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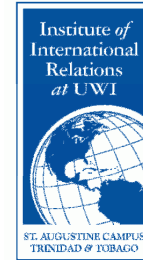
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FORUM

The United Kingdom and its Caribbean Overseas Territories: Present Relations and Future Prospects

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Abstract: *This paper considers the relationship between the UK and its Caribbean Overseas Territories (OTs) since the Conservative-led coalition government won power in May 2010. There is discussion of the UK government's recent White Paper on the OTs; the balance of authority between the UK and the territories in areas such as good governance and economic reform; the attitude of the territories to the present political settlement; and the ways in which further autonomy can be encouraged. It is clear that the UK's role in the territories has become more assertive over the last three years, but the UK has also tried to build a more constructive and positive set of relations with the territories. The response of the territories to this has been mixed. Some are happy with the status quo, while others are critical. Notwithstanding it is likely that the existing arrangements will be maintained for the foreseeable future. What is crucial, however, is managing relations in an effective manner, which in turn could lead to the territories achieving greater autonomy in the medium-term.*

Keywords: Caribbean, overseas territories, good governance; economic vulnerability, decolonisation, United Nations

On entering government in May 2010 the UK Conservative-led Coalition was faced with a number of challenges in regard to its Overseas Territories (OTs) in the Caribbean, including dealing with

the problems resulting from the corruption allegations in the Turks and Caicos Islands (TCI); addressing the economic fragility in several territories; and overcoming an underlying fractiousness between the UK and the OTs which had developed towards the end of the Labour Party's time in office. Since 2010 these challenges, and several others, have been addressed, but in doing so the UK's role in the territories has become more assertive. This obviously has implications – certainly in the short and medium term – for the territories capacity to achieve greater autonomy and possibly full decolonisation as defined by the United Nations (UN).¹ This paper considers the reforms that have been enacted over the last three years, including the recent White Paper on the OTs; the state-of-play vis-à-vis the balance of authority between the UK and the territories; the response of the territories to the present situation; and the ways in which further autonomy can be encouraged.

THE 2012 WHITE PAPER

On 28 June 2012 a White Paper on the OTs sub-titled *Security, Success and Sustainability* was published by the UK government.² The White Paper sets out the nature of the existing links between the UK and its 14 OTs and the measures required to 'renew and strengthen' the relationship.³ The Coalition government felt – perhaps correctly – that towards the end of the Labour Party's time in power relations with at least some of the territories were becoming increasingly fractious and several political and economic problems in the territories required stronger corrective action, supported by a 'very strong positive vision'.⁴ Thus the White Paper attempts a balance between promoting a more positive overall agenda while making clear the responsibilities and high standards of governance the territories must maintain.

From the outset the White Paper refers to the 'valued partnership within the Realm'⁵ and the mutual benefits gained from the relationship. For the UK that includes a global presence; a set of strategic assets; economic and financial opportunities; and access to significant natural and environmental resources (the territories comprise 90 percent of the biodiversity of the UK and territories combined). For the territories advantages include UK defence and security guarantees; economic and technical assistance; and reputational benefits. The White Paper also makes very clear that all UK government departments are 'committed to engaging with supporting the Territories'⁶ – not just the Foreign

and Commonwealth Office (FCO) and the Department for International Development (DFID) – to establish a mutually beneficial relationship. Stronger political links between the UK and the territories are also encouraged through a new Joint Ministerial Council, supported by a small secretariat, which replaces the more ad hoc and rather ineffective Overseas Territories Consultative Council. Further, the White Paper highlights the government's desire to promote broader engagement with the territories via local government, private companies and non-governmental organisations, and also the sharing of best practice between the territories.

In relation to specific policy areas the White Paper includes chapters on defence, security, and safety; economic development and resilience; the natural environment; good governance; education, health, culture and sport; and the territories' links with the wider world. Within these chapters several considerations stand out: (1) Territories must 'abide by the same basic standards of good government as in the UK',⁷ which means *inter alia* maintaining the highest standards in public life, strengthening the public service, and safeguarding fundamental rights and freedoms. (2) Territories must follow 'prudent fiscal management and effective fiscal planning'⁸ to become as financially self-reliant as possible – if not the UK government will intervene. However, the UK will strongly defend the territories' offshore financial sectors and provide financial support, including investments to promote growth, when called upon. (3) Greater efforts will be made to develop the territories' links with key organisations such as the UN, the Commonwealth, the European Union, and the Caribbean Community (CARICOM).

The publication of the White Paper was timely in reaffirming the importance of the relationship and setting out clearly the priorities of the UK government over the next few years. Further, particular initiatives such as the Joint Ministerial Council, the emphasis on deepening ties beyond the FCO and DFID, and projecting a more positive view of the relationship are to be welcomed. However, the White Paper is in many respects very similar to the previous White Paper – *Partnership for Progress and Prosperity* – produced by the Labour government in 1999.⁹ Because there is no desire on the part of the Coalition to change the fundamental nature of the relationship and little pressure to force independence, managing relations in an effective manner is the most important challenge.

POLITICAL ISSUES: THE TCI AND BEYOND

In the TCI a general election was held on 9 November 2012, just over three years since direct rule was imposed by the UK government after serious allegations of corruption were revealed. The election was won very narrowly by the Progressive National Party (PNP) who had been in office when self-government was suspended in August 2009. Just prior to the election a new constitution came into force on 15 October 2012. Compared to the previous 2006 constitution, the new version includes stronger powers for the governor and the UK government. The UK felt this was necessary to make sure the previous corruption and mismanagement in the territory could not re-occur. There are several provisions designed to enhance the accountability of executive government. For example, all organs of government are obliged to give effect to a 'Statement of Governance Principles', which was formulated by the UK secretary of state after consultation with the TCI. The governor also has powers to act contrary to cabinet advice, or even exceptionally to enact legislation, to ensure compliance with the Statement of Governance Principles.

With self-rule now returned, but with greater UK oversight tensions are apparent between the TCI and UK. In February 2013, Premier Ewing warned CARICOM Heads of Government that there was a risk of 'chaos' in the country, criticised the actions of the UK, and called for the 'full restoration' of democracy and the removal of 'colonial influences'.¹⁰ In a strongly worded response UK Foreign Secretary William Hague accused the Premier of 'misrepresenting' the country's situation, and he reminded him that the previous PNP government had 'left behind a chaotic situation'. Hague continued, '[t]he UK government has invested much in helping put TCI back on the right path. I hope you will use this inheritance wisely'.¹¹

The Cayman Islands has also witnessed a period of political instability, after Premier McKeever Bush was arrested on suspicion of theft and allegedly importing explosive substances without valid permits in December 2012. (He was formally charged on 20 March.) Subsequently, Bush lost a vote of no confidence in the Legislative Assembly after five of his colleagues supported the motion – those colleagues then formed a new government. This move against Bush was precipitated in part by what had happened in the TCI – Cayman politicians felt it was necessary to act first,

rather than risk a repeat of the TCI experience. Indeed, the arrest of Bush was the culmination of a period of increasingly strained relations between the ex-premier and the Governor and the FCO. Bush during his premiership had taken an aggressive stance towards the Governor and the UK. Bush on many occasions had talked about 'bureaucratic harassment' and 'meddling'. It is true that the Governor and the UK have taken a more pro-active role in the Cayman Islands, but there have been legitimate concerns about the path the country has taken – in particular the overly dominant role Bush has played in Caymanian politics and the somewhat lax approach to budget management and government procurement (see below).

Further, the UK's present engagement in the Cayman Islands (and in other territories) is framed by the previous unattended failings in the TCI. The arrest of Bush was unconnected to the policy clashes that had taken place, but it is a sign that greater attention is now being paid to good governance with a strong lead being given by the Governor and the UK. Former premier Bush tried but ultimately failed to challenge the constitutional supremacy of the UK government, and as a consequence his own position was seriously undermined. Since Bush stepped down as premier the mood music coming out of the Cayman Islands in relation to the UK has been more positive. There are indications that many in Cayman believe that the politics of division and conflict have damaged the country's reputation and undermined its economy. Now there is hope that a more positive political climate can be shaped. However, it is uncertain whether some other territories, including the TCI, will follow suit. The absence of mutual trust and confidence is a real barrier towards the awarding of further autonomy, and without improvements the UK government will be reluctant to move significantly on the issue.

ECONOMIC ISSUES

Despite the territories relatively high levels of economic development most rely on a few key industries – particularly financial services, tourism and construction – for both government revenue and employment. The proportion of government revenue generated by financial services and tourism is approximately 50 per cent for the majority of territories, whilst they account for between 23 per cent and 48 per cent of employment.¹² The vulnerability of government revenue is particularly acute since the

territories have a narrow revenue base. There are no taxes levied on income, profits and capital gains, nor are there sales or value added taxes. Rather revenue is derived from a combination of import duties, financial sector licence fees and other specific charges. Thus many OT economies are 'particularly exposed to economic shocks'.¹³

The territories suffered during the recession from reduced activity in their financial services sector and declines in tourist arrivals and construction. As a result, the economies stagnated and fiscal deficits increased. The growing budgetary pressures were particularly acute in Anguilla, the Cayman Islands, and the TCI (the latter's situation being exacerbated by the previous government's corruption and mismanagement). This has led the UK government to take a stronger hand in economic matters. For example, in both Anguilla and the Cayman Islands the UK has forced revisions to local budgets to cut spending and raise revenue. Further, the UK and all the territories have agreed Frameworks for Fiscal Responsibility – legislation that commits the territory governments to be prudent and transparent on fiscal and debt management, establishes borrowing limits, and lays down the stages that must be followed in the planning, development and execution of a project. The latter obligation was particularly pertinent for the Cayman Islands as in November 2012 talks with China Harbour Engineering to develop the main port were ended after criticism from the UK government. FCO Minister Henry Bellingham had publicly criticised the way in which former Premier Bush had conducted the negotiations.

As well as direct economic impacts, the global financial crisis has led to changes in the international regulation of offshore financial centres (OFCs). For example, the US Congress passed the Foreign Account Tax Compliance Act in 2010 which came into force in January 2013. The Act requires both US citizens and foreigners living in the US to disclose information about their overseas holdings in their tax returns or risk large penalties. Further, foreign financial institutions are required to report on income earned by their US account holders, or face US-imposed fines. Similar measures are being introduced in Europe. As a consequence holdings in OFCs are coming under greater scrutiny. Indeed, the whole narrative around OFCs has become more critical.

So it is clear that the level of economic oversight of the territories, both on the part of the UK and the international community is increasing. The Coalition government in the UK with

its austerity policies at home feels it is necessary to encourage greater fiscal discipline in the territories. The UK wants the territories to be financially self-reliant. However, the increasing criticism of the territories' OFCs might put that at risk. Notwithstanding the UK remains a strong defender of the territories' right to maintain their role in the offshore sector. As the recent White Paper suggests the UK 'will continue to represent the interests of those Territories which meet [international standards]' and 'will strongly support their right to compete freely in international markets'.¹⁴ One reason for this support as highlighted in the White Paper is that 'the international financial centres in the territories can play a positive and complementary role to the UK-based financial services industry'.¹⁵ A second is that the UK wants the territories to be as economically independent as possible and the offshore sector helps them to be so.

How might the present economic trends impact on the territories and their attitudes towards greater political autonomy? Well, greater financial discipline may help them by consolidating their economic position and minimising their vulnerability, despite some short-term resentment over the UK's greater involvement in economic matters. On the other hand, the more hostile international attitude to their financial services industries might make the territories less confident about asking for more autonomy. The territories may well prefer to maintain the link with the UK and the useful level of protection that provides.

ATTITUDES TOWARDS THE PRESENT CONSTITUTIONAL RELATIONSHIP

From the UK government, the view is that the constitutional position is largely settled – at least for the time being. Over the last few years new constitutions have been agreed for the British Virgin Islands, the Cayman Islands, Montserrat, and the TCI (twice). Only Anguilla was unaffected by this process.¹⁶ With the exception of the TCI, the new constitutions afford new, albeit limited, responsibilities to the territories. For example, National Security Councils were created in the British Virgin Islands and the Cayman Islands, and a National Advisory Council in Montserrat, to advise the Governor on internal security and police matters. Provisions were also made for the devolution of new powers to the governments of the British Virgin Islands, the Cayman Islands and Montserrat in the area of international affairs. Further, the new

constitutions included some symbolic changes which the territories requested. In the British Virgin Islands and the TCI the Legislative Council was renamed the House of Assembly, and in Montserrat it was renamed the Legislative Assembly. In three territories the title of Chief Minister was changed to Premier and the Executive Council was renamed the Cabinet, while in the Cayman Islands the title of Leader of Government Business was changed to Premier. Ultimately, however, the Conservative/Liberal Democrat coalition government shares the position of the previous Labour government that limits should be placed on the territories' constitutional room for manoeuvre in order to maintain the UK's reserved powers and to safeguard the independence of the judiciary and the impartiality of the civil service. The UK now believes that rather than further constitutional reform the existing arrangements should be made to work better, and it is hoped that the provisions within the White Paper will help to do this.

For the territories the picture is more mixed. In the British Virgin Islands, the Cayman Islands, and Montserrat there is general satisfaction with the status quo. However, in Anguilla and the TCI the rhetoric against the constitutional link is quite critical. Anguilla's Chief Minister Hubert Hughes has called for complete internal self-government, and more recently full independence. After differences over the territory's budget in 2011 Hughes called on Anguillans to 'throw off the yoke of oppression' and consider independence.¹⁷ Then in April 2013 Hughes said he wanted a referendum by the end of the year to consider two options: 'complete internal self-government or independence'.¹⁸ Note, moderate reform was not offered as an option.

What should we make of the suggested referendum? First, it is not at all certain that a vote will be taken place. Second, if a vote is held it is unlikely that independence will be favoured. Rather, the most likely result – support for complete self-government – could be used as a bargaining chip in an attempt to pressurise the UK government to devolve significant new powers in any new constitution. So far the UK has not been prepared to accept such changes unless a territory decides on a stage-by-stage process to independence. In addition, the PNP in the TCI announced in October 2011 that it would seek a referendum on independence if it won the next general election. Since the election Premier Rufus Ewing (of the PNP) has talked about the option of independence but has not committed to holding a referendum anytime soon.

Indeed, if a vote was held, it is unlikely to pass because of the recent poor record of the local political class.

Indeed, key to facilitating any changes is enhancing the probity and good practice of the territory governments, and maintaining those standards consistently over the medium to long term. Without such action the UK will be reluctant to devolve further powers, and the local populations will be cautious about supporting independence. So the territories, with external support, must take steps to consolidate and in some cases improve the ways in which local governance systems operate.

FUTURE PROSPECTS

From the outset it can be stated that neither the UK nor the territories want a closer and more formal constitutional relationship that might involve direct representation for the territories in the UK parliament. Similarly, the possibility of independence appears only a distant possibility, despite recent talk in Anguilla. Then what about free association? As intimated above the UK has little enthusiasm for free association in large part because of the problems linked to Associated Statehood in the 1960s and 1970s in countries such as Grenada, and the belief that free association is problematic in the cases where it operates today, for example the Cook Islands (with New Zealand) and the Federated States of Micronesia (with the United States). There is also reluctance on the UK's part to allow the Caribbean territories to be given the same level of autonomy as Bermuda (which has one of the most devolved constitutional systems) because that would hinder UK oversight. Notwithstanding, there is evidence to suggest that some territories (such as Anguilla) would like greater autonomy and/or free association.

A decade ago, the UK government set in motion a constitutional review process for the territories. For the first time the process was supposedly 'locally owned rather than directed from London'.¹⁹ As a consequence, the territories hoped that fundamental reform would be undertaken. This impression was reinforced when the FCO failed initially to make its own position clear on the extent to which it would accept changes to the existing constitutions. Therefore the expectations for change on the part of the territories were high. The territories asked for a range of reforms, such as to reduce the power of the Governor and to increase the role of the elected government, to make the Attorney

General a political appointee, and to gain greater control over the public service and judicial appointments. Only then did the FCO step in and place clear limits on the territories' options. The FCO minister at the time argued that the idea of free association 'does not sit easily with our over-riding responsibility to ensure the good governance of the territories and compliance with applicable international obligations'.²⁰ As we have seen this remains the case.

So what are the possible routes towards decolonisation? One is that the territories make clear their contentment with the existing constitutional arrangements and ask to be removed from the UN's list of non-self governing territories.²¹ Montserrat's Premier Reuben Meade tentatively called for this in 2012. Meade argued that 'the people of Montserrat have made their choice in choosing to continue as an overseas territory of the United Kingdom and do not see themselves as being a colony'.²² There is much to be said for the argument that the local territory population should have the final say over whether a territory is delisted by the UN, and that the UN should show some flexibility to allow this to happen, i.e. in relation to UN General Assembly Resolution 2625 (XXV) that considers 'the emergence of any other political status freely determined by the people' as a way of implementing the right to self determination.²³ However, it has always been the view of the General Assembly that the Resolution should not legitimise models which do not offer a full measure of self government. Notwithstanding, there are two key considerations here. First, what is the view of the local (Montserratian) population? Without some kind of vote or referendum it is difficult to gauge what the view of the population is – they might not want independence but they may wish to have greater autonomy which the UK does not presently allow. It needs more than the word of the premier to judge the views of the people. Second, what happens if the view of the population changes and a new constitutional settlement is preferred? Under those circumstances could Montserrat be re-listed? So perhaps the process of de-listing could be made more flexible, but the procedure for this to happen has to be clear and reversible.

Another option is to support the UK preference and make the existing arrangements work more effectively and use the newly established Joint Ministerial Council to strengthen relations and build confidence between the UK and the territories, and to enhance political and economic governance in the territories. Would a stronger institutional structure focused on mutual benefit

be enough for de-listing? Perhaps not, but an effective Joint Ministerial Council could in the medium-term lead to greater autonomy being countenanced by the UK, including the reduction of the power of the Governor, strengthening the role of public service commissions, allowing the territories to appoint a political Attorney General, and limiting the power of the UK government to disallow laws enacted by the local legislatures. In short, if independence is not an option the UK government must gain reassurance that greater autonomy for the territories will not jeopardise its interests.

CONCLUSION

Over the last three years the UK coalition government has enacted a series of reforms to strengthen oversight and improve political and economic governance in the territories. However, many of these changes have been controversial and to counter disquiet in the territories the UK has attempted to build a more constructive and positive set of relations with them. The response of the territories to this has been mixed. Notwithstanding, it is clear that at the present time the routes towards decolonisation are limited. Independence, incorporation, and free association are not favoured by either the UK and/or the territories. One option is to enshrine the status quo, but several territories as well as the UN do not support this. Thus the most feasible way forward is to encourage further confidence building measures between the UK and its territories, and to enhance the territories political and economic viability. Only then might more substantial constitutional reform be possible.

NOTES ON CONTRIBUTOR

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NOTES

- 1 The three options are independence, integration, and free association (i.e. full internal self-government).
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