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THE UK CARIBBEAN OVERSEAS TERRITORIES, NEW LABOUR, AND THE STRENGTHENING OF METROPOLITAN CONTROL

Peter Clegg

ABSTRACT

The article analyses the complex and ever-evolving relationship between Britain and its Overseas Territories in the Caribbean. Links between Britain and its Territories have been shaped and determined by particular historical, constitutional, political and economic trends. For many years the relationship between the Territories and the UK was rather *ad hoc*—a situation that can be traced back to the compromises, fudges and deals characteristic of ‘pragmatic’ British colonial administration. More recently, however, there have been attempts by the Labour government in Britain to overcome the informal nature of the relationship and to develop a new partnership based on mutual obligations and responsibilities. The article describes the applications of this more pro-active and coherent level of oversight and highlights how the principle of more forceful metropolitan control has taken hold. The article asserts that the Territories are now much more heavily integrated into the international system, having adopted either willingly or unwillingly a number of changes to their political, economic and social structures. The effect has been a convergence of policy and approach across the Territories, even though they retain their distinctive constitutional arrangements.

Keywords: Overseas Territories, Crown control, constitutional reform, modernization, good governance, contingent liabilities

RESUMEN

El artículo analiza la compleja y siempre cambiante relación entre Gran Bretaña y sus Territorios de Ultramar en el Caribe.

Las conexiones entre Gran Bretaña y sus Territorios se han formado y han sido determinadas por tendencias particulares, históricas, constitucionales, políticas y económicas. Por muchos años la relación entre los Territorios y el Reino Unido era bastante *ad hoc* —una situación que se puede ver reflejada en los compromisos, arreglos poco claros y acuerdos característicos de la ‘pragmática’ administración colonial inglesa. Últimamente, sin embargo, el gobierno laborista británico ha intentado superar el carácter informal de sus relaciones con los Territorios y desarrollar una nueva asociación basada en obligaciones y responsabilidades mutuas. El artículo describe la aplicación de este nivel más proactivo y coherente de supervisión y destaca cómo se ha establecido el principio de un control metropolitano más fuerte. En el artículo se afirma que los Territorios ahora se encuentran muchísimo más integrados en el sistema internacional, habiendo adoptado bien sea por voluntad propia o a regañadientes un número de cambios a sus estructuras políticas, económicas y sociales. Esto ha traído como efecto una convergencia de política y enfoque a través de todos los Territorios, aunque conserven sus acuerdos constitucionales particulares.

Palabras clave: Territorios de Ultramar, control de la Corona, reforma constitucional, modernización, gobernabilidad, obligaciones contingentes

RÉSUMÉ

Cet article analyse la complexité des rapports en constante évolution entre la Grande-Bretagne et ses territoires d’outre-mer dans la Caraïbe. Les liens entre la Grande-Bretagne et ses territoires furent forgés et déterminés par des tendances économiques, historiques, constitutionnelles et politiques bien particulières. Ainsi, la relation entre le Royaume-Uni et ses territoires fut, pendant des années, basée sur des décisions temporaires adaptées à des circonstances spécifiques. Cette approche trouve ses origines dans la gestion pragmatique de l’administration coloniale britannique caractérisée par des engagements flous, des arrangements confus ou encore des accords peu clairs. Cependant, depuis peu le gouvernement travailliste britannique tente de mettre un terme à ces rapports de nature informelle, en développant un nouveau partenariat qui renforce les devoirs

et les responsabilités de chaque partenaire. Cet article décrit la mise en place des méthodes de surveillance plus actives et cohérentes, soulignant en même temps l'impact de ce contrôle significatif de la part de la métropole. Cet article avance que désormais ces territoires se sont plus fermement intégrés au système international, suite à leur adoption—soit volontaire ou involontaire—de bon nombre de changements dans leurs structures politiques, économiques et sociales, ce qui a abouti à une convergence des politiques et des approches entre eux, bien que chacun conserve son propre accord constitutionnel.

Mots-clés: Territoires d'outre-mer, contrôle de la Couronne britannique, réforme constitutionnelle, modernisation, gouvernabilité, engagement conditionnel

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Introduction

The article analyses the complex and ever-evolving relationship between Britain and its Overseas Territories (formerly known as Dependent Territories) in the Caribbean. The Territories consist of Anguilla, British Virgin Islands, Cayman Islands, Montserrat and Turks and Caicos Islands. Links between Britain and its Caribbean Overseas Territories (COTs) have been shaped and determined by particular historical, constitutional, political and economic trends. For many years the relationship between the COTs and the UK was rather ad hoc—a situation that can be traced back to the compromises, fudges and deals characteristic of 'pragmatic' British colonial administration. The article traces the relationship between the UK and its COTs, and the efforts on the part of the current Labour government to overcome the legacy of only sporadic UK government interest, through the imposition of greater coherence across the five Territories via a new partnership based on mutual obligations and responsibilities. It can be argued that the recent reforms have led to a greater convergence of policy across the COTs and a

strengthening of Britain's role in overseeing their activities. The article contends that UK policy has the objective of re-asserting metropolitan control over the Territories. In order to understand how and why this is happening it is first necessary to consider the constitutional provisions that underpin the relationship between Britain and its Territories in the Caribbean.

The constitutional basis of the UK-Caribbean Overseas Territory relationship

The collapse of the Federation of the West Indies precipitated a period of decolonisation in the English-speaking Caribbean, which began with Jamaica and Trinidad and Tobago gaining their independence in 1962. Despite the trend towards self-rule across the region a number of smaller British Territories, lacking the natural resources of their larger neighbours, were reluctant to follow suit. As a consequence the UK authorities had to establish a new governing framework for them. This was required as the West Indies Federation had been the UK's preferred method of supervising its Dependent Territories in the region. In its place the UK established constitutions for each of those Territories that retained formal ties with London. The West Indies Act of 1962 (WIA 1962) was approved for this purpose. The WIA 1962 remains today the foremost provision for four of the five COTs. The fifth, Anguilla, was dealt with separately owing to its long-standing association with St Kitts and Nevis. When Anguilla came under direct British rule in the 1970s and eventually became a separate British Dependent Territory in 1980, the Anguilla Act 1980 (AA 1980) became the principal source of authority.

The constitutions of the Territories framed by WIA 1962 and AA 1980 detail the complex set of arrangements that exist between the UK and its COTs. Because, with the exception of Anguilla, the relationship between the Caribbean Territories and the UK is framed by the same piece of legislation, there are many organisational and administrative similarities. Each constitution allocates government responsibilities to the Crown, the Governor

and the Overseas Territory, according to the nature of the responsibility. In terms of executive power, authority is vested in Her Majesty the Queen. In reality, however, the office of Secretary of State for Foreign and Commonwealth Affairs and the Territory Governors undertake decisions in the Monarch's name, with the Governors having a large measure of autonomy of action. Those powers generally reserved for the Crown include defence and external affairs, as well as responsibility for internal security and the police, international and offshore financial relations, and the public service. With such a balance of authority it has been argued "the Governor is halfway to being a constitutional monarch ... taking his own decisions in those areas reserved for him" (Taylor 2000:339).

While the British Monarch retains a number of important reserved powers, there is significant autonomy for individual COTs. In theory individual Territory governments have control over all aspects of policy that are not overseen by the Crown, including the economy, education, health, social security and immigration. In addition, each Territory has a government set out in their respective constitutions, which allows the local populations to choose their legislative and executive representatives. However, the level of accountability is limited by the inclusion of non-elected members in the legislatures and executive councils, and the constitutional subordination of these authorities to the UK executive (Davies 1995). The latter limitation gives the Crown the right to introduce laws into the Territory or to override legislation that has been passed locally.

Although there seems to be a clear privileging of UK executive and legislative authority with regard to the COTs the picture is not so clear-cut. The UK government has been reluctant to use the 'nuclear' option of forcing change through executive or legislative dictat, and as a consequence there is uncertainty over who has responsibility for specific areas of policy. On occasion there are disputes as to whether a matter falls within the Governor's remit of reserved powers, or whether a Territory minister should

oversee the issue. For example, in the Turks and Caicos Islands there is some concern locally over the number of illegal Haitians living in the Territory. Under normal circumstances the relevant minister deals with issues of immigration. However, if the Governor believes that a particular case has implications for external affairs or internal security he can assume the responsibility for decision-making. Nevertheless, such decisions are controversial and can be contested. As Taylor argues, "... the Constitution provides continuous opportunities for turf wars between the [Governor and Ministers]" (Taylor 2000:339). Tensions are made worse by the fact that the British government and the local government have different agendas and face conflicting pressures. Local governments are subject to short-term electoral pressures, while the British government is concerned with legality and maintaining good governance.

The balance of power and influence between the UK government, the Governors, and the Island administrations is therefore complex and sometimes confusing. What is most apparent, however, is that the UK government, through the reserved powers of the Governor has the upper hand when it comes to overseeing policy-making in the Territories. Despite this, the constitutional link with the UK retains its popularity, in particular because it helps to preserve stability in the Territories. As Taylor argues "The people ... regard continuing dependence as a safeguard against weak or corrupt government ..." (Taylor 2000:338). The political ties are also important for the economies of the COTs, as they provide a measure of sovereign protection, which helps to reassure potential investors. 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). Such support provided by the UK has meant that many of the Territories have become highly successful economies. A related area of

advantage is the Territories sometimes-uncertain constitutional relationship with the UK. As has been noted the constitutional arrangements that link the Territories with the metropolis are rather ill defined with the Territories having autonomy in some areas, but maintaining close ties with the UK in others. The quasi-independent status that exists provides room for manoeuvre in political and economic matters, and creates an ambiguity, which attracts international financial capital. In short, the Territories recognise the advantages of retaining their present status.

The generally compliant attitude on the part of the Territories in relation to being under British sovereign control was maintained for many years. The COTs' approach was preserved during the period of "benign neglect" on the part of the UK in the late 1970s and early 1980s (Thorndike 1989:118). It continued during the time of partial re-engagement by the British authorities in the mid to late 1980s in response to the Argentine invasion of the Falkland Islands in 1982, and the growing problems of corruption and drug trafficking in the Turks and Caicos Islands. While, the Territories position remained largely undisturbed when in 1991 the UK government abolished the death penalty in the Dependencies, via the Caribbean (Abolition of Death Penalty for Murder) Order. From the 1970s through to the early 1990s, tensions were apparent in the relationship between the UK and its Caribbean Dependencies, but to a large extent the five territories retained their faith in the constitutional link with London. Since 1997, however, the UK under the New Labour government of Tony Blair has stepped up its oversight of the Territories, and this has caused increasing tensions within the existing constitutional settlement.

Taking stock: volcanic eruptions and contingent liabilities

One crisis in Montserrat and one UK National Audit Office (NAO) report highlighted Britain's inadequate organisational and regulatory framework in relation to the Dependent Territories. The crisis in Montserrat began in July 1995 (towards the end of the British Conservative Party's term in office) when the Soufrière

Hills Volcano erupted precipitating a period of great uncertainty and insecurity for the island. The eruption of the volcano devastated the country, and by December 1997 almost 90 percent of the resident population of over 10,000 had been relocated at least once and over two-thirds had left the island. Much of the infrastructure of the island had been destroyed or put out of use, while the private sector had collapsed and the economy had become largely dependent on British aid (DFID 1999). Although a report commissioned by the Department for International Development (DFID) argued the “disaster response by HMG ... has been a success in comparison with many other recent natural disasters elsewhere in the developing world”, it went on to highlight the less satisfactory aspects of the UK’s performance (DFID 1999:1). Indeed the Montserrat crisis placed into stark relief the responsibilities Britain should have had towards the inhabitants of the Dependent Territories (Skelton 2000).

The failures of British governments, both Conservative and Labour (after May 1997), were highlighted in a series of reports produced by the House of Commons International Development Committee (1997 and 1998) and the Overseas Development Institute for DFID (1999). The investigations were important in highlighting deficiencies in the UK-Montserrat relationship, including a confused division of responsibility for Montserrat between DFID and the Foreign and Commonwealth Office (FCO), the overly complex UK government management and the administrative systems for Montserrat as a self-governing Overseas Territory, and the absence of contingency planning in terms of how the FCO and DFID would manage an emergency in a Dependent Territory.

At about the time the Montserrat crisis was at its height and the first official reports on the situation were being published, the NAO investigated the action taken by the FCO to minimise the risk of potential contingent liabilities falling on the UK resulting from the actions of the Territories. As the report stated, “Given the Foreign Office’s responsibilities, there exists a continuing

exposure to potential liabilities ... Under English and Dependent Territory law, the governments of the Territories are answerable for their own actions. However, if the Territories' resources are insufficient, the UK government may come under pressure to provide assistance. Legal liability may fall on the UK if Territories fail to comply with international law, especially treaty obligations" (NAO 1997:1). The report centred on three broad areas: governance, law and order, and financial issues. More specifically, the investigation considered issues such as disaster preparedness, off-shore financial services and budgetary control in the Territories.

The report found that despite the FCO having undertaken a number of past initiatives to identify and minimise the risk of contingent liabilities in the Territories, the UK remained exposed. In particular the NAO noted that the UK was vulnerable from "financial sector failures, corruption, drug trafficking, money laundering, migrant pressure and natural disasters" (NAO 1997:7). The NAO worryingly described the UK government as having "extensive responsibilities but limited power" (NAO 1997:17). In a follow up report by the House of Commons Committee of Public Accounts its concern over the situation was starkly highlighted. The Committee wrote "We are worried by the mismatch between the extent of these responsibilities [for the Dependent Territories] and the inadequacy of the FCO's powers, strong in theory but limited in practice, to manage them". The Committee further stated, "As a result of this mismatch, the UK taxpayer continues to be exposed to very significant liabilities in the Territories and, from time to time, these materialise. More generally, we are concerned at the Foreign Office's admission that everything is not wholly under control and that all risks are not weighed and properly covered" (Committee of Public Accounts 1998:v). Both the NAO and the Committee of Public Accounts recommended a number of reforms to reduce Britain's potential contingent liabilities, and encouraged the UK government to strengthen its control over the Territories. It is clear that the NAO and the Committee of Public Accounts felt that the attempts to

re-engage with the Dependent Territories in the late 1980s and early 1990s had not been that successful. There was still the impression that the FCO and the British government more generally retained a rather detached relationship with the dependencies with resultant risks for both sides.

The combination of the Montserrat volcano disaster and the UK government's response to it, as well as the examination of Britain's contingent liabilities in the Dependent Territories opened up a Pandora's box, and led to a wide-ranging debate about good governance and the political, constitutional and economic future of the British Dependent Territories in a way that nothing had before. Indeed, the UK government had been forced to cover the contingent liabilities caused by the volcano in Montserrat, which amounted to £59 million from the start of the crisis to March 1998 (DFID 1999). The timing of events was also congruent with the election of a Labour government in May 1997 that had modernisation and reform at its heart. The government made clear from the outset that Britain's relationship with the Territories would come under the microscope. As early as August 1997 the new government established an interdepartmental Montserrat Action Group to co-ordinate relief activity, while in September the Crisis Investment Programme was created as part of a new coherent response to all aspects of the emergency. In October, meanwhile, FCO minister Baroness Symons suggested that the entire relationship between Britain and the Dependent Territories was "a piece of machinery that we have inherited which I think is not working in the way that a reasonable person would expect it to work" (International Development Committee 1997:162). These examples of the Labour government's approach and attitude were only the beginning of a much more extensive review of Britain's relationship with its Dependent Territories. In short, the Labour government was aiming to strengthen and deepen the application of metropolitan control over its dependencies in the Caribbean.

'Partnership for Progress and Prosperity': the relationship revisited

The arrival of the 'New' Labour government, the ongoing crisis in Montserrat, and the recent NAO and Committee of Public Accounts reports, led to the initiation of a review of the UK's relationship with its COTs in August 1997. The purpose of the review was "to ensure that the relationship reflected the needs of the Territories and Britain alike, and to give the Territories confidence in our commitment to their future" (FCO 1999:8). It was based on the principle that "Britain's links to the Dependent Territories should be based on a partnership, with obligations and responsibilities for both sides" (FCO 1999:8). In particular, it was noted, "the relationship ... needs to be effective and efficient, free and fair. It needs to be based on decency and democracy" (FCO 1999:7). During the review the UK government consulted with a range of interested parties, however it was clearly a British led initiative and this led to some uncertainty amongst the Dependent Territories. In a memorandum of evidence provided by the Dependent Territories Association (DTA) to the House of Commons Foreign Affairs Committee it was claimed, "It has never been clear to the DTA what the precise terms of reference of the review are and to what extent departments other than the FCO are involved" (Foreign Affairs Committee 1998:8).

Despite such uncertainty the review process was undertaken relatively quickly and by February 1998 interim findings of the investigation were announced. Then in March 1999 the completed review was published as a White Paper entitled 'Partnership for Progress and Prosperity' (FCO 1999). The White Paper set out a number of recommendations on issues, such as the constitutional link, citizenship, the environment, financial standards, good governance and human rights. The latter issues highlighted Britain's desire that the Territories should meet certain standards set by the UK government and the wider international community. On the constitutional issue, the White Paper reported that there was a clear wish on the part of the Territories to retain their connection

with Britain, and not move towards independence. Other constitutional arrangements were considered, including integration into the UK and Crown Dependency status similar to the Channel Islands, but were rejected in favour of maintaining existing practice. However, it was agreed that a process of constitutional review would be carried out in an attempt to update existing provisions, and that if any Territory wanted independence in the future Britain would not stand in its way.

Further, the White Paper documented the changes that had been introduced to improve the administrative links between the UK and the Territories. The Montserrat crisis and the associated parliamentary reports had highlighted the inadequacies of existing mechanisms, and precipitated action on the part of the British government to reconfigure its bureaucratic ties with the Dependent Territories. For example, the UK for the first time appointed a dedicated minister for the Territories and established a new department within the FCO (the Overseas Territories Department) to replace the previously fragmented structure across six separate departments. It was also decided that a parallel department for the Territories in DFID should be created, together with a ministerial joint liaison committee to coordinate DFID/FCO activities. Further, a new political forum, the Overseas Territories Consultative Council was established to bring together British ministers and Territory representatives to discuss matters of concern. Previously, Ministers and officials in London used the Governors to convey information. The first meeting of the Council took place in October 1999, and gatherings have since been held annually.

The changes made to the organisational structure of the relationship between Britain and its Territories, and the wide-ranging policy commitments laid out in the White Paper were a clear indication that the new UK government was prepared to engage more fully with the Territories and to correct the perceived deficiencies in the application of metropolitan control. Most of these reforms were undertaken out of public view, but two gained

widespread publicity and perhaps best represented the Labour government's approach to the Territories. One decision related to the Territories change in nomenclature and the other extended British citizenship to those living in the Territories that met certain conditions. In terms of the former, Foreign Secretary Robin Cook announced the nomenclature change from 'UK Dependent Territory' to 'UK Overseas Territory' in February 1998 at the Dependent Territory Association conference, and this decision was confirmed in the UK government White Paper. Although the term 'Overseas Territory' was widely used from 1998 it was not until the British Overseas Territories Bill was passed in February 2002 that the amendment was formally made. A number of Territory representatives had asked for the name change believing that it better reflected the nature of a post-colonial 'partnership' at the end of the twentieth century. A majority of the Territories at this point were not receiving any budgetary assistance from the UK and consequently felt that they were not really dependent on the British government.

The second high profile change to the relationship between Britain and its Overseas Territories came with the announcement that British citizenship, and so the right of abode, would be offered to citizens of the Overseas Territories (FCO 1999). UK citizenship rights for Territory residents were gradually restricted under a series of Immigration Acts in the 1960s and early 1970s. The final change came with the British Nationality Act 1981, which created a British Dependent Territories citizenship, a status separate from those with British citizenship. Only the latter group had the right of abode in the UK. However, with the transfer of Hong Kong's sovereignty to China on 30 June 1997, the population of Britain's Dependencies amounted to only 186,000 and therefore posed no conceivable threat to a country of well over 50 million people. In addition, not all of the resident population of the Dependent Territories were citizens, and these were not included in the change. For example, only 19,000 of the Cayman Islands' resident population of 33,600 were Caymanian (Foreign Affairs Committee 1998).

Further, approximately 70 percent of the total population of the Territories had a higher income per head than Britain, and as was suggested, “residents [of the Territories] might well be more likely to want to stay where they are” (FCO 1999:18). In the FCO review process of the UK Territories a number of representations were made stressing the problems that a lack of citizenship created and the obligations on the part of the British government to correct the anomaly. Issues raised included the fact that citizens of Dependent Territories were required to obtain leave to enter the UK at ports of entry, which involved queuing with all other non-UK and non-European citizens; that student tuition fees were charged at the higher ‘overseas’ rate; and there was no right to work in the UK. The resulting White Paper acknowledged the UK’s responsibilities and promised to offer citizenship to those residents of the Territories to whom no other national citizenship was available (FCO 1999).

Although the commitment to return British citizenship to the nationals of Overseas Territories was made, legislation had to be implemented. The British Overseas Territories Bill was published in June 2001, which set out the provisions required to amend the existing legislation. The subsequent Act received its Royal Assent on 26 February 2002, and the citizenship provisions took effect on 21 May 2002. The Act confers British citizenship on those citizens in the Territories who qualify and who wish to have it, and allows the right of abode in the UK and the right of free movement and residency in European Union (EU) and European Economic Area member states. However, the right to health and social security benefits, preferential rates for higher education, and the vote in UK parliamentary elections, as well as the requirement to pay income tax all depend on residence in the UK, not citizenship. For these rights and obligations to be attained individuals in the Overseas Territories have to apply for a British passport to show documentary evidence of their new status and to facilitate travel. The provisions of the Act were also non-reciprocal, which prevented British and other EU citizens from travelling to, and

establishing residency in, the Territories. By the end of 2002, some 6,500 citizens from the Overseas Territories had applied for British Citizen passports (House of Lords 2001 and FCO 2003a).

The review of the COTs undertaken by the British Labour government was certainly the most wide-ranging since the West Indies Act of 1962. The desire of a new administration to assert its influence over problematic policy areas, as the Overseas Territories were deemed to be, was an important factor underpinning the FCO led examination. In addition, the fact that the Labour Party had been out of power for 18 years heightened the expectations of new thinking and new approaches. In many ways the outcome of the 'Partnership for Progress and Prosperity' White Paper indicated that the Labour government was serious in attempting to overcome long-standing problems in the UK-Overseas Territories relationship. The recommendations of the White Paper focused on issues such as the constitutional settlement, citizenship, financial standards, good governance and human rights, which all had been areas of contention through the 1980s and into the 1990s. In its general language, the Labour government also made plain its desire for a relationship that secured the interests of both parties based on sound political, economic and social principles. In many ways the White Paper laid down the ideal framework for maintaining UK-COT relations. The extension of UK citizenship to the Overseas Territories, the emphasis placed on meeting international standards of good practice, the importance given to the promotion of transparent, accountable government, and a concern for environmental protection all seemed to indicate that the Overseas Territories were now better placed to play a full and active role in an increasingly globalised world. However, the more pro-active attitude of the UK government created new tensions, which highlighted the sensitivity of the Territories to a more pro-active stance from London.

Beyond the white paper: partnership in practice

In theory at least the 'Partnership for Progress and Prosperity' White Paper appeared to address a number of long-standing problems, which had been associated with the UK-Overseas Territories relationship for a number of years. However, in order to consider the nature of the relationship since 1999, an analysis of the practical effects of the White Paper must be undertaken. Two of the most important areas of policy are highlighted: the human rights legislation needed to bring Overseas Territories more into line with the international obligations to which the UK is subject and the attempt to tighten regulation in the COTs' offshore financial industries.

In regard to the issue of human rights, the UK government made clear in the White Paper that "high standards of observance" were required on the part of the Overseas Territories in order to "comply with the same international obligations to which Britain is subject" (FCO 1999:20). The White Paper indicated three particular issues on which the UK government wanted reform: judicial corporal punishment, legislation outlawing homosexual acts between consenting adults in private, and capital punishment. The British hoped that the Overseas Territories would enact the necessary reforms themselves, but stated "in the absence of local action, legislation could be imposed on the Caribbean territories by Orders in Council" (FCO 1999:20). Progress was made with the British Virgin Islands abolishing judicial corporal punishment, and later the Turks and Caicos Islands became the last Territory to pass legislation for the abolition of the death penalty for piracy and treason. However, the issue of decriminalising consensual private homosexual acts between adults was more problematic. Despite lengthy consultation with the Caribbean Territories, involving governments, religious and social leaders, the media and the general public, there remained strong resistance to the decriminalisation of homosexual acts. Many in the Territories believed the issue was a local one, and local views and predispositions should take precedence over British demands. However, in early 2001, in spite

of widespread controversy the UK government passed an Order in Council to force the change in legislation. The fact that the change was made via an Order in Council meant that the measure was effectively imposed without any input from the British House of Commons or the Territories themselves. Such conduct generated tremendous ill feeling among many in the Territories because they felt that the Order encroached upon an area of responsibility formerly overseen at the local level. The British action highlighted its determination to enforce basic standards of human rights, but it is interesting to observe that although the law was changed the view of many in the Overseas Territories has not.

The issue of homosexuality remains a very contentious issue in the Territories, and is sustained to an extent by the conservative attitudes of the Anglican Church in the region. For example, Anglican Archbishop Drexel Gomez, the most senior priest in the West Indies, has stated that all the churches over which he presides (including those in the Overseas Territories) stand totally opposed to homosexuality on biblical and historical grounds. The discrepancy between the law and people's beliefs on the issue of homosexual acts illustrates the limits of British legislative influence. Under such circumstances a more sophisticated approach is perhaps required.

Indeed, in 2003 the FCO and DFID began funding a project to raise awareness of human rights in the Overseas Territories, and to encourage a change in public attitudes towards the issue (FCO 2003a). While the FCO's 'Good Government Fund', which in part focuses resources on raising awareness of human rights and building local capacity to deal with problems, provides several million pounds of support each year (FCO 2002). These monies have assisted the Overseas Territories to ratify several international human rights conventions, including: the Convention on the Rights of the Child, the United Nations (UN) Convention on the Elimination of Racial Discrimination, and the UN Convention on the Elimination of all Forms of Discrimination Against Women. It can be argued, therefore, that the 1999 White Paper

has accelerated the adoption by the Overseas Territories of internationally recognised human rights standards. However, the suspicion remains that some of these changes are more symbolic than real.

A second issue that was prioritised in the UK government review was to improve the regulation of the offshore financial service industries in the Overseas Territories. The offshore financial sector is extremely important to their economies, but concerns have been raised about the probity of the industry. For example the 1997 NAO Report on Contingent Liabilities in the Dependent Territories considered the state of play vis-à-vis regulatory oversight in the offshore financial services sector in the COTs. The report concluded that despite some progress in improving regulatory oversight, the offshore sector remained vulnerable to abuses by money launderers and drug traffickers, and the Territories faced possible financial sector failure as a consequence (NAO 1997). In response to the mixed assessment given by the NAO, the UK government commissioned consultants KPMG in 1999 to undertake a report reviewing COTs' compliance with international standards and best practice in financial regulation. The report recommended a number of proposals that the Overseas Territories agreed subsequently to implement. The key measures were the establishment of independent regulatory authorities, the introduction of investigative powers to assist enquiries by overseas regulators, and the creation of comprehensive anti-money laundering frameworks (KPMG 2000).

It is important to recognise, however, that bi-lateral efforts involving the UK and the COTs to improve regulatory oversight of the offshore financial sector were not carried out in a vacuum. International demands for greater control over offshore finance have also been very important, with organisations such as the Financial Stability Forum, the International Monetary Fund and the Organisation for Economic Cooperation and Development overseeing offshore financial good practice. The attempts to tighten regulation of offshore financial jurisdictions by the inter-

national community, and via unilateral action on the part of the UK have highlighted the vulnerability of the Territories' position. They have been caught in the crossfire, which has led to growing resentment about being forced to introduce measures that even exceed what the 'core developed' countries are sometimes willing to accept. One such example was the UK's attempts to enforce the EU's 'Directive on the Taxation of Savings' in the Overseas Territories.

The EU had been discussing the possibility of coordinating measures to tackle harmful tax competition by individuals across Member States for over 30 years. EU Economics and Finance Ministers finally reached an agreement on the directive in January 2003 (Economic and Financial Affairs Council 2004). Under the proposal "each member state would ultimately be expected to provide information to other Member States on interest paid from that Member State to individual savers resident in other Member States" (European Commission 2001a). Member States would then have the necessary information to apply the level of taxation that they saw fit to their own residents. However, under the agreement Belgium, Luxembourg and Austria were allowed to apply a withholding tax for a transitional period, rather than committing to information exchange. One further proviso was that cooperation of relevant third countries was needed before the directive was enacted in order to avoid a shift of business to paying agents outside the EU. At the June 2000 Santa Maria de Feira European Council meeting it was agreed that Switzerland, Liechtenstein, Monaco, Andorra and San Marino should adopt measures equivalent to those found in the directive. In addition, the UK and the Netherlands agreed that the directive would be applicable to their COTs (European Commission 2001b). On 19 July 2004, EU Ministers adopted a Decision establishing the application date of 1 July 2005 (European Council 2004).

The decision on the part of the UK government to get its COTs to adopt the EU directive was highly controversial. The Territories were aggrieved, as neither the Treasury nor the FCO had consulted

them before the UK made the commitment to co-opt them into the directive. The Territories were also concerned about the possible impact of the directive upon their financial services sector, in part caused by the UK government's lack of explanation as to the detail and likely coverage of the measure. The Territories were fearful that the directive would cover not only individual holdings, but also their more important corporate sector. The poor communication on the part of the UK government was unfortunate, as the EU directive made it clear that interest payments made to companies would be excluded. It was not surprising therefore that the Overseas Territories were concerned about the likely impact of the directive and unhappy at the UK government's attitude towards them. It was of course hoped that the reforms associated with the 'Partnership for Progress and Prosperity' White Paper would have eased communication between London and each of its Territories in the Caribbean. However, controversy over the EU directive seemed to indicate that past mistakes were being repeated.

The Cayman Islands was most vociferous in opposing the directive, primarily because it has the largest retail-banking sector of all the COTs. However, a number of other issues exacerbated the disquiet on the part of Cayman. The most important being the collapse of a six-month long trial of four defendants accused of laundering US\$25 million through the Cayman Islands-based Euro Bank Corporation. The collapse of the trial in January 2003 provoked a serious split between the Cayman and UK governments. It was reported that the trial was stopped after it emerged that British intelligence had ordered the territory's lead investigator to destroy evidence in an unsuccessful attempt to keep secret the security services involvement in the case. The activities of British intelligence had been withheld from the locally elected government ministers (Lashmar 2003 and Offshore Alert 2003).

The collapse of the Eurobank trial, together with disagreements over the EU's saving tax directive, led the Cayman Islands to undertake a legal challenge against the applicability of the

directive at the European Court of First Instance in Luxembourg. When the case was heard in March 2003, the Court argued that the EU could not impose an obligation on the territory to implement the proposed directive. In addition, the Court ruled that the UK was not legally required as a full member of the EU to impose the directive on the Cayman Islands. However, the judges said that the question of whether the UK could compel the Cayman Islands to accept the directive was something that depended on the exact arrangements between the UK and the Territory, and was outside of the Court's remit (European Court of First Instance 2003). The ruling was important as it left the UK government to decide for itself whether the directive should be imposed on the COTs. So although the European Court of First Instance ruled that the EU directly, or indirectly via the UK, could not force the COTs to implement the savings tax directive, the Court allowed the UK government to act as it saw fit.

In response to the ruling UK Chancellor Gordon Brown threatened to issue an Order in Council against the Cayman Islands that would force the Territory to adopt the provisions of the directive (*Caribbean Insight* 2003). This threat led McKeeva Bush, the Cayman Islands' Leader of Government Business to accuse the UK government of behaving like the colonial power of old, ruling by dictat and treating the island's citizens like slaves (Parker 2003). The UK government, meanwhile, was unhappy about the aggressive tone emanating from the Cayman Islands government. However, it was expected that some form of compromise over the directive would eventually be found because both sides wanted to prevent the disagreement damaging more fundamental aspects of the relationship. Indeed in February 2004, the Cayman Islands government reached agreement with the UK over the application of the EU directive. A settlement was possible because of the growing realisation on the part of the Cayman Islands that the directive was going to be imposed one way or another. In addition, the four other Caribbean Territories had by this time signed up to the provisions of the directive, and

therefore the Cayman Islands was isolated in its opposition to the measure. The Turks and Caicos, for example, had agreed to sign up in January 2004. Another factor was the findings of a UK government commissioned report by Maxwell Stamp, which argued that the actual effect of the directive on the COTs would be small (*Hansard* 2004). Further, the UK government provided the Cayman Islands with a number of compensatory measures to offset any possible negative effects of the directive.

The case of financial services in the Overseas Territories highlights a number of points in relation to the operation of UK policy after the government's 1999 White Paper reforms. It is clear that the UK government is now much more engaged in the COTs' financial service industries than in the past. A number of bilateral and multilateral initiatives have been undertaken, which have tightened oversight of the sector. An indication of the importance that the UK government places on this issue can be seen with its threat to impose the EU savings tax directive by Order in Council. Conversely, however, the issue illustrates the still uncertain lines of communication between the UK and Overseas Territories authorities. Despite the White Paper and the associated reforms, much of the controversy over the EU directive was caused by misunderstanding and confusion. Finally, the nature of the offshore financial sector highlights the continued deficiencies of the present model of metropolitan oversight, despite recent reforms. It is true that many Overseas Territories have dynamic and now better regulated offshore financial industries, but questions remain over the adequacy of resources provided for proper supervision. This issue is largely out of the UK's hands as budget decisions are in large measure the responsibility of the local governments and legislatures. Therefore there can be a gap between UK preferences and actual policy outcomes because the British government does not always have at its disposal the necessary decision-making tools.

Indeed, there remains a problem with issues that are in the middle of the spectrum of UK-Overseas Territories relations. Of

course, the British government can use the nuclear option of an Order in Council, but this is done reluctantly because of the controversy it causes. As a consequence issues that are serious, but not as serious as to provoke an Order in Council can be difficult to address. As Taylor argues “the Governor ... has a difficult task, relying on the authority of his office and his power of persuasion in Executive Council and its margins to carry out the burden laid on him” (International Development Committee 1997:186-187). Also as was highlighted earlier there is not always a clear division between matters, which are the Governor’s responsibility, and those, which are Ministers. For example, in the British Virgin Islands, an official enquiry led to three senior officials and a local businessman being convicted of attempting to defraud the government in connection with telecommunications contracts for a new airport. A report by the UK Centre for Management and Policy Studies commissioned by the Governor’s office and published in July 2002 described an “almost total breakdown” in the relationship between ministers and permanent secretaries (Economist Intelligence Unit 2004:42). Despite the emphasis on good government in the Overseas Territories, the aspirations of the 1999 White Paper floundered on an issue that was not serious enough to allow the UK government to act. Rather the UK government was forced to respond after the corruption had come to light. On occasion there remains a grey area in policy-making between the British and island governments, which highlights a number of still outstanding deficiencies in the UK’s oversight of its Territories. However, more recently the British government has used the constitutional review process undertaken by the COTs to restate the importance of metropolitan oversight.

Constitutional review: between a rock and a hard place

At the time of the ‘Partnership for Progress and Prosperity’ White Paper the UK government maintained that reform should be evolutionary, and set in motion during 2001 a constitutional review process for the Overseas Territories. For the first time the

process was supposedly “locally owned and driven rather than directed from London” (Foreign Affairs Committee 2004:7). As a consequence, the Territories hoped that quite fundamental reform would be undertaken. This impression was reinforced when the 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.

The COTs have all but completed their reviews and various constitutional amendments have been suggested. For example, recommendations have been made to reduce the power of the Governor and to increase the role of the elected government, to make the Attorney General a political appointee, and to redefine the various forms of residency status. Other proposals include greater autonomy for the Territories over the public service and judicial appointments, the introduction of local consultation before the UK appoints a governor, and changes to Territories’ electoral systems. In addition, because of the deep unhappiness on the part of the COTs, and particularly the Cayman Islands, over the issue of financial regulation the reviews have also considered the possibility of increasing local control over offshore finance. Despite long-standing differences in the levels of autonomy between the Territories the requests for change have been along similar lines, and even the Cayman Islands, with its relatively underdeveloped political system, has called for a reduction in the powers of the Governor and the Attorney General.

With the UK government faced with growing expectations on the part of the Overseas 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:

The complexity of Government business, particularly following the terrorist attacks of 11 September, is tending increasingly to blur the distinction between domestic and foreign policy, requiring greater UK involvement in some areas which hitherto Territory governments may have considered to be their own preserve. Moreover, 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 memorandum suggested therefore that Governors may need to play a more proactive role in areas such as contingency planning, aviation and maritime safety/security, financial regulation, management of the economy, the environment and human rights (Foreign Affairs Committee 2004). Also it described the British “as acting as the transmission mechanism by which an ever-growing corpus of global regulation is applied to the Territories” (Foreign Affairs Committee 2004:9). The memorandum claimed that the potential extension of UK involvement was not a change in policy and that Governors would not be given more powers, but it was clear that the British government was sending a strong message in regard to the limits of any constitutional reform. 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 importance the UK gives to the Overseas Territories was illustrated in December 2003, when the FCO published a comprehensive strategy setting out the UK's international priorities over the next ten years and the ways in which it intended to deliver its objectives. One priority was 'Security and good governance of the UK's Overseas Territories' (FCO 2003b:42-43). In a follow-up document presented by the FCO in March 2006 their position at the heart of UK foreign policy was reiterated (FCO 2006). The commitment is important because it clearly prioritises the Territories in UK foreign policy, committing the Government as a whole to safeguarding them, and re-stating for all to see the specific aims of the FCO in regards the Territories, focusing on such issues as good governance, law and order, and observing international commitments. Overall therefore, the constitutional reviews will most likely bring about only the most modest of changes, and reaffirm the UK government's privileged and necessary role in overseeing its Overseas Territories. The clear message from the UK is that it will not grant further autonomy unless the Territories embark upon a process of independence. Crudely put, "accept our concept of modernisation or go your own way" (Fergus 2005:42). All indications are that the COTs will not follow the independence path despite the expected lack of progress towards greater constitutional autonomy. The leaders and populations of all five Territories prefer the status quo believing that despite its problems; in particular the overly intrusive role of London, the system now in operation is the best option of governance presently available.

The constitutional review process dramatically underlines the importance that the UK government attaches to the model of governance now operating in its COTs. Even though the review process was meant to be "locally owned and driven rather than directed from London", the reality was somewhat different. Towards the end of 2003 the UK government set out its stall very clearly arguing that while remaining under the authority of the Crown, Overseas Territories must comply with certain political, economic and social standards of behaviour. Indeed, in many

ways the review process provided the UK with an opportunity to demand even more from the Territories, while at the same time highlighting the continued deficiencies in the relationship. The COTs were perhaps given a false impression of what would be possible in the constitutional review, because of the British government's delay in laying out its case. This certainly caused some confusion and anger but the reality is that no Territory desires independence. As the UK does not countenance a 'third way' between the current structures and independence, the government in London has the authority and legitimacy to maintain and if necessary reinforce the present system of supervision.

Conclusion

The UK's relationship with its Caribbean Overseas Territories has been defined by a concern over the nature of governance and the balance between their respective interests. On many occasions their interests have been similar, while on others clear differences have emerged. The period since the West Indies Act of 1962, which established constitutions for the Territories, has witnessed an evolutionary process of constitutional and administrative reform. From the mid-1990s however the approach of the British authorities, particularly under New Labour, has become more proactive, provoked in large measure by the Montserrat volcano eruptions and the National Audit Office report on the UK's contingent liabilities. The crisis in Montserrat highlighted a number of weaknesses in the administrative framework connecting London, the Governors and the local governments, while the NAO report drew attention to the UK's "extensive responsibilities but limited power" and the resultant exposure of UK taxpayers if the British government failed to act judiciously.

The consequence was the publication, by the Labour government in 1999, of a White Paper entitled 'Partnership for Progress and Prosperity', which provided a comprehensive plan of action to improve the governing arrangements between the UK and its Territories. The White Paper set out a number of recommendations

on issues, such as the constitutional link, citizenship, financial standards, good governance and human rights. The document emphasised that the reforms were to encourage a “modern and effective partnership”, which included an expectation that the Territories would agree to meet a range of international treaty obligations. The Labour government has since reaffirmed its commitment to the provisions contained in the White Paper, and has even suggested that the level of supervision should be increased. The discussions over reforming the Territories’ constitutions illustrate well the UK government’s position. The UK has made clear that it will retain and even strengthen the existing model of control, and will certainly not grant further autonomy unless the Territories commit themselves to full independence. Despite strains in the relationship the Caribbean Territories wish to remain constitutionally linked to Britain at the present time, because the benefits still outweigh the negative aspects of the association.

The gradual application of a more pro-active and coherent level of oversight on the part of the New Labour government in relation to the Overseas Territories highlights how the principle of more forceful metropolitan control has taken hold, and how attempts have been made to address past deficiencies in the system. The Territories are now much more heavily integrated into the international system, having adopted either willingly or unwillingly a number of changes to their political, economic and social structures. The effect has been a convergence of policy and approach across the COTs, even though they retain distinctive constitutional arrangements. These changes have been undertaken by the British authorities in order to improve the UK’s oversight and control of the Territories. Weaknesses remain, but the UK is now in a much stronger position than ever before to defend its interests and minimise its liabilities. The Overseas Territories might not always appreciate the measure of control exacted by the UK government, but as they wish to remain under the authority of the Crown for the foreseeable future, they have no choice but to accept the system now in operation.

References

- Aldrich, R. and J. Connell. 1998. *The Last Colonies*. Cambridge, UK: Cambridge University Press.
- Caribbean Insight*. 2003. An editorially independent publication of the Caribbean Council of Europe, September 19. London, UK: Caribbean Council.
- Committee of Public Accounts. 1998. *Foreign and Commonwealth Office: Contingent Liabilities in the Dependent Territories*, Thirty-Seventh Report, House of Commons, May 11. London, UK: The Stationary Office.
- Davies, E. 1995. *The Legal Status of British Dependent Territories: The West Indies and North Atlantic Region*. Cambridge, UK: Cambridge University Press.
- Department for International Development. 1999. *An Evaluation of HMG's Response to the Montserrat Volcanic Emergency*. Vol. 1, EV635, December. London, UK: The Stationary Office.
- Economic and Financial Affairs Council. 2004. "Results of Council of Economics and Finance Ministers, Luxembourg, June 2, 2004 – Taxation", MEMO/04/134, June 3. Brussels, Belgium.
- Economist Intelligence Unit. 2004. Country Profile: Barbados, British Virgin Islands, Cayman Islands, Netherlands Antilles and Aruba. London, UK: EIU.
- European Commission. 2001a. "Commission Adopts New Proposal on Taxation of Cross-border Savings Income", IP/01/1026, July 18. Brussels, Belgium.
- _____. 2001b. "Savings Tax Proposal: Frequently Asked Questions", Memo 01/266, July 18. Brussels, Belgium.
- European Council. 2004. Council Decision (2004/587/EC) of July 19, 2004 on the date of application of Directive 2003/48/EC on taxation of savings income in the form of interest payments, Official Journal L 25, August 4. Brussels, Belgium.
- European Court of First Instance. 2003. "Order of the President of the Court of First Instance, Government of the Cayman Islands vs. Commission of the European Communities", Case T-85/03 R, March 26.
- Fergus, H. 2005. "Constitutional Reform in Some British Overseas

Territories in the Caribbean: Modernisation or Colonial Entrenchment?" Pp. 31-44 in *The United Kingdom Overseas Territories: Past, Present and Future*, edited by D. Killingray and D. Taylor. London, UK: Institute of Commonwealth Studies.

Foreign Affairs Committee. 1998. *Interim Report on the Dependent Territories*, House of Commons, February. London, UK: The Stationary Office.

_____. 2004. 'Overseas Territories: Written Evidence', HC 114, House of Commons, March. London, UK: The Stationary Office.

Foreign and Commonwealth Office. 1999. *Partnership for Progress and Prosperity: Britain and the Overseas Territories*, Cm 4264, March. London, UK: The Stationary Office.

_____. 2002. Departmental Report 2002. Retrieved January 15, 2006 (<http://www.fco.gov.uk>).

_____. 2003a. Departmental Report 2003. Retrieved January 15, 2006 (<http://www.fco.gov.uk>).

_____. 2003b. *UK International Priorities: A Strategy for the FCO*, Cm 6052, December. London, UK: The Stationary Office.

_____. 2006. *Active Diplomacy for a Changing World: The UK's International Priorities*, Cm 6762, March. London, UK: The Stationary Office.

Hansard. 2004. House of Commons, Oral Answers to Questions (British Virgin Islands), The Parliamentary Under-Secretary for Foreign and Commonwealth Affairs (Mr. Bill Rammell), July 13, Column 1237. London, UK: The Stationary Office.

House of Lords. 2001. *The British Overseas Territories Bill*, Bill 40 of 2001-2002, October 30. London, UK: The Stationary Office.

International Development Committee. 1997 *Montserrat*, First Report, House of Commons, November 18. London, UK: The Stationary Office.

International Development Committee. 1998. *Montserrat – Further Developments*, Sixth Report, House of Commons, July 28. London, UK: The Stationary Office.

KPMG. 2000. *Review of the Financial Regulation in the COTs and Bermuda*, Cm 4855. London, UK: Foreign and Commonwealth Office.

Lashmar, P. 2003. "Bungled MI6 Plot Led to Cayman Trial Collapse."

- The Guardian*, January 18, A8.
- National Audit Office. 1997. *Foreign and Commonwealth Office: Contingent Liabilities in the Dependent Territories*, Report by the Comptroller and Auditor General, HC 13 1997/98, May 30. London, UK: The Stationary Office.
- Offshore Alert. 2003. *Collapse and Aftermath of Eurobank Trial*, January 31. Retrieved May 12, 2005 (<http://www.kycnews.com>).
- Parker, A. 2003. "Global Crackdown on Tax Evasion Begins to Stall." *Financial Times*, November 30. Retrieved May 12, 2005 (<http://www.ft.com>).
- Skelton, T. 2000. "Political Uncertainties and Natural Disasters: Montserratian Identity and Colonial Status." *Interventions: International Journal of Post-Colonial Studies* 2 (1):103-17.
- Taylor, D. 2000. "British Colonial Policy in the Caribbean: The Insoluble Dilemma – the Case of Montserrat." *The Round Table* 355:337-344.
- Thorndike, T. 1989. "The Future of the British Caribbean Dependencies." *Journal of Interamerican Studies* 31:117-140.