Paquita file.

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STRICTLY CONFIDENTIAL 7 November 1958

MEMORANDUM

To : Dr. Arturo Morales Carrión

From : Juan M. García Passalacqua

Re : Eventual Development of the Commonwealth of Puerto Rico: International Relations.

The object of this paper is to analyze in terms of (a) political theory, (b) international law, and (c) factual circumstances, the possibilities of participation by the Commonwealth of Puerto Rico in international relations.

General - After a concise definition of international relations themselves, and their practice in U.S. Constitutional Law and in other federal forms of government, an analysis of the possibilities of the Commonwealth's participation in the following four fields of international relations will follow:

1) Diplomatic relations;

2) Various forms of alliances;

3) International organizations;

4) International specialized agencies.

Assumptions - (1) The best possibilities can be found in the field of specialized agencies, eventhough in none of the other fields participation is absolutely impossible in terms of international law. (2) There is no

internal constitutional problem involved in these developments. (3) A change in the Federal Relations Act would be helpful but not absolutely necessary to facilitate participation in some of the fields.

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I. International Relations : General - The general trend in political theory at present is to deny the old theory that only fully sovereign national-states can maintain international relations. "Clearly international relations includes relations between many entities of uncertain sovereignty" — claims Quincy Wright (The Study of International Relations, N. Y., 1955). "It is said to be concerned only with the relations among political communities occupying definite territory" (Ibid). "This approach to international relations regards individuals and groups as basic constituent elements" (Haas & Whiting, Dynamics of International Relations, N. Y., 1956). It is evident that these definitions are the most useful for our purposes, but they are not particularly popular outside of the academic world. Nevertheless the trend is towards their acceptance, specially in the case of international organizations (See for this the Bernardotte case, individuals as subjects of international law, in international law textbooks).

II. Foreign Relations, U.S.: Constitutional Issue - "The Constitution of the United States does not describe the organization which shall carry on relations between this country and foreign states, nor does it outline in

in detail the extent and limits of the powers to be exercised" (Comments on Art. II, secs. 2, 3 of U.S. Const. by Stoke, in The Foreign Relations of the Federal State, Lon., 1931). On the preceding grounds, the participation of the Commonwealth in Foreign Relations would not involve a constitutional issue, but a matter of law. In Art. I, sec. 10 of the U.S. Constitution, the power is given to Congress to legislate on this matter: No State shall enter into any treaty or alliance or confederation... No State shall without the consent of Congress... enter into any agreement or compact with another state or foreign power." The U.S. Congress has given such consent in some cases. Congress could then, by law (alteration to the Federal Relations Act by Puerto Rico's request) consent to give the Commonwealth the power to enter into such agreements. This, of course, involves the problem if the Commonwealth is to be interpreted as being a state or a territory. The interpretation of it being an associated state would permit Congress to pass the law without involving a constitutional issue. "...Interpretations, broader as new cases arise, may extend the meaning of the words state or territory, the only conditions which the Constitution contemplates. A strict interpretation of the Constituwion would proscribe the undue extension of any clause in that document. It has definitely been established that such a course is not to be followed by the United States Supreme Court in the application of the constitutional provisions to particular cases, if the circumstances make judicial ammendment of

the Constitution is necessary" (Morales Yordán, The Constitutional and International Status of the Commonwealth of Puerto Rico, S.J., 1957). In Mora v. Mejías the court said "Puerto Rico has thus not become a State in the Federal Union like the 48 States, but it would seem to have become a State within a common and accepted meaning of the word" (206 F. 2d 377, 1953). This interpretation is the more useful for our purpose, and would clear the way to a Congress law, to be included in the Federal Relations Act by Puerto Rico's consent, more or less with the following text:

"The Commonwealth of Puerto Rico may legislate or take the necessary or proper measures for performing the obligations towards foreign countries of the Government of the Commonwealth as associated to the United States, which may arise under treaties between the United States and such foreign countries."

This text, modeled on art. 132 of the British North American Act of 1867 between Canada and the United Kingdom, would give, by Puerto Rico's consent, the treaty making power to the U.S. Government; but would permit the Commonwealth to implement such treaties in the name of the President of the United States.

III. Foreign Relations : International Law Issue - No problem could be found by the preceding arrangement in international law, since it is a known principle of this discipline that: "This right has been accorded at times in a restricted form to part-sovereign and semi-sovereign states, the exact

restrictions upon the diplomatic activity of each being determined by the instrument defining their international position" (Memorandum of the U.S. Department of State, April 6, 1920. MS. Department of State, file 701.611/648). In our case, such "instrument" would be the Federal Relations Act as ammended.

I. Diplomatic Relations- Even though in the strict sense of the word diplomatic relations would remain under the U. S. Department of State (with the possibility of more participation by official consultation with our own Dpartment) in case of interest, even in the field of International Law precedents can be found for the participation of the Commonwealth in Diplomatic Relations.

The U. S. Foreign Servide, has in the past, appointed officials with the rank of Commissioners and Agents to foreign countries. The rank of Commissioner has been given to official representatives without diplomatic status in foreign countries with whom the U.S. did not have direct diplomatic relations, but only through the foreign service of other country. (Hackworth, International Law, vol. IV). The Commonwealth could-without problems of any kind, if the appointment is made in the President's name,-appoint Commissioners in other countries where its foreign relations are handled by the United States. A possibility would be their nomination by the President on recomendation from the Governor. This would be an absolutely internal matter of the Department of State, for which it is empowered by law, and would not involve any constitutional or legal issue. A detailed study of this possibility would be fruitful.

II. Forms of Alliances- Developments in international relations tend to indicate that alliances are "gradually transforming a calculated alliance of sovereign governments into a regional association of peoples" (Haas, as cited above). Nevertheless, since the treaty-

making

making power of the U. S. involves a Constitutional issue, our role in this sphere would be limited again as in the preceding case. "In the negotiation of (a) treaty the United States Government recognized the claims of the States (of the Union) and asked them to appoint Commissioners, to aid in reaching an agreement". (Comments on the Webster-Ashburton Treaty of 1842 in Crandall, Treatiss, their making and enforcement, Wash., 1916.) This seems to be the only useful possibility for us.

III. International Organisations- Forms and formulas for the representation of associated states in international organisations can be found in the Statute of the Council of Europe, the European Economic Community Treaty, teh European Political Union draft treaty and others. All these can be studied for possible prededents and norms.

The main point to be made in this connection is that membership in interantional organisations is given on a qualitative basis, and "states are given membership if they are considered particularly vital to the achievements of the organization's tasks".(Haas, as cited above). So, we could participate only in those agencies where our inclusion would be desired by the other members on the grounds of possible co-operation. We must weigh then, not only our willingness to enter, but the necessity or advantages the organisation would obtain with our inclusion in it.

There is no International Law problem with our admission in such organisations, since "recognition of either state or government is an individual act, and either admission to membership or acceptance of representation in the Organisation are collective acts; it would appear to be legally inadmissible to condition the latter acts by a requirement

would be well received by the Assembly.

Nevertheless, it seems wiser to limit the intent to the organs specifically, since "representation of a State in the organs is clearly determined by a collective act of the appropiate organs... in the case of representation, by vote of each of the purported representatives" (Memorandum prepared for the Secretary General, Feb. 1950, as cited). Application to a specialized agency by states not members of the United Nations , "shall be inmediately transmitted by the Secretariat (of the agancy? to the Economic and Social Council ... The Council may recommend the rejection of such applications and any such recommendation shall be accepted by the Organisation" (Art. II of Agreement between the UN and Unesco). We should be prepared, if developments follow the preceding path, to enter into power politics considerations again.

The best possibilities for admission of associated states on all grounds already delineated seems to be UNESCO.

An analysis and an specific approach to the problem is offered by Roger Baldwin in his confidential report draft in our archives.

SUMMARY AND RECOMENDATIONS.

1. The alteration of the Federal Relations Act would be extremely helpful but not absolutely necessary, since a good case could be built inside the United Nations based on our self-government resolution of 1952 and other U.N. documents. At the present moment this would seem to be the most advisable move, since agood case could be built for our admission on the present Commonwealth conditions. Nevertheless, power politics considerations slhould be taken into

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requirement that they be preceded by individual recognition (of the member states)". ("Legal aspects of problems of representation in the United Nations" Memorandum for the Secretary General, Feb. 1950, in United Nations Law, by H. Sohn, N.Y., 1956).

It is evident on the preceding grounds, that recognition of our status as the one of a Nation-State is not necessary for our admission, since the Secretary General has insisted both things are separate matters. Nevertheless, international politics problems will be present in case of an admission request, and ~~that~~ ~~an~~ a study of these problems in the specific body in which admissionn or participation is sought would be necessary.

IV. International Agencies.

Participation by the Commonwealth in international agencies presents no international law problem, since the representatives to such agencies do not posses international personality unless representing the U. N. as an organisation (MS Department of State file 701.09/374, for letter of the U.S. Secretary of State on October 16, 1933 on the problem, and the cited Bernadotte case).

Art. 57 of the Charter defines the U. N. specialized agencies as established by "inter governmental agreements" and not agreements between nations. This semantic formulation could be good grounds on which to base the acceptance of associated states.

Even "the value of association of Non Self Governing Territories in the work of specialized agencies" has been stressed (Resolution 66 I of the General Assembly, Dec. 14, 1946). This resolution would seem to indicate that a new form of associated membership, specifically for associated states (to distinguish them from the terrtiories)

would

strict account as to insure the success of the measure before presenting it.

2. In relation to our possible legal problems in presenting the case, it seems extremely advisable to stress the State content of our official tittle, Free Associated State, and to slowly abandon the Commonwealth one, since it has less possibilites. For example, the word State is not defined within the United Nations. So, the admission of an associated state, but still a state, would be made easier by the use of such title. It has been evident also that in our internal legal problems the use of the word state would prove much more useful to newer interpretations of the Constitution and Laws of the U. S. since it would made possible the use of a series of semantic-legal approaches.