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THE UNITED KINGDOM'S RELATIONSHIP WITH ITS OVERSEAS
TERRITORIES

Paper presented to the Pacific regional seminar

by

the Foreign and Commonwealth Office



THE UNITED KINGDOM'S RELATIONSHIP WITH ITS OVERSEAS TERRITORIES

This paper sets out the United Kingdom's relationship with its Overseas Territories. It has been written with a view to it being circulated at the annual seminar of the United Nations Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Bandung from 14-16 May 2008.

The United Kingdom would like to state at the outset that its relationship with its Overseas Territories is a modern one based on partnership, shared values and the right of each Territory to determine if it wishes to retain the link to the United Kingdom. It considers the existence of the Committee of 24 and the UN list of non-self governing territories to be outdated and remains of the view that none of its Overseas Territories should remain on the list.

The 1999 British Government Command White Paper "Partnership for Progress and Prosperity" set out the four principles that underline the British Government's relationship with the Overseas Territories. They are:

- self-determination;
- mutual obligations and responsibilities;
- freedom of the Territories to run their own affairs to the greatest degree possible;
- a firm commitment from the United Kingdom to help the Territories develop economically and to help them in emergencies

Those principles remain fundamental to the United Kingdom's relationship with the Overseas Territories. The UK is committed to the future development and continued security of the Overseas Territories for as long as the Territories choose to retain the link with the United Kingdom. There is regular dialogue between British Government Ministers and Territory leaders on a wide range of issues of mutual interest. The annual Overseas Territories

Consultative Council, which provides a political forum for British Ministers and Overseas Territories Premiers, Chief Ministers and their equivalents to discuss issues of topical interest, is now well established. The United Kingdom continues to provide assistance to the Overseas Territories through the provision of technical and logistical support and, in the case of Montserrat, Pitcairn and St Helena, through budgetary aid.

As the 1999 White Paper pointed out, the United Kingdom's policy towards the Overseas Territories rests on the basis that it is the people of each Territory who determine whether they wish to stay linked to the United Kingdom or not. The United Kingdom has no intention of imposing independence against the will of the people concerned. It has been the established policy of successive British Governments to give every help and encouragement to those Territories where independence is the clearly and constitutionally expressed wish of the people, where this is an option. At this time, the presumption of the United Kingdom Government is that a referendum would be the way of testing opinion in those Territories where independence is an option. But the final decision on whether a referendum is necessary, and what form a referendum might take, would need to be determined by the United Kingdom, in the light of the particular circumstances in each Territory.

The link between the United Kingdom and the Overseas Territories is enshrined in the Constitution of each Territory. Consultation with the Territories at the time of the White Paper showed a clear expression of their wish to retain the connection with the United Kingdom. The United Kingdom concluded that neither integration into the United Kingdom, nor Crown Dependency status, offered more appropriate alternatives to the present arrangements.

The overwhelming majority of decisions in the United Kingdom's Overseas Territories are taken by the Territory Governments in exercise of devolved powers. There is no wish on the United Kingdom's part to micro-manage its relationship with the Overseas Territories. But as long as any Territory chooses to remain British, its Constitution must be agreed with the United Kingdom. As part of a constitutional review process launched by the 1999 White Paper, the UK agreed to consider carefully any proposals for constitutional change made by an Overseas Territory. The constitutional review process has taken the form of a bilateral negotiation, with the scope and pace largely being determined by the Territories themselves. The objective of the negotiations has been to agree the best possible modern constitutional

arrangements that are acceptable to both the Territories and the United Kingdom. While the United Kingdom considers all proposals for constitutional development and change put forward by the Territories, it has also made clear to the Territories during the negotiations that, while the Territory chooses to remain British, the United Kingdom needs to retain sufficient powers to discharge its responsibilities for good governance, defence, external relations, and to meet contingent liabilities and fulfil international obligations applying to the Territories. The reviews also offer the opportunity to bring up-to-date provisions of the existing Constitutions, such as the human rights chapters, and to clarify the respective roles of the Governor and local politicians.

There has been progress on constitutional review with most Overseas Territories. New constitutions came into force in the Turks and Caicos Islands in 2006 and in the British Virgin Islands and Gibraltar in 2007. Constitutional reviews are underway in other Territories (Anguilla, Cayman Islands, Falkland Islands, Montserrat, St Helena), and in some negotiations are at a very advanced stage with the expectation that new Constitutions will soon be agreed.

In May last year a fourth round of negotiations was held with the Legislative Councillors of Montserrat for a new Constitution for that territory. The talks built on progress made at earlier rounds, allowing a revised draft Constitution to be prepared for consideration by Legislative Councillors. Informal discussions took place on Montserrat in March this year, at which further progress was made. Negotiations are at a very advanced stage.

There has been significant progress in negotiations with the Falkland Islands. A Select Committee of the Falkland Islands Legislative Council published its final report in May 2007 recommending a large number of constitutional amendments. United Kingdom and Falkland Islands delegations met in Stanley in December 2007 and February 2008. There remain only a small number of issues outstanding. We expect a new constitution to come into force within the next 12 months.

In the Cayman Islands, the Government has been engaged in public consultation about resuming the constitutional review process that stalled in February 2004. The Government

published a consultation paper in January this year setting out a number of proposals for constitutional reform, with a view to holding a referendum on those proposals, or revised proposals, this summer.

In August 2006, the Anguilla Constitutional and Electoral Reform Commission published its Report with 147 recommendations relating to the revision of the Constitution of Anguilla. These are still under consideration in Anguilla. A first round of negotiations with the United Kingdom, scheduled for July last year, was postponed at the behest of the Government of Anguilla.

The constitutional review process in St Helena stalled in May 2005 when the people of St Helena, in a consultative poll, rejected a move to a ministerial system of government as envisaged in the draft constitution. Since then a revised draft constitution without the ministerial government provisions has been prepared as a basis for discussion between the United Kingdom negotiating team and Legislative Councillors on St Helena in May.

Some commentators have suggested that the United Kingdom should agree to allow Territories the options for status set out in the UN General Assembly Resolution 1541 (XV). This identified three options for de-listing, ie removing Territories from the UN list of non-self governing Territories. These were integration; independence; and free association. As already stated, the United Kingdom policy is not to agree to integration; and nor is there any indication that any of the Territories are seeking this. The United Kingdom's position on independence has already been set out.

But the concept of free association, as defined by the UN General Assembly, would mean that the Territory itself would draw up its Constitution free from United Kingdom involvement. The United Kingdom would retain all responsibility for the Territory, but would not be able to ensure that it had the powers necessary to meet its responsibilities for the Territories. This is not a position the United Kingdom is willing to put itself in.

UN General Assembly Resolution 1541 (XV) is not legally binding. Furthermore, the United Kingdom did not vote in favour of the Resolution. It believes that the guiding principles for the relationship with the Territory should draw on the Charter of the United Nations. This

states, inter alia, that an administering power shall take due account of the political aspirations of the peoples of its Territories, and assist them in the progressive development of their free political institutions according to the particular circumstances of each Territory and its peoples and their varying stages of advancement. The United Kingdom places the utmost importance on these fundamental principles, which are at the heart of the constitutional review process.

The UN Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations 1970, which elaborates the principle of self-determination, also makes clear that there is an option for the peoples of a Territory in addition to those set out in Resolution 1541. It says that the establishment of a sovereign and independent State, free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

We acknowledge that the purpose of seminar in Bandung is to assess the situation in the Non-Self-Governing Territories, in particular their constitutional evolution towards self-government and self-determination. This paper has set out the position of the United Kingdom and its Overseas Territories. As stated at the outset, the United Kingdom Government considers the existence of the Committee of 24 and the list of non-self governing territories to be outdated and remains of the view that none of its Overseas Territories should remain on the list.

Foreign & Commonwealth Office
May 2008