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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: goals and expected accomplishments**

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STATEMENT

BY

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Decolonisation prospects for the Caribbean Non-Self-Governing Territories of the United Kingdom under the purview of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

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1. Introduction

During the Second International Decade for the Eradication of Colonialism the United Kingdom's Overseas Territories in the Caribbean underwent a process of constitutional reform. Four of the territories – British Virgin Islands, Cayman Islands, Montserrat and Turks and Caicos Islands – adopted new constitutions which awarded them greater autonomy,¹ while Bermuda also agreed some important amendments to its constitution. Only Anguilla was unaffected by this process.² Now as we enter the Third International Decade for the Eradication of Colonialism the possibilities for further change are seemingly more limited. The key question is to what extent can further constitutional reform be undertaken and greater autonomy be awarded within the context of the UK's reluctance to offer more concessions, underpinned by the fact there is little consensus on the three options for exercising full self-determination? The territories do not want independence, while the UK does not accept free association or integration. So in other words, after the very recent process of constitutional review what more can be done to advance self-determination and the achievement of political equality? In order to answer this question the paper is divided into three sections. First, there is a brief assessment of the background to the aforementioned constitutional review process. Second, there is a consideration of what was attained. Third, and most importantly there is an attempt to suggest ways in which autonomy can be encouraged and achieved over the coming decade.

2. Background to constitutional change

At the time of the 1999 *Partnership for Progress and Prosperity* White Paper the UK government maintained that constitutional reform should be evolutionary, and set in motion in 2001 a review process for the territories which for the first time was supposedly 'locally owned and driven rather than directed from London'. Thus, the territories hoped that quite fundamental reform would be undertaken. This impression was reinforced when the Foreign and Commonwealth Office (FCO) failed to make its own position clear, including the extent to which it would accept changes to existing constitutions. Until late 2003 the territories were given no guidance by the FCO as to what limits would be placed on the review, and therefore the expectations for change on the part of the territories were high. Suggested reforms included adopting free association; making the Attorney General a political

¹The new TCI constitution was partially suspended in 2009.

²This remains the case.

appointee; providing greater autonomy for the territories over the public service and judicial appointments; and introducing local consultation before a governor is appointed.

With the UK government faced with growing expectations on the part of the territories for significant reform, it finally set out its 'red lines' beyond which change was not possible. In a memorandum submitted on 27 October 2003 by the FCO Minister Bill Rammell to the House of Commons Foreign Affairs Committee strict limits were placed on territories' constitutional room for manoeuvre. The minister argued that the idea of free association, which would allow the territories to determine the nature of their constitutional relationship with the UK without reference to UK interests or responsibilities, 'does not sit easily with our over-riding responsibility to ensure the good governance of the territories and compliance with applicable international obligations'. He went on to suggest that

... whilst standards in governance in some Territories are high, in others there is room for improvement – and some of the smaller Territories lack the institutional capacity and experience to cope well with the increasing demands on Government. Equally, the lack of a developed civil society, strong legislature, and vibrant media in some Territories also means that many of the usual checks on the Executive can be weaker than normal (Foreign Affairs Committee, 2004, 7).

The final sentence of the memorandum emphasised again the attitude of the UK government: 'OT governments should not expect that in the Constitutional Reviews ... the UK will agree to changes in the UK Government's reserved powers, or which would have implications for the independence of the judiciary and the impartiality of the civil service' (Foreign Affairs Committee, 2004, 9). The clear message from the UK was that it would not grant further autonomy unless the territories embarked upon a process of independence – but none wished to do so.³ The constitutional link with the UK retains its popularity, in particular because it helps to preserve stability in the territories – as Taylor argued 'The people ... regard continuing dependence as a safeguard against weak or corrupt government ...' (2000, 338). The political ties are also important for the economies of the territories as they provide a measure of sovereign protection which reassures potential investors, and help to maintain strong links with the City of London. The influence of English law and language, and the UK's responsibility for defence and external affairs has been valuable. In addition, even the 'pomp and pageantry of the colonial government, with its venerable yet quaint British customs, are used to sell the islands as changeless (and hence stable) to both tourists and financiers' (Aldrich and Connell, 1998, 88).

3. Recent constitutional and political changes

Despite the UK government's 'red lines' beyond which change was not possible the constitutional review process did result in some important reforms – most of which were suggested by the territories themselves. In each of the territories there was an increase in local

³Previously three territories had come close to achieving independence, but public disapproval (Bermuda), serious concerns over the standard of local governance (Turks and Caicos Islands), and natural disasters (Montserrat) helped prevent the successful completion of the process.

self-government and a reduction in the reserved powers wielded by the Governor and the UK government. 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. Further, Judicial Service Commissions were established in the British Virgin Islands, the Cayman Islands, and the Turks and Caicos Islands to provide advice on judicial appointments. 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 (supported by general letters of entrustment), including in relation to regional organisations and institutions, and agreements on taxation, finance, financial services and tourism. Another important reform was the inclusion for the first of time of fundamental rights chapters in the constitutions of British Virgin Islands and the Cayman Islands, while updated chapters were provided for Montserrat and the Turks and Caicos Islands.

The new constitutions also include some symbolic changes which the territories requested. In the British Virgin Islands and the Turks and Caicos Islands 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.

Although Bermuda has not been party to a constitutional review process, some changes were undertaken, in particular the revision of the electoral system in 2003 to establish single member, in place of dual member, constituencies. However, it is important to recognise that the process of constitutional reform has not been solely one way in the case of Bermuda. After the controversy regarding the acceptance of four Guantánamo detainees in June 2009 Bermuda's general letter of entrustment was revised and new limits were placed on the territory's freedom of action. Further, there is a requirement that Bermuda must provide an annual written report to the UK government summarising the previous year's activities under the terms of the entrustment (Hendry and Dickson, 2011, 238-39). So in this case the UK government was prepared to limit self-government if it felt its interests were being damaged.

A much more significant example of the clawing back of decision-making power on the part of the UK was seen in relation to the Turks and Caicos Islands and the allegations of corruption and financial mismanagement against the former government of Michael Misick. Indeed it can be argued that the new Constitution introduced in 2006 actually contributed to the breakdown in good governance in that territory. As the Commission of Inquiry stated, 'The 2006 Constitution, to a far greater extent than its 1988 predecessor, leaves individual Cabinet Ministers with a wealth of discretions, by way of grants, exemptions, concessions, discounts etc. to override or side-step matters of principle or orderly and fair administration' (TCI Commission of Inquiry, 2009, 216). Examples of such abuse were seen in the disposal of Crown Land and the limiting of proper parliamentary oversight. Owing to the broad concerns of the Inquiry, its author Sir Robin Auld appealed for 'urgent and wide-ranging systemic change', and in particular the partial suspension of the 2006 Constitution, the implementation

of interim direct rule by the UK government, and reforms to the Constitution and other aspects of the system of governance in the territory to help prevent future abuses of power. Subject to such wide-ranging criticisms, the UK government had little choice but to act, and key parts of the Constitution were suspended in August 2009, including those relating to ministerial government, the House of Assembly, and trial by jury, and this remains the case. The Governor was given the power to take charge of government matters, subject to instruction from the FCO, and is now overseeing a difficult and costly root and branch reform of the Turks and Caicos Islands' Constitution and economic system. The consequences of what took place in the Turks and Caicos Islands will have ramifications for the other territories as was made clear in a Written Ministerial Statement by UK Foreign Secretary William Hague in March 2011. Hague stated that 'we are determined that the situation we have found in the Turks and Caicos Islands is not repeated, there or elsewhere [and] to make sure the 'right controls are in place to ensure good governance...' (FCO, 2011).

A tightening of British control is also being seen in the economic sphere. During the global economic downturn, the territories suffered from reduced activity in their financial services sector and declines in tourist arrivals and construction. The negative impact on public finances was thus significant, particularly for Anguilla, the Cayman Islands and the Turks and Caicos Islands (the latter's situation being exacerbated by the previous administration's corruption and mismanagement). In response, the UK (both under Labour and the new Coalition government) has shown a new determination to help correct the structural imbalances in the territories' economies. This has caused significant tensions in Anguilla between the Governor and the government of Hubert Hughes, with the latter talking about 'throwing off the yoke of oppression' and securing independence. However, despite the heated rhetoric such a move seems unlikely for the foreseeable future, in part because of the economic uncertainty facing Anguilla.⁴ Indeed, with the stronger hand from London, the problems in the Turks and Caicos Islands, and the conclusion of recent constitutional reviews, it is clear that the territories have now less room for manoeuvre in terms of gaining further autonomy than in the past.

4. The way forward

In order to make any progress in this Third International Decade for the Eradication of Colonialism three separate but related issues must be addressed: (i) the possible (albeit likely moderate) changes in the territories' constitutions that would advance self-government; (ii) the ways in which the territories can further develop and improve their systems of governance; and (iii) the ways in which the UK government can reform its own administrative structures to better facilitate the territories progress towards greater self-government.

⁴Also little of the political groundwork has been put in place, and some commentators have argued that the call for independence has more to do with political pique than a profound desire for independence.

(i) Future constitutional reform

It is worth analysing the differences in the constitutional provisions and devolved powers of the territories and considering whether these differences can be reduced. The following list is not exhaustive, but it does provide some guidance as to where further devolution of power might take place.

- End the role of the Governor in chairing the local Cabinet or Executive Council of Ministers. In Bermuda the Governor does not act as Chair, but in the other territories he/she does.
- Reduce the 'special responsibilities' of the Governor, for example in relation to aspects of international finance in Anguilla, Montserrat, Turks and Caicos Islands, or at least increase the scope for consultation.
- Restrict the power of the Governor in relation to dissolving the legislature. Apart from Bermuda the Governor is given ultimate discretion in this matter.
- Reduce the reserved legislative power of the Governor. In Anguilla, the British Virgin Islands, and the Cayman Islands the Governor has this power, albeit in slightly different forms.
- Strengthen the role of the Public Service Commissions so that the Governor does more than just consult on public service appointments, discipline and dismissals. In Bermuda the Governor is largely bound by the Commission's advice, but in other territories he/she has more discretion.
- Increase the role of local input into the composition of the Judicial and Legal Services Commissions. For example, in the British Virgin Islands and Cayman Islands there is local input but it is not decisive.
- Allow the territories to appoint a political Attorney General. Bermuda has this power; the other territories do not. During the recent constitutional changes the UK made clear a political Attorney General was not an option.
- Limit the power of the UK government to legislate by Order in Council for the peace, order and good government of the territories. In the Bermuda Constitution there is no such authority, but in the other territories there is.
- Limit the power of the UK government to disallow laws enacted by the local legislatures. In Bermuda the power is limited, but in the other territories it is unlimited.
- Advance the process of devolving responsibility for external affairs (highlighted in section 3) to Anguilla and the Turks and Caicos Islands, including in relation to the use of general entrustments, and to role back the restrictions added to Bermuda's 2009 general letter of entrustment.

These suggested changes may seem rather moderate and piecemeal and they certainly fall short of the ultimate objectives of the Third International Decade for the Eradication of Colonialism, but they are not insignificant. They would increase the level and hopefully quality of self-governance in the territories and could act as a springboard towards independence if that goal was sought. Key to facilitating the changes listed above, however, is enhancing the probity and good practice of the territory governments, particularly in the

Turks and Caicos Islands, and maintaining those standards consistently over the medium to long term. Without such action the UK government will be reluctant to devolve further powers. So the territories must take steps to consolidate and in some cases improve the ways in which local governance systems operate.

(ii) Local reform

Most of the territories are faced with governance challenges that relate to their small size. For example, 'close communities with personal or extended family relationships between officials and citizens, and small legislatures with a lack of separation of duties and membership between the executive and the elected assembly' (National Audit Office, 2007, 31). Further, some lack a developed civil society and a vibrant media, both of which can reduce the level of checks and balances on the executive. In addition the very limited electoral franchise in many territories helps to distort the political and democratic process. The source of this problem is the special immigration status that exists, called 'Belonger' (or its equivalent), which only applies to certain members of the permanent resident population. Those that have 'Belonger' status have the right to vote; other residents do not. As a consequence the franchise is much restricted. For example, in the Cayman Islands only about 30 percent of the population are registered to vote, while in the Turks and Caicos Islands the figure is even less at 23 percent (Transparency International, 2011, 48). So what can be done to mitigate these problems? The following is an indicative list of potential reforms, some of which were highlighted in the Turks and Caicos Islands Constitutional and electoral reform project (2011), but perhaps should be considered for the remaining territories as well.

- Establish that cabinet meetings should be held on a very regular basis.
- Establish that the legislatures should be in session on a regular and extended basis.
- Strengthen the level of parliamentary oversight of the executives, for example via more powerful Public Accounts Committees.
- Widen the electoral franchise beyond existing 'Belongers' in order to enfranchise long-term residents and those 'Belongers' living aboard.
- Revise the process for the acquisition of Belongership to make it more objective and transparent.
- Reform the electoral process to dilute some of the negative effects of the existing First-Past-the-Post system, by adding a degree of proportionality.
- Review and if necessary update the systems of political party regulation, including in relation to party donations.
- Remove the automatic right to a trial by jury in certain cases.
- Strengthen and diversify the economies of the territories and improve financial procedures and controls, including producing timely, audited public accounts, and accurate data. The new Coalition government in London has highlighted the importance of such reforms and has committed itself to assist.

(iii) Issues for the UK

As well as reforms in the territories the UK's administrative structures can be improved, particularly in terms of continuity of personnel. In terms of staffing, both at ministerial and

civil service level, there is little continuity. There was a high-turnover of individuals filling the post of Parliamentary Under-Secretary of State under the Labour government – six between 1999 and 2010. Further, the ministerial position, as well as dealing with the territories, involved several other responsibilities as part of the portfolio, including the EU, Eastern Europe and Russia, South America, and Australasia and Pacific.⁵ Within this list the territories were certainly not central priorities. In addition, the qualifications of the people filling the ministerial role have sometimes been inadequate. Some of the deficiencies at ministerial level have also been replicated within the civil service. For example, the Overseas Territories team had six heads in 12 years, while FCO desk officers for the territories tend to remain in post for 18 months to two years, reflecting general practice in the FCO and across Whitehall (National Audit Office, 2007). As the National Audit Office argued ‘...the resulting lack of continuity and loss of Territory-specific knowledge has been a concern for some stakeholders’ (National Audit Office, 2007: 28). The institutional failures in the FCO, and indeed the UK government more generally, can explain at least in part why the crisis in the Turks and Caicos Islands was not dealt with earlier. So the position of the UK government and its governors must be strengthened. For example, there should be greater continuity in the appointment of ministers responsible for the territories and a requirement that the incumbent holds fewer responsibilities so that they can devote more time to the territories. Further, the process of familiarising newly appointed governors with the territories should be reinforced and territory administration and governance should be developed as a distinct specialism and career path within Whitehall.

5. Conclusion

This paper has highlighted the key reforms, issues and concerns in the UK Overseas Territories during the Second International Decade for the Eradication of Colonialism, and the challenges and possible advances to come in the Third Decade. It is unlikely, although not impossible, that independence will be achieved in the coming period, but further devolution of power is a possibility. However, for this to take place the territories, the UK, and other interested parties (including the UN) must act in concert and in good faith. Indeed, the chances of progress rely greatly on the degree of trust and confidence between the territories, the UK/the administering Powers and the UN. Such trust and confidence could be significantly strengthened through greater direct communication and dialogue among all concerned with a view to make practical progress in decolonisation. Initiatives could include:

- A joint and ongoing UN/territory/administering powers project to enhance public education about the nature of the constitutional relationships in place both in particular territories and across territories. Such a project would help to reduce the level of misunderstanding and misinformation that is sometimes present in the territories about the respective powers and responsibilities of the local government and the Governor; while also giving citizens a better idea of the different constitutional relationships that exist elsewhere.

⁵ The present Minister for the Overseas Territories has a number of other responsibilities including Africa, UN and the International Criminal Court, Climate Change, Conflict Issues, and Counter-Piracy.

- The undertaking of public polling/consultations in the territories to determine the level of support for decolonisation, and the key issues/concerns which are limiting support for its achievement.
- The holding of formal and/or informal regular meetings involving the territories, the administering powers and the UN to consider present developments and likely future trends. However, such meetings should avoid being prescriptive in relation to the need of the territories to exercise their full self-determination, and focus more on particular issues of importance and concern.
- Encouraging greater involvement of UN agencies, e.g. UNDP and UNODC, which can provide support and share best practice (and funding if appropriate) in dealing with issues relating to good governance, civil society, human rights, crime, and economic development.

Without such trust and confidence building measures the hopes for the Third International Decade for the Eradication of Colonialism will likely remain unfulfilled.

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