



United States Department of State

Washington, D.C. 20520

October 31, 2013

Javier L. Inclán Aponte, Esq.
Commonwealth of Puerto Rico
Special Aid
Department of State
P.O. Box 9023271
San Juan, PR 00902-3271

Dear Mr. Inclán:

This responds to your email communication of September 10, 2013 seeking the views of the U.S. Department of State concerning the possible attendance of the Commonwealth of Puerto Rico at the Ibero-American Cultural Congress to be held in Zaragoza, Spain on November 20-22, 2013. You have also provided a copy of a letter from Ms. Leonor Esguerra Portocarrero, Director of the Division of Culture of the Ibero-American General Secretariat, to Commonwealth Secretary of State David Bernier Rivera, inviting Puerto Rico to attend the Cultural Congress and further inviting Puerto Rico to join some or all of the Cultural Cooperation Programs of the Ibero-American Cultural Community.

The U.S. Department of State does not object to representatives of Puerto Rico attending the 2013 Cultural Congress, provided that Puerto Rico not attend in the capacity of a member of the Congress or of the Ibero-American Cultural Community, that Puerto Rico not seek or accept to be treated as a sovereign State at the Congress, and that Puerto Rico sign no instruments in connection with the Congress without the prior authorization of the U.S. Department of State.

We note that Ms. Esguerra Portocarrero's letter requests that Puerto Rico confirm its interest in adopting the Ibero-American Cultural Charter. It is unclear what action Ms. Esguerra Portocarrero contemplates as constituting "adoption," given that the Charter does not appear to be an instrument open for signature or formal adoption. However, to the extent that the Charter constitutes a statement of "Heads of State and Government," it cannot be adopted by Puerto Rico. To attempt to do so would be inconsistent with Puerto Rico's status and with United States foreign policy.

With regard to Puerto Rico's participation in international organizations associated with the Ibero-American Community and Ibero-American Summit, you have provided a list of six such organizations in which Puerto Rico already participates: the Organización de Estados Iberoamericanos para la Educación, la Ciencia y la Cultura; the Federación Iberoamericana del Ombudsman; the Consejo Iberoamericano del Deporte; the Red de Capacitación del Ministerio Público Iberoamericano; the Conferencia de Autoridades Cinematográficas de Iberoamérica; and the Organización Iberoamericana de la Juventud.

We have requested information about Puerto Rico's participation in these organizations, including the nature of the organizations, any agreements, other instruments or correspondence Puerto Rico executed in order to join or participate, and any consultation between Puerto Rico and the U.S. Department of State concerning such participation. In this regard, we call to your attention the attached letter concerning Puerto Rico's participation in the Consejo Iberoamericano del Deporte, directed in 2008 to Puerto Rico's Office of Federal Affairs. That letter repeated earlier requests for information, indicated that in the absence of such information the Department was unaware of a legal basis for Puerto Rico's participation in that organization, and urged consultations on this and similar matters to facilitate the effective implementation of the foreign affairs functions of the United States.

We greatly appreciate Puerto Rico's recent outreach to the Department of State to consult regarding its possible participation in international organizations, including those associated with the Ibero-American Community and Ibero-American Summit. We are pleased to work with you to identify other opportunities for Puerto Rico to engage in the region. However, Puerto Rico should take no steps to join or associate itself with any such organizations pending receipt of the information we have requested and written concurrence from the Department. We look forward to further consultations based on that information.

Sincerely,



Maria Germano
Office of Policy, Regional and Functional Organizations
Bureau of International Organization Affairs
U.S. Department of State



United States Department of State

Washington, D.C. 20520

September 3, 2008

Mr. Eduardo Bhatia
Executive Director
Office of Federal Affairs of Puerto Rico
1100 17th Street, NW
Suite 800
Washington, D.C. 20036

Dear Mr. Bhatia:

You will recall that my predecessor, Portia Palmer, wrote to you in April concerning a question raised with us by Mexican officials regarding a Note Verbale sent last year by the Commonwealth of Puerto Rico to the Consulate General of Mexico in Puerto Rico. The Note Verbale stated that the Commonwealth wished, through its official representative for sports on the island, to "continue its membership" in the Ibero-American Sports Council. Our letter noted that the Bylaws of the Ibero-American Sports Council reflect features generally characteristic of an international agreement creating what is described as "an inter-governmental organization" with "its own legal status." As a follow-on to earlier efforts we had undertaken, our letter requested that your office provide clarifying information concerning Puerto Rico's relationship to the Sports Council and, in particular, any participation by Puerto Rico with the Council and the legal basis for that participation.

Regrettably, our numerous attempts to obtain such clarifying information from Puerto Rican authorities have thus far been to no avail, nor have we identified such information through our own efforts. In these circumstances, and in light of the concerns raised in this case, we have responded to the Mexican authorities informing them that we have identified no authority for Puerto Rico to submit the Note Verbale. A copy of our letter is attached for your information.

We believe that it is in our mutual interest to discuss this matter and, more broadly, to undertake appropriate and timely consultations regarding any similar issues that may arise in the future, in order to facilitate the effective implementation of the



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Washington, D.C. 20520

foreign affairs functions of the United States. We would very much welcome your contacting us for that purpose.

Sincerely,

A handwritten signature in cursive script that reads "Cheri Nolan".

Cheri Nolan
Director
Public Liaison and
Intergovernmental Affairs

Attachment: As stated



United States Department of State

Washington, D.C. 20520

September 3, 2008

Mr. Carlos Quesnel-Melendez
Counselor for Legal Affairs
Embassy of Mexico
1911 Pennsylvania Avenue, NW
Washington, D.C. 20006

Dear Mr. Quesnel-Melendez:

Your office forwarded to us a Note Verbale sent last year by the Commonwealth of Puerto Rico to the Consulate General of Mexico in Puerto Rico pertaining to the Ibero-American Sports Council. Specifically, the Note Verbale stated that the Commonwealth wished, through its official representative for sports on the island, to "continue its membership" in the Ibero-American Sports Council. In that regard, on behalf of your legal office, you raised the question whether Puerto Rico had the authority to submit such a document. With your inquiry you were kind enough to include as well the Bylaws of the Sports Council.

Puerto Rico has no independent legal capacity to conclude treaties or other legally binding international agreements. The federal government of the United States is responsible for the foreign relations of all its states, territories and possessions, including Puerto Rico. The Department of State must review any Puerto Rican proposal to join or participate in an international organization or sign a document (including an agreement) with other nations to ensure that such participation or document would be consistent with the foreign policy of the United States, and that it would not result in the assumption by the United States of undesirable or inconsistent international commitments, including binding obligations under international law.

While the precise intent of Puerto Rico's Note Verbale is not entirely clear to us, the documents you submitted raise a number of significant questions in light of Puerto Rico's status and the principles outlined above. The Bylaws of the Ibero-American Sports Council reflect features generally characteristic of an international agreement as set forth in the Vienna Convention on the Law of Treaties and appears to create an international organization. For example, Articles 1 and 2 provide for establishment of the Sports Council as "an inter-governmental organization" with "its own legal status," and Articles 32 and 33 provide for the deposit of instruments of ratification or accession and entry into force. We note also that the Bylaws refer repeatedly to "States", specifying in particular in Article 5 that Ibero-American "States" that ratify or accede to the Bylaws



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under the procedures set forth in Articles 32 and 33 may become "members" of the Ibero-American Sports Council. In addition, the Bylaws contain a number of provisions regarding the collection of members' dues.

We have raised this matter with appropriate Puerto Rican authorities, but to date we have not received or otherwise identified information sufficient to clarify the intended effect of the document Puerto Rico has submitted or the nature of Puerto Rico's participation in the Sports Council and the legal basis therefor. Accordingly, in light of the concerns as described above and in the absence of information that would warrant a different conclusion, we wish to inform you that we have identified no authority for Puerto Rico to submit the Note Verbale.

Sincerely,

A handwritten signature in cursive script that reads "Cheri Nolan".

Cheri Nolan
Director
Public Liaison and
Intergovernmental Affairs