A new relationship for the Overseas Territories?

The View from Europe

David Jessop

While most of the world has been focussed on the outcome of the US presidential elections, other events of long-term importance to the region have been taking place. Of these, one of the more significant relates to the relationship between the UK and its Overseas Territories (OTs), which could eventually become subject to change.

Although for a while now some, like the British Virgin Islands, have been signalling that they want constitutional advance and are weighing the merits of self-determination – about which more later – it is clear that all of Britain's Overseas Territories have found the British vote to leave the European Union, at the very least challenging, and for some potentially game changing.

In part this reflects the wider evolution of their relationship with London.

While the UK continues to retain overall responsibility for sovereignty in all of its OTs, and to a greater or lesser extent good governance, Britain’s role has in recent years become of significantly less economic and democratic relevance. This is particularly the case in nations with advanced constitutions, viable political systems and institutions and governments that have created a much higher standard of living than exists in many developed nations: Cayman Islands statistics indicate, for example, a per capita GDP income of US$58,430 in 2014, while that for the BVI in 2010 stood at US$43,200 according to the US government.

The matter is further compounded by the fact that for some OTs their dialogue with Europe in conjunction with the UK has become vital in developmental and regulatory terms, and could simply evaporate if a future relationship is not satisfactorily established with the EU27 before Britain formally leaves the EU.

Although the joint communiqué issued after the recently held 2016 Overseas Territories Joint Ministerial Council Meeting (JMC) did its best to be diplomatic in this respect, in reality it papered over a growing number of political cracks in the relationship being brought about by Brexit and changing national circumstances.

Britain, in the face of multiple questions from Overseas Territories leaders attending the JMC, in a major concession, agreed to hold a special council meeting with its Overseas Territories on Brexit before it triggers Article 50 of the European Treaty and begins the process of leaving the EU.

According to the joint communiqué, this Council on European Negotiations will be held in the first quarter of 2017. It also said that the UK ‘committed fully to involve’ the Overseas Territories as Britain prepares to leave the EU.

The announcement follows strong representations by the UK’s Overseas Territories about the need to be fully consulted and for the UK to provide answers on a complex range of questions about the issues likely to arise when the country leaves the EU.

These include matters that touch on the legality of the referendum decision as far as the Overseas Territories are concerned, issues relating to future sovereignty, constitutional change, development assistance, free movement, and financial services regulation, as well as judicial issues relating to
human rights, environmental regulations and a plethora of technical issues that will arise in future, including the OT’s future relationship with the EU27.

Addressing some of these issues, the joint communiqué said ‘the UK Government is clear that the referendum result does not change the UK Government’s position on sovereignty over the Territories’. It also ‘reaffirmed that while the UK remains a member of the EU, current EU funding arrangements continue unchanged’ and that in the case of EU funds covered by assurances from the UK Treasury, such guarantees will continue. It also provided assurances that the UK would ‘take the priorities of the Overseas Territories into account’ as it established future trade and investment arrangements with the wider world, and would ‘explore the inclusion of Overseas Territories in future UK bilateral investment treaties’.

Although the language went towards addressing certain concerns, according to some OT heads, the inability of the UK to provide detailed answers and assurances to the many complex questions they posed remains a matter of deep concern, requiring resolution before the UK triggers it decision to leave the EU.

For this reason, the manner in which the Overseas Territories will be treated in relation to Brexit is likely, in its own way, to be as politically and constitutionally significant as the other challenges that the UK government is having to address in relation to Scotland and other devolved administrations.

At present, the intention of all OTs is to remain a part of the UK family, but it is not hard to see how, without the right safeguards and relationships with both the EU27 and London, Brexit may test the UK’s ties with some of its Overseas Territories to the limit.

The Premier of the British Virgin Islands, Dr Orlando Smith, who is also current President of the UK Overseas Territories Association Political Council, has therefore urged the UK to find a way to more closely engage the international role played by the OTs and the British economy. He has also argued that as the UK realigns its relationships globally, it should see the positive role that the Overseas Territories can play, for example in relation to the City of London.

All of which suggests that if the UK cannot address satisfactorily the many questions raised, and determine how in future the Overseas Territories are to relate to the EU27, the pressure from some for a more advanced constitutional relationship with London, and a further reduction in the UK’s powers, is likely to grow.

The implication is that for some Overseas Territories, Brexit and constitutional advancement could therefore become inextricably linked.

Whether this eventually leads, subject to the wishes of electorates, to something close to full separation or independence, remains to be seen. However, the sense is that the UK remains reluctant to return to the 1970s when full internal self-government in the Associated States in the Caribbean meant responsibility without power.

It is yet another issue that the region may have to add to its already over-full agenda.

David Jessop is a consultant to the Caribbean Council and can be contacted at david.jessop@caribbean-council.org
Previous columns can be found at www.caribbean-council.org
November 20th, 2016