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THIRD INTERNATIONAL DECADE FOR THE ERADICATION OF COLONIALISM

**Caribbean regional seminar on the implementation of the Third International
Decade for the Eradication of Colonialism: the future for decolonization in
the Non Self-Governing Territories: what are the prospects?**

**Kingstown, Saint Vincent and the Grenadines
16 to 18 May 2017**

DISCUSSION PAPER

PRESENTATION

BY

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**UN Regional Seminar on the Implementation of the Third
International Decade for the Eradication of Colonialism, St Vincent
and the Grenadines 16 – 18 May 2017**

**Prospects for decolonization in the Third International Decade: a
discussion based on an analysis of BREXIT and its implications for
British Dependent Territories in the Americas**

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Introduction

This paper explores the impact of the British decision to leave the European Union on the political, social and economic opportunities available to British Overseas Territories (UKOTs). While it is recognized that all the UKOTs will be significantly affected by Brexit in various ways, the paper focuses specifically on those in the Caribbean/Northern Atlantic region. They are a heterogeneous group in terms of GDP and levels of economic autonomy. Although most have achieved favourable economic and social development over the last four decades, they

remain extremely vulnerable to the external environment and have been negatively affected by the global recession 2008 – 2012 and by recurrent natural disasters.

The British vote to leave the European Union in June 2016 poses a new challenge to UKOTs for whom the European Union is a very important trade and development cooperation partner. Brexit throws into sharp relief the disadvantage in international affairs faced by the Overseas Territories who have no representation in the British Parliament and are indirectly associated with the EU through Britain. Their populations, with the exception of Gibraltar, are not members of the British electorate and could not vote in the 2016 referendum on Britain's continued membership of the European Union. Nonetheless, they are severely affected by the consequences of decisions and developments like Brexit on which they were minimally consulted before the fact, and over which they have no control. The paper will examine the implications of Brexit for the Caribbean UKOTs, and discuss their responses and options in crafting future relations with Britain and the EU, and in configuring future links within their region and with the global community.

Summary Background on British Overseas Territories in the Americas

Territory	Area	Population	GDP	GDP per cap	GDP growth	Main econ. Sectors
Anguilla	91 km ²	16,086 (2014)	USD311mn (2014)	USD21,493 (2014)	6.2% (2014)	Tourism, offshore finance, fishing remittances
Bermuda	53.3 km ²	65.2th.	USD5.6.bn	USD89,795	-0.4%	Insurance,

		(2015)	(2014)	(2014)	(2014)	reinsurance, int'l finance, tourism, light manufacturing
British Virgin Islands	153 km2	30,117 (2015)	USD902 mn (2014)	USD30,501 (2014)	-0.3% (2014)	Tourism, financial services
Cayman Islands	260 km2	59.9 th.(2015)	USD 3.48 bn (2014)	USD 59,657 (2014)	-1.3% (2014)	Tourism, offshore finance
Montserrat	102 km2	5.1 th. (2014)	USD63 mn (2014)	USD12,384 (2014)	3.7% (2014)	Limited: agriculture, tourism, construction, remittances
Turks & Caicos Is.	948 km2	35 th. (2016)	USD797 mn (2014)	USD23,614.7 (2014)	4.6%	Financial services, tourism

Sources: UN Data; UK FCO; CARICOM

The British OTs in the Caribbean, with the exception of Montserrat which has suffered from a series of natural disasters since 1989, are self-supporting and the majority are classified as upper middle income or high income territories by virtue of their GDP per capita. Only Montserrat

finds itself currently on the OECD list of ODA eligible countries and territories on the basis of its Gross National Income (www.oecd.com/dac/stat/ accessed 11/05/2017). Although the territories have prospered on the basis of their financial and tourism services sectors for several decades, their economies are highly vulnerable to external shocks and in most cases, their growth rates have declined into negative figures since 2009. However, their debt to GDP ratios are considerably lower than those of independent Caribbean territories, in a region noted for high levels of external debt since 2009. Their major development partners are listed as the European Union, Britain, and Canada. Their major trade partners in goods and services are Britain, the European Union, North America and China while they engage in a number of economic and socio-cultural exchanges with regional partners through CARICOM or OECS institutions.

The OT's relationship with Britain is aptly described by Clegg (2009: 3) as "complex and ever-evolving". An important policy milestone was the Overseas Territories White Paper (2012) (<https://www.gov.uk/government/publications/the-overseas-territories>) which was published by the Conservative/Liberal Democrat coalition government in the context of the new conditions of the 21st century impinging on the relationship. It recognizes the diversity of the OTs and their relationships with the British Government but emphasizes an underlying normative framework for the relationships based on the fact that "the choice to remain a British Overseas Territory engages responsibilities and benefits for the territories and for the United Kingdom" (ibid. webpage summary). The White Paper outlines Britain's security commitments, highlighting concerns about terrorism, organized crime, natural disasters. It declares Britain's intention to "support successful economic development through strengthened economic planning and management of public finances, and the promotion of free trade" (<https://www.gov.uk/government/publications/pdf/summary>). It commits to providing assistance

to territories in need and to supporting development aimed at reducing aid dependence. It declares that “reasonable assistance needs of the OTs are a first call on the United Kingdom’s international development aid budget. A consequence of these responsibilities is that the UK Government carries significant contingent liabilities in respect of the territories...therefore it maintains certain residual powers to ensure it is able to discharge this duty” (<https://www.gov.uk/government/publication/pdf.p.13>) Finally, the White Paper encourages British investment inflows and places great store on preserving the natural environment of the OTs.

A major dimension of the UK/OT evolving political relationship is evidenced in the process of constitutional change. All the Caribbean OTs have participated over the last two decades in complex processes of constitutional review which generally resulted in the adoption of new or amended Constitutional Orders¹. Significant topics that arose during the processes concerned the questions of citizenship rights in the territories which have high immigration rates due to their labour market needs and favourable economic growth relative to neighbouring territories, and the scope of the residual powers of the British Government particularly in terms of financial management. The trend has been towards Britain’s tightened control in areas of fiscal supervision, crime and security, even though there is greater representation and involvement of local actors in overall governance. A major reminder of the British Government’s “residual powers” came with British direct rule in the TCI between 2009 and 2012.

OT links with the European Union

¹ This is so with the exception of Anguilla which operates on the basis of its Amended Constitutional Order of 1990. All the other British OTs in the Americas have Constitutional Orders concluded or amended between 2007 and 2016.

The OTs, with the exception of Gibraltar², are associated with the European Union under Part IV of the Treaty on the Functioning of the EU, Articles 198 – 203 (Consolidated Version of the Treaty on the Functioning of the EU, 2012; Clegg 2016). The European Council Overseas Association Decision 2013/755/EU institutionalized the relationship further and increased the Overseas Countries and Territories (OCT) access to EU economic and development cooperation. OCT affairs are handled by the European Commission's Directorate-General for International Cooperation and Development. There is an annual OCT-EU Forum as well as other meetings and working groups on matters of joint concern involving the OCTs and the EU. The OCTs have their own organization (OCTA) aimed at cooperating more closely and coordinating positions vis-à-vis the EU. These links are extremely important for the international visibility of the UKOTs (Clegg 2016). Apart from their status within the EU, links with the Commonwealth and the UN, inclusion in the SIDs and their participation in regional groupings, British Caribbean OTs have little access to international forums.

The other principal UKOT interests in the EU are trade and investment access, development cooperation and freedom of movement. The Caribbean OTs of Bermuda, the BVI, the Cayman Islands and the TCI are major exporters of financial services to the EU³. Mobility within the EU market is an important facility for OT service operators and for general socio-cultural and educational opportunities. Certain Caribbean OTs, notably Montserrat, Anguilla and TCI have benefited considerably from European Development Funding and have indicative allocations under the 11th EDF of Euros 8.4 mn, 14 mn and 14.6 mn respectively (Clegg UKOTA June 2016:8). The wider group, although ineligible for bilateral development cooperation allocations

² Gibraltar is a member of the EU under Art. 355(3) of the same Treaty.

³ Bermuda services over 40% of the EU property catastrophe reinsurance market and its insurance assets account for 98% of its GDP (Clegg UKOTA June 2016; Clegg 2017; Ernst and Young 2017). Financial services make up 41% of the Cayman Islands' GDP and 13% for the TCI (Ernst and Young 2017).

by virtue of their GDP, participate through the regional funding in development cooperation programmes for environmental protection and climate change mitigation⁴.

Brexit questions and OT Responses to date

The OTs were proactive in commissioning a study, even before the Brexit referendum, on the potential implications for them of a “Leave” vote, and the possible alternative models of association with the EU that could be explored (Jessop 13/03/2016; Clegg UKOTA Report, June 2016). Brexit featured prominently in the preparatory meetings and proceedings of the UK/OTA Joint Ministerial Council Meeting in November 2016, resulting in assurances from the UK that they would receive agreed EU funding as long as the UK remains an EU member, that they would be consulted in the process leading up to negotiation, and a UK-OT Joint Ministerial Council on the European Negotiations would be convened during the first quarter of 2017 (Mercopress 2/11/2016; UK-OT Joint Ministerial Council 2016 Communiqué). The OTs have been lobbying various sectors of the British Government and may have engaged, where possible, in informal discussions with the EU. Many of the OTs have inherent capacity limitations where public administration and international engagement are concerned, but have leveraged their public, private sector and academic networks quite effectively thus far. However, their governments and economic actors continue to grapple with the ongoing uncertainty surrounding the process, duration and ultimate outcomes of the Brexit talks, and there are still a number of major questions.

- Notwithstanding the British Government’s assurances to the OTs about development assistance commitments, Clegg (2016) points out that there may be delays in

⁴ The 11th EDF 2014 – 2020 has 76.8 million Euros for bilateral funding for eligible OTs, and 40 million Euros for Caribbean OTs for environmental conservation programmes (Clegg 2017; David Jessop 2016).

disbursement of funds until the exit negotiations have been concluded. These could result in significant delays in the progress of development projects. There is a larger question of development cooperation in the longer term and the extent to which these territories will have access to funding for climate change mitigation and for some, the achievement of the 2030 SDGs.

- While short-term conditions remain unchanged, EU market access for financial services remains uncertain once Brexit is fully implemented. Ernst and Young (2017) identify Bermuda as being in the most favourable position, since it has third country equivalency via Solvency II and has made major efforts to align its regulatory framework with EU legislation over the past six years. It already has a bilateral relationship with the Commission and representation in Brussels. The Cayman Islands, despite boasting a very modern financial legal framework, may experience greater difficulties as may the BVI. **Neither jurisdiction has yet established representation in Brussels.** The BVI will also lose the political visibility benefits of co-chairing the OCT-EU Financial Services Partnership and co-administering the Caribbean OT Regional Development Fund. Harney (2016) mentions the risk that, as the EU is currently preparing its list of non-compliant offshore financial jurisdictions, although the OTs perform favourably on all the criteria except that they charge no corporate tax, they may be disadvantaged by Britain's absence from the decision-making process in the future. Bermuda, the BVI and the Cayman Islands are all currently updating their regulatory regimes to conform to the EU 2011 Alternative Investment Fund Management Directive (AIFMD). The alignment process is

slow and they cannot access the EU AIFM market⁵ until the EU deems that they have met the requirements.

- Although the British Government has given assurances that all the OTs concerns will be taken into consideration, the major challenges posed by Brexit for Gibraltar and to some extent the Falkland Islands, have led to a more visible focus on their situations in the British Parliament than those of other OTs. The OTs collectively need greater visibility and the capacity to stimulate more public awareness of the equally grave economic security threats posed to financial services jurisdictions in the Caribbean and to territories like Montserrat which lack economic autonomy and are heavily dependent on budget support from Britain and from the EU. Britain faces a snap election in June 2017, which focuses squarely on the country's separation from the EU and its future directions. **It would benefit the OTs to engage with the Caribbean diasporas resident in Britain and with the wider British public during the campaign and raise awareness of their interests and concerns on these issues.**
- The OTs have a huge stake in the configuration of Britain's post-Brexit relationship with the EU. **They need to maintain as many of their current benefits as possible: favourable market access, time-limited free movement, the possibility of development cooperation and investment flows from the EU, and the opportunity to maintain and strengthen their links not only with EU institutions in Brussels and elsewhere, but also with the members of OCTA with whom they have had fruitful collaboration since 2002.** These opportunities will have to be negotiated as part of the

⁵ AIFM refers to hedge funds, private equity and real estate funds and the EU introduced its own regulation of such entities after the global financial crisis.

structure of the new Britain-EU relationship and the chances of success will depend in large part on how smoothly the rest of the negotiations go.

BREXIT Developments 2017

Between June 2016 and early 2017, there has been much uncertainty about Brexit, and many political changes within Britain. Some degree of clarity emerged with the British Prime Minister's Brexit speech on January 17 2017, the notification under Art. 50 of the TEU on March 31 2017 and the European Council's publication of its Guidelines for the Brexit Negotiations on April 29 2017. The Guidelines state that there will be three phases of negotiation with a formal time limit of two years but that in the event an agreement has not been concluded by then, transitional arrangements can be made to facilitate economic and other arrangements in the interim. The Guidelines stress that there will be a unified approach by the EU with no possibility for negotiations with individual member states.

This may work against the OTs' possibilities for lobbying with EU members concerning their interests. The British Government has also discouraged the OTs from engaging directly with the EU, advising that they communicate their concerns to the British Government to be incorporated into the negotiating positions. This puts them firmly in a third party passive role during the Brexit negotiations.

The EU's Guidelines also state that no future settlement shall be negotiated until there is agreement on the manner of Britain's disengagement from the EU, including the financial settlement to cover all commitments and liabilities. The rights of EU and UK citizens are their top priority (which may possibly favour the interests of the OTs in maintaining some form of free movement). But they also state that a future relationship must have less privileges than Single Market membership, and mention that in the event of a future EU-

UK FTA, the EU will seek safeguards against unfair competitive advantage through tax or other regulatory measures. The regulatory and supervisory regime and standards of the EU must be respected. This statement may imply future tougher stances against low tax/no tax financial jurisdictions like those of the OTs.

One analyst points out the diverging positions of the EU and Britain, the latter hoping for a parallel rather than phased approach and focusing on the post-Brexit talks rather than the separation itself (Clarke 2017). He notes that a transitional arrangement is probable since phased negotiation of the separation followed by FTA talks augur for a protracted negotiation with the risk of more uncertainty for businesses and other actors. He also notes the EU's make-or-break areas of citizens' rights and the exit bill and the potential for conflict in these areas.

Conclusion

- Within their limited space for manoeuvre, the OTs have been proactive in leveraging their networks and expertise to analyse the impact of Brexit and to seek to protect the benefits they enjoy as OCTAs under the TEU. However, they are severely challenged by their status as low-visibility third parties in the negotiations, by the protracted and highly political nature of the process and by the ongoing uncertainty for their economies.
- The United Nations organizations, such as ECLAC and UNDP, other international groupings like the Commonwealth and regional groupings have a major responsibility to support the case of the UK OTs during this difficult transition in their relationship with the EU. Interestingly, the focus of analyses of Brexit repercussions for independent developing countries (CARIFORUM, Latin America, Commonwealth) has been on the future relationship with Britain since their relationship with the EU remains unchanged. It

is the inverse of the UKOT predicament and less attention has been given to possible solutions for their dilemma. ECLAC and CARICOM should be asked to set up a monitoring group on Brexit negotiations and to do a cost-benefit analysis of the future options available to the OTs for a beneficial relationship with the EU. UNDP and UNHRLLS should pay special attention to the UKOTS access to climate change mitigation financing.

- The Caribbean UKOTs have membership or associate membership in CARICOM and/or the OECS. Their performance to date in analysing and acting upon the Brexit risk provides major lessons for their CARICOM partners and demonstrates yet again the advantage offered to the regional groupings by the participation therein of the non-independent territories, the diverse networks and specific economic sectoral expertise that they bring to the organizations. Regional organizations should be mobilizing their own networks to support and disseminate the OTs positions as widely as possible in Britain and in the EU. They should incorporate into their own studies on the future reconfiguration of their trade relationship with Britain, the options for the OTs of a beneficial future relationship with the EU. There should be committees within both CARICOM and the OECS that function as observatories, foci of consultation and strategic discussions on the Brexit negotiations. Finally, the regional organizations are focal points for the maintenance and further strengthening of the UKOTs' networks with other Caribbean OCTs, in the event that they lose their association with OCTA. The UKOTs might wish to consider membership of the ACS also, which is important for the participation of the Dutch and French territories in the region. Brexit

developments should likewise galvanize CARICOM to speed up its consideration of the applications for associate membership of certain French and Dutch territories, to seriously contemplate the strategic advantages of such membership and the need to have a well thought out agenda for cooperation with associate members.

- The final observation concerns the implications of Brexit for further decolonization in the UKOTs. Sir Shridath Ramphal suggested in 2004 that interest in self-government was being diluted as Neoliberal globalization reduced the meaning of sovereignty. Paul Sutton in 2009 pointed out that the pace of decolonization had slowed considerably and that for the Caribbean dependencies, the pattern seemed to be to opt for a continued relationship with the metropolitan power with periodic struggles for expanded autonomy within that relationship (Clegg and Pantojas Garcia, 2009: xiii – xliii).

There has been no development since Brexit that radically contradicts those conclusions. In 2015 the then ruling PDM proposed to hold a referendum on independence (but this may have been influenced more by the particular UK/TCI history than by Brexit). However, the PDM lost the next election by a large margin to the PNP in December 2016 and such a referendum does not seem to be on the current agenda. The Chief Minister of the BVI in presenting the 2016 budget stated “In order for us as a people to realize our full potential, our goal must be self-determination, but we must do our work now and grow in maturity as a people” (Smith

2016

http://caribbeanelections.com/eDocs/budget/bv_budget/bv_budget_2016.pdf)

However, as David Jessop argues, Brexit presents an opportunity for reigniting the debate on the status of the Caribbean UKOTs and reminds them of the critical need for ever-growing autonomy (Jessop 13/03/2016, <http://www.caribbean-council.org>). It will also strengthen their capacity and experience in engaging with the external environment and may well reconfigure in significant ways their internal administrations, their relationship with Britain and with the EU, as well as with their regional environment.

References