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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**

**Kingstown, Saint Vincent and the Grenadines
31 May to 2 June 2011**

STATEMENT

BY

Cayman Islands Chamber of Commerce

(Mr. Wil Pineau)

**CARIBBEAN REGIONAL SEMINAR ON THE IMPLEMENTATION OF THE THIRD
INTERNATIONAL DECADE FOR THE ERADICATION OF COLONIALISM:
GOALS AND EXPECTED ACCOMPLISHMENTS**

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A Cayman Islands' Civil Society Perspective

Presented by:

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Cayman Islands Non-Governmental Organizations Constitutional Working Group

This presentation has been prepared and is supported by the following organizations:

- Cayman Islands Chamber of Commerce (CICOC)
- Concerned Citizens Group (CCG)
- People for Referendum (PFR)

Introduction

Mr. Chairman, distinguished delegates of the Special Committee on Decolonization and representatives from the United Nation's (UN) Secretariat's office, thank you for inviting the Cayman Islands Chamber of Commerce (CICOC), the coordinating organization for the Cayman Islands Non-Governmental Organizations Constitutional Working Group (NGO Working Group), to deliver a presentation at this regional seminar.

This presentation is a collaborative effort and is supported by the following Non-Governmental Organizations (NGOs): CICOC, People for Referendum (PFR) and the Concerned Citizens Group (CCG).

Collectively, these three diverse NGOs remain committed to working with the C24, Her Majesty's Government, elected officials in the Cayman Islands, regional experts and representatives from other Non-Self-Governing Territories (NSGT) to educate the people about their inalienable human right to self determination as defined by Article 73 of the UN Charter.

Although, admittedly, we are all familiar with Article 73, because what it says is so important, I crave your indulgence as I quote its contents at this time:-

"Article 73

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and 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, their just treatment, and their protection against abuses;
- 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;
- c. to further international peace and security;
- d. to promote constructive measures of development, to encourage research, and to co-operate with one another and, when and where appropriate, with specialized international

bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and

- e. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply."

The NGOs have been working together for more than a decade making submissions to the UN Special Committee on Decolonization and our administering Power, the UK, calling for the need for proper and full education of the UN options in order to achieve the right and free exercise of self-determination. Representatives from the group have demonstrated their commitment to this effort by attending and delivering presentations at three regional conferences in Anguilla (2003), Canouan (2005), St. Kitts and Nevis (2009) and now St. Vincent (2011) and travelling to UN headquarters in New York City to address the UN's Special Political and Decolonization Committee (Fourth Committee) in June 2003, October 2003 and June 2004.

As Secretary of the NGO Working Group, I am accompanied by Mr. James O'Neill, President of the CICOC and have been asked by the Group to deliver this presentation.

Each of these diverse organizations working together have contributed significantly to the debate and public discussion on governance matters for more than a decade.

CICOC, established in 1965, represents the interests of 735 businesses and associations that employ 18,159 workers out of a total population of 54,000. Its objective is to support, promote and protect the interests of the membership and the public welfare of the Cayman Islands and has been actively involved in the constitutional review process for more than three decades.

PFR established in 2002 seeks to foster the development of participatory democracy through the use of voter initiated binding referendums.

CCG was activated in the 1990s (prior to and during the time of formulation of Vision 2008) for the purpose of keeping abreast of district, national and international issues impacting on the short and long term social and economic development of the Cayman Islands. The group is made up of a cross-section of Caymanians and residents (including retirees) whose careers range from skilled and technical to the hospitality and service industries to businesspersons and professionals. From the beginning, CCG has not only been championing issues such as rights-of-way, beach accesses, waterways and environmental issues but has also been actively presenting its views and suggested amendments to various proposed laws as well as in relation to the lengthy constitutional review process culminating in the current 2009 Constitution.

The CICOC was invited by the Cayman Islands Government to participate on the negotiating team that drafted the new constitution that was approved by voters during the Islands' first national referendum in 2009.

Historical decolonization background

As we enter the third international decade for the eradication of colonialism it is only appropriate to reflect and to share the progress that has been achieved and the challenges that we have faced in our quest to educate the people of Cayman Islands on the UN self-determination options. We also congratulate the C24 on declaring a third International Decade for the Eradication of Colonialism as we understood there was some question about this being done. There is certainly much that our NGO Working Group has learned that we can share with this esteemed group.

The first C24 Caribbean regional seminar that we attended was in Anguilla in 2003. The Anguilla seminar was declared historic because it was the first seminar to be held in a UK Overseas Territory and also the first to be attended by a representative from the UK Foreign and Commonwealth Office (FCO) for many years.

During the Anguilla seminar, Mrs. Sophia-Ann Harris, then President-Elect of the CICOC, surprised many delegates when she explained that until the CICOC invited then C24 Chair Ambassador Earl Huntley to visit Grand Cayman in April 2003, Caymanians were generally unaware of the three UN options for self-determination and the corresponding international obligations of the administering Power.

At the Anguilla seminar Ambassador Huntley announced an action plan for the C24 to ensure that the decade of 2001 to 2010 the UN's objective to eradicate colonialism would be achieved. However, he recognized that this could only be accomplished with the cooperation of the administering Powers and the NSGTs respective governments.

Speaking on behalf of Her Majesty's Government, Mr. Roy Osbourne, then Deputy Head of the Overseas Territories Department of the Foreign and Commonwealth Office (FCO) assured delegates

"...that the UK Government would permit the UN Special Committee to carry out public education programmes in the OTs regarding the options specified under the UN Charter."

He confirmed the UK's undertaking to become engaged in the C24 action plan. Following the seminar, however, the UK reversed its position and declared that free association was not on offer.

In a written address on behalf of the Cayman Islands Government, the Hon. W. McKeeva Bush, OBE, JP, the then Leader of Government Business and Cayman's current Premier, who also attended the seminar, said:

"I would like it understood that the Cayman Islands wishes to fully understand and be given access to the full range of options for self-determination. We look forward to learning more from the United Nations and from all of you gathered here... We would also like to indicate our ongoing willingness to share our experiences as we progress towards that form of self-determination that complies with the UN Charter while safeguarding the interests of the people of the Cayman Islands."

In June 2003 a delegation from the NGO Working Group travelled to the UN to address the C24. The response from the C24 to the presentations was positive and provided the NGO representatives with hope and encouragement. The NGO representatives (Mrs. Sophia Ann Harris and myself from the CICOC, Mrs. Sandra Catron from PFR and Ms. Alice Mae Coe from CCG) were able to share information about constitutional issues in the Cayman Islands and to inform the C24 about the lack of progress the UK had made with educating our local people about UN Resolutions 1514 (XV), 1541 (XV) and 2625.

The C24 action plan that was announced by the then Chair Mr. Huntley, at the historic regional seminar in Anguilla in May 2003, was unanimously approved by the C24 members at that meeting.

At the October 2003 meeting of the UN's Special Political and Decolonization Committee (Fourth Committee) the NGO Constitutional Working Group presented a paper on behalf of the NGOs. The C24 action plan was ratified by the Fourth Committee at that meeting.

In June 2004, at the C24's meeting, NGO representatives, which included Pastor Al Ebanks from the Cayman Ministers Association (CMA) and then co-chair of the NGO Working Group, Mr. Dennie Warren Jr. from the PFR and Mrs. Alice Mae Coe from the CCG travelled to New York City to present a petition. The group challenged the UN's C24 to implement its action plan and requested that the C24 includes the Cayman Islands on its list of visiting missions for the year.

The group wrote to the elected Government at the time requesting them to invite the UN's C24 to visit the Cayman Islands. Regretfully, we never received a reply.

Regrettably, the Cayman Islands Government refused to allow the C24 to convene this 2011 seminar in the Cayman Islands. The NGO Working Group believes that our people have lost a wonderful opportunity to learn about the work of the C24 in protecting their interests as regards to options available regarding the governance relationship with our administering Power.

The UK/OT experience

More than eight years have passed since the historic first NSGT seminar in Anguilla and other annual seminars. Since then the people of the Cayman Islands, and indeed other UK OTs, continue in their efforts to deal with the administering Power that asserts unilateral and total authority over the Territories. The administering Power remains empowered to amend and enact external legislation

including the constitutions (or as some would refer it as “the administration document”) through Orders-in-Council which the UK calls their “*nuclear option*”. The UK professes to advocate constitutional modernization yet they are prohibiting further examination and education of the rights to self-determination options available under UN Charter Article 73, Resolution and Affirmations reinforced by their attempts to de-list the Cayman Islands and other OTs as NSGTs altogether.

There continues to be a need for greater active involvement by the peoples of the NSGTs in the constitutional consultation process. Traditionally, the preferred path to progress within the terms of the UN resolution for the self determination agenda is to work with the elected governments and the administering Power. We believe that UN guidelines for self-determination are as applicable today as when they were first drafted.

Whilst we fully support this course of action as one of the active civil society participants in the recent constitutional negotiations, we ask the Special Committee to also consider engaging the NGOs more actively in the process of preparing our people to make an educated choice regarding future constitutional modernization and our right to self-determination.

Civil society groups like ours are trying to work with the C24 to achieve its stated goal of eliminating colonialism. It is therefore sad to realize that there has been absolutely no financial assistance or assistance in kind offered to the NGOs in the Cayman Islands by the UN or the UK over the past eight years and unless our NGOs made personal and organizational financial commitments and sacrifices to attend previous seminars then there would have been no representation from civil society in the Cayman Islands. We believe this demonstrates our commitment to the education process.

In May 2009 at the Caribbean Regional seminar in St. Kitts and Nevis, Mrs. Sophia-Ann Harris, a past President of the CICOC and co-chair of the NGO Constitutional Working Group, speaking personally as an invited expert, presented a paper entitled “Challenges and Opportunities in the Process of Decolonization of the Non-Self-Governing Territories in the Caribbean Region: The Cayman Experience”.

Mrs. Harris expressed a lack of sufficient public education on constitutional issues leading up to the referendum vote for a new draft Constitution in 2009 and raised specific concerns about the inclusion of a Bill of Rights (BOR) in the Constitution without proper education:

“There has been no discussion of the dangers or merits of having a Bill of Rights enshrined in the constitution. There has been no discussion as to the overall policies, laws or current international obligations of the Islands that will be affected by such a BOR and the possible impact, costs and potential liabilities resulting there from... It is clear that if we have not got this right, this could prove to be the most costly experiment the Cayman Islands would have ever engaged in yet!”

Over the years the United Kingdom has made it clear to the Cayman Islands that constitutional modernization is necessary for all OTs but what really constitutes “*constitutional modernization*” and the “*right to self-determination*” within the narrow confining UK definition, remains unclear for the residents who live in the OTs.

The UK House of Commons Foreign Affairs Committee, in debating their Overseas Territories report in Westminster Hall in April 2009, the first such report completed in a decade, identified severe lapses in “good governance”, a constitutionally assigned responsibility by the FCO. The most current and topical example is the ongoing situation in the Turks and Caicos Islands (TCI) which has resulted in the UK suspending its 2006 Constitution

The UK has now drawn up a new draft constitution for the TCI which it is seeking to put in place by July of this year. The draft has been rejected by the TCI people who have called for a referendum on the document. This highlights the failure of the Westminster monarchical parliamentary governance system which does not have separation of powers. Good governance capacity building will require open, participatory and democratic constitutional governance with separation of powers following the rule of law.

In his contribution to the debate, Sir John Stanley, Member of the UK Parliament for Tonbridge and Malling and a Member of the House of Commons Select Committee for Foreign Affairs, referring to the reports submitted by the FCO regarding the situation in the TCI stated:

“... the Foreign Office seemed to be so oblivious for so long as to what was happening... The Committee was in an extraordinary position: we received a lavender-scented memorandum from the Foreign Office at the same time as we were being bombarded with distinctly malodorous memorandums from the Turks and Caicos Islands across the Atlantic.

Only one of two conclusions can be drawn from such a situation. If one were cynical—I am not—one could say that the Foreign Office was out to pull the wool over the Committee’s eyes, to mislead the Committee. I do not believe that that is the way in which present Ministers or their officials would wish to conduct themselves before the Foreign Affairs Committee. If one takes the view that the Foreign Office was not trying to pull the wool, I am afraid that only one other conclusion can be drawn: the Foreign Office was asleep on the job, or most certainly half asleep, and it simply had not woken up to what was happening on the Turks and Caicos Islands.”

The NGO Working Group is also aware that every year the UK makes submissions that the Cayman Islands should be removed from the list of Non-Self-Governing Territories (“NSGT”). We too have in the past made submissions to the UN to clarify that this is by no means the case; our governance system is still that of a Colonial Administered Governance system in which there are no “devolved powers” as stated in the UK statement to the UN in March 2009.

The Cayman Experience

In November 2009, the Cayman Islands Constitution Order came into effect.

Earlier in 2009, the UN requested the UK to update the UN on the status of their territorial relations and in the response they stated:

"The overwhelming majority of decisions in the United Kingdom's Overseas Territories are taken by the Territory Governments in exercise of devolved powers. There is no wish on the United Kingdom's part to micromanage its relationship with the Overseas Territories."

This statement is not factual; our "modernized" Constitution contains no "devolved powers".

Examples of the Administrative Power's absolute unilateral power are contained in the Cayman Islands Constitutional Order 2009, Section 125 which states "*there is reserved to her Majesty full power to make laws for the peace, order and good government of the Cayman Islands.*" and in Section 81 the Governor's reserve power to unilaterally enact legislation.

Some responsibilities have been delegated by the UK similar to the previous constitution with the ultimate power resting with the administering Power. New provisions include the creation of a National Security Council, Director of Public Prosecutions, People-initiated referendums, a Bill of Rights, a Preamble, Human Rights Commission, Commission for Standards in Public Life, Judicial and Legal Services Commission, Constitutional Commission and Advisory District Councils. Provisions formalizing the offices of the Complaints Commissioner, Information Commissioner and the Auditor General and protecting their independence have been included. Most of these provisions are similar in form and function as to the constitutions in the other UK OTs with the noteworthy exception of the establishment of a Constitutional Commission, the first body of its kind to obtain constitutional recognition among the UK OTs.

The 1972 Constitution included that an Order in Council required the approval of the Privy Council, whereas the 2009 Constitution in effect gives the UK Prime Minister the power, without any other governance body in the UK, to directly exercise his or her power as they so wish to totally control the governance of the Cayman Islands and any other UK Overseas Territory. Even the House of Commons Foreign Affairs Committee recognizes the need to abolish the "medieval" Order in Council.

Mr. Ian Hendry and Ms. Susan Dickson, (the UK's advisors at the constitutional modernization talks in the Cayman Islands and other OT's) in their recent book entitled *British Overseas Territories Law* said that the UK made it clear to the Decolonization Committee in 2008 that it:

"...considers the existence of the Committee of 24 and the list of Non-self-Governing-Territories to be outdated and remains of the view that none of its overseas territories should remain on the list."

Mr. Steve McField, the Honorary Representative for the Cayman Islands Government speaking at the Pacific Regional Seminar in Noumea, New Caledonia in 2010 said that there were changes which were considered “advancements”, all of these however only “delegated” changes which can always be reversed, as in the case of the TCI. There are no devolved powers in the new Cayman Islands Constitution; therefore our colonial status with our administering Power remains exactly the same.

We do not regard the introduction of a new administrative arrangement between the administering Power and her territory as a sincere attempt to advance the progress towards self-determination. During the constitutional discussions, the UK made it clear that specific conditions had to be met and lines could not be crossed otherwise the administering Power would not agree to a new constitution for the Cayman Islands.

So it seems that “self-determination” is at an impasse for the Cayman Islands and other OTs as far as the UK is concerned.

The UN Position

In February 2011, UN Secretary General Ban Ki-Moon, in his remarks to the opening at UN Headquarters of the session of the Special Committee on Decolonization, emphasized that the completion of the process of decolonization will require the concerted efforts of all concerned: first and foremost, the Special Committee, the administering Powers and the peoples in the NSGTs. Dialogue aimed at improving cooperation between the Special Committee and the administering Powers continues to be of utmost importance.

The NGOs agree with the UN Secretary General and support the Declaration by the General Assembly in 1960 that affirmed the right of all people to self-determination and proclaimed that colonialism should be brought to a speedy and unconditional end. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, contravenes the UN Charter and impedes the promotion of world peace and cooperation.

The Special Committee, which was set up two years after the adoption of the Declaration, has a crucial role to play as the intergovernmental body exclusively devoted to advancing the UN decolonization agenda. It could assess its past work and achievements to chart a way forward, together with the administering Powers, for the ultimate benefit of the peoples of the Territories, Mr. Ban added.

At the time of the UN’s establishment in 1945, 750 million people – almost one-third of the global population – lived in NSGTs, compared to fewer than 2 million at present. “Today, 16 NSGTs remain on the list, awaiting constructive, results-oriented initiatives. On a case-by-case basis, those Territories have to be given the opportunity to exercise their right to self-determination in order to take the interests

of their peoples fully into account. Colonial situations are completely outdated and must be addressed with renewed vigor and creativity,” Mr. Ban concluded.

A good example of how a compliant administrative Power should act is New Zealand. They are exemplary as an administrative Power in the way that they administer their OTs.

On the other hand the UK was a drafter of the UN Charter Article at the end of WWII. When they and others were non-compliant with the letter and intent of Article 73 the UN General Assembly in December 1959 recognized that the decolonization process had to be more structured in the path to self-determination of non NSGTs. The UK was a member of the original committee which in affect was the original C6 and is now the C24.

The UK drafted the current decolonization provisions and the committee unanimously recommended it to the fourth committee. However, for reasons unknown to us, the UK decided to abstain from the vote for their motion.

“Constitutional modernization” is not in itself a replacement or move away from colonization although it is often portrayed as a legitimate and acceptable means of decolonization.

Mr. Hendry and Ms. Dickson state in their recent book:

“The United Kingdom’s relationship with its territories is based on the principle of self-determination as enshrined in the Charter of the United Nations [Articles 1.2 & 55]. Early on the United Kingdom regarded the principle as enunciated in the Charter as a ‘political principle’ with a ‘strong moral force’ only. [UNGA 1955]... The UK did not regard these Principles [Resolution 1541 (XV)] as legally binding and abstained from voting on this resolution....The UK is of the view that the guiding principles for its relationship with its overseas territories are to be found in the United Nations Charter itself, which requires the administering Power to take due account of the political aspirations of the people of its territories, 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 development. [UNGA Oct. 2009]. These principles, to which the UK attaches the utmost importance, are largely ignored by the Resolution 1541 (XV).” [p. 251-252 H&D]

As Dr. Carlyle Corbin stated in his presentation at the Caribbean Regional Conference in St. Kitts and Nevis in 2009:

“The adoption of resolutions and the de-listing from UN review does not constitute success in and of itself. It is the achievement of full self-government by the peoples of the territories which is the real barometer of success. De-listing should not be considered the goal, but rather a result of the achievement of full-self-government, and only after certification by the international community that full self-government with political equality has been realized.”

And that is why we are here today.

All of the provisions for self-determination were relevant then and they are still relevant now.

Recommendations & Goals

So what is the way forward as we enter the Third International Decade for the Eradication of Colonialism?

Some recommendations the Special Committee may wish to consider:

- Convene future regional seminars only in the NSGTs with public access including the press to all deliberations in keeping with the protocols already in practice by the C24 and the Fourth Committee meetings;
- Work with the Government and Civil Society groups in the NSGTs to provide governance education resources and funding;
- Prepare educational materials on the self-determination options;
- Implement the actions called for in the plan of action adopted at the seminar in 2003, the later plan of action adopted for the second IDEC or develop one for the third decade consistent with the proposal made by an eminent Caribbean expert at the 2010 seminar in Caledonia one that meets the current needs;
- Work with regional organizations eg. CARICOM towards governance and capacity building of the NSGTs;
- Find ways to develop governance and capacity building with or without the administering Powers cooperation and involvement;
- Open/expand access of the NSGTs to UN programmes, systems and services, specifically in the principles embodied in Resolution 2625 (Declaration of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations);
- Input for the annual Working Paper must be received, in addition to the administering Power, the Civil Society and local Government in each of the NSGTs;
- Establish a minimum criteria set for the level of education to be conducted in an NSGT before self-determination can be accomplished;

- Establish governance information sources and reference systems within the UN Secretariat to share and educate on the services that the Secretariat should be providing to the peoples of the NSGTs;
- Improve and increase dialogue between the C24 and Civil Society in the OTs that would assist with the development of participatory democracy. At present there is minimal communication between the C24 and civil society in the Cayman Islands. Communication usually occur leading up to the regional seminars. Correspondence submitted to the UN Secretariat in most instances remains unanswered;
- Evaluate the successful compliance of New Zealand with the decolonization resolutions as a best practice;
- Provide capacity building and support to NGOs and other institutions involved in the self-determination process in the NSGTs;
- Identify conference hosted by the administering Powers addressing governance and constitutional matters and encourage attendance by Special Committee members.

Education must continue to be at the epicenter of all activities. Such education must of course clarify to the people of the Cayman Islands that the expression “self-determination” is not a synonym for the word “independence” – although “independence” is numbered amongst the options to be available to NSGTs.

There has been a long standing call for the administering Power in cooperation with the territorial governments and appropriate bodies of the UN system to develop political education programmes for the territories in order to foster an awareness among the people of their right to self-determination in conformity with the legitimate political status based on the principles clearly defined in General Assembly Resolution 1541 and other relevant resolutions and decisions.

An informed and enlightened civil society will ensure that informed choices are made as they make decisions towards self-determination.