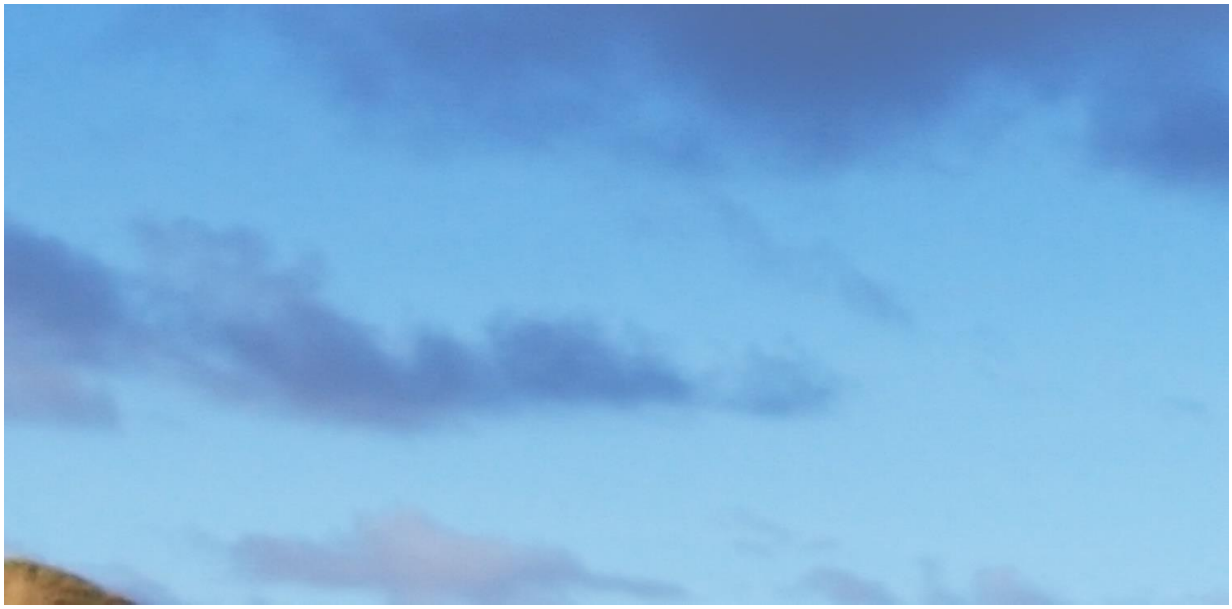

Assessment of Self-Governance Sufficiency in conformity with internationally-recognised standards

Country: Bermuda

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30th September 2022
(as revised)
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Geography, People, Government and Economy	
Geography	Bermuda is located in the western part of the Atlantic Ocean, approximately 917 km east of the North Carolina coast of the United States of America. It consists of 8 major and 130 smaller islands. Land area: 53.35 km2
People	Population: 64,055 (August 2021) Ethnic composition: Approximately 52 per cent black, 31 per cent white, 9 per cent mixed races and 8 per cent other races (2016 census) Life expectancy at birth: 82.9 years (men: 80.0 years; women: 85.9 years (2020)
Government	Legislature: Bicameral legislature, comprising an 11-member Senate appointed by the Governor (*3 at his or her discretion, 5 on the advice of the Premier, 3 on the advice of the leader of the Opposition*); and the 36-member House of Assembly elected in 36 constituencies for up to a five-year term.
Economy	Economy: Financial services, tourism Main trading partners: United States, Canada, United Kingdom and States members of the Caribbean Community Exclusive economic zone: 450,370 km2 Monetary unit: Bermuda dollar, pegged at parity with the US dollar
Judiciary and legal system	The law and legal system of Bermuda are based on the application of English common law and the principles of equity, the legislation of the United Kingdom (in force since 1612) that has been extended to Bermuda, and acts of the Bermuda Parliament. The judiciary is appointed on the advice of the Chief Justice. There are three courts: the Magistrates' Court, the Supreme Court and the Court of Appeal.

Source: United Nations Working Paper prepared by the Secretariat 2022.

Figure 1. Map of Bermuda

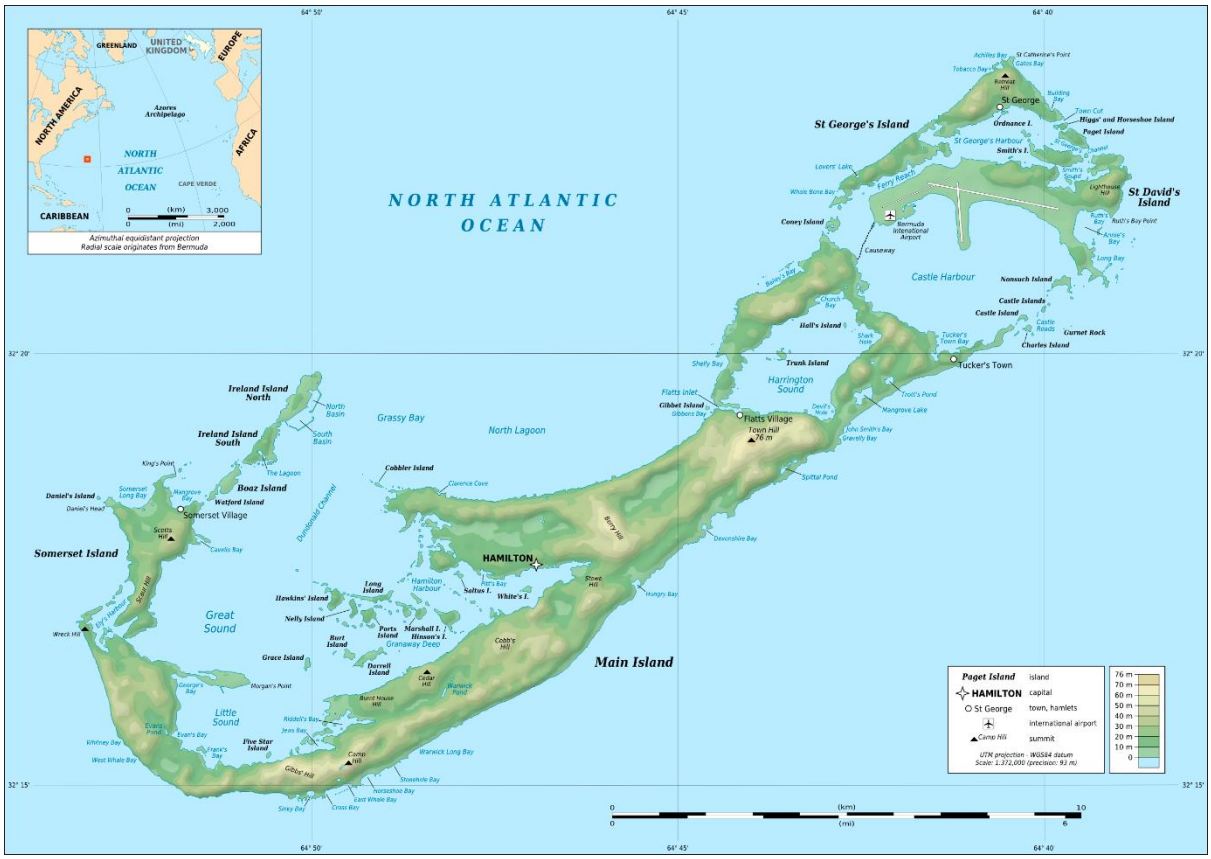
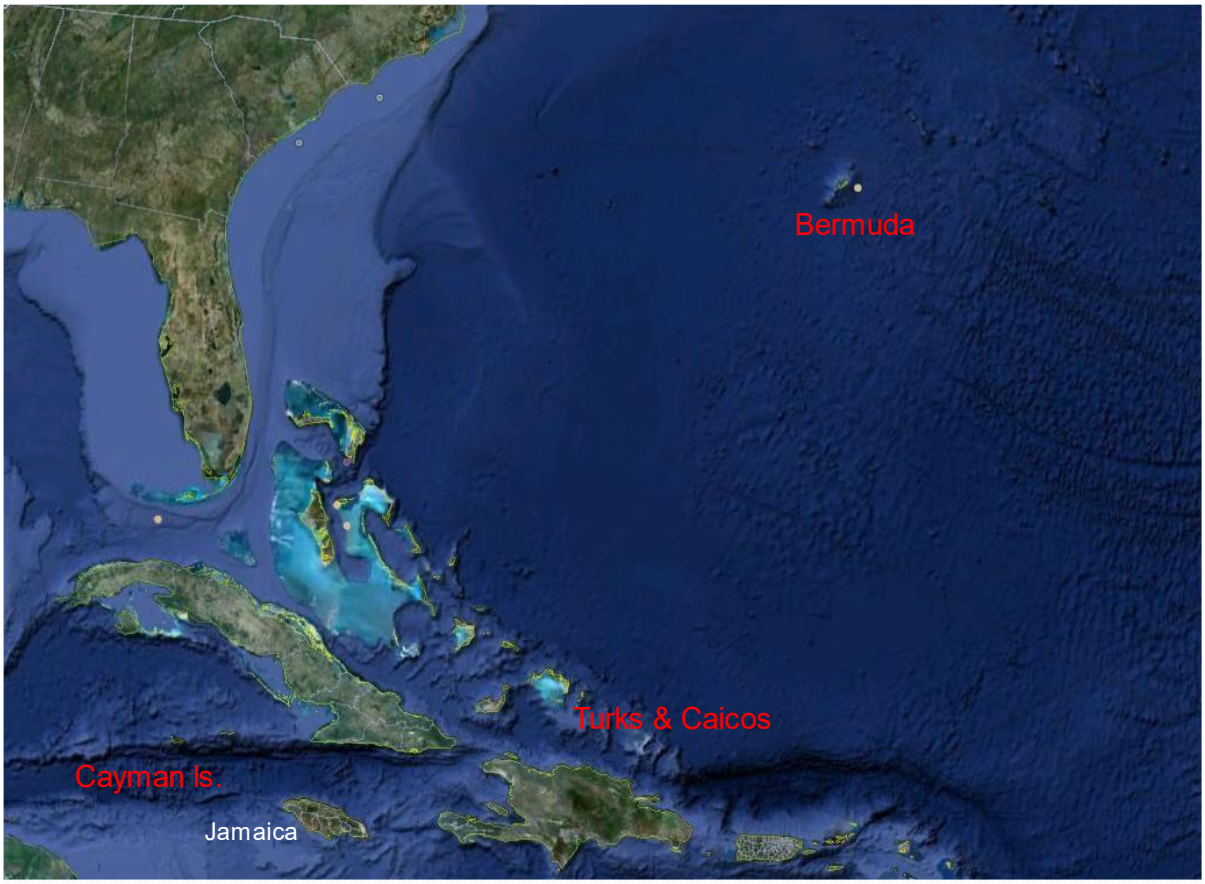


Figure 2. Bermuda in regional context



Contents

Glossary of Acronyms, Abbreviations and Terms

ADG	Appointed Dependency Governance
AbPE	Absolute Political Equality
AMC(s)	Associate Member Country(ies)
AP(s)	Administering Power(s)
BMA	Bermuda Monetary Authority
C-24	UN Decolonisation Committee/Committee of 24
COI	Commission of Inquiry (UK)
Cosmopole	Country which administers a Non-Independent Jurisdiction
DAP	Decolonisation Acceleration Period
DGS	Dependency Governance by Segregation
DDP	Decolonisation Deceleration Period
DEP	Decolonisation Engagement Period
DG	Dependency Governance
DL	Dependency Legitimisation
DMP	Dependency Modernisation Period
DT(s)	Dependent Territory (ies)
EDG	Elected Dependency Governance
EU	European Union
FMSG	Full Measure of Self Government
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social & Cultural Rights
ICJ	International Court of Justice
IDA	Instrument of Delegated Authority
IDEC	International Decade for the Eradication of Colonialism
IDG	Instrument of Dependency Governance
IDP	Initial Decolonisation Period
IJ(s)	Integrated Jurisdiction(s)
I-NSGTs	Island Non Self-Governing Territories
IUA(s)	Instrument(s) of Unilateral Authority
jus cogens	*A peremptory norm of general international law*
jus gentium	*law of nations*
MDG	Military Dependency Governance
NATO	North Atlantic Treaty Organization
NIC(s)	Non-Independent Country/Countries
NICC(s)	Non- Independent Caribbean Country(ies)
NIJ(s)	Non Independent Jurisdiction(s)
NSGT(s)	Non Self-Governing Territory/Territories
OBA	One Bermuda Alliance
OT	Overseas Territory
PD(s)	Peripheral Dependency/Dependencies
PDG	Proprietary Dependency Governance

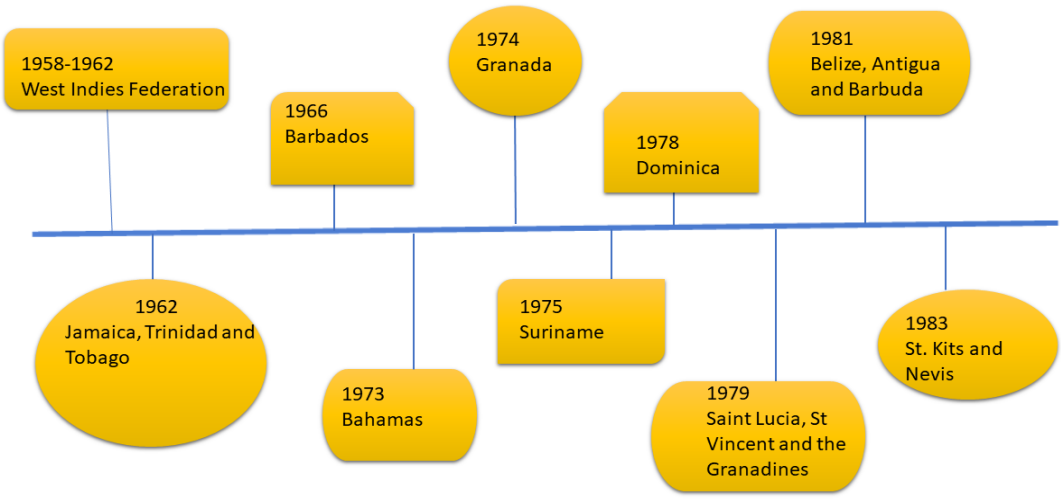
PEG	Pre-Emancipation Governance
PLP	Progressive Labour Party
prima facie	*at first sight*
PSG	Preparedness for Self-Government
PSNR	Permanent Sovereignty over Natural Resources
SGA	Self-Governance Assessment
SGI(s)	Self-Governance Indicator(s)
SUA	Source of Unilateral Authority
UBP	United Bermuda Party
UK	United Kingdom
UKOT(s)	United Kingdom Overseas Territory/Territories
UN	United Nations
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNESCO	UN Educational, Scientific and Cultural Organisation
US	United States

I. Introduction

The Western Hemisphere is one of the most politically diverse regions on a global scale comprising former and present dependencies of various European states (*United Kingdom, France and the Netherlands*), as well as one North American state (*United States*). The self-determination of the countries of the Americas began in the early 1800s and progressed throughout that century beginning with Haiti's independence from France in 1804 through to most of the former Central and South America colonies administered by Portugal and Spain.

Within this hemispheric framework, the Caribbean subregion can be regarded as having emerged from an *ethno-historical* [1] space comprising a cultural sphere of countries and territories of varied political and constitutional arrangements into the present third decade of the 21st century. Chief among these are the former and current dependencies of the United Kingdom (UK), many of which exercised their self-determination and consequent decolonisation through independence in the latter half of the 20th Century (see table 1). The singular dependency of the Kingdom of the Netherlands to achieve independence during the period was Suriname which transitioned from a colony to a constituent country of the Kingdom of the Netherlands in 1954 before attaining independence in 1975.

TABLE 1. Caribbean Decolonisation through Independence - 2022



Source: The Dependency Studies Project, Virgin Islands 2021.

[1] Girvan, Norman, *Creating and re-creating the Caribbean.* In Contending With Destiny-The Caribbean in the 21st Century, edited by Kenneth Hall and Denis Benn, 31-36. Kingston: Ian Randle Publishers, 2000.

Other territories administered by France progressed to the full measure of self-government (FMSG) through full political integration into the constitution of the French Republic as overseas departments at the midpoint of the 20th Century (*Martinique, Guadeloupe, French Guiana*) (Table 3).

Other dependency governance models persist in the hemisphere into the present third decade of the 21st Century. The Netherlands formed a model termed 'public entity' amounting to 'partial integration' under the Kingdom of the Netherlands *(Bonaire, Saba and Sint Eustatius),* and a separate 'autonomous country' model amounting to 'semi-autonomy' *(Aruba, Curacao, Sint Maarten).* Both models emerged in 2010 from the political fragmentation of the erstwhile semi-autonomous Netherlands Antilles which was originally comprised of six islands geographically split between three in the Eastern Caribbean (*Saba, Sint Eustatius, and Sint Maarten*) and three off the coast of South America (Aruba, Bonaire, and Curacao) . [2] France established its own version of semi-autonomy *(French St. Martin, St. Barts)* three years prior in 2007 introducing a semi-autonomous model of *collectivité territoriale* 'into the Caribbean akin to the political status arrangement in the Pacific territory of Ma'ohi Nui (*French Polynesia*). [3]

Table 2. Caribbean NSGTs

Caribbean Non Self-Governing Territories (UN listed)	
Anguilla	UK
Bermuda	UK
British Virgin Islands	UK
Cayman Islands	UK
Montserrat	UK
Turks & Caicos Islands	UK
US Virgin Islands	US

The remaining non-independent jurisdictions in the hemisphere comprise the seven Non Self-Governing Territories (NSGTs) under international oversight pursuant to Chapter 11 of the United Nations (U.N.) Charter. The United Kingdom Overseas Territories (UKOTs) comprise the bulk of the NSGTs in the Americas amongst other European/North American - administered dependencies.

[2] Aruba had earlier seceded from the six-island Netherlands Antilles in 1986 to assume separate 'autonomous country' status with the commitment to assume independence over a defined period. This decision, however, was reversed and the 'autonomous country' status remains to present day.

[3] The collectivité status of Ma'ohi Nui (*French Polynesia*) was determined to be insufficiently autonomous by the UN General Assembly in 2013 resulting in the re-inscription of that territory on the UN List of Non Self-Governing Territories (NSGTs) by Resolution 67/265 of 17 May 2013.

Table. 3. Non-Independent Jurisdictions (NIJs) in the Western Hemisphere 2022		
Non Self-Governing Territory	**Autonomous/Semi Autonomous**	**Full/Partial Integration**
Anguilla (UK)	Aruba (Netherlands)	Guadeloupe (France)
Bermuda (UK)	Curacao (Netherlands)	Martinique (France)
Virgin Islands (British) (UK)	Sint Maarten (Netherlands)	Guiana (France)
Cayman Islands (UK)	Saint Martin (France)	Bonaire (Netherlands)
Montserrat (UK)	Saint Barthélemy (France)	Saba (Netherlands)
Turks & Caicos Is. (UK)	Puerto Rico (US) [4]	Sint Eustatius (Netherlands)
Virgin Islands (US)		San Andres, Providencia & Santa Catalina (Colombia)
Falkland Islands/Malvinas (UK) *(South Atlantic)*		South Caribbean Coast Autonomous Region (Nicaragua)

Dependency Designations - Caribbean

FRANCE	Overseas Department [*Guadeloupe, Martinique, French Guiana*] *(formerly "overseas territory," now fully integrated into France)*
NETH.	Autonomous Country [*Aruba, Curacao, St Maarten*] Public Entity/'Special Municipality' [*Bonaire, Sint Eustatius, Saba*]
UK	Overseas (*formerly 'Dependent') Territory* [*Bermuda, TCI, Cayman Is, Anguilla, Montserrat, BVI*]
US	Unincorporated Territory (*U.S. Virgin Islands*) Commonwealth (*Puerto Rico*)

A similarly complex political configuration exists with respect to NIJs in the Pacific region with independent states and autonomous governance arrangements co-existing with various political dependencies (See Table 4).

[4] Puerto Rico is also recognised as an unincorporated territory administered by the US is seen as a *de facto* NSGT.

Table 4. Non-Independent Jurisdictions (NIJs) in Oceania – 2022

Non Self-Governing Territory	Autonomous/Semi-Autonomous	Full/Partial Integration
American Samoa (US) a/	**North. Mariana Islands** (US) d/	**Hawai'i (US)** g/, h/
Guahan/Guam (US) a/	**Cook Islands** (N. Zealand) e/, h/	West Papua (Indonesia) m/
Kanaky/New Caledonia (France) b/	**Niue** (New Zealand) e/, h/	**Norfolk Island** (Australia) *(post-2016)* i/, k/
Ma'ohi Nui (French Polynesia) (France) b/	**Bougainville** (Papua New Guinea) l/	**Rapa Nui/Easter Island** (Chile) k/
Tokelau (New Zealand) c/	**Norfolk Island** (Australia) *(pre-2016)* i/, k/	**Hong Kong** (China) n/
Pitcairn (UK) f/		**Macao** (China) o/
Wallis & Futuna (France) j/		

Notes-

a/ U.S. -administered dependent territory; listed by the U.N. as non-self-governing
b/ French-administered dependent territory; re-listed by the U.N. as non self-governing
c/ NZ-administered dependent territory; listed by the U.N. as non self-governing
d/ Semi-autonomous dependency administered by U.S.; formerly part of the UN Trust Territory of Pacific
e/ State in free association with NZ with some characteristics of integration
f/ UK-administered dependent territory; listed by the U.N. as non self-governing
g/ Former NSGT in full integration with U.S. following annexation
h/ Formerly an NSGT and removed from U.N. list by UN resolution
i/ Partially integrated with Australia, democratic governance suspended since 2016.
j/ French-administered dependent territory, not listed by the U.N; removed from UN list without UN resolution
k/ Never listed by the U,N. as non-self-governing
l/ Territory administered by Papua New Guinea; political status plebiscite held in 2019 with independence winning with 98.31 % of the vote; independence transition modalities under discussion
m/ Territory integrated with Indonesia with an autonomy statute
n/ Territory formerly administered by the United Kingdom under agreement before its return to China in 1997
o/ Territory formerly administered by Portugal under agreement before its return to China in 1999

Source: Dependency Studies Project (DSP), St. Croix, Virgin Islands 2022.

Additional governance models in play globally are also instructive. In the North Atlantic, autonomous arrangements of Greenland and the Faroe Islands in association with Denmark, and the Alands Islands vis a vis Norway, are pertinent examples in their uniqueness for merging elements of integration and association. Still other arrangements exist globally including the Indian Ocean models of the external territories of the Cocos/Keelings and Christmas Island under Australia. A further Indian Ocean model is Chagos, a peripheral dependency (PD), which is legally part of Mauritius as confirmed by the International Court

of Justice, but stubbornly occupied by the UK (*which leases a part of the territory to the US for military purposes*) as a particular affront to the 'international rule of law.' [5]

There is also the Portuguese autonomous region of the Azores in the North Atlantic, and a second autonomous region of Madeira projected as also being in the North Atlantic but, rather, is closer geographically to northwestern Africa than to Portugal. Both autonomous regions are integrated within the framework of the Portuguese Republic, and relate to the European Union (EU) through the designation of 'outermost regions' reserved for integrated components of EU states. As Ghanian journalist Akyaaba Addai-Sebo observed, "(i)t is generally held that decolonisation of Africa ended with the fall of apartheid in South Africa in 1994 (b)ut the truth is that Britain, France, Spain and Portugal continue to colonise a number of African islands." He elaborated:

> (I)t is 'Not Yet Uhuru' for the following islands: Ascension Island (United Kingdom); Saint Helena Island (United Kingdom); Tristan da Cunha Archipelago (United Kingdom); Bassas de India Atoll (France); Europa Island (France); Glorioso Islands (France); Iles Esparses (France); Juan de Nova Island (France); Mayotte Island (France); Reunion Island (France); Tromelin Island (France); Canary Islands (Spain); Ceuta (Spain) and Madeira (Portugal). [6]

Addai-Sebo also made reference to the 'disputed island territories" including: Bassas da India, Europa Island & Juan de Nova Island claimed by France and Madagascar with France exercising control through its military base in nearby Réunion, and used for nature reserves and meteorological stations. He also pointed to a number of islands under sovereignty dispute including Glorioso (Glorieuses) Islands claimed by Comoros, France, Madagascar and the Seychelles, but again, controlled via French military forces (*as mentioned above, France also controls Mayotte, a part of the Comoros Islands*).

Overall, an awareness of myriad dependency, autonomous or integrated governance arrangements is instructive in examining the nature of the existing dependency governance (DG) model of Bermuda, and particularly the extent to which the status quo is compliant with international standards with respect to the obligatory function of the administering Power (AP) to advance the territory to the full measure of self-government (FMSG). In this context, it is noted that internal dependency modernisation initiatives, including constitutional reform measures, are periodically undertaken in NSGTs, but are not intended to address the imbalance of power between the administering Power (AP) and the NSGT concerned with the final decision-making authority of the cosmopole remaining intact.

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[5] See "*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*," Advisory Opinion of the International Court of Justice, The Hague, Netherlands, 25 February 2019.

[6] See *The unfinished business of total liberation - Africa's islands*, Pambazuka, Issue 634 (2013).

Hence, it is the responsibility of the UN to scrutinise the nature of the varied DG arrangements pursuant to the global self-determination and decolonisation mandates intended to facilitate the attainment of the Full Measure of Self-Government (FMSG) for the remaining NSGTs consistent with minimum standards set forth by the UN General Assembly in its landmark 1960 Decolonisation Declaration, its associated resolution (*Resolution 1541 XV*) setting the minimum standards for FMSG, [7] and other relevant international instruments.

II. Methodology

A comprehensive examination of these relevant instruments and their subsequent synthesis yielded the formulation of the *Self-Governance Indicators (SGIs)* first introduced in 2011 at the Sir Arthur Lewis Institute for Social and Economic Studies (SALISES) of the University of the West Indies (UWI). The initial SGIs were codified one year later in the edited volume *"The Non-Independent Territories of the Caribbean and Pacific"* published by the Institute of Commonwealth Studies in 2012, and have been further advanced over the decade.

The SGI mechanism is the primary diagnostic tool designed to assess respective political status arrangements, and to determine the level of compliance of these governance models with minimum standards of self-government recognised under relevant international criteria. The SGIs are applied through a Self-Governance Assessment (SGA) procedure which considers the self-governance sufficiency of a respective NSGT, autonomous country or integrated jurisdiction through three distinct measurement sets. The SGA methodology has been applied in various jurisdictions worldwide since 2012.

The SGIs are not static but are refined and updated periodically to reflect advancements in international self-determination, decolonisation, human rights and democratic governance doctrine taking into account the often increasing complexities of such political status arrangements. The data used is derived from official sources, publicly available information and scholarly analysis.

For autonomous governance arrangements, a specific set of SGIs are utilised to examine the extent of autonomy as in the case of SGAs conducted for the Parliament of Curacao (2012), and for the Office of the President of French Polynesia (2012), respectively. These two comprehensive examinations were done to assess whether the respective models of 'autonomy' met minimum international standards for mutual consent between two associated polities. Assessments of other 'autonomous' forms are ongoing in several Pacific island jurisdictions, and under consideration in several Caribbean 'autonomous' jurisdictions.

[7] See United Nations General Assembly Resolutions 1514(XV) of 14 December 1960, and 1541(XV) of 15 December 1960, respectively.

For models of integrated governance, a different set of SGIs are employed measuring compliance with the minimum standards of political integration. A most recent SGI in this regard was conducted in 2018 in the Pacific external territory of Norfolk Island administered by Australia. This SGA was commissioned by the Norfolk Island Council of Elders as the duly elected government before the imposition of successive forms of Australian direct rule. The Norfolk Island Assessment focused on whether the requirements for absolute political and economic integration had been fully met in compliance with international norms.

In the Caribbean, an Assessment of the partially-integrated "public entity" status of Bonaire administered by the Netherlands was commissioned by the territory's premier human rights body, and completed in 2020. As in the case of Norfolk Island, the Bonaire Assessment applied the specific SGIs for integration in the wake of the 2010 dismantlement of the erstwhile five-island Netherlands Antilles and the subsequent annexation of the newly created polity of Bonaire through a unilateral insertion in the Constitution of Holland, one of the four constituent countries of the Kingdom of the Netherlands..

For the NSGTs formally listed by the UN (table 3,4), recent SGAs have been conducted for the US-Pacific territory of Guam [8] in 2020 that included a second phase which examined the legitimate political status options of political equality available to NSGTs. A most recent Assessment on the UK-administered NSGT of the British Virgin Islands was conducted in 2021. In this context, the SGAs for NSGTs are conducted to ascertain the extent to which the territory has been prepared for self-government by the country which administers it as mandated under Article 73(b) of the UN Charter. The SGA for NSGTs also determines the extent of transfer of power to the NSGT pursuant to the UN Decolonisation Declaration, and identifies, as appropriate, existent self-governance deficits in the governance model under review.

The present SGA of Bermuda is based on the SGIs for NSGT's by virtue of the formal recognition/designation of Bermuda under the UN Charter as a *"territory which has not yet achieved the full measure of self-government* (FMSG). " [9] Several selected SGIs for autonomous governance are also applied in view of the considered advanced nature of the dependency model vis a vis other United Kingdom-administered NSGTs.

The composite SGIs for Bermuda, along with the applicable scale of measurements are evaluated on a score of 1 to 4, with level 1 representative of the most political power differential and concomitant deficient level of preparation for self-government (PSG) through level 4 indicative of the culmination of the least power differential and accompanying high level of PSG for the specific SGI concerned.

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[8] *Assessment of Self-Governance Sufficiency in conformity with internationally-recognized standards, Country-Guam/Guåhan* (2021) In Giha Mo'Na – A Self-Determination Study for Guåhan, Commission on Decolonisation, Government of Guam, **https://decol.guam.gov** (accessed 1st August 2022).

[9] United Nations Charter (1945).

Relevant Self-Governance Indicators for Bermuda

It is within this context that the existent political status arrangement of Bermuda is examined in the present Assessment with the aim of 1) evaluating the extent to which the prevailing DG model is meeting the intended role of preparing the territory for the requisite FMSG on the basis of recognised international standards, 2) identifying relevant democratic deficits in the dependency model, and 3) determining pertinent adjustments which might be considered in accelerating the preparatory process towards the attainment of FMSG and consequent full democratic governance with absolute political equality (AbPE) pursuant to a genuine process of self-determination and consequent decolonisation.

As in the case of other NSGTs, the present Assessment is undertaken from the perspective that Bermuda is recognised as being in an essential preparatory phase leading to the attainment of FMSG pursuant to the international legal obligations of administering Powers (*states which administer territories recognised by the UN Charter*). Accordingly, the SGA for Bermuda measures the level of the territory's Preparation for Self-Government (PSG) in the exercise of its delegated power under the Bermuda Constitution Order 1968 which serves simultaneously as the Instrument of Dependency Governance (IDG) and Instrument of Delegated Authority (IDA), respectively.

It is to be noted that in the post-Cold War environment, the applicability of international principles of self-determination and decolonisation has been downplayed by the main administering Powers (APs) which, conversely, have sought to "validate as a recognised means of decolonisation the often cosmetic colonial reforms emerging from internal constitutional modernisation which does not modify the status quo colonial condition" (Corbin, 2009: 260). This is illustrated in the UN roster of NSGTs having remained stagnant since the independence of the erstwhile Pacific NSGT of Timor Leste in 2002. Thus, no territory achieved the requisite FMSG and the consequent delisting from the UN inscription since that time. This inertia comes, paradoxically, in the midst of General Assembly adoption of four successive International Decade(s) for the Eradication of Colonialism (IDEC) beginning in 1990, with the fourth such decade proclaimed for the period 2021-2030. The present fourth IDEC is designed to jumpstart the dormant process but this is not without the significant challenge of inertia.

Accordingly, account is taken in the present SGA of Bermuda that whilst there is an expressed acknowledgment by the UK and other APs of the applicability of international law to the decolonisation of the remaining NSGTs, there has emerged a certain proclivity towards dependency legitimisation in the interest of power projection, and geo-strategic/geo-economic interests. Therein lies a key obstacle to a genuine decolonisation process for Bermuda which, nevertheless, is judged on the basis of the contemporary standards determining 1) the level of PSG at the stage of the present third decade of the 21st century, and 2) the extent to which the UK has actively carried out its international legal mandate to advance Bermuda to FMSG.

It is within this context that the composite SGIs for Bermuda, along with the applicable range of measurements, are evaluated on a scale ranging from 1 to 4, with 1 representative of the least level of PSG and 4 indicative of the culmination of PSG for the specific SGI concerned. The SGA for Bermuda measures the level of the territory's PSG as it evolved through the respective periods of dependency governance under successive Instruments of Unilateral Authority (IUA) and Instruments of Delegated Authority (IDA) in this modern period termed by the late Bermudian scholar/political leader C. Walton Brown as "New Millennium Colonialism." [10]

The individual SGIs used in assessments of NSGT models may vary in emphasis depending on the individual complexities of the political arrangement concerned. Upon review of the UKOT Dependency Governance (DG) model in Bermuda, the specific SGIs set forth in Table 5 are employed.

Table 5. Self-Governance Indicators - Country: Bermuda

Self-Governance Indicator	Measurement
INDICATOR # 1 **Cosmopole compliance with international self-determination/decolonisation obligations**	1. Cosmopole dismisses relevance of external self-determination and regards political development of the territory as solely a domestic matter governed by cosmopole laws. 2. Cosmopole acknowledges external right to self-determination for the NSGT but regards it as subordinate to the domestic laws of the cosmopole. 3 .Cosmopole recognised relevance of international law and uses it as a guideline for the advancement to the full measure of self-government. 4. Cosmopole cooperates with United Nations "case-by-case work program" to develop a genuine process of self-determination for the territory with direct U.N. participation in the act of self-determination.
INDICATOR # 2 **Level of unilateral applicability of laws to the territory**	1.Absolute authority of cosmopole to legislate for the territory. 2.Mutual consultation on applicability of laws but final determination remains with cosmopole. 3.Existence of a process to assess impact of laws, regulations, and treaties before application to territory. 4. Mutual consent required before application of laws, regulations and treaties.

[10] Brown, C. Walton (2017) In an interview with Overseas Territories Report, May 2017.

INDICATOR # 3 **Degree of awareness of the people of the territory of the legitimate political status options, and of the overall decolonisation process**	1. Little or no awareness and absence of organised political education process. 2. Some degree of awareness with insufficient political awareness activities. 3. Significant degree of awareness through official political education programme(s). 4. High degree of awareness and preparedness to exercise the right to self-determination through referendum or other form of popular consultation.
INDICATOR # 4 **Right of the people to determine the internal constitution without outside interference.**	1.Dependency constitution can be drafted by the cosmopole in conformity with its unilateral authority over the territory. 2. Dependency constitution can be drafted by the cosmopole following consultations with the territory, with cosmopole retaining final authority on the content. 3. Dependency constitution can be drafted by the territory in advance of submission to the cosmopole which can only change the content by mutual consent of the parties. 4. Dependency constitution can be independently drafted and adopted by the people of the territory, consistent with U.N. resolution 1514(XV) on the "transfer of powers" to the territory and resolution 1541(XV) permitting the constitution to be enacted without outside interference as preparatory to the full measure of self-government.
INDICATOR # 5 **Extent of evolution of governance capacity through the exercise of delegated internal self-government.**	1. Cosmopole administers all major competencies with no consequential delegation of power to the elected government. 2. Cosmopole provides elected government with a (reversible) delegation of power of minor competencies whilst retaining control of major competencies. 3. Cosmopole provides elected government with a (reversible) delegation of power of significant number of major competencies. 4. Cosmopole provides elected government with a virtually irreversible devolution of power of most major competencies.

INDICATOR # 6 **Extent of evolution of governance capacity through the exercise of external affairs.**	1. Limited awareness of potential of the territory for participation in regional and international organisations. 2. Substantial awareness of regional and international organisation potential but limited participation. 3. Significant participation in regional and international organisations. 4. Full, unrestricted participation in range of relevant programmes of regional and international organisations.
INDICATOR # 7 **Degree of autonomy in economic affairs.**	1. Territorial economy dependent on direct aid from cosmopole and subject to cosmopole unilateral applicability of laws and regulations which can affect economic growth and sustainability. 2. Territory receives sectoral assistance from cosmopole, and generates and maintains significant revenue from its local economy with administration subject to cosmopole unilateral applicability of laws and treaties. 3. Territory generates and keeps most revenue from its economy and exercises administrative control subject to cosmopole unilateral applicability of laws and treaties. 4. Territory has self-sufficient economy through retention of all revenue and maintains full decision-making powers in the administration of the economy without unilateral applicability of cosmopole laws and treaties.
INDICATOR # 8 **Control and administration of Internal Security**	1. Cosmopole exercises direct control over internal security without regard for consultation. 2. Cosmopole consults with territory before setting policy but maintains final authority. 3. Cosmopole delegates substantial authority to elected government but maintains constitutional authority to control national security. 4. Cosmopole devolves full control of internal security to elected government of the territory.

INDICATOR # 9 **Control and administration of military activities**	1. Cosmopole has full control over defence and related military activities with some consultation with elected government. 2. Cosmopole has full control over defence and related military activities but delegates authority over some aspects to the elected government. 3. Cosmopole has full control over defence and related military activities, delegates authority over some aspects to the elected government, and shall consult with the elected government on most defence-related matters. 4. 4. Territory has full authority over all aspects of defence and related military activities, and can enter into external defence agreements, as appropriate.
INDICATOR # 10 **Extent of ownership and control of natural resources.**	1.Cosmopole exercises absolute ownership and control over natural resources of territory with power of eminent domain. 2. Some degree of shared management of natural resources between territory and cosmopole. 3. High degree of management of the resources by the elected government of the territory. 4. Natural resources owned and controlled by territory pursuant to international law.
A framework for the political formula for Non Self-Governing Territories (NSGTs) reflects: 1+2+3+4+5+6+7+8+9+10 = Preparation for Self-Government (PSG).	
Source: *"Self-Governance Deficits In Non Independent Caribbean Countries,* In The Non-Independent Territories of the Caribbean and Pacific, Institute of Commonwealth Studies, London (2012).	

Accordingly, the SGA for Country Bermuda assesses the political evolution of the territory emanating from the early through modern colonial eras inclusive of the pre-emancipation and post-emancipation periods. In the process, the SGA reviews the various stages of Appointed Dependency Governance (ADG) through to the successive periods of Elected Dependency Governance (EDG). The SGA analyses the cosmopole-territory power relationship as it has evolved through the sequential amendments to the constitutional order, and through relevant constitutional modernisation initiatives of the AP.

In this connection, the SGA surveys the pertinent UN resolutions on self-determination and decolonisation applicable to Bermuda to pinpoint actions required by the

administering Power and the wider international community in furtherance of the self-determination process leading to decolonisation. The level of implementation of these actions by the administering power in compliance with the UN Charter obligations is a consistent theme under review throughout the text. This inalienable right to self-determination remains the overriding legislative authority under international law through which the people of Bermuda would achieve the full FMSG guaranteed to them under the UN Charter and other relevant international instruments. Yet, this process of self-determination as it relates to such NSGTs as Bermuda is often misunderstood in both its complexity and relevancy. As such, the self-determination mandate is given particular attention in part III of the present Assessment.

III. Mandate for Self-Determination under International Law

The evolution of self-determination for Bermuda and other territories similarly situated has been the subject of sustained analysis and debate by scholars from several perspectives. This principle can be said to have its roots in the response to the beginnings of the earliest imperial period of the British empire and other European powers in the sixteenth century. It has been determined that "the origins of a political right to self-determination in a population can be traced back to the era of the French, American and Haitian Revolutions of the late 18th century." [11] A 2022 analysis in Overseas Territories Review (OTR, 2022) shed considerable light on the evolution on the thinking of the period:

> German scholar Wolfgang J. Mommsen in his 1980 *Theories of Imperialism* comparatively analysed various emerging schools of thought on empire, noting that imperialism "was originally regarded as a phenomena of power politics, consisting essentially in the extension of the rule of the European great powers to all parts of the globe," and that the "forcible extension of political rule to what was generally underdeveloped territories (was undertaken) regardless of the wishes of the conquered people" (Mommsen, 1980: 4-5);
>
> German scholar Otto Hintze regarded historical imperialism as a "fight for great power status" among emerging powers (Hintze, 1962: 469) whilst British and French scholars, Joseph Chamberlain and Paul Leroy-Beaulieu, respectively, "saw the imperialist expansion of the European great powers as an almost inevitable process…and any nation-state which did not join their ranks was condemned to inferior status. " (Mommsen, 1980: 6);
>
> British writer Sir John Sealy's view on imperialism lay in what he saw as a necessary expansion of England from an ethnocentric vantage point and a "largely state responsibility devoted to a 'Greater Britain'…preserving for all time the unity of the British race" (Mommsen, 1980: 6). This thinking supported the contention that the

[11] See Emily Forbes* and John R Morss (2021), *Peoplehood Obscured? The Normative Status of Self-Determination after the Chagos Advisory Opinion,* Monash University Law Review,

state-oriented theory of imperialism "was closely allied to the idea of nationalism since imperialism was generally regarded as a necessary consequence of the creation of nation-states." (Mommsen, 1980: 6). Chamberlain shared this perspective that imperialism was an extension of nationalism:

> The discussion at the beginning of the 20st century provided a broad spectrum of nationalist arguments for imperial expansion. A vigorous policy of enlarging the territory of the nation-state and creating an overseas empire – by force if necessary – was looked on by some as a necessary means of preserving and strengthening the national spirit, and by others as a source of fresh political vitality (Mommsen, 1980: 7).

Mommsen also alluded to the "racial and biological variants" of nationalist imperialism which was popularised in the latter 19th century whereby Europeans were projected as inherently superior to other races, and "it was therefore their mission and duty to rule over them (*the 'inferior' races*)." (Mommsen, 1980: 8). He referred to "strong tendencies of this kind… found in British and German imperialism before 1914" (and) surmised that "these racial and biological versions of imperialism in general may be looked upon as invalidated" (e)ven if remnants of such ways still play a part in present-day politics." (Mommsen, 1980: 8) (*emphasis added*)

An attendant argument to the nationalism rationale for imperialism was its economic 'justification.' Thus, a main theme at the beginning of the 20th century was that the European capitalist economies needed overseas markets which, by necessity, might have to be facilitated though the use of imperialist methods. In this connection, the English philosopher John Stewart Mills wrote of a threat to capitalist economies of economic stagnation that might be temporarily staved off by colonialism and imperialism. In this vein, Polish economist Rosa Luxemburg saw imperialism as a chance for the survival of capitalism, and viewed it as a necessary consequence of the inherent expansionist character of capitalism, consistent with the Leninist thesis that imperialism was the highest stage of capitalism.

A third school of thought on the raison d'être of imperialism was the objectivist theory propagated by the Swiss historian Herbert Luthy among other thinkers of the period. Hence, they saw imperialism as an objective process, arguing that colonisation and its final imperialist phase was a necessary stage in the evolution of a world-wide civilisation based on modern technology. This line of thinking saw imperialism as the Europeanisation of peoples of the third world in a decided 'civilising mission', and can be seen in the context of a forerunner of the colonial legitimisation philosophy which has found a new generation of advocates/apologists/accommodationists in the late 20th and early 21st centuries.

This was in line with the advent of the global dependency stagnation/legitimisation period later discussed in the present Assessment. These various elements of the

phenomenology of imperialism were interrelated, born of a nationalist agenda, an interrelated economic imperative as a logical stage of evolution of capitalism, and finally an objectivist approach which gave considerable weight to an inherent 'right' of the Europeans to colonise distant lands. It was within this historical framework that the present Assessment explores the evolution of the doctrine of self-determination and its historic application to dependent territories.

As Australian legal scholar James Crawford noted, "(t)he development of the right to self-determination has been above all a historical process." [12] The unfolding of this process has been the feature of continued analysis since the dawn of the 20th Century, and indeed into the 21st. In *"In Defense of Self-Determination,"* US political scientist Daniel Philpott recalled the expressions of former US Secretary of State Robert Lansing at the 1919 Conference at Versailles who regarded the concept of self-determination as "loaded with dynamite (and) will raise hopes which can never be realized." [13] Philpott observed:

> Self-determination unfolds its pockmarked history, inducing skepticism. To the democrat, though, this skepticism is far from easy. Despite its miscarriages, self-determination runs deep in democratic history, often traced back to the French Revolution, when Sieyes and others preached that Rousseauian self-government means not only democracy, but also an independent nation. And if the French Revolution is only partially vindicated, Americans find and celebrate the same link in their own revolution. The democratic intuition in international relations is that just as self-governing people ought to be unchained from kings, nobles, churches, and ancient custom, self-determining peoples should be emancipated from outside control-imperial power (and) colonial authority, Self-determination is inextricable from democracy; our ideals commit us to it.

Cleveland-Marshall College of Law Milena Sterio pointed to the historic legacy of self-determination as "not novel in modern international law (but) stems back to the beginning of the 20th century, when world leaders in the wake of World War I realised that national peoples, groups with a shared ethnicity, language, culture, and religion, should be allowed to decide their fate – thus, to self-determine their affiliation and status on the world scene. This idea applied later in the same century to colonial peoples, and by the 1960's, it became widely accepted that oppressed colonized groups ought to have similar rights to auto-regulate and to choose their political and possibly sovereign status." [14] As Sterio asserts:

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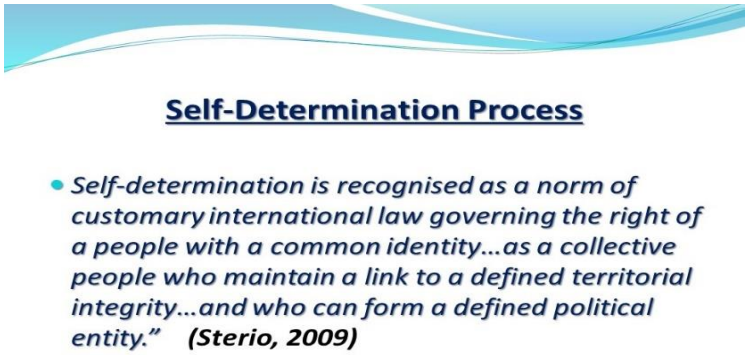
[12] See Crawford, James (2001) *The Right of Self-Determination in International Law,* Philip Alston (ed.), Peoples' Rights, 2001, IX/2, 7-68, Collected courses of the Academy of European Law Collected Courses of the Academy of European Law, [AEL].

[13] See Philpott, Daniel (1995) *In Defense of Self-Determination.* Ethics, Vol. 105, No. 2. (Jan., 1995), p. 352.

[14] See Sterio, Milena (2010) *On the Right to External Self-Determination: "Selfistans," Secession and the Great Powers' Rule*, Minnesota Journal of International Law, p. 1.

Self-determination in international law is the legal right for a "people" to attain a certain degree of autonomy from its sovereign. As early as 1918-19, leaders like Vladimir Lenin and Woodrow Wilson advanced the philosophy of self-determination…(and) (t)oday, the principle of self-determination is embodied in multiple international treaties and conventions, and has crystallized into a rule of customary international law, binding on all states. [15]



Nigerian Solicitor-Advocate Chinonso Ijezie observed that:

T)he development of self-determination as a definite legal concept is in tandem with the development of government (and)…traces its origin, as a political and constitutional principle, to the democratic principles proclaimed by the American and French revolutions of 1776 and 1789 respectively. But its development as a legal principle in international law could be traced to the works of Joseph Stalin, Vladimir Lenin and Woodrow Wilson in 1913 and 1916 respectively. [16]

Indonesian Law Lecturer M. Ya' Aiyub Kadir took note of Wilson's 1918 political statement that "the US aimed to secure a 'fair and just peace' by employing the principle of national self-determination." [17] Decades earlier at the signing of the Treaty of Paris between Spain and the US, the transfer of islands as the 'spoils of war' precipitated the change of jurisdiction of the Caribbean territories of Puerto Rico, and the Asia/Pacific territories of Guam and the Philippines, respectively, with the stipulation that "(t)he civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the (US) Congress."[18]

[15] *id/*

[16] Ijezie, Chinonso (2013) *Right of Peoples to Self-Determination in the Present International Law*, Social Sciences Research Journal, p.1.

[17] Kadir, M. Ya' Aiyub (2016) *Application of the Law of Self-determination in a Postcolonial Context: A Guideline*, Journal of East Asia and International Law p.1.

[18] See Treaty of Paris (1898) between the United States and Spain (10 December).

This marked the beginnings of an evolving recognition of a responsibility of the various colonial powers for the disposition of the inhabitants who resided in the acquired islands following the advent of the dependency governance of those territories. It is considered that this period initiated the preparatory phase aimed at the ultimate achievement of a form of self-government. Hence, this preparative period might be seen as the beginning stages of what would emerge decades later as a process of self-determination in the rudimentary interpretation of the concept at this historical point of pre-World War I.

The emergence of this thinking had influence on administering Powers such as the UK which had already maintained a significant number of territories through the British Empire. This perspective began to further develop after World War I from the signing in 1919 of the Covenant of the League of Nations which applied to the "colonies and territories" the principle that "the well-being and development of such (colonised) peoples form a sacred trust of civilisation, and that securities for the performance of this trust should be embodied in this Covenant."[19] Crawford referred to the Covenant as "mark(ing) the period of transition from classical to modern international law." [20]

The evolution of this right to self-determination was a research topic of choice from the immediate post World War I (WWI) period onward. In an analysis of evolving concepts of self-determination, Valerie Epps of Suffolk University Law School recalled the historical period when the Austro-Hungarian and Ottoman Empires were being carved up by the victorious powers (in World War I). Epps highlighted U.S. President Woodrow Wilson's recognition in 1918 that "self-determination is not a mere phrase, (but rather was)...an imperative principle of action which statesmen will henceforth ignore at their peril." [21]

In this context, the Covenant of the League of Nations made specific reference to this commitment to promote the development of peoples, with the "British Empire" as one of the signatory countries at the creation of the League in 1920 encompassing the United Kingdom along with the *dominions* of Canada, India, New Zealand and South Africa. Article 22 of the Covenant, accordingly, spoke to this developing thought in relation to the self-determination of peoples:

[19] Covenant of the League of Nations, Article 22 (1919-1924).

[20] 10 *supra note.*

[21] See Valerie Epps (2008) *Evolving Concepts of Self-Determination and Autonomy in International Law: The Legal Status of Tibet*, Suffolk University Law School, 21 October p. 4.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League. [22]

By 1941, UK Prime Minister Winston S. Churchill and U.S. President Franklin D. Roosevelt made certain commitments via the Atlantic Charter regarding the recognition of self-determination, on 'the right of all peoples to choose the form of government under which they will live' and in their 'wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them.'[23] These developments were followed by the deliberations of the 'Washington Conversations on International Peace and Security Organization' (*Dumbarton Oaks Conference*) held from August to October 1944 among the 'Big Four' countries of the UK, US, the Soviet Union and China where proposals for the establishment of a 'general international organization' were formulated, debated and agreed as a multilateral treaty to be adopted as the UN Charter in 1945 by the nations of the period. The first session of the UN General Assembly, representing all 51 initial members, convened in London in January 1946.

The UN Charter proceeded to promote the refinement of international criteria for the FMSG in the period immediately following World War II. The U.N. Charter contained provisions formally declaring in Article 1 that the principle of "equal rights and self-determination" was one of the "primary purposes of the UN." Further, Article 55 of the U.N. Charter recognised that "peaceful and friendly relations among nations (should be) based on respect for the principle of equal rights and self-determination of peoples..." [24] From Crawford's perspective:

> It was maintained…that the principle of self-determination…should not only be applied to the colonial territories of the defeated powers (of WW II) but to all colonial territories. That was done in Chapter XI of the (UN) Charter in the form of a Declaration Regarding Non Self-Governing Territories… The Charter itself linked human rights

[22] 17 *supra note*

[23] The Atlantic Charter was a joint declaration by British Prime Minister Winston Churchill and U.S. President Franklin D. Roosevelt on August 14, 1941 following a meeting in Newfoundland. The declaration providing a broad statement of U.S. and British goals regarding WWII (*U.S. State Department, Office of the Historian).*

[24] United Nations (UN) Charter (1945) Article 1(2) and Article 55. The UN Charter entered into force on 24th October 1945.

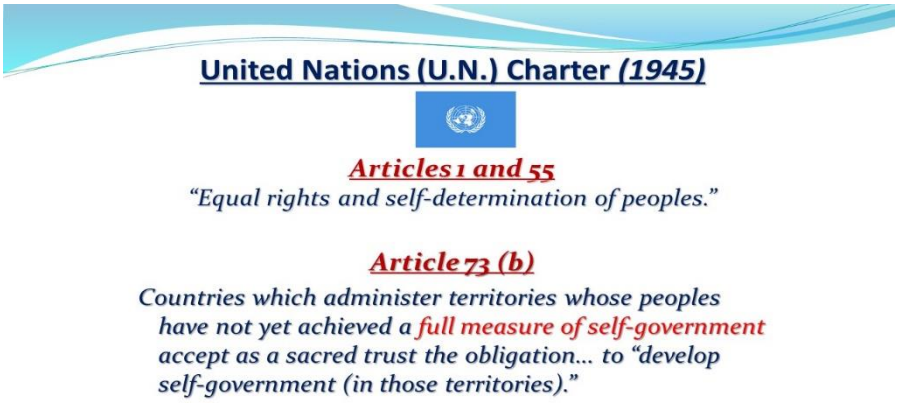
> and self-determination in Article 1 and again in Article 55…These were references to self-determination in the general sense and these were new (*as compared to the League of Nations*). The extension of self-determination to all colonial territories under Article 73 (of the UN Charter) was also new.[25]

Hence, Chapter XI of the U.N. Charter had direct relevance to the British dependencies including Bermuda as a result of the UK's formal acceptance of the statutory obligations under international law for countries which administered territories (*administering Powers*) to advance their self-determination and consequent decolonisation. Article 73 of Chapter 11 is especially instructive:

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.** 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.

[25] 12 *supra note*.



Self-Determination - From 'Principle' to a recognised 'Right'

Ijezie outlined various international legal instruments which emerged following the UN Charter which have enhanced self-determination from a mere principle to a right in international law. In this regard, he cited Article 2 of the "United Nations Decolonisation Declaration [26] that "(a)ll Peoples have the right to self-determination, by virtue of economic, social and cultural development." He also recalled the 1970 "Programme of Action for the Full Implementation of the (Decolonisation) Declaration" which reaffirmed that" all peoples have the right to self-determination and independence and that the subjugation of the peoples to alien domination constitutes a serious impediment to the maintenance of international peace and security and the development of peaceful relations among nations." [27]

University of Hull professor Richard Burehill emphasised that "the inclusion of self-determination in the (International Covenant on Civil and Political Rights) was an important development moving self-determination from primarily a political principle to a justiciable right within a treaty regime" (Conte/Burehill, 2009: 247). Ijezie further cited the importance of Article 1 of both the 1966 International Covenant on Civil and Political Rights (ICCPR), and of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), respectively. Both conventions specified that:

> "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." [28]

Ijezie also went on to reference other relevant multilateral instruments including the UN Declaration on Principles of International Law Concerning Friendly Relations and Co-

[26] United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples" (General Assembly Resolution 1514 (XV) of 14 December 1960.

[27] See Programme of Action for the Full Implementation of the (Decolonisation) Declaration, U.N. General Assembly resolution 2621 (XXV).

[28] 16 *supra note.*

operation among States (1970), [29] the Helsinki Final Act (1975), the African Charter of Human and Peoples Right (1981), the Vienna Declaration and Programme of Action (1993), and the Charter of Paris for a New Europe (1994). Relative to these international agreements. Ijezie noted:

> (T)reaties or resolutions crystalise into customary international law by virtue of state (international and regional organisations inclusive) practice coupled with *Opinion Juris* (*law of necessity*)… It is submitted that once the treaties or resolutions have crystalised into customary international law, they become directly binding on state parties without a need for domestication. [30]

The evolution of self-determination of peoples from a 'principle' to a recognised 'right' under international law pre-dated the establishment of the UN and was the subject of considerable debate by the international community. As noted above, specific attention had been paid to self-determination as a 'principle' at the time of the earlier League of Nations, and this principle evolved to an acknowledgement of self-determination as a recognised right, or "*jus cogens* - a peremptory norm of general international law. [31]

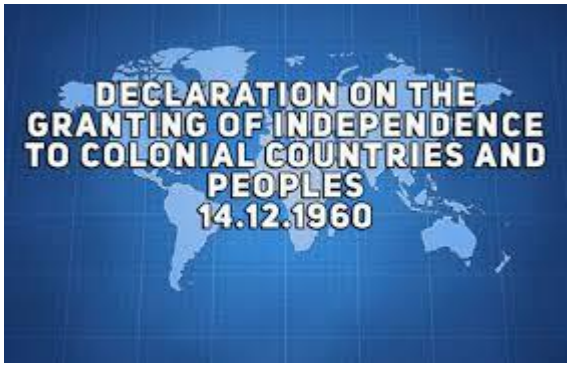
This realisation was later reflected in subsequent international instruments including the landmark 1960 Decolonisation Declaration ("*Declaration on the Granting of Independence to Colonial Countries and Peoples"*) regarded as the *'magna carta'* of decolonisation, followed by the 1969 "Vienna Convention on the Law of Treaties." [32]

[29] See *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,* adopted by the General Assembly on 24 October 1970 (General Assembly resolution 2625 (XXV)) of 25 October 1970)

[30] 16 *supra note*

[31] See John B. Henriksen (2001), *Implementation of the Right of Self-Determination of Indigenous Peoples*, Indigenous Affairs. p.7. *Jus cogens* is customary international law through the adoption by states. However, not all customary international laws rise to the level of peremptory norms.

[32] See, respectively, operative paragraph 2 of U.N. Resolution 1514 (XV) on the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (Decolonisation Declaration); and Article 53 of the Vienna Convention on the Law of Treaties, Done at Vienna on 23 May 1969 and entering into force on 27 January 1980, United Nations, Treaty Series, vol. 1155, p. 331.



Canadian legal scholar Edward McWhinney emphasised that the Decolonisation Declaration, in particular, was adopted by the General Assembly "at a time when the decolonisation process was already well underway" with the recognition that "a patently anti-colonialist measure would not become politically possible until the General Assembly's transformation from its original very narrow base of representation limited to the States members of the victorious wartime Alliance against Fascism to something more nearly reflective in cultural and ideological terms of the world community at large."[33] In an historical commentary on the Decolonisation Declaration published by the United Nations, McWhinney concluded that:

> In the end, the persuasiveness, in both political and legal terms, of resolution 1514 (XV) as Declaration must rest upon its claims to be an authoritative, interpretive gloss upon the Charter of the United Nations as originally written, amplifying and extending the Charter's original historical imperatives so as to encompass the new historical reality of the post-World War II international society of the drives for access to full sovereignty and independence of erstwhile subject-peoples, in an emerging new, culturally inclusive, representative, pluralist world community…In its substantive law stipulations, the Declaration postulates what may be described as ordering principles, intended to guide the progressive development of international law in accordance with the General Assembly's own explicit mandate under...the Charter of the United Nations.[34]

Consistent with Ijezie's analysis, the authoritative Brussels-based Unrepresented Peoples Organisation (UNPO) asserted that self-determination is a peremptory norm which became increasingly accepted by the international community as a norm from which no derogation is permitted, and which can be modified only by a subsequent norm of general international law of the same nature.[35] It is also noted that the norm was specifically applied to indigenous peoples' right to self-determination as a function of the recognition of the fundamental right to self-determination of all peoples, and as "firmly established in international law, including human rights law, and...must, therefore, be applied equally and universally.[36]

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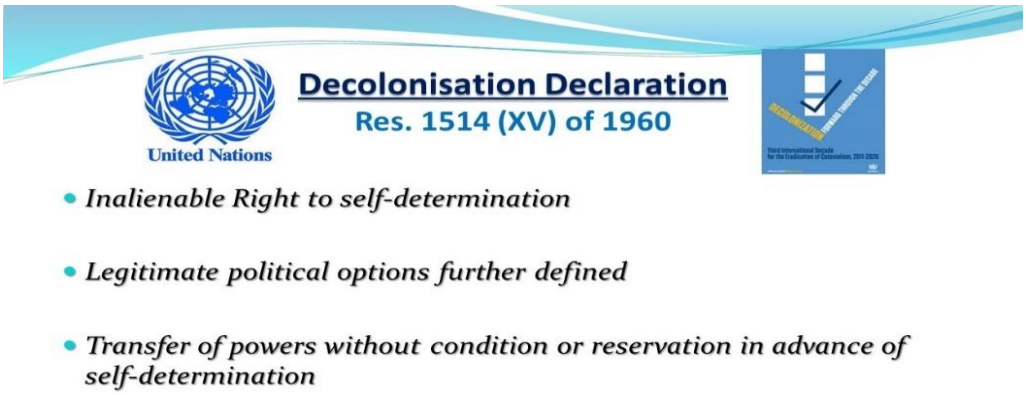
[33] See Edward McWhinney, "Declaration of the Granting of Independence to Colonial Countries and Peoples," United Nations Audiovisual Library of International Law, United Nations website, http://legal.un.org/avl/ha/dicc/dicc.html.
[34] *id.*, at 1-2.
[35] *Self-Determination*, Unrepresented Peoples Organisation (UNPO), 19 July 2006.
[36] 31 *supra note*, at 15.



McWhinney highlighted the "prophetic quality of resolution 1514 (XV) (*the Decolonisation Declaration*) in providing an inevitable legal linkage between self-determination and its goal of decolonisation, and a postulated new international law-based right of freedom also in economic self-determination." [37]

Notwithstanding legal and scholarly determination recognising the applicability of the Decolonisation Declaration to be obligatory, most administering Powers increasingly articulate a politically-inspired view that the Declaration and other decolonisation resolutions of the UN General Assembly are non-binding. Case in point is the UK response to the complaint filed by Mauritius in the International Court of Justice (ICJ) on the Chagos Archipelago whereby the UK argued that "(a) close reading of resolution 1514 (XV) and the circumstances of its drafting and adoption reveal that it did not reflect rules of customary international law(,)…is not binding (,)…and (is) an aspirational instrument." [38]

However, the ICJ, in its advisory opinion on Chagos, made specific reference to "international law, including obligations reflected in General Assembly resolution 1514 (XV) of 14 December 1960" (*emphasis added*). [39] The ICJ opinion made further reference to "the evolution of the law on self-determination since the adoption of the Charter of the United Nations and of resolution 1514 (XV) of 14 December 1960 entitled Declaration on the Granting of Independence to Colonial Countries and Peoples."[40] According to the ICJ Advisory Opinion:

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[37] 33 *supra note*, at 4.

[38] See *Written Statement of the United Kingdom of Great Britain and Northern Ireland*, Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, (Request By The United Nations General Assembly For An Advisory Opinion), International Court of Justice, p. 130-131.

[39] See *Legal Consequences Of The Separation Of The Chagos Archipelago From Mauritius In 1965*, Advisory Opinion of the International Court of Justice, 25 February 2019, P 37.

[40] *id*, at 39

145. The participants in the advisory proceedings have adopted opposing positions on the customary status of the right to self-determination, its content and how it was exercised in the period between 1965 and 1968. Some participants have asserted that the right to self-determination was firmly established in customary international law at the time in question. Others have maintained that the right to self-determination was not an integral part of customary international law in the period under consideration;

146. The Court will begin by recalling that "respect for the principle of equal rights and self-determination of peoples" is one of the purposes of the United Nations (Article 1, paragraph 2, of the Charter). Such a purpose concerns, in particular, the "Declaration regarding non-self-governing territories" (Chapter XI of the Charter), since the "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" are obliged to "develop [the] self-government" of those peoples (Article 73 of the Charter);

147. In the Court's view, it follows that the legal régime of non self-governing territories, as set out in Chapter XI of the Charter, was based on the progressive development of their institutions so as to lead the populations concerned to exercise their right to self-determination.

148. Having made respect for the principle of equal rights and self-determination of peoples one of the purposes of the United Nations, the Charter included provisions that would enable non-self-governing territories ultimately to govern themselves. It is in this context that the Court must ascertain when the right to self-determination crystallized as a customary rule is binding on all States;

…..

152. The Court considers that, although resolution 1514 (XV) is formally a recommendation, it has a declaratory character with regard to the right to self-determination as a customary norm, in view of its content and the conditions of its adoption…;

153. The wording used in resolution 1514 (XV) has a normative character, in so far as it affirms that "[a]ll peoples have the right to self-determination". Its preamble proclaims "the necessity of bringing to a speedy and unconditional end to colonialism in all its forms and manifestations" and its first paragraph states that "[t]he subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights [and] is contrary to the Charter of the United Nations".[41]

[41] *id* at 40-42.

The Right to External Self-Determination of Peoples

Further to the recognition by the ICJ of the Decolonisation Declaration as customary international law is the matter of whether the right to self-determination is intended as an individual right internal to a (S)tate, or as an external, collective right of peoples to form a separate (S)tate. This was comprehensively addressed in a seminal 1980 report of the "U.N. Special Rapporteur with regard to the implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination." On this point of the collective right, the Special Rapporteur indicated that:

> Self-determination is...a right of peoples. The divergence of opinion among lega1 theorists which existed on this point until a few years ago has been overcome: the Declaration adopted in resolution 1514 (XV) and the International Covenants on Human Rights have provided the basis for unquestioned acceptance in international law of the fact that self-determination is a right of peoples under colonial and alien domination. To characterise self-determination as a collective possessed by peoples raised awkward theoretical problems because of the difficulty of defining the concept of a people and drawing a clear distinction between that and other similar concepts. Apart from such difficulties however, it is evident that, both politically and practically, the right of peoples to self-determination is one of the major realities of the present day and that the invocation and recognition of this right have radically changed international society as it existed until a few years ago. [42]

The Committee on the Elimination of Racial Discrimination (CERD), the body of independent experts that monitors implementation of the *International Convention on the* Elimination *of All Forms of Racial Discrimination* by its State parties, also addressed this question of internal / external self-determination in its 1996 General Recommendation, affirming that:

> (T)he right to self-determination of peoples has an internal aspect, i.e. the rights of all peoples to pursue freely their economic, social and cultural development without outside interference. In that respect there exists a link with the right of every citizen to take part in the conduct of public affairs at any level as referred to in article 5 (c) of the International Convention on the Elimination of All Forms of Racial Discrimination... (Conversely) (t)he external aspect of self-determination implies that all peoples have the right to determine freely their political status and their place in the international community based upon the principle of equal rights and exemplified by the liberation

[42] See *The Right to Self-Determination: Implementation of the United Nations Resolutions*, A Study prepared by Hector Gros Espiell, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, United Nations, 1980.

of peoples from colonialism and by the prohibition to subject peoples to alien subjugation, domination, and exploitation. [43]

The CERD General Recommendation also emphasised that the right to collective self-determination does not authorise nor encourage any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states in accordance with the "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States." [44] Hence, the right of peoples to self-determination did not recognise "a general right of peoples to unilaterally declare secession from a state," but that "arrangements reached by free agreements of all parties concerned" are not precluded. [45] In this connection, it is to be emphasised that any exercise of self-determination by the peoples of NSGTs would not constitute a secessionist act as they are not politically or constitutionally *a part of* but rather, *administered by* the respective cosmopole *aka* 'administering power.'

Ukrainian legal scholar Vladyslav Lanovoy concurred that in international law "it is widely agreed that there are two means of exercising the right to self-determination in international law: an external one which provides the people with the right to determine the international status of the territory and an internal one ensuring the right of peoples to self-government within the confines of the parent state." [46] Accordingly, a fundamental distinction must be given to the collective right of 'peoples' to self-determination since it is only 'peoples' who possess this collective right. This in terms begs the question, 'who are the people?'

In this regard, Bermuda is distinct from the country administering it (UK), as it is admittedly not constitutionally 'a part of the UK.' The uniqueness of such a position under international law was set forth in the aforementioned 1970 "Declaration on Principles of

[43] Committee on the Elimination of Racial Discrimination, General Recommendation, The right to self-determination (Forty-eighth session, 1996), U.N. Doc. A/51/18, annex VIII at 125 (1996), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.6 at 209 (2003). General Recommendation XXI(48) adopted at 1147th meeting on 8 March 1996, p. 1-2. The U.S. ratified the Convention on the Elimination of Racial Discrimination on 21 October 1994.

[44] 29 *supra note.*
[45] 29 *supra note.*

[46] See Vladyslav Lanovoy (2015) *Self-Determination in International Law: A Democratic Phenomenon or an Abuse of Right,* Cambridge Journal of International and Comparative Law, p. 391-392.

International Law concerning Friendly Relations and Co-operation among States", and stipulates that:

> The territory of a colony or other Non-Self-Governing Territory has, under the (U.N.) Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles.[47]

The identification of the 'people(s)' who possess this right to self-determination sheds further light on this distinctiveness. Henriksen defines 'peoples' as "a group of individual human beings who enjoy some or all...features (including) a common historical tradition, ethnic identity, cultural homogeneity, linguistic unity, religious or ideological affinity, territorial connection and common economic life possess(ing) the will or consciousness to be a people, and institutions to express the identity of the people. [48]

In this light, legal scholar Milena Sterio observed that "...national peoples, groups with a shared ethnicity, language, culture and religion should be allowed to share their fate - thus to self-determine their affiliation and status on the world scene...and by the 1960s, it became widely accepted that oppressed colonized groups ought to have similar rights to auto-regulate and to choose their political and possibly their sovereign status." [49] Nevertheless, it was recognised as early as 1981 by the U.N. Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities Aurelia Cristescu that:

> Although the principle of equal rights and self-determination of peoples has been embodied in the (U.N.) Charter and has been reaffirmed and developed in several fundamental instruments of the United Nations and in other instruments concluded between States, it is continuously being violated in various parts of the world (with) many examples of denial of the right of peoples to self-determination. [50]

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[47] 29 *supra note.*

[48] 31 *supra note*, at 8. Henriksen points to the "well established legal principle contained in the Vienna Convention on the Law of Treaties, that terms in international legal instruments are to be interpreted according to their ordinary meaning (and) that (t)his maxim of international law has also been affirmed by the International Court of Justice: 'if the words in their natural and ordinary meaning make sense, in their context, that's the end of the matter" [*Advisory Opinion, 1950 ICJ 4,8."].*

[49] Milena Sterio (2009), *On the Right to External Self-Determination: 'Selfistans,' Secession and the Great Powers' Rule*, Cleveland-Marshall College of Law, Cleveland State University, Research Paper 09-163.

[50] *"The Right to Self-Determination-Historical and Current Development on the basis of United Nations Instruments,"* Study prepared by Aureliu Cristescu, Special Rapporteur of the Sub-commission on Prevention of Discrimination and the Protection of Minorities; United Nations, 1981.

The Special Rapporteur concluded by drawing attention to the "fundamental problem... aris(ing) in regard to equal rights and self-determination...(and) of identifying the holder of the rights and the nature of the corresponding duties." He noted that "...peoples, whether or not they are constituted as a State, whether or not they have attained nation status, are the holders of equal rights and of the right to self-determination," and that the guarantee of those rights has been dictated by "historical necessity." As the Special Rapporteur indicated:

> "It is also clear from a reading of other legal instruments of the United Nations, and from the Organization's consistent practice, that all peoples possess the right in question. The principle of equal rights and self-determination should be understood in its widest sense. It signifies the inalienable right of all peoples to choose their own political, economic and social system and their own international status. The principle of equal rights and self-determination of peoples thus possesses a universal character, recognised by the Charter, as a right of all peoples whether or not they have attained independence and the status of a State." [51]

The Special Rapporteur in his 1981 Report identified 'peoples' as "those who are able to exercise their right of self-determination, who occupy a homogenous territory and whose members are related ethnically or in other ways." The Rapporteur's Report affirmed that the right of peoples to choose and develop their internal political system was expressly set forth in the General Assembly 'Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States' in accordance with the U.N. Charter which makes specific reference to 'territories whose peoples (who) have not yet attained a full measure of self-government.' A range of relevant resolutions of the General Assembly have further affirmed these conclusions through present day. In this light, the *opus* of research establishes the clear applicability of the right to self-determination for the peoples of Bermuda.

The particular question of the identification of 'people(s),' was examined by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) at an "International Meeting of Experts for the Elucidation of the study of the Concepts of Right of peoples," in 1989. The experts agreed a set of common features constituting a "people' to include:

(a) a common historical tradition;
(b) a racial or ethnic identity;
(c) cultural homogeneity;
(d) linguistic unity;
(e) religious or ideological affinity;
(f) territorial connection;
(g) common economic life.

[51] *id.*

Ijezie noted that "(i)n addition to the above description, the UNESCO Experts added that: 'the group must be of a certain number which need not be large…but which must be more than a mere association of individuals within a state'; (and) must have the will to be identified as a people or the consciousness of being a people…"; (with) institutions or other means of expressing its common characteristics and will for identity." [52] It is therefore concluded in the present assessment that the peoples of Bermuda and the Caribbean NSGTs under UK administration not subject to sovereignty dispute collectively possess the requisite number of 'features' to be recognised as a 'people' as listed in the 1989 UNESCO definition, and therefore maintain the collective right to external self-determination under international law. In this context, Bermuda and other UKOTs similarly situated have yet to exercise this collective right.

In the seminal "Emerging Right to Democratic Governance," legal scholar Thomas Franck in 1992 made the organic link between self-determination and democratic governance, in indicating that "self-determination postulates the right of a people organised in an established territory to determine its collective political destiny in a democratic fashion and is therefore at the core of the democratic entitlement. "[53] Reference is also made to the confirmation of the self-determination principle in relevant international court decisions where this right has been described as *erga omnes* and an essential principle of international law.[54]

The U.N. International Law Commission's Special Rapporteur on the topic of *peremptory norms of general international law* Dire Tladi, in his fourth report in 2019, further confirms that "the right to self-determination is another norm previously identified by the (U.N. International Law) Commission as a...classical norm of *jus cogens* whose peremptory status is virtually universally accepted."[55] In the report, the *Special Rapporteur on peremptory norms* alluded to the 1995 International Court of Justice (ICJ) judgment in the East Timor Case which stated that "the right of peoples to self-determination, as it evolved from the (U.N.) Charter and from U.N. practice, has an *erga omnes* character, (and) is irreproachable."[56]

[52] 16 *supra note* at 4.

[53] See Thomas M. Franck (1992), *The Emerging Right to Democratic Governance*, The American Journal of International Law, Vol. 86, No. 1. January, p. 52.

[54] *Erga omnes in international law refers to* specifically determined obligations that States have towards the international community as a whole.

[55] See Dire Tladi, *Fourth report on peremptory norms of general international law (jus cogens)*, Special Rapporteur, U.N. Doc. A/CN.4/727 of 31 January 2019, pp. 48-49.

[56] *id.*

The Special Rapporteur made reference to additional ICJ judgments which emphasised the importance of the right to self-determination as one of the essential principles of contemporary international law,[57] and underscored that *jus cogens* "has always been recognised in the practice of States in the context of multilateral instruments (including) many General Assembly resolutions proclaiming the fundamental character of the right to self-determination."[58]

In a commentary on the 2019 ICJ "Advisory Opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius In 1965" earlier referenced, international law lecturers Craig Eggett and Sahara Thin pointed to the recognition by the ICJ of the "*erga omnes* character of the obligation *(emphasis added*) to respect self-determination, (finding) that there exists an obligation, binding on all (S)tates, to cooperate with the U.N. to complete the decolonisation of Mauritius," and that "while rights and obligations go hand in hand, it is obligations that have *erga omnes* character... not rights (*emphasis added*)."[59] With this further refinement, it is to be concluded that the obligations of the U.K. contained in Article 73 of the U.N. Charter to bring Bermuda as a UK-administered NSGT to the full measure of self-government (FMSG) possesses an *erga omnes* character.

In this connection, it is the obligation of the UK under international law to facilitate a genuine process of self-determination for the people of Bermuda in order to advance the territory to the FMSG. In this pursuit, measures have been identified by the international community for implementation by the administering Power of the territory to fulfill this legally binding commitment. A most relevant action is contained in the mandate of the 1960 Decolonisation Declaration for the UK "to take (i)mmediate steps… to transfer all powers to

[57] 55 *supra note*, at 49. The Special Rapporteur in his report cited ICJ advisory opinions on Namibia and Western Sahara, et al.

[58] *55 supra note*, The Special Rapporteur report made specific reference to the Decolonization Declaration (resolution 1514(XV) "which provided for a right to self-determination in absolute terms and was referred to by the ICJ in establishing the *erga omnes* nature of the right." Also cited was the 1970 Declaration on Principles of International Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the U.N," and Security Council resolution 384 (1975) which recognized "the inalienable right of the people of East Timor to self-determination, " and which called on all States to respect that right. The Security Council resolution also referred to the consequences associated with serious breaches of *jus cogens*, in particular, the duty of States to cooperate to bring an end to situations created by the breach of the right to self-determination of the people of East Timor.

[59] Craig Eggett and Sarah Thin, Clarification and Conflation: Obligations Erga Omnes in the Chagos Opinion, Blog of the European Journal of International Law, 21 May 2019. Also see the ICJ Advisory Opinion on the Legal Consequences Of The Separation of the Chagos Archipelago From Mauritius In 1965, ICJ website https://www.icj-cij.org/files/case-related/169/169-20190225-01-00-EN.pdf

the peoples of (Bermuda)…without any conditions or reservations, in accordance with their freely expressed will and desire…" On the broader point, Franck concluded that:

> (S)elf-determination is legitimated by its long pedigree (and) despite lacunae, it also has a large and precise textual canon, refined by a growing 'jurisprudence' of interpretation...(and) under Article 73 (of the U.N. Charter) members responsible for administering non self-governing territories pledged 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."[60]

Franck observed that "these provisions were augmented by additional normative texts among which was U.N. General Assembly resolution 1541 (XV) of 1960 which "attempt(ed) to stipulate the test for determining whether a territory was non self-governing within the meaning of Article 73(e) of the (U.N.) Charter."[61] Thus, the standards of validation of self-governance contained in resolution 1541(XV) are specifically reaffirmed by the U.N. General Assembly in its annual decolonisation resolutions on Bermuda and other NSGTs.

In this light, Franck pointed to Principle IV of resolution 1541(XV) and its reference to the existence of non-self-governing status which exists *prima facie* "in respect of a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it" with subsequent reference to a position or status of the NSGT to one of subordination to the administering power.[62]

In summary, Franck said of the right to self-determination that "its general normative content already had been spelled out in General Assembly resolutions to which a large majority of the international community has assented, and in widely ratified treaties, beginning with the U.N. Charter and culminating in the (International) Covenant (on Civil and Political Rights).[63] Subsequent U.N. resolutions, multilateral treaties, and other international instruments through present day serve to further clarify the required FMSG in determining whether the contemporary threshold of full political equality has been met through legitimate acts of self-determination in the various political status arrangements.

The legal and political analyses provided by Franck, et al leave little doubt of the applicability of the international right to external self-determination to Bermuda and other

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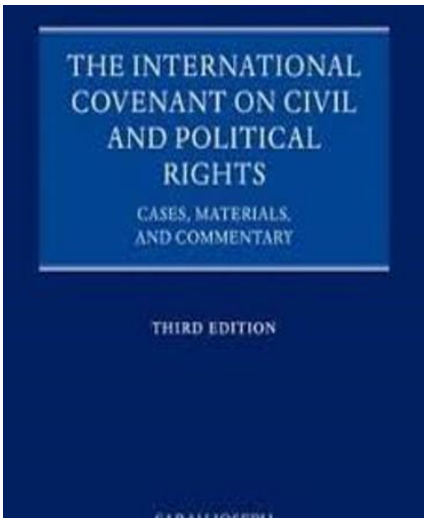
[60] 53 *supra note*.
[61] 53 *supra note.*
[62] 53 *supra note.*
[63] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 UNTS 171 **,** *reprinted in* 6 ILM 368 (1967) (entered into force Mar. 23, 1976. See also International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 UNTS 3, *reprinted in* 6 ILM 360 (1967) (entered into force Jan. 3, 1976).

NSGTs similarly situated, and in particular recognise the obligation of the administering powers to advance the territory towards the FMSG.



With the confirmation of the applicability to Bermuda of the right to self-determination and consequent decolonisation consistent with international law, coupled with the recognition of the 'peoples' to whom this principles and law apply, the present Assessment proceeds to the matter of defining the mandate within which specific actions have been approved for the decolonisation process of Bermuda to be achieved. These actions are set forth in U.N. decolonisation resolutions providing the historic legislative authority. In this context, a synopsis of U.N. decolonisation resolutions on Bermuda is provided later in the present Assessment.

Franck observed that self-determination was "both universalized and internationalized, for it could now be said to portend a duty owed by all governments to their peoples and by each government to all members of the international community.[64] In this vein, a widely recognised source of international law is the customary practice of states that is accepted by those states as law (*opinio juris*) over a period of time. The Federal Department of Foreign Affairs of Switzerland regards customary international law as "one of the two main sources of the rights and obligations of States," and that "for customary law to develop...the systematic recurrence of the same pattern of behavior by States, and the conviction of these States that they are acting in conformity with a rule of international law," is essential.[65]

The Prematurity of Post-Coloniality

Whilst the prevailing view amongst most international legal scholars supports the recognition of self-determination as a fundamental right, there is the oft-repeated perception that the world has evolved to a situation of post-coloniality. Indonesian law professor M. Ya'kub Aiyub Kadir appropriately points to the favourable application of the "decolonisation project…which was successfully applied in 83 territories including 72 cases of the NSGT and 11 trust territories between 1945 and 1965." [66]

[64] 53 *supra note*.

[65] ABC of International Law, Federal Department of Foreign Affairs, Switzerland, https://www.eda.admin.ch/dam/eda/en/documents/publications/Voelkerrecht/ABC-des-Voelkerrechts_en.pdf accessed 22 July 2021.

[66] See M. Ya'kub Aiyub Kadir (2016) Application of the Law of Self-Determination in a Postcolonial Context: A Guideline, Journal of East Asian and International Law, Syiah Kuala University.

But his suggestion that the world entered a new phase of "post colonial self-determination" begs the question as to which event in 1965 or thereafter precipitated a transition to a post-colonial condition. The seventeen remaining NSGTs formally listed by the UN as not having achieved the FMSG (*along with an equal number or more of such peripheral dependencies not formally listed by the UN*) is evidence of a premature assumption of post-coloniality.

In a similar vein, Sterio phrases the decolonisation era to have ended at the beginning of the 1970s following the adoption of the "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations." [67] Sterio argues thusly:

> Toward the end of the decolonization movement in the early 1970s (*emphasis added*) the legal position on self-determination could be summarized as follows. First, all peoples subjected to colonial rule had the right to self-determination, pursuant to the provisions of the (human rights) Covenants, as well as to two Resolutions passed in the General Assembly—Resolution 1514 of 1960, the so-called Declaration on Granting Independence to Colonial Countries and Peoples, and Resolution 1541, passed one day later, which contained an annex specifying the modalities of self-determination for colonized peoples. Second, for colonized peoples, the right to self-determination entailed the choice to freely decide their future status (*emphasis added*). [68]

However, the adoption of the 1970 Declaration did not have the effect of sustaining the advancement towards a post-colonial era, and the dissolution of the former West Indies Associated States between 1974 and 1983 resulted in individual independence for the islands states with other dependencies intact. The Italian legal scholar Daniele Amoroso also claimed that "since the end of decolonization (*emphasis added*), the principle of self-determination of peoples has been going through a veritable identity crisis," while asserting, seemingly paradoxically, that "the various attempts to overcome the colonial paradigm have not led to satisfactory results, being doomed to capitulate in the face of the fact that international practice in this field is either too poor or is inconsistent." [69]

Hakeem Yusuf, and Tanzil Chowdhury in a 2022 Indiana Journal of Global Legal Studies article criticised the UN Special Committee on Decolonisation for what the authors viewed as the committee's dogmatic approach to the decolonisation process. This perspective falls squarely in line with the dependency legitimisation strategy employed by several APs at the beginning of the 1990s and discussed later in the present Assessment. Yusuf asserted:

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[67] 49 *supra note.*
[68] 49 *supra note.*

[69] See Daniele Amoroso (2015) *Whither the Principle of Self-Determination in the Post-Colonial Era? The Case for a Policy-Oriented Approach,* Conference Paper No. 9/2015 2015 ESIL Research Forum, Florence, 14-15 May 2015.

> The time is ripe for the United Nations Special Committee on Decolonization (the Committee of 24) to accept *sui generis* categories to enable it to achieve its aim of 'finishing the job' of decolonization. This would mean a departure from the Committee of 24's rigid adherence to the three forms of decolonization recognised by it - independence, integration and free association. [70]

In the final analysis, it should be recognised that an identifiable 'post-colonial' world should not be assumed to the exclusion of the clear existence of an existent (*perhaps modernised*) colonial world. The stubborn retention of empire by modern colonial powers in numerous areas around the globe quite readily supports this undeniable fact. Indeed, the UN Special Committee on Decolonisation, and the UN Fourth Committee of the UN General Assembly all maintain an annual intensive review process on the decolonisation of the remaining NSGTs complete with the adoption of relevant resolutions and decisions in furtherance of the advancement towards the FMSG. This speaks to the question of whether the acceptance of an imaginary post-colonial condition amongst remaining NSGTs can serve as a genuine substitution for the requisite genuine decolonisation, for sake of expediency.

The added predicament of the Peripheral Dependencies (PDs) which have not met international standards of FMSGs but remain outside UN review due to premature UN 'de-inscription,' is further illustration of the incompleteness of a universality of decolonisation. This is discussed by Addai-Sebo earlier in the present Assessment with respect to Africa, and is easily identified in the Caribbean, Asia and the Pacific, and elsewhere.

Overall, such projections of post-colonialism by many political and legal academicians and practitioners provide fuel to a false narrative that the colonial period has ended. Such a contention has had the effect of reinforcing the stagnation of the global decolonisation process in favour of the dependency legitimisation approach being taken by contemporary colonial powers, and which has been accelerated during the Dependency Deceleration/Stagnation period discussed later in the present Assessment.

It is to be emphasised at this stage that care must be taken to avoid the inadvertent or intentional legitimisation of Dependency Governance (DG) arrangements when they do not meet the international standards of Absolute Political Equality (AbPE) as set forth in the UN Charter; human rights conventions; and relevant UN resolutions 1514(XV), 1541(XV) and 742(VIII) et al. Notably, the global Self-Governance Indicators (SGIs) employed in the present Assessment are derived from these and other international instruments. Part IV of this study discusses the evolution of the three periods of decolonisation rising through an active period of genuine decolonisation through to the current period of relative dormancy.

[70] See Yusuf, H.O. and Chowdhury, T., 2019. The UN Committee of 24's Dogmatic Philosophy of Recognition: Toward a Sui Generis Approach to Decolonization. Indiana Journal of Global Legal Studies, 26(2), pp.437-460.

IV. The UN Mandate and the Decolonisation of Bermuda

An historical review of UN consideration of "The Question of Bermuda" includes the mandates contained in the UN Charter and UN General Assembly resolutions. This provides an inclusive portrait of the intentions of the UN member States to foster the process of self-determination and its consequent decolonisation rather than the un-intended substitute of colonial reform and dependency modernisation.

For the NSGTs as Bermuda under Chapter XI of the UN Charter, the UN General Assembly in 1946 approved Resolution 66-1 concerning the "Transmission of Information under Article 73(e) of the Charter " (United Nations, 1946) through which member States which administered NSGTs (*Australia, France, New Zealand, the UK the US, Belgium, Denmark, and the Netherlands*) voluntarily agreed to provide information to the UN Secretary General on political, economic, social and educational developments in the territories under their administration. This resulted in the inscription of some 72 territories on a formal UN roster of NSGTs, and affirmed the Charter obligations of the APs to advance the decolonisation process of those NSGTs. (United Nations, 1946).

The result of this inscription process was the UN adoption of annual UN General Assembly resolutions on decolonisation through to present day. These resolutions and their level of implementation can be examined within the context of three identifiable periods of decolonisation as introduced in Table 6 below.

TABLE 6. THREE PERIODS OF DECOLONISATION
1946-1960: Decolonisation Engagement ***International criteria for the full measure of self-government clarified***
1960-1990: Decolonisation Acceleration ***Following adoption of Decolonisation Declaration (1514 XV)***
1990-2022: Decolonisation Deceleration/Stagnation ***Post Cold War to present day***
Source: The Dependency Studies Project, St. Croix, Virgin Islands 2022

A. Decolonisation Engagement Period (DEP) – 1946-60

The Decolonisation Engagement Period (DEP) as the initial stage of decolonisation, began from 1946 following the adoption of the UN Charter one year prior. This period ushered in the adoption of relevant General Assembly (*and later Economic and Social Council*) resolutions to give substance to the original self-determination and decolonisation mandates of the UN Charter. Many of the U.N. resolutions during the DEP were adopted along specific thematic lines, and were continually updated and refined in subsequent years to reflect new developments and strategies for implementation. The areas of focus of the resolutions included eradication of literacy, the promotion of education, and social and economic advancement.

This began with resolutions addressing the "Development of Self-Government in [NSGTs],"[71] the "Participation of the Indigenous Inhabitants of the Trust Territories in the work of the Trusteeship Council,"[72] the identification of "Factors that should be taken into account in deciding whether a territory is or is not a territory whose people have not yet attained a full measure of self-government,"[73] the call for the end of racial discrimination in NSGTs[74] and the affirmation of the "Voluntary transmission of information on political developments in Non-Self-Governing Territories." This was accompanied by the "establishment of intermediate timetables leading to the attainment of self-government by these territories."[75] A summary of the relevant resolutions in the DEP was recounted in the journal Overseas Territories Report in 2006:

> (T)he (UN General) Assembly adopted Resolutions 567 (VI), 637 (VII) in 1952, and Resolution 742 (VIII) in 1953, initiating the process of identifying a full measure of self-government (FMSG) through the political options of independence, internal self-government, and integration. Resolution 567 emphasized that for the standard for internal self-government to be met, "freedom from control or interference by the government of another State in respect of the internal government" of the territory was

[71] "*Development of Self-Government in Non Self-Governing Territories"* UN General Assembly Resolution 448 (V), 12 December 1950.

[72] *Participation of the Indigenous Inhabitants of the Trust Territories in the work of the Trusteeship Council*, UN General Assembly Resolution 554 (VI), 18 January 1952.

[73] "*Factors that should be taken into account in deciding whether a territory is or is not a territory whose people have not yet attained a full measure of self-government, "*UN General Assembly Resolution 742 (VIII), 27 November 1953.

[74] *Racial Discrimination in Non Self-Governing Territories*, Resolution 1328 (XIII), 12 December 1958.

[75] *Voluntary Transmission of information on Political Developments in Non Self-Governing Territories*, UN General Assembly Resolution 1468 (XIV), 12 December 1959. (New York: United Nations General Assembly). It is to be noted that most decolonization resolutions during the first period were adopted on the basis of "non-recorded votes."

required. Resolution 567 also emphasized the need for “complete autonomy in respect of economic and social affairs;

Resolution 637 (VII) further confirmed that the administering Powers include in the information transmitted to the United Nations under Article 73(e) of the Charter provided specific “details regarding the extent to which the right of peoples and nations to self-determination is exercised by the peoples of those territories, and in particular, regarding their political progress and the measures taken to develop their capacity for self-administration, to satisfy their political aspirations and to promote the progressive development of their free political institutions;

In this regard, the administering powers were obligated to advise the United Nations of relevant changes in the political status of a non self-governing territory, and if a request was made to the United Nations by the administering Power, a detailed review of the elements of the proposed political arrangement would be conducted by the relevant General Assembly committee on whether these changes met the established criteria for a full measure of self-government;

This obligation continues to present day. Resolution 742 (VIII) emphasized that “self-government can be achieved by association with another State or group of States if this is done freely and on the basis of absolute equality." These were important principles that still remain valid today, and have been used as the basis of a process to assess the acquisition of a full measure of self-government in any given territory. This process provided the guidelines for the review of proposed political arrangements in a number of territories during that period;

In this connection, the member States which administered the territories of Puerto Rico, Greenland, Netherlands Antilles and Suriname submitted the relevant documents articulating the nature and extent of self-government exercised in those political arrangements, for extensive review by the General Assembly pursuant to the recognised criteria of the relevant UN resolutions;

The General Assembly subsequently adopted separate resolutions removing those territories from the UN list after determining that a sufficient level of political equality had been achieved in those territories at that time, with reference to the established criteria. Thus, the procedure of transmitting information on new political developments in the territories for review by the General Assembly was established as far back as the 1950s, and the process of review of the political and constitutional arrangements based on the established criteria continued to evolve (Overseas Territories Report, 2006).

B. Decolonisation Acceleration Period (DAP) - 1960-90

The DEP ended with the approval by the UN General Assembly in 1960 of the landmark *Declaration on the Granting of Independence to Colonial Countries and Peoples* as adopted by Resolution 1514(XV). This development transitioned the process to the Decolonisation Acceleration Period (DAP) which would last for some 30 years. Hence, this Decolonisation Declaration (*often referred to as the Magna Carta of Decolonisation*) declared, inter alia that:

> The continued existence of colonialism prevents the development of international economic co-operation, impedes the social, cultural and economic development of dependent peoples and militates against the United Nations ideal of universal peace;
>
> …..
>
> The process of liberation is irresistible and irreversible and that, in order to avoid serious crises, an end must be put to colonialism and all practices of segregation and discrimination associated therewith;
>
> …..
>
> All peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory;
>
> All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development;
>
> Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence;
>
> Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom (UN, 1960a)

The DAP also saw the adoption of an affiliated resolution to the Decolonisation Declaration, in particular, Resolution 1541(XV) on *Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 e of the Charter*. Resolution 1541 identified and defined the three political status options of absolute political equality (AbPE), namely independence, free association and integration. (UN, 1960b). Accordingly, resolution 1541(XV) declared, inter alia that:

> Principle II Chapter XI of the Charter embodies the concept of Non-Self-Governing Territories in a dynamic state of evolution and progress towards a 'full measure of self-government'. As soon as a territory and its peoples attain a full measure of self

government, the obligation ceases. Until this comes about, the obligation to transmit information under Article 73 e continues;

…..

Prima facie there is an obligation to transmit information in respect of a territory which is geographically separate and is distinct ethnically and/or culturally from the country;

Once it has been established that such a prima facie case of geographical and ethnical or cultural distinctness of a territory exists, other elements may then be brought into consideration. These additional elements may be, inter alia, of an administrative, political, juridical, economic or historical nature. If they affect the relationship between the metropolitan State and the territory concerned in a manner which arbitrarily places the latter in a position or status of subordination, they support the presumption that there is an obligation to transmit information under Article 73 e of the Charter;

…..

A Non-Self-Governing Territory can be said to have reached a full measure of self-government by: Emergence as a sovereign independent State; Free Association with an independent State; or Integration with an independent State (United Nations 1960b).

The Decolonisation Declaration evolved from the decolonisation resolutions of the preceding 14-years of the DEP. Among other purposes, the Declaration in particular served to reaffirm the organic link between self-determination and its goal of decolonisation, and confirmed the necessity of the transfer of powers to the peoples of the territories. Meanwhile, the companion Resolution 1541(XV) defined the three political status options of independence, free association and integration which provide for the minimum standards constituting the full measure of self-government (FMSG) – standards which are specifically affirmed annually by the UN General Assembly through 2022.

In this regard, the focus began to crystalise around a set of parametres of sovereign independence, association with an independent state and integration with an independent State. In effect, it is the status of 'independence' which can be achieved through three alternatives with the understanding of full political equality as the essential condition. In the Caribbean, a number of countries advanced to the FMSG via independence (*See Table 1*) whilst others experienced dependency reforms which fell well short of the minimum standards of FMSG via free association.

During the Dependency Acceleration Period (DAP) resolutions 1514 (XV) and 1541 (XV) respectively reaffirmed the self-governance requirement of 'absolute political equality' (AbPE) which had been earlier emphasised in resolution 742(VIII) of 1953. The period also saw the creation of the 'Special Committee on the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples'(*Decolonisation Committee/Committee of 24*) in 1961 to replace the earlier 'Committee on Information from Non Self-Governing Territories'.

The Special Committee provided an updated organisational mechanism to pursue the UN role in the decolonisation process for the listed NSGTs one year after the 1960 adoption of the landmark Decolonisation Declaration. This historic achievement of the General Assembly ushered in the Decolonisation Acceleration Period (1961-1990) when the mandate became more specified with adoption of annual resolutions with direct relation to Bermuda and other NSGTs. These and the earlier resolutions of the DEP contributed to the evolution of the legislative and political authority creating significant momentum for the attainment of the FMSG of many of the former island colonies in the Caribbean and Pacific.

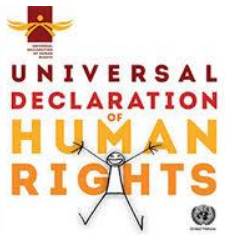
The DAP saw the active implementation of many of the provisions of the Declaration and relevant decolonisation resolutions in the case of a number of territories. This resulted in most of the former NSGTs in Africa, the Caribbean and the Pacific attaining the FMSG during this period. For other territories, the actions called for in UN resolutions remained recurrent themes throughout the DAP with full implementation remaining a challenge to present day. Table 7 provides a listing of Caribbean NSGTs which achieved the FMSG through independence during the DAP.

TABLE 7. CARIBBEAN DECOLONISATION – 1960 TO 1990

Former Territory	Former Admin. Power	Date of Decolonisation *(via independence)*
Jamaica	United Kingdom	1962
Trinidad and Tobago	United Kingdom	1962
Barbados	United Kingdom	1966
Bahamas	United Kingdom	1973
Grenada	United Kingdom	1974
Suriname	Netherlands	1975
Dominica	United Kingdom	1978
Saint Lucia	United Kingdom	1979
Saint Vincent and the Grenadines	United Kingdom	1979
Belize	United Kingdom	1981
Antigua and Barbuda	United Kingdom	1981
Saint Kitts and Nevis	United Kingdom	1983

Source: The Dependency Studies Project, St. Croix, Virgin Islands (2021)

Human Rights Conventions



From the beginning of the DAP onward, the right of peoples to self-determination was systematically enshrined in numerous international agreements including the International Covenants on Human Rights; numerous and repeated resolutions of the UN General Assembly; the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty [76]; the Declaration on the Strengthening of International Security[77]; the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and the Definition of Aggression[78]; and the resolutions on permanent sovereignty of natural resources," among other United Nations Instruments.[79] The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) is the most recent human rights instrument of relevance.[80]

By 1963, a new preliminary list of NSGTs was published by the UN consisting of some 64 territories (*eight fewer than the original 72 listed in 1946*) reflective of several genuine transitions to full self-government as defined at the time and approved by UN resolution. The period also served to confirm the de facto 'de-listing' of the territories under French administration without the requisite adoption of a UN resolution, but rather via a unilateral declaration that the colonies were no longer colonial even as the substance of the dependency arrangement remained unchanged. During the period between 1962 and 1984, some 25 African NSGTs, four Asian NSGTs, 13 Caribbean NSGTs, and eight Pacific NSGTs achieved independence with an additional ten either becoming integrated or freely associated.

Additional international instruments also reflected recognition of the principle of self-determination as a legal norm, and bolstered the momentum towards full self-government. These included, inter alia, the 1975 Helsinki Final Act adopted by the Conference on Security and Co-operation in Europe (CSCE), the 1981 African Charter of Human and Peoples' Rights, and at the beginning of the 1990s, the 1993 Vienna Declaration and Programme of Action. Later decisions of the International Court of Justice (ICOJ) served to uphold the principle of self-determination which also became pivotal with the inclusion in Article 1 of

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[76] *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty*, UN Resolution 2131 (XX), 21 December 1965.

[77] *Declaration on the Strengthening of International Security*, UN Resolution 2734 (XXV), 16 December 1970.

[78] Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States, UN Resolution 2625 (XXV), 24 October 1970.

[79] See Hector Gross Espiell (1978), *Report of the "U.N. Special Rapporteur with regard to the implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination,"* U.N. Economic and Social Council, Sub-Commission on Prevention of Discrimination and Protection of Minorities, U.N. Doc. E/CN.4/Sub.2/405 (Vol. 1) 20 June, p. 27.

[80] Declaration on the Rights of Indigenous Peoples (UNDRIP), UN Resolution 61/295, 13 September 2007.

both the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), respectively (Corbin, 2016: 8-9). In this context, the signatory countries in the ICCPR, which entered into force in 1976, affirmed that:

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development;

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence;

3. .The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

During the DAP, General Assembly resolutions reiterated longstanding support for the principles of decolonisation expressed during the initial DEP, whilst also directing its focus towards actions to be undertaken to advance those principles within the framework of the international decolonisation process. Accordingly, such projected actions included the conduct of UN visiting missions, and the insistence that the APs cease military activities in NSGTs due to their incompatibility with the UN Charter - consistent themes of the Assembly through the decades of the Cold War to present day. [81] Emphasis was also made on the importance of the APs "to implement without delay the relevant (decolonisation) resolutions of the General Assembly," and the further significance of render(ing) all (UN) help to the peoples of these Territories in their efforts freely to decide their future status." [82]

The adoption in 1970 of the Programme of Action for the Full Implementation of the Decolonisation Declaration, marking the tenth anniversary of the Declaration, provided further elaboration with respect to the issue of decolonisation implementation. [83] By 1972, the Assembly began its call for the AP's "to establish, in consultation with the freely elected

[81] See *Military Activities in Non Self-Governing Territories as an impediment to Decolonisation*, In Micronesian Educator, Vol. 31, University of Guam (Guahan) 2021, pp. 9-29.

[82] *Question of American Samoa, Antigua, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Mauritius, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Swaziland, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands*, UN General Assembly Resolution 2357 (XXII), 19 December 1967.

[83] *Programme of action for the full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,* UN General Assembly Resolution 2621(XXV), 12 October 1970.

representatives of the people, a specific timetable for the free exercise by the peoples of those Territories of their right to self-determination and independence." [84]

The Assembly also adopted a Declaration (Resolution 2625 XXV)in 1970 (*addressed earlier in the present Assessment*) which reaffirmed that the three options of independence, integration or free association constituted the achievement of implementing the right to self-determination. The resolution also commented that "the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people." [85]

On this point, it is important to emphasise that the reference to "any other political status" should not be interpreted as a sanction to legitimise dependency governance arrangements which fall short of the achievement of a full measure of self-government (FMSG) with absolute political equality (AbPE). In fact, the intent of Resolution 2625 (XXV) was to recognise the emergence of differing and flexible self-governing political models as preparatory and transitional to the attainment of full self-government - not the embodiment of it.

By 1973, the Assembly began its call for the APs to "safeguard the inalienable right of the peoples of (the) territories to the enjoyment of their natural resources by taking effective measures which guarantee the rights of the peoples to own and dispose of those natural resources and to establish and maintain control of their future development. [86] Also in 1973, the Assembly called for "particular attention" to be paid by the Decolonisation Committee "to the small territories and to recommend to the General Assembly the most appropriate methods and also the steps to be taken" for the exercise of the right to self-determination and independence. [87]

Further in 1973, the General Assembly, with specific reference to those small territories, began to "note with concern that many of the provisions of the relevant resolutions of the General Assembly, as well as the related recommendations of the Special Committee, remain unimplemented…in particular with respect to the establishment of a specific timetable for the exercise by the peoples of those territories of their right to self-determination and

[84] *Question of American Samoa, Bahamas, Bermuda, British Virgin Islands, Brunei, Cayman Islands, Cocos (Keeling) Islands, Gilbert and Ellice Islands, Grenada, Guam, Montserrat, Pitcairn, St. Helena, Seychelles, Solomon Islands, Turks and Caicos Islands and the United States Virgin Islands*, Un General Assembly Resolution 2984 (XXVII), 14 December 1972.

[85] *"Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*," UN General Assembly Resolution 2625 (XXV) of 24 October 1970.

[86] *Question of Bermuda, British Virgin Islands, Cayman Islands, Montserrat, Turks and Caicos Islands, and the United States Virgin Islands,* UN General Assembly Resolution 3157 (XXVIII), 14 December 1973.

[87] *Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, UN General Assembly Resolution 3163(XXVIII), 14 December 1973.

independence." [88] With specific reference to the Pacific territories, the Assembly in 1973 also called on the APs concerned "to discontinue any further nuclear atmospheric testing in the South Pacific area, in order not to endanger the life and environment of the Peoples of the Territories concerned." [89]

By 1974, emphasis was placed on the non-compliance of some APs with their UN Charter obligations to bring about the decolonisation of NSGTs. In this connection, the Assembly "deplored the continued refusal of the Government of France, in contravention of the provisions of the relevant resolutions of the General Assembly, to cooperate with the Special Committee of the Territory of New Hebrides," (and) "called upon the Government of France, as an administering Power, to participate in the relevant proceedings of the Special Committee concerning the Territory of the New Hebrides." [90]

By 1980, the Assembly adopted its Plan of Action for the full implementation of the (Decolonisation) Declaration in which it reiterated calls for implementation of many of the actions previously endorsed by the Assembly, and called for a thorough review of territories to which the Declaration applied. [91] Accordingly, the thirty-year period of the DAP established the most specific guidelines to that point in order to implement the decolonisation mandate. The relevant actions calling for implementation by the administering Powers and the UN system during the period included:

- The transfer of powers to the peoples of the territories - established in the Decolonisation Declaration as a precursor to the legitimate act of self-determination.

- The implementation of the decolonisation mandate through one of the three political status options providing for the full measure of self-government, namely independence, free association with an independent state, and integration with an independent state.

- The conduct of UN visiting missions to the territories to ascertain first hand the situation on the ground.

[88] *Question of Bermuda, British Virgin Islands, Cayman Islands, Montserrat, Turks and Caicos Islands, US Virgin Islands,* UN General Assembly Resolution 3157 (XXVIII), 14 December 1973.

[89] *Question of American Samoa, Gilbert and Ellice Islands, Guam, New Hebrides, Pitcairn, St. Helena, Seychelles, an Solomon Islands*, UN General Assembly Resolution 3156 (XXVIII), 14 December 1973.

[90] *Question of American Samoa, Guam, New Hebrides, Pitcairn, St. Helena, and Solomon Islands,* UN General Assembly Resolution 3290 (XXIV)), 13 December 1974.

[91] *Plan of Action for the Full Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, UN General Assembly Resolution 35/118, 11 December 1980.

- The provision of UN assistance to the peoples of these Territories in their efforts to freely decide their future political status.

- The establishment of a specific timetable, in consultation with the freely elected representatives of the people, to identify and implement the most appropriate methods for the exercise of the right to self-determination and independence.

- The guarantee of the inalienable right of the peoples of the territories to own and control their natural resources.

- The exercise of authority of the UN General Assembly to determine whether an obligation exists under Chapter 11 of the UN Charter.

- The cessation of the use of NSGTs for military activities of the administering Powers, including the discontinuance of any further nuclear atmospheric testing in the South Pacific area, in order not to endanger the life and environment of the Peoples of the Territories.

By 1986, the Assembly would express concern that the "Government of France (had) not transmitted information on New Caledonia (Kanaky) and Dependencies since 1946, (and subsequently) declared that an obligation exists on the part of the Government of France to transmit information on New Caledonia under Chapter XI of the Charter, and requests the Government of France to transmit to the Secretary-General such information as is called for under Chapter XI and in the related decisions of the General Assembly. "[92] This action resulted in the re-listing of New Caledonia on the list of NSGTs by the General Assembly.

Many of the mandates were further elaborated in resolutions during the subsequent Decolonisation Deceleration Period (DAP) which began in 1961, and the UN General Assembly adopted specific resolutions on the decolonisation of Bermuda during this timeframe.

United Nations Decolonisation Mandates for Bermuda 1961-1990

Many UN resolutions adopted in the Decolonisation Acceleration Period (DAP) served to reaffirm principles and actions contained in previous resolutions aimed collectively at the NSGTs including Bermuda in furtherance of the decolonisation process. Key areas of focus included activities of foreign and other economic interests which were impeding the implementation of the Decolonisation Declaration; recognition of the inalienable right of the peoples of the territories to own and dispose of their natural resources; the importance of

[92] *Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, UN General Assembly Resolution 41/41, 2 December 1986.

U.N. visiting missions to the territories; U.N. assistance to territories in their political status development process, assistance from the UN specialised agencies; study and training facilities for inhabitants of Non-Self-Governing Territories; and the timeliness and comprehensiveness of information on the NSGTs transmitted by the AP to the UN under Article 73e of the Charter.

The year 1965 brought the beginnings of a more targeted approach with respect to the individual NSGTs. Thus, resolutions were adopted that were made relevant to the NSGT 'block' directed at some 28 named NSGTs, including Bermuda. These resolutions tended to repeat earlier mandated actions calling for implementation by the APs of decolonisation resolutions. Mandates included the dispatch of UN visiting missions to the NSGTs, the inalienable right of the people of these territories to decide their constitutional status in accordance with the Charter of the United Nations and with the provisions of resolution 1514 (XV) and other relevant General Assembly resolutions; and confirmation that the United Nations should render all help to the people of these territories in their efforts freely to decide their future status…" [93]

These themes would be repeated in decolonisation resolutions throughout the Decolonisation Acceleration Period (DAP). By 1969, the General Assembly began to adopt additional resolutions on particular territories to reflect political developments therein. UN resolutions concerning Bermuda from 1965-90 are listed in Table 8 (below).

[93] See A/RES/2069(XX) *Question of American Samoa, Antigua, Bahamas, Barbados, **Bermuda**, British Virgin Islands, Cayman Islands, Cocos (Keeling) Islands Dominica, Gilbert and Ellice Islands, Grenada, Guam, Montserrat, New Hebrides, Niue, Papua, Pitcairn, St. Helena, St-Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Tokelau Islands, Turks and Caicos Islands, and the United States Virgin Islands*, of 16 December 1965 (New York: United Nations General Assembly). See also A/RES/2232(XXI) of 20 December 1966, A/RES/2357(XXII) of 19 December 1967, A/RES/2430(XXIII) of 18 December 1968, A/RES/2592(XXIV) of 14 December 1969, A/RES/2709(XXV) of 14 December 1970, A/RES/2869(XXVI) of 20 December 1971, A/RES/2984(XXVII) of 14 December 1972.

Table 8. United Nations Resolutions on the Question of Bermuda 1965-1990

Year	Resolution	Action
1965	**A/RES/2069(XX)** Question of American Samoa, Antigua, Bahamas, Barbados, Bermuda, British Virgin Islands, Cayman Islands , Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands	6 Dec. 1965 91-0-10 non-recorded
1966	**A/RES/2232(XXI)** Question of American Samoa, Antigua, Bahamas, **Bermuda**, British Virgin Islands, Cayman Islands , Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Mauritius, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia St. Vincent, Seychelles, Solomon Islands, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands	20 Dec. 1966 93-0-24
1967	**A/RES/2357(XXII)** Question of American Samoa, Antigua, Bahamas, **Bermuda**, British Virgin Islands, Cayman Islands , Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Mauritius, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Swaziland, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands	19 Dec. 1967 86-0-27
1968	**A/RES/2430(XXIII)** Question of American Samoa, Antigua, Bahamas, **Bermuda**, British Virgin Islands, Cayman Islands , Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands	18 Dec. 1968 89-2-22

1969	**A/RES/2592(XXIV)** Question of American Samoa, Antigua, Bahamas, **Bermuda**, British Virgin Islands, Brunei, Cayman Islands , Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands	16 Dec. 1969 88-1-26
1970	**A/RES/2709(XXV)** Question of American Samoa, Antigua, Bahamas, **Bermuda**, British Virgin Islands, Brunei, Cayman Islands , Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands	1 4 Dec. 1970 94-1-20
1971	**A/RES/2869(XXVI)** Question of American Samoa, Bahamas, **Bermuda**, British Virgin Islands, Brunei, Cayman Islands , Cocos (Keeling) Islands, Gilbert and Ellice Islands, Guam, Montserrat, New Hebrides, Pitcairn, St.Helena, Seychelles, Solomon Islands, Turks and Caicos Islands and the United States Virgin Islands	20 Dec. 1971 98-1-19
1972	**A/RES/2984(XXVII)** Question of American Samoa, Bahamas, **Bermuda**, British Virgin Islands, Brunei, Cayman Islands , Cocos (Keeling) Islands, Gilbert and Ellice Islands, Guam, Montserrat, New Hebrides, Pitcairn, St. Helena, Seychelles, Solomon Islands, Turks and Caicos Islands and United States Virgin Islands	14 Dec. 1972 100-4-17
1973	**A/RES/3157(XXVIII)** Question of **Bermuda**, British Virgin Islands, Cayman Islands, Montserrat, Turks and Caicos Islands and United States Virgin Islands	4 Dec. 1973 110-0-19
1974	**A/RES/3289(XXIX)** Question of **Bermuda**, British Virgin Islands, Cayman Islands, Montserrat, Turks and Caicos Islands and United States Virgin Islands	13 Dec. 1974 117-0-17

1975	**A/RES/3427(XXX)** Question of **Bermuda,** British Virgin Islands, Cayman Islands and Turks and Caicos Islands	8 Dec. 1975 without vote
1976	**A/RES/31/52** Question of **Bermuda**, Cayman Islands, Montserrat and Turks and Caicos Islands	1 Dec. 1976 without vote
1977	**A/RES/32/29** Question of **Bermuda**, British Virgin Islands, Montserrat and Turks and Caicos Islands	28 Nov. 1977 without vote
1978	**A/RES/33/35** Question of **Bermuda**, British Virgin Islands, Cayman Islands, Montserrat and Turks and Caicos Islands	13 Dec. 1978 without vote
1979	**A/RES/34/34** Question of **Bermuda**, the British Virgin Islands, the Cayman Islands, Montserrat and the Turks and Caicos Islands	21 Nov.1979 without vote
1980	**A/RES/35/21 Question of Bermuda**, the British Virgin Islands, the Cayman Islands and Montserrat	11 Nov. 1980 Adopted without a vote
1981	**A/RES/36/62 Question of Bermuda,** the British Virgin Islands, the Cayman Islands, Montserrat and the Turks and Caicos Islands	25 Nov. 1981 117-0-2 non-recorded
1982	**A/RES/37/22 Question of Bermuda**	23 Nov. 1982 without vote
1983	**A/RES/38/43 Question of Bermuda**	7 Dec. 1983 without vote
1984	**A/RES/39/33 Question of Bermuda**	5 Dec. 1984 without vote
1985	**A/RES/40/43 Question of Bermuda**	2 Dec. 1985 without vote

1986	**A/RES/41/18 Question of Bermuda**	31 Oct. 1986 without vote
1987	**A/RES/42/86 Question of Bermuda**	4 Dec. 1987 without vote
1988	**A/RES/43/39 Question of Bermuda**	22 Nov. 1988 without vote
1989	**A/RES/44/92 Question of Bermuda**	11 Dec. 1989 without vote
1990	**A/RES/45/24 Question of Bermuda**	20 Nov. 1990 without vote

Source: United Nations General Assembly 2022.

From 1973-74, the UN resolutions on the territories were grouped by region [94] with one six-power resolution specifically covering five of the six Caribbean territories of **Bermuda**, British Virgin Islands, Cayman Islands, Montserrat, and the Turks and Caicos Islands along with the US Virgin Islands. A multi-territory text covered African and Pacific NSGTs, including American Samoa, Gilbert and Ellice Islands, Guam, New Hebrides, Pitcairn, St. Helena, Seychelles and Solomon Islands.

By 1975, the NSGTs were further disaggregated with a four-power resolution on the UK-administered NSGTs of **Bermuda**, British Virgin Islands, Cayman Islands, and the Turks and Caicos Islands in a single resolution [95] whilst Montserrat was provided with its own resolution. [96] By 1976, **Bermuda** formed part of the four-power resolution that included the UK-administered territories of Cayman Islands, Montserrat and the Turks & Caicos Islands that called on the Government of Great Britain and Northern Ireland as the administering Power, inter alia:

> To continue to take all the necessary steps in consultation with the freely elected representatives of the peoples to ensure the full and speedy attainment of the goals set forth in the (Decolonisation) Declaration with respect to the Territories;

[94] See A/RES/3157(XXVIII) and A/RES/3156(XXVIII) of 14 December 1973, A/RES/3290(XXIX), and A/RES/3289(XXIX) of 13 December 1974.
[95] See A/RES/3427(XXX) of 8 December 1975.
[96] See A/RES/3425(XXX) of 8 December 1975.

> To safeguard the inalienable right of the peoples…to the enjoyment of their natural resources by taking effective measures which guarantee the rights of the peoples to own and dispose of those natural resources and to establish and maintain control of their future development. [97]

In 1977, **Bermuda** was part of a four-power resolution that included British Virgin Islands, Montserrat and Turks and Caicos Islands, [98] and in 1978 a five-power resolution was adopted covering **Bermuda**, British Virgin Islands, Cayman Islands, Montserrat, and the Turks and Caicos Islands reaffirming the elements contained in the multi-territory resolutions immediately preceding. [99] In 1979 **Bermuda** was included in the four-power resolution along with the British Virgin Islands, Cayman Islands and Montserrat,[100] and in 1980 a resolution covering the same four territories reaffirmed earlier expressions, and went further to "call on the (AP), in consultation, as appropriate, with the freely elected authorities and representatives of the peoples of the Territories concerned, to take all possible steps to diversify and strengthen further the economies of the (four) Territories…(and) to work out concrete programmes of assistance and economic development for those Territories." [101]

In 1981 a five-power resolution including **Bermuda** reaffirmed the mandates of previous resolutions, and introduced the dimension related to the operation of military bases in NSGTs. On this point, the resolution:

> Recogni(sed) that the presence of military bases and other installations could constitute an impediment to the implementation of the Declaration and reaffirms its conviction that the presence of foreign military bases and installations in Bermuda and the Turks and Caicos Islands should not prevent the people of those Territories from exercising their right to self-determination and independence in accordance with the Declaration and the purposes and principles of the Charter. [102]

[97] See A/RES/31/52 of 1 December 1976.
[98] See A/RES/32/29 of 28 November 1977.
[99] See A/RES/33/35 of 13 December 1978.
[100] See A/RES/34/34 of 21 November 1979.
[101] See A/RES/35/21 of 11 November 1980.
[102] See A/RES/36/62 of 25 November 1981.

Figure 4. European NSGTs

In 1982, the multi-territorial resolutions gave way to individual resolutions for each territory (to be grouped again in 1991 with specific reference to small size. Accordingly, the first **Bermuda** resolution reiterated a number of issues covered in previous multi-island resolutions whilst adding several new areas of focus, including:

● The reaffirmation of the inalienable right of the people of **Bermuda** to self-determination and independence; and that size, geographic location size of population and limited natural resources should in no way delay the speedy exercise of that right;

● The reiteration that it was the obligation of the AP to create such conditions in the Territory to enable the people themselves to exercise that right, and it was ultimately for the people of Bermuda to decide on their future political status;

● The call for the AP, in cooperation with local authorities, to continue to expedite the process of 'Bermudianisation' in the Territory, and in this connection, urge(d) that particular attention be paid to greater localisation of the public sector. [103]

In 1983, the resolution on **Bermuda** further added reference to the general elections of that year, and "note(d) with interest that the Government of the Territory ha(d) expressed its intention to revive discussion of the 1979 White Paper on Independence and to promote public debate on Bermuda's future status." [104] The 1983 text also brought to light issues of discrimination. Hence, the resolution:

> (R)eaffirm(ed) the importance of the need to foster national unity and a national identity(,) and (took) note of the steps taken by the local authorities in that regard, such as the establishment of an institution with a view to preventing discrimination among the people of the Territory on racial, religious, social or political grounds. [105]

The 1984 resolution introduced additional issues including the contention that "Bermuda has been somewhat isolated from its Caribbean neighbors." [106] It also expanded on

[103] See A/RES/37/22 of 23 November 1982.
[104] See A/RES/38/43 of 7 December 1983.
[105] *id.*
[106] See A/RES/39/33 of 5 December 1984.

the reference to military activities in Bermuda in its admonition to the AP not to "involve the Territory in any offensive acts or interference directed against other States, and to comply fully with the purposes and principles of the (UN) Charter, the (Decolonisation) Declaration, and resolutions and decisions of the General Assembly relating to military activities and arrangements by colonial Powers in Territories under their administration." [107]

In 1985, the Bermuda resolution strengthened earlier language on the Bermudisation of the public sector with calls for the AP "to continue, in cooperation with the territorial Government, the assistance necessary for the employment of the local population in the civil service, particular at senior levels." [108] The 1986 resolution made reference to "the planned Private Member's bill in the Senate of Bermuda demanding a referendum on the issue of independence to take place on 7 April 1987,"[109] whilst the 1987 resolution [110] repeated earlier thematic mandates. The 1988 resolution took note of "the stated policy of the Government of the…AP that it remains ready to respond positively to the express wish of the people of the Territory on the question of independence," and "not(ed) the active discussions in the Territory, both within and outside the territorial Government, on the future status of Bermuda." [111]

The resolution on Bermuda in 1989 [112] reflected the emergent issues in the territory, and represented a comprehensive plan of action to advance the decolonisation process. As the DAP came to a close, the 1990 resolution reflected developments in the aftermath of the 1989 general elections with specific relevance to the decolonisation process. In this connection, the 1990 resolution observed that:

> "(T)he general elections (were held in)1989, during which the ruling United Bermuda Party retained power in the House of Assembly despite the loss of eight seats, (and) its leader, the Prime Minister, stated that the question of independence was no longer a major issue because the majority of the people did not seem to want independence at present;
>
> (T)he leader of the largest opposition party, the Progressive Labour Party, consider(d) that independence would help to unify the people of Bermuda and that the (*UK-appointed*) Governor of Bermuda recognized that it had a responsibility to obtain pertinent information on the question of independence should circumstances change. [113]

[107] *id.*
[108] See A/RES/40/43 of 2 December 1985.
[109] See A/RES/41/18 of 31 October 1986.
[110] See A/RES/42/86 of 4 December 1987.
[111] See A/RES/43/39 of 22 November 1988.
[112] See A/RES/44/92 of 11 December 1989.
[113] See A/RES/45/24 of 20 November 1990

The 1990 resolution repeated earlier affirmations that "(i)t was ultimately for the people of Bermuda to determine freely their future political status in accordance with the relevant provisions of the (UN) Charter and the (Decolonisation) Declaration, and in that connection reaffirm(ed) the importance of fostering an awareness of the people of the Territory of the possibilities open to them in the exercise of their right to self-determination and independence." [114]

C. Decolonisation Deceleration/Stagnation Period (DDP) 1991-2022

At the beginning of the first International Decade for the Eradication of Colonialism (IDEC) in 1991, the General Assembly at the recommendation of the Special Committee on Decolonisation (C-24) consolidated its resolutions on the individual small territories into an 'omnibus resolution.' This was in conformity with an institution-wide 'UN reform' process in the immediate aftermath of the Cold War. Thus, references in the political and constitutional dimension of the resolutions were included in a general section applicable to ten small island territories including Bermuda. Of particular note was the general reference in resolutions throughout the period to the "legitimate political status options clearly defined in General Assembly 1541(XV)," (*namely, independence, free association and integration*. [115]

Table 9. United Nations Resolutions on the Question of Bermuda - 1991-2021

Year	RESOLUTION	ACTION
1991	A/RES/46/68B-III Question of Bermuda	11 Dec. 1991 without vote
1992	A/RES/47/27B-III Question of Bermuda	25 Nov. 1992 without vote
1993	A/RES/48/51B-III Question of Bermuda	10 Dec. 1993 without vote
1994	A/RES/49/46 B-III Question of Bermuda	9 Dec. 1994 without vote
1995	A/RES/50/38 B-III Question of Bermuda	6 Dec. 1995 146-4-3

[114] *id/*

[115] A/RES/46/68B-IV of 11 December 1991. See also A/RES/47/27B-IV of 25 November 1992, 10 December 1993 and other omnibus resolutions during the first International Decade for the Eradication of Colonialism.

1996	**A/RES/51/224** Question of American Samoa, Anguilla, **Bermuda**, the British Virgin Islands, Cayman Islands, Guam, Montserrat, Pitcairn, St. Helena, the Turks and Caicos Islands, and the United States Virgin Islands	27 March 1997 without vote
1997	**A/RES/52/77** General; B: Individual Territories - I: American Samoa - II: Anguilla - **III: Bermuda** - IV: British Virgin Islands - V: Cayman Islands - VI: Guam - VII: Montserrat - VIII: Pitcairn - IX: St. Helena - X: Tokelau - XI: Turks and Caicos Islands - XII: United States Virgin Islands	10 Dec. 1997 without vote
1998	**A/RES/53/67** Questions of American Samoa, Anguilla, **Bermuda**, British Virgin Islands, Cayman Islands, Guam, Montserrat, Pitcairn, St. Helena, Turks and Caicos Islands, United States Virgin Islands	3 Dec. 1998 without vote
1999	**A/RES/54/90** Questions of American Samoa, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, St. Helena, the Turks and Caicos Islands and the United States Virgin Islands	6 Dec. 1999 without vote
2000	**A/RES/55/144** Questions of American Samoa, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, St. Helena, the Turks and Caicos Islands and the United States Virgin Islands	8 Dec. 2000 without vote
2001	**A/RES/56/72** Questions of American Samoa, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, St. Helena, the Turks and Caicos Islands and the United States Virgin Islands	10 Dec. 2001 without vote
2002	**A/RES/57/138A** General: Questions of American Samoa, Anguilla, **Bermuda**, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, St. Helena, the Turks and Caicos Islands and the United States Virgin Islands	11 Dec. 2002 without vote

2003	**A/RES/58/108 A-B** Questions of American Samoa, Anguilla, **Bermuda**, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, Saint Helena, the Turks and Caicos Islands and the United States Virgin Islands A: General B: Individual Territories	9 Dec. 2003 without vote
2004	**A/RES/59/134 A-B** Questions of American Samoa, Anguilla, **Bermuda**, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, Saint Helena, the Turks and Caicos Islands and the United States Virgin Islands A. Reports, Letters of the Secretary-General B. Individual Territories	10 Dec. 2004 without vote
2005	**A/RES/60/117 A-B** Questions of American Samoa, Anguilla, **Bermuda**, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, Saint Helena, the Turks and Caicos Islands and the United States Virgin Islands A. Reports, Letters of the Secretary-General B. Individual territories	8 Dec. 2005 without vote
2006	**A/RES/61/128 A-B** Questions of American Samoa, Anguilla, **Bermuda**, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, Saint Helena, the Turks and Caicos Islands and the United States Virgin Islands A. General B. Individual territories	14 Dec. 2006 173-0-4
2007	**A/RES/62/118 A-B** Questions of American Samoa, Anguilla, **Bermuda**, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, Saint Helena, the Turks and Caicos Islands and the United States Virgin Islands A. General B. Individual Territories	17 Dec. 2007 GA/10677 without vote
2008	**A/RES/63/108 A-B** Questions of American Samoa, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, Saint Helena, the Turks and Caicos Islands and the United States Virgin Islands A. General B. Individual Territories	5 Dec. 2008 without vote

2009	**A/RES/64/104 A-B** Questions of American Samoa, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, Saint Helena, the Turks and Caicos Islands and the United States Virgin Islands A. General B. Individual Territories	1 10 Dec. 2009 without vote
2010	**A/RES/65/115 A-B** Questions of American Samoa, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, Saint Helena, the Turks and Caicos Islands and the United States Virgin Islands A. General B. Individual Territories	10 Dec. 2010 without vote
2011	**A/RES/66/89** **A-B** Questions of American Samoa, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, Saint Helena, the Turks and Caicos Islands and the United States Virgin Islands A. General B. Individual Territories	9 Dec. 2011 without vote
2012	**A/RES/67/132** Questions of American Samoa, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, Saint Helena, the Turks and Caicos Islands and the United States Virgin Islands	8 December 2012 without a vote
2013	**A/RES/68/95 A-B** Questions of American Samoa, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, Saint Helena, the Turks and Caicos Islands and the United States Virgin Islands	1 December 2013 without vote
2014	**A/RES/69/105** Questions of American Samoa, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, Saint Helena, the Turks and Caicos Islands and the United States Virgin Islands	5 December 2014 without a vote

2015	**A/RES/70/102** Questions of American Samoa, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, Saint Helena, the Turks and Caicos Islands and the United States Virgin Islands	9 December 2015
2016	**A/RES/71/110** Question of Bermuda	6 December 2016 without a vote
2017	**A/RES/72/98** Question of Bermuda	7 December 2017 without a vote
2018	**A/RES/73/119** Question of Bermuda	7 December 2018 without a vote
2019	**A/RES/74/100** Question of Bermuda	13 December 2019 without a vote
2020	**A/RES/75/109** Question of Bermuda	10 December 2020 without a vote
2021	**A/RES/76/92** Question of Bermuda	9 December 2021 without a vote
2022	Question of Bermuda	***Pending as of December 2022***

The resolution consolidation measure was inconsistent with the advent of the first IDEC but advertently/inadvertently coincided with the simultaneous emergence of the Decolonisation Deceleration/Stagnation Period (DDP) which followed the Decolonisation Acceleration Period (DAP) in 1991. The DDP - originating from 1991 through to present day - has seen only one NSGT achieving the FMSG (*Timor Leste, 1992*), with one territory being re-inscribed (*French Polynesia, 2013*).

Overall, the DDP is characterised by a significant slowdown in the implementation of the self-determination and decolonisation mandates – even as these mandates remain integral to the achievement of decolonisation. This slowdown has been attributed to certain geo-strategic changes in the immediate post-Cold War era at the beginning of the 1990s, and the resultant UN reform measures being contemplated that would have diminished the priority of decolonisation within the UN agenda (Corbin, 2022).

The present DDP was precipitated, in part, by the end of the Cold War and the independence of Namibia (*the penultimate UN - listed African NSGT*), This followed on from

the successful implementation of the DAP which facilitated the achievement of the FMSG through political independence for many African, Caribbean and Pacific NSGTs. These erstwhile territories were subsequently delisted from the U.N. list of NSGTs.

In the wake of the strides made during the DAP, it was evident that the majority of the remaining NSGTs at the beginning of the 1990s were Island-Non Self-Governing Territories (I-NSGTs), mainly in the Caribbean and Pacific under differing political status and constitutional arrangements requiring specific attention. However, a different narrative began to emerge with the remaining I-NSGTs increasingly regarded as not being interested - nor prepared if they were interested - in independence. This dilemma was encapsulated in an expert paper delivered to the 2022 UN Caribbean Regional Seminar on Decolonisation:

> This mindset was used as a pretext by several administering Powers to argue that the UN should essentially phase out the UN role in the decolonisation process of the remaining NSGTs. Thus, the overall changing international environment brought on by the end of the Cold War saw the stagnation of global support for continued decolonisation, paradoxically at the advent of UN General Assembly adoption of the first international Decade(s) for the Eradication of Colonialism (IDEC) where the UN member States agreed to place more – rather than less - emphasis on solving the prevailing colonial conundrum (Corbin, 2022).

An earlier expert paper presented to the 2016 regional seminar of the Special Committee on Decolonisation described this scenario as a "re-interpretation of the self-determination principle (which) was coupled with a growing resistance of the main Administering Powers to comply with their international legal obligations under the U.N. Charter, with arguments that self-determination and decolonisation had been Cold War issues, and that the end of the Cold War signaled the need to phase out the items from active U.N. consideration." (Corbin, 2016: 9-10).

These assumptions served as the genesis of a ' dependency legitimisation' strategy which continues through present day characterised by the contention that the people of the NSGTs were satisfied with the prevailing dependency arrangements - notwithstanding the political inequality and administering Power unilateral authority inherent in the contemporary territorial models. Thus, even the minimum standards contained in the alternatives to independence - free association and integration - were no longer sufficient, with suggestions that these options should be bypassed in favour of the legitimisation of the political inequality of the status quo dependency arrangements. This was manifest in the execution of administering Power policies and external influence on the U.N. decolonisation process. (Corbin, 2016: 9). [116] The period found the withdrawal of formal participation of two of the largest APs (*UK and US*) with the UN Special Committee on Decolonisation.

[116] A critique of the changing British, French and United States diplomatic positions on decolonisation can be reviewed in the 2016 expert paper Decolonisation: The Un-finished Agenda of the United Nations presented to the Pacific Regional Seminar on the Implementation of the Third International Decade for the Eradication of Colonialism, Managua, Nicaragua. 31 May - 2 June 2016.

As the DDP emerged, many of the relevant actions adopted by the General Assembly continued to confirm the primacy of implementation of the self-determination and decolonisation mandates through action by the administering Powers and the UN system alike. Accordingly, the General Assembly continued to reaffirm that:

> It is ultimately for the people of (the territory) themselves to determine freely their future political status in accordance with the relevant provisions of the Charter of the United Nations, the Declaration and the relevant resolutions of the General Assembly, and in that connection, calls upon the administering Power, in cooperation with the territorial government(s), to facilitate programs of political education to foster an awareness among the people of the possibilities open to them in the exercise of their right to self-determination;
>
> It is the responsibility of the…administering Power to continue to create such conditions in (the territory) as will enable the people of the Territory to exercise freely and without interference their inalienable right to self-determination and independence in conformity with General Assembly 1514 (XV). [117]

As noted, the beginning of the DDP coincided paradoxically with the first of four successive International Decade(s) for the Eradication of Colonialism (IDEC) beginning in 1990, with the fourth (and current) decade proclaimed for the period 2021-2030. The first IDEC was approved by the General Assembly in 1988 [118] in advance of the commemoration of the 1990 Thirtieth Anniversary of the Decolonisation Declaration. In 1991, the Assembly adopted a Plan of Action (POA) for the first IDEC [119] that was derived from a summary of views and suggestions submitted to the Secretary-General by U.N. member states as requested in the original 1988 resolution on the IDEC. The POA mandated actions to be undertaken to implement the decolonisation mandate have been consecutively adopted from the second through fourth IDECs.

In this context, particular reference is made to the self-determination process where the POA reaffirmed relevant UN resolutions calling for the APs to ensure that all acts of self-determination are preceded by adequate and unbiased campaigns of political education. During the DDP, the independence of Timor Leste is the lone example to date of a genuine act of self-determination being conducted with FMSG realised through independence in 1992. It is important to note that the self-determination act, and its preceding unbiased public education programme, was conducted by the UN pursuant to the pertinent UN mandate which remains presently valid.

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[117] *Question of Bermuda,* UN General Assembly Resolution 45/31, 20 November 1990,
[118] *Internationa1 Decade for the Eradication of Colonialism,* UN General Assembly Resolution 43/47, 22 December 1988.
[119] See UN General Assembly resolution 46/181 of 19 December 1991.

This is contrasted with the three-stage referendum process in Kanaky (*New Caledonia*) under the Noumea Accord where the entire process is under the control of the AP (*France*) with limited, advisory/observatory UN involvement. This has resulted in an outcome deficient in its legitimacy and not recognised as valid by the indigenous peoples for whom the referendum was designed. This failed process calls into question whether a self-determination process governed by the AP as a consultative exercise rises to the level of a genuine act of self-determination given the mandate of the Decolonisation Declaration for the transfer of powers. There is little evidence that the present APs are willing to agree such a transfer of powers for the people of a given NSGT even as the procedure can be regarded as an essential precursor to the conduct of a genuine act of self-determination without undue influence of an AP which has an obvious stake in the outcome of any such exercise.

Relatedly, the POA of the Fourth IDEC reiterates that the APs should ensure that any exercise of the right of self-determination is not affected by changes in the demographic composition of the territories under their administration as a result of immigration or the displacement of the peoples of the territories. Indications are that concerns for the impact of such demographic changes have not been taken into account given active proposals under consideration to extend political rights of UK citizens in the dependent territories under the Global Britain initiative. It is assumed that participation in any referendum process on self-determination would be covered by such proposals. UK plans to this effect are further examined in the present Assessment in relation to UK dependency governance policy.

Mandate of the First International Decade for the Eradication of Colonialism

As in the case of other NSGTs, the adoption of UN resolutions on Bermuda from the beginning of the DDP in 1991 coincided with the initiation of the first (o*f four*) International Decade(s) for the Eradication of Colonialism (IDEC) designed to place added emphasis on the implementation of the international mandate on self-determination and decolonisation. The specific resolutions on Bermuda provide a comprehensive picture of the areas of UN focus vis a vis the evolution of Bermuda and the key actions called for in furtherance of the attainment of FMSG through a genuine and unbiased process of self-determination. The mandates adopted by the international community for Bermuda during the DDP are considered from the political/constitutional perspective, and from the socio-economic vantage point, respectively.

It is to be recalled that the General Assembly in its 1990 resolution on the 30th anniversary year of the UN Decolonisation Declaration (*at the end of the DAP*) took note of the "stated policy of the Government of the (UK), the administering Power, that it remains ready to respond positively to the express wish of the people of the Territory on the question of independence." [120] UN resolutions on Bermuda through to present day are replete with

[120] See A/RES/45/25 of 20 November 1990.

affirmations favouring a genuine self-determination process with the obligations of the AP and the UN system clearly spelled out. [121]

In 1991, the Bermuda section of the 'omnibus resolution' on ten small territories [122] focused attention on the implications of the 1989 election to the decolonisation process, concerns over the presence of military bases and installations in Bermuda and the potential for such activities to obstruct the decolonisation process, measures to be taken to ensure economic and social stability, and the call for the facilitation of a UN visiting mission to the territory. In 1992, the Bermuda resolution requested the AP "to assist the territorial Government in the implementation of its programme of Economic Stability and Responsible Management with a view to reducing the impact of the recession on the economy of the Territory and the unprecedented increase in unemployment. " [123]

In 1993, the Bermuda section of the omnibus resolution reiterated that "it is ultimately for the people of Bermuda to decide their own future," called on the AP "to ensure that the criminal justice system (was) fair to all inhabitants of the Territory," and further called on the AP "to ensure that the planned restructuring of the public school system (was) not prejudicial to the economically less advantaged sectors of the population." [124]

The 1994 omnibus resolution "(n)ot(ed) the decision of the United Kingdom of Great Britain and Northern Ireland as administering Power to effect a policy change aimed at enhancing its relations with its Caribbean dependent Territories," expresse(d) the view that the referendum on the future status of Bermuda is an appropriate means for the people of the Territory to decide their own future," (n)ote(d) with satisfaction that the economy of the Territory ha(d) begun to recover and that the territorial Government continue(d) to place emphasis on the general good management of the economy of Bermuda." The resolution also "(n)ote(d) the plans of the territorial Government to restructure the entire educational system with a view to facilitating wider access to higher education and to training more Bermudian students in the skills required to satisfy the employment needs of the Territory." [125]

At its fiftieth session in 1995, the UN General Assembly reiterated its consistence emphasis on the self-determination and decolonisation mandates in its resolution by:

…..

[121] The reversion to UN resolutions on groups of selected I-NSGTs to replace the individual territory resolutions was problematic and only served to yield one large resolution with separate sections for each I-NSGT. The UN returned to individual NSGT resolutions in subsequent years.

[122] See A/RES/46/68B-III of 11 December 1991.

[123] See A/RES/47/27B-III 25 November 1992.

[124] See A/RES/48/51B-III of 10 December 1993.

[125] See A/RES/49/46 B-IV of 9 December 1994

2. Reaffirm(ing) the inalienable right of the people of the Territories to self-determination, including independence, in conformity with the Charter of the United Nations and General Assembly resolution 1514 (XV), containing the Declaration on the Granting of Independence to Colonial Countries and Peoples;

3. Reaffirm(ing) also that it is ultimately for the people of the Territories themselves to determine freely their future political status in accordance with the relevant provisions of the Charter, the Declaration and the relevant resolutions of the General Assembly, and in that connection call(ed) upon the administering Powers, in cooperation with the territorial Governments, to facilitate programmes of political education in the Territories in order to foster an awareness among the people of the possibilities open to them in the exercise of their right to self-determination, in conformity with the legitimate political status options clearly defined in resolution 1541 (XV);

4. Request(ing) the administering Powers to ascertain expeditiously, by means of popular consultations, the wishes and aspirations of the peoples of Non-Self-Governing Territories regarding their future political status so that the Special Committee (*on Decolonisation*) can review the status of the Territories in accordance with the expressed wishes of the peoples of the Territories;

5. Also request(ing) the administering Powers to facilitate the dispatch of the United Nations visiting missions to the Non-Self-Governing Territories regarding their future political status so that the Special Committee (*on Decolonisation*) can review the status of the Territories in accordance with the expressed wishes of the peoples of the Territory;

6. Reaffirm(ing) the responsibility of the administering Powers under the Charter to promote the economic and social development and to preserve the cultural identity of the Territories, and recommend(ing) that priority continue to be given, in consultation with the territorial Governments concerned, to the strengthening and diversification of their respective economies;

7. Request(ing) the administering Powers to take all necessary measures to protect and conserve the environment of the Territories under their administration against any environmental degradation, and request(ing) the specialized agencies concerned to continue to monitor environmental conditions in those Territories;

8. Call(ing) upon the administering Powers, in cooperation with the respective territorial Governments, to continue to take all necessary measures to counter problems related to drug trafficking, money laundering and other offences;

9. Stress(ing) that the achievement of the declared goal of eradication of colonialism by the year 2000 requires full and constructive cooperation by all parties concerned, and

appeal(ing) to the administering Powers to continue to give their full support to the Special Committee on Decolonisation);

10. Urg(ing) Member States to contribute to the efforts of the United Nations to usher in the twenty-first century in a world free of colonialism, and call(ing) upon them to continue to give their full support to the Special Committee (*on Decolonisation*) in its endeavours towards that noble goal;

11. Invit(ing) the specialized agencies and other organizations of the United Nations system to initiate or to continue to take all necessary measures to accelerate progress in the social and economic life of the Territories;

12. Request(ing) the Special Committee (on Decolonisation) to continue the examination of the question of the small Territories, to recommend to the General Assembly the most suitable steps to be taken to enable the populations of those Territories to exercise their right to self-determination, and to report thereon to the Assembly at its fifty-first session. [126]

The Bermuda section of the 1995 resolution "(n)ot(ed) the results of the independence referendum held on 16 August 1995," and "the different viewpoints of the political parties of the Territory on the future status of the Territory," and also recognised "the measures taken by the Government to combat racism and the plan to set up a Commission for Unity and Racial Equality," The section also took note of "the closure of the Canadian base in 1994 and the announced plans of the United Kingdom of Great Britain and Northern Ireland and the United States of America to close their respective air and naval bases in Bermuda in 1995." [127]

In 1997, the Bermuda section of the two omnibus resolutions, in March and December respectively, took note of the "intended closure of the foreign military bases and installations in the Territory," and referred to "the statement made in October 1995 by the Finance Minister on the transfer of those lands for development projects." Accordingly, the resolutions requested the AP "to elaborate, in consultation with the territorial Government, programmes of development specifically intended to alleviate the economic, social and environmental consequences of the closure of certain military bases and installations in the Territory."

The resolution also requested the AP "to keep the Secretary-General informed of the wishes and aspirations of the people regarding their future political status." [128] The second 1997 resolution recognised in the general section that "in the decolonization process there is no alternative to the principle of self-determination as enunciated by the General Assembly in

[126] See A/RES/50/38A-B of 6 December 1995.
[127] *id/*
[128] See A/RES/51/224 of 27 March 1997. The resolution of the 51st session of the UN General Assembly was delayed in its adoption until the Spring of 1996.

its resolutions 1514 (XV), 1541 (XV) and other resolutions." This served to reinforce the organic link with the human rights conventions earlier referenced. [129]

The 1998 resolution on NSGTs addressed the question of the method by which territories can express their view on political evolution. In this connection, the resolution indicated that "the wishes and aspirations of the peoples of the Territories should continue to guide the development of their future political status(,) and that referendums, free and fair elections and other forms of popular consultation play an important role in ascertaining the wishes and aspirations of the people."[130] The resolution also "welcom(ed)" the "stated position of the Government of the United Kingdom of Great Britain and Northern Ireland that it continues to take seriously its obligations under the Charter to develop self-government in the dependent Territories," and called on the AP in cooperation with the locally elected Governments to ensure that their constitutional frameworks continue to meet the wishes of the people, with emphasis that "it is ultimately for the peoples of the Territories to decide their future status."

The 1998 text went further to emphasise that "any negotiations to 1) determine the status of a Territory must not take place without the active involvement and participation of the people of that Territory," 2) to note "the particular circumstances that prevail in the Territories concerned, and 3) to encourage the political evolution in (the territories) towards self-determination. [131] The Bermuda section of the 1998 resolution repeated references to the results of the 1995 referendum on independence, took note of the "measures taken by the Government to combat racism and the plan to set up a Commission for Unity and Racial Equality," and also referenced "the closure of the foreign military bases and installations in the Territory." In reference to military installations, reference was made to the October 1995 "statement by the Finance Minister on the transfer of (military) lands for development projects." The Bermuda section also:

> (R)equest(ed) the AP, bearing in mind the views of the people of the Territory ascertained through a democratic process, to keep the Secretary-General informed of the wishes and aspirations of the people regarding their future political status;
>
> Call(ed) upon the administering Power (AP) to continue its programmes for the socio-economic development of the Territory;
>
> Request(ed) the administering Power to elaborate, in consultation with the territorial Government, programmes specifically intended to alleviate the economic, social and environmental consequences of the closure of the military bases and installations of the United States of America in the Territory. [132]

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[129] See A/RES/52/77 of 10 December 1997.
[130] See A/RES/53/67 of 3 December 1998.
[131] *id/*
[132] id/

The general section of the 1999 omnibus resolution applicable to the ten I-NSGTs expressed the view that "any negotiations to determine the status of a Territory must not take place without the active involvement and participation of the people of that Territory," and called upon the APs "to enter into constructive dialogue with the Special Committee (*on Decolonisation*) before the fifty-fifth session of the General Assembly to develop a framework for the implementation of the provisions of Article 73 of the Charter and the Declaration on the Granting of Independence to Colonial Countries and Peoples for the period beyond 2000." [133]

The Bermuda section of the 1999 resolution took note of "the comments made by the administering Power in its …White Paper on Partnership for Progress and Prosperity: Britain and the Overseas Territories," and "request(ed) the administering Power to elaborate, in consultation with the territorial Government, programmes specifically intended to alleviate the economic, social and environmental consequences of the closure of the military bases and installations of the United States of America in the Territory."[134] In the final resolution of the first IDEC in 2000, the general section and the Bermuda-specific section repeated many of the mandates cumulatively adopted during the period. [135]

Mandate of the Second International Decade for the Eradication of Colonialism

The adoption of UN resolutions on the small territories including Bermuda from the beginning of the second IDEC in 2001 effectively maintained the accumulated directives with the incremental introduction of additional actions to be undertaken by the AP and the UN system alike. Of particular note was the link between the UN global initiatives in the economic and social sphere and the NSGTs. In this connection, the 2001 resolution made the relevant reference to "the particular vulnerability of the Territories to natural disasters and environmental degradation and (referenced)…the programmes of action of the United Nations Conference on Environment and Development, the World Conference on Natural Disaster Reduction, the Global Conference on the Sustainable Development of Small Island Developing States and other relevant world conferences." [136]

The General Assembly also introduced references to the financial sector of various NSGTs in "noting that some territorial Governments have made efforts towards achieving the highest standards of financial supervision, but that some others have been listed by the Organisation for Economic Cooperation and Development as having met the criteria of a tax haven according to its definition." The Assembly also noted that "some territorial

[133] See A/RES/54/90 of 6 December 1999
[134] *id/*
[135] A/RES/55/144 of 8 December 2000.
[136] A/RES/56/72 of 10 December 2001.It is to be noted that the UN General Assembly and the Economic & Social Council (ECOSOC) created new rules of procedure permitting those NSGTs which enjoyed associate membership in the UN regional commissions to participate in world conferences and special sessions of the UN General Assembly in the capacity of official observer. The list of these UN conferences available to NSGTs would expand exponentially. Further examination of this process is elaborated later in the current Assessment under the relevant self-governance indicator.

Governments have expressed concern about insufficient dialogue between them and the Organisation," Other references were reflective of the period, with the Assembly:

…..

> Tak(ing) note of statements made by the elected representatives of the Territories concerned emphasizing their willingness to cooperate with all international efforts aimed at preventing abuse of the international financial system and to promote regulatory environments with highly selective licensing procedures, robust supervisory practices and well-established anti-money-laundering regimes.
>
> Call(ing) for an enhanced and constructive dialogue between the Organisation for Economic Cooperation and Development and the concerned territorial Governments with a view to bringing about the changes needed to meet the highest standards of transparency and information exchange in order to facilitate the removal of those Non-Self-Governing Territories from the list of jurisdictions classified as tax havens, and request(ing) the administering Powers to assist those Territories in resolving the matter. [137]

The 2002 resolution emphasised "the usefulness both to the Territories and to the Special Committee of the participation of appointed and elected representatives of the Territories in the work of the Special Committee (*on Decolonisation*)." The text also highlighted the concerns expressed by "some Non-Self-Governing Territories" regarding… the procedure followed by one administering Power (UK), contrary to the wishes of the Territories themselves, namely, amending or enacting legislation for the Territories through Orders in Council, while recognizing that such Orders in Council were necessary for the administering Power to fulfil its international treaty obligations. [138]

The resolution also brought to light one of the key provisions of the plan of action of the first IDEC carried forth through the fourth IDEC, but remaining unimplemented as of 2022. This particular activity mandated the implementation of the " plan of action for the Second Decade in particular through the development of work programmes for the decolonization of each Non-Self-Governing Territory, on a case-by-case basis, including periodic analyses of each Territory and the review of the impact of the economic and social situation on the constitutional and political advancement of the Territories. [139]

With respect to the Bermuda component of the resolution, the General Assembly (w)elcome(d) the agreement reached in June 2002 between the United States of America, the United Kingdom of Great Britain and Northern Ireland and the Territory formally transferring the former military base lands to the territorial Government, and the provision of financial resources to address some of the environmental problems", and "(a)lso welcome(d) the

[137] *id/*
[138] See A/RES/57/138A of 11 December 2002.
[139] id/

accession of the Territory to associate membership in the Caribbean Community. [140] These themes were repeated in 2003 and in subsequent resolutions during the DDP. By 2004, the Bermuda section of the resolution contained a decision by the General Assembly to:

> …closely follow the territorial consultations on the future status of Bermuda and to facilitate assistance to the Territory in a public educational programme, if requested, as well as to hold consultations and to make all necessary arrangements to have a visiting mission to the Territory. [141]

In 2005, the General Assembly added specific reference in its resolution to the role of relevant human rights bodies to the self-determination process of the NSGTs in its formal "recognition" of the Human Rights Committee mandate under the International Covenant on Civil and Political Rights (which) "reviews the status of the self-determination process of small island Territories under examination by the Special Committee (*on Decolonisation*)." Relatedly, the resolution also repeated its reaffirmation that "in the process of decolonization, there is no alternative to the principle of self-determination, which is also a fundamental human right, as recognized under the relevant human rights conventions"; [142] The resolution:

> (R)equest(ed) the Special Committee to collaborate with the Human Rights Committee within the framework of its mandate on the right to self-determination as contained in the International Covenant on Civil and Political Rights with the aim of exchanging information, given that the Committee reviews political and constitutional developments in many of the (NSGTs) that are under review by the Special Committee. [143]

The Bermuda section of the 2005 resolution took note of "the statement of the Premier of Bermuda in his Founder's Day address that there could never be a true democracy as long as the country remains a colony or an overseas dependent Territory, and that only with independence can national unity be forged and pride in being Bermudian fully developed." The resolution:

> (a)lso welcome(d) the dispatch of the UN Special Mission to Bermuda at the request of the territorial Government and with the concurrence of the administering Power, which provided information to the people of the Territory on the role of the United Nations in the process of self-determination, on the legitimate political status options as clearly defined in General Assembly resolution 1541 (XV) and on the experiences of other small States that have achieved a full measure of self-government.[144]

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[140] *id/*

[141] A/RES/59/134 A-B of 10 December 2004. A UN Visiting Mission was dispatched to Bermuda in 2005.

[142] See A/RES/60/117 A-B of 8 December 2005.

[143] *id*

[144] *id/*

In 2006-2008, the General Assembly in its resolution on the small territories reiterated "the need for the Special Committee (*on Decolonisation*) to ensure that the appropriate bodies of the United Nations embark actively on a public awareness campaign aimed at assisting the peoples of the Territories in gaining an understanding of the options of self-determination." The resolution also:

> (n)ot(ed) with appreciation the contribution to the development of some Territories by the specialized agencies and other organizations of the United Nations system, in particular the United Nations Development Programme, the Economic Commission for Latin America and the Caribbean, and the Economic and Social Commission for Asia and the Pacific, as well as regional institutions such as the Caribbean Development Bank, the Caribbean Community, the Organization of Eastern Caribbean States (and) the Pacific Islands Forum…" [145]

The 2006-2007 resolutions also "(r)ecogniz(ed) that the annual background working papers prepared by the Secretariat on developments in each of the small Territories, as well as the substantive documentation and information furnished by independent experts, scholars, non-governmental organizations and other independent sources, have provided important inputs in updating the present resolution." [146] The resolution went further:

> To call upon the administering Powers to participate in and cooperate fully with the work of the Special Committee in order to implement the provisions of Article 73 e of the Charter and the Declaration, and in order to advise the Special Committee on the implementation of provisions under Article 73 b of the Charter on efforts to promote self-government in the Territories;
>
> To take note of the constitutional reviews in the Territories administered by the United Kingdom of Great Britain and Northern Ireland, and led by the territorial Governments, designed to address the internal constitutional structure within the present territorial arrangement;
>
> To request the Special Committee to collaborate with the Permanent Forum on Indigenous Issues and the Committee on the Elimination of Racial Discrimination, within the framework of their respective mandates, with the aim of exchanging information on developments in those Non-Self-Governing Territories which are reviewed by these bodies. [147]

With specific reference to Bermuda, the 2006-07 resolutions referenced the "conclusions in the report of the United Nations Special Mission to Bermuda which visited the Territory in March and May 2005, welcome(d) the 2005 report of the Bermuda Independence Commission which provide(ed) a thorough and meticulous examination of the facts surrounding independence, and (took) note of the plans for public meetings and the presentation of a Green Paper to the House of Assembly followed by a White Paper outlining

[145] See A/RES/61/128 A-B of 14 December 2006. See also A/RES/62/118 A-B of 17 December 2007.
[146] *id/*
[147] *id/*

the policy proposals for an independent Bermuda." [148] The subsequent 2008 resolution "regret(ed) that the plans…(had) so far not materialized."[149]

The 2008 resolution went on to reiterate earlier references to the necessity of "negotiations to determine the status of a Territory (which) must take place with the active involvement and participation of the people of that Territory, under the aegis of the United Nations (*emphasis added*), on a case-by-case basis, and that the views of the peoples of the Non-Self-Governing Territories in respect of their right to self-determination should be ascertained."

This reference to the role of the UN in the self-determination process of the remaining NSGTs served to confirm the relevance of international law to the process. **[150]** Emphasis was also reiterated on the participation of the NSGTs which were associate members of the UN regional economic commissions in the UN world conferences and special sessions. [151] (*The 2013 resolution would later welcome the entry of Bermuda as an associate member of the Economic Commission for Latin America and the Caribbean in 2012*). The 2008 resolution also elaborated on an earlier theme by emphasising:

> …the importance of implementing the plan of action for the Second International Decade for the Eradication of Colonialism, in particular by expediting the application of the work programme for the decolonization of each Non-Self-Governing Territory, on a case-by-case basis, as well as by ensuring that periodic analyses are undertaken of the progress and extent of the implementation of the Declaration in each Territory, and that the working papers prepared by the Secretariat on each Territory should fully reflect developments in those Territories. [152]

The 2008 resolution went on to (r)equest the Special Committee (*on Decolonisation*) to collaborate with the (UN) Economic and Social Council and its relevant subsidiary intergovernmental bodies, within the framework of their respective mandates, with the aim of exchanging information on developments in those Non-Self-Governing Territories which are reviewed by those bodies." This proposed action recognised the organic link between self-determination and social and economic development of the NSGTs. The 2008-2011 resolutions on the small territories, with specific reference to Bermuda, repeated earlier

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[148] *id/*

[149] See A/RES/63/108 A-B of 5 December 2008.

[150] *id/*

[151] See Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992, vol. I, Resolutions Adopted by the Conference (United Nations publication, Sales No. E.93.I.8 and corrigendum); Report of the World Conference on Natural Disaster Reduction, Yokohama, Japan, 23–27 May 1994 (A/CONF.172/9), chap. I; Report of the Global Conference on the Sustainable Development of Small Island Developing States, Bridgetown, Barbados, 25 April–6 May 1994 (United Nations publication, Sales No. E.94.I.18 and corrigenda), chap. I; Report of the International Conference on Population and Development, Cairo, 5–13 September 1994 (United Nations publication, Sales No. E.95.XIII.18), chap. I, resolution 1, annex; Report of the United Nations Conference on Human Settlements (Habitat II), Istanbul, 3–14 June 1996 (United Nations publication, Sales No. E.97.IV.6), chap. I, resolution 1, annex II; and Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August–4 September 2002 (United Nations publication, Sales No. E.03.II.A.1 and corrigendum), chap. I, resolution 2, annex.

[152] 149 *supra note.* See also A/RES/64/104 A-B of 10 December 2009, A/RES/65/115 A-B of 20 December 2010, and A/RES/66/89 A-B of 9 December 2011.

mandates albeit with a decided lack of implementation of the repeated requests to the UN Secretary-General for a report to the General Assembly on a regular basis on the implementation of decolonisation resolutions. The absence of a report was inconsistent with the dissemination of information on decolonisation to the people of the territories themselves.

Mandate of the Third/Fourth International Decades for the Eradication of Colonialism

The year 2011 marked the beginning of the Third IDEC with specific reference to Bermuda in the annual resolutions. Hence, in the 2012 and 2013 texts the General Assembly:

> (R)ecall(ed) the statement made by the representative of Bermuda at the Pacific regional seminar held in Quito from 30 May to 1 June 2012 that the circumstances of the Territory with respect to the issue of independence are unique and that its dream of independence persists, albeit temporarily deferred, as the pursuit of independence is not a current top priority for the people of Bermuda.[153]

The 2014 and 2015 texts expressed "concerns regarding good governance, transparency and accountability in the Territory, including with respect to external election campaign financing originating in a neighbouring country, which led the Premier to resign in May 2014 with a view to maintaining integrity and confidence in the political landscape."[154] In 2016 the General Assembly finally forewent the omnibus resolution of ten small territories and instituted individual territorial resolutions. The subsequent annual resolutions on Bermuda between 2016 through 2021 repeated the mandates referenced in the previous omnibus resolutions on ten small territories with the inclusion of the specific references contained in the Bermuda section of the earlier texts. [155]

The 2021 version marked the first of the annual resolutions of the Fourth International Decade for the Eradication of Colonialism (IDEC). [156] The cumulative resolutions from the first through third IDECs, and into the present fourth IDEC, contained accepted mandates of the international community in furtherance of a genuine self-determination process and valid decolonisation through which Bermuda and other NSGTs would attain the full measure of self-government (FMSG) pursuant to the UN Charter.

These resolutions coincided with the three phases of Decolonisation Engagement (1946-1960), Decolonisation Acceleration (1961-1990) and Decolonisation Deceleration (1991-present); and provide an extensive array of actions to be undertaken by the AP and the UN system alike to advance the process. Within this context of political advancement, Chapter 5 of the present Assessment explores the evolution of dependency governance in Bermuda.

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[153] See A/RES/67/132 of 18 December 2012 and A/RES/68/95 A-B of 11 December 2013.
[154] See A/RES/69/105 of 5 December 2014 and A/RES/70/102 of 9 December 2015.
[155] See A/RES/71/110 of 6 December 2016, A/RES/72/98 of 7 December 2017, A/RES/73/119 of 7 December 2018, A/RES/74/100 of 13 December 2019, A/RES/75/109 of 10 December 2020, and A/RES/76/92 of 9 December 2021.

[156] See A/RES/75/123 of 10 December 2020.

V. Bermuda Dependency Governance

The preceding chapter of the present Assessment sets forth a comprehensive international mandate for action to be undertaken in furtherance of the self-determination and decolonisation of Bermuda. The current chapter examines the successive levels of dependency governance of Bermuda and the relevant political and constitutional developments beginning with the early European colonial period through the current British dependency arrangement which is recognised as preparatory to the FMSG under the UN Charter.

A. Early European Colonial Period

The document "Black History in Bermuda Timeline" (CURB, 2020) published by Citizens Uprooting Racism in Bermuda (CURB) in 2020 provides an informative chronological account of the beginning of the Bermudian society in proper historical context:

> **'DISCOVERY'**
>
> **1505** Earliest known discovery of Bermuda by Bermuda's namesake – Juan de Bermudez. He was a Spanish slave trader and former shipmate of the world's most notorious colonizer and Native American-enslaver, Christopher Columbus. When de Bermudez discovered the island, he was on his way back to Spain after delivering a cargo of enslaved Africans to the colony of Hispaniola. De Bermudez briefly explored the island, deposited hogs on it for a food source for future Spanish vessels, then marked it on his charts for future Spanish settlement. Therefore, our island home of Bermuda first entered the consciousness of Europeans during the Slave Trade and holds the name of a slave trader.
>
> (*J. Maxwell Greene, mainly taken from the works of Maj. Gen. J. H. Lefroy*).

The US State Department in a 2007 information circular described 'discovery' in rather more sanitised terms *sans* reference to the 'notoriety' of the slave trading exploits of 'Bermudez the 'conquistador' and subsequent events:

> Bermuda was discovered in 1503 by a Spanish explorer, Juan de Bermudez, who made no attempt to land because of the treacherous reef surrounding the uninhabited islands. In 1609, a group of British colonists led by Sir George Somers was shipwrecked and stranded on the islands for 10 months. Their reports aroused great interest about the islands in England, and in 1612 King James extended the Charter of the Virginia Company to include (Bermuda). [157]

It was elaborated in the CURB historical account that:

> In 1619 (a)lmost 200 enslaved Africans were loaded onto a Portuguese ship the Säo Joäo Bautista, headed from Angola across the Atlantic to the Mexican port of Vera Cruz. Two English privateer ships(,) The Treasurer and The White Lion, both who had

[157] *Diplomacy in Action Bermuda* (04/07), U.S. Department of State.

> license to capture Spanish ships, boarded the Säo Joäo, taking off some of its cargo including some 50 - 60 slaves to be sold in Virginia. When The Treasurer captained by Capt. Daniel Elfrith arrived in Point Comfort he discovered that the Duke of Savoy had made peace with Spain. Fearful that he might be charged as a pirate and hung, Elfrith quickly set sail for Bermuda. Upon arrival the governor, Samuel Butler, seized the 29 slaves who were sold off to various Bermudian colonists, whereas most of the rest were put to work on behalf of the [Bermuda] Company.

Thus, the system of chattel slavery was introduced shortly after the establishment of the colony, and as the late Bermudian scholar-political leader Walton Brown Jr. pointed out, the slave era was the "point of departure for comprehending the relation between blacks and whites. (Brown Jr., 2011: 8). In examining the scenario in this early Pre-Emancipation Governance (PEG) period, the running of the territory took on a decidedly overt racial tone. As the CURB chronology recounted:

> The Bermuda Assembly has the notoriety of passing the earliest set of laws anywhere in the British Colonies to control blacks, i.e. an Act of the Second Assembly #12 to suppress black people entitled "An Act to Restrayne the insolences of the Negroes", which severely restricted the freedom of blacks. The Act forbade blacks to buy, sell or barter or exchange tobacco or any other produce without the consent of their masters;
>
> An Act "against the ill keeping of the ferrie" made it illegal to row anyone between Bailey's Bay and St. George's on Sunday. Those who were caught committing this crime would be whipped. Since many blacks used this crossing to earn extra money, this law had the effect of further limiting the amount of financial freedom enjoyed by free or enslaved blacks in Bermuda;
>
> …..
>
> "By 1626 'Chattel Slavery' was established in Bermuda… with the decree of Governor Henry Woodhouse's Council that the offspring of any slave-mother was itself to be considered a slave and to be treated as a chattel to be owned by the mother's master, or to become property of the Bermuda Company (CURB, 2020).

Brown contrasted the "highly paternalistic slave society" that would evolve in Bermuda against the nature of the slave system in the plantation economies in the Caribbean "that would continue to have some resonance in the post slave era." Brown observed:

> In the Bermudian context, slavery can be seen primarily as an economic system designed to better exploit those workers who were enslaved. Paternalism, meshed with racism, was the ideological apparatus implemented to justify the degradation of people of African descent. The effect this system had on blacks was considerable and long-lasting. Paternalism inhibited the creation of unity among the enslaved, either as blacks or as workers…;
>
> (D)espite the areas of cultural autonomy slaves had managed to create for themselves – in religion, in song, in dance and in stories – the historical baggage left by paternalism has prevented slaves, and the freed generation after them, from fully utilizing what individual strength they had generated…(The) collective weakness of blacks/workers

> meant the white ruling elite had almost a free hand in reorganizing society at emancipation to guarantee its continued hegemony. (Brown, 2011: 9-10).

Brown pointed to "four given and inherited characteristics" (which) have dominated and contoured the (Bermudian) socio-economic and political landscape" (with) the first concerning Bermuda's colonization as a settler colony rather than a plantation colony, or colony of exploitation." (Brown Jr., 2011: 1). As Brown observed:

> Unlike almost all of Bermuda's Caribbean neighbours to the South, the island was a settler society rather than the one based on the much more common plantation system. In this respect, Bermuda's early history shares something with the era of European migration to Canada and Australia: large numbers of English men and women left their homeland, either voluntarily or otherwise, hoping for a prosperous future in what to them was virgin territory (Brown, 2011: 2-3).

This process of settler colonialism is described as a method by which "colons emigrate(d) with the expressed purposes of territorial occupation and the formation of a new community (Wiersma, 2012)." The Caribbean scholar Gordon K. Lewis intimated that the evolution of the Bermudian society via this approach was considerably influenced by those settlers who were "the Loyalist refugees fleeing from the American revolution with its sense of property and the psychology of (American) Southern slavery)" (Lewis, 2004: 324). Lewis also noted that "the slave population was proportionately smaller, relative to the demographic character of the sugar islands, and the seafaring life – always sociologically, an anti-authoritarian existence – gave the coloured people a degree of freedom which would have been unattainable had they been tied strictly to the land (Lewis, 2004: 326).

Brown surmised that "(t)here is considerable evidence to suggest that the island was colonized to facilitate English colonial expansion into North America and the Caribbean for a short period (1612-1624) when the English lacked a secure footing (with) Bermuda offering a natural defence – a string of reefs surrounding the island – close proximity to the North America coastline, and an ideal location along shipping routes" (Brown, 2011: 3). The CURB chronology noted that the 1670 population was estimated at 8,000 which included an enslaved population of about 25 per cent. (*By 1730, the population was estimated at 8,774 of which 5,086 were white and 3,688 were black -CURB).*

Concerns for the increasing population of blacks precipitated a formal ban on bringing new enslaved Africans to Bermuda via the Act of 1675. The proliferation of laws and regulations were promulgated from 1687 through 1761 was instructive, and was specifically aimed at controlling the growth of the black population in the context of the overall governance of the territory in the pre-emancipation era. These measures are illustrative, as outlined below:

Laws/Regulations governing Black Population 1687-1761 *

- 1687 - A law prohibiting the baptism of blacks, both free and slave.
- 1690 - An Act to Prevent Buying and Selling or Bargaining with Slaves.
- 1704 - An Act 'against the Insolency of Negroes and other Slaves for attempting or getting white women with Childe, and for furnishing all such white women.'
- 1706 - An Act to impose a tax of forty shillings a head on all Negroes or slaves who were brought to the island.
- 1730 - An Act for the security of the subject, to prevent the forfeiture of life and estate upon killing a Negro or other Slave. [*Protecting slave owners from death or loss of property if they killed a slave*].
- 1730 - An Act for the further and better regulating Negroes and other Slaves. (controls/reprisals).
- 1730 - An Act extirpating all free Negroes, Indians and Mulattoes. An Act requiring all freed slaves to leave Bermuda or be sold into slavery.
- 1730 - An Act "laying an Imposition on Negroes Imported and other slaves imported into these Islands" is passed expressing concern at the "great quantities of Negroes and slaves" on the island, levying £5 on all imported blacks to the island "except those that may be imported from Africa."
- 1743 - An Act to Prevent Buying, Selling or Bargaining with Negroes and other slaves.
- 1761 - The Council and Assembly enacted legislation to banish free Negroes and mulattoes from Bermuda. Those who did not leave were to be sold.

*** CURB *Black History in Bermuda timeline spanning 5 centuries,* Citizens Uprooting Racism in Bermuda, (Hamilton) (2020).**

Meanwhile, Lewis commented on other influences on the emerging demographic composition of Bermuda and its impact on the developing dependency governance arrangement of the territory:

> The American adventurers who flocked to (Bermuda) were basically anti-democratic: the Tory Royalist of 1776, the Southern secessionist, (and) the Chicago-style 'bootlegger.' There had been early expectations on the part of the American revolutionary leaders that the Bermudian colonialists would join them…but (George Washington's appeal (for such support) underestimated the deep conservatism of the white colonialist mentality…;
>
> …..

> The machinery of class slavery that the…oligarchies put together, untouched in its essentials until the 1960s, offers a fascinating study in the mechanics of colonial society. In its economic aspects the oligarchies, by means of their stranglehold on both the import-export trade and the credit system, held the majority at their mercy …All of this was cemented, politically, by the remarkable survival of the archaic constitutional system of the Old Empire up until only yesterday (Lewis, 2004: 329-330).

It is the evolution of this constitutional system of dependency governance which is examined below.

B. Appointed Dependency Governance Period (ADG)

This expansion of the Virginia Charter to include Bermuda in 1612 initiated the period of Appointed Dependency Governance (ADG) in the form of Proprietary Governance (PG) as the island arose as a settler colony, and was the oldest continuously inhabited English-speaking settlement in the Western Hemisphere. Bermuda was the second permanent English colony established as an extension of Jamestown in Virginia. The first appointment was of a non-resident governor (Sir Thomas Smith), with a resident Deputy Governor (Richard Moore). In its 2005 analysis, the Bermuda Independence Committee recounted that "(i)n 1620 the first Parliament was held after the Crown granted the colony limited self-government" (Bermuda Independence Commission, 2005: 9).

Proprietary Dependency Governance (PDG) provided for an advisory body of settlers known as the 'Counsell of Six' who facilitated the governance of the colony. Bermuda was administered under Royal charters, initially by the Virginia Company, and later by the Somers Isles Company which appointed governors sent from London with the added appointment of some 24 assistants. (*By the 1630s, the governors were appointed by the company from the ranks of the settlers resident in Bermuda*). This early period saw the then-incumbent Governor, Nathaniel Butler, summoning a General Assembly in 1620 in the town of St. George. In this connection:

> The Assembly, the forerunner of Bermuda's present House of Assembly, included two male representatives ("chosen by voice") from each of the Tribes (now designated Parishes) into which the colony was then divided. These elected representatives met jointly with the Governor and his Council to discuss local problems, administer justice and to formulate legislation, which, when finally agreed to, was to be forwarded to England for approval. [158]

By 1684, the Charter was revoked, ending a 72-year period of Proprietary Governance (PG) with Bermuda entering a new phase of ADG under the direct control of the British Crown as a Crown Colony. It is generally concluded that genuine political power remained with the appointed Council of Bermuda composed of members of Bermuda's wealthy merchant class. Upon the assumption of power in 1684, the Crown maintained the governance structure that had previously obtained under Proprietary Dependency Governance

[158] Website of the *Bermuda Parliament*, http://parliament.bm/about/view, accessed 15 July 2022.

(PDG) with an elected Assembly under strict conditionality of eligibility for holding office, and overseen by an unelected Governor on behalf of direct Crown rule. There was also a Privy Council (*comprised of the chief justice, selected civil servants, and other appointees*), also known as the Governor's Council, and further, a Legislative Council whose functions were later taken up by the Cabinet and Senate.

Subsequently, the Treaty of Union between England, Wales, and Scotland formed the Kingdom of Great Britain in 1707. (*The addition of the Kingdom of Ireland to the Kingdom of Great Britain in 1801 formed the United Kingdom of Great Britain and Ireland. In 1922, much of Ireland seceded from the UK to form an independent state and the name was updated to the United Kingdom of Great Britain and Northern Ireland*). According to the Bermuda Parliament website:

> Since 1684, when direct administrative control of Bermuda's affairs was transferred to England, Bermuda's Governors, representing the authority of the Crown and acting on instructions from the mother country, have played a major executive role in Bermuda until the 1960's when, following the Constitutional Conference in 1966, Bermuda moved from a representative to a responsible form of government, a change which became effective after the 1968 general election. [159]

Meanwhile, a period of Military Dependency Governance (MDG) was initiated during the American Revolutionary War for independence of the thirteen original colonies in North America between 1775 and 1783, with Bermuda becoming a major British naval base with a substantial military garrison. Bermuda was a principal launching point for British attacks during both the American Revolutionary War, and the War of 1812 between the UK and US (1812-1814) during which time a 'Corps of Colonial Marines' was formed. Historian Keith Archibald Forbes described the role of African descendants during the period in the context of a most detailed military history of Bermuda:

> The Corps of Colonial Marines saw extensive military action from Canada to Georgia in the years 1814 to 1816. These former slaves, who became known from where they were from originally as America Negroes or Florida Negroes or King's Negroes, or French slaves, had all sought refuge under the British flag, Many had extensive local knowledge of tidal creeks and riverine routes of the US South during that period. Because of that knowledge, they participated in numerous battles, skirmishes, and raids during the War of 1812. In 1814 they were sent to Bermuda;
>
> In 1821 the first slave register from Bermuda was prepared and sent to London, in compliance with the British Government in London Order of 1819. It was quite detailed. It showed numbers, ages, colors, family relationships, occupations and places of birth of all slaves in Bermuda. By then, the vast majority of living slaves listed were born in Bermuda. Many of the Bermuda-born slaves were in their sixties and seventies.

[159] *id.* Note that the British Government had abolished the slave trade in the British Empire in 1807, but did not end slavery until the adoption of the Slavery Abolition Act by the British Parliament in 1833 with effect in 1834.The British Government required that registers be maintained to ensure that the slave trade did not continue illegally. This ended the pre-emancipation period but initiated an elaborate system of post-emancipation racial/class discrimination.

There were slaves listed who were born in Africa, the Bahamas, Madeira, Turks Island and from most of the West Indian islands. This first register (1821) listed 5,242 slaves – 2,620 males and 2,622 females;

…..

More than 700 freed black Americans, refugees from the War of 1812-14, were bought initially to Bermuda, for trans-shipment to Trinidad where they found temporary sanctuary. Many of the men were enlisted into the 3rd Colonial Battalion of Royal Marines and on their arrival in Trinidad were organized into military-style Company Villages…In 1827, a second Bermuda slave register was prepared and sent to London (in 1830) in compliance with the 1819 directive of the British Government in London. [160]

Table 9. Total enslaved persons in Bermuda 1821-1833

YEAR	MALE	FEMALE	TOTAL ENSLAVED PERSONS
1821	2620	2622	5242
1830	2107	2264	4371
1833	1848	2319	4277

Source: Bermuda's History from 1800 to 1899.
Note: *The decrease in the number of enslaved males between 1830 and 1833 has been attributed by some scholars to the sale of enslaved males to the US in advance of emancipation owing to price considerations.*

Consistent with the pre-emancipation period, the Bermuda Legislature adopted an act in 1827 'to Ameliorate the Condition of Slaves and Free Persons of Colour.' This act intended to define the limitation of rights of the black population, providing for 'permission' to own property, but with severe conditionality on the right to vote or stand for elections. Hence, this persistent limitation on the political rights maintained the territory in the status of appointed dependency governance (ADG) which continued *en force*, and was further 'enhanced' after the Slavery Abolition Act was adopted by the British Parliament in 1833 (with effect in 1834). Accordingly:

(L)egislation was passed (*by the Bermuda Assembly in 1834*) which virtually doubled the property (ownership) value qualifications for voting, for running as candidates for House of Assembly seats(,) and for municipal and parochial offices (and serving as jurors). This across the board increase in property value voting requirements made it quite clear that the Legislature of the day wanted to protect the status quo by restricting the opportunities for the newly-emancipated slaves (and those Blacks who had been

[160] See Keith Archibald Forbes *Bermuda's History from 1800 to 1899*, http://www.bermuda-online.org/history1800-1899.htm accessed 1st August 2022.

> free citizens prior to Emancipation) to become directly involved in the management of Bermuda's affairs. This was borne out by an official dispatch from Governor Chapman, which highlighted the injustice of the new law by observing that, with the new legislation in place, there would be only thirty-four eligible black voters and only three Blacks who would be qualified to run as candidates in general elections. Those Whites who did not own real estate of the required value also suffered from a political impotence induced by the restricted property-based franchise, the number of qualified electors at that time (and well into the twentieth century) amounting to a very small percentage of the total adult population…The voting qualification was raised from a property value of £40 to £100, and to run as a member of the House, from £200 to £400. [161]

It was noted that "all the members of the Parliament were slave-owners, (and) after emancipation of slavery in 1834 the former slaves had to pay taxes." (Kamarakafego, 2002: 110). In 1881 there were slightly more than eight hundred registered voters in Bermuda at this time, a statistic which underscored the fact that the franchise was restricted to a privileged few. By 1841, further legislation was brought, further constraining the exercise of political rights by the disenfranchised:

> (T)he Bermuda Legislature enacted the Currency Act, under which the local pound, previously at 40% discount to the London pound, was raised to parity. Bermuda formally adopted the United Kingdom pound sterling as the official legal tender. As a result, the previous property values legislated in 1834 for voting in general elections and vying for representation in the House of Assembly were now expressed in pounds sterling – sixty pounds sterling for the right to vote (previously one hundred pounds in Bermuda currency) and two hundred and forty pounds sterling to qualify as a candidate (previously four hundred pounds in Bermuda currency). The conversion to pounds sterling also impacted on the property qualifications in elections for the offices of Mayor, Aldermen and Common Councillors in the municipalities of Hamilton and St George's and for positions on the parish vestries. [162]

Under these legislated limitations, Bermuda's first post-abolition election was held in 1837. The *Emancipation Bermuda* website reveals the political reality of the immediate post - emancipation period and beyond:

> Collectively, affected slave owners received £20,000,000 in compensation for their slaves, which equates to approximately £2,870,000,000 today. The enslaved received no compensation… Upon emancipation, the practice of racial segregation became the societal standard in Bermuda creating first-class and second-class citizenry along lines of race. The practice affected every sector of Bermudian society, from education, to

[161] *id/* Under these conditions, the first black member of the Bermuda Assembly, William H.T. Joell, was not elected until 1883 with the second black member, John Henry Thomas Jackson, elected in 1887.
[162] 160 *supra note.*

> healthcare, to churches, to employment and others. The intention of racial segregation was to ensure that black Bermudians remained in a subordinate position to the island's established white ruling class. This lasted for over a century until 1971, when the island's public schools were formally desegregated by law. [163]

The Assembly also adopted a measure in 1842 to accelerate the settler colonialism process earlier referenced by further encouraging emigrants to Bermuda from the United Kingdom. From 1864, there were also efforts by the Bermuda Government to import agricultural labor from Madeira, the Azores, Britain, Germany and Sweden but Forbes regarded these efforts as less than successful.

Forbes recounted that in 1895 "(a) petition was presented to the Colonial Assembly (as the Bermuda Parliament or House of Assembly was then called) signed by 172 women requesting that the ability to vote in General and other Elections be extended to them (via a) propose(d)…Women's Franchise Bill (which)…passed in the Lower House (but)… was defeated in the Legislative Council by a single vote." [164] Accordingly:

> In two successive years (1895-1896), there were attempts in Bermuda to pilot legislation through Parliament for the express purpose of extending the vote to property-owning women. On both occasions, the franchise Bill was rejected by the Legislative Council by a narrow margin after having passed the House of Assembly. [165]

Brown's analysis on subsequent initiatives to gain the vote for women was instructive:

> Although Bermuda's women had always been excluded from political life there would be no direct challenge to the restrictions confronting women until the early part of the 20th Century when the Bermuda's Women's Suffrage Society (BWSS) was formed and spearheaded the struggle for the vote. Founded by Gladys Misick-Morell, the BWSS began in the 1920s to press in earnest for an extension of the franchise to include women who met the property qualification. Most of the men in the House treated the demands of these women with dismissive contempt…But that was not the only consideration. Also important was the fear that granting voting privileges for women would lead to demands from workers for an even wider extension of the franchise;
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> …..
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> These "other extensions" were, of course, a direct reference to the working people of Bermuda. The property-based franchise excluded most of the population from electoral participation; and during an era when the struggle for such rights was successful elsewhere in the British Empire local workers would demand the same

[163] See *Emancipation Bermuda* website https://emancipationbermuda.com/ accessed 10th August 2022.
[164] 160 *supra note)*
[165] 160 *supra note)*

> rights. A clear connection between the Sufragettes' cause and the struggle of labour was made by the island's only black/worker newspaper (Brown, 2011: 16-17).

In this vein, Brown referred to an editorial of The Recorder newspaper which made the organic link between women's suffrage movement and the extension of political rights to the broader Bermudian society, and which insisted that "our rights as citizens within the British Commonwealth of Nations (be) fully recognized." Brown referenced the quite revealing British response to the movement towards universal political rights in the reaction of the-then Bermuda Attorney General:

> I think the sole reason why we have representative institutions in this Colony and have not gone the way of great many sister Colonies is due to the fact that we are not a democratic country. We are an oligarchy…I hope that there would never be anything approaching adult suffrage or manhood suffrage in this country… (*emphasis added*) (Brown, 2011: 17).

The prevailing posture of Bermuda's Military Dependency Governance (MDG) earlier referenced was extended to the American Civil War between 1861 and 1865 during which time Bermuda served as "an important stop for Confederate blockade-runners during the American Civil War(,) turn(ing) a tidy profit running rum during the Prohibition years." [166] Given the geographic proximity to the southern secessionist states of the US, coupled with the proclivity towards support for the South's ideological position in the war, Bermuda was the base for the supply of food and armaments for the confederate forces by running the Union's sea blockade. To this end:

> A steady stream of fast-running ships from the South clandestinely skirted the Union blockade, passing through St. George's carrying cotton from Charleston, South Carolina and Wilmington, North Carolina for English manufacturers; they made the return journeys freighted with European armaments. Bermuda was both a transshipment point where cotton was directly exchanged for British weapons warehoused here and a refueling depot for Confederate blockade runners making transatlantic runs… Bermuda was openly on the side of the Confederacy, to the consternation of (neutral) Britain. [167]

Whilst the Bermuda merchant class benefitted heavily from their support for the South in the US Civil War in 1865, the opposite applied to many of the African descendants. Following the end of the war it was determined that black Bermudians had contributed

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[166] S*mithsonian Magazine* (2007) Bermuda History and Heritage, https://www.smithsonianmag.com/travel/bermuda-history-and-heritage-14340790/#:~:text=First%20discovered%20in%20the%20early,its%20way%20to%20Jamestown%2C%20Virginia. Accessed 17 July 2022.

[167] 160 *supra note.*

significantly to the conflict on behalf of the North through their participation in the US Colored Infantry:

> US Military records reveal that at least 40 Bermudians of African descent served in the Union navy. Despite its small size, Bermuda was among the foreign nations with the highest number of black sailors in the Union Navy. Bermuda's numbers exceeded many South American and Caribbean nations that had larger African descent populations. In comparison to Jamaica and Canada, Bermuda had a higher representation of sailors per each country's population size. Many of the Union foreign sailors of African descent like those from Bermuda were already experienced seamen prior to their enlistment. At least half of the 40 Bermudian sailors reported having nautical occupations at the time of their enlistment. Some may have already been in the American Navy prior to the outbreak of the war so their enlistment may actually have been a re-enlistment. It is worth noting that of the known Bermudians who served in the Union Army, most were sailors prior to their enlistment.

Throughout the three wars, Bermuda was dominated by a militarisation of significant proportion and complexity in terms of support for the British loyalist forces in the American Revolutionary War and the War of 1812, respectively, and subsequently in support of the confederate forces in the US Civil War even as the African descendants contributed significantly to the other side by fighting with the US union forces as previously mentioned. During this extended period of MDG, the British resorted, with a few exceptions, to the naming of senior military or naval officers to serve as governor and commander-in-chief. (*This would end in 1964 with the return of appointed civilian governors from London through to present day).*

Hence, the governance of Bermuda moving forward from 1888 was via Letters of Patent given to the appointed governors which provided for the UK to make new laws or apply existing British common law to the territory. (*These Letters served as the forerunner of the constitutional orders which would be put into effect with the Constitutional Order of 1968).* Meanwhile, few operational changes were made in the overall governance of Bermuda from its organisational origins as a polity:

> The framework of government introduced under the Somers Islands Company's regime in 1620 and extended under British control from 1684 onwards remained virtually intact until 1968 following a Constitutional Conference held in London two years earlier. The only major structural change before that date being the replacement of the Governor's Council in 1888 with two newly created bodies - an Executive Council and a Legislative Council. The Executive Council was renamed the Cabinet in 1973 and the title of the Legislative Council was changed to the Senate in 1980.
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> As a result of these changes in 1888, the executive branch of Government consisted of the Governor and the Executive Council, which included senior civil servants and five

> or six representatives from the House of Assembly, all of whom were appointed by the Governor. The Legislature has been bicameral since 1888; the Legislature then consisted of an elected Lower House (The House of Assembly) and an Upper House (The Legislative Council). The Legislative Council then comprised of civil servants and other members, all of whom were also appointed by the Governor. [168]

A number of additional historical developments would have significant implications for the political, economic and social development of Bermuda in the post-emancipation period before the advent of Elected Dependency Governance (EDG). These included the formation of the first trade union, the Bermuda Union of Teachers, in 1919; and the founding of the first successful black newspaper, the Bermuda Recorder, in 1925. The passage of legislation extending the franchise to women property owners in 1944 was finally accomplished, and was particularly noteworthy as it "eliminat(ed) any division among the property-owning class on the franchise issue (even as) "the (overall) limited franchise was seen as the major restriction to genuine social progress" (Brown, 2011: 17-18).

Subsequent highly meaningful events were indicative of the movement towards increased civil and political rights, beginning with the establishment in 1944 of the Bermuda Workers Association (BWA) which stressed the point in 1947 [169] that "almost all of the political, economic and social disabilities suffered by the inhabitants of the ancient and Loyal Colony have their foundation in the fact that the parliamentary franchise is extremely limited" (Brown, 2011: 18). As Brown recounted, "a white ruling class prepared to act boldly to defend or to advance its interests while, at the same time, barely containing its anxiety about what it believed were imminent threats from below" (Brown, 2011:18).

Such intransigence, predicated on race, class and inequality, resulted in a response from the wider Bermudian society which took the form of social protest actions during the latter part of the ADG period. Such initiatives included the BWA petition to the British Secretary of State for the Colonies calling for a Royal Commission to investigate social conditions in Bermuda with the aim of forcing the Legislature to enact labour reforms, as well as other measures including an end to the regressive taxation system, the cost of compulsory education, the exclusion of blacks from the civil service, and enforced segregation.

Brown detailed the refusal by the UK of the request for a Royal Commission on the basis of a continued reliance on the prevailing model of a Dependency Governance by Segregation (DGS). Further, the Bermuda elite regarded any such British action as an unwarranted colonial intrusion. A subsequent internal select committee of the Bermuda House was established to consider the issues raised in the BWA petition, but resulted only in

[168] See *Bermuda Parliament* website, http://parliament.bm/ accessed 3 August 2022.

[169] The establishment of the BWA in 1944 preceded the subsequent creation of the Bermuda Industrial Union (BIU) in 1947. Bermuda's first (but restricted) trade union legislation, the Trade Union and Disputes Act, was passed in 1946 but did not comply with the interests of the workers as it prohibiting the use of union funds for political purposes in a clear attempt to limit the political power of the union.

recommendations contained in its 1948 report in support of measures that would advance 'separate but equal opportunities' (Brown, 2011: 38-39). On the point of political participation, Brown provided a striking political reality of the dependency governance of the period:

> At the end of the Second World War…most Bermudians were still denied voting rights. It has been estimated that in 1946, only twelve per cent of the voting age population was eligible to vote…In addition, while black voters in 1946 had the numerical edge over whites…plural voting gave whites greater electoral strength…Even this, though, does not give full weight to the electoral weakness of blacks, for amongst other things, those who owned land faced the constant fear of having their mortgages recalled…Having constituted the ruling class historically…the white elite was always sure of dominating the political scene under the electoral system (Brown, 2011: 61-63).

Of the period, Brown further observed:

> Bermuda's historical experience, while paralleling certain aspects of other Caribbean societies, is in many ways quite distinctive. The points of departure are the economic and political structures that developed out of the island settler society status, structures that essentially encouraged the development of the production forces for internal rather than external elite. As a result of this, strong local elite emerged early on. This class maintained a social structure imbedded in white supremacist ideology, first under slavery, and then through an official policy of black exclusion and racial segregation (Brown, 2011:19).

Consequently, the *status quo* remained very much intact, but a certain momentum was generated by the discussions in the earlier internal select committee of the Bermuda House culminating in the creation of a new Parliamentary Select Committee on Race Relations in 1953. The Committee Report issued in 1954 expressed caution for the pace of any reforms which might deleteriously impact government services and the tourism economy. Accordingly, the report offered only vague assurances that progress would be sought with respect to black participation in the civil service, whilst care was to be taken regarding any move to legislate private sector behavior, particularly related to the determination of who private business should employ.

The Committee Report essentially endorsed the continued *status quo* practice of Dependency Governance by Segregation (DGS) which reinforced separate public facilities including schools, athletic facilities, and segregated/quasi-segregated restaurants and churches (Brown, 2011: 55). However, the challenge to elements of the DGS continued with the Theatre Boycott in 1959 organised by the Progressive Group.

This forced the end to segregation in public places such as hotels, cinemas and restaurants. [170] The significance of this advancement was that it was achieved by direct action rather than through the ineffectiveness of the limited discriminatory parliamentary participation under DGS. As Brown asserted, however, questions of political democracy remained were very much unachieved "(u)ntil the early 1960s (whereby) Bermudians elected parliamentarians under virtually the same limited franchise system that had been set up once slavery was abolished in 1834" with stiffening land qualifications for voting still making it "increasingly difficult" for (the black majority and white workers) to vote. Further, the extension of women's suffrage in 1944 did not seriously increase the size of the electorate" (Brown, 2011: 61).

A subsequent select parliamentary committee was formed in 1958, and which was chaired by a black parliamentarian (Wesley Tucker), focused on options to expand the electoral franchise but the principle of 'one person, one vote' and universal suffrage continued to be rejected. Owing to sustained civic pressure, however, the House of Assembly Select Committee reversed its position by 1961 and supported universal suffrage. The accomplishment was tempered by the proposed Parliamentary Election Act 1961 which would create a "racially-structured electoral system (with) electoral districts drawn along racial lines"(Brown, 2011: 69).

The new structure also increased the voting age from 21 to 25, and provided for the right to vote for any British subject residing in the territory for three years, as well as for an additional vote for Freeholders. Brown observed that "(t)he years before the struggle for the franchise and the first general election under liberal democracy (1960-1968) represent Bermuda's political watershed" (Brown, 2011: 71). It is also to be noted that the Watlington Amendment was subsequently adopted which would give property owners in the territory a second vote in their home constituency, thus distorting the democratic nature of the process of 'one person, one vote.'

University of the West Indies professor Selwyn D. Ryan observed:

> Prior to 1959, Bermuda was characterized by what one might call invisible apartheid. Although the Emancipation Act of 1834 provided that there should be no discrimination of any sort in public life, separate facilities were maintained for blacks and whites. Separateness was maintained in education, health facilities, in religious observance, transport, recreational facilities, social clubs, theatres, hotels and restaurants…Up to 1959, then, Bermudian society was not remarkably different from that which obtained in the Southern United States. It was less brutal in the physical sense, but the effect on the minds of the blacks was quite similar. [171]

[170] See *The Bermudian*, https://www.thebermudian.com/heritage/heritage-heritage/bermudas-black-history-the-19th-and-20th-centuries/ accessed 3 August 2022. Also see The Bermuda Parliament website http://parliament.bm/visitor/view/40 accessed 3 August 2022.

[171] See Selwyn D. Ryan, *Politics in an Artificial Society: The Case of Bermuda*. In Caribbean Studies, Institute

Accordingly, the first general elections under universal suffrage, held in 1963 pursuant to the Parliamentary Act 1961, provided for 8,207 persons who could cast only a single vote whilst 6,689 were eligible to cast a second vote of the 14,896 total registered voters. The nine electoral parishes were divided into two constituencies, each of which sent two members to the 36 member House of Assembly. In this connection, it was noted that the demographic of the parishes, combined with the extra vote for property owners, meant that "the vote living in the predominantly black and working class constituencies, was worth something in the order of on-tenth of the value of the vote of a Bermudian living in a white and middle class constituency." [172] Owing to the persistence of political inequalities and other conditionalities in the exercise of the franchise, the present Assessment does not consider that the era of Elected Dependency Governance (EDG) had been fully initiated at that particular juncture, but rather a phase of 'conditional' EDG may be a more apt designation.

University of Liverpool Law Professor Nicolas Barker determined that the year 1963 was the genesis of a constitutional reform process with the completion of the "Joint Select Committee Report on what constitutional changes, if any, were desirable." [173] The committee of the two House of the Bermuda legislature was appointed after the 1958 election "to investigate the extension of the franchise" (Kamarakafego, 2002: 109). The recommendations for reform put forth by the Joint Committee were presented to the British Secretary of State for the Colonies by a Governor-appointed delegation which was "not representative of Bermuda because, at that time (1966) the legislature itself was not representative (since) the composition of this particular House of Assembly was (formed as a result of) the last election to allow landowners to have an extra vote…[174]

Also reflective of an impediment to democratic governance was the particular inequality of representation between the different Parishes, and the fact that the delegation appointed by the Governor to discuss the proposed constitutional changes was " more representative of (the) oligarchy than they were representative of the whole of Bermuda." [175] Among the issues discussed at the constitutional reform talks were voter registration, nomenclature of government officials, freedom of government officials to stand for elected office, the end of UK control of the public service, and the important issue of constituency boundaries.

A minority report of the three-member contingent of the Progressive Labour Party (PLP) had expressed concern for the lack of consideration of alternative constitutional forms, and the possibility of a unicameral legislature (or an elected rather than appointed second chamber) among other issues. Additionally, the PLP did not favour the franchise to be

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of Caribbean Studies, University of Puerto Rico, Vol. 15, No. 2 (Jul., 1975), pp. 5-35.

[172] *See* Nicola Barker (2018), *Rights, Democracy and Decolonization: An Argument for 'Bermudianizing' the Constitution*, A Paper presented at "The Fiftieth Anniversary of the Bermuda Constitition: reflections on its Past and Future, Centre for Justice, 8th July.
[173] *id/*
[174] *id/*
[175] *id/*

extended to a three-year resident who did not enjoy Bermudian status as this smacked of a perpetuation of the discredited settler colonial policy. There was also opposition to the proposed method of appointment of judges. The PLP delegation favoured a fundamental rights chapter in the proposed constitution which would be based on United Nations doctrine with reference to universal and equal suffrage to ensure that all votes would be of equal value. The PLP delegation expressed its general opposition to the recommendations of the Report of the Constitutional Commission and cited its striking similarity with the report of the 1963 Bahamas Constitutional Conference. Barker surmised:

> It is difficult to avoid the conclusion that this Constitution was about cementing power in the hands of the oligarchy and moving just enough in the direction of equality to diffuse racial tension that was building up in the civil rights era without creating true equality or true democracy…The constituency boundaries issue demonstrate(d) very clearly that while formal legal equality was supposedly guaranteed under the fundamental rights chapter, in fact the dominance of the white elite was being written into the Constitution. [176]

Despite the lack of unanimity within the Bermuda delegation to the talks on the recommendations for reform, the contested measures were proposed in the Bermuda Constitution Bill which was subsequently submitted to the UK Parliament for consideration in two successive sessions of the House of Commons in 1967. In introducing the text to the first session of the House, the Minister for Commonwealth Affairs Judith Hart projected the proposal as an upgrade to a structure of dependency governance which had worked reasonably well but needed to be modernised:

> The present Constitution is, frankly, archaic. It resembles, on the whole, those of the North American Colonies before the War of Independence. Indeed, some of its features date back to that period and before. They date back to the early part of the seventeenth century…There have been changes over the years. Some of these have been achieved by Instruments issued under the Royal Prerogative, some by Acts of the local Legislature, and others by unwritten constitutional convention. As a result, Bermuda now has a very complicated Constitution. It is not contained in any single comprehensive document and it is one in which the written provisions may give a misleading impression of the real situation… (Hansard, 1967a: 1).

With regard to the role of the appointed governor in the prevailing arrangement, the Minister pointed out that:

> (U)nder the present Constitution the Governor is assisted in the exercise of his executive functions by an Executive Council whose advice he need not follow, and Government Departments are controlled either directly by the Governor or by statutory boards. Members of the Executive Council and of the statutory boards are

[176] *id/*

> appointed by the Governor and are not responsible to the Legislature. Thus, in theory, the Government's executive powers are virtually unlimited and the elected House of the Legislature has no say in executive government (Hansard, 1967a: 1).

On the Legislature, the Minister argued that "before 1963, the franchise was based entirely on property, and property owners could vote in every parish in which they owned land." He noted that in 1963 "the franchise was extended to all those over 25 and property owners were restricted to a single additional vote." This seemed to lend a degree of legitimacy to a system which did not reflect equality of voting. He went on to note that "in 1966 the additional vote…was abolished and the voting age was reduced to 21," touting the changes between 1963-1966 as a "transition in the electoral arrangements..." (Hansard, 1967a: 1).

The Minister contended that the historical progression of the dependency governance arrangement "retain(ed) some ancient features" of the constitution but that "there has been no lack of progress, particularly in recent times." She asserted that the "ancient Constitution has worked in the past, (but) the time has now come for the introduction of a new Constitution which provides clearly and unambiguously for the responsible Government which all bodies of opinion in Bermuda say they wish to have." For whom the ancient constitution had worked was not raised in the Minister's introduction of the new constitutional proposal. The Minister made the case for the new proposed text:

> Any Constitution is an interim Constitution. I think that you must regard constitutional development as a steady process. Bermuda's new constitution is a very big advance on the previous one. It will be a good thing if people are interested enough to discuss how it will evolve further. If there is a demand for further change, then further change will no doubt occur.

In the ensuing debate, a number of issues were raised by members of the British Parliament. Sir F. Bennett (Torquay) made reference to the importance of diversifying the economy to increase tourism. He regarded the issue of racial tensions as "slight" and not attributable to the "holding back (of) political or economic advance, because progress in both these directions has been marked, and the old-fashioned property vote (was) developed within a short time into an overall franchise." He proffered that "we shall do a great deal of damage to the economic structure in Bermuda which is dependent for a large degree of success on the lack of racial tension." (Hansard, 1967a).

Bennett also cited the economic dependence on the US military base, the application of taxation on the emerging financial sector and the concerns expressed in the territory about the constituent boundaries. He expressed support for the three-year voter eligibility for non-Bermudians contending that:

(I)f the island is to continue to prosper, more people must go to it, taking their ability to develop its potential and to help in local employment, apart from seasonal tourism. It would be selfish to think that in Bermuda—we do not do it vis-à-vis our other Commonwealth partners—we should prevent non-Bermudans having a vote if they decide to live in the country under its laws (Hansard, 1967a).

On the question of independence, Bennett expressed that:

Any territory must, in due course, decide which way it shall go, but there seems to be a practical limit to what can form an independent sovereign country in this day and age as regards the numbers involved. I do not accept for a moment that our granting independence to Bermuda, with its total dependence on outside resources concerning tourism, and so on, and the presence of the American base, would make independence in any way a reality when we talk in terms of sovereign countries elsewhere with substantial populations (Hansard 1967a).

Bennett concluded that upon "studying the results of the (Constitutional) conference I think that, on the whole, one can say that this Bill is a very logical, natural and a creditable step forward along the road to self-government for this very small territory" (Hansard, 1967a). Mr Tom Driberg (Barking) challenged a number of Bennett's earlier assertions:

All of us in the House have a high regard for all the people of Bermuda, whatever their racial background. Some of us wish that they all had equal rights. The Hon. Member for Torquay (Sir F. Bennett) appears not to wish that, judging from what he says. He says that we should not stress any racial inequalities. But it is impossible not to draw attention to them when they are felt as keenly as they are by the coloured people of Bermuda who, after all, despite what has been said about the very small difference in numbers, are a majority who succeed in obtaining only a minority of seats in the House of Assembly because of the way in which the constituency boundaries have been managed (Hansard, 1967a).

Driberg further argued that :

"If this Constitution went a bit further and gave real justice—what the Hon. Gentleman called, perhaps ironically, "true democracy"—to the people of Bermuda, he means that the dominant white oligarchy would resort to violence to prevent the coloured people from getting their rights and a just constitution. Is that what he means? If so, it does not say much for their sense of true democracy" (Hansard, 1967a).

Driberg went on to question aspects of the constitutional conference process and a decided unfairness with respect to the representation at the talks:

> I suppose that the first minority Report (of the conference), the one which says that it goes too far, must come from a relatively small minority of the dominant race, whereas the other comes from the P.L.P., which represents a much larger proportion of the population of Bermuda. It is not altogether fair to seem to equate those two minority Reports. The conference was dominated by people from the majority party elected on the old unjust boundaries (Hansard, 1967a).

Driberg went on to question the registration of electors and the findings and recommendations of the British expert sent to the territory to advise on the matter, but whose report was unavailable. He also pointed to the unfairness of the debarring of public servants from standing for the House of Assembly that restricts some of the most educated and qualified people from standing. He asked "whether anything can be put into the constitution embodied in the Order in Council so as to ensure that all adults otherwise qualified shall be able to stand for election, whether or not they are in receipt of public funds."

Driberg argued that "the distinction between constituencies, between electors and the numerical size of electorates…is the crux of the inequalities that undoubtedly exist in Bermuda and will continue to exist, although in a somewhat modified form." He further referenced the debate which took place in the Bermuda Assembly on the Report of the Boundaries Commission which had been agreed, but with strong opposition by a vote of 21-11, commenting that:

> The constituency boundaries will continue in many cases to be rigged. Originally, the rigging cannot properly have been so described. It was a byproduct of historical circumstances probably. But the deliberate perpetuation of it is, of course, rigging or gerrymandering in the interests of the oligarchy. This is almost as bad in some respects as the rigging of the boundaries in Northern Ireland.
>
> Whereas in the past it would be correct to say that, at any rate in some parts of the island, if one was a coloured man, one's vote was worth one-ninth of the vote of a white man, now it would be worth one-third. It is not a case of one man one vote but of one third of a man one vote—which, of course is a sensational advance…The constituencies in Bermuda are unequal on a racial basis. That is how the boundaries are rigged and will continue to be rigged to a considerable extent…Anything which enhances racial tension is bad. I maintain that this Constitution, retaining these gerrymandered elements of racial privilege, will tend to enhance racial tension (Hansard, 1967a).

Driberg's perspective on the unfairness of the boundaries had been earlier elaborated at the Constitutional Conference in London by Walter Robinson, barrister and politician, who led the PLP delegation. Robinson stressed that:

> (T)he present constituencies are deliberately rigged in order to keep in power a clique who could not possibly survive if they were subject to democratic choice…. (T)he fixers and manipulators of the fraudulent constituencies dared to include over one-third of the coloured voters in a single constituency…[177]

Driberg noted that "(f)ifty-nine Hon. Members of this House signed a Motion, which said: "That this House will decline to enact any legislation enabling additional powers to be granted to the Legislature of the Colony of Bermuda until such time as that Legislature has provided by law that the House of Assembly of the Island shall be composed of members elected from constituencies of approximately equal population delimited without regard to colour or social status." He further noted that "(o)n the face of it, that looks very fine, but as the whole basis of the electorate, at any rate in some of the parishes, is racial, some regard should have been had for racial considerations in an effort to carve up the parishes, the constituencies, more equitably between the races…"

In the second session of the House on the Bermuda Constitution Bill, Mr. Gerard Fitt (Belfast West) addressed the question of electoral registration:

> At the Constitutional Conference it was recommended to the people in attendance that a person of high legal status from Britain should go to Bermuda to inquire into the system of registration and to see whether it could be improved. This recommendation was accepted. The idea was to see whether the system could be abolished or whether the British system of registration could be implanted in Bermuda. But the person who went there did not do that. He said in his report that the terms of reference which were given to him prevented him from changing the registration system and implementing the British system in Bermuda. He said that all he could do was to see how the existing system of registration could be improved. There has been a gross misinterpretation of the thinking of the people who attended the Constitutional Conference…;
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> …..
>
> There is embodied in the Boundary Commission's Report, something which is tantamount to an acceptance of the fact that there is a race problem in Bermuda. The report of the Constitutional Conference said that no regard should be paid to race or colour in the drawing of constituency boundaries. But the fact that Devonshire has been drawn on white and black lines and racial lines makes it clear that those who were in charge of drawing up the Boundary Commission's Report did pay regard to race and colour. In the Pembroke constituency, the majority of the electors are not the coloured but the white working class. It may not be generally known that in Bermuda

[177] See The Workers Voice, *Mr. Walter Robinson speaks at 1966 Constitutional Conference: 'Present constituencies are deliberately rigged,'* 1 October.

there are three classes: the coloured working class, the Portuguese working class and the dominating white master race (*emphasis added*). (Hansard, 1967b).

Hugh Jenkins (Pitney) observed that "there is danger in establishing a constitution in which a certain party has a privileged position (as) I have not known of any constitution in which a certain group which has been established in a privileged position has readily given up its privileges." He went further to remind the House of the Motion signed by a number of Members "(t)hat this House will decline to enact any legislation enabling additional powers to be granted to the Legislature of the Colony of Bermuda until such time as that Legislature has provided by law that the House of Assembly of the Island shall be composed of members elected from constituencies of approximately equal population delimited without regard to colour or social status."

He reminded that this "has not happened, but we are asked, in other words, to do precisely what that Motion said we would not do." Jenkins went further to note that the Order in Council for the Bermuda Constitution had not been made available and that the precise wording was important before taking a decision.

At the close of the debate, the Minister of State for Commonwealth Affairs Judith Hart sought to address the concerns raised by members of the House on matters such as the role of the upper and lower Houses in the proposed Bermuda constitution, and taxation; and provided the assurance that "the Order in Council would be drafted to reflect precisely the decisions of the (Constitutional) Conference (that) will be laid before Parliament before being made, and will not be subject to affirmative or negative resolution." In this connection, the Minister said that "this is the kind of Constitutional Order which is made by Her Majesty in Council (and) (w)hen it is made, it is made, and that is that." On the question of the electoral registration system the Minister insisted that there was "no convincing evidence that the present system operated unfairly." Overall, the Minister indicated:

> The new Constitution that will be established under the Order in Council that will follow this Bill will, if anything, give this House of Commons more opportunities in regard to what happens in Bermuda rather than fewer, because to the extent that the Constitution will tidy up a number of the present anomalies while not, at the same time introducing any striking new advances in self-government other than those outlined in the White Paper, this House will still have the unimpaired advantage of the ability to comment on matters in Bermuda, to comment on progress towards racial equality in Bermuda (Hansard, 1967a).

Marcus Lipton (Brixton) encapsulated the objective reality of the constitutional reform exercise in the acknowledgement that "the Government of the United Kingdom will use the powers in Clause 1(2) by which the British Government may vary or revoke 'any law relating to the Government of Bermuda' and made by the Legislature, (and) also pointed to

the "very important reserve powers which will enable the British Government, if they wish, to make whatever changes in the Constitution they may consider desirable or necessary." Thus, the unilateral authority interwoven within the proposal provided comfort for the maintenance of control and authority over the colony.

C. (Conditional) Elected Dependency Governance (EDG)

As earlier referenced, the subsequent entry-into-force of the 1968 Bermuda Constitutional Order did not result in the beginning of a period of full Elected Dependency Governance (EDG), but rather marked a progression to a (Conditional) EDG owing to the continuation of an inherent political inequality. Bermuda Premier David Burt, JP, MP pointed to these disparities at a conference in Bermuda on the fiftieth anniversary of the Constitutional Order of 1968:

> The 1968 Constitution was the legal mechanism to cement gerrymandering (and) (i)ts crafty boundaries and imposition of dual seat constituencies assured victory after victory…Only in 2003's General Election did we achieve one man, one woman vote, each vote of equal value. (Burt, 2018: 5). (*This development began Bermuda's actual period of full EDG*)

Barker noted that "(i)t was striking how little influence the people of Bermuda had on making (the) Constitution…(as) the legislature at that time was neither representative of Bermuda nor fairly elected, (with the document) based on an FCO template and virtually identical to those of the other British Overseas Territories." [178] Nevertheless, the Constitutional Order of 1968 was entered into force via Order in Council with the unequal system of voting power contained therein whereby predominately black working class constituencies were worth one-third of a voter in a white constituency.

This was recognised as an 'improvement' from one-tenth the value of the black vote vis the white vote, but the reduced political imbalance denotes political imbalance nevertheless. Hence, the DG principle of 'lesser inequality' was on full display. The entry-into-force of the 1968 Constitutional Order did precipitate the revocation of the previous Instruments of Unilateral Authority (IUA) governing the territory, and was replaced by the new IUA.

[178] 172 *supra note.*

SCHEDULE 1 TO THE ORDER INSTRUMENTS REVOKED

Letters Patent, dated 19th January 1888, passed under the Great Seal of the United Kingdom, constituting the office of Governor and Commander-in-Chief of the Bermudas or Somers Islands [Rev.III, p. 119].

The Bermuda (Amendment) Letters Patent 1953 [S.I. 1953 II, p. 2777].
The Bermuda (Amendment) Letters Patent 1955 [S.I. 1955 II, p. 3179].
The Bermuda Letters Patent 1962 [S.I. 1962 I, p.1025].

Instructions issued under the Royal Sign Manual and Signet to the Governor and Commander-in-Chief of the Bermudas or Somers Islands on 25th November 1915.

Additional Instructions issued as aforesaid on 9th June 1930. Additional Instructions issued as aforesaid on 30th August 1943.
Additional Instructions issued as aforesaid on 16th May 1953.

Ian Hendry and Susan Dickson in *British Overseas Territories Law* set forth the legal basis for constitutions in UK territories, and within this context, outlined the features of the Bermuda Constitution Act 1967 setting forth the statutory legal basis for the Constitution Order) of Bermuda 1968:

> Each British Overseas territory is a separate constitutional unit, and accordingly is a distinct legal jurisdiction. None is constitutionally a part of the United Kingdom. Each territory has its own constitution and is administered separately from the others. But at the same time each territory has a constitutional relationship with the United Kingdom, the sovereign power;
>
> …..
>
> Each British overseas territory has a distinct written Constitution, designed to suit its circumstances. In this important respect each territory differs from the United Kingdom, which has no single constitutional instrument. The Constitutions of the overseas territories differ from each other, although they have several features in common; some provisions are even worded identically. The Constitution of each territory is contained in an Order in Council. It is legally enacted by Her Majesty the Queen, by and with the

> advice of Her Privy Council, acting on the recommendation of UK Ministers. But the legal basis for such Orders in Council differs as between the various territories;
>
> …..
>
> Orders in Council providing such constitutions under the British Settlements Acts 1887 and 1945, the West Indies Act 1962 and the Bermuda Constitution Act 1967 must be laid before Parliament after being made (b)ut (t)hey do not require an affirmative resolution in either House, and they are not subject to annulment by resolution of either House. By contrast, constitution Orders made under the Saint Helena Act 1833, the Anguilla Act 1980 and the Cyprus Act 1960 are not even required to be laid before Parliament after being made. The same applies to constitution Orders made exclusively by virtue of the Royal prerogative, that is to say those for Gibraltar and the British Indian Ocean Territory;
>
> Accordingly, Parliament has made little statutory provision for its scrutiny of overseas territory constitutions. However, since 2002 political arrangements have operated whereby most constitution Orders have been sent in draft by the Foreign and Commonwealth Office to the House of Commons Foreign Affairs Committee, where possible at least 28 sitting days before they were submitted to Her Majesty in Council. This political arrangement allows, in most cases at least, timely scrutiny by a House of Commons Committee and goes some way to mitigate the limited parliamentary control provided for in the Acts in question (Hendry and Dickson, 2018).

With respect to the powers of the UK Parliament, it is noteworthy to consider that the "fundamental principle" of UK dependency governance arrangements is the supremacy of Parliament which has "unlimited power to legislate for the overseas territories" (Hendry and Dickson, 2018). It is noted that "Parliament has not exercised this power to provide directly by Act of Parliament for the constitution of any of the overseas territories" (but) (i)nstead it has, except in the cases of Gibraltar and the British Indian Ocean Territory, enabled the Crown to do so by Order in Council."

But the fact that Parliament still retains the authority to so act through legislation is testament to multiple modalities to exercise the UK existent unilateral authority to legislate for the territories without their consent and often against their will. This is a major feature of the asymmetrical nature of the overall political relationship between the UK and its dependencies. (*This is coupled with the unilateral powers exercised by the governor on behalf of the UK as outlined in the respective constitutional orders, and addressed below*). Hendry and Dickson summarised the political reality of the UKOTs and the UK parliamentary powers:

> The power of Parliament to legislate for the overseas territories results in there being a hierarchy of laws in force in each territory, with Acts of Parliament and statutory instruments made under them that extend to that territory being at the apex.

It is within this context that the constitutions of British overseas territories are made under powers granted by Acts of the UK Parliament. For Bermuda, the relevant instrument is the Bermuda Constitution Act 1967 which provides the statutory legal basis for the 1968 Bermuda Constitutional Order 1968. Hendry and Dickson identified the "material provisions" of the 1967 Act as contained in section 1(1), (3) and (4):

> (1) Her Majesty may by Order in Council make such provision as appears to Her expedient for the government of Bermuda. …;
>
> (3) Any Order in Council under this section may be varied or revoked by a subsequent Order in Council thereunder, but otherwise shall not be capable of being varied or revoked except by Act of Parliament;
>
> (4) Any Order in Council under this section shall be laid before Parliament after being made. (Hart and Dickson, 2018).

Bermuda Constitution Order 1968

Having established the Bermuda Constitution Act 1967 as the statutory legal basis for the Bermuda Constitutional Order 1968 as the first written constitution for the territory, and the accompanying internal electoral inequalities contained in the 1968 Order, attention is paid to the broader question of the external political relationship between Bermuda and the UK as the administering Power of the territory under the UN Charter.

BERMUDA

BERMUDA CONSTITUTION ORDER 1968
BX 182 / 1968

[made by Her Majesty-in-Council under the Bermuda Constitution Act 1967 of the United Kingdom [title 2 item 9]

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Accordingly, the focus of attention is on the asymmetrical nature of the power relationship between the two polities. Specific features of the Constitutional Order 1968 are instructive in this regard with focus on the functional areas of unilateral authority exercised by the UK, either directly or via its appointed governor. The United Nations 1973 Working Paper on Bermuda summarised the main provisions of the Bermuda Constitution Order 1968 including areas which pinpoint the power of the UK, directly and indirectly, within the dependency governance structure:

> **Governor**
> 6. Executive authority is exercised by the Governor who is appointed by the Queen. He retains responsibility for external affairs, defence, internal security and 'the police. In all other matters he acts on the advice of the Executive Council. He may act against the advice of the Council, however, if in his judgement it is necessary or expedient to act in the interests of any of the matters exclusively reserved to him (*emphasis added*);
>
> **Legislature**
> 7. The legislature consists of the Queen, a Legislative Council and a House of Assembly. The power of the legislature to make laws is exercised by bills passed by both Houses and assented to by the Queen or by the Governor on behalf of the Queen. The Legislative Council consists of 11 members appointed by the Governor (5 in his discretion; 4 in accordance with the advice of the Government Leader and 2 in accordance with the advice of the Opposition Leader). It elects a president and a vice-president from-among its members. The Council has power to delay legislation and introduce and amend bills other than financial bills. It is empowered, however, to return any financial bill received from the House of Assembly with recommendations for amendments which the Council may consider desirable (*emphasis added*);
>
> 8. The House of Assembly consists of 40 members elected under universal adult suffrage for a term of five years. It elects a speaker and a deputy speaker from among its members. The Governor, acting in his discretion, appoints the majority leader in the House as Government Leader. He also appoints the Opposition Leader from among its members;
>
> 9. Except on the recommendation of the Governor, signified by a member of the Executive Council, the House of Assembly cannot proceed on any bill, including any amendment to a bill, that, in the opinion of the person presiding, makes provision for any of the following purposes: (a) the imposition of taxation or the alteration of taxation other than by reduction; (b) the imposition of any charge upon any public fund or the alteration of any such charge other than by reduction; (c) the payment, issue or withdrawal from any public fund of any moneys not charged thereon or any increase in the amount of such a payment, issue or withdrawal of any moneys not charged thereon; (d) the composition or remission of any debt due to the Government;

or (e) proceeding upon any motion (including any amendment to a motion) the effect of which will be to make provision for any of these purposes. Except for a taxation bill, provisions are made in the Constitution empowering the House of Assembly to present to the Governor for assent any financial or other public bill even when the Legislative Council has not consented to the bill (*emphasis added*);

Executive Council

10. The Executive Council, which is collectively responsible to the legislature, consists of the Government Leader and at least six other members of the legislature, appointed by the Governor in accordance with the advice of the Government Leader. Of these members, a maximum of two are appointed from among the members of the Legislative Council and the remainder from among the members of the House of Assembly. The Executive Council is presided over by the Governor and its members are assigned responsibilities for government departments and other business. Provisions are made for the appointment of parliamentary secretaries. The Secretary of the Executive Council is the head of the civil service;

11. In addition to the Government Leader, the Executive Council, as constituted at present, consists of members for labour and immigration, finance, education, tourism and trade, works and agriculture, health and welfare, marine and air services, planning, transport and organization, as well as a member without portfolio, concerned particularly with youth activities. There are three parliamentary secretaries, for finance, education and aviation. The Secretary of the Executive Council is also an appointed post (United Nations, 1973: 14-15).

Further, the Constitutional Order 1968 retains the Governor as the Commander-in-Chief. This differs from other UKOTs and relates to the existence of the Bermuda Regiment over which the Governor has authority pursuant to the portfolio of defence. The Regiment is a reflection of the role of Bermuda on behalf of the UK in the historical military dependency governance (MDG) period in preceding wars earlier discussed. The Constitutional Order 1968 also established the relevant electoral arrangements which was an acquiescence to the advocates for voter eligibility of non-Bermudian status holders:

12. Members of the House of Assembly are elected under universal adult suffrage. General elections are held within three months after each dissolution of the legislature. The Territory is divided into 26 constituencies, each returning two members to the House. To be qualified to register as an elector in a constituency, a person should: (a) be a British Subject aged 21 years or over; (b) either possess Bermudian status or have been ordinarily resident in the Territory throughout the immediately preceding period of three years; and (c) be ordinarily resident in that constituency (*emphasis added*) (United Nations, 1973: 15).

Of particular note was the move towards dependency reform with the PLP platform "reiterat(ing) its dedication to a revision of the constitutional framework which would prepare the way for a more democratic system of government, and ultimately independence". The PLP endorsed a constitutional conference to give effect to a number of changes in the constitution including full control over Bermuda Government over all financial matters, the reduction of the voting age to 18, automatic voter registration; the equalisation of voting numbers in each electoral district, and elected Government control over the civil service among other areas. (United Nations, 1973: 92).

On the other hand, it was reported in the UN Working Paper that "during a UBP election campaign rally, on 31 May 1972, Mr. Jack Sharpe, the member of the Executive Council for finance, had said, inter alia: 'Our position is perfectly clear (-) (w)e are going to seek to make certain administrative changes which will improve the working of our Constitution as a consequence of our experience over the last four years, but we are not seeking independence (United Nations, 1973: 17).

The UK-appointed governor Sir Richard Sharples spoke on potential constitutional changes envisaged by government, indicating in his speech to the opening of the Legislature in 1972 that the Bermuda Government would seek "at an early date" the agreement of the United Kingdom Government "to further constitutional advance". He indicated that the proposed changes, which would be recommended to both Houses of the legislature, were 'modest but nevertheless significant," and would include the change of title from Government Leader to that of Premier, and the replacement of the Executive Council with a Cabinet of Ministers. It was intended that the Premier would preside in the Cabinet in place of the Governor (United Nations, 1973: 17).

Other recommended changes were a separate Governor's Council composed of the Premier and certain other ministers to be consulted by the Governor in the exercise of his powers in relation to defence, external affairs, the police and internal security, and the change of title from 'Member of Colonial Parliament to 'Member of Parliament.' The Governor indicated that some of the changes were administrative in nature, could be implemented without a constitutional conference, and were not prejudicial in any way to any possible future decision to seek independence. He indicated that the constitutional changes "would give Bermuda a form of constitution which was as advanced, short of independence, as was possible" (United Nations, 1973: 17).

Bermuda Constitution Order (Amendment) 1973

Following the entering into force of the proposed constitutional amendments on 18 April 1973, the Governor's Council was established, consisting of the Governor, the Premier and not less than two, nor more than three, other Ministers appointed by the Governor after consultation with the Premier. The Governor was required to consult the Council (but did not have to accept the advice of its members) in relation to the business of the Government for

the conduct of the areas of the Governor's jurisdiction, in particular defence, external affairs, the police and internal security. The Chief Secretary became the Deputy Governor. [179]
The relevant amendments were reflected in the Bermuda Constitution Order (Amendment) 1973 which indicated in its explanatory note:

> T*his Order amends the Bermuda Constitution Order 1968 in relation to the title of the Executive Council and of certain offices, the membership of the Advisory committee on the Prerogative of Mercy, the Boundaries Commission and posts where there are special provisions for security of tenure. Provision is made for a Governor's Council in respect of the Governor's special responsibilities.*

Bermuda Constitution Order (Amendment) 1979

Further amendment to the Constitutional Order came following the findings of a Royal Commission led by the Rt. Hon. Lord Pitt to investigate the underlying causes of 'civil disturbances' in 1977, and a subsequent constitutional conference. The 1978 Pitt report made the important organic link between the social crisis in the Bermudian society and the deficient level of political and constitutional development. In this regard, the Pitt Report (1978) concluded that "among the underlying causes of the unrest was the lack of a sense of national unity," and recommended a series of further dependency reforms. Accordingly, the Governments of Bermuda and the UK were "urged to hold a constitutional conference before the end of 1978, with the full participation of the opposition (PLP) party, to identify the matters that needed to be resolved…" [180]

Issues identified by the Pitt Report recommended for discussion at the impending constitutional conference included the 'two to one' disparity between the number of voters in certain constituencies, the re-examination of the composition of the Boundaries Commission, the ending of the voter eligibility for three-year residents who were Commonwealth citizens but without Bermudian status, the reduction of the voting age from 21 to 18 years of age, and several other internal modifications.[181]

The subsequent Bermuda Constitutional Conference was held in the territory in 1979 with concentration on the observations and recommendations of the Pitt Report. With regard to the electoral system, the Pitt Report had taken note that "the disparity between the numbers of voters in constituencies (was) a little over 2 : 1 (and) (a)lthough this may be acceptable in other countries, the difference is significant and material in a small island like Bermuda" (Pitt Report, 1978: 34). In this connection, the Pitt Report recommended that "before the next Boundaries Commission is appointed early in 1979, consideration should be given to amending Section 52 (1) of the Constitution with a view to reducing the disparity," (and that)

[179] Bermuda Constitutional (Amendment) Order 1973.
[180] See *Bermuda Working Paper prepared by the Secretariat*, United Nations, A/AC.109/6832 March 1982, p. 6.
[181] *id/*

"the composition and mandate of the Boundaries Commission should be re-examined." Pitt Report, 1978: 34).

The Constitutional Conference, in accordance, decided to recommend the enlargement of the Boundaries Commission from three to six members, thereafter being comprised of a Chairman, a member of the judiciary (both nominated by the Governor), and four others either from the House of Assembly or Senate, two each recommended by the Premier and the Leader of the Opposition. [182]

The 1982 UN Working Paper on Bermuda recounted that "with regard to the electoral system, the United Bermuda Party (UBP) proposed a system of proportional representation while the PLP called for single-member constituencies of equal size. However, no agreement was reached at the Constitutional Conference on the issue, (and) it was decided that the existent system, "despite its drawbacks, should continue in force until after the next general election." [183]

On the matter of voter eligibility, the Pitt Report had taken note that British subjects of age 21 years or more who have been resident in Bermuda for three years were entitled to vote in elections. The Report recognised that "(t)his provision has been the subject of bitter resentment on the part of many Bermudians (as the) number of (non-Bermudian voters) has been sufficient to have decided the outcome of elections in several constituencies." (Pitt Report, 1978: 34). The Report had concluded that "the resentment (this issue) arouse(d) was a contributory cause to the disturbances, and that it remain(d) a threat to any programme of (social) integration"(Pitt Report, 1978: 34). The Pitt Report concluded:

> The principle that all residents should be able to qualify as voters is an important one, such that it can be overridden only by some more compelling principle. One such principle ought to be the recognition that the right to vote in Bermuda was hard won by agitation from the black community almost exclusively, but the overseas voter is seen as a new and decisive element which has the effect of thwarting the success of their struggle. Several of the Commissioners believe that it is not in the national interest to retain the three-year residential vote and would eliminate it forthwith. The Commission has debated this issue at great length and believes that this should be a priority item for the proposed (constitutional) conference and recommends that conference to bring the provisions for residential voting to an end. (Pitt Report, 1978: 34).

At the Constitutional Conference perspectives differed between the two political parties whereby the PLP wanted the Commonwealth vote to be entirely abolished whilst the UBP offered that the period of residency be extended from the prevailing three to seven years, or such period as the Bermuda Legislature might prescribe. Because of the deadlock,

[182] *id/*
[183] *id/*

"the two parties agreed to refer the matter to the UK Secretary of State for Foreign and Commonwealth Affairs whose decision would be binding on the parties." [184] Accordingly, the UK Secretary of State decided that Commonwealth citizens over 21 years of age would be qualified to vote if they possessed Bermudian status or if they had been registered as electors by 1976, thus reducing, but not completely eliminating, the number of non-Bermudian voters on the electoral list.

On the matter of lowering the voting age from 21 to 18, the Pitt Report had suggested that "having the vote may…have its effect in generating a more responsible attitude towards the community on the part of the youth." The Constitutional Conference also reflected a difference of views between the two political parties with the PLP supporting the lowering of the voting age to 18 whilst the UBP wishing to retain the voting age at 21. It was decided the issue would be left to the later decision of the Bermuda Legislature. The relevant amendments were reflected in the Bermuda Constitution Order (Amendment) 1979 which indicated in an explanatory note:

> *The Constitutional Conference held in Bermuda in February 1979, at which Her Majesty's Government in the United Kingdom, the United Bermuda Party, and the Progressive Labour Party were represented, made a number of recommendations for the amendment of the Constitution of Bermuda. This Order gives effect to the recommendations relating to the composition of the Constituency Boundaries Commission.*

With the dependency reform measures having been enacted via the successive constitutional orders in 1973 and 1979, respectively, the question of the future political status of the territory was raised as a potential political outgrowth of the expanding constitutional arrangements. Hence, the question of the future status of the territory was raised in the Pitt Report with the recommendation that "the question of independence be an issue at the 1980-81 general election after certain changes had been made to the electoral system." [185] The Pitt Report commented on the rationale for independence to be raised for consideration:

> This leads us, inexorably, to the discussion of independence, and to the question of whether those who are presently alienated from the social order would identify themselves more effectively with an independent Bermuda. We believe that there is a sufficient likelihood of this for it to constitute a principal argument for accelerated constitutional change…;
>
> A further point that we do stress, however, is that in our view the regulation of the Bermudian economy with respect to immigration, and the planning of social integration, will have to be based upon a shared concept of Bermudian nationhood. That concept can only become a reality when Bermuda comes of age and the country takes

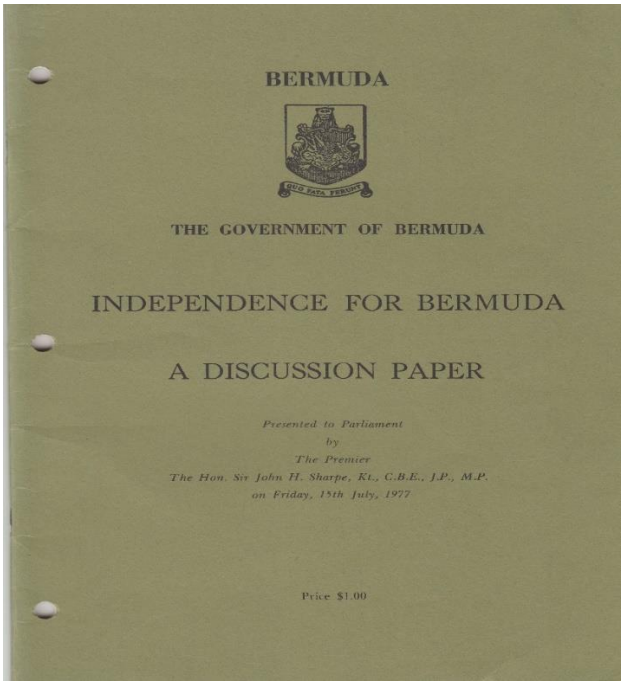
[184] *id/*
[185] *id/*

its rightful place in the international community as a fully independent nation. Only then can Bermuda demonstrate her political maturity to the world at large.
(Pitt Report, 1978: 36)

Green Paper on Independence 1977

These observations and recommendations of the Pitt Report had been preceded by the issuance by the Bermuda Government in 1977 of a *Green Paper on Independence* for the purpose of engendering public discussion. This informational document was produced in conformity with the mandate of the 1976 Throne Speech:

> The Government has given a commitment to examine and report to the people on the matter of independence for Bermuda. As the first stage in this process, and as soon as the preliminary explorations have been completed, the Government intends to place a Green Paper on this very important matter before the Legislature for discussion, and for the information and consideration of the people of Bermuda (Green Paper, 1977: 3).


BERMUDA

THE GOVERNMENT OF BERMUDA

INDEPENDENCE FOR BERMUDA

A DISCUSSION PAPER

Presented to Parliament
by
The Premier
The Hon. Sir John H. Sharpe, Kt., C.B.E., J.P., M.P.
on Friday, 15th July, 1977

Price $1.00

The perspective expressed in the 1977 Green Paper was that the "present Constitution, on the whole, had worked well," and that Bermuda had "satisfactorily absorbed the system of responsible Government, at a time when other, less advanced, Dependent Territories were moving towards independence." The division of areas of governance were described therein:

> The Premier and the Cabinet, through the Legislature, have full responsibility for the Government of Bermuda except for those matters specifically reserved to the

Governor, i.e. External Affairs, Defence including Armed Forces, Internal Security, The Police (Green Paper, 1977: 1).

In the context of further dependency reforms, it was argued that "the time had come for consideration of further constitutional advance particularly with respect to a Bermudian Governor; responsibilities for the police; (and) more authority in the areas of civil aviation and shipping matters" (Green Paper, 1977: 4).

An important contribution of the 1977 Green Paper was in relation to its revelations on UK policy vis a vis the future of Bermuda, and rationale for limiting further constitutional advance. Hence, it was indicated that proposals for dependency reform had been raised with the UK between 1974 and 1976, with the UK responding that it "could agree to such changes only as part of a timetable leading to independence, otherwise they would be, for an indefinite time, transferring authority but retaining responsibility – an arrangement which in their experience was not satisfactory" (Green Paper, 1977: 4-5).

The possibility of Associated Statehood for Bermuda was also discussed in the Green Paper as a potential constitutional arrangement that had been broached with the UK, and which had been codified in the West Indies Act 1967. Associated Statehood was described in the 1977 Green Paper as a model of governance whereby the UK maintained responsibility for defence, external affairs, citizenship, and certain other matters, but the Associated States are otherwise fully self-governing with a Governor of their own choosing and full control of internal security.

The responding UK argument against Associated Statehood, similar to its opposition to the Bermuda-proposed dependency reforms under the prevailing constitutional arrangement, expressed that the Associated Statehood arrangements put in place after the breakup of the West Indies Federation were "not entirely satisfactory" as they "place(d) the UK in a position where they have international responsibility without internal authority." This UK reticence towards free association is discussed later in the present Assessment. Consequently, the 1979 Green Paper revealed a British policy vis a vis Bermuda that it was not possible "to devise an alternative form of special status for Bermuda which would give them the additional powers that they sought, since in constitutional essentials any such arrangement would in effect be Associated Statehood under another name" (Green Paper, 1977: 5).

The 1977 Green Paper also served to further reveal the British perspective that "even in the event that Bermuda became an Associated State, the United Kingdom Government would still retain responsibility for defence and external affairs, and the proposed changes would thus not in fact resolve the differences which could arise between the two Governments – for instance civil aviation and shipping matters" (Green Paper, 1977: 5). The conclusions of the Bermuda Government on the UK response to Bermuda's view of its future political evolution were instructive:

(T)he potential problems which could arise between the UK and Bermuda cannot be solved either by amending the existing constitution or, even if it were possible, by Bermuda moving to some form of Associated Statehood. Although the matters in dispute between the two Governments are not in themselves sufficient reason to seek a more fundamental change of relationship between them, they are nevertheless symptomatic of the problems that can arise between two Governments which are in a colonial relationship…;

The UK Government therefore suggested that in view of these considerations and of constitutional developments in prospect in other Dependent Territories, the (Bermuda) Government might wish to consider whether the time had now come to move more positively in the direction of independence…;

The Bermuda Government must now accept that there is no possibility of further constitutional advance with regards to the reserved powers by changes in the existing Constitution, and that Associated Statehood is not an option which the United Kingdom Government are (sic) prepared to contemplate. Bermuda must, therefore, accept that the choice now is either to maintain the *status quo* of continued dependency, or to move positively towards complete independence in accordance with a planned timetable;

If Bermuda continues to remain a Dependent Territory, it may well be seen by the United Nations and other bodies as justification for a continuing interest in the internal affairs of Bermuda, which could be some embarrassment to both Bermuda and the United Kingdom;

Independence would not or need not affect the financial organization of Bermuda;

It is difficult to identify tangible benefits arising from independence, and it is obvious that Bermudians would have to assume additional and serious responsibilities with their attendant costs. However, the natural desire of a people to identify more positively with their country as an independent nation assuming all its responsibilities, must be a real consideration (Green Paper, 1977: 5-8,).

The Green Paper was debated in both the House of Assembly and the Legislative Council with public hearings held through the territory. The Government subsequently presented its policy on independence in a White Paper presented to the House in 1979 (White Paper, 1979) coming after the release in 1978 of the Pitt Report.

White Paper - Independence for Bermuda (1979)

The conclusion of the Government, as interpreted from the territory-wide discussions on the Green Paper, was articulated in the 1979 White Paper that "a majority of Bermudians are opposed to independence at this time"(White Paper, 1979: 2). The Government's position was elaborated:

> Bermuda has a viable and unusually prosperous economy….Independence for Bermuda is a development that can reasonably be contemplated…At the right time independence, cautiously and carefully implemented, would enable Bermudians to have the satisfaction of becoming a nation…Government therefore accepts independence as a goal to be worked towards and prepared for, but believes that, except in the most unusual circumstances, it would be morally wrong to take Bermuda into independence without a clear indication that a majority of Bermudians supported it…A move to independence without the most careful and complete preparation could well imperil the standard of living earned and enjoyed by Bermudians, and undermine the confidence of those upon whom our economic prosperity depends;
>
> It is the intention of Government to continue to monitor the views of Bermudians and to keep the external position under constant review. Meanwhile the necessary steps will be taken…to ensure that Bermuda will be fully prepared against the time that circumstances indicate Bermuda should be independent and that this has the support of the majority of Bermudians (White Paper, 1979: 1-2).

The UN reported in 1982 that the opposition Progressive Labour Party (PLP) "questioned the view that the majority of Bermudians were opposed to independence," during the debate on the White Paper in the House. [186]

On the matter of the *status quo* dependency governance arrangements, the UK Governor in a speech to the Bermuda Rotary Club, indicated that he was aware of the frustrations of the elected government over the lack of control by the elected government of key competencies under the present constitutional order. The PLP position was stated in the House that "before further amendments were made to the Constitution a constitutional conference should be held." [187]

Also in 1982, the Bermuda Government expressed its intention "to place before the Legislature recommendations for changes to the Constitution following consultations with the Opposition (since) apart from the amendments agreed to at the 1979 Constitutional Conference some shortcomings had appeared which needed to be addressed in 1983." [188]

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[186] 103 *supra note* at 8.
[187] See *Bermuda Working Paper prepared by the Secretariat,* United Nations, A/AC.109/725, 2 March 1983, p. 6.
[188] See *Bermuda Working Paper prepared by the Secretariat,* United Nations, A/AC.109/761, 24 February 1984, p. 4-5

These included the delegation to a minister of financial and administrative responsibilities for defence and the Bermuda regimen, and the establishment of a judicial and legal services commission. The Bermuda Premier announced in 1983 that "a White Paper on Independence was being prepared to promote discussion among the people and ascertain their views regarding breaking off the Territory's colonial relationship with the United Kingdom, (but that) the Government has not set a specific timeframe for independence." [189]

In 1984, the PLP continued its efforts of further dependency reform by tabling amendments in the House of Assembly to the Parliamentary Election Act of 1978 to reduce the voting age from 21 to 18 years of age – a longstanding PLP position- and to modify the current process of voter registration. These initiatives were not supported by the UBP Government.

Independence Review Committee 1987

Meanwhile, the discussion on independence continued and in 1987 the UBP published an 'Interim Report' prepared by its Independence Review Committee which was then tabled as a parliamentary paper in the House of Assembly. The Interim Report highlighted the "considerable experience acquired by the Government in the management of both its internal and external affairs since the adoption of the 1968 Constitution." An argument in the report was that the Territory "had a measure of autonomy even in those matters 'reserved' for the UK Government' (Interim Report, 1987).

Further, the Interim Report cited earlier UK policy that it would not force independence into Bermuda, and explained that the Bermuda Government had rejected (an earlier) Opposition PLP proposal for a referendum on independence because Government felt that more definitive information was required before the people could themselves make a judgement on the issue. The interim report expressed the need for a detailed debate on how Bermuda would assume the responsibilities which were currently under the reserved powers of the UK Governor, and the feasibility of independence as related to the strategic relevance of Bermuda to the UK, US and Canada.

The Interim Report, extraordinarily, also "saw no need for an independent Bermuda to join the UN as yet another mini-state caught up in the power struggle between the major powers," whilst expressing a rather questionable view that for an independent Bermuda "it was possible to join selected UN specialised agencies without joining the UN itself." [190]

Meanwhile, the Opposition PLP in 1987 put forward its own recommendations regarding the steps it felt should be taken in order to advance the existing political status (including) a joint Select Committee of the House to discuss independence, and to collect and

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[189] *id/*

[190] See *Bermuda Working Paper prepared by the Secretariat*, United Nations, A/AC.109/942, 7th April 1988 p.7.

disseminate the information; and the inclusion by the political parties of their respective constitutional reforms and independence proposals in their election platforms. According to the PLP proposal, this would be followed by an election where the victorious political party would organise a constitutional conference to adopt an independence constitution and to set a date for independence. [191] The proposed Select Committee did not carry, and in its stead, the House adopted a Government motion in January 1988 to facilitate contacts with third countries regarding independence:

> That, in order that the Government obtain all relevant information so as to inform the people of Bermuda better on the issue of independence, this House approves the Government having discussions with the United Kingdom Government and seeking their authority to discuss with the Governments of the United States of America and Canada those matters which, under the Constitution, are presently reserved for the Government of the United Kingdom." [192]

Bermuda Constitution Order (Amendment) 1989

Amid the discussions in the territory on further political advancement, the UK introduced an Order-in-Council in 1989, encouraged by the Premier of Bermuda, to amend the Bermuda Constitution to provide for the possibility of the delegation of power to the elected government on areas within the Governor's special responsibilities under Article 62 of the Constitution Order 1968. The amended article read as follows:

Amendment of section 62 of Constitution.

2. Section 62 of the Constitution set out in Schedule 2 to the principal Order is amended by substituting for subsection (2) the following–

> "(2) The Governor, acting in his discretion, may by directions in writing delegate, with the prior approval of the Secretary of State, to the Premier or any other Minister designated by him after consultation with the Premier such responsibility for any of the matters specified in subsection (1) of this section as the Governor may think fit upon such conditions as he may impose".

The relevant amendments were reflected in the Bermuda Constitution Order (Amendment) 1979 which indicated in an explanatory note:

This Order amends the Constitution of Bermuda to enable the Governor to delegate, under certain conditions, responsibility to Ministers for defence, including the armed forces, in addition to the matters responsibility for which he was previously empowered to delegate, that is to say external affairs, internal security and the police (*emphasis added*).

[191] *id/*
[192] *id/*

The amendment was arguably the most significant indication to date of the 'advance nature' of the Bermuda constitution, albeit that the authority was at the discretion of the UK Governor, and that the delegation was wholly reversible - consistent with developments during the period of conditional Elected Dependency Governance (C-EDG). In the aftermath, of the most recent constitutional change to date, the United Bermuda Party (UBP) in 1989 won its third general election in six year, but with a reduced majority, losing eight seats. This narrowed the gap between the parties to 23 seats for the Government and 15 seats for the Opposition PLP. Additionally, the first independent member of the House was elected. [193]

The strengthened Opposition PLP continued its advocacy for reforms of the electoral system within the C- EDG on issues related to ensuring that " each vote in Bermuda was of equal value," noting that "the current system of elections (dual seat constituencies within parish boundaries) had led to a great disparity in the quality of the vote, and that there was something wrong with having non-Bermudians vote in the Territory's elections." [194]

Further issues emerged in the post-election political environment with specific reference to the territory's relations with the UK within the C-EDG status including limitations on the level of participation of the territorial government in certain external affairs activities (*inaccurately reflecting the possibilities*), the consequences of the British Nationality Act of 1981 on Bermudians, and the expenses related to UK military that were charged to Bermuda in relation to civil unrest in 1987. Also noted were 1) the subordination of the Bermudian interests in aviation favouring British air carriers which maintained a monopoly on the UK to Bermuda routes, along with 2) the "negative effect" on Bermuda of the UK's increasingly close ties to the European Community. [195]

It is to be noted that the consistency of discussion on constitutional reform and decolonisation surrounding the proper time to move towards independence was undertaken during the Decolonisation Acceleration Period (DAP) between the adoption of the Decolonisation Declaration in 1960 and the thawing of the Cold War at the beginning of the 1990s. In this context, the Chairman of the Committee for the Independence of Bermuda advised a UN Seminar in Barbados commemorating the thirtieth year anniversary 1960 Decolonisation Declaration that "British-born residents holding Bermudian status held a minority veto over independence."

In 1991, a PLP motion was tabled in the House of Assembly "calling for the question of independence to become an issue in the next general election…declar(ing) that it was a total anachronism that we should be seen as a colony." The Premier responded that "he remained unconvinced that the majority of Bermudians wanted independence and that his party would not pursue the issue as yet." [196]

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[193] See *Bermuda Working Paper prepared by the Secretariat*, United Nations, A/AC.109/995, 18th May 1989, p.5.
[194] *id/*
[195] *id/*
[196] See *Bermuda Working Paper prepared by the Secretariat*, United Nations, A/AC.109/1063, 14th May 1991,

Meanwhile, calls accelerated for the leaders of the three political parties "to either place on their electoral agendas, or further highlight, the independence issue, (and that) this will in turn empower the post-election Government to discuss such matters with Britain." [197] Owing to intense discussion in the community on the subject of the political evolution of the territory, the House of Assembly adopted the Independence Referendum Act in 1994 as proposed by the UBP Government on a vote of 20-18, but the measure was amended in the Senate, and "had become ineffective." [198]

A Bermuda Government delegation visited London in 1994 for discussions on the modalities of "what the British Government would consider appropriate for a referendum, what the conditions of a referendum would be, what might happen if Bermuda decided to opt for constitutional change, and what would happen if they decided not to opt for constitutional change." The delegation was entrusted with the preparation of a new Green Paper (*as an update to the 1979 Green Paper earlier referenced*) "to look at all facets of the question of independence, as well as to examine possible constitutional changes for Bermuda if it decided to remain a dependent territory." [199]

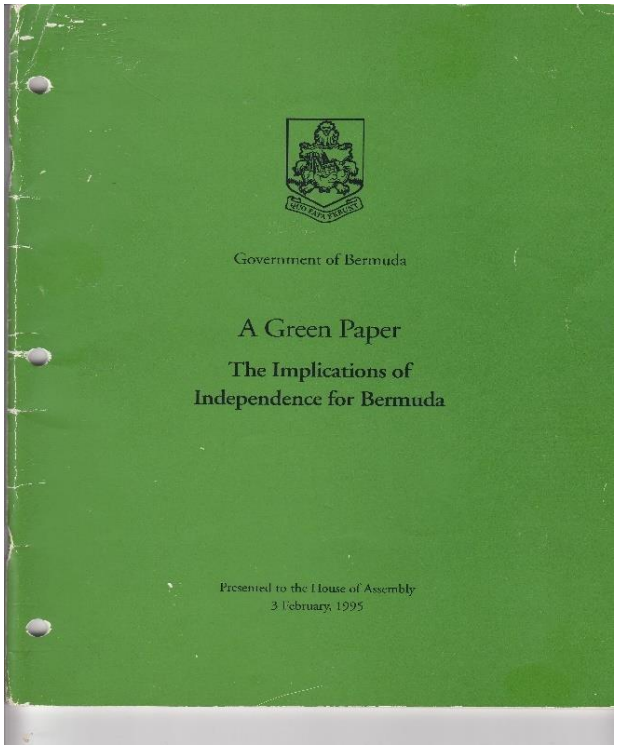
p.6.

[197] See *Bermuda Working Paper prepared by the Secretariat*, United Nations, A/AC.109/1102, 30th April 1992, p.5.

[198] See *Bermuda Working Paper prepared by the Secretariat*, United Nations, A/AC.109/2020, 2nd May 1995, p.10.

[199] *id/*

Green Paper on the Implications of Independence for Bermuda 1995



The 1995 *Green Paper on the Implications of Independence for Bermuda* was discussed in the House of Assembly, and came some fifteen years following the White Paper *Independence for Bermuda* of 1979. The new Green Paper was not intended to make a recommendation for or against independence, but was meant "to identify the issues and examine the pros and cons of independence for Bermuda." (Green Paper, 1995: 1). In particular, the Green Paper expressed the intention of the Government to conduct a referendum on the political status option of independence. The Green Paper included a number of determinations presented in the run up to a potential referendum on the issue:

- The UK has reiterated its position that there is no option of any intermediate status, such as an associated statehood, or the assumption of further responsibility short of independence.

- Bermuda would automatically assume full responsibility for defence, external affairs and internal security, with their attendant costs. But advice and assistance in the way of training for the Police and Regiment would continue to be available from the United Kingdom, at cost, in much the same way as it is now.

- It would be necessary to have a Ministry of External Affairs in Bermuda, probably as part of the responsibility of an existing ministry. Consideration would also have to be given to the most economical and efficient way of handling Bermuda's relations with her main partners, the United Kingdom, Canada and the United States – and to Bermuda's position vis-à-vis various international organizations such as the United Nations.

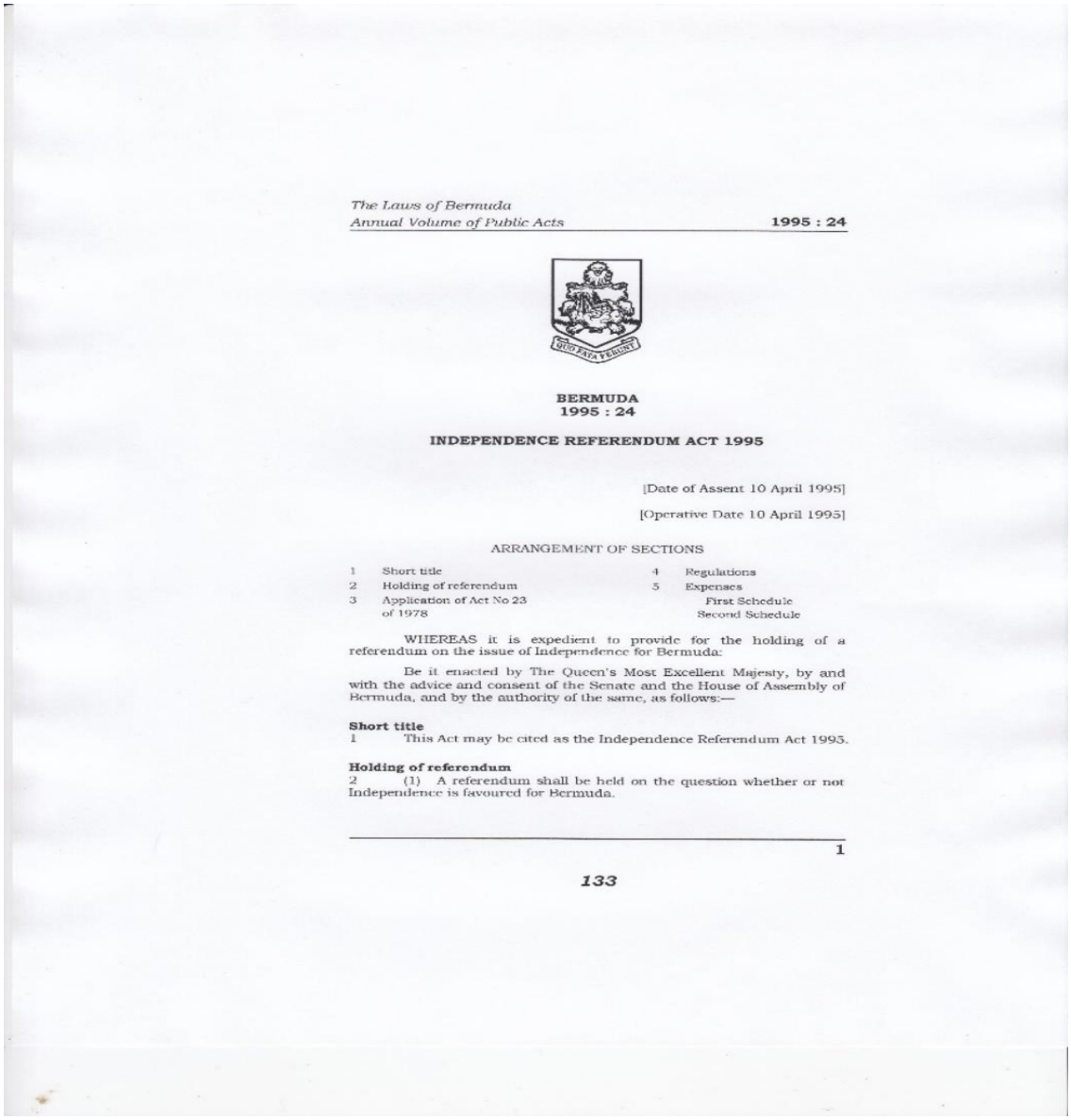
- However remote the prospect of an invasion may seem, an independent Bermuda would be likely to seek a Treaty of Friendship with the United Kingdom, United States or Canada to protect against such an eventuality.

- Bermuda would be free to decide her own marine, shipping, civil aviation, citizenship and nationality policies. Independence need not affect the financial position of Bermuda.

- No major changes would be required in the existing Constitution, except to provide for Bermuda becoming a fully independent Sovereign State, to set out how public officers would be appointed, and to entrench certain fundamentally important matters.

- It is assumed that Bermuda would become a Monarchical State, with a Bermudian Governor-General replacing the British Governor.

Independence Referendum Act (Bermuda) 1995



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BERMUDA
1995 : 24

INDEPENDENCE REFERENDUM ACT 1995

[Date of Assent 10 April 1995]

[Operative Date 10 April 1995]

ARRANGEMENT OF SECTIONS

WHEREAS it is expedient to provide for the holding of a referendum on the issue of Independence for Bermuda:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

Short title
1 This Act may be cited as the Independence Referendum Act 1995.

Holding of referendum
2 (1) A referendum shall be held on the question whether or not Independence is favoured for Bermuda.

1

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Following these developments, a new Independence Referendum Act 1995 was tabled in the House of Assembly by the Government in February 1995, whilst the Opposition urged a boycott of the exercise, calling for the alternative consultative exercise whereby the issue would be decided by general election. The Government proposed Act was adopted by the House on 24th March 1995, and approved by the Senate after lengthy debate. The referendum formula of the Act required a plurality of 40 per cent of the persons on the electoral roll for a mandate to be achieved. [200]

The referendum was held on 16th August 1995 with 58.8 per cent of the registered voters participating with 25.6 per cent in favour of independence, 73.7 per cent against with 0.7 abstentions. The result of the poll forced the resignation of the Premier (John Swan) with his replacement, David Saul, declaring that 'independence was water under the bridge' and that 'the issue would not be raised again' during the life of the existent parliamentary session. [201] The opposition PLP had organised a boycott of the referendum arguing that the issue should be resolved by general election.

There were no further developments on the political evolution of the territory in the post-referendum period until the election of 1998 in which the Opposition PLP, which had historically sought to have the question of independence determined by general election, was victorious in the election and assumed power for the first time in the history of Bermuda. According to the United Nations, the PLP Government focused attention on internal reforms it regarded as overdue under the previous Government:

> Since winning the election, PLP has been consolidating power, instituting programmes to increase black representation in management positions and discouraging employment of non-Bermudians, as well as the issuance of work permits. Following a review of the civil service conducted by experts from the United Kingdom Civil Service College, a draft report, released in January 2000, recommended that the Civil Service be reformed. In April 2000, the Premier shuffled her Cabinet, halved the number of Ministers and strengthened the Cabinet Office.

In March 1999, the UK Government presented a White Paper to its Parliament, entitled *Partnership for Progress and Prosperity: Britain and the Overseas Territories* which caused the issue of independence to be once again raised in Bermuda and in other UK dependent territories. The relevant provisions of the White Paper are examined in the subsequent section of the present Assessment on UK dependency policy, but it is important to note that some provisions of the proposed 'partnership' were to have the effect of extending – rather than relaxing - British powers. Of particular concern as expressed in the territory was the use of the UK unilateral authority under the Bermuda Constitution to take decisions that

[200] *id/*
[201] See *Bermuda Working Paper prepared by the Secretariat*, United Nations, A/AC.109/2041, 7th March 1996, p.8-9.

could impact the financial services industry including the application of certain international conventions.

On the question of political development, Premier Jennifer Smith indicated that the now-ruling party PLP which she led would continue to advocate for independence from the UK, but that any such move would be a matter for another general election. The Premier noted that she would concentrate on introducing legislation required for the implementation of her Government's social programme as a priority. The question of independence, she said, would not be addressed in her first term, and perhaps not in her second. [202]

In the context of advancement within the prevailing dependency governance context, it is to be recalled that in 2000 "the question of constitutional reform has dominated Bermuda politics (with) several proposals to reform the Constitution tabled in the House of Assembly just prior to the 2000 summer recess (including) proposals to "equalize the size of voting constituencies, and to replace the current two-member constituencies with single-member one" among other areas. [203] In this connection, the ruling PLP proposed reforms to the Constitution on the basis that said measures were in the party platform, and its election to power was authority enough to enact the changes. The opposition, on the other hand, argued that a referendum was essential prior to making such important changes.[204]

On this difference of perspective on how to address the question of constituency equity, it is to be recalled that in August 2001 the Bermuda Boundaries Commission was created consisting of an equal number of members from both political parties with the task of making recommendations on the boundaries and on the number of constituencies in a new single-seat electoral system. This was aimed at replacing the existent system of parish-based seats. The Order-in-Council establishing the Boundaries Commission categorically stated that 'no account shall be taken of the racial distribution of voters in Bermuda.' The relevant amendment to create the Boundaries Commission, and other changes, was reflected in the Bermuda Constitution Order (Amendment) 2001 so indicated in an explanatory note:

> *This Order supplements the Constitution of Bermuda to enable a Constituency Boundaries Commission to make recommendations on the establishment of single-member constituencies for elections to the House of Assembly. It also amends the Constitution to alter or remove some outdated provisions, to change the title of the offices of Parliamentary Secretary and Auditor, and to make provision for an Ombudsman.*

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[202] See *Bermuda Working Paper prepared by the Secretariat,* United Nations, A/AC.109/2000/13, 15th June 2000, p.13-14. See also *Bermuda Working Paper prepared by the Secretariat,* United Nations, A/AC.109/2001/9, 3 May 2001. p.16.

[203] See *Bermuda Working Paper prepared by the Secretariat,* United Nations, A/AC.109/2001/9, 3 May 2001. p. 5.

[204] *id/*

STATUTORY INSTRUMENTS

2001 No. 2579

CARIBBEAN AND NORTH ATLANTIC TERRITORIES

The Bermuda Constitution (Amendment) Order 2001

Made - - - -	*18th July 2001*
Laid before Parliament	*30th July 2001*
Coming into force - -	*21st August 2001*

At the Court at Buckingham Palace, the 18th day of July 2001

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in Her in that behalf by section 1 of the Bermuda Constitution Act 1967(**1**) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Citation, construction and commencement

1.—(1) This Order may be cited as the Bermuda Constitution (Amendment) Order 2001 and shall be construed as one with the Bermuda Constitution Order 1968(**2**) (hereinafter referred to as "the principal Order").

(2) The principal Order and this Order may be cited together as the Bermuda Constitution Orders 1968 to 2001.

(3) In this Order, "the Constitution" means the Constitution set out in Schedule 2 to the principal Order.

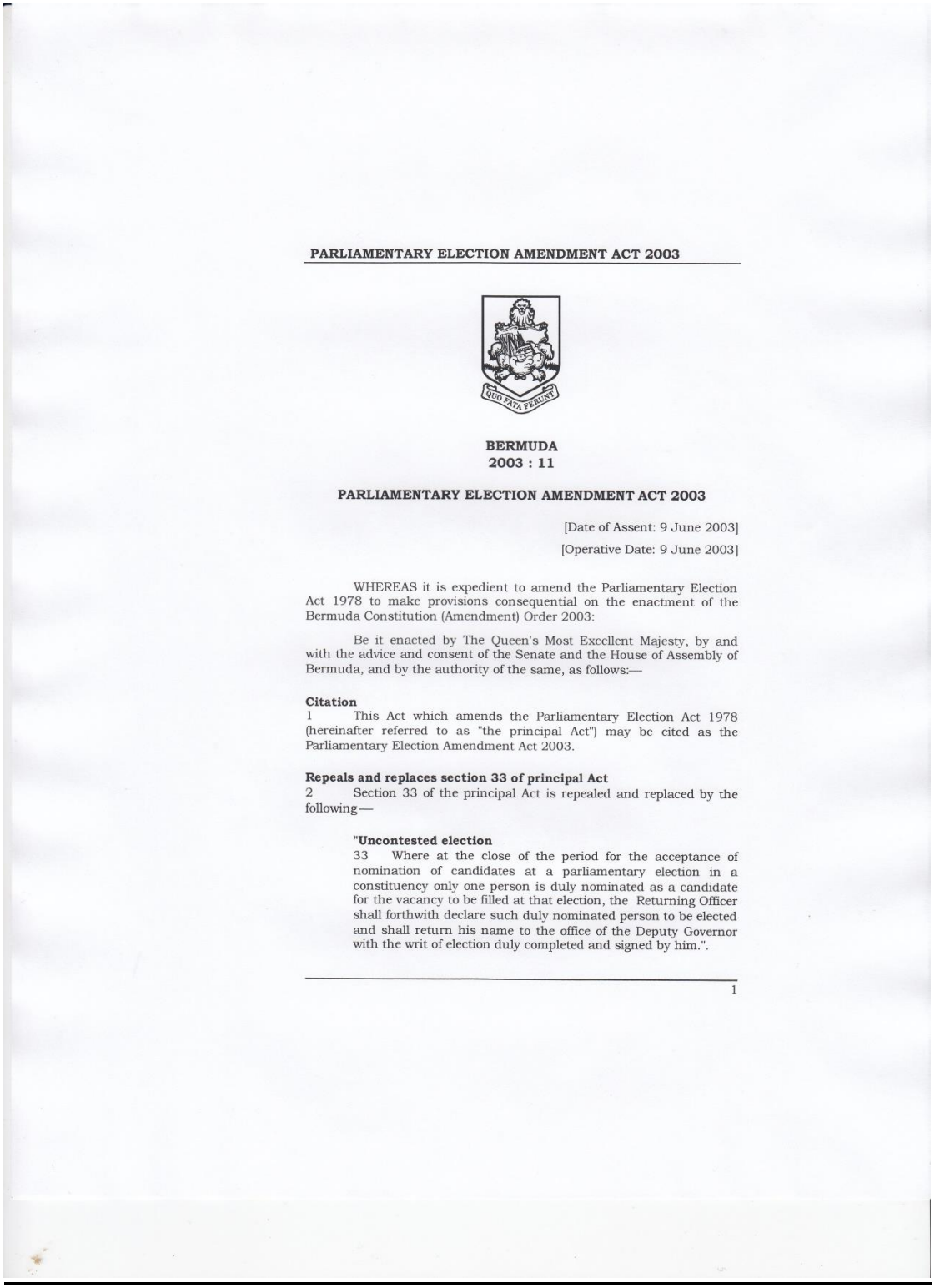
(4) This Order shall come into force on 21st August 2001.

Recommendations for single-member constituencies

2.—(1) Notwithstanding section 54 of the Constitution, the following provisions shall have effect in relation to a Constituency Boundaries Commission first appointed in accordance with section 53 of the Constitution after the date on which this Order comes into force.

(1) 1967 c. 63.
(2) S.I.1968/182, amended by S.I. 1968/463, 726, 1973/233, 1979/452, 1310, 1989/151.

In September 2002, the Boundaries Commission presented its report to the House of Assembly that proposed a new electoral system with 36 electoral districts of similar size. Each district would send a single representative to Parliament. In October 2002, the House of Assembly approved the proposal and transmitted it, through the Governor, to the British Minister of State for Foreign and Commonwealth Affairs for approval and implementation.



PARLIAMENTARY ELECTION AMENDMENT ACT 2003

BERMUDA
2003 : 11

PARLIAMENTARY ELECTION AMENDMENT ACT 2003

[Date of Assent: 9 June 2003]

[Operative Date: 9 June 2003]

WHEREAS it is expedient to amend the Parliamentary Election Act 1978 to make provisions consequential on the enactment of the Bermuda Constitution (Amendment) Order 2003:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

Citation

1 This Act which amends the Parliamentary Election Act 1978 (hereinafter referred to as "the principal Act") may be cited as the Parliamentary Election Amendment Act 2003.

Repeals and replaces section 33 of principal Act

2 Section 33 of the principal Act is repealed and replaced by the following—

"**Uncontested election**

33 Where at the close of the period for the acceptance of nomination of candidates at a parliamentary election in a constituency only one person is duly nominated as a candidate for the vacancy to be filled at that election, the Returning Officer shall forthwith declare such duly nominated person to be elected and shall return his name to the office of the Deputy Governor with the writ of election duly completed and signed by him.".

1

D. (Full) Elected Dependency Governance (EDG)

The more equitable Parliamentary Election Act 2003 was subsequently approved in June 2003 [205] with the introduction, for the first time, of an electoral system on the foundation of the one-person one-vote principle. Bermuda Attorney-General, The Hon. Kathy Lynn Simmons, JP, MP Attorney-General and Minister of Legal Affairs and Constitutional Reform, in an address to the UN Special Committee on Decolonisation recalled the historical struggle for the new law, noting that "despite its glaring deficiencies (of the 1968 Constitution Order), it wasn't until 2003 that amendments to the Constitution brought about universal adult suffrage to Bermuda elections" (Simmons, 2022).

The general election held on 28 July 2003 was, therefore, the first election in the history of Bermuda to be held on the basis of the political equality so coveted by the majority of the population. The PLP was re-elected with 22 seats in the House of Assembly to 14 for the Opposition UBP, with a new Premier (Alexander Scott). The conduct of the 2003 election under a democratic electoral system constituted the transition to full Elected Dependency Governance (EDG) pursuant to the Parliamentary Election Act 2003.

The transition to full EDG constituted a fundamental shift to a system of equal political rights. However, this development was not intended to address the larger question of the asymmetrical nature of the territory-administering Power political relationship and the unilateral authority inherent in the existent constitutional arrangement. The political inequality of the dependency status is reflected in continued concerns over the unilateral exercise of power by the UK which often utilises its constitutional authority, or bypasses its responsibilities under that authority, to make decisions without due regard for the position of the elected government.

A case of the latter was the UK Government decision in 2003 to appoint the new British Chief Justice for Bermuda upon the recommendation of the UK-appointed Governor rather than pursuant to the constitutional requirement of consultation with the elected Premier who favoured a Bermudian candidate. Concern was expressed by the Premier that such unilateral appointments might have implications for the selection of other key positions in the Bermuda Regimen, the Police and the Department of Public Prosecutions. In the case of the Chief Justice appointment, its unilateral nature was made without regard for the requirement of the Bermuda Constitution that consultation be held with the Premier as the elected leader of Bermuda who must, in turn, consult with the Leader of the Opposition. In a letter to the UK Overseas Territories Minister Bill Rammell on the matter, Bermuda Premier Scott W. Alexander Scott asserted:

> The consultative mechanism established by the Bermuda Constitution requiring due regard to be paid to the elected leadership of the Bermudian people has been

[205] See *Bermuda Working Paper prepared by the Secretariat*, United Nations, A/AC.109/2003/13, 30 April 2003, p. 4.

disregarded in favour of a colonial model which we thought had been relegated to history…Will our justice system now be rolled back to the days when our senior-most jurist [posts were reserved for foreigners (?) (Scott, 2003).

The Premier asserted that "the gains which Bermudians have won over the past three decades in administering our own internal affairs should neither be eroded nor reversed." The Chief Justice example spoke to the realisation that whilst Bermuda enjoyed certain areas of delegated autonomy considered more advanced than other UK dependencies, the political status arrangement remained on unequal terms. Of this example, the Premier stated that "when the UK ignored the views of the elected Government, that showed that there was no real partnership between London and the Territory." [206] This event served to accelerate discussions on independence as a means to correct the existent political inequality, with the Premier calling for a wide debate to start the process of examining the next step in the political evolution of the territory.

Bermuda Independence Commission (BIC) 2005

In December 2004, the Government established the Bermuda Independence Commission (BIC) comprised of 14 members for the expressed purpose of educating, informing and encouraging discussion and debate on the subject of independence for Bermuda. Unlike earlier bodies created for a similar purpose, it was the Government's stated intention that the BIC be independent of the Government, representative of the wider Bermudian community, and designed to assist the Government in developing its approach towards the issue of independence. [207]

Accordingly, the BIC met with representatives of the Foreign and Commonwealth Office (FCO) in London from 14 to 16 March 2005, to discuss a wide range of issues relating to Bermuda's constitutional position, as well as the implications of independence in areas including legislation, citizenship, maritime and aviation issues, defence, treaty succession, and UN membership. During the course of the BIC deliberations, the UK reiterated its policy that neither integration nor free association were options on offer from the UK to the Territories. (*This policy is examined in the section on UK dependency policy later in the present Assessment*).

In a statement to the House of Assembly in December 2004 announcing the creation of the BIC, Bermuda Premier Hon. W. Alexander Scott, JP, MP recalled that "…the Bermuda Constitution Order 1968 was drafted in contemplation of Bermuda moving toward

[206] See *Bermuda Working Paper prepared by the Secretariat,* United Nations, A/AC.109/2004/14, 1st April 2004, p. 13.

[207] See *Bermuda Working Paper prepared by the Secretariat,* United Nations, A/AC.109/2005/5, 23 February 2005, p. 10.

See *Bermuda Working Paper prepared by the Secretariat,* United Nations, A/AC.109/2006/6, 23 February 2006, p. 11

independence or self-determination in the then-not too distant future (but) that was thirty-seven years ago" (Scott, 2004).

The proper modality for ascertaining the will of the people of Bermuda on the question of independence emerged again in the public discourse, in particular whether the issue should be decided by referendum or via an election. This matter had been raised by the Bermuda Government with the UK Government at the sixth Overseas Territories Consultative Council in London in 2004.

The initial response from the UK Minister indicated no clear UK policy on the issue at that time, and an invitation was extended to the dependencies for written representations on the question for consideration at the next Overseas Territories Consultative Council meeting in 2005. However, the UK Parliamentary Secretary of State Bill Rammell pre-empted the requested submissions from the territories by issuing a policy memorandum in early 2005 to the UK Governors in the Territories expressing a British preference for the referendum route over an election – a position which coincided with the anti-independence opposition:

> As the grant of independence by the United Kingdom requires the prior approval of (the United Kingdom) Parliament, the United Kingdom Government needs to be satisfied that, if a territory moves to independence, it does so on the basis of the clearly and constitutionally expressed wish of its people. The move to independence is a fundamental step. Increasingly in the United Kingdom, major constitutional issues of this kind are being put to a referendum. At this time, the presumption of the United Kingdom Government is that a referendum would be the way of testing opinion in those territories where independence is an option. But a final decision on whether to go the referendum route, and on what form the referendum might take, would need to be determined by the United Kingdom on a case-by-case basis, reflecting the uniqueness and individual characteristics of each Territory" (*emphasis added*). [208]

The salient point of the Rammell communiqué was the assertion that "a final decision on whether to go the referendum route, and on what form the referendum might take, would need to be determined by the United Kingdom" - not the elected government of the territory. [209] This constituted yet another example of the unilateralism exercised by the administering Power on key issues related to the political future of the territory, and in this case, served to compromise the process of self-determination. A 2005 briefing note presented to the BIC on the issue of modalities for self-determination provided a broader perspective on the

[208] See *Bermuda Working Paper prepared by the Secretariat*, United Nations, A/AC.109/2006/6, 23 February 2006, p. 11.

[209] *id/*

complexities of the modalities for such a self-determination decision, and is contained in the Appendix to the present Assessment.

The Throne Speech delivered in November 2005 emphasised the work of the BIC to set the record straight regarding the implications of independence, and the next steps in the process of self-determination:

> (T)he Bermuda Independence Commission highlighted to this community that if the process towards sovereignty is handled in an open and transparent manner, international business will not leave these shores, the dollar will not lose its value and the status and relationship with overseas neighbours will not be threatened. Independence is therefore a natural progression for a mature jurisdiction such as Bermuda…Following a series of public meetings to disseminate the conclusions reached by the BIC, the Government would present a Green Paper for discussions within the House of Assembly and ultimately, a White Paper outlining the Government's policy proposals for an independent Bermuda;
>
> Currently, Bermuda's role on the world stage is performed by others. The United Kingdom Government speaks for Bermuda on international political issues; the financial sector delivers Bermuda's external economic impact. It is the [Bermudian] Government's view that the time has come for Bermuda to rehearse her own voice and write her own script. Bermudians must be prepared to play many parts. They must expand their horizons. Let history record that Bermuda saw the challenge of the future and met it!" [210]

A number of additional issues emerged in the BIC public discussions, and considered in its final report, included the effect of independence on the new UK citizenship granted to Bermudians with the accompanying freedom of movement rights in the European Union through the United Kingdom Overseas Territories Act of 2002. The BIC had also invited (*with UK concurrence*) a United Nations Special Mission of the Special Committee on Decolonisation (C-24) which visited the territory twice in 2005. This followed a visit by a BIC delegation to the C-24 regular session the same year where the UN examines annually the political, economic, social and educational developments in Bermuda, and adopts an annual resolution for consideration and approval by the UN General Assembly (UNGA) setting forth actions to be taken to facilitate the decolonisation process pursuant to the UN Charter.

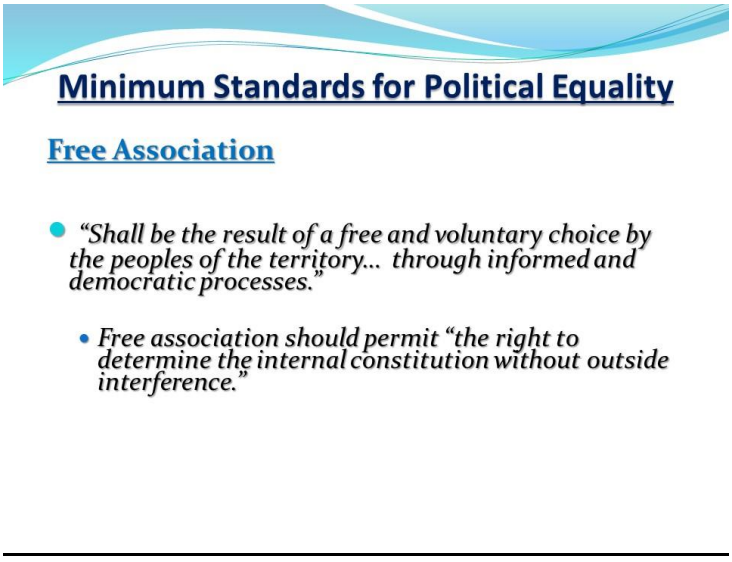
Following six months of international consultations, investigation and public meetings, the BIC published its report in August 2005 which provided its observations and conclusions on the key issues of their deliberations. Regarding the use of either a general election or a referendum to test public opinion on independence, the Commission concluded that both political parties should share the merits of each method. The report explored

[210] *id/ p. 12-13*

Bermuda's current constitutional status; how issues such as the economy, citizenship, the appointment of public officers, internal security and defence might be affected under independence; and the associated financial costs which the BIC Report estimated at equivalent to 2 per cent of government revenue. The BIC Report noted that independence, in and of itself, would not change the social challenges faced by Bermuda, nor would it on the other hand precipitate a flight of international business.

The BIC recommended that the Government start a national dialogue laying out the kind of government, constitution and related matters it would propose for an independent Bermuda. It also recommended that the Government confer with the Bermuda International Business Association and the Insurance Development Council to ensure that myths of independence are separated from reality and that the same message is carried to prospective companies. On the citizenship question, the BIC Report urged the Government to explore how citizenship might be retained should Bermuda proceed to independence.

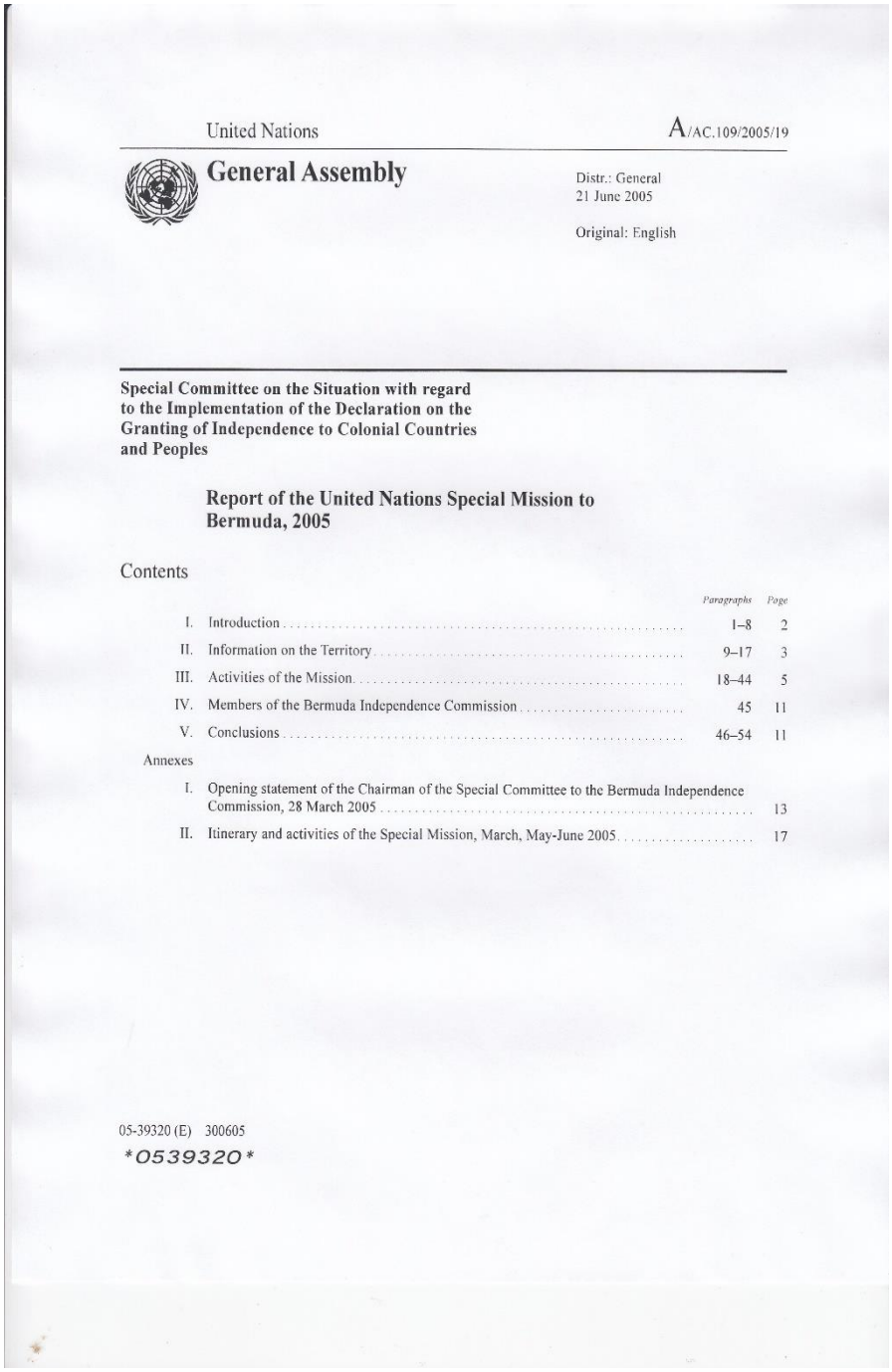
Regarding the impact of race relations on attitudes to independence, the BIC Report strongly recommended the Government lead a process of truth and reconciliation to achieve equal opportunity and genuine social unity. Finally, the BIC Report called on the Government to identify all treaties and international agreements that were applied to Bermuda' by the UK, and to review opportunities regarding membership of international organizations. (Report of the Bermuda Independence Commission, 2005). The observation that "independence was a natural progression for a mature jurisdiction such as Bermuda" was made in the 2005 Throne Speech, along with the intention of Government "to present a Green Paper for discussion within the House of Assembly and the public, and subsequently a White Paper, outlining the Government's policy proposals for an independent Bermuda" [211]



[211] See *Bermuda Working Paper prepared by the Secretariat,* United Nations, A/AC.109/2007/10, 27 March 2007, p. 4-5.

United Nations Special Mission to Bermuda 2005

The UN Special Mission held meetings with the BIC, the Premier of Bermuda, members of the Cabinet, PLP parliamentarians, the leadership of the opposition UBP, including the Leader of the Opposition, and the Governor of the Territory. The Special Mission also participated in six evening public meetings at various sites around the territory, and one school meeting where persons of different ages and from the various communities presented their views on self-determination and independence, and posed questions to the members of the Special Mission on the experiences of their countries during the transition to independence.



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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Report of the United Nations Special Mission to Bermuda, 2005

Contents

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Throughout the course of the two-stage visit to Bermuda, the UN Special Mission observed "a serious racial divide between the persons of African descent and those of European descent (with) (t)hat division…played out, in significant measure, in the support for opposing political parties, as well as in the support for, or opposition to, independence" (Report of the Special Mission, 2005: 5). The Chairman of the Special Mission, Ambassador Julian Hunte of Saint Lucia, proceeded to clarify the role of the UN in the process of decolonisation for the non self-governing territories (NSGTs):

> Consistent with Articles 1, 5 and 73 of the Charter of the United Nations, the year 2005 marked a significant benchmark in the self-determination process worldwide, with the convergence of the five-year review of both the United Nations Millennium Declaration and the Second International Decade for the Eradication of Colonialism… The mandate of the (UN Special)Mission was to get first-hand information on the situation in Bermuda and to define what assistance the United Nations could provide for Bermuda if requested…The Special Mission was not in Bermuda to seek to persuade the Territory of any particular approach to take in the self-determination process, or of any particular path to be chosen to achieve that goal… (T)he Special Mission could provide certain insights gained from the experiences of other former territories which had moved to a full measure of self-government. (Report of the Special Mission, 2005: 6).

The UN Report also made reference to the concerns expressed by some BIC members that, "notwithstanding the three options for self-determination recognised by the United Nations, namely independence, integration with an independent State and free association with an independent State, the United Kingdom, as the administering Power, had expressed the view that only independence or the status quo were on offer." In that regard, some BIC members expressed that this position was inconsistent with United Nations principles on decolonization routinely agreed by all nations.

Members of the UN Special Mission clarified the issue during the public discussions, indicating that "the political options of free association with an independent State, or integration with an independent State, provided the possibility of association or integration, respectively with a country other than the administering Power" (Report of the Special Mission, 2005: 7). The overall question of defining the transition to independence by referendum or election was also addressed with a representative of the UN Special Mission pointing to the example of his small island country where the opposing political parties reached consensus through negotiations, with the transition to independence not required via either a referendum or elections.

The representative of UNDP expressed the view that the focus should not be as much on independence as an event, but rather on a process whereby Bermudians would define their goals and explore whether those could be reached through transition to independence or through another option of political equality. The UN Special Mission took note of the consistent expressions during their public and private meetings that there was a need for more education on constitutional issues, for further analysis of the current political status of the territory, and for more information on the steps to be taken in transition to a fully self-governing status.

Of particular note was the UN Special Meeting with the UK Governor where "(d)iscussions centred on the position of the United Kingdom Government in regards to the completion of the decolonization process in Bermuda…, the legitimate self-determination options contained in General Assembly resolution 1541 (XV)," and the reiteration of the UK

position that it offered neither free association nor integration - two of the three options of political equality recognised by the UNGA. (Report of the Special Mission, 2005: 9).

No political or constitutional developments occurred through the remainder of the Second International Decade for the Eradication of Colonialism (IDEC) which ended in 2010, and into the third IDEC (2011-2020) even as the UNGA had approved a plan of action for the acceleration of the decolonisation process during the periods. The UK posture on further constitutional advancement was reflected in its 2011 national statement to the UN Special Committee and Decolonisation Committee (Fourth Committee) through its reference to the British Foreign Secretary announcement the same year. The statement has indicated that "the time was not right to embark on further constitutional change, (but) (r)ather, his Government was focusing on three practical policy goals: to strengthen interaction between the United Kingdom and its Territories; to work with the Territories to strengthen good governance, public financial management and economic planning where necessary; and to improve the support available to the Territories." [212]

This hesitancy to pursue further political development in cooperation with Bermudian authorities was reflective of a policy of dependency legitimisation and would be repeated throughout the third and into the fourth IDEC. (*British dependency governance policy is examined later in the present Assessment*). Hence, the UK mantra:

> The British Government was committed to allowing each Territory to run its own affairs as far as possible, which entailed responsibilities and good governance on the part of the Territory. However, where high standards of probity and governance were not maintained, the United Kingdom did not hesitate to intervene (*emphasis added*). [213]

The statement of the Attorney-General and Minister of Justice of Bermuda Hon. Kim J. Wilson, JP to the 2012 UN Decolonisation Seminar in Ecuador on the *Implementation of the Third International Decade for the Eradication of Colonialism* reminded the UN Special Committee on Decolonisation that "from its inception, the PLP Platform has never wavered from the cause of independence of our people." [214] She indicated that "we would consult with and be guided by the will of the majority by way of referendum before independence would

[212] See *Bermuda Working Paper prepared by the Secretariat*, United Nations, 27 March 2012/4, 9 February 2012, p. 11-12.
[213] id (p. 14)

[214] See *Bermuda Working Paper prepared by the Secretariat*, United Nations, A/AC.109/2013/6, 19 February 2013, p.4.

take place" (Wilson, 2012). [215] This was manifested in the Referendum Act (Bermuda) 2012 which established procedures for conducting a referendum.

The PLP subsequently lost power in the December 2012 elections to the One Bermuda Alliance (OBA) party, and re-gained power in the next election held in 2017 with 24 of the 36 seats in the House of Assembly under the premiership of David Burt JP, MP. As a result of the by-elections held on 7 June 2018 and 21 November 2019, the Progressive Labour Party held 25 out of the 36 seats. It was reported by the UN that the Premier in September 2017 announced that "while the achievement of independence was in the constitution of his party, the territorial Government was not committed to pursuing independence at that moment, as it was committed to growing the economy and addressing the immediate challenges inside the Territory." [216] The Premier reiterated this position in an interview in 2018 in which he stated that, "while independence was an ultimate aim and objective of the PLP, it was not part of the current mandate of the Party(,) and that Bermuda would not pursue independence during the current term of his office in order to address more important issues.[217]

At the 2019 Caribbean Regional Seminar on Decolonisation held in Grenada in 2019, the Deputy Premier of Bermuda Hon. Walter H. Roban JP, MP stated that the constitutional arrangements differed between Bermuda and the other UK overseas territories. In this vein, the Deputy Premier argued that "the existing constitutional arrangements" did not allow for the UK to "legislate over Bermuda, (and that the UK) can request certain legislation but it does not allow them to legislate from the UK onto us" (Roban, 2019). The Deputy Premier indicated:

> (T)the Government of Bermuda supports independence and full sovereignty for Bermuda. After the process where the public are properly engaged through a mechanism of some sort or mandate that this is the will of the people following an exhaustive education campaign and a thorough engagement, we will be prepared to make that step. We have been a supporter from the start of the existence of my party and remain supportive for full sovereignty for Bermuda;
>
> (It) is our hope that the Committee of 24 will be of availability to us for advice, for assistance, and to guide us to make sure that our small 21 square mile island territory makes the proper decisions, puts in place the proper processes, and takes the

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[215] The choice of deciding on independence via referendum represented a shift in the PLP longstanding position favouring a general election as the modality for the decision on independence.

[216] See *Bermuda Working Paper prepared by the Secretariat,* United Nations, A/AC.109/2018, 8th March 2018, p.4-5.

[217] See *Bermuda Working Paper prepared by the Secretariat,* United Nations,A/AC.109/2019/3, 12th February 2019, p.5.

appropriate steps so that we can be a positive member of the Family of Nations across the world (Roban, 2019).

General elections were held in the Territory on 1st October 2020 with the incumbent PLP winning with an increase margin of seats in the House of Assembly from 25 to 30 seats, while the One Bermuda Alliance won 6 seats. Eight women were elected to the House of Assembly. David Burt of the Progressive Labour Party was re-elected as Premier.

E. United Kingdom Dependency Governance Policy

A synopsis of UK policy as articulated to the UN decolonisation meetings on the stewardship of the dependent territories is instructive with regard to the pursuit of the full measure of self-government (FMSG) for Bermuda. A 1981 UK statement to the UN Fourth Committee signaled that independence would be encouraged only if desired by the territories themselves. There was a tendency, even at this early period, for the UK to critique UN resolutions as attempts to force independence on the territories. However, since the adoption by the UNGA of Resolution 1541(XV) in 1960, it was evident that the resolutions merely reaffirmed the right to independence whilst also giving equal weight to political integration with an independent State, or via free association with an independent State, (*the alternative options to independence that would be removed from offer by the UK in later years in the UK dependency legitimisation thrust*).

The 1983 statement of the UK to the UN Fourth Committee referred to the uniqueness of each territory in terms of size of population and natural resources which the UK expressed could render independence unrealistic. Of particular interest were references to distinctions in social structure amongst the dependencies. This was especially relevant to Bermuda which was developing from a particularly unique place of settler colonialism and racial orientation.

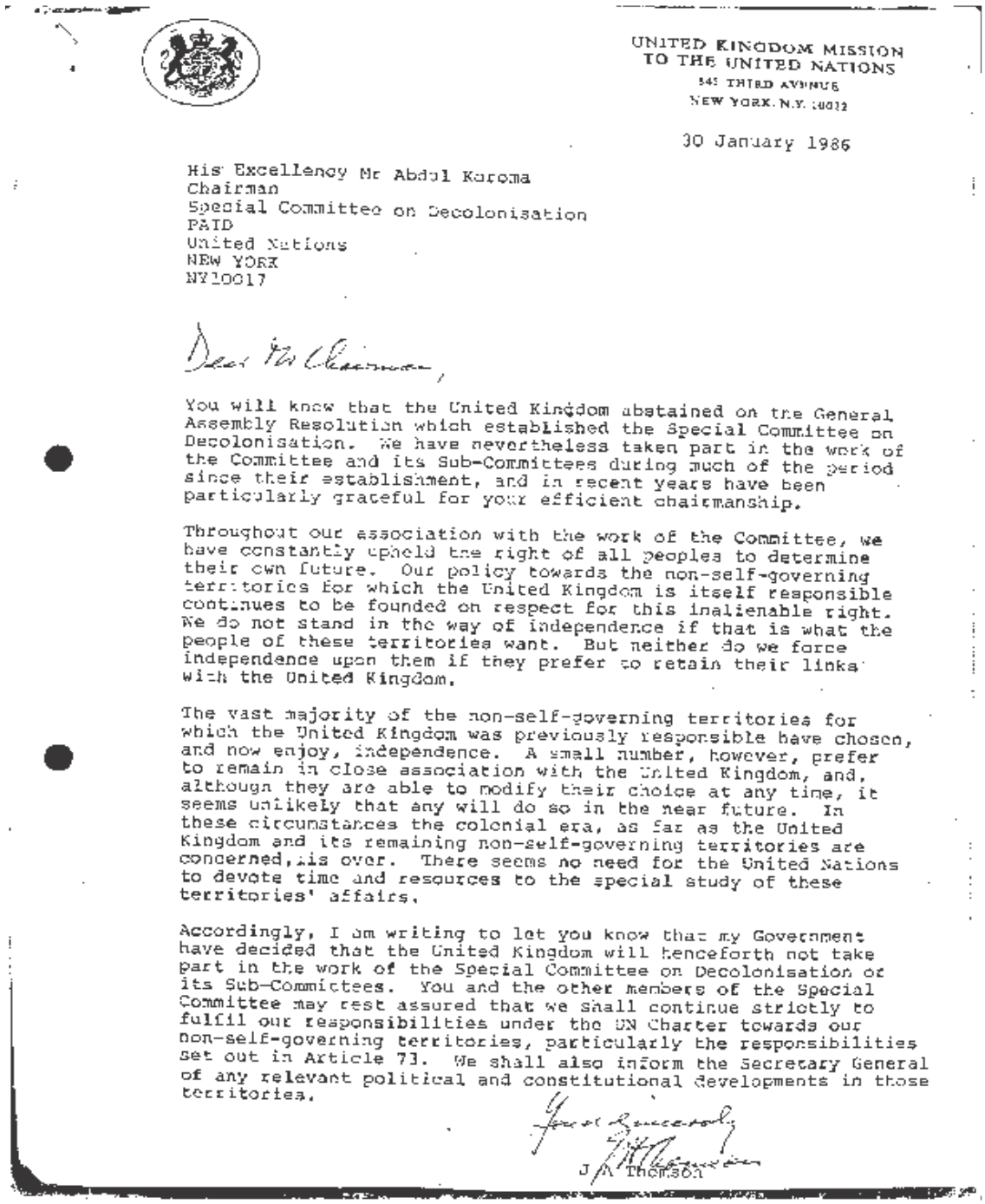
This perspective differed from the conclusions of the international community via its annual UN General Assembly decolonisation resolutions that dismissed territorial size, geographical location, size of population, and limited natural resources as impediments to the fulfillment of the decolonisation process. The UK representative in the 1985 statement to the UN Fourth Committee elaborated that "there was no single model for decolonization and that each Territory must be allowed to follow its own freely chosen and individual path" but that the dependencies would not be forced into independence if not desired. [218]

As the UK position continued to run counter to the UNGA decisions, the UK in 1986 ultimately withdrew its formal cooperation from the UN Special Committee on Decolonisation (C-24) by way of a communication from the UK Ambassador J.A. Thomson to the Chair of the C-24 Abdul Koroma. The letter summarily concluded that colonialism had

[218] See *Official records of the General Assembly,* Thirty-ninth Session, Fourth Committee, 16th meeting, paras 45-54.

ended. This decision to step away from the UN process was reflective of the UK move towards its dependency legitimisation strategy. In the letter of withdrawal, the UK Ambassador articulated the UK decision:

> The vast majority of the non-self-governing territories for which the United Kingdom was previously responsible have chosen, and now enjoy, independence. A small number, however, prefer to remain in close association with the United Kingdom, and, although they are able to modify their choice at any time, it seems unlikely that any will do so in the near future. In these circumstances the colonial era as far as the United Kingdom and its remaining non-self-governing territories are concerned', is over…Accordingly, I am writing to let you know that my Government haver (sic) decided that, the United Kingdom will henceforth not take part in the work of the Special Committee on Decolonisation or its sub-committees. You and the other members of the Special Committee may rest assured that we shalt continue strictly to fulfil our responsibilities under the UN Charter towards our non-self-governing territories, particularly the responsibilities set out in Article 73 (*emphasis added*). (Thomson, 1986).



UNITED KINGDOM MISSION
TO THE UNITED NATIONS
845 THIRD AVENUE
NEW YORK, N.Y. 10022

30 January 1986

His Excellency Mr Abdul Koroma
Chairman
Special Committee on Decolonisation
PAID
United Nations
NEW YORK
NY10017

Dear Mr Chairman,

You will know that the United Kingdom abstained on the General Assembly Resolution which established the Special Committee on Decolonisation. We have nevertheless taken part in the work of the Committee and its Sub-Committees during much of the period since their establishment, and in recent years have been particularly grateful for your efficient chairmanship.

Throughout our association with the work of the Committee, we have constantly upheld the right of all peoples to determine their own future. Our policy towards the non-self-governing territories for which the United Kingdom is itself responsible continues to be founded on respect for this inalienable right. We do not stand in the way of independence if that is what the people of these territories want. But neither do we force independence upon them if they prefer to retain their links with the United Kingdom.

The vast majority of the non-self-governing territories for which the United Kingdom was previously responsible have chosen, and now enjoy, independence. A small number, however, prefer to remain in close association with the United Kingdom, and, although they are able to modify their choice at any time, it seems unlikely that any will do so in the near future. In these circumstances the colonial era, as far as the United Kingdom and its remaining non-self-governing territories are concerned, is over. There seems no need for the United Nations to devote time and resources to the special study of these territories' affairs.

Accordingly, I am writing to let you know that my Government have decided that the United Kingdom will henceforth not take part in the work of the Special Committee on Decolonisation or its Sub-Committees. You and the other members of the Special Committee may rest assured that we shall continue strictly to fulfil our responsibilities under the UN Charter towards our non-self-governing territories, particularly the responsibilities set out in Article 73. We shall also inform the Secretary General of any relevant political and constitutional developments in those territories.

Yours sincerely,

J A Thomson

These responsibilities included the continuation of the requirement under Article 73(e) the UN Charter "to transmit regularly to the (UN) 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…" (United Nations Charter),

This appeared to preclude adherence to other parts of the UN Charter required of the UK as the administering Power of the territories, in particular Article 73(b) of the Charter:

> 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…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 (United Nations Charter).

Dependency Legitimisation

Thus, the mandate that the administering Power advance the territories to the FMSG was being redefined to foster a perception of legitimacy of the status quo dependency status, and that such arrangements should be accepted as a model of democratic governance by the international community despite the clear political inequalities. This was followed by a seminal announcement from UK Parliamentary Secretary of State for Foreign Affairs Timothy Eggar in 1987 during parliamentary debate in the UK House of Commons on the results of a 1987 UK review of its UKOT policy. The policy represented a fundamental shift to a *laissez faire* approach to the decolonisation of the dependent territories under UK administration by indicating that it would only remain ready to respond to any expressed wish of then people on independence – but not to promote it, or any other legitimate option.

The later 1989 UK Statement to the Fourth Committee revealed a willingness to entertain other political status choices, arguing that self-determination need not be limited to independence. This hint of flexibility to entertain other political status options would later give way to the 'two-option' dependency legitimisation strategy of independence or the status quo dependency arrangement – the 'zero-sum' game'. In effect, this continued the process of re-defining what constituted 'self-government' and coincided precisely with the beginning of the Decolonisation Deceleration Period (DDP) at the beginning of the 1990s,. Paradoxically, these developments also occurred on the eve of the first International Decade for the Eradication of Colonialism (IDEC) – not its justification (*emphasis added*).

The 1992 UN Working Paper on Bermuda reported on the UK 1991 statement to the UN Fourth Committee which suggested that its obligations to the development of self-government would be focused on dependency reforms, whilst repeating the position that independence would be responded to if the peoples of the territories expressed a preference for it:

> (T)he United Kingdom took seriously its obligations under the Charter of the United Nations to develop self-government in its dependent territories, and in cooperation with the locally elected governments, to ensure that their constitutional frameworks continued to meet the wishes and aspirations of their peoples. [219]

[219] See *Bermuda Working Paper prepared by the Secretariat,* United Nations, A/AC.109/1143, 5th April 1993, p. 5.

In 1993, the British held a Conference on dependent Territories entitled "Progress through Partnership" where the UK Secretary of State for Foreign and Commonwealth Affairs Douglas Hurd outlined the British policy on the dependent territories. The UK Secretary "noted that the world had changed so dramatically that the pressure to decolonise, which has been so strong, had become more complicated," (and that) the assumption that… independence was the only way to make progress had evaporated." [220]

This perspective of 'a changing world' coincided with the end of the Cold War and the beginning of the period of dependency legitimisation at the beginning of the 1990s. Keeping with this narrative, Secretary Hurd pronounced that "some Territories were bound by unavoidable political realities, and most of them showed no signs of wishing to move to full political independence. [221] The Secretary repeated the new mantra of dependency legitimisation which intensified from that stage of C-EDG onward, in suggesting that:

> The concept of statehood and independence had changed and, in that connection, some Territories had exercised their right not to press for independence. Some territories were too small or viable, even by today's terms; others could not support the expense; and yet others had powerful neighbors and felt the need for protection. They look to a larger State, usually the metropolitan Power, to provide such protection. Sometimes States formed an association that gave them statehood and internal self-government but enable another country to look after their defence [222] (*emphasis added*).

The idea expressed by Secretary Hurd that an association arrangement was a potential alternative seemed to, on the surface, bring UK policy closer to the recognition of the free association alternative as contained in UN Resolution 1541(XV) (United Nations, 1960b). However, the model of 'association' being suggested by the UK did not meet the relevant mutual consent criteria. A decade later the free association option would be summarily deemed 'not on offer' as the dependency legitimisation strategy became a dominant zero-sum game of independence on the one hand, or modernised dependency status on the other. Hence, the mantra continued that 'if the territories wish to remain British' they would have to comply with the parameter set by the modernised version of the status quo (Corbin, 2006). As indicated by Secretary Hurd, the right to self-determination "might be expressed at each and every general election," but this would shift in later years when the UK began to set forth its preference that self-determination would have to be determined by a referendum rather than via a general election.

This was followed on by a 1996 communication from UK Foreign Secretary Malcolm Rifkind to the elected leaders of the dependent territories, presented as a 'modest revision of existing policy', which warned that, in future, continued dependency may, in

[220] See *Bermuda Working Paper prepared by the Secretariat,* United Nations, A/AC.109/1189, 4th May 1994, 8-9.
[221] *id*
[222] *id/*

some cases, require that there should be an extension of those reserve powers in the respective constitutional orders he deemed necessary to be exercised by the UK-appointed governor" (Rifkind, 1986). The Secretary proceeded that "it may become necessary to grant ''extended reserve powers'' to the British Governor, including the right to override the local legislature and chief minister" (Rohter, 1997). In an analysis of the Rifkind letter, the then - Anguilla Chief Minister Hubert Hughes commented that:

> They come down from the imperial throne at the empire and they want to dominate the economic and political life in the colonies. Anguillans resent that. We are not owned by Britain. The new power will make a mockery of democracy. A civil servant from the foreign office would be able to ignore the advice of the local council. [223]

This question of unilateral authority was also the subject of a 1997 UK House of Commons Select Committee on Public Accounts where Sir John Kerr, a permanent Undersecretary in the Foreign Office, replied to a parliamentary query that:

> We have nuclear weapon-type powers. We can always in the last resort override the (elected) government, disallow the country's budget or pass by Order in Council here legislation which changes, overrides, (or) replaces their legislation…for all Caribbean territories (except Bermuda). It is a nuclear option which we have on occasion threatened to use. If we found a really very alarming situation, it would be right in future to threaten to use it again, and if we were ignored, it might be right to use it. [224]

The perspective that Bermuda is excluded from the application of such UK legislative unilateralism was reflected in the statement of the Deputy Premier to the 2019 UN Regional Seminar on Decolonisation (*as earlier referenced*) but other unilateral measures such as the UK decline of assent to territorial legislation as well as other measures are noteworthy, most recently with respect to the 2022 'instruction' to the UK Governor not to assent to Bermuda legislation on the legalisation of cannabis. [225]

The UK Secretary through the 1997 policy statement went on to reaffirm the UK 'zero sum' strategy, indicating that " (i)t is for the people of the Dependent Territories to decide whether to become independent or remain constitutionally dependent' (Rohter, 1997) (*emphasis added*).Thus, the dependency status was quickly being developed into a model of expanded unilateral power by the cosmopole as opposed to the increasingly expressed desire of the political leadership and general public in the dependencies for a genuine devolution of

[223] *Caribbean colonies debate letter from Britain,* Trinidad Guardian, 27 February 1997.

[224] See *Minutes of Evidence,* Select Committee on Public Accounts, UK House of Commons, 15 December 1997.

[225] See *Crisis looms as Britain blocks cannabis legalisation*, The Royal Gazette, Hamilton, Bermuda, 7 September 2022. https://www.royalgazette.com/politics/news/article/20220906/uk-blocks-cannabis-legalisation/ accessed 9 September 2022.

power to the elected government that would have been consistent with the transfer of power doctrine contained in the UN Decolonisation Declaration (United Nations, 1960a).

UK policy would remain constant through the latter half of the 1990s consistent with an approach of setting aside the global decolonisation mandate under Article 73(b) of the UN Charter in favour of sustaining the status quo arrangements through their re-cast as a form of acceptable democratic governance. This dependency legitimisation/accommodation strategy epitomised UK and other administering Power dependency governance policy during the first decade of the Dependency Deceleration Period (DDP) at the beginning of the 1990s, and provided a convenient rationale as it sough to re-define the decolonisation mandate. Thus, the beginning of the new century would see schemes of dependency modernisation through changes in nomenclature and more, all the while, maintaining and even strengthening cosmopole unilateral authority (Corbin, 2006).

In this regard, the Foreign Affairs Committee of the House of Commons in its 1998 report on the dependent territories weighed in with recommendations in the run-up to the 1999 White Paper. Among their more enlightened (albeit cautious) proposals were that:

- (T)here should be a presumption "in favour of the maximum degree of internal self-government in dependent territories";
- Full consideration should be given to the revision of individual territorial constitutions" with a process of "regular review in line with the territory's development";
- "Careful and sensitive consideration should be given to the mechanism of the appointment of governors to include formal and proper consultation with the appropriate local representatives prior to a governor's appointment;
- Permanent representation in the UK should be established for the dependencies (Foreign Affairs Committee, 1998, xxii).

Dependency Modernisation Period (DMP)

The release of the new British White Paper in 1999 entitled *Partnership for Progress and Prosperity: Britain and the Overseas Territories*, ushered in the era of 'dependency modernisation' at the cusp of the 21st Century. [226] The new policy was unveiled by British Foreign Secretary Robin Cook as a 'new partnership' between the administering Power and the territories. The new principles reiterated many of the political expressions of the early C-

[226] Partnership for Progress and Prosperity Britain and the Overseas Territories Presented to Parliament by the Secretary of State for Foreign and Commonwealth Affairs by Command of Her Majesty March 1999.

EDG period that the "the right of self-determination (was) paramount, (and that) Britain has willingly granted independence where it has been requested."

A new point of emphasis was added in favour of the dependent territories "running their own affairs as much as possible," but this was regarded as remaining within the existing asymmetrical dependency governance context. Bermuda scholar/political leader Walton Brown saw the new policy as "a re-packaging of the UK-colony relations under New Labour with the seductively labelled 'Partnership for Progress', (but) the document…had virtually nothing to do with partnering and everything to do with a series of unilateral decisions imposed by the British" (Brown, 2011b).

Accordingly, the 1999 *Partnership policy* maintained unilateral applicability of UK laws and policies to the UK dependent – renamed overseas - territories (UKOTs) to ensure 'good governance,' and the creation of new or improved bureaucratic mechanisms. The policy placed considerable weight on the concept of modernisation of existent structures and practices governing the relationship between the UK and its re-named dependencies. The policy stipulated that "fundamental to the new partnership would be the right of each territory to 'remain British if that is the freely and democratically expressed wish of the people.' This would be an oft-repeated phrase throughout the contemporary dependency modernisation period. Perhaps this phrase should have read 'if the territory wished to remain a British colony/territory'… (Corbin, 2006).

The White Paper established its broad framework for the inclusion of the UKOTs within a modernised dependency framework:

> Britain's mutual relationship with the Overseas Territories must be seen in this context: within the overall framework of modernisation and reform, and within Britain's new international role. As participants in the new global order and the new global economy, the Overseas Territories themselves must embrace reform and modernisation, and in its relationships with the Overseas Territories, Britain must ensure that its structures and its practices are reformed and modernised (United Kingdom, 1999).

Some of the key provisions of the *Partnership* included:

- The change in designation from British 'Dependent' Territories to United Kingdom 'Overseas' Territories (UKOTs) reflective of the policy projection that the territories were no longer 'dependent.' This was to be embraced, to a degree, by some territorial leaders who equated their growing economic self-sufficiency with no longer being economically 'dependent.' However, the 'dependency' reference still defined the political status relationship between cosmopole and 'dependent' territory;

- The extension of British citizenship (and the right of abode) for those who "met certain conditions" with the option to retain British Dependent Territories citizenship (*even as*

the territories were no longer being referred to as 'dependent). On this issue, the White Paper reflected a sensitivity to the potential impact of "unrestricted access" for UK and EU citizens to the UKOTs. It was determined that "British citizenship should be on a nonreciprocal basis as far as the right of abode is concerned" in view of the possible "inflow of people on a scale that could dramatically alter the social cohesion and character of the (territorial) communities." The sustainability of this non-reciprocity, however, remained very much an open question (*subsequent proposals in the UK Foreign Affairs Committee advocating the extension of UK citizen rights in the dependencies would reverse this non-reciprocity pledge*) ;

- The establishment of parallel Overseas Territories structures in the Foreign and Commonwealth Office and the Department for International Development, the appointment of a Minister with responsibility for the Overseas Territories, and the creation of an Overseas Territories Consultative Council to bring together United Kingdom Ministers and the Chief Ministers/Premiers of the Overseas Territories;

A stated intent of the 1999 White Paper was the emphasis on 'good governance' provisions aimed at 'regulation' of the financial services industry in those UKOTs such as Bermuda, the Cayman Islands and the Virgin Islands which had developed this capacity. This policy was projected as "improved regulation to meet "internationally acceptable standards to combat financial crime and regulatory abuse," the introduction of (m)easures to promote greater cooperation with international regulators and law enforcers," (and) "(e)nhanced measures to combat drug trafficking and drug-related crime."

In the area of human rights, the 1999 White Paper focused on reform of local legislation in some Territories to comply with the same standards of human rights as those existing in the United Kingdom with regard to capital punishment and consensual homosexual acts with the caveat that if territorial government action was not taken, the UK would "enforce the necessary changes." [227] (*This would challenge the notion of UK did not have the authority to legislate for Bermuda*).

In the area of sustainable development, the new policy was to introduce mechanisms for UK-UKOT cooperation in the promot(ion) of 'economic growth and self-sufficiency, and the prioritisation of "reasonable' development assistance, in addition to the "strengthening of procedures and guidelines on borrowing by the Overseas Territories." In this connection:

- Borrowing should only be considered for discrete capital investment projects. It should be restricted to investments which have a calculable and reasonably certain financial and economic rate of return. All investment projects, however financed, should be appraised by suitably qualified professionals against technical, economic, financial,

[227] *id/ It is to be recalled that such unilateral enforcement by the UK of its 'human rights' mandates in the dependent territories was experienced in 1991 when the UK abolished the death penalty through the unilateral action of the Order in Council.*

social and (where appropriate) environmental criteria. Concessional sources of funding should be sought first and, in principle, projects with social objectives and low financial returns should be financed from recurrent budget surpluses;

- In considering particular projects due attention should be given to the impact of new commitments on overall levels of borrowing, and to the territory's debt management record. While a rigid framework should not be applied, each territory wishing to borrow will be required to agree with us an overall level of borrowing, and in the case of some territories approval will be required for individual loans. Borrowing in excess of agreed limits would only be approved in exceptional circumstances, or if the economic situation had changed substantially since the limit was set (United Kingdom (1999).

These 'guiding principles' also made reference to "enhanced policies, legislation and standards for the protection and management of the rich natural environment of the Territor(ies)" including the increase in funding for environmental programmes of £1.5 million over three years, and an agreement on an environmental charter along with the provision of technical support, training and capacity-building. UK Foreign and Commonwealth Secretary Robin Cook outlined the principles upon which the new policy would be based in the Foreword to the 1999 White Paper asserting that "the Partnership" would be "founded on self-determination" with the qualification, once again, that the UKOTs "are British (*dependencies?*) for as long as they wish to remain British (*dependencies?*)." This stipulation was consistent with the strategy of dependency legitimisation which sought to ascribe some degree of democratic legitimacy to the asymmetrical nature of the 'overseas territory' political status which is, in reality, a non self-governing territory under international law.

In effect, the constitutional adjustments contemplated in the 1999 White Paper were limited to internal modernisation of the 'machinery of government' whilst maintaining the prevailing dependency status. In other words, the cosmopole-territory political power differential remained the same as it was before the 'partnership' entered into force, and in some areas was further expanded. The UN Fourth Committee, as well as other strategic venues, remain important vehicles for the projection of the UK policy of dependency legitimisation, all the while downplaying the relevancy of the recognised self-determination process which previously obtained for former colonies during the DAP. The April 2000 speech of the Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs, Baroness Scotland to the Conference at Wilton Park on Overseas Territories was illustrative in this regard:

> The principles of partnership on which Britain wished to build its relationship with the Overseas Territories (are) self-determination; responsibilities of both partners; the exercise of democratic practices in the Territories to allow their people the

> greatest degree of control over their own lives; and continuance of British assistance to those Overseas Territories that needed it. [228]

With respect to Bermuda, Baroness Scotland noted that "Bermuda does not need development assistance" (b)ecause it is financially independent from Britain (and that) the effectiveness of the policies followed for some years (in Bermuda) was reflected in the Territory's flourishing, forward-looking, enterprise-based economy." [229] This followed on from the earlier statement delivered by Parliamentary Under-Secretary of State in the Foreign and Commonwealth Office Baroness Elizabeth Symons to a 1997 House of Lords debate:

> There are some who contend that the dependent territories are an anachronism at the end of the 20th century and that the United Kingdom has no business to be involved in such places at this time. Let there be no mistake. This is not this Government's view. We accept our responsibilities to these far-fluing territories because it is the express wish of their people to continue to have the protection of the United Kingdom. The territories are an important part of the United Kingdom's history, which deserve to be, and which will be, appreciated and valued. (Symons, 1997).

At this juncture of the advent of the *Partnership* policy, the idea was continually reinforced that "further progress" was made in UK "efforts to transform its relationship with its Overseas Territories into a fully modern partnership based on the four principles of self-determination, mutual obligations, freedom for the Territories to run their affairs to the greatest degree possible…(with the UK) prepared to consider any proposals about their future put forward by the peoples of the Territories themselves.[230]

This posture served as further confirmation that the UK international law commitments as an administering Power to advance the territory to the FMSG through genuine options of political equality had been circumvented in favour of dependency legitimisation. To this end, the Foreign Secretary's depiction of the 1999 White Paper as "a milestone in Britain's relationship with the Overseas Territories" was on point as it ushered in an era of dependency modernization - but this came at the expense of genuine decolonisation. In the 2009 edited volume "*The Diplomacies of Small States*," the context of the UK policy brought about in the 1999 White Paper was explored in *Dependency Governance and Future Political Development in the Non-Independent Caribbean* :

> (M)odifications to the internal constitutional arrangements announced in a new 1999 United Kingdom policy were clear examples of changes in form, but not in substance. Hence, the difference in nomenclature from *dependent* to *overseas* territories was coupled with the overriding retention of the power of unilateral authority of the United

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[228] *Bermuda Working Paper prepared by the Secretariat*, Special Committee on Decolonisation, United Nations, A/AC.109/2000/13, 15th June 2000, p.14.
[229] *id/*
[230] *id/*

> Kingdom to legislate for the territories through the mechanism of order-in-council, and to administer the islands through reserved constitutional powers of the British-appointed governor. It is to be emphasised that the modernisation of the dependency arrangements, as envisaged in the 1999 policy, was not intended to fundamentally change the political status of the territories *vis a vis* the United Kingdom. This was duly confirmed in an updated United Kingdom policy document published in 2007 which indicated that 'overseas territories governments should not expect that in the constitutional reviews currently underway the UK will agree to changes in the UK Government's reserved powers;
>
> Yet, even as the policy confirmed the continuation of the status quo, a strategy of 'colonial accommodation' was devised with the aim of gaining international legitimacy for the prevailing dependency arrangements as acceptable forms of self-governance. This is evidenced in the position of the United Kingdom representative in a statement to the United Nations Fourth Committee in October, 1998 that '...in no cases have territories remained British through coercion or repression (or) have been denied the opportunity to make their views known.' It is unclear, however, by what method the people of these territories had chosen to remain in their present dependency status since the available options have been limited to either independence, or continued and enhanced dependency status. (Corbin, 2009: 86).

Leaders of a number of the dependent/overseas territories in response to the new policy expressed concern that the consultations they had held with UK officials on the emerging *partnership* "had not sufficiently taken into account their position, and that nothing short of a popular consultation of the people would accurately assess their views on their political status choice." [231] Of particular note were the expressions of concern from many of the elected territorial leaders that "their repeated requests for reduced authority of the British-appointed governors and conversely more autonomy for the elected governments were essentially ignored in the plan." [232]

As earlier noted, there remained a general reluctance to accept at face value that the principle of non-reciprocity with respect to the right of abode would be of an indefinite nature without being adjusted unilaterally in later years. A 1999 Overseas Territories Review (*OTR*) edition pondered this question:

> The non-reciprocal pledge has been less than universally convincing even given the precedents cited in the policy regarding the Falklands (*Malvinas*) and Gibraltar, as well as the French, Dutch and Portuguese territories. This reluctance to accept the view that non-reciprocity would remain in effect indefinitely could in part be attributable to the reality of several of these very examples. Accordingly, despite the apparent non-

[231] See B*ritish Territories Review Options in wake of UK Policy Announcement*, In Overseas Territories Review, Vol. 2 No. 5, April 1999, (Caribbean Information Services), Washington, D.C.
[232] *id/*

> reciprocity in the French territories, a large settler population in New Caledonia (Kanaky) and French Polynesia (Ma'ohi Nui) has heavily influenced electoral politics not to mention the inordinate control (by) this segment of the population over the economy of the respective territories…The question posed by officials throughout the dependent territories was whether a future government could at some point drop non-reciprocity and 'let the floodgates open.' [233]

The caution of the leaders of the period proved to be predictive as ideas were floated subsequently in the UK House of Commons Foreign Affairs Committee about the potential for extending to all UK citizens the right of abode; and political and other rights in the UKOTs. Meanwhile, proposals providing for some forms of political representation for the UKOTs in the House of Commons were simultaneously proffered. Whether or not this extension of a degree of political representation in the British political system was being offered as a *quid pro quo* was raised in a number of territorial circles. On matters of human rights-related mandates contained in the 1999 White Paper, it was observed in the 1999 *OTR* that:

> (M)any of the existing philosophical views on these emotional human rights issues within small island Caribbean territorial societies have been historically influenced by religious teachings originally introduced during slavery and in the post-emancipation pacification period. These considerations have now apparently given way to contemporary international requirements for the UK to eliminate its contingent liability regarding these matters in the territories, preferably through territorial enactment of laws to bring them in conformity with international conventions. However, the UK policy document makes it clear that if the territories do not act legislation would be 'imposed in the Caribbean territories by Orders in Council,' and in the case of Bermuda with its 'advanced' constitution by an Act in the British Parliament. [234] (*emphasis added*).

On the broader question of the continued unilateral applicability of the UK to legislate for the dependent territories, specific questions were raised during the period as to whether "(s)uch unilateral authority to force laws against the will of the majority (*in the territories*)…should raise some eyebrows in United Nations circles where the General Assembly and its committees have been repeatedly led to believe that the remaining territories enjoy 'full internal self-government' and that the new (partnership) policy would increase such autonomy." [235]

As the new policy took effect, the British intensified its emphasis on convincing the international community of the legitimacy of the new modernised dependency arrangements. Accordingly, the UK representative told the UN Fourth Committee in the 2000 statement that

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[233] *id/*
[234] *id/*
[235] *id/*

her government "welcomed the efforts made by the Special Committee on Decolonization (C-24) to pursue informal dialogue with the administering Powers in order to ascertain the wishes of the peoples of the Territories with a view to the possible removal of those Territories from the Special Committee's list" [236] (*emphasis added*).

In this light, it is to be noted that the willingness of the C-24 to accept informal cooperation with the UK, to the exclusion of formal participation from which the UK withdrew in 1986 (*referenced above*), regularised closed-door discussions on the disposition of the UK dependent territories without the opportunity for member States to engage the UK in formal and open dialogue on its claim of legitimacy for the 'modernised' dependency status. The UK representative in the 2000 session of the Fourth Committee maintained its assertion that the "partnership with (the) Overseas Territories continued to evolve and progress," and that the UK would continue to pursue its informal dialogue with the C-24 with a view to the possible de-listing of the UK territories from the Committee's list. [237]

One analysis concluded that the aim of the strategy was to discontinue international oversight of the dependencies by 'short-circuiting' the international decolonisation process, thus relegating the territories to a state of 'dependency periphery' - not exercising full self-government but no longer under the jurisdiction of UN oversight. The number of peripheral dependencies (PDs) in the Caribbean administered by extra-regional countries is illustrative..

In 2003, the UK representative advised the UN Fourth Committee of the entry-into-force of the British Overseas Territories Act on 21 May 2002 that provided for, inter alia, UK citizenship for certain people in the dependent territories with right of abode in the United Kingdom and freedom of movement in Europe. The UK representative also made reference to ongoing constitutional reviews in various UKOTs "for the first time with the participation of appointed review commissions with a view to providing each Territory with a modern constitution suitable for its long-term development which reflected its specific circumstances."

The 2003 UK statement to the UN Fourth Committee noted that "work was underway to implement the Guiding Principles of the Environment Charter for the Overseas Territories, adopted in September 2001… (and) multilateral environmental agreements would be extended to the Territories and national legislation would be strengthened. Further reference was made to "regional and bilateral European Commission trade, economic and development assistance within the framework of the November 2001 decision on the Association of the Overseas Countries and Territories with the European Community (Overseas Association Decision)." [238]

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[236] See *Bermuda Working Paper prepared by the Secretariat,* Special Committee on Decolonisation, tA/AC.109/2001/8, 3rd May 2001, p. 16.

[237] See *Bermuda Working Paper prepared by the Secretariat,* Special Committee on Decolonisation, A/AC.109/2002/15, p. 13.

[238] *id/*

The consistent call by UKOT elected leadership for limitations on the unilateral authority of the administering Power (*exercised through the governor*), and for an irreversible devolution of power to the elected government, was the subject of a key recommendation of the 2003 UN Regional Seminar of the Special Committee on Decolonisation which met in Anguilla in May of that year. This event represented a watershed moment in the heightening of awareness of the territorial leaders on the legitimate political status options available to them under international law according to UN doctrine. The seminar called for the administering Power and the respective territorial leaders to "discuss the desire of the elected representatives of the UKOTs present at the seminar for greater devolution of powers from the governors to the locally elected representatives." [239]

In this connection, the seminar also precipitated a discussion on the availability of genuine self-determination options of political equality other than independence that would provide for the FMSG. Fittingly, the free association political status option was examined in this vein by the heads of delegation of the territorial governments at the seminar. A synopsis of an expert paper delivered to the UN seminar was contained in the Report of the 2003 UN Regional Seminar:

> An expert from the United States Virgin Islands examined the political and constitutional implications of self-government in the Caribbean. He reviewed the three options for political equality and their implications and described the different models of self-government currently existent in the Caribbean region. He concluded that the remaining small island Non-Self-Governing Territories seemed to be focusing initially on the devolution of power and more autonomy for the elected governments as they proceeded along an evolutionary path towards full and absolute political equality through one of the available self-determination options;
>
> In the case of Territories where economic progress had been steady and sustained and where no grant-in-aid was received from the administering Power, concern was being expressed regarding restrictions imposed from the outside on their financial services sector. That could potentially nudge those Territories towards seeking independence, for they would wish to prevent their constitutional dependency from impeding their ability to adjust to global economic developments and remain competitive. [240]

The actual expert paper delivered to 2003 seminar provided further elaboration:

> There is an inconsistent level of awareness in the territories of the options of political equality pursuant to Resolution 1541(XV) that should be available to them under

[239] *Report of the United Nations Caribbean Regional Seminar on Advancing the Decolonization Process in the Caribbean and Bermuda*, Special Committee on Decolonisation (A/58/23), held at The Valley, Anguilla, from 20 to 22 May 2003.

[240] *id/*

> international law and principles - options that were not placed on the table during the constitutional review exercises of 2002/03 in a number of UK territories… This "inconsistency of awareness" exists despite the longstanding resolutions of the U.N. General Assembly calling for 'political education programmes in the territories to foster an awareness of the people of the options available to them;
>
> Further, it appears that the free association option is not on offer for most of the territories without the conditionality of a short timetable to independence, while the integration alternative has never been actually considered…In any event, the three legitimate options of independence, free association and integration would have significant political and constitutional implications for the future self-determination process of the dependent territories. [241]

Later the same year in December of 2003, the UK Parliamentary Under Secretary of State told the Overseas Territories Consultative Council meeting held in London that "the concept of free association advanced by the United Nations Special Committee of 24 (on Decolonisation)" would not be inconsistent with the principle of partnership "if it meant mutual acceptance by both sides, because the United Kingdom Government had responsibilities to protect."

The argument raised several points. Firstly, the free association political status option was not only advanced by the C-24 – as stated by the Parliamentary Undersecretary - but had been annually reaffirmed by the full General Assembly as a genuine option of political equality (*with UK concurrence*). Linking it to merely one UN committee and not the full General Assembly appeared as an effort to bypass the fact that this was a full UN General Assembly mandate – a strategy which would be continuously employed in subsequent years.

The second point related to the Under Secretary's qualifying assertion that the UK would not agree with a free association where "Territories would draw up their own constitutions free of outside interference."[242] This determination differed, of course, from the recognition of the minimum standards of a genuine free association which provides for exactly that level of non-interference pursuant to UN Resolution 1541(XV):

> The associated territory <u>should have the right to determine its internal constitution without outside interference</u>, in accordance with due constitutional processes and the freely expressed wishes of the people. (*emphasis added*)

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[241] Political and Constitutional Implications of Self-Government in the Caribbean, An Expert Paper presented to the United Nations Caribbean Regional Seminar on Advancing the Decolonization Process in the Caribbean and Bermuda, Special Committee on Decolonisation (A/58/23), held at The Valley, Anguilla, from 20 to 22 May 2003.

[242] See *Bermuda Working Paper prepared by the Secretariat*, Special Committee on Decolonisation, A/AC.109/2004/3, 1st April 2004, p. 15.

As it had turned out, the understanding of what constituted free association that the UK considered consistent with the principle of partnership was contradictory to the acceptable definition of the General Assembly. The UK appeared to prefer an option more akin to a modernised dependency governance model, complete with contingent liabilities - perhaps with further updated nomenclature. Hence, by 2003, absolute political equality (AbPE) was not on offer, and the reinforcement of the "zero-sum game of continued (or enhanced) political dependency on the one hand, or independence with a short timetable and inadequate preparation on the other hand, became the order of the day. (Corbin, 2016: 147) This issue was addressed in the 2016 edited volume *The Caribbean in a Changing World*:

> (The UK) position was widely reported to have been taken on the faulty assumption that under free association the territories had all of the benefits and none of the responsibilities – and that the cosmopole would still retain contingent liabilities. This is a fundamental mis-perception of the political status of autonomous free association which was mis-projected as another form of dependency governance. Quite the contrary, free association is a real partnership between equals where there are no such things as contingent liabilities. Current autonomous models in place today such as the Cook Islands with New Zealand; Micronesia, Marshall Islands and Palau with the U.S.; and Greenland with Denmark are clear examples of autonomy through genuine, irreversible devolution of power - not the reversible delegation of power which can be given, and then taken back. These genuine autonomous governance models are devoid of contingent liabilities, and it is the lack of political will which prevents such arrangements from being devised for the U.K. dependencies in the Caribbean;
>
> To purposely project the autonomous free association option in this manner does a deep disservice to the self-determination aspirations of the UK dependencies in the Caribbean since this is (a) most realistic method to bring many territories to a full measure of self-government (FMSG), and to allow them freer rein in their involvement in regional and international processes that a reformed dependency status would not permit. Genuine autonomy is central to preparing the territories for full self-government and is consistent with the fulfillment of the international obligations of the cosmopole to this effect. Thus far, these obligations have not been met as 'stubborn retention of empire' is very much in evidence. (Corbin, 2016: 147).

Nevertheless, the UK stood firm on its withdrawal of the free association option for the dependencies under its administration. This UK sentiment was further expressed at the Overseas Territories Consultative Council meeting (*earlier referenced*) held in London in December 2003.[243] This viewpoint was also repeated in a formal letter in 2004 to the elected leaders of the territories from the UK Undersecretary of State Bill Rammell in which the position was reinforced. Accordingly, the Undersecretary wrote that:

[243] *id/*

> For as long as the territories wished to 'retain the link' with the UK…this partnership will continue to be based on the principles set out in the 1999 White Paper which remain valid…There must therefore be a balance between the degree of autonomy of each territory and the reservation of sufficient powers to enable the UK Government to ensure good governance and compliance with international obligations, when necessary…The constitutional reviews should result in further development in several Territories but we shall continue to insist on the retention of certain powers;
>
> Where the Territory does not seek independence, the nature of the continuing relationship must be acceptable both to the Territory and the UK. For us, this cannot mean the removal of reserved powers which would leave the UK with responsibility but without any means to protect against the liability if things go seriously wrong. This would appear to rule out Free Association as an option.[244]

The Rammell letter to the UKOTs elicited reaction from the UN which sought to clarify the actual meaning of free association. A 2004 letter from the Chair of the C-24, Saint Lucia Ambassador Earle Stephen Huntley in reply to a query from the Leader of Government Business of the Cayman Islands provided clarification on the free association option:

> We have pointed out and wish to emphasize that the "free association" option offers the flexibility to allow both parties - the territories and the UK - to achieve their objectives (and that) (i)t is unfortunate that the UK still wants to limit the options…The UK claims that it would have difficulty with that section of the definition of free association that provides a territory with "the right to determine its constitution free from outside interference";
>
> We realize that in the past, the UK has handed down constitutions to the territories. However, to safeguard the interest of the people of the Non-Self Governing Territories, as proclaimed in the UN Charter and to lead them to self-government the C24 envisages that the territories and the UK would negotiate the terms of the association and hence the type of constitution desired. Since the free association must be the result of an agreement between the parties, the people of the territories could not be excluded from the finalization of a constitution that will form part of the terms of the association. The UK government should therefore not seek to interpret free association in a manner that will exclude its consideration as a viable option for self-determination [245] *(emphasis added).*

[244] Letter from Bill Rammell, Parliamentary Undersecretary of State, Foreign and Commonwealth Office, to the elected chief ministers of the British dependent territories, 30 January 2004.

[245] *Letter from Ambassador Earle Stephen Huntley,* Chair of the United Nations Special Committee on Decolonisation, to the The Hon. W. McKeeva Bush OBE, JP ,Leader of Government Business, Cayman Islands, (circa) 2004.

Whilst significant delegation of power was subsequently extended to the Turks and Caicos Islands in 2006 and the Virgin Islands in 2007 through amendments to the prevailing constitutional orders of the two territories, the overall unilateral authority of the UK in key areas of governance remained unchanged. University of West England Senior Lecturer Peter Clegg earlier characterised the political relationship between the administering Power and the dependencies under its administration:

> Each (UKOT) constitution allocates government responsibilities to the Crown (i.e. the UK Government and the governor), and the (UK)OT according to the nature of the responsibility. Those powers generally reserved for the Crown include defence and external affairs, as well as responsibility for internal security and the police…The Crown also has responsibility for good governance. Meanwhile, 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. However, ultimate control rests in the hands of the UK as the territories are constitutionally subordinate (Clegg, 2012: 25-26.)

Hence, genuine equality remains absent from the political relationship by 2022, and genuine devolution of power consistent with the irreversible transfer of power doctrine of the UN Decolonisation Declaration continues to be seen as outside the bounds of the present EDG relationship. For Bermuda, the advanced nature of the Constitution Order, amended five times since 1968, indeed provides more delegation of power than even the modernised constitutional orders provided to the other Caribbean UKOTs pursuit to the 1999 *Partnership for Progress and Prosperity*.

But for Bermuda, its level of delegation of authority has apparently reached its apex whereby the UK powers to intervene remain intact, albeit exercised by differing means than for the other UKOTs. As earlier pointed out with respect to the Bermuda Cannabis Licensing Bill 2022 approved by the elected House of Assembly, the method of UK withholding assent is very much in place and serves as a reminder that the advanced nature of Bermuda's constitutional arrangement is still subject to UK unilateral authority and decision-making. It is from this vantage point that the Self-Governance Indicators are applied to Bermuda.

VI. Application of Self-Governance Indicators

As noted above, the present Assessment pays due regard to the substantial delegation of authority to the elected Government of Bermuda as set forth in the Bermuda Constitution Order of 1968, as amended. This gives credence to the designation of an advanced constitution. Yet, it is also realised that the competencies assigned to the elected Government of Bermuda under the original Constitution Order, and those which have been subsequently delegated at the discretion of the Governor, are reversible by the UK in the exercise of its constitutional authority.

In extraordinary cases, the very dependency governance structure can be dismantled through a suspension of the constitution order with elected government only returned to a given territory following a period of direct UK rule, providing for less delegated power than previously obtained. Examples include the two Commissions of Inquiry (COI) in the Turks and Caicos Island in 1986 and in 2008-09, respectively. Both COIs resulted in the constitutional suspension, the suspension of elected government, and the return of a constitutional order with significantly less delegated autonomy. The most recent experience is the COI in the Virgin Islands in 2022 which issued recommendation for a similar constitutional suspension. In this case, the order-in-council to give effect to this recommendation was introduced in the UK Parliament with a stipulation that it would be acted upon if certain internal 'reforms' are not carried out to the satisfaction of the UK – a political *Sword of Damocles* approach of sorts.

Such reversible delegation of power experienced or threatened in the Caribbean UKOTs contrasts sharply with the (virtually) irreversible devolution of power to the Scottish Parliament and the Welsh Assembly. The distinctions in the modality of governance in the crown dependencies vis a vis the UKOTs have been justified by the fact that the Crown Dependencies are in Europe, and secondly that they were never colonies in the first instance. A 2019 UK House of Commons informational report was revealing in the context of the differing perspectives on dependency governance between the Atlantic/Caribbean overseas territories and the Crown Dependencies:

> In contrast with the British Overseas Territories on which the UK Parliament has unlimited power to legislate UK primary legislation does not ordinarily apply to the Crown Dependencies *(emphasis added)*. It can, however, be extended to them if UK Government departments consider it necessary…Ministry of Justice guidance states that UK departments must consult the Crown Dependencies at the earliest opportunity if an extension is under consideration and should not be included in a Bill without their prior agreement; *(emphasis added)*
>
> But this is a convention rather than a matter of law. The Royal Commission on the Constitution concluded that: "in the eyes of the courts (the UK) Parliament has a paramount power to legislate for the Islands (*crown colonies*) in any circumstances." It stated this should be restricted to considerations of "good government". In other words, the UK Parliament should only legislate following a fundamental breakdown in public order or endemic corruption in the government, legislature or judiciary of one of the Dependencies. [246]

It is in this context that cosmopole unilateralism and the concomitant power differential between the UK and the Caribbean dependencies under its administration is

[246] *How autonomous are the Crown Dependencies?* (2019) Insight, House of Commons 5th July, 2019.

fundamentally inconsistent with principles of democratic governance and the requisite political equality. The potential for the unilateral dismantling of the elected government structures in these dependencies signals a fundamental vulnerability in the specific dependency governance model, and is inconsistent with the international legal responsibilities of the cosmopole under the UN Charter to advance the dependencies to the full measure of self-government (FMSG).

It is from this understanding that the present Self-Governance Assessment (SGA) of Bermuda applies the interrelated Self-Governance Indicators (SGIs) constructed for Non Self-Governing Territories (NSGTs) to examine the extent to which the administering Power has complied with the requisite genuine transfer of power and other international mandates designed to prepare the territory for the full assumption of the reins of authority with the full measure of self-government (FMSG), and for the completion of the process of self-determination and its consequent decolonisation.

In reiteration, the SGA is undertaken from the perspective that Bermuda, in its political and constitutional evolution as an NSGT, is in the preparatory phase of its political status advancement leading to the attainment of the FMSG in conformity with Article 73 of the UN Charter, and relevant self-determination and human rights instruments. The obligations of the nations which administer these territories is clear under the UN Charter. Accordingly, application of the particular set of SGIs for NSGTs measures 1) the level and extent of the political power differential within the existent dependency governance arrangement, and 2) the degree of Preparedness for Self-Government (PSG) through the exercise of its existent delegated authority under the Bermuda Constitution Order 1968 as amended to attain FMSG.

Indicator # 1
Cosmopole compliance with international self-determination/decolonisation obligations

The global mandate for self-determination and its consequent decolonisation as related to dependent territories in general, and to Bermuda in particular, has been articulated in Sections III and IV of the present Assessment. It is to be recalled that the UK decision in 1986 to formally withdrawal its cooperation from the UN Special Committee on Decolonisation - and in the process avoid substantive review and debate on the exact nature of the UKOT dependency governance arrangements – detracted significantly from the UK international decolonisation obligations to advance the territories to the FMSG. It is concluded that the obligation appears to have been replaced by the present strategy of dependency legitimisation as further evidence of a circumvention of the minimum standards of self-government so well established in UN doctrine as customary international law.

Accordingly, the policy of the zero-sum game has prevailed where there is either the retention of the status quo dependency status or independence on offer. This is seen in the consistency of the annual UK policy statements made to the UK Fourth Committee that repeat the theme that if the territories *"wish to remain British"* they would be subject to

continued and potentially expanded unilateral authority, with no genuine diminution of the powers of the governor entertained, although certain dependency reforms might be considered through some delegation of authority not affecting the genuine unilateral power dynamic.

Consistent with this theme, further reforms are absent in the policy statements to the UN Fourth Committee with mention of the international obligations having been satisfied under the 'substantial' self-governing status of the existent dependency model. The UK Statement in 2000, for example, remarked that the territory-cosmopole relationship "continue(ed) to be based on the following fundamental principles: self-determination; mutual obligations; freedom for the territories to run their affairs to the greatest degree possible; and a firm commitment from the United Kingdom to help the territories economically and to assist them in emergencies." [247] Such sentiments have been repeated, by and large, on an annual basis to present day.

The 2006 UK statement to the Fourth Committee focused on the element of its strategy that characterised as 'outdated' the "criteria used by the Committee of 24 in its deliberation on whether a non self-governing territory should be 'de-listed', and failed to take account of the way that relationships between the UK and its Overseas Territories have been modernised, in a way that is acceptable to both parties." [248] The 2006 Overseas Territories Review (OTR) analysis was instructive:

> Whilst there is a consistent expression of commitment on the part of the UK to self-determination, a concern lies in the fact that the UK defines this right outside of the framework of the international decolonisation doctrine, and relies on a legitimisation of the prevailing dependency status. This argument also projects the view that the people of the UKOTs were satisfied with their political status even given the inherent political inequality and administering Power unilateral authority. This position implies that there is a new permanence to the dependency arrangements which have always been regarded as transitional and preparatory to full self-government under the U.N. Charter and relevant resolutions of the UN General Assembly. (OTR, 2006)

The repudiation of the applicability of international decolonisation principles was also illustrated in the UK reply to the 2019 International Court of Justice (ICJ) opinion on the Chagos Archipelago at the request of the UN General Assembly (*earlier cited).* The ICJ opinion indicated that the decolonisation of (the former UK colony of) Mauritius should be completed 'in a manner consistent with the right of peoples to self-determination'.

[247] Statement of Ms. Kate Smith, Alternate Representative of the United Kingdom, before the Special Political and Decolonisation Committee, UN General Assembly 55th Session, 26 September 2000.

[248] Statement by H,E. Karen Pierce, Ambassador and Deputy Permanent Representative before the Special Political and Decolonization Committee (Fourth Committee) 5 October 2006.

Bermuda is duly recognised as a non self-governing territory (NSGT) under the UN Charter and governed by the United Kingdom (UK) as its administering Power (AP) through the prevailing Bermuda Constitution Order 1968 as amended. The NSGT status is confirmed by the UK which adheres to selected provisions of the UN Charter, in particular Article 73(e), pursuant to which the UK annually transmits information to the UN:

> 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, to this end…, 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 (UN Charter, 1945: Article 73e).

Other provisions of the UN Charter, particularly Articles 1 and 55, and the full Article 73 (a-e), as well as relevant international instruments on self-determination and UN decolonisation resolutions, are equally applicable to Bermuda. Accordingly, the people of Bermuda possess the inalienable right to self-determination in accordance with these international law instruments utilised historically to advance territories to the FMSG.

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

It is, therefore, the conclusion of the present Assessment that the SGI on administering Power compliance with international self-determination obligations within the framework of the prevailing Elected Dependency Governance (EDG) model in play in Bermuda is judged at Level 2 on the indicative scale of 4.

VALUATION

SELF-GOVERNANCE INDICATOR	MEASUREMENT
INDICATOR # 1 **Cosmopole compliance with international self-determination/decolonisation obligations**	1. Cosmopole dismisses relevance of external self-determination and regards political development of the territory as solely a domestic matter governed by cosmopole laws. **2. Cosmopole acknowledges external right to self-determination for the NSGT but regards it as subordinate to the domestic laws of the cosmopole.** 3 .Cosmopole recognises relevance of international law and uses it as a guideline for the advancement of the territory to the full measure of self-government. 4. Cosmopole cooperates with United Nations "case-by-case work program" to develop a genuine process of self-determination for the territory with direct U.N. participation in the act of self-determination.

Indicator # 2
Level of unilateral applicability of laws to the territory

The extent of internal self-governance exercised by the elected Government of Bermuda is a critical benchmark in assessing the nature of the political relationship with the UK as the administering Power of the territory under international law. An important indicator in this regard is the extent of application of cosmopole laws, treaties and regulatory instruments, and the degree of mutual consent between the parties on what should - or should not - be extended to the dependency. This is seen in the context of the broader question of the cosmopole veto power over laws approved by the elected legislature under the denial of assent to territorial legislation.

In the UK House of Commons 2022 Research Briefing document "*The UK Overseas Territories and their Governors*," it is indicated that governors can have…significant law-making powers in the UKOTs except for Bermuda, Montserrat, and St Helena." However, the analysis confirms that "(t)he UK retains the right to make law for all the Territories." [249] As earlier referenced, the House of Commons 2019 information note "*How Autonomous are the Crown Dependencies*?" confirms that with respect to the British Overseas Territories (*in*

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

comparison to the crown dependencies) "the UK Parliament has unlimited power to legislate." [250]

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

This power of withholding assent to laws is portrayed as 'limited', but the overriding point is that such power exists. The denial of assent can be on the basis of several factors including whether a particular bill is inconsistent with UK international obligations, or inconsistent with the provisions of the constitution order. A somewhat peculiar condition is based on whether a bill is 'prejudicial to the Royal Prerogative' appearing to be a somewhat 'catch-all' conditionality. Any of these conditions is confirmation of the unilateralism inherent in the dependency governance model.

In the final analysis, the applicability of laws and extent of mutual consent within the current political and constitutional arrangement reflects a significant amount of delegation of power to be addressed under the SGI # 5 on the *Extent of evolution of governance capacity through the exercise of delegated internal self-government.* The current SGI is concerned with the unilateral powers of the cosmopole in the governance of the territory. Accordingly, it is evident that even when the delegation is taken into account, it is the UK as the administering Power which maintains the levers of power to make unilateral decisions even as this might be through fewer methods than those used for other territories.

At the end of the day, the dependency governance arrangement in Bermuda, as an advanced constitutional model vis a vis other Caribbean dependencies, nevertheless reflects significant democratic deficiency. Accordingly, the level of unilateral applicability of laws, and extent of mutual consent is judged at level 2 on the indicative level of 4.

[250] See "*How Autonomous are the Crown Dependencies*." In Insight, House of Commons Library, United Kingdom Parliament 5 July 2019 https://commonslibrary.parliament.uk/how-autonomous-are-the-crown-dependencies/ (accessed 16 August 2022).

VALUATION

SELF-GOVERNANCE INDICATOR	MEASUREMENT
INDICATOR # 2 **Level of unilateral applicability of laws to the territory**	1.Absolute authority of cosmopole to legislate for the territory. **2.Mutual consultation on applicability of laws but final determination remains with cosmopole.** 3.Existence of a process to assess impact of laws, regulations, and treaties before application to territory. 4. Mutual consent required before application of laws, regulations and treaties.

Indicator # 3
Degree of awareness of the people of the of the territory of the legitimate political status options, and of the overall decolonisation process

The United Nations General Assembly has consistently highlighted the importance of political education and awareness among the people of the NSGTs as preparatory to their exercise of self-determination, most recently by way of its 2021 resolution on Bermuda:

> Recognizing the need for the Special Committee to ensure that the appropriate bodies of the United Nations actively pursue a public awareness campaign aimed at assisting the people of Bermuda with their inalienable right to self-determination and in gaining a better understanding of the options for self-determination, on a case-by-case basis;
>
> Further reaffirms that it is ultimately for the people of Bermuda to determine freely their future political status in accordance with the relevant provisions of the Charter, the Declaration and the relevant resolutions of the General Assembly, and in that connection calls upon the administering Power, in cooperation with the territorial Government and appropriate bodies of the United Nations system, to develop political education programmes for the Territory in order to foster an awareness among the people of their right to self-determination in conformity with the legitimate political status options, based on the principles clearly defined in General Assembly resolution 1541 (XV) and other relevant resolutions and decisions;

> Requests the administering Power to assist the Territory by facilitating its work concerning public educational outreach efforts, consistent with Article 73 b of the Charter, and in that regard calls upon the relevant United Nations organizations to provide assistance to the Territory, if requested; [251]

There appears to be little evidence of significant collaboration between the administering Power and the Government of Bermuda (*or any other UKOT Government*) in the promotion of public awareness on the political status options of absolute political equality, nor any recognition of a sustained role of the UN in the process following the 1986 formal UK withdrawal of cooperation from the Special Committee on Decolonization. The exceptions are UK concurrence with the conduct of the UN seminar in Anguilla in 2003, the UN Special Mission to Bermuda in 2005, and the UN Visiting Mission to Montserrat in 2019. The 2005 UN Special Mission Report concluded some particularly relevant points vis a vis the matter of public awareness in Bermuda:

> It is quite apparent that there was insufficient knowledge and awareness among the people of Bermuda and its political leadership of the role of international law in their process of political and constitutional development. That information deficit extended not only to the political options available to the people, but also to the important part that the wider United Nations system could play in supporting the self-determination and subsequent decolonization of the Territory. The Special Committee (*Special Mission*), therefore, spent considerable time on enlightening the stakeholders on the relevance of this international process;
>
> Since the position presented to the Bermuda Independence Committee by the administering Power on the unavailability of certain political options differed substantively from the consensus position in United Nations resolutions, which confirm a broader range of legitimate political alternatives, a mixed message was heard by Bermudians on this question. The United Nations Special Mission sought to shed some light on the matter during its engagement with the Bermudian community;
>
> Even the very issue of whether the present status of Bermuda is self-governing, or not, was raised from time to time during the course of the Special Mission by several individuals. The Special Mission provided clarification on the minimum standards for what constitutes self-government, and thus on the role of the United Nations under Chapter XI of the Charter of the United Nations in relation to the territories, including Bermuda;
>
> It was also clear that sufficient information regarding the role the wider United Nations system of organizations might play in the development process of the Territory had not been made available to the people or their leadership. The Special Mission, accordingly,

[251] See General Assembly resolution 76/92 on the *Question of Bermuda*, 9 December 2021.

> sought to provide the Bermudian community with information on the various United Nations organizations and other international organizations which the Territory could join, under its current political status, in furtherance of its preparatory process for the achievement of full self-government;
>
> It can be concluded that the Special Mission to Bermuda provided a mechanism of communication between the people of Bermuda and their leadership, on one hand, and the United Nations, on the other hand. It was evident that the lack of previous communication with the United Nations had resulted in a number of misconceptions in the Territory regarding the role of the United Nations in the self-determination process and the parameters of self-government (United Nations, 2005).

The clarity of the findings of the 2005 UN Special Mission indicated that there was a major deficiency in the degree of awareness of the people of Bermuda of the legitimate political status options available to them, and of the overall international decolonisation process specifically as it applied to the territory. The subsequent adoption of the report of the Bermuda Independence Commission (BIC) was an important contribution to the availability of information and was informed by the discussions held with the UN Mission.

However, it did not appear that a subsequent sustained public education programme was initiated around the findings of the BIC Report which had revealed information on the international self-determination and decolonisation processes as related to Bermuda. Further, the elected governments have not utilised consistently the territory's eligibility of participation in the annual hearing process of the UN Special Committee on Decolonisation, or the UN Special Political and Decolonisation Committee, respectively. It is recognised that there have been instances of government participation in several of the annual UN decolonisation seminars in recent years whilst an expert from Bermuda participated in earlier seminars during the 1990s. The direct participation in the broader context of UN programmes and activities is addressed below in the application of Indicator # 6 (below).

Notwithstanding the deficiency of awareness of the international process of decolonisation, the present Assessment recognises a significant amount of recognition on the elements of the existing territorial status as it has evolved as a result of the historical efforts of the trade union movement, and subsequently the political parties in addressing certain political inequalities in the existent arrangement. It is also acknowledged that a certain consciousness of the internal mechanisms of the current political status evolved within the community via the various green papers and white papers earlier referenced in the present Assessment.

It is to be recalled that these studies were essentially limited to examining the implications of independence, as the other two options of political equality - integration and free association – had been removed from consideration by the administering Power. There did not appear to be much public challenge to this decision. In this vein it is also noted that analysis of other forms of further delegation of power in a status such as British crown

dependency status has not been significantly examined, and did not appear to be on offer to the dependent territories. [252] It is within this scenario that the degree of awareness of the people of the territory of the legitimate political status options, and of the overall decolonisation process, is judged at level 2 on the indicative level of 4.

VALUATION

SELF-GOVERNANCE INDICATOR	MEASUREMENT
INDICATOR # 3 **Degree of awareness of the people of the territory of the legitimate political status options, and of the overall decolonisation process**	1. Little or no awareness and absence of organised political education process. **2. Some degree of awareness with insufficient political education activities.** 3. Significant degree of awareness through official political education programme(s). 4. High degree of awareness and preparedness to exercise the right to self-determination through referendum or other form of popular consultation.

Indicator # 4
Right of the people to determine the internal constitution without outside interference

International law recognises a constitution as "a Charter of government deriving its whole authority from the governed" (*emphasis added*) [253]. The original Bermuda Constitution Order 1968 was the result of extensive discussion in the UK House of Commons reflecting a certain concern regarding the social crisis in the society that may have been mitigated through due attention to lessening the political inequality in Bermudian society.

Subsequent amendments to the Constitutional Order in large measure have been motivated by the internal political process through the advocacy of the 'government of the day', debate in parliamentary committees, policy positions expressed by the respective political parties articulated through constitutional conferences between territorial representatives and the UK Government, and the input of civil society including Bermudian experts. Whilst subsequent amendments to the constitutional orders of Bermuda and other

[252] According to UK Ministry of Justice *Fact Sheet on the UK's relationship with the Crown Dependencies*: "The Crown Dependencies have never been colonies of the UK, Nor are they Overseas Territories, like Gibraltar, which have a different relationship with the UK. The constitutional relationship of the Islands with the UK is maintained through the Crown and is not enshrined in a formal constitutional document."

[253] Black's Law Dictionary, Definitions of the Terms and Phrases of American and English Jurisprudence.

British dependencies may have evolved from a process of extensive consultations between the UK and the territory, the final decision to amend the Order, and the nature of the constitutional changes, is not vested in the people of Bermuda or the other UKOTs, but rather in the British Crown. Hence, such authority is not derived from the governed, but lies with the administering Power.

This is consistent with the political status of dependency governance, and confirmed by UK statements to the UN Fourth Committee earlier referenced inferring an unwillingness to agree an arrangement whereby the territory would have the power to draft a constitution 'without external interference'. Such authority of the people of Bermuda to write a constitution independently is the type of genuine political power which has been repeatedly stressed by the UK as not on offer.

There is a substantial capacity of Bermuda to draft its own constitution owing to the extensive involvement of the political actors over time in the House of Assembly debates and parliamentary committees leading to recommendations for UK approval of specific amendments. Accordingly, the Preparation for Self-Government (PSG) is particularly high. The specific Indicator, however, is concerned with the extent of authority to do so independently 'without external interference' within the context of the prevailing Elected Dependency Governance (EDG) arrangement.

Accordingly, the indicative level is determined to be at level 2 of 4 reflecting the recognition of the final authority of the cosmopole to draft the dependency constitution order for Bermuda following consultations with the relevant territorial authorities. Again, the significant capacity of Bermuda to draft its own internal constitution is well established but outside of the parametres of the dependency relationship with the UK.

VALUATION

SELF-GOVERNANCE INDICATOR	MEASUREMENT
INDICATOR # 4 **Authority to determine the internal constitution without outside interference**	1.Dependency constitution can be drafted by the cosmopole in conformity with its unilateral authority over the territory. **2. Dependency constitution can be drafted by the cosmopole following consultations with the territory with cosmopole retaining final authority on the content.** 3. Dependency constitution can be drafted by the territory in advance of submission to the cosmopole which can only change the content by mutual consent of the parties. 4. Dependency constitution can be independently drafted and adopted by the people of the territory, consistent with the Decolonisation Declaration.

Indicator # 5
Extent of evolution of governance capacity through the exercise of delegated internal self-government

The present Assessment measures the level of internal self-government exercised by Bermuda within the framework of its exercise of delegated authority under Bermuda Constitution Order 1968 as amended. At the outset, it is to be recognised that one of the landmark decolonisation resolutions of the UN General Assembly relates specifically to the extent of internal self-government. By its resolution 742 (VIII) the UN General Assembly as far back as 1953 expressed great concern for the nature of control or interference by the cosmopole in respect of the internal government of the territory in the areas of the legislature; executive; judiciary; and economic social and cultural jurisdiction. [254]

Accordingly, the resolution sets forth the parametres for independence, as well as the "factors indicative of the attainment of other separate systems of self-government" other than independence (,) or a status of "free association of a territory on equal basis with the metropolitan or other country as an integral part of that country or in any other form." This resolution, coupled with other resolutions concerning the degree of internal self-government of an NSGT, remain wholly applicable in the global contemporary decolonisation dialogue on modalities for the achievement of the full measure of FMSG.

[254] United Nations General Assembly resolution 742 of 742 (VIII). *Factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of self-government.* 27 November 1953.

With respect to the legislature, this international standard, pursuant to Resolution 742 (VIII) requires the "enactment of laws for the Territory by an indigenous body whether fully elected by free and democratic processes or lawfully constituted in a manner receiving the free consent of the population." In relation to the judiciary, the standard provides for the establishment of courts of law and the selection of judges. Regarding the executive, the key criterion under UN Resolution 742 is for the "selection of members of the executive branch of the government by the competent authority in the Territory receiving consent of the indigenous population…"

The UK as the administering Power exercises unilateral authority over Bermuda, both in the application of laws as addressed in Indicator 2 above, and via the direct role in the governance of the territory through relevant provisions of the Bermuda Constitution Order 1968 as amended. Article 17 provides for a broad function conferred on the governor by the crown...including the exercise of any functions that are expressed to be exercisable in his (*her*) discretion…as Her (*His*) Majesty may from time to time see fit to give him (*her*) under Her (*His*) Sign Manual and Signet or through a Secretary of State (Bermuda, 1968). Article 56 vests the executive authority of Bermuda in the Crown to be exercised by the Governor. On the judiciary, the Governor maintains the authority to appoint the Chief Justice "after consultation with the Premier who shall first have consulted the Opposition Leader" (Article 73). However, there is no requirement that the recommendation of the Premier must be accepted.

TABLE 10.

Instruments of Unilateral Authority

Cosmopole/ Non Independent Country (NIC)	Source of Cosmopole Unilateral Authority	Instrument of Unilateral Authority
UK Dependencies Bermuda, Turks & Caicos, Cayman Is, Montserrat, Br. Virgin Islands, Anguilla, Pitcairn	UK Parliamentary Acts, court judgments and conventions	Constitutional Order • *Governor's reserved powers* • *Governor's control of major competencies*
US Dependencies Amer. Samoa, Guam, N. Marianas, Puerto Rico, U.S. Virgin Islands	U.S. Constitution *"Territory or other property" clause* (Art. IV(3)(2)	• Organic Act (Guam, USVI) • Constitution (Puerto Rico) • Constitution (Am. Samoa) • Covenant (N. Marianas)

Section 21 of the Order on the 'Exercise of the Governor's functions' provides that the Governor shall "act in accordance with the advice of the Cabinet or of a Minister under the general authority of the Cabinet." However, the Governor "may act otherwise than in accordance with (the) advice of the Cabinet or Minister "if in his (*her*) judgement it is

necessary or expedient" to act otherwise. The governor exercises additional control over specific competencies including, *inter alia*, the power of pardon (Section 22), to "make grants and dispositions of lands or other immovable property" (Section 24), and to withhold assent on legislation adopted by the elected House (Section 35).

Of particular note are the "Governor's special responsibilities" (Article 62) which provide for the conduct and administration of external affairs, defence including armed forces, internal security and the police. In this context, there is provision for the delegation of authority which has specific relevance here on delegated internal self-government. Accordingly, Article 62(2) of the Bermuda Constitutional Order 1968 as amended by the Bermuda Constitution (Amendment) 1989 is relevant:

> The Governor, acting in his discretion, may by directions in writing delegate, with the prior approval of the Secretary of State, to the Premier or any other Minister designated by him after consultation with the Premier such responsibility for any of the matters specified in subsection (1) of this section as the Governor may think fit upon such conditions as he may impose.

The delegation of competencies in external affairs and internal security are specifically examined in subsequent Indicators. The present Indicator on delegated internal self-government is assessed within the context of its relevance to the development of internal capacity of Preparation for Self-Government (PSG). This delegation is wholly consistent with the preparatory obligation of the UK as the administering Power under Article 73b of the UN Charter to advance the territory to the full measure of self-government (FMSG) even as it may be a reversible delegation as opposed to a (virtually) irreversible devolution.

This overall delegation of authority emanating from the governor's 'special responsibilities' has contributed significantly to an accelerated development of governmental institutions and overall capacity building. This is preparative to the full assumption of the duties of internal self-government through an actual devolution, or "transfer of power" as an obligation of the landmark UN Decolonisation Declaration:

> 5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom (United Nations, 1960a).

The current SGI addresses the "Extent of evolution of governance capacity through the exercise of delegated authority" within the framework of the prevailing Elected Dependency Governance (EDG) arrangement in Bermuda, and is judged at level 3 on the indicative level of 4.

VALUATION

SELF-GOVERNANCE INDICATOR	MEASUREMENT
INDICATOR # 5 **Extent of evolution of governance capacity through the exercise of delegated internal self-government**	1. Cosmopole administers all major competencies with no consequential delegation of power to the elected government. 2. Cosmopole provides elected government with a (reversible) delegation of power of minor competencies whilst retaining control of major competencies. **3. Cosmopole provides elected government with a (reversible) delegation of power of significant number of major competencies.** 4. Cosmopole provides elected government with a virtually irreversible devolution of power of most major competencies.

Indicator # 6
Extent of evolution of governance capacity through the exercise of external affairs

Whilst the competency of external affairs is under the administration of the UK, there is a delegation of power from the governor to the elected government under Article 62(2) of the Bermuda Constitution Order 1968 as amended. This provides for Bermuda to participate in international organisations, and to pursue selected bilateral engagements. Unlike the extensive elaboration contained in the Constitution Order of the Virgin Islands 2007 as to the exact bilateral and multilateral countries and organisations of potential engagement, and the terms and conditions governing the external affairs participation, there is no such reference in the Bermuda Constitution Order 1968 as amended, with the detail contained in separate letters of entrustment from the UK Governor (*see Appendix*).

An internal mechanism, such as a Secretariat, to coordinate dependency participation in international organisations is important to maximising the potential of this activity in relation to its capacity building value, and might be considered for Bermuda in managing the delegated power. As in the case of other SGIs, the participation in external affairs is assessed from the perspective of the value of the delegated function to capacity building and the concomitant level of PSG. This linkage between the direct participation of NSGTs in external affairs and the promotion of progress of the people toward FMSG has been long recognised by both the UN General Assembly as early as 1952 [255] and the Economic and Social Council (ECOSOC).

[255] See UN General Assembly Resolution 566(VI) of 18 January 1952.

Of the two primary intergovernmental organisations at the regional level - The Caribbean Community (CARICOM) and the Association of Caribbean States (ACS) - Bermuda is an associate member of CARICOM. (*The singular UKOT in the ACS is the Virgin Islands*).

The Caribbean Community

As an NSGT, Bermuda participates in a number of international organisations. From the Caribbean regional perspective, Bermuda maintains associate membership in The Caribbean /Community (CARICOM) along with four of the other five British dependencies with one enjoying full membership (Montserrat). Bermuda was the last of the UKOTs to join CARICOM in 2012. The conditions governing the current associate membership of the five associate members which are UK dependencies namely **Bermuda**, Turks and Caicos Islands, Cayman Islands, British Virgin Islands and Anguilla - are set forth in separate agreements. In essence, the conditions for associate membership provide for, inter alia, the right of attendance as an Observer, the right of participation (*without the right to vote*), and accession to the Protocol on Privileges and Immunities.

Table 11. Associate Members of CARICOM (as of September 2022)

CARICOM Associate Member	Year of Admission
Anguilla	1999
Bermuda	**2012**
British Virgin Islands	1991
Cayman Islands	2002
Turks and Caicos Islands	1991

Source: The Caribbean Community 2021
(Montserrat was admitted as a full member on 1 May 1974*).**

UN Economic Commission for Latin America and the Caribbean

Bermuda acceded to associate member in the UN Economic Commission for Latin America and the Caribbean (ECLAC) pursuant to ECLAC Resolution of 31st August 2012. As in the case of CARICOM, Bermuda was the last UKOT to gain associate membership in ECLAC (see table 12). The resolution of admission of Bermuda to ECLAC is seen below with the list of associate members of ECLAC and their dates of admission in Table 12.

RESOLUTION 662(XXXIV) ADMISSION OF BERMUDA AS AN ASSOCIATE MEMBER OF THE ECONOMIC COMMISSION FOR LATIN AMERICA AND THE CARIBBEAN

adopted at the thirty-fourth session
Economic Commission for Latin America and the Caribbean
San Salvador
31 August 2012

The Economic Commission for Latin America and the Caribbean,

Recalling that paragraphs 3(a) and 4 of the terms of reference of the Economic Commission of Latin America and the Caribbean state that "Any territory, or part or group thereof, may on presentation of its application to the Commission by the member responsible for the international relations of such territory, part or group of territories, be eligible for admission by the Commission as an associate member of the Commission",

Recognizing that Bermuda enjoys strong economic, cultural and social ties with the rest of the region and that it is committed to strengthening these links wherever possible,
Aware that associate membership in the Economic Commission of Latin America and the Caribbean will contribute strongly towards achieving this goal,

Welcoming the request made by the Government of the United Kingdom of Great Britain and Northern Ireland on behalf of the Governor of Bermuda that the latter be granted associate membership in the Commission,

Decides that Bermuda shall be granted associate membership in the Economic Commission of Latin America and the Caribbean.

Table 12. Associate Members of the UN Economic Commission for Latin America and the Caribbean (ECLAC) (2022)

Associate Member Country (AMC)	Date of Admission to ECLAC
Montserrat	23 April 1968
[Netherlands Antilles a/	*14 May 1981]*
British Virgin Islands	6 April 1984
U.S. Virgin Islands	6 April 1984
Aruba	22 April 1988
Puerto Rico	10 May 1990
Anguilla	20 April 1996
Turks and Caicos Islands	24 March 2006
Cayman Islands	13 June 2008
Bermuda	**31 August 2012**
Curacao a/	31 August 2012
Guadeloupe	31 August 2012
Martinique	31 August 2012
Sint Maarten a/	9 May 2014

a/ The Netherlands Antilles ceased to exist on 10 October 2010.The subsequent political dismantling of the then-five island country resulted in the emergence of Curacao and Sint Maarten as separate SGACs which achieved associate membership in ECLAC/CDCC separately. (*The partially integrated Dutch 'public entities' of Bonaire, Saba and Sint Eustatius were also created out of the same constitutional fragmentation process*).

Source: Economic Commission for Latin America and the Caribbean, 2022

The UN role in the development process of the dependencies was highlighted in the 2017 UN study *Assessing Opportunities for Enhanced Integration of the associate members of the Economic Commission for Latin America and the Caribbean*:

> The United Nations offers all countries and territories the opportunity to engage in regional and international activities and decision-making as part of the global community. The classification of associate membership, reserved for non-independent countries (NICs) is consistent with the sufficiency of international legal personality for autonomous participation in international institutions. Associate membership in ECLAC thus affords the inclusion of non-sovereign Caribbean countries in the Commission's programme of work and its regional development agenda (Alexander/Corbin, 2017).

Observer Status in UN World Conferences

Dependencies can also participate in a broader range of UN activities through the participation in an official observer capacity in UN world conferences in the economic and social sphere. Accordingly, the Associate Member Countries (AMCs) of ECLAC have been afforded official observer status in these conferences since the UN Conference on Environment and Development (Earth Summit) in 1992, and most subsequent conferences including Special Sessions of the UN General Assembly. In this connection, the organic link between external affairs participation of non-independent countries and the self-determination process was emphasised in 2001 in the book 'Islands at the Crossroads: Politics in the Non-Independent Caribbean':

> It is clear that the remaining non-independent countries (NICs) in the Caribbean and Pacific, and particularly those which have achieved associate membership in regional commissions, have evolved to a strategic point in their political development process that should facilitate their logical progression to a more regular and comprehensive participation in the United Nations system consistent with their level of political maturity and awareness of the importance of their role in international deliberations which impact on their economic and political viability (Corbin, 2001: 155).

UN Specialised Agencies

Further direct participation in UN organisations is also made available through the UN specialised agencies depending on the rules of procedure of the particular agency concerned. Table 13 shows the participation of Non-Independent Caribbean Countries (NICCs) in UN specialised agencies. This participation can take several forms including full membership, associate membership or observer status.

Table 13. Participation of Non-Independent Caribbean (NICCs) Countries in U.N. Specialised Agencies

NICC	UN Specialised Agency	Membership Status
Bermuda	**World Meteorological Org. (WMO)** **Universal Postal Union (UPU)**	**associate member ***** **member *****
Turks and Caicos Islands	UPU WMO	member *** member ***
Cayman Islands	UN Educational, Scientific and Cultural Organisation (UNESCO) UPU	associate member member ***
British Virgin Islands	UNESCO UPU WMO	associate member member *** member ***
Montserrat	UNESCO UPU WMO	associate member member *** member ***
Anguilla	UNESCO UPU WMO	associate member member *** member ***
Puerto Rico	World Health Organisation (WHO) UN World Tourism Organisation (UNWTO)	associate member associate member
U.S. Virgin Islands	---	---
Aruba	UNESCO UNWTO UPU	associate member associate member member * member **
Curacao	WMO UNESCO UPU	member **** associate member member * member **
Sint Maarten	UNESCO UPU WMO	associate member member ** member ****
Martinique/Guadeloupe/Guiana	---	---

* "Non sovereign area listed as 'member country' and under the sovereignty of a U.N. member State.

** Aruba, Curacao and Sint Maarten are represented as a single member.

*** Five UKOTs are represented as a single member.

**** Curacao and Sint Maarten represented as a single member.

Source: Dependency Studies Project, St. Croix, Virgin Islands, 2020.

Finally, the elected Government of Bermuda also has the acquired right, under UN procedures, to directly address the relevant UN decolonisation committees, including the Special Committee on Decolonisation, and the Special Political and Decolonisation Committee (Fourth Committee), during the annual consideration of '*The Question of Bermuda'* which is a standing agenda item under Article 73 of the UN Charter. Accordingly, the Bermuda Attorney General and Minister of Legal Affairs participated in the UN Decolonisation Regional Seminar in Saint Lucia in May 2022, and in the regular session of the Special Committee on Decolonisation at UN Headquarters in New York in June 2022.

It is noted that the Bermuda London Office website includes self-determination in the description of its duties although there is no indication that there is any collaboration with the UN self-determination mechanisms:

> The face of Bermuda in the UK and Europe is the London Office. Bermuda's London Office promotes Bermuda's commitment to uphold self-determination, self-sufficiency, and strong economical and advanced social development as a United Kingdom Overseas Territory… Over the past decade, the London Office has grown to be respected as a vital component in Bermuda's relationships with the United Kingdom, fellow British Overseas Territories, and the European Union. [256] (*emphasis added*)

The importance of bilateral communication with London and Brussels was highlighted by the Premier of Bermuda:

> The London Office and its team of experts have been invaluable (since)… (o)ur constitutional arrangement demands close links with the UK and it is critical that we have firsthand knowledge of the workings of Westminster. With Brexit looming for the UK, the London Office has kept us, here at home, fully briefed and strongly advocated for Bermuda to address any impact the UK's exit from the EU might have.";
>
> The need for direct interaction with the EU has been shown in the months of work that led to the adoption of the Economic Substance Act 2018. Like other jurisdictions, Bermuda has become an international target of European, localized politics. This threat can and will be met by direct engagement in Brussels on behalf of the Government of Bermuda. (Burt, 2019).

[256] See Government of Bermuda, London Office https://www.gov.bm/department/london-office accessed 13 September 2022.

As for procedures specific to international organisations, the 2012 UK White Paper laid out the process of entrustment:

Figure 5. UK Dependencies And International Organisations

The Overseas Territories Security, Success and Sustainability
United Kingdom Foreign and Commonwealth Office

How can Territories join International Organisations?

If an Overseas Territory Government wishes to enter into negotiations with an international or regional organisation, or to conclude a treaty with it, it requires the authority of the UK Government. Such authority can be given in the form of a specific or general entrustment (i.e. a letter to the Territory Government confirming that it can enter into negotiations and/or conclude a treaty). Before issuing an entrustment or agreeing to the conclusion of a treaty, the UK Government will consider whether the Territory is able to meet the obligations that membership of the treaty imposes. In recent years general entrustments have been given to the Cayman Islands, the British Virgin Islands and Montserrat as part of their constitutional reviews. Bermuda's 1968 General Entrustment was updated in 2009 (*see Appendix*). These general entrustments give these Territories greater freedom to engage with regional organisations and governments across a range of issues.

The BIC Report also reported that "with greater frequency, Ministers of the Bermuda Government are, with prior (UK) approval, to negotiate certain agreements provided that they keep the British Government informed. One example is the "Tax Convention that Bermuda was allowed to negotiate directly with the US." (BIC, 2005: 17).

Overall, the delegation of authority for the direct participation of Bermuda in external affairs, including bilateral contacts and multilateral organisations, has contributed significantly to the development of capacity of the territory, and is wholly consistent with the preparatory mandate under Article 73b of the UN Charter to advance the territories to FMSG. Accordingly, the extent of engagement in external affairs activities is judged at indicative level 2 reflecting an increasing substantial awareness of regional and international organisation potential, and limited but growing participation.

VALUATION

SELF-GOVERNANCE INDICATOR	MEASUREMENT
INDICATOR # 6 **Extent of governance capacity through the exercise of external affairs**	1. Limited awareness of potential of the territory for participation in regional and international organisations. 2. **Substantial awareness of regional and international organisation potential but limited participation.** 3. Significant participation in regional and international organisations. 4. Full, unrestricted participation in range of relevant programmes of regional and international organizations.

Indicator # 7
Degree of autonomy in economic affairs

The UN Charter is a primary instrument in the recognition of the international legal obligation for administering Powers to advance the economic development of the territories under their administration, In this connection, Article 73 of the Charter on the *Declaration regarding the Non Self-Governing Territories* requires the administering Powers "to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement…" (United Nations Charter, 1945). The UK Foreign Affairs Committee in a 2007 report recognised this international legal mandate as a "duty under international law to provide for the development of the OTs." (Foreign Affairs Committee, 2007).

The 2022 UN Working Paper on Bermuda indicates that the economy is based primarily on the two pillars of financial services for international business with financial services accounting for about 41 per cent of its GDP and tourism, with a small industrial sector and limited agriculture with only about 20 per cent of the land arable. The territory also experienced a decrease in its GDP by an average of 8.1 per cent in real terms in the first three quarters of 2020 owing to significantly reduced expenditure on goods and services in the tourism sector. In 2020, the Minister of Finance established a COVID-19 Economic Advisory Committee to provide insight and expert advice on how to protect jobs and stimulate economic activity during the economic crisis stemming from the COVID-19 pandemic (United Nations, 2022: 6).

Additionally, Bermuda has its own currency (Bermuda dollar) governed under the Bermuda Monetary Authority (BMA) as described in the 2022 United Nations Working Paper on Bermuda:

> The Bermuda Monetary Authority, the integrated regulator of the financial services sector, has the power to levy civil fines. The Territory has no central bank. The peg to the United States dollar is managed by commercial banks meeting supply and demand at a one-to-one rate. The banks, rather than the Authority, own the foreign exchange reserves of Bermuda (United Nations, 2022: 6).

In 2016 the Bermuda and UK Governments exchanged notes and technical protocol for sharing beneficial ownership information to allow law enforcement authorities to have timely access to beneficial ownership information on corporate and legal entities incorporated in the respective jurisdictions" (United Nations, 2022: 7). In 2013, Bermuda joined the Multilateral Convention on Mutual Administrative Assistance in Tax Matters of the Organization for Economic Cooperation and Development (OECD) to facilitate cooperation between jurisdictions in the assessment and collection of taxes, in particular to combat tax avoidance and evasion. The Convention came into force on 1 March 2014. The ratification of the United Nations Convention against Corruption by the United Kingdom was extended to Bermuda on 4 June 2018 (United Nations, 2022: 7).

In 2020, the UK composed a Draft Order-in Council entitled T*he Overseas Territories (Publicly Accessible Registers of Beneficial Ownership of Companies) Order 20*** prepared by the Secretary of State to comply with the requirement under section 51 of the UK Sanctions and Anti-Money Laundering Act 2018. It was noted in a 2022 UK House of Commons report that "the crown dependencies, Bermuda, Gibraltar and the Turks and Caicos Islands (TCI) all have central registers to hold the required information," and that "Bermuda has had a central register for over 70 years, and its new database is nearly 100% populated" (United Kingdom, 2022b).

The Bermuda Government maintains a significant degree of delegated administrative authority over the economy of the territory. In the area of financial services, for example, the UK-appointed governor does not maintain direct authority in Bermuda (*nor the British Virgin Islands, and the Cayman Islands)* as it does for Anguilla, Montserrat, and the Turks and Caicos. Yet, the power of the cosmopole to withhold assent on legislation adopted by the elected House of Assembly serves as a critical conditionality to the administration of the economy. The most recent case of the UK withhold of assent to the Bermuda Cannabis Legislation (earlier referenced) is illustrative as this was an important initiative by the elected government in the diversification of the economy. This assent, according to the governor, was withheld following "an instruction, issued to me on Her Majesty's behalf, not to Assent to the Bill as drafted." [257] The governor made a subsequent statement on the issue:

> Any Governor receiving a bill for assent must follow the process set out in The Bermuda Constitution. This requires the Governor to consider, amongst other things,

[257] see *Governor ill not give assent to cannabis bill*, BERNEWS, 6th September 2022 https://bernews.com/2022/09/governor-will-not-give-assent-to-cannabis-bill/ accessed 20th September 2022.

whether the Bill, as written, is consistent with or would breach any international obligation should it be made into law;

In terms of cannabis reform, the key international obligations are set out in United Nations Conventions (the 1961 Single Convention on Narcotic Drugs, and the 1971 Convention on Psychotropic Substances). The Conventions permit legalisation of cannabis and cannabis products for medicinal and scientific purposes, and for certain industrial purposes, as long as appropriate regulatory oversight is put in place. The legalisation of cannabis for other purposes is not permitted under the Conventions. It is possible to decriminalise the possession of limited amounts of cannabis for personal use, but that is not the same as making cannabis legal, for example, for sale in shops and cafes;

The Bill presented to me legalises cannabis for other purposes. So, it appears to me that the Bill is inconsistent with what I understand to be obligations that the UK and Bermuda have under the Conventions and assenting to the Bill would lead to a breach of those obligations. I therefore have no choice but to reserve Assent of the Bill under Section 35 (2) of Constitution and to notify the Secretary of State for Foreign, Commonwealth and Development Affairs. [258]

In reply to the 'Instruction' from the UK given to the governor to withhold Assent on the Cannabis Licensing Bill 2022, the Attorney-General of Bermuda the Hon. Kathy Lynn Simmons confirmed the position of the Bermuda Government that the decision was "(d)isappointing but not surprising, given the confines of our constitutional relationship with the UK Government and their archaic interpretation of the Narcotic Conventions." The Attorney General asserted:

The People of Bermuda have democratically expressed their desire for a regulated cannabis licensing regime following the strong endorsement at the ballot box and an extensive public consultation process. The Government of Bermuda intends to continue to advance this initiative, within the full scope of its constitutional powers, in keeping with our 2020 General Election Platform commitment.

The withhold of assent by the governor at the 'Instruction' of the UK is significant to the measure of the degree of autonomy in economic affairs, and indicative of a certain limitation of the current political status. In this context, the overarching authority of the UK in decision-making is exercised through the constitutional authority of assent on legislation as opposed to the 'order-in council modality more commonly used for other UKOTs, coupled with the unilateral applicability of international conventions. These factors reveal that the administrative authority of Bermuda, whilst substantial, can be revoked at will with the effect

[258] See *Statement from the Governor and Commander-in-Chief of Bermuda - The Bermuda Cannabis Licensing Bill 2022* , 12 May 2022 https://www.gov.bm/articles/statement-governor-bermuda-cannabis-licensing-bill-2022 (accessed 20th September 2022.

of stymieing the will of the elected government. On the other hand, the administrative capacity developed is significant to the capacity building in the Preparation for Self-Government. Accordingly, the SGI on autonomy in economic affairs is measured at indicative level 3.

VALUATION

SELF-GOVERNANCE INDICATOR	MEASUREMENT
INDICATOR # 7 **Degree of autonomy in economic affairs.**	1. Territorial economy dependent on direct aid from cosmopole and subject to cosmopole unilateral applicability of laws and regulations which can affect economic growth and sustainability. 2. Territory receives sectoral assistance from cosmopole, generates and maintains significant revenue from its local economy, with administration subject to cosmopole unilateral applicability of laws and treaties. **3. Territory generates and keeps most revenue from its economy and exercises administrative control subject to cosmopole unilateral applicability of laws and treaties.** 4. Territory has self-sufficient economy through retention of all revenue and maintains full decision-making powers in the administration of the economy without unilateral applicability of cosmopole laws and treaties.

Indicator # 8
Control and administration of internal security

Section 62(1)(c) of the Bermuda Constitution Order 1968 as amended specifies that internal security including the administration of the police is under the jurisdiction of the administering Power as exercised by the UK-appointed governor. Section 62(2) of the Order provides for a written delegation of power to the Premier or any other Minister… "such responsibility as the Governor may think fit upon such conditions as he (she) may impose."

In this regard, the administration of internal security has been delegated to the Minister of National Security whose Minister oversees the relevant national government departments and agencies of the Bermuda Fire and Rescue Service, the Department of Corrections; the Royal Bermuda Regiment; the Police Complaints Authority; the Department of Customs (Border Control); the Department of Immigration (Border Control); the Bermuda Fire and Rescue Service and delegated responsibilities for the Bermuda Police Service and the Royal Bermuda Regiment.

Owing to the significant delegation of authority to the Minister of the elected government, and the significant capacity developed in the administration of internal security

in furtherance of PSG, the SGI on control and administration of internal security is judged at indicative level 3.

VALUATION

SELF-GOVERNANCE INDICATOR	MEASUREMENT
INDICATOR # 8 **Control and administration of Internal Security**	. Cosmopole exercises direct control over internal security without regard for consultation. 2. Cosmopole consults with territory before setting policy but maintains final authority. **3. Cosmopole delegates substantial authority to elected government but maintains constitutional authority to control national security.** 4. Cosmopole devolves full control of internal security to elected government of the territory.

Indicator # 9
Control and administration of military activities

From its inception as a British colony, the geo-strategic importance of Bermuda has been recognised as a key UK asset. Part V above on Bermuda Dependency Governance provides elaboration on the evolution of Bermuda's military strategic value as a UK military outpost from the American Revolutionary War through the War of 1812, into the US Civil War followed by World War I. Bermudian scholar Quito Swan alluded to the later strategic role of Bermuda which arose during World War II with specific respect to the "1940 wartime agreement (*Bases Agreement*) (whereby) the British Government granted the United States rent-free ninety-nine year leases for the construction of bases in select British colonies in exchange for American warships." He noted that "(a)lthough Bermuda never officially agreed, two such bases were built on the island." Swan described the value of the two bases to US military interests:

> The land agreement comprised property annexes slightly in excess of two miles. One was the Kindley Air force Base, located on the eastern end of the island; it was used to maintain a Bermuda-based NASA Station. The other was a naval station, which supported antisubmarine forces deployed to Bermuda. In 1965, the Base provided logistic support to 278 vessels. To maintain these facilities, in 1966, 6,381 personnel were stationed in Bermuda totaling about one-eighth of Bermuda's civil population of 48,750;
>
> Adjacent to the Naval Station was a Naval Underwater Sound Laboratory and Naval Facility which developed submarine detection systems using underwater sound…The testing area spanned over 300,000 square miles south of the island, and utilized

> extremely large acoustic equipment on the seabed connected by cables to Bermuda-based labs…These bases were considered vital to the overall defense planning of the United States and its Intercontinental Ballistic Missile (ICBM) systems" (Swan, 2009: 54-55).

In subsequent years, Canada would join the US with its own military presence in Bermuda. By the 1980s, Canada maintained a military base at Daniel's Head, Somerset whilst the US maintained its two bases, with a total of 1,200 enlisted personnel (United Nations 1982: 9). In 1982, the Supreme Allied Commander of the North Atlantic Treaty Organization (NATO) referred to Bermuda as "strategically crucial to NATO powers, and that it would be in the mutual interest of both North America and Western Europe to ensure Bermuda's defence after independence" (United Nations, 1983: 9).

Foreign base closures

In 1993 Canada announced its intentions to cease its military operations which it ha(d) maintained for 29 years. Additionally, the 1992 Bermuda Throne Speech had also contained reference to the appointment of a "committee comprised of a broad cross-section of Bermudians" to "examine the ramifications of the reduction in military presence." (United Nations, 1992: 6). Discussions ensued between the UK and the Bermuda Governments on transitional arrangements including the resources needed for the takeover of essential operations such as air traffic control and costs associated with maintenance of all equipment and installations left by the US military" (United Nations, 1994: 11).

In 1995, the UK Secretary of State for Defence told the House of Commons that it intended to close its base in Bermuda, "ending more than two centuries of British naval presence in the territory." Then-Premier Sir John Swan observed that the intended closure was a "further erosion of ties with the British Government," and expressed "concerns regarding the date of closure which was set for six months before the likely date of the closure of the US Naval Air Station and two years following the Canadian Air Forces' withdrawal." The UK-appointed Governor "reiterated the British Government's continuing interest in matters relating to the defence of Bermuda (whereby) close links would continue between the British Army and the Bermuda Regiment to which five British officials (were) currently attached." (United Nations, 1994: 10).

Also in 1995 the Bermuda Minister of Finance "unveiled a long-term plan for the utilisation of the land that would be transferred to the territorial government to include commercial, fisheries, recreational, technological and education and research projects." The retention of a British military presence remained in the context of the Bermuda Regiment comprised of 366 soldiers including 34 full time soldiers and the remaining number made up of part time reservists. The US expressed its intention to return all leased land to Bermuda except the NASA station at Cooper's Island and the facility at Tudor Hill in Southampton. (United Nations, 1994: 11). However, it is to be recalled that the closure of the US bases had

left significant environmental degradation in the aftermath. Initial indications were reported by the UN in 1998:

> 272 containers of asbestos that were used in the base buildings and other facilities were left behind. The land of the former base also poses a problem of soil and ground water pollution. The environmental situation is unique in many respects. Land is obviously scarce, freshwater resources are very limited, and storage capacity for hazardous waste disposal does not exist. It is one of the most northerly coral reef areas, making the marine environment surrounding the island extremely fragile as well. Asbestos would have to be removed from the buildings that will be demolished;
>
> In addition, industrial waste and raw sewage that were disposed of in Bassetts's Cave over time will pose a threat to parts of the island's water system, unless they are removed. Underground and above-ground petroleum storage tanks – many in poor condition – are leaking into surrounding soil and groundwater. Landfills left behind are also causing environmental problems… (United Nations, 1998: 4).

An updated description of the presence of hazardous material was reported by the UN as having been some 525 20-ton shipping containers full of asbestos (United Nations, 1999: 4), residue from oil and sewerage that was pumped into a system of caves under one of the bases, and the existence of potentially harmful metals such as mercury, lead and cadmium (United Nations, 2001: 10-11). The UN recalled that the UK and Canada had contributed to clean up of the sites of their former bases but attempts by the previous Bermuda Government had not succeeded in convincing the US to pay for the clean up, reported to be at the cost of US55 million for its environmental degradation and pollution of the land.

The US had declined to acknowledge its culpability, arguing that "the pollution did not pose a known imminent and substantial danger to human health and safety." The US expressed concern that paying for the clean-up might have implications for its contamination in its other bases globally. In any case, the infrastructure left to Bermuda such as an airport should be sufficient. The cost of the clean-up of the environmental degradation and contamination was quantified in a 1997 private contractor study which estimated the cost at US65.7 million including $11.7 million for the environmental clean-up, $30.9 million for removing asbestos, $8.6 million for demolition, $5.1 million for managing the work, and $9.5 million on replacing Longbird Bridge. The UN reported that agreement was reached in 2002:

> The base lands deal was negotiated by the British Government and resolved that Bermuda is to receive $11 million from the United States for the maintenance of Longbird Bridge and for the clean-up. On 18 June 2002, the Government of Bermuda accepted that deal as the full and final settlement of the 1941 United States Bases Agreement. Consequently, the Government of Bermuda agreed to pay the costs of the clean-up… The deal annul(ed) the 1941 Leased Bases Agreement and the right of the United States to reoccupy the former Naval Annex at Southampton and the Naval Air Base at St. Davis. The United Kingdom declared that Bermuda had the responsibility

for the clean-up of the former bases, but that Britain would provide technical support (United Nations, 2003: 11).

Military Activities in Non Self-Governing Territories and Self-Determination

The use of NSGTs for military activities became the subject of concern on the part of the United Nations as such a role for the territories was seen as having the effect of impeding their process of self-determination. In the 2021 scholarly journal Micronesian Educator of the University of Guam, concerns for such use of dependencies by the administering Powers - and by third countries with the approval of administering Powers – was examined in relation to customary international law:

> In the period preceding the adoption of the U.N. Charter in 1945, there were few standards governing such practices. But after 1945, customary international law on questions of self-determination and decolonisation began to crystalise with reference to the impact of military activities in NSGTs and their effects on the self-determination process…U.N. policy on military activities in NSGTs has been included in annual resolutions intended for all NSGTs on the implementation of the 1960 Decolonisation Declaration, and in annual consolidated resolutions on individual territories;
>
> …..
>
> (M)ilitary bases were seen as 'not only an impediment to the establishment and strengthening of the independence of developing countries but also a serious obstacle to the liberation of people still under colonial domination and a grave threat to the future development of the territories' (Corbin, 2021).

UN resolutions from the 1960s through to present day made "the link between military activities and its effects on territorial economic development with military activities and arrangements (in NSGTs) inevitably (leading) to interference with the economic development…through the extensive alienation of land for military purposes" (Corbin, 2021: 23). Consistent themes of the overwhelming majority of the UN member States reflected the concerns that the existence or establishment of military bases constituted an obstacle to the freedom and independence of the dependencies with the administering powers being requested to dismantle such bases.

The administering Powers retorted that they had the 'sovereign right' to maintain such bases which they asserted provided a safeguard rather than an obstruction to the territories' 'freedom and independence.' The extraordinarily claim that the existence of a base was a matter for the people of a territory to decide was not consistent with the unilateral applicability of the administering Powers who exercised – and still exercise – ultimate authority on defence-related matters.

In 1966, a new argument was introduced by the colonial powers that military bases located in the colonial Territories would help them in their overall strategy in the so-called East-West confrontation, with the territories openly characterised as 'part and parcel of the global military policy of the colonial Powers.' (Corbin, 2021: 22). This projected a heavy handed approach which revealed that the continuation of colonialism had resulted in the preservation of global military interests.

Throughout the period from the 1970s at the height of the Decolonisation Acceleration Period (DAP), the General Assembly adopted a Programme of Action for the full Implementation of the (Decolonisation) Declaration which called for, inter alia, a sustained and vigorous campaign against all military activities and arrangements in the dependencies. The UN also added the important call for administering Powers (APs) not to involve the dependencies in any offensive acts or interference against other States.

Owing in part to this consistent diplomatic acknowledgment of the issue, procedures were put in place by a number of APs to close or downsize some of the military bases in the dependencies. This coincided with the process of closure of the Canadian, UK, and US bases in Bermuda in the mid-1990s. At the time, he UN also called on the APs to promote alternative sources of livelihood in the dependencies given that some were inordinately dependent on the economic activity brought by the foreign military presence.

The closure of the UK base paved the way for the expansion of the Bermuda Regiment, in effect, maintaining an internal military presence with the UK-appointed Governor serving as the Commander-in-Chief (*the singular UK appointed governor in the Atlantic/Caribbean who carries the military title*). The progressive development of the Regiment entailed a system whereby the adult male population was subject to conscription for three years at part time with weekly drills and an annual camp.

By 2009, the United Kingdom Committee of Foreign Affairs recommended in its report that the United Kingdom Government should facilitate the move away from conscription and towards the professionalisation of the Bermuda Regiment, with voluntary and paid elements. It is also to be noted that the Regiment has cooperated for decades on a regular basis with foreign governments and militaries, including the Jamaica Defence Force, the United States Marine Corps and the Canadian military; and by 2012 plans were announced for the Bermuda Regiment, in collaboration with the Bermuda police, to assume more responsibility for patrolling the Territory's waters to enhance drug interdiction capabilities.

By 2014, plans were announced for the introduction of legislation to eliminate conscription and to provide the Bermuda Regiment with a revised legal and disciplinary system in accordance with European Union standards for a modern military. By 2015, efforts were underway to expand the role of the Regiment to include maritime safety in both inshore and offshore waters.

By way of the subsequent Defence Amendment Act (2016), the Regiment would be staffed by volunteers with a return to conscription only if sufficient volunteers cannot fulfil the Regiment's functions. By 2018, the Royal Regiment Boat Troop was established to assist the Bermuda Police Service with inshore maritime patrolling and policing requirements. In 2019 the Regiment participated in "Trade Winds", a training exercise designed to build training capacity, enhance relationships and support cooperation to better respond to natural disasters and land and maritime threats in the Caribbean.

In 2020, the Royal Bermuda Regiment Coast Guard was formed through an amalgamation of the Bermuda Police Service Maritime Unit and the Royal Bermuda Regiment Boat Troop. Its responsibilities were inshore maritime patrolling and policing in line with the Defence (Coast Guard Unit) Amendment Act 2018. The role of the Governor as Commander-in-Chief is set forth in the Bermuda Regiment website:

> Her Excellency the Governor as Commander-in-Chief of the Regiment has ultimate authority for the command, administration and discipline of the Regiment. She appoints the Defence Board, Medical Board and Exemption Board and upon consulting them shall act in his discretion. She is responsible for Governors Orders which govern various aspects of the Regiment. When the need arises for the Regiment to be embodied she will consult Governors Council;
>
> At times the Royal Bermuda Regiment needs to draw on the expertise of its advisory boards and its ministry. The Regiment falls under the Ministry of National Security and is accountable to the Minister for operational funding and government administration. The Regiment also consults with the Defence Board, Medical Board, and the Exemption Board. These boards all advise The Governor as Commander-in-Chief and the Commanding Officer…The Defence Board is an Advisory Board to the Governor on all operational and administrative matters in the Royal Bermuda Regiment. [259]

The use of Bermuda for military purposes by the UK, and by third-countries, dates back to the period of the early settlement and continued well into the 20th century. The Bermuda Constitution Order 1968 as amended coupled with the Bermuda Defence Act (2016) establishes the primacy of the UK-appointed governor in the area of defence. However, there is significant delegated administrative authority to the Minister of National Security. The SGI on military activities is examined in the present Assessment from the perspective of the extent to which the territory has been advanced in the preparative stage (PSG) to administer the requirements of defence.

The level of capacity is one of the questions often raised in the event of changes in the political status of the territory. The evolution of the Regiment, its ongoing relations with

[259] Royal Bermuda Regiment, https://www.bermudaregiment.bm/about/legislation-boards-mns, accessed 20th September 2022.

neighboring States on defence issues, and the geographical proximity to the US, for support if required, positions Bermuda favourably in relation to preparation for full assumption of defence responsibilities. This is an addition to the ever-increasing capacity and expansion of activities into the maritime theatre. Accordingly, the SGI on control and administration of military activities is judged at indicative level 3.

VALUATION

SELF-GOVERNANCE INDICATOR	MEASUREMENT
INDICATOR # 9 **Control and administration of military activities**	1. Cosmopole has full control over defence and related military activities with some consultation with elected government. 2. Cosmopole has full control over defence and related military activities but delegates authority over some aspects to the elected government. **3. Cosmopole has full control over defence and related military activities, delegates authority over some aspects to the elected government, and shall consult with the elected government on some defence-related matters.** 4. Territory has full authority over all aspects of defence and related military activities, and can enter into external defence agreements, as appropriate.

Indicator # 10
Indicator of ownership and control of natural resources

As far back as 1952, the UN General Assembly requested the U.N. Commission on Human Rights to prepare recommendations concerning international respect for the right of peoples to self-determination including the right of peoples and nations to permanent sovereignty over their natural wealth and resources. The Commission noted that this right formed a 'basic constituent of the right to self-determination.'

The Commission on Permanent Sovereignty over Natural Resources was established in 1958 to carry out the mandate. In 1961, this Commission adopted a resolution outlining principles concerning permanent sovereignty over natural resources, and Resolution 1803 (XVII) was subsequently adopted by the U.N. General Assembly in 1962 in connection with the right of peoples to self-determination. The resolution provides that States and international organisations shall strictly and conscientiously respect the sovereignty of peoples and nations over their natural wealth and resources in accordance with the U.N. Charter and the principles contained in the resolution in such areas as exploration,

development and disposition of natural resources, nationalisation and expropriation, foreign investment, the sharing of profits, and other related areas.

From 2013 to 2020, the U.N. General Assembly adopted annual resolutions calling on the administering Powers concerned (including the UK) "to take effective measures to safeguard and guarantee the inalienable rights of the peoples of the Non-Self Governing Territories to their natural resources, and to establish and maintain control over the future development of those resources, and requests the relevant administering Power (UK, et al) to take all steps necessary to protect the property rights of the peoples of those Territories." [260] Also from 2013 to 2020, the U.N. General Assembly adopted additional resolutions on economic and other activities affecting the NSGTs. Accordingly, the Assembly:

- Reaffirm(ed) further that the natural resources are the heritage of the peoples of the Non Self-Governing Territories, including the indigenous populations;

- Reaffirm(ed) the right of the peoples of the (NSGTs)…to the enjoyment of their natural resources and their right to dispose of those resources in their best interest;

- Reaffirm(ed) the legitimate rights of the peoples (of the NSGTs) over their natural resources (and) reaffirms its concern about any activities aimed at the exploitation of the natural resources that are the heritage of the peoples of the Non Self-Governing Territories, including the indigenous populations;

- Call(ed) upon the administering Powers to ensure that the exploitation of the marine and other natural resources in the Non Self-Governing Territories under their administration is not in violation of the relevant resolutions of the United Nations, and does not adversely affect the interests of the peoples of those Territories;

- Invite(ed) all Governments and organizations of the United Nations system to take all possible measures to ensure that the permanent sovereignty of the peoples of the Non Self-Governing Territories over their natural resources is fully respected and safeguarded in accordance with the relevant resolutions of the United Nations on decolonization;

- Urge(d) the administering Powers concerned (including the UK) to take effective measures to safeguard and guarantee the inalienable right of the peoples of the Non Self-Governing Territories to their natural resources and to establish and maintain control over the future development of those resources.[261]

[260] U.N. General Assembly Resolution 68/97 of 11 December 2013; Resolution 69/107 of 5 December 2014; Resolution 70/231 of 23 December 2015; Resolution 71/122 of 6 December 2016; Resolution 72/111 of 7 December 2017; Resolution 73/123 of 7 December 2018; Resolution 74/113 of 13 December 2019; and Resolution 75/122 of 10 December 2020.

[261] U.N. General Assembly Resolution 68/88 of 11 December 2013; Resolution 69/98 of 5 December 2014;

The most prominent expressions of the principle of the right of the people of the NSGTs to ownership of their natural resources are found in the two human rights conventions earlier referenced, namely the ICCPR and the ICESCR. Accordingly, Article 1(2), common to both conventions states that "(a)ll peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law." Article 25 of the ICESCR and Article 47 of the ICCPR, both later additions, emphasise a people's unrestricted and absolute right to their resources. The U.N. Human Rights Committee has also endorsed these rights, finding that the right to self-determination confers natural resource rights, and a corresponding set of duties on States to respect these rights.

A 2019 study by Blue Ocean Law, the Pacific Network on Globalisation, and the International Justice and Human Rights Clinic at Allard Law School, University of British Columbia, concluded that" if the peoples are unable to exercise that sovereignty because they do not exist as a self-governing or independent state their right to permanent sovereignty of natural resources (PSNR) is *per se* being violated and the denial of this right is to deny the entire normative architecture of PSNR in international law."

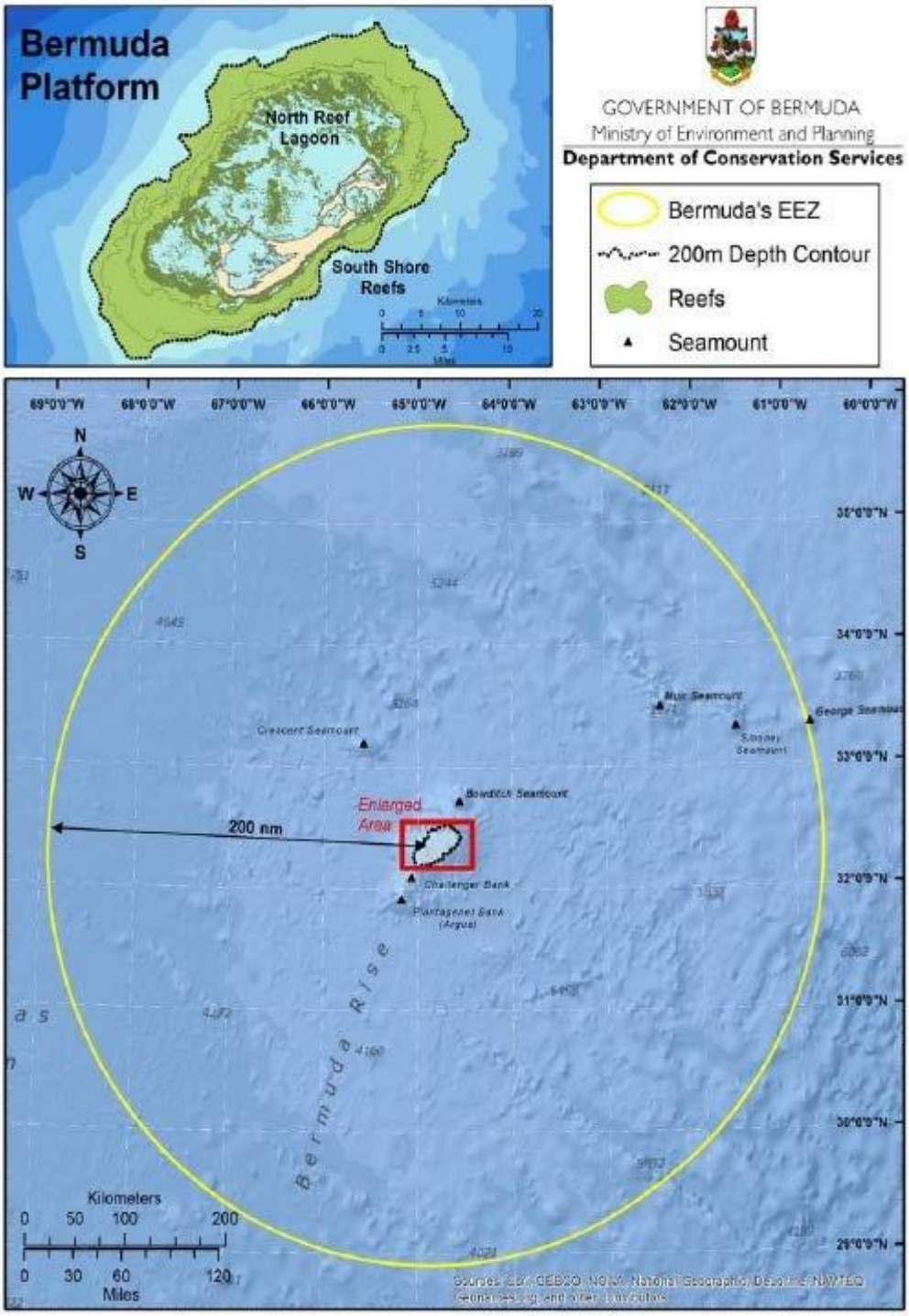
The study further revealed the particular duties under international law to safeguard the permanent sovereignty of people of the NSGTs to their natural resources as a manifestation of their inalienable right to self-determination. This is a binding commitment on the UK through multiple treaties to which the UK is a party, as well as through its status as a binding norm of customary international law. [262]

Despite this extensive international legislative authority, all indications are that the actual ownership of the natural resources including the marine resources are regarded by the administering Powers as part of their base of resources related to the respective economic zones (EEZs) surrounding the island territories and the rights claimed therein. This is confirmed through the UK's Exclusive Economic Zone Order 2013. [263] Within this framework, the delegation of the management of the natural resources of Bermuda has been extensive. Overall, the United Kingdom's EEZ in Europe is 773,676 km^2 (298,718 sq mi). When including all crown dependencies and overseas territories it is 6,805,586 km^2 (2,627,651 sq mi).

Resolution 70/95 of 9 December 2015; Resolution 71/103 of 6 December 2016; Resolution 72/93 of 7 December 2017; Resolution 73/104 of 7 December 2018; Resolution 74/94 of 13 December 2019; and Resolution 75/103 of 10 December 2020

[262] *Enduring Colonization, How France's Ongoing Control of French Polynesia's Resources Violates the Law of Self-Determination*; Blue Ocean Law, the Pacific Network on Globalisation, and the International Justice and Human Rights Clinic at Allard Law School, University of British Columbia, 2019.

[263]See *Exclusive Economic Zone Order 2013* United Kingdom https://www.legislation.gov.uk/uksi/2013/3161/ accessed 17th September 2022.



In 2019 The Government of Bermuda committed to protect at least 20% of the total Exclusive Economic Zone (EEZ) around Bermuda in marine protected areas (MPAs) and to sustainably develop its Blue Economy. The global expert network Blue Prosperity Coalition provided further elaboration on the initiative:

> (T)he Government of Bermuda's Ministry of Home Affairs, the Waitt Institute and the Bermuda Institute of Ocean Sciences (BIOS) signed a Memorandum of Understanding (MOU) to form the Bermuda Ocean Prosperity Programme. Through this partnership, Bermuda will create a binding ocean plan to sustainably manage and improve ocean industries like fishing and tourism while at the same time preserving 90,000 square kilometres (50,000 square miles) of Bermuda's waters, which total 465,000 square kilometres (180,000 square miles), in fully protected areas (no fishing, extraction, or destruction of any kind is allowed);
>
> This process will be based on scientific, legal, and socio-economic assessments of the island and will be designated and implemented by 2022. Utilizing marine spatial planning (MSP), new inshore and offshore zones will aim to preserve commercially important fish stocks, migratory routes for marine mammals, and deep-sea ecosystems like seamounts and corals while allowing for responsible development of marine industries;
>
> Deputy Premier and Minister of Home Affairs the Hon. Walter H. Roban said, "We Bermudians rely on our ocean for our food, livelihoods, shipping, tourism, climate resilience and recreation. This partnership confirms our recognition that a healthy ocean is essential to our island's prosperity – our future depends on it. Bermuda is committed to achieving the highest standard of marine protection, which is essential to build ocean resilience, while at the same time ensuring economic resilience. [264]

The report on the outcome of the *Public Consultation on the Future of Bermuda's Exclusive Economic Zone* conducted in September 2020 provided background on the nature of the EEZ and its management:

> Under the United Nations Convention on the Law of the Sea, Bermuda has special rights over the exploration and use of the natural resources within our EEZ including managing and conserving those resources. Our EEZ represents an area of ocean within 200 nautical miles of our island, covering 464,940 km2 (179,514 m2). Bermuda has a long history of managing its marine resources and regulatory measures are in place for many activities in the EEZ.

The present Assessment acknowledges the highly effective management of the natural resources by the Department of Environment and Natural Resources which reflects the development of extensive capacity in safeguarding the resources of the territory reflective of the wide delegation of power in the area of resource management.. Accordingly, the SGI on ownership and control of natural resources is judged at indicative level 3 reflecting this

[264]See *Bermuda Commits to Protecting 20% in New Marine Protected Areas*, Blue Prosperity Coalition, 17 November 2020. https://www.blueprosperity.org/post/bermuda-protects-20-percent. accessed 22 September 2022..

considerable authority in the management of Bermuda's natural resources whilst recognising that the final transfer of those resources to the people of territory pursuant to international self-determination doctrine has not yet been implemented.

VALUATION

SELF-GOVERNANCE INDICATOR	MEASUREMENT
INDICATOR # 10 **Extent of ownership and control of natural resources.**	. 1.Cosmopole exercises absolute ownership and control over natural resources of territory with power of eminent domain. 2. Some degree of shared management of natural resources between territory and cosmopole. 3. High degree of management of the resources by the elected government of the territory. 4. Natural resources owned and controlled by territory pursuant to international law.

VII. CONCLUDING OBSERVATIONS

The primary intention of the present Self-Governance Assessment of Bermuda was to examine the level of Preparation for Self-Government (PSG) for the territory under its current Elected Dependency Governance (EDG) arrangement of United Kingdom Overseas Territory (UKOT) status recognised under international law as non self-governing. The Assessment employed the specific set of Self Governance Indicators (SGIs) designed to determine the measure of Preparation for Self-Government (PSG) required for the advancement of Bermuda to the Full Measure of Self-Government (FMSG) under the present political and constitutional arrangement.

Significant attention in the present Assessment has been paid to the extent of the delegation of power to the elected government within the current EDG framework as reflected in the Bermuda Constitution Order which serves simultaneously as the Instrument of Delegated Authority (IDA) and the Instrument of Unilateral Authority (IUA), respectively. In this context, the extent of adherence by the Administering Power (AP) to the international decolonisation mandate is also examined. Throughout the Assessment, the advanced nature of the Bermuda model of UKOT status is recognised through the extensive delegation of administrative authority. At the same time, the modalities for maintaining the ultimate decision-making authority of the administering Power are fully acknowledged. It is also understood that the exercise of final decision-making authority may differ for Bermuda, in practice, from how this unilateral authority is applied in other UKOTs.

It is suggested that the level of delegation of authority to the elected government of Bermuda as set forth in the Bermuda Constitution Order 1968 had evolved through subsequent amendment to become, essentially, a model of Dependency Governance (DG) as preparatory to independence. The model, however, was never intended to be in place indefinitely. This may be borne out in the reluctance of the UK to delegate to other UKOTs anything approaching the level of delegated authority exercised by Bermuda without an expressed timetable for independence. In any case, the extensive delegation to Bermuda provided by the UK is wholly consistent with the obligation of APs to advance the dependencies under their administration to the FMSG within the preparatory framework under Article 73(b) of the UN Charter.

There are several distinctions between Bermuda and the Caribbean UKOTs. The first such distinction is seen in differing interpretations of UK constitutional authority to legislate for Bermuda. Whilst Bermuda may view such UK authority as inapplicable, a number of UK official policy documents insist on at least a residual retention of that authority albeit with a general reluctance to use it. In reiteration, the 2022 Foreign and Commonwealth Office research brief *The UK Overseas Territories and their Governors* (p. 6) advises:

> Governors can have also significant law-making powers. Only three Territory constitutions do not allow the Governor to make laws: Bermuda, Montserrat, and St. Helena (though they can in Ascension and Tristan da Cunha, which form part of the

> same Overseas Territory with St Helena). (But) (t)he UK retains the right to make law for all the Territories." (emphasis added).

In any case, whether it is a reticence to apply legislation from London or a genuine lack of constitutional authority to do so, the question alone is sufficient enough to distinguish Bermuda from other UKOTs, serving as *prima facie* determination that Bermuda enjoys an advanced dependency model – perhaps as advanced as it can expect within the present arrangement.

A second area of uniqueness of the Bermuda model is the extent of substantial delegated autonomy established in the Bermuda Constitution Order 1968 as amended through subsequent entrustments (*as in the case of external affairs*) or through regulation (*as in the case of the public service*). Bermuda may enjoy a *sui generis* model of advanced dependency status, but it remains a model of political inequality, nevertheless, as the reversible delegation is not irreversible devolution. Thus, the delegated powers contained in the Bermuda Constitution Order are reversible, albeit by differing means, perhaps, than those used for other UK dependencies which are more susceptible to the so-called 'nuclear option' of order-in-council.

For Bermuda, the reversibility of delegated authority by other means may include a creative use of the 'withhold of assent' to legislation adopted by the elected government as in the case of the Bermuda cannabis legislation earlier referenced. It may also take the form of the application of a UK Parliamentary Act. The 2012 UK White Paper *The Overseas Territories: security, success and sustainability* establishes that "as a matter of constitutional law the UK Parliament has unlimited power to legislate for the Territories" with no formal exemption stated for Bermuda (United Kingdom, 2012: 14). The House of Commons 2022 report *The UK's Overseas Territories and sanctions against Russia* provides further variation on the theme appearing to introduce a voluntary component for Bermuda and Gibraltar:

> In (a)pplying sanctions in the OTs, the long-standing policy of the UK Government is for the OTs to apply the same sanctions as the UK. Two OTs—**Bermuda** and Gibraltar—pass their own legislation aligned to the UK but for others, Orders in Council implement the UK's sanctions. Orders in Council are made by the Privy Council, and are mostly statutory instruments. UK sanctions against Russia, as they existed in 2019, were extended to all the OTs (except **Bermuda** and Gibraltar) in The Russia (Sanctions) (Overseas Territories) Order 2020 (as amended);
>
> There are two ways in which the OTs generally implement sanctions: The UK legislates for the majority through Orders in Council. Two legislate for themselves—**Bermuda** and Gibraltar—but follow what is implemented in the UK. The Government argues this approach respects the rights of each jurisdiction and is "well established" (*emphasis added*) (UK, 2022b: 1-2).

Another modality to reverse delegated authority is the potential for suspension or re-drafting of letters of entrustment. It is to be recalled that the suspension of the entrustment on external affairs was threatened as a punitive measure against Bermuda in 2008 over the

difference of opinion between the UK and Bermuda on the arrangement negotiated by Premier Ewart Brown with the US Secretary of State Hillary Clinton to relocate four members of the Uyghur community who had been released from Guantanamo Bay detention, and whether this represented a formal agreement with which the UK had to concur. [265]

However remote the chances are that such a reversal of delegated authority would be initiated by the UK, for whatever reason, it does not render such action impossible, and such decisions may be subject to the whim of a UK government of the day which could interpret the overall arrangement differently. At the end of the day, the Bermuda Constitutional Order 1968 as amended constitutes a formidable Instrument of Delegated Authority (IDA), and would represent a significant advancement for other UKOTs (*although such delegation has been denied to other UKOTs or rolled back in the case of the Turks and Caicos Islands*). Overall, the DG model should be seen in proper context of its preparatory intention.

This brings into focus the relevance of the current dependency legitimisation strategy discussed earlier in the current Assessment. It is to be recalled that the policy was initiated by the main AP at the outset of the Dependency De-celeration/Stagnation Period at the beginning of the 1990s as a tactic to convince the international community and the dependencies alike that the existent non self-governing territory (NSGT) political status arrangements were no longer preparative in nature, but rather, already sufficiently self-governing despite the inherent political inequalities. However, taking into account the recognised standards of FMSG, the UKOT model of dependency governance does not comply with full self-government, and should be considered as preparatory in its function rather than as the culmination of self-government.

For Bermuda, the level of delegation appears to have reached its apex whilst simultaneously the capacity of the elected government to govern itself without undue oversight has reached the highest degree of maturity. This paradox can result in conflicting opinions and interpretations of the division of power under the current system of delegation played out in a number of examples earlier referenced. The sophistication of the modernised dependency arrangement may include consistent negotiation but with the cosmopole retaining final decision-making authority. However, the very fact that Bermuda maintains a fully-self-sufficient, well managed economy and governance structure provides little impetus for the retention of an existent modernised colonial arrangement.

Bermuda, thus, is poised to take the next logical step of political evolution to remove the remaining anachronistic unilateral authority, to be replaced with a genuinely modernised political relationship with the UK, and with the rest of the international community, based on the sovereign equality of States. Of course, the historic ties between Bermuda and the UK would ensure that a modern relationship would evolve. Such political advancement would

[265] See *British anger at Bermuda decision to accept Guantánamo Bay inmates*, The Guardian, London, 12th June 2009, The UK Foreign Office issued a statement saying that it should have been consulted on whether the matter fell within Bermuda's competence or was "a security issue for which the Bermuda government does not have delegated responsibility".

only be achieved through a process of international self-determination and consequent removal of the final vestiges of colonialism which, if left intact, could result in political and constitutional fossilisation. The late president of Ghana Dr. Kwame Nkrumah cautioned that "we cannot afford the luxury of delay" in relation to the political evolution of the African continent. This advice may be wholly applicable to Bermuda.

The Indian scholar Laxmi Berwa made the important observation that "the concept of democracy and the right to self-determination are inter-related" and that "in the aftermath of WWI self-determination in international law evolved into an enforceable right to freedom from colonial rule." [266] US Secretary of State Robert Lansing realised over a century ago at the 1919 Conference at Versailles expressed that self-determining peoples should be emancipated from outside control-imperial power, and that colonial authority and self-determination is inextricable from democracy.

In contemporary terms, the decolonisation process is a matter of international law, not solely one of the domestic law of the cosmopole as it is routinely described by the APs to the people of the NSGTs. In reality, the international "rule of law" is essential to the advancement of territories to FMSG, and it is the APs who are legally obligated to carry out this mandate – if their lectures to the rest of the world on adherence to this "rule of law" are also applied inwardly to address their contemporary administration of modernised colonies in the 21st Century.

In reality, a successful decolonisation process for Bermuda and other UKOTs is not really adverse to the geo-strategic nor geo-economic interests of the UK where longstanding political, economic, and social ties would dictate a continued, albeit more balanced, approach to the relationship in future that would replace the present asymmetrical political power dynamic. It is unavoidable that genuine political advancement would constitute a loss of cosmopole unilateral authority enjoyed under the existent DG arrangement – as well it should. But in the wisdom of the renowned Martinique psychiatrist Franz Fanon, "decolonisation is an historical process" and "simply a question of relative strength." There is a requirement, then, for a balanced partnership in practice, not just in nomenclature.
The Bermuda Attorney-General speaking before the UN Special Committee on Decolonisation in 2022 was clear on this point:

> The Government of Bermuda is proud of its time-honored parliamentary history, our enduring internal self-government and 53 years of constitutional democracy. By all objective measures Bermuda remains an advanced society characterized by economic, social and political stability. For over 350 years we have governed ourselves with minimal interference by the United Kingdom in our domestic affairs. However, when the United Kingdom has and does involve itself in Bermuda's domestic affairs, it

[266] Berwa, Laxmi (2001) In *In Pursuit of the Right to Self-determination*, Collected Papers and proceedings of the First International Conferences on the Right to Self-determination and the United Nations, Geneva 2000, Clarity Press Inc.

> undercuts the stability of our democracy and undermines and demoralizes the collective desire for Bermuda to handle our own affairs;
>
> The powers in the Bermuda Constitution Order 1968 reserved to the Governor, when exercised in the United Kingdom's interests, effectively stifle Bermuda's growth and dampen the legitimate aspirations and the manifest will of our people. Moreover, fault-lines emerge routinely where the domestic interests of Bermuda and the express democratic will of the people are at odds with the interests of the United Kingdom's own domestic political positions…Agonizingly too, we have come to understand the practical constraints when powers derived from the Constitution are delegated and exercised unfairly.

This considered judgement of the Attorney-General on the state-of-play in Bermuda speaks loudly towards a negotiated transition to the full measure of self-government (FMSG) and the ultimate advancement to full democratic governance. At the end of the day, a democratic dependency is oxymoronic since a dependency cannot, by definition, be a model of democracy - even if the arrangement has been modernised to appear more acceptable. If the power imbalance between the cosmopole and the territory remains unchanged, then any argument of 'modernisation' is illusory.

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APPENDIX

United Nations A/AC.109/2022/L.12

General Assembly

Distr.: Limited
15 June 2022

Original: English

Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Draft resolution submitted by the Chair

Question of Bermuda

The General Assembly,

Having considered the question of Bermuda and examined the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples for 2022,[1]

Taking note of the working paper prepared by the Secretariat on Bermuda[2] and other relevant information,

Recognizing that all available options for self-determination of the Territory are valid as long as they are in accordance with the freely expressed wishes of the people of Bermuda and in conformity with the clearly defined principles contained in General Assembly resolutions 1514 (XV) of 14 December 1960, 1541 (XV) of 15 December 1960 and other resolutions of the Assembly,

Expressing concern that, more than 60 years after the adoption of the Declaration on the Granting of Independence to Colonial Countries and Peoples,[3] there still remain 17 Non-Self-Governing Territories, including Bermuda,

United Nations General Assembly Resolution 1514 (XV)

Decolonisation Declaration

Adopted by General Assembly on 14 December 1960

The General Assembly,

Mindful of the determination proclaimed by the peoples of the world in the Charter of the United Nations to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to promote social progress and better standards of life in larger freedom,

Conscious of the need for the creation of conditions of stability and well-being and peaceful and friendly relations based on respect for the principles of equal rights and self-determination of all peoples, and of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Recognizing the passionate yearning for freedom in all dependent peoples and the decisive role of such peoples in the attainment of their independence,

A ware of the increasing conflicts resulting from the denial of or impediments in the way of the freedom of such peoples, which constitute a serious threat to world peace,

Considering the important role of the United Nations in assisting the movement for independence in Trust and Non-Self-Governing Territories,

Recognizing that the peoples of the world ardently desire the end of colonialism in all its manifestations,

Convinced that the continued existence of colonialism prevents the development of international economic co-operation, impedes the social, cultural and economic development of dependent peoples and militates against the United Nations ideal of universal peace,

Affirming that peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law,

Believing that the process of liberation is irresistible and irreversible and that, in order to avoid serious crises, an end must be put to colonialism and all practices of segregation and discrimination associated therewith,

Welcoming the emergence in recent years of a large number of dependent territories into freedom and independence, and recognizing the increasingly powerful trends towards freedom in such territories which have not yet attained independence,

Convinced that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory,

Solemnly proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations;

And to this end Declares that:

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.

2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.

4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.

5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.

6. Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.

7. All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity.

United Nations General Assembly Resolution 1541 (XV)

Adopted by General Assembly on 15 December 1960

[Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 e of the Charter]

The General Assembly,

Considering the objectives set forth in Chapter XI of the Charter of the United Nations,

Bearing in mind the list of factors annexed to General Assembly resolution 742 (VIII) of 27 November 1953,

Having examined the report of the Special Committee of Six on the Transmission of Information under Article *73* e of the Charter,[12] appointed under General Assembly resolution 1467 (XIV) of 12 December 1959 to study the principles which should guide Members in determining whether or not an obligation exists to transmit the information called for in Article *73* e of the Charter and to report on the results of its study to the Assembly at its fifteenth session,

1. *Expresses its appreciation* of the work of the Special Committee of Six on the Transmission of Information under Article *73* e of the Charter;

2. *Approves* the principles set out in section V, part B, of the report of the Committee, as amended and as they appear in the annex to the present resolution;

3. *Decides* that these principles should be applied in the light of the facts and the circumstances of each case to determine whether or not an obligation exists to transmit information under Article 73 e of the Charter.

948th plenary meeting, 15 December 1960

Annex To Resolution 1541(XV)

Principles which should guide members in determining whether or not an obligation exists to transmit the Information called for in Article *73* e of the Charter of the United Nations

Principle I

The authors of the Charter of the United Nations had in mind that Chapter XI should be applicable to territories which were then known to be of the colonial type. An obligation exists to transmit information under Article *73* e of the Charter in respect of such territories whose peoples have not yet attained a full measure of self-government.

Principle II

Chapter XI of the Charter embodies the concept of Non-Self-Governing Territories in a dynamic state of evolution and progress towards a "full measure of self-government". As soon as a territory and its peoples attain a full measure of self-government, the obligation ceases. Until this comes about, the obligation to transmit information under Article *73* e continues.

Principle III

The obligation to transmit information under Article *73* e of the Charter constitutes an international obligation and should be carried out with due regard to the fulfilment of international law.

Principle IV

Prima facie there is an obligation to transmit information in respect of a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it.

Principle V

Once it has been established that such a *prima facie* case of geographical and ethnical or cultural distinctness of a territory exists, other elements may then be brought into consideration. These additional elements may be, *inter alia,* of an administrative, political, juridical, economic or historical nature. If they affect the relationship between the metropolitan Slate and the territory concerned in a manner which arbitrarily places the latter in a position or status of subordination, they support the presumption that there is an obligation to transmit information under Article *73* e of the Charter.

Principle VI

A Non-Self-Governing Territory can be said to have reached a full measure of self-government by:

(a) Emergence as a sovereign independent State;

(b) Free association with an independent State; or

(c) Integration with an independent State.

Principle VII

(a) Free association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes. It should be one which respects the individuality and the cultural characteristics of the territory and its peoples, and retains for the peoples of the

territory which is associated with an independent State the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes.

(b) The associated territory should have the right to determine its internal constitution without outside interference, in accordance with due constitutional processes and the freely expressed wishes of the people. This does not preclude consultations as appropriate or necessary under the terms of the free association agreed upon.

Principle VIII

Integration with an independent State should be on the basis of complete equality between the peoples of the erstwhile Non-Self-Governing Territory and those of the independent country with which it is integrated. The peoples of both territories should have equal status and rights of citizenship and equal guarantees of fundamental rights and freedoms without any distinction or discrimination; both should have equal rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial organs of government.

Principle IX

Integration should have come about in the following circumstances :

(a) The integrating territory should have attained an advanced stage of self-government with free political institutions, so that its peoples would have the capacity to make a responsible choice through informed and democratic processes;

(b) The integration should be the result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage. The United Nations could, when it deems it necessary, supervise these processes.

Principle X

The transmission of information in respect of Non-Self-Governing Territories under Article 73 e of the Charter is subject to such limitation as security and constitutional considerations may require. This means that the extent of the information may be limited in certain circumstances, but the limitation in Article 73 e cannot relieve a Member State of the obligations of Chapter XI. The "limitation" can relate only to the quantum of information of economic, social and educational nature to be transmitted.

Principle XI

The only constitutional considerations to which Article 73 e of the Charter refers are those arising from constitutional relations of the territory with the Administering Member. They refer to a situation in which the constitution of the territory gives it self-

government in economic, social and educational matters through freely elected institutions. Nevertheless, the responsibility for transmitting information under Article 73 e continues, unless these constitutional relations preclude the Government or parliament of the Administering Member from receiving statistical and other information of a technical nature relating to economic, social and educational conditions in the territory.

Principle XII

Security considerations have not been invoked in the past. Only in very exceptional circumstances can information on economic, social and educational conditions have any security aspect. In other circumstances, therefore, there should be no necessity to limit the transmission of Information on security grounds.

Decolonization agenda
Annual cycle

FEBRUARY
C-24 opens its annual session & **elects bureau** (Chair, Vice-Chairs & Rapporteur)

C-24 decides **venue & dates** of annual regional seminar; agrees on **seminar guidelines & rules of procedure**

MARCH/APRIL

MAY
Regional seminar on decolonization in the Pacific or Caribbean region

C-24 substantive session at UN headquarters (2 weeks):
- considers question of **17 Non-Self-Governing Territories (NSGTs) & Puerto Rico**
- **adopts resolutions and conclusions & recommendations** of regional seminar
- **hears views** of Member States, administering Powers, representatives of NSGTs & "individuals"

JUNE

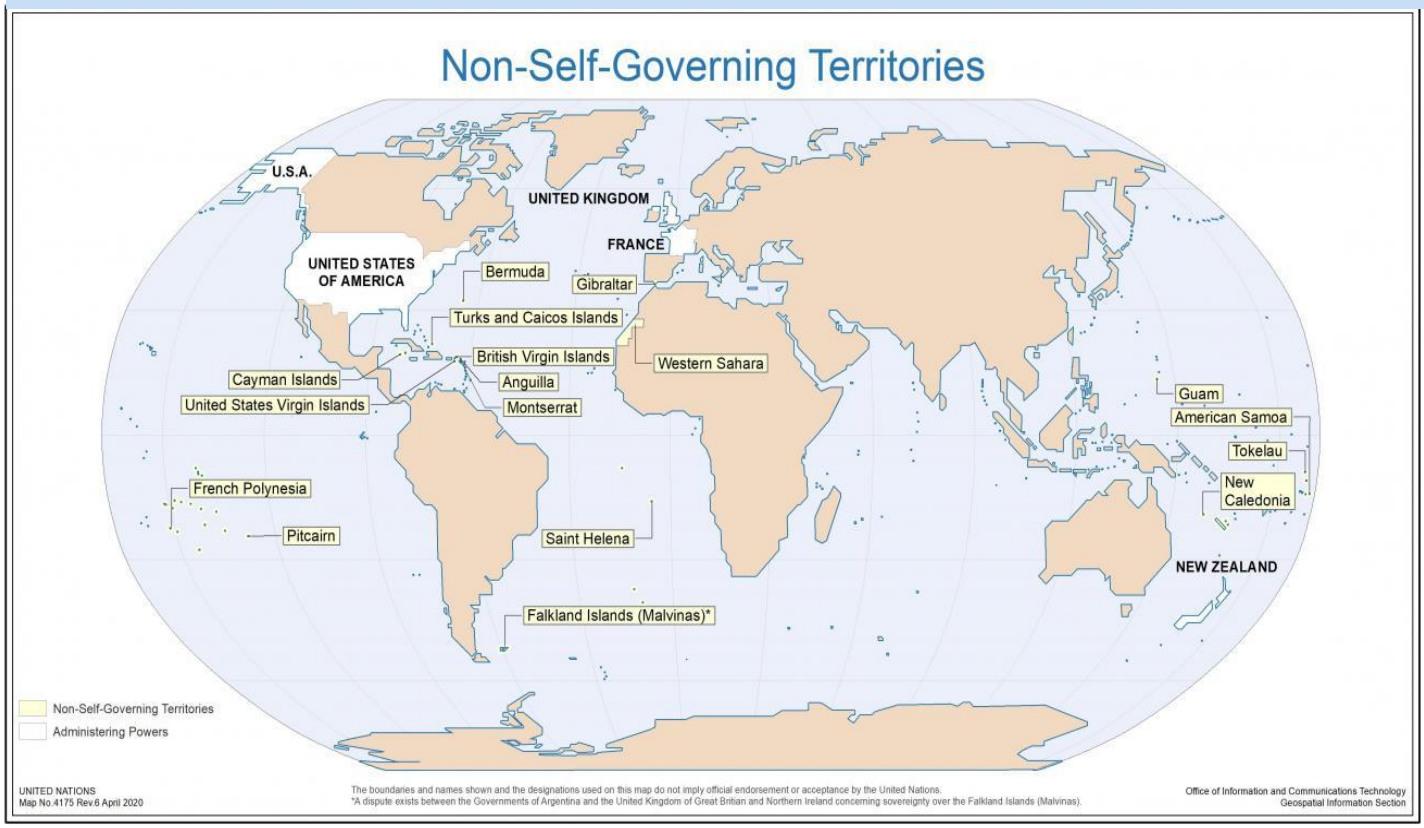
JULY
ECOSOC
- considers agenda item on support to NSGTs by specialized agencies & int'l institutions
- takes action on draft resolution

JULY/AUGUST
C-24 **submits annual report** to Fourth Committee

OCTOBER
Fourth Committee
- considers **agenda items on decolonization** allocated by General Assembly
- considers **C-24 annual report**
- **adopts resolutions** recommended by the C-24 & other resolutions/decisions for submission to the GA plenary

DECEMBER
General Assembly plenary
considers draft resolutions of the 4th Committee

For more information, visit: https://www.un.org/dppa/decolonization



662(XXXIV) ADMISSION OF BERMUDA AS AN ASSOCIATE MEMBER OF THE ECONOMIC COMMISSION FOR LATIN AMERICA AND THE CARIBBEAN

The Economic Commission for Latin America and the Caribbean,

Recalling that paragraphs 3(a) and 4 of the terms of reference of the Economic Commission of Latin America and the Caribbean state that "Any territory, or part or group thereof, may on presentation of its application to the Commission by the member responsible for the international relations of such territory, part or group of territories, be eligible for admission by the Commission as an associate member of the Commission",

Recognizing that Bermuda enjoys strong economic, cultural and social ties with the rest of the region and that it is committed to strengthening these links wherever possible,

Aware that associate membership in the Economic Commission of Latin America and the Caribbean will contribute strongly towards achieving this goal,

Welcoming the request made by the Government of the United Kingdom of Great Britain and Northern Ireland on behalf of the Governor of Bermuda that the latter be granted associate membership in the Commission,

Decides that Bermuda shall be granted associate membership in the Economic Commission of Latin America and the Caribbean.

Notes on General Election versus Referendum

- The method by which the people of Bermuda determine their political future in an exercise of *popular consultation* is the subject of substantial discussion among political and civic leadership in the country. The focus is between the alternative methods of general election versus referendum.

- In the former British dependent territories of the Caribbean which are now independent, the method of determining the political status has historically been by way of general election. Accordingly, if the political party platform contains support for a particular political status option in the party platform – and that party wins the general election – it is concluded that the electorate has endorsed the political status supported by that party.

- It should be noted that a referendum or plebiscite is a direct vote in which an entire electorate is asked to either accept or reject a particular proposal. This may be the adoption of a new constitution, a constitutional amendment, a law, the recall of an elected official or simply a specific government policy. The determination of a political status of a country is a much more complicated issue, however, and is not simply the adoption of a constitution or expression of view on government policy. Indeed, a constitution is a subsequent act which can only be determined after the choice of political status.

- Whilst a referendum on such issues as a new constitution, a constitutional amendment, a law, the recall of an elected official or simply a specific government policy *(as cited above)* are routinely conducted on the basis of a *"yes or no"* vote, a referendum on *political status* is far more involved with far reaching implications. Such a referendum should provide a full range of alternatives, if this is the method which is to be utilised. A simple *"yes or no"* referendum on whether or not to adopt a single political status option – with the status quo as the *"default"* in the case of a "*no"* vote – could yield inconclusive results.

- In the case of a *"no"* vote on a single political status option, the 'status quo" may remain in place, by default, but it was not necessarily chosen by the people in the referendum. The situation, thus, would remain unresolved, particularly when the "status quo" is not recognised as a permanent status with full self-government that is required for decolonisation to be achieved. If the electorate is limited to one option of political

equality and one option of democratic deficiency (*the status quo*), the credibility of the result would be in question because the process would be insufficient.

- The nations of the world have agreed by way of annual UN General Assembly resolutions that the three options providing for a full measure of self-government are independence, free association or integration. Accordingly, if the referendum route is chosen, this full range of options should be provided to the people. Since the *United Kingdom* have announced that it does not offer integration or free association, in spite of their consistent support for those options in UN resolutions, any referendum on political status without the full range of choices would be questionable. The 1995 *"yes or no* " referendum in Bermuda did not have a multiple choice of political options required for it to be a comprehensive process, and as a result, the situation remains un-resolved.

There are a number of examples of multiple choice referenda on political status alternatives:

* In June 1948, a multiple-choice referendum was held in *Newfoundland*, with three choices: join Canada as a province, be restored as a dominion under the British crown, or continue with the status commission administration that was in effect since 1934. With the commission option eliminated, a subsequent referendum the next month saw the voters choose to join Canada.

* In 1967, 1993 and 1998, *Puerto Rico* held referenda with a range of political status options including independence, integration or a commonwealth status (*an enhanced status quo dependency arrangement*).In the 2012 referendum, the voters eliminated the commonwealth status in the first round and a majority selected the option of political integration with the United States although the large number of blank protest votes reduced the tally to below fifty per cent.

* In 1993, the *US Virgin Islands* held a referendum on political status options with a total of seven political alternatives including independence, free association and integration. In this case, the number of options far exceeded those which provide for a full measure of self government. Had one of the dependency options been selected, the result would have been that the electorate did not demonstrate its readiness to move to an option of decolonisation. A less than required percentage of the electorate rendered the referendum null and void, and the *status quo* colonial arrangement remains by default. The results did not mean that the people chose the present arrangement.

* The 1999 Referendum in East Timor was preceded by extraordinary circumstances emerging from a civil war and subsequent invasion by Indonesia. The unique conditions precipitated a referendum on whether or not to accept the proposal for an autonomous relationship with Indonesia. If the proposal was defeated, Indonesia would take

immediate steps to relinquish control of the territory to the United Nations to begin a process of transition to independence. In real terms, therefore, East Timor had two alternatives before the voters, both of which were decolonising options: an autonomous arrangement meeting UN requirements for sufficiency, and an irrevocable transitional process towards independence. The *status quo* colonial arrangement under occupation was not on offer since this was not a permanent status option. In this case, the political education and the referendum itself was conducted by the United Nations to ensure that the public awareness programme was unbiased.

Conclusion

The historic pattern of ascertaining the views of the people of the former British territories on the matter of political status was determined through the process of general election. If the method of referendum is utilised as an alternative, then the legitimacy of the process would be determined, in large measure, on the nature and extent of the choices available to the people.

/2005

FCDO GUIDANCE ON EXTENSION OF TREATIES TO OVERSEAS TERRITORIES

Introduction

Unless expressly authorised to do so by the United Kingdom Government, Overseas Territories do not have the authority to become party to treaties in their own right. The United Kingdom must extend the territorial scope of its ratification of treaties to include them. This is normally done either at the time of ratification, or at some later date. When the United Kingdom is involved in the negotiation or signature of any treaty which could apply to the Overseas Territories it is important that they are fully consulted at the earliest stage. The Overseas Territories must then be allowed a proper length of time to consider the implications of having any treaty extended to them.

The lead United Kingdom Government department (lead Government Department) is responsible for ensuring that the Overseas Territories are ready to have a treaty extended to them. For example, by checking that enabling legislation is in place. They also need to consider whether it will be possible to accept any reservations that an Overseas Territory proposes. FCDO Overseas Territories Directorate (FCDO OTD) can give advice on the process; and how urgent the issue is in the light of competing requirements for the Overseas Territories to have other treaties extended to them. The Overseas Territories have to consider several treaties every year and lack the capacity to cover everything quickly. Best practice is for the lead Government Department to clear the initial communication to the Territories with FCDO OTD before sending.

The United Kingdom Government cannot compel Overseas Territories to request extension of any treaty but can and should provide a steer on the importance of a particular treaty and why it might be in their interests to have it extended. Not all treaties will be relevant to every Overseas Territory. Lead Government Departments should respond promptly if an Overseas Territory proactively shows interest in having a treaty extended to them.

This guidance is broken down into how to **extend and consult at the time of the United Kingdom's ratification** and how Overseas Territories can request extension at a later date.

Background

The Overseas Territories consist of the following territories, with a total population of around 270,000. Anguilla; Bermuda; British Antarctic Territory; British Indian Ocean Territory; British Virgin Islands; Cayman Islands; Falkland Islands; Gibraltar; Montserrat; Pitcairn, Henderson, Ducie and Oeno Islands (commonly known as the Pitcairn Islands); St Helena, Ascension and Tristan da Cunha(a single Territory); South Georgia and South Sandwich Islands; Turks and Caicos Islands; and Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus.

The United Kingdom of Great Britain and Northern Ireland, Overseas Territories and Crown Dependencies form one undivided realm. Each Overseas Territory has its own constitution, government and local laws. They have a substantialmeasure of responsibility for the conduct of their own affairs. In general the United Kingdom is responsible for thedefence, external relations and internal security of the Overseas Territories; and has an overall responsibility for their good governance. The Overseas Territories are not part of the United Kingdom, constitutionally. However, the Queen is their Monarch and the people of the permanently-populated territories have chosen to retain their connection with the United Kingdom. Most of the people of the Overseas Territories are British citizens, apart from on the Sovereign Base Areas, which contain several thousand Cypriot citizens. For further information on the Overseas Territories please see the United Kingdom Government's June 2012 White Paper.

When consulting the Overseas Territories officials should bear in mind the considerable diversity between territories. For example, Bermuda has a population of around 64,000, a Parliament dating from 1602 and a high degree of control over its own affairs; while the Pitcairn Islands have a population of about 50 and an Island Council dealing only with internal affairs. Three Territories (British Antarctic Territory; South Georgia and the South Sandwich Islands; and the British Indian Ocean Territory) do not have permanent populations. The Sovereign Base Areas in Cyprus are administered by the Ministry of Defence. Ascension does not have an indigenous population and there is no right of abode.

Consultations should include information relevant to all territories and, where applicable, tailor advice to local circumstances.

1. Extension at the time of United Kingdom ratification

Consultation with Overseas Territories

a) Why should the Overseas Territories be consulted?

Consultation with the Overseas Territories regarding extension of a treaty is a matter of good policy and administration. Some treaties directly affect particular Overseas Territories. Where applicable, the views of Overseas Territories may also be required to formulate the United Kingdom negotiating position on a treaty. The United Kingdom is responsible under international law for the due performance of treaty obligations undertaken in respect of the Overseas Territories. The United Kingdom must make sure not only that an Overseas Territory is willing to accept particular treaty obligations, but also that those obligations can be fulfilled by the Overseas Territory. If they cannot, the United Kingdom bears ultimate responsibility.

b) Can the United Kingdom force the Overseas Territories to have certain treaties extended to them?

No. The United Kingdom should let Overseas Territories know the importance it places on having a particular treatyextended to them, but cannot compel any Overseas Territory to request extension. In some cases (e.g. tax andtransparency issues) the United Kingdom will want to encourage all (or some) Overseas Territories to request extension at the same time as the United Kingdom; or as soon as possible after. On the subject of international human rights conventions, the United Kingdom Government said in the 2012 White Paper noted above:

"*The UNITED KINGDOM Government's long-standing practice in this area is to encourage the Territories to agree to the extension of UN human rights conventions that the UK has ratified, but to extend these to the Territories only when they are ready to apply them*".

c) When should the Overseas Territories be consulted?

Generally speaking, **initial consultation with the Overseas Territories should occur during the course of negotiation of a treaty**, if the subject of the treaty is relevant to the Overseas Territories. By doing this, Overseas Territory governments can be made aware of the issues and can express any views or concerns they might have with texts under negotiation. In particular, Gibraltar bases its legislation on the United Kingdom version, therefore they require early sight of the United Kingdom legislation, even in draft form.

Where a treaty is being negotiated by the United Kingdom on behalf of one or more of the Overseas Territories, for example, a treaty geographically limited to the Caribbean, the Overseas Territories should normally be kept closely involved in the negotiations, perhaps even forming part of the United Kingdom delegation. Where a treaty is not directly relevant to the Overseas Territories, they would not normally be consulted at the negotiation stage. However, they should be consulted as soon as there is any question of extending a treaty to them.

It is important for lead Government Departments to liaise with FCDO OTD before consulting Overseas Territories. FCDO OTD can check the wording of the introductory correspondence and can advise on handling and the priority that the Overseas Territories should give to the particular treaty. The Overseas Territories do not have the capacity to deal with a lot of treaty work at the same time.

d) How long will it take to secure extension to Overseas Territories?

Overseas Territory governments must be given adequate time to examine a treaty and its implications, with advice as necessary from the United Kingdom. To ensure compliance with the treaty, Overseas Territory governments will be required to legislate or make administrative arrangements (including possibly resource allocation)as necessary before the treaty is extended to them. It follows that hurried or token consultation is not acceptable, nor is the assumption that an Overseas Territory is content to accept and is in a position tofulfil particular treaty obligations because it has not replied to any consultation. None of thisprecludes the setting of deadlines for Overseas Territory responses and following up with them, to maintain momentum. It should be made clear when responses, including nil responses, need to be received within a given timeframe, and these should always be sought. However, **deadlines should be sensible and take into account the very limited capacity of the Overseas Territory administrations**.

United Kingdom practice is to declare on ratification to which, if any, Overseas Territories a multilateral treaty will extend. Subject to the terms of the particular treaty the list may be supplemented later by an instrument prepared by FCDO Treaty Section. However, for each treaty, the lead Government Department should establish with their legal advisers whether extension to the Overseas Territories is possible, and if so, whether it must be at the same time as United Kingdom ratification, or whether it can occur later in respect of some or all of the Overseas Territories. This information should inform the timeframe set for completion of the consultation (see below). It should be noted that where extension to the Overseas Territories can be done after ratification, the United Kingdom prefers to extend to a group of Overseas Territories in one go rather than having multiple single extensions.

e) How should the lead Government Department consult the Overseas Territories?

The Government Department that has the policy lead on a particular treaty is responsible for drafting (in consultation with FCDO OTD) the consultation paper to be sent to the Overseas Territories. This is normally in the form of a letter sent by e-mail; but can be in any form considered appropriate in the circumstances, e.g. a diptel (telegram). Whatever the form, it should be addressed to Governors, Administrators and/or Commissioners as appropriate. It is important to ensure that the key information can be forwarded on to the elected government of the Overseas Territory without the Governor's office needing to make changes. The covering e-mail can contain commentary that does not need to be passed to the local government.

Within the FCDO the consultation paper should be cleared by the Strategy and Co-ordination Team in FCDO OTD, with assistance from FCDO Legal Advisers and Treaty Section as necessary. In the case of

Gibraltar, it should also be cleared with Europe Directorate, Gibraltar Unit, and in the case of the Cyprus Sovereign BaseAreas, with Ministry of Defence (Air).

f) What should the consultation document contain?

The consultation paper **should be drafted on the assumption that the recipient has no previous knowledge of the subject**. Guidance should be sufficient to enable Overseas Territory governments to understand the substance of the treaty without reference to the full text. The consultation paper should attempt to address all questions that the Overseas Territory governments may pose and recognise the differing capabilities, interests and capacities within the Overseas Territories. Please contact FCDO OTD if an example is required.

In short, it should contain:-

- **The concept of the treaty.** For example; what it aims to achieve, what triggered the interest in the issue and definitions of any technical terms. The scope of the treaty should be addressed, setting out who is eligible to become a party to the treaty and highlighting any restrictions such as, for an amending treaty, being party to the parent treaty. The consultation paper should explain how the treaty will achieve its key aims and include an explanation of the mechanisms involved and clarify why there may be a need for legislation.

- **The United Kingdom's stance on the treaty**. Why the United Kingdom supports the aims of the treaty will be key for Overseas Territory governments to establish whether the treaty complements their ownobjectives. This section should also consider the United Kingdom position on the principles of the treaty, set in both the domestic and international context. United Kingdom policy on related issues should also be addressed and, if applicable, any background to the stance of other key parties. Where extension of the treaty is essential from the United Kingdom's perspective, this section should also include reasoning as to why the Overseas Territories should agree to the extension of the treaty and the possible consequences for the United Kingdom and Overseas Territories if they do not. If the United Kingdom wantsto encourage the Overseas Territories to have a treaty extended to them, but does not consider itto be urgent, this section should indicate the relative priority that the Overseas Territories should give to requesting extension of the treaty (to be agreed with FCDO OTD).

- **The perceived benefit for the Overseas Territories**. The consultation paper should clearly set out the benefits, if any, of joining the treaty for the Overseas Territories. This information will be key in encouraging the involvement of Overseas Territory governments and will need to take into consideration the differing circumstances in the Overseas Territories. In order to provide relevant briefing it may be useful to divide the consultation paper into groupings such as geographical regions or size of population. The consultation paper should includeany issues which may be of particular relevance to Overseas Territories. This information should assist the Overseas Territory governments in determining if they are interested in having the treaty extended to their territories.

- **How will the Overseas Territories meet the requirements of the treaty?** This information should refer to how the United Kingdom has implemented the treaty and should refer to our implementing legislation, if any. An indication should be given as to where copies of such legislation can be obtained, usually a website address particularly where it is too bulky to include with the consultation letter. Overseas Territories should be provided with an

indication of how onerous the legislative requirements will be, particularly any financial burdens, if there will be technical limitations to consider, or difficulties in application of the treaty within a limited population. It should also refer to any reporting obligations, and any infrastructure required to meet obligations, such as reporting committees or mechanisms to collect information and publish reports. If the United Kingdom is willing to legislate for the Overseas Territories by Order in Council, this offer should be set out in the consultation paper, as this may have a bearing on the Overseas Territories' willingness to agree to the extension of the treaty.

- **When the treaty enters into force.** Overseas Territory governments should be given details of when the treaty will enter into force, such as number of parties requiredor number of days after the extension is notified to the depositary. Also, if possible, links to websites providing updated information on the treaty.

- **Contact details of the Government Department officials leading on the consultation.**

- **Consultation deadline** (normally at least four weeks).

g) <u>What do the Overseas Territories need to do to get ready for extension?</u>

If any of the Overseas Territories indicate that they wish to be included in the United Kingdom's instrument of ratificationthey should be able to demonstrate that the necessary domestic provisions are in place to support extension of the treaty. The normal method for an Overseas Territory to demonstrate its compliance with a treaty is through a **transposition table** setting out, often on an article by article basis, the relevant domestic legislation and/or other provisions.

The transposition table should include confirmation that the Attorney General's Chambers is content that, in its view, the domestic legislation/provisions set out in the table are sufficient for the territory to comply at the point of extension with the treaty in question, to a similar extent as the United Kingdom. Copies of, or links to, any legislation or other documents referred to in the table should be sent to the department. Please contact FCDO OTD if an example is required.

The lead Government Department needs to satisfy itself that the evidence provided by the Overseas Territory in the transposition table (and any accompanying letter) is in accordance with the provisions in the treaty; sufficient for the United Kingdom to assert that the Overseas Territory is ready to have the treaty extended to it. The lead Government Department needs to go back to the Overseas Territory if it is not satisfied.

It is for the lead Government Department to decide whether it should carry out a detailed review or be content to undertake a quality assurance check that the Overseas Territory's legislation meets the requirements of the treaty in question. Any such checks should be reasonable andpragmatic and take into account the circumstances of the particular Overseas Territory. An Overseas Territory's implementing provisions need not be identical to those of the United Kingdom and an Overseas Territory may not need all of the provisions that exist in the United Kingdom if they are not relevant.

h) <u>How to Deal with Responses and Queries from the Overseas Territories</u>

Contact details of officials at the lead Government Department should be provided and also an email account to collateall responses established. The lead Government Department should be the first point of contact for Overseas Territories. The officials in that Department should then refer any questions of substance to the Strategy and Co-ordination Team in FCDO OTD, with assistance from

FCDO Legal Advisers and Treaty Section as necessary.

It is the responsibility of the lead Government Department to ensure that all relevant FCDO departments and the Overseas Territories are aware of the progress of the extension and any issues that have been raised. At the end of the timeframe for consultation the lead Government Department should inform the Strategy and Co-ordination Team in in FCDO OTD, Europe Directorate, Gibraltar Unit for Gibraltar, and Ministry of Defence (Air) for the Sovereign Base Areas in Cyprus, on the outcome of the consultation. This may involve contacting Overseas Territories for (nil) responses.

i) Are Reservations acceptable?

An Overseas Territory may, when requesting the extension of a treaty, formulate a reservation. These can take into account points such as religious beliefs, capacity constraints, or Territory- specific laws. However, a reservation cannot be made if:

a. the reservation is prohibited by the treaty;
b. the treaty provides that only specified reservations, which do not include the proposed reservation in question, may be made; or
c. in cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

A reservation must be formulated in writing and indicate the reasons why it is being formulated. The lead Government Department needs to consider, with FCDO OTD, whether the reservation is justified and is likely to be accepted by the treaty depositary. If the lead Government Department does not think the reservation is justified, they need to respond to the Overseas Territory explaining why.

Where the United Kingdom has told the Overseas Territories about reservations that it proposes to make, the Overseas Territories need to confirm whether or not they wish to be covered by the same reservations.

j) Extending a treaty to the Overseas Territories

The process for accepting the extension of a treaty to an Overseas Territory should be provided in the consultation document or accompanying letter**. Overseas Territories should formally request extension by authoritative notification** (for example, a signed letter from the Governor) to be addressed to the lead Government Department, copied to FCDO OTD, stating that:

a. the Overseas Territory requests extension of the treaty to it; and that
b. sufficient laws and policies are in place in the Overseas Territory to enable it to implement and comply with the obligations under the treaty, identifying such laws and policies.

Once the lead Government Department is satisfied that the treaty can be extended to the Overseas Territory they should inform FCDO OTD. FCDO Treaty Section will then draw up a diplomatic note. Please contact FCDO OTD if an example is required. FCDO Treaty Section will advise on the correct form in each case.

Summary of steps required

- Lead Government Department drafts consultation paper and clears it with FCDO OTD
- Lead Government Department sends consultation paper to Overseas Territory Governors' offices, copying in FCDO OTD

- Overseas Territories inform lead Government Department whether they wish to be included in United Kingdom's ratification; if they do, Overseas Territories need to include transposition table and any proposed reservations
- Lead Government Department considers applications from Overseas Territories, consulting with FCDO where necessary, and informs Overseas Territories of the outcome
- Once Overseas Territories are ready, they send formal request to lead Government Department
- Lead Government Department informs FCDO once they are content for each Overseas Territory to have the treaty extended to them
- FCDO sends instrument of extension of ratification to treaty depositary
- FCDO informs lead Government Department and relevant Overseas Territories

2. Extending Treaties to the Overseas Territories after the point of United Kingdom ratification

It is not always possible to include the Overseas Territories in the instrument of ratification, even though one or more may wish that treaty to apply to them. Generally this tends to be because the requesting Overseas Territory does not have the necessary legislation in force to support extension at the point of United Kingdom ratification. Rather than the Overseas Territories having to work to the United Kingdom's schedule, **there is provision in most treaties that allows the scope of ratification to be extended to include Overseas Territories at a later date**, once the necessary legislation is in place.

Where an Overseas Territory wishes to have a treaty extended at a date subsequent to United Kingdom ratification/accession, Overseas Territories should make a request together with details of any implementing legislation in place, along the lines set out in 1 g) and i) above. Extension is subject to legal advisers and officials in the lead Government Department agreeing that the Overseas Territory is able to implement the treaty adequately. Once this is confirmed, FCDO Treaty Section will prepare an instrument of extension, which is sent to the depositary and, subject to the terms of the specific treaty, it will be extended. Where an Overseas Territory needs to introduce new legislation to give effect to a treaty, it is recommended that they begin the process well in advance of the expected date at which the extension is required and share any drafts with the lead Government Department at an early stage. This will ensure that there is enough time to resolve any technical or legal issues that may delay extension.

When extending a treaty to an Overseas Territory and subject to its terms, the instrument of extension to the depositary should make clear whether any reservation or declaration made by the United Kingdom upon ratification apply to the Territory.

A decision on the territorial extent of a treaty entered into by the United Kingdom is a **domestic** decision, and is **not** one that must be agreed by all the other parties to the treaty.

a) <u>Process: an Overseas Territory requests extension</u>

If an Overseas Territory decides to request the extension of a treaty, they are responsible forinitiating requests through the Governor. **The Overseas Territory must write directly to the lead Government Department which has responsibility for the treaty under discussion** (FCDO OTD will be able to advise them which Government Department leads on which treaty if not known).

The request should set out the scope of the extension, i.e. whether the same provisions, reservations and declarations as the United Kingdom should apply or not. If requested to do so by an Overseas Territory, **the lead Government Department should provide any information it may have on how the United Kingdom complies with the provisions of the treaty in question**.

The Overseas Territory needs to be able to demonstrate that the necessary domestic provisions are in place to support extension of the treaty. **The standard method for an Overseas Territory to demonstrate its compliance with a treaty will be through a transposition table /compliance matrix, as in 1g) above.** Extension requests are best supported by acompliance/transposition table regardless if they are made at the time of the United Kingdom's ratification or subsequently.

FCDO OTD should be copied into any extension request. Where appropriate, the request should also identify any reservations or derogations which the Overseas Territory wishes to be made.

b) Lead Government Department review

On receipt of the request, the lead Government Department should satisfy itself that the Overseas Territory has the necessary domestic provisions in place to support the request by considering the detailed transposition table and any proposed reservations. Further details are set out in sections 1 g) – i) above. The lead Government Department should usually complete this step within **four weeks** of receiving the request. If the Department considers it necessary to query an aspect of the request, then any such request for clarification should be put in writing, submitted to the Overseas Territory and copied to FCDO OTD.
If the lead Government Department fails to decide what steps it intends to take within the timescale set down, the relevant Overseas Territory should contact FCDO OTD, asking for their assistance to resolve the issue.

The Overseas Territories are entirely separate from one another and the lead Government Department should not treat them as a package. If one or two of the Overseas Territories have requested extension of a treaty **the lead Government Department should not delay considering the request** until the others are also in a position to have the treaty extended.

Once the lead Government Department is content for a treaty to be extended to an Overseas Territory, it should inform the Overseas Territory who will then ask the Governor to forward the formal request for extension. The request should be copied to the Overseas Territory government concerned.

c) FCDO draft Instrument of extension

The FCDO will draft the necessary instrument of extension, ensuring that it is drafted as required by the treaty and contains any reservations or declarations requested. When the instrument is submitted to the depositary, the FCDO will provide a copy to the Overseas Territory directly. Unless there are extenuating circumstances, this step in the process should usually be completed within four weeks of the formal request by the lead Government Department for extension of the relevant treaty.

Summary of steps required

- Overseas Territory informs lead Government Department that they wish to have a treaty extended to them
- (If necessary) the lead Government Department sends requirements to the Overseas Territory. For example, the original consultation paper
- Overseas Territory sends transposition table and any proposed reservations to the lead

Government Department for consideration

- Lead Government Department considers application from Overseas Territory, consulting with FCDO where necessary, and informs Overseas Territory of the outcome
- Once Overseas Territory is ready, they send formal request to lead Government Department
- Lead Government Department informs FCDO once they are content for Overseas Territory to have the treaty extended to them
- FCDO sends instrument of extension to treaty depositary
- FCDO informs lead Government Department and relevant Overseas Territory

Further Guidance

There is a section on Overseas Territories in the FCDO Treaties and MOUs: Guidance on Practice and Procedures on gov.uk:

https://www.gov.uk/government/publications/treaties-and-mous-guidance-on-practice-and-procedures

Information on the application of existing treaties to the Overseas Territories can be found using the United Kingdom Treaties Online database which can be accessed on gov.uk:

https://www.gov.uk/guidance/uk-treaties

FCDO Legal Advisers
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