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FORTH INTERNATIONAL DECADE FOR THE ERADICATION OF COLONIALISM

**Pacific regional seminar on the implementation of the Fourth International
Decade for the Eradication of Colonialism:
innovative steps to ensure the attainment of the Sustainable Development
Goals in the Non-Self-Governing Territories**

Bali, Indonesia
24 to 26 May 2023

DISCUSSION PAPER

PRESENTATION

BY

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**"Preparation for the Full Measure of Self-Government:
A Comparison of Selected Pacific and Caribbean Non Self-Governing Territories"**

**A Paper presented to the Pacific Regional Seminar on the Implementation of the
Decolonisation Declaration**

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INTRODUCTION

The present paper offers some insights on the level of Preparation for Self-Government (PSG) of two Caribbean and two Pacific Non Self-Governing Territories (NSGTs) in the transitional phase towards the achievement of the Full Measure of Self-Government (FMSG) pursuant to a genuine process of self-determination. The paper reviews the findings of Self-governance assessments which were undertaken Caribbean between 2013 and 2022 by the Dependency Studies Project at the request of the governments of French Polynesia and Guam in the Pacific, and the British Virgin Islands and Bermuda in the Caribbean. The paper also offers some concluding observations regarding the decolonisation process.

Sustainable Development Goals and the Non Self-Governing Territories

The theme of the United Nations (UN) 2023 *Pacific regional seminar on the implementation of the Fourth International Decade for the Eradication of Colonialism* refers to innovative steps to ensure the attainment of the Sustainable Development Goals (SDGs). The SDGs are important benchmarks in the economic and social development of countries and territories globally. It should also be noted that the primary relevance of the SDGs to the NSGTs is from the perspective of Article 73(a) of the United Nations (UN) Charter which obligates the administering Powers (APs) "to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement" ¹ (*emphasis added*).

¹ Article 73(a) of the UN Charter denotes that UN Member States "...accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end: a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement,"

Accordingly, the achievement of the SDGs for NSGTs is directly related to the realisation of this Charter obligation.

The implementation of the relevant UN General Assembly (UNGA) and Economic and Social Council (ECOSOC) resolutions are also key to the progressive development of the NSGTs. Taken together, these mandates are meant to prepare the NSGTs in the process of self-determination toward the full measure of self-government (FMSG) required under Article 73(b) of the UN Charter which requires those States which administers territories:

(b) to develop self-government, to take due account of the political aspirations of the peoples, and to 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." (UN, 1945).

Hence, the achievement of the SDGs for NSGTs cannot be considered in isolation from the overall decolonisation process, but rather as part of the preparatory process which should culminate with the actual transfer of power to the territories as required under the Decolonisation Declaration [Res. 1514(V)].² Current (and reversible) delegation of power to the territories is, thus, seen in the context of capacity building.

It is within this framework that the present paper analyses the level of Preparation for Self-Government (PSG) in two Pacific and two Caribbean NSGTs, in a comparative sense, through the application of several of the key Self-Governance Indicators (SGIs) utilised in the diagnostic Self-Governance Assessment process undertaken in these territories during the third and fourth International Decades for the Eradication of Colonialism (IDECs).

I. THE SELF-GOVERNANCE ASSESSMENT PROCESS

The adoption of Chapter XI of the UN Charter – the "Declaration Regarding Non-Self-Governing Territories" - represented the beginning of international attention on the development of international standards of self-government. This was reflected in the relevant UNGA examination on the requisite conditions for genuine self-determination and consequent decolonisation. At this early stage of the Decolonisation Engagement Period (DEP) through to 1959, a global consensus on international principles of decolonisation slowly emerged with the the adoption by the UNGA of a series of resolutions.

This process was advanced during the Decolonisation Acceleration Period (DAP) following UN adoption in 1960 of the landmark Decolonisation Declaration [Resolution 1514 (XV)] (UN, 1960a). The adoption of Resolution 1541 (XV), also in 1960, was equally important as it outlined the minimum standards for the three political status options of political equality, namely independence, free association and integration. This period lasted for three decades

² See operative paragraph 5 of United Nations General Assembly Resolution 1514(XV), 15 December 1960.

through 1990 during which time most Caribbean and Pacific territories advanced to full self-government consistent with the minimum standards recognised in Resolution 1541 (UN, 1960b).

³ The remaining small island territories are the remnants of empire.

Subsequent annual U.N. resolutions on self-determination and decolonisation, relevant human rights conventions, and other international instruments adopted by the UN and other international institutions served to further refine the required measurement in determining whether the threshold of full self-government had been met under various political status arrangements; or conversely, whether political developments or judicial decisions of the administering Power may have rendered those arrangements below the requisite minimum standards of full self-government.

A subsequent synthesis of these relevant international instruments resulted in the formulation of the Self-Governance Indicators (SGIs) first introduced in 2011 at the Sir Arthur Lewis Institute for Social and Economic Studies (SALISES) of the University of the West Indies (UWI) and published in the edited volume of "The Non-Independent Territories of the Caribbean and Pacific (Corbin, Institute of Commonwealth Studies, 2012)." In this regard, these Indicators were designed as a diagnostic tool to independently assess existent dependency arrangements to determine the level of compliance with minimum standards of self-government, as well as the level of preparation for full self-government (PSG).

The Indicators are applied through a process of Self-Governance Assessment (SGA) to examine the self-governance sufficiency of existent governance models. Several versions of the Indicators are utilised in the Assessment process depending on the specific governance model under evaluation.⁴ Accordingly, the Indicators used in the assessment process of the four territories which are the subject of the present paper is the set designed for the NSGTs listed by the UN.

These Indicators are continually refined and updated to reflect advancements in international self-determination and decolonisation doctrine amidst the ever increasing complexities of existent territorial arrangements. The diagnostic tool to assess NSGTs is not a punitive mechanism, but rather serves as an independent examination of the prevailing political status relationship between an administering Power and the NSGT it administers.

³ Other NSGTs had made political status advances in the Decolonisation Engagement Period before the minimum standards of Resolution 1541(XV) were adopted in 1960.

⁴ For territories which have been categorised as politically integrated, a separate set of indicators are utilised to assess the compliance with minimum standards for political integration. For territories which are classified as autonomous or freely associated, specific indicators are used to evaluate the level of conformity with international standards of autonomous governance.

The present paper reviews challenges to a genuine self-determination process amid prevailing attempts at dependency legitimisation, considers the delegation of power in the Preparation for Self-Government (PSG) which would culminate in the actual transfer of power mandated by the UN Decolonisation Declaration, and offers some concluding observations on the way forward.

II. CHALLENGES TO CONTEMPORARY SELF-DETERMINATION

The Self-Governance Indicators (SGIs) related to political and constitutional evolution of the NSGTs include reference to the self-determination obligations to advance the territories to the full measure of self-government (FMSG). The current sentiment among those countries which administer territories ranges from the recognition of international law as the governing instrument in the self-determination process of the territory with a direct role of the UN, to an outright dismissal of international self-determination obligations. At best, there may be some recognition of international law in the process, but an insistence on its subordination to the unilateral applicability of laws of the administering Power.

French Polynesia

The four NSGTs examined in the present paper are cited as examples of "the emergence of "contemporary dependency model(s)... which...have been left over from the wave of independence in Africa, Asia/Pacific and the Caribbean" (Ma'ohi Nui, 2013: 29). Thus, reference was made in the Assessment on Ma'ohi Nui (French Polynesia) to the "delegation of limited powers over time that continued incrementally, culminating in a 2003 revision in the French Constitution (Article 74) which recognised only the local powers of the French territories, and (which) unilaterally subordinat(ed) the interests of the inhabitants to the overall interests of the French Republic" (Ma'ohi Nui, 2013: 32).

This has made the realisation of self-determination for French Polynesia even more difficult since - unlike the Noumea Accord for New Caledonia - the autonomy statutes for French Polynesia do not lead to a self-determination process at the end of a transitional period (and) (t)he incremental delegation of some powers to the elected government did not constitute a process of self-determination" (Ma'ohi Nui, 2013: 32). The UN General Assembly subsequently recognised the democratic deficiencies of the dependency model in French Polynesia, and proceeded with its re-inscription on the UN list of NSGTs by a consensus resolution in 2013 which:

Affirm(ed) the inalienable right of the people of French Polynesia to self-determination and independence in accordance with Chapter XI of the Charter of the United Nations and General Assembly resolution 1514 (XV), recognize(d) that French Polynesia remains a Non-Self-Governing Territory within the meaning of the Charter, and declare(d) that an obligation exists under Article 73 e of the Charter on the part of the Government of France, as the administering Power of the Territory, to transmit information on French Polynesia;

.....

Request(ed) the Government of France, as the Administering Power concerned, to intensify its dialogue with French Polynesia in order to facilitate rapid progress towards a fair and effective self-determination process, under which the terms and timelines for an act of self-determination will be agreed, and to extend its cooperation to the Special Committee (on Decolonisation) in the implementation of the present resolution (emphasis added) ⁵

France as the AP has not acknowledged the validity of the 2013 resolution and has not transmitted information to the UN as required under Article 73(e) of the UN Charter. (UN, 1945). Thus, left unmet are the requirements in the resolution of reinscription "to facilitate rapid progress towards a fair and effective self-determination process, under which the terms and timelines for an act of self-determination..., and to extend its cooperation to the Special Committee (on Decolonisation),"⁶

Whilst statements in favour of the principle of self-determination are routinely made by most administering powers, the matter of what exactly constitutes self-determination is the subject of differing opinions. One question emerging from these differences of definition is whether it is possible for a genuine, self-determination process to be undertaken in French Polynesia (*or any other NSGT*) in an unbiased fashion if it is organised by the administering Power which often has a declared interest in the maintenance of the status quo (*military strategic interest or natural resource interest, et al*). A second question is whether a territory which expresses little interest in change should, therefore, be re-defined as sufficiently self-governing, and as a consequence, removed from the UN list - an endorsement of a sort of "colonialism by consent."

The first question on the UN role can be addressed within the framework of a genuine process of self-determination where UN resolutions have clearly directed the UN to develop programmes of political education, and to participate in the act of self-determination itself. The second question on dependency legitimacy can be addressed in the context of an assessment of self-governance sufficiency of an existing territory – a review process which remains part of the unfulfilled mandate of the four International Decades for the Eradication of Colonialism.

The latest UN resolution on French Polynesia is illustrative, as it echoed repeated resolutions "to develop political education programmes for the Territory in order to foster an awareness among the people of French Polynesia of their right to self-determination in

⁵ See UNGA Resolution 67/265 on the *Self-determination of French Polynesia*, 17th May 2013.

⁶ France participates in the work of the Special Committee on Decolonisation as it pertains to New Caledonia, the other listed NSGT administered by France.

conformity with the legitimate political status options, based on the principles clearly defined in Assembly resolution 1541 (XV) and other relevant resolutions and decisions." ⁷

The victory of the Tavini Huira'atira Party in the April 2023 elections in French Polynesia ⁸ serves to reinforce the importance of the UN role in this regard given that the new ruling party has consistently argued for a proper international self-determination process in their statements to the UN Special Committee and Fourth Committee, respectively, over the decade since the territory's UN reinscription. This was followed by a succession of letters to the Chair of the Special Committee on Decolonisation requesting that decolonisation work plan as contained in annual resolutions on implementation of the Decolonisation Declaration be initiated for that territory.. ⁹

Guam

Meanwhile, the US-administered territory of Guahan (Guam) represents another contemporary dependency model whose self-determination aspirations have been unmet. As the 2021 Self-Determination Study for Guahan (Guam) observed:

...the political relationship between the US territories and the United States has been referred to as 'contradictory and complex.' These contradictions and complexities have been seen in the expression of (US) federal policy at the international level, whereby US representatives in some forums confirm the applicability of international law to the decolonization process of US territories, while in other quarters dismiss—or at the least, minimize—its relevance. The evolution of these contradictory expressions can be traced to the early stages of the decolonization legitimization period. (Guam, 2021: 88).

Such contradictions have served to circumscribe the decolonisation process in Guam and can be seen in the 1993 US submission to the Human Rights Committee, stating that "(a)lthough these areas (*US territories*) are, in fact, self-governing at the local level... they have not yet completed the process of achieving self-determination" (*emphasis added*) Guam, 2021: 88). Yet, "(o)nly five years later, in 1998—without any political or constitutional changes in Guam to warrant a shift in policy—the US statement to the UN Fourth Committee argued that "...the majority of the US should be 'dis-inscribed' from the NSGT list." (Guam, 2021: 88).

The 2021 Guam Study concluded that such inconsistency of position was linked to a strategy of dependency legitimisation and the accompanying argument for the acceptance of the

⁷ See UNGA Resolution 77/139 on the *Question of French Polynesia*, 12th December 2022.

⁸ See "*French Polynesia's New Pro-Independence Leadership*," *The Diplomat*, 10th May 2023.

⁹ See Summary record of the 3rd meeting, Special Political and Decolonization Committee (Fourth Committee), UN Headquarters, New York, 6 October 2021. See also Letter from the Mayor of the City of Faa'a and Former President of Ma'ohi Nui addressed to the Chair of the Special Committee on Decolonization, 20th February 2023.

status quo dependency arrangement on the grounds that decolonisation is an outdated process in contemporary international relations. The genesis of this phenomena was traced back to the immediate post-Cold War period and the independence of Namibia in 1990 after which only one territory (Timor Leste, 2002) has attained full self-government – paradoxically at the beginning of the first IDEC when the UN was to have intensified its decolonisation efforts. As the Guam Study concluded:

The dependency legitimization argument saw the larger countries which administered territories becoming reluctant to comply with their international legal obligations under the UN Charter and the relevant decolonization resolutions. The US withdrawal from the proceedings of the UN Decolonization Committee review process in the early 1990s (*the British withdrew in the early 1980s*) signaled an attempt to relegate decolonization to a lesser importance on the UN agenda, and to effectively stymie that process.

.....

Thus, the US position in international circles from that point was that the US dependency model was acceptable if the people of the territory selected it. (*the 'colonialism by consent theory'*) The argument did not—and does not—elaborate on the political and constitutional subordination of the US territories such as Guam under the “Territory or other Property” clause of the US Constitution. The general reference made to US territories having 'representation in Washington,' for example, did not refer to the non-voting and incomplete nature of the territorial delegates, and also failed to mention the lack of authority to vote in US presidential elections... Yet, numerous US court rulings confirmed the very inequality of US territories in the US political system that US diplomats in the international arena were seeking to defend as legitimate (Guam, 2021: 87-89).

Virgin Islands (UK) / Bermuda (UK)

Similar delay in the self-determination processes are experienced in the cases of the (British) Virgin Islands (BVI) and Bermuda as United Kingdom (UK) dependencies in the Caribbean. The 2021 Assessment on the BVI referred to "the shift in the UK position away from its international decolonisation obligations...(as) highlighted in the (UK) 1986 letter to the UN Special Committee on Decolonisation (C-24) withdrawing formal cooperation with the committee," and the subsequent emergence of a strategic pattern of dependency legitimisation. (Virgin Islands, 2021: 105).

The BVI Assessment referred to standard UK policy statements to the UN Fourth Committee based on a particular theme that "if the territories remained in the status quo, they would be subject to continued and potentially expanded unilateral authority (with) the only alternative (being) independence since the other legitimate alternatives of free association and integration, recognised by the UN...were not on offer." (Virgin Islands, 2021: 105). The analysis of the 2022 Bermuda Assessment was also instructive:

The policy of the zero-sum game has prevailed where there is either the retention of the status quo dependency status or independence on offer. This is seen in the consistency of the annual UK policy statements made to the UK Fourth Committee that repeat the theme that if the territories “wish to remain British” they would be subject to continued and potentially expanded unilateral authority, with no genuine diminution of the powers of the (UK) governor entertained, although certain dependency reforms might be considered through some delegation of authority not affecting the genuine unilateral power dynamic. (Bermuda, 2022: 148-149).

The 2021 BVI Assessment cited relevant UK statements to the Fourth Committee which characterised the political status of the UK-administered NSGTs as "based on fundamental principles including "self-determination, mutual obligations; (and) freedom for the territories to run their affairs to the greatest degree possible." (*emphasis added*) (Virgin Islands, 2021: 106). This is coupled with expressions by the administering Power that the “criteria used by the Committee of 24 in its deliberations on whether an NSGT should be ‘de-listed’ was outdated, (and that the C-24) failed to take account of the 'modernisation' of the Administering Power-territorial relationship. A conclusion of the 2021 BVI Assessment was instructive in seeking answers to the decolonisation dilemma:

Whilst there is a consistent expression of commitment on the part of the UK to self-determination, a concern lies in the fact that the UK defines this right outside of the framework of the international decolonisation doctrine and relies on a legitimisation of the prevailing dependency status. This dependency legitimisation argument also projects the view that the people of the UKOTs were satisfied with their political status even given the inherent political inequality and administering Power unilateral authority. This position implies that there is a new permanence to the dependency arrangements which have always been regarded as transitional and preparatory to full self-government under the U.N. Charter and relevant resolutions of the UN General Assembly. (Virgin Islands, 2021: 106).

The 2022 Bermuda Assessment put it this way:

The (administering Power's) conformity with its international obligations on self-determination and the consequent decolonisation of Bermuda is incomplete owing to the difference in interpretation as to what constitutes compliance with Article 73(b) of the UN Charter to advance the territories under their administration to the FMSG. Thus, the political strategy of dependency legitimisation and the continued mis-portrayal of the prevailing NSGT arrangement as having met the standards of FMSG places the UK in an untenable position of seeking to justify the political status arrangement of Bermuda as a legitimate form of democratic governance, notwithstanding the political inequality and unilateral authority contained therein.

III. UNILATERAL AUTHORITY

This matter of unilateral authority over the NSGTs is a common feature of the existent dependency arrangements, notwithstanding the insistence of the administering Powers that the territories under their administration are 'essentially self-governing' polities which should be removed from the UN List of NSGTs. Hence, just as the matter of what constitutes an authentic self-determination process remains the subject of interpretation, there are also differences on how genuine self-government is construed. A key Indicator used in the Self-Governance Assessment process is the examination of this unilateral authority.

French Polynesia

The 2013 French Polynesia Assessment indicated that the power relationship between the territory and the administering Power is reflected in significant and wide-ranging competencies exercised by the cosmopole, and "illustrative of a substantial imbalance of power inconsistent with international principles of mutual consent under recognised autonomous governance" (Ma'ohi Nui, 2013: 33). The 2013 Assessment categorised the distribution of competencies into the three areas of "those expressly assigned to the French State, those which are assigned to the territory, and those which are retained by the State but exercised by the territory under a delegation of authority.

In this connection, it was concluded that the main competencies are controlled by the administering Power whilst "specific competencies of an administrative nature (are) qualified by the final decision-making or governing authority being reserved for the cosmopole" (Ma'ohi Nui, 2013: 35). The 2023 UN Working Paper on French Polynesia cites the French Government website for Collectivities' assertion that "French Polynesia does not have political autonomy, but exercises administrative autonomy" (UN, 2023: 5). The 2013 Assessment concluded that "(o)verall, the constitutional power to apply French laws to the territory rests with the French State - a procedure which calls into question the claims of genuine 'autonomous' governance" (Ma'ohi Nui, 2013: 39).

The Instrument of Unilateral Authority (IUA) governing the territory is an Organic Law written by the administering Power to which amendments can be introduced by the territory, but which must be approved by France. Accordingly, there is no authority for the territory to "write its own constitution without external interference" pursuant to UN Resolution 1541(XV) (UN, 1960b). Thus, the Organic Law does not rise to the level of a constitution which must be "(a) charter of government deriving its whole authority from the governed...agreed upon by the people...(and which) shall be changed by the authority which established it." ¹⁰ As the 2013 French Polynesia Assessment points out:

¹⁰ Nolan, Joseph R. and Nolan-Haley, M. Jacqueline (et al.) Philip (Ed.). "Black's Law Dictionary." West Publishing Company. (St. Paul, Minnesota, 1990), 311.

In assuming that the proper 'authority' is the people of a given jurisdiction, it is logical to conclude that the French organic laws... do not pass muster as legitimate constitutions by standard definition. Thus, these organic laws are instruments of Unilateral Authority (IUA) put in place in lieu of - rather than synonymous with - a genuine Instrument of Democratic Governance (IDG) such as a constitution.

Guam

The 2021 Guam Study recognised that "the overall nature and extent of internal self-government is a critical factor in the relationship between a territory and its administering Power (and) (t)his is affected significantly by the level of unilateral applicability of federal (US) laws, regulations and treaties, which can have a significant influence in the Preparation for Self-Government (PSG) of the territory" (Guam, 2021: 96). In elaboration:

(W)hile the external decisions affecting the territory can be influenced to varying degrees through differing forms of mutual consultation between the respective federal agencies on the one hand, and the Government of Guam and/or the (territory's) congressional delegate on the other hand, the final decisions on whether a given measure is applied to Guam or other US-NSGTs lies with the US Congress, the federal executive branch and the federal judiciary. This is often manifested by including the territory in US laws but excluding it from international negotiations which directly impact Guam (Guam, 2021: 96)

Guam's present Instrument of Unilateral Authority (IUA) is the Organic Act of 1950 which is a law of the administering Power that serves in lieu of a constitution. The administering Power has authorised the territory to draft a territorial constitution under Guam's current NSGT status of 'unincorporated territory' with the requirement that the provisions must conform to the unilateral applicability to the territory of selective provisions of the US Constitution and US laws.

It is within a framework that an internal constitution can be drafted, but not without external interference since any proposed constitution under the present dependency arrangement would require submission to the US Congress for approval and potential amendment before it is submitted to the people of the territory in referendum.¹¹ The administering Power scrutiny ensures that the provisions of a territorial constitution are compliant with the unilateral applicability of US law and relevant parts of the US Constitution governing the territorial status. This unilateral application has had the (*intended?*) effect of protecting US citizens who have migrated to the territory from any constitutional provisions that would place them in a disadvantageous position. A case in point was the 2017 ruling of the US District Court which granted the 'right' of US citizens to participate in the territory's self-determination plebiscite

¹¹ The US Virgin Islands, an NSGT listed by the UN, has drafted five territorial constitutions but none have passed muster owing to the inclusion of powers of self-government which would have exceeded the limited authority of territorial status. .

designed for the "native inhabitants." The 2023 UN Working Paper on Guam explained the relevant US court decision which:

...recogniz(ed) the "long history of colonization" of the island and its people and the "desire of those colonized to have their right to self-determination," (but nevertheless)...permanently enjoined Guam from enforcing the plebiscite that specifically limited voting rights to native inhabitants of Guam and any laws and regulations designed to enforce the plebiscite law, insofar as such enforcement would prevent qualified (US) voters who were not native inhabitants of Guam from registering for and voting in the plebiscite (UN, 2023: 5).

Virgin Islands (UK)

Meanwhile, the 2021 Virgin Islands Assessment pointed to "three key provisions of the 2007 Virgin Islands Constitution Order (that) illustrate the function of unilateral authority in the Elected Dependency Governance (EDG) arrangement in operation in the Virgin Islands." The first relevant provision of the Order written by the administering Power after consultation with the territory confers wide authority on the UK Governor as representative of the administering Power who "shall have such powers and duties as conferred or imposed on him or her by (the) Constitution (Order) or any other law and such other powers as Her Majesty may from time to time be pleased to assign to him or her."

In this context, the governor shall consult with the Cabinet (*which the UK governor also chairs*), except where such consultation is not required "when acting under instructions from London," or further conditionalities such as potential material prejudice to the Crown, material insignificance, or the urgency of the matter (Virgin Islands, 2021: 108).

The second provision on the exercise of unilateral authority as contained in the Constitutional Order, as the territory's Instrument of Unilateral Authority, provides for the power of the governor to deny approval of legislation adopted by the elected legislature. Even if a law is assented to by the governor, it can yet be disallowed at the discretion of the UK Secretary of State.

The third provision in the exercise of unilateral authority provides "reserved powers" to the Governor to propose legislation in the Legislative House of the territory which must become law with or without the concurrence of the House. Such extensive authority of the administering Power through its appointed governor serves to belie the notion that the British Virgin Islands exercises full self-government. The British Virgin Islands Assessment concluded that:

In the final analysis, the applicability of laws...under the prevailing Virgin Islands constitutional status of overseas territory only provides for an elaborate procedure of 'advisory consultation.' In some instances, even such limited consultation is not required and remains subject to the unilateral determination of the UK. In effect, the entire

governance structure is organised in such a manner as to provide for its wholesale unilateral dismantlement,¹² à la the Turks and Caicos Islands in 2009 (Virgin Islands, 2001: 109).

The 2021 Virgin Islands Assessment concluded that the "persistent and unbending unilateral authority pursuant to the successive constitutional orders (is) reflective of a political inequality which is inconsistent with democratic principles" (Virgin Islands, 2021: 109). As in the case of other NSGTs, the authority 'to determine the internal constitution without external interference,'... would lie outside the parameters of the prevailing constitutional arrangement... since the document governing the UKOTs does not derive its 'whole authority' from the governed" (Virgin Islands, 2001: 112).

Bermuda

In relation to the unilateral applicability of laws, regulations and treaties, the 2022 Bermuda Assessment came to similar conclusions as those of the Virgin Islands given the similarity of the dependency governance model. In the case of Bermuda, however, the matter is more complex with respect to administering Power policy since the territory is considered at a more advanced stage of dependency governance than other UK-administered NSGTs. As the policy is interpreted, the UK governors can have "... significant law-making powers in the UKOTs (UK-administered territories) except for Bermuda, Montserrat, and St Helena" (but "(t)he UK retains the right to make law for all the Territories."¹³ In this regard, the 2022 Bermuda Assessment is instructive:

(O)n the matter of the unilateral applicability of cosmopole laws, it is not a question of whether or not the authority exists but rather by which method the power is exercised. In this context, the advanced nature of Bermuda's constitution order limits the authority of the UK governor to directly legislate for Bermuda, but this cosmopole authority can be exercised by UK parliamentary determination. Thus, this absence of the UK governor's power to legislate for Bermuda does not preclude the exercise of unilateral authority in other areas, including the power to withhold assent on legislation adopted by the elected legislature. Hence, the UK Governor may not 'make laws,' but can 'reject laws';

This power of withholding assent to laws is portrayed as 'limited', but the overriding point is that such power exists. The denial of assent can be on the basis of several factors including whether a particular bill is inconsistent with UK international obligations, or inconsistent with the provisions of the constitution order. A somewhat peculiar condition is based on whether a bill is 'prejudicial to the Royal Prerogative' appearing to be a

¹² The unilateral 'suspension' of the Virgin Islands Constitutional Order was introduced in the UK House of Commons in 2022 based on the findings of a UK 'Commission of Inquiry' and is being held in a state of temporary deferral pending the completion of internal governance reforms to the satisfaction of the administering Power.

¹³ See "The UK Overseas Territories and their Governors" by Philip Loft, House of Commons Research Briefing, p. 6; 30 June 2022 <https://researchbriefings.files.parliament.uk/documents/CBP-9583/CBP-9583.pdf> (accessed 16 August 2022).

somewhat 'catch-all' conditionality. Any of these conditions is confirmation of the unilateralism inherent in the dependency governance model (Bermuda, 2022: 152).

The exercise of the withhold of assent by the administering Power on the Bermuda Cannabis Legislation in 2022 despite the legislation having been adopted by the elected House of Assembly, "serves as a critical conditionality to the administration of the economy" (Bermuda, 2022: 170-171).

IV. DELEGATION OF POWER AS CAPACITY BUILDING

The level of delegation of authority from the administering Power to the NSGT is a critical component in the development of capacity building as Preparation for Self-Government (PSG). The extent of the delegation varies amongst the four NSGTs reviewed and can be advanced through proper human resource development within the administration of competencies delegated to the territorial government.

For French Polynesia, two of the three categories of governance competencies are assigned to the territory outright or administered by the territory under a delegation of authority. 'It was pointed out in the 2013 French Polynesia Assessment, however, that the set of competencies designated to the territory are especially limited in comparison to those controlled by the administering Power which has jurisdiction over the major competencies of the electoral system; criminal law; foreign policy; control of strategic raw materials; public order and security; financial markets; civil aviation; maritime traffic and fishing; organisation and powers of the communes; university instruction' research; and granting and delivery of national grades, titles and diplomas; et al. (Ma'ohi Nui, 2013: 33-35). It is also noted that migration from the administering Power is a significant feature in the administration of state competencies.

In the case of Guam, the position of the administering Power is described as "generally indirect in terms of a day-to-day role in governmental operations of the territorial government, with notable exceptions, including periodic oversight of territorial compliance with myriad (US) rules and regulations..." (Guam, 2021: 97). According to the 2021 Guam Assessment, "territorial governance through well-developed governmental institutions created pursuant to a delegation of authority under the (territory's) Organic Act, facilitates the important function in the implementation of the US international obligation of preparing Guam to achieve the FMSG" (Guam, 2021: 1998).

In contrast to the indirect governance referenced in the Guam Assessment, the administering Power in the Virgin Islands, as earlier noted, "has a direct role in the governance of the territory through the relevant provisions of the 2007 Virgin Islands Constitution Order which provides for the overarching authority of the cosmopole" (Virgin Islands, 2021:111). As the Assessment determined:

(T)he powers of the elected Virgin Islands Government under the 2007 Order are recognised within the framework of an historic level of delegation of authority. This delegation is wholly consistent with the preparatory obligation of the UK as the administering Power under Article 73(b) of the UN Charter to advance the territory to the full measure of self-government (FMSG). It is in this sense that Section 60(1) of the 2007 Order accurately frames the specific competencies within the area of delegation of power from the governor under his 'special responsibilities' which are expressed through the "conduct (subject to this Constitution and any other law) of any business of the Government of the Virgin Islands, including the administration of any department of government";

This overall delegation of authority emanating from the governor's 'special responsibilities' has contributed significantly to accelerated development of governmental institutions and overall capacity building. This is preparative to the assumption of the duties of internal self-government through an actual devolution, or "transfer of power" as established in the UN Decolonisation Declaration which is the magna carta of decolonisation at the global level.

Meanwhile, the Bermuda Government maintains a significant degree of delegated administrative authority over the economy of its territory, particularly in the governance of the financial services sector where the UK-appointed governor does not maintain direct authority. The territorial government also maintains a high degree of delegated administrative authority in the areas of "internal security (which) has been delegated to the Minister of National Security whose Minister oversees the relevant national government departments and agencies.¹⁴ (Bermuda, 2022: 172). There is also a recognised "highly effective management" of Bermuda's natural resources by the territorial government, reflecting "the development of extensive capacity in safeguarding the resources of the territory reflective of the wide delegation of power in the area of resource management" (Bermuda, 2022: 183).

Accordingly, the importance of current and progressively expanded delegation of authority from the respective administering Powers to the four territories covered by the present paper remains a critical feature in the development of further capacity building. Care should be taken, however, not to consider such dependency reforms as consistent with a culmination of the decolonisation process, as argued by advocates of dependency legitimisation. Rather, these measures of reversible delegation of power are but a component of the larger endeavor of Preparation for Self-Government (PSG) that is a precursor to the final act of devolution of authority where power is transferred to the territory consistent with the Decolonisation Declaration and the attainment of the Full Measure of Self-Government.

¹⁴ Bermuda Fire and Rescue Service, the Department of Corrections; the Royal Bermuda Regiment; the Police Complaints Authority; the Department of Customs (Border Control); the Department of Immigration (Border Control); the Bermuda Fire and Rescue Service and delegated responsibilities for the Bermuda Police Service and the Royal Bermuda Regiment."

CONCLUSION – THE ROLE OF THE UNITED NATIONS

The role of the UN in the Preparation for Self-Government (PSG) for the remaining NSGTs lies, first and foremost, in the implementation of the longstanding decolonisation mandate to advance the NSGTs to the Full Measure of Self-Government (FMSG). In this connection, it is imperative to recognise that whilst the aim is to address each NSGT on a case-by-case basis, the minimum standards of the Full Measure of Self-Government must be met.

Hence, colonial reform in an NSGT with the retention of unilateral authority of the administering Power does not equate to full self-government. The UN must resist the flawed argument of dependency legitimisation that runs the risk of endorsing political inequality. Colonial arrangements were never meant to be permanent, but rather meant as temporary and transitional to the full measure of self-government. The problem comes when the 'temporary' becomes indefinite. This may be where we have arrived today as a result of the lack of implementation of the actions called for in UN resolutions on decolonisation. Yet, the international community should not countenance patently undemocratic dependency governance models which can regressively become the accepted and regular order of things - the acceptance of the abnormal as the 'new normal.'

Therefore, it must be acknowledged that UN inaction has impeded the realisation of decolonisation, and this period of stagnation actually dates back over three decades. It has become a 'repetition of process' where resolutions are adopted without any regard for their implementation. Therefore, there must be a modicum of accountability for the specific actions included in the decolonisation resolutions. Further, these actions must be included in the UN budget if they are to be accomplished.

Every year that passes without implementation of the 'innovative strategies' called for by the General Assembly places more pressure on the process. This delights the advocates of dependency legitimisation who have successfully absented themselves from the UN decolonisation process for decades whilst influencing that process from behind closed doors. As it has been said, we may not be able to resist the pressures of inertia caused by the inaction.

The true intention is not to legitimise the various modernised versions of dependency/colonial status as legitimate forms of democratic governance. They are not. The true intention of the decolonisation process is to decolonise. The dependency arrangements are meant as preparatory and transitional to full self-government – not the embodiment of it. If only a few of the initiatives on decolonisation adopted by the General Assembly over the last half-century were implemented, we would not be having this conversation in 2023.

I close by strongly urging the implementation of the following longstanding "innovative strategies," and the mobilisation of the necessary resources to carry them out:

- The analytical on each NSGT called for in the plan of action of all four IDECs, but never implemented, in particular the "*Periodic Analyses of the progress and*

extent of the implementation of the (Decolonisation) Declaration,"¹⁵ and the "Review (of) the impact of the economic and social situation on the constitutional and political advancement of Non-Self-Governing Territories."¹⁶ In the interim, the *Guam Self-Governance Study* undertaken in conjunction with the territory's university, as well as the other self-governance Assessments conducted for the territories covered in the present paper, can provide member States with important analysis on the complexities of the prevailing dependency status arrangements.

- The *Plan of Implementation of the Decolonisation Mandate*,¹⁷ endorsed by the General Assembly during the chairmanship of an earlier Saint Lucia ambassador, that is designed to organise the wider UN system and other relevant parties to implement their portion of the decolonisation mandate which is to be carried out by all organisations of the UN system.
- The "constructive programme of work on a case-by-case basis"¹⁸ adopted by the General Assembly since the 1990s for UN assistance to NSGTs to develop programmes to heighten the awareness of the people on the genuine political status options available to them, and to assist with procedures for the future act of self-determination. In view of repeated requests by French Polynesia, the first such workplan should be initiated for that territory.

The strategic reticence of the respective administering Powers to participate in the UN decolonisation process cannot be permitted any longer to further stymie the completion of the decolonisation mandate – as it has been permitted to do for decades. These three recommended actions do not require the immediate involvement, nor further approval of the administering Power since they have already been endorsed by the General Assembly.

The initiation of these activities could quite possibly bring the administering Powers back to the table. Otherwise, they are perfectly happy to remain disengaged from the process, and to continue the systematic denigration of the C-24 including the unflattering characterization of the composition of its membership. Again, we may not be able to withstand the pressures of inertia much longer.

It is time for action!

¹⁵ See *International Decade for the Eradication of Colonialism*, Report of the Secretary-General (A/46/634/Rev.1) 13 December 1991.

¹⁶ *id.*

¹⁷ See *Plan of Implementation of the Decolonization Mandate 2006-07*, (A/60/853–E/2006/75), 17th May 2006.

¹⁸ See *Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, UN General Assembly Resolution 77/149 of 12th December 2022.

GLOSSARY OF ACRONYMS AND ABBREVIATIONS *

AP	Administering Power
DAP	Decolonisation Acceleration Period
DEP	Decolonisation Engagement Period
DDP	Decolonisation Deceleration Period
ECOSOC	Economic and Social Council
EDG	Elected Dependency Governance
FMSG	Full Measure of Self-Government
IDEC(s)	International Decade(s) for the Eradication of Colonialism
IDG	Instrument of Democratic Governance
IUA	Instrument of Unilateral Authority
NSGT(s)	Non Self-Governing Territory(ies)
PSG	Preparation for Self-Government
SDG(s)	Sustainable Development Goal(s)
SGA	Self-Governance Assessment
SGI(s)	Self-Governance Indicators(s)
UK	United Kingdom
UN	United Nations
UNGA	United Nations General Assembly
UNSG	United Nations Secretary-General
US	United States

* Source: Dependency Studies Project, St. Croix, Virgin Islands, 2022