Brexit and the UK Overseas Territories

On June 23 voters in Britain will decide whether they wish to remain within the European Union (EU). If they vote to leave as some polls suggest, they may inadvertently affect the special status that the UK’s Overseas Territories in the Caribbean have with Europe.

In a recent indication of the uncertainty an out vote might create, Anguilla, the British Virgin Islands, the Cayman Islands, Montserrat, and the Turks and Caicos Islands, together with other Overseas Territories, have jointly commissioned a study on the subject. This will not only review the issues that would arise should the British electorate vote to leave, but will also consider whether there might be alternative options in relation to the Overseas Territories status with both the UK and the EU; potentially opening the way for longer term change, irrespective of the outcome of the vote.

Their concerns in part relate to ambiguities in the status of their relationship with Europe.

Although they are linked to the EU through the member state to which they belong, as well as by their membership of the Association of Overseas Countries and Territories of the European Union (OCTA) and the EU’s 2013 Overseas Association Council Decision, the Overseas Territories are not part of the European Union. Instead, given their special relationship to a specific EU member state, they are regarded as being associated with the EU as a result of the accession by the EU nation concerned to the Treaty of Rome which established the European Economic Community.

This means that the five Caribbean Overseas Territories’ primary relationship with the EU comes through their political, legal and constitutional ties with their ‘parent’ state, in this case the UK’s, which acceded to the Treaty in 1973. As a consequence, for most issues the Overseas Territories are regarded as ‘third countries’ in their dealings with the European Commission, the EU and its many institutions. This means there is no automatic process that causes EU decisions to apply to them.

Should the UK decide to leave, this ambiguity would immediately become apparent if the Overseas Territories wished to continue their existing relationship with Europe, or develop a new one of their own choosing.

For the UK’s Caribbean Overseas Territories, perhaps the most significant challenge would relate to finding a way to ensure future funding from the European Development Fund (EDF), and continuing access to its Investment Facility and to the European Investment Bank, as well as retaining access to other European programmes of benefit relating to the environment, education and training.

As matters stand, the present EDF programme runs up to 2020, but it is far from clear what would happen when negotiations begin for its successor. Also uncertain is how the Overseas Territories would address in Britain’s absence the complex issues arising from changing EU development priorities, or the new approaches being developed in the light of the UN sustainable development global goals agreed last year.
With Britain outside the EU, the Overseas Territories would almost certainly require a direct relationship with the European Commission, a representative office or offices in Brussels, and the capacity to lobby EU member states; the vast majority of which have no historical connection with Caribbean and regard the high GNP per capita of the Overseas Territories as placing them beyond the need for assistance.

Complex diplomatic maneuvering may also be required. The withdrawal of UK funding from the EDF after a ‘leave’ vote would seemingly make it unlikely that the EU would be disposed to provide support for territories associated with the UK. However, given the EU has always been keen to develop as direct a relationship as possible with all of Europe’s Overseas Territories, it may be possible for those in the Caribbean to negotiate an alternative form of direct partnership.

Trade ties could also become a factor after any vote to leave. The EU’s 2013 overseas association decision, regarded Overseas Territories as trading partners able to enjoy duty and quota free access to the EU market. Although those promoting a decision to leave the EU suggest that a new trade relationship with the EU would be rapidly negotiated, the Overseas Territories might instead wish to develop alternative thinking about longer term options. They would also need to consider how, for example, trade disputes, the interpretation of the rules on cumulation, phytosanitary disputes, or compliance with EU import regulations relating to agriculture or fisheries imports, all of which have arisen previously, would in future be remedied.

A vote to leave would also raise other practical issues including free movement within the EU’s Schengen area, how best to maintain the free association that brings the Caribbean Overseas Territories peripheral advantages, and questions about security co-ordination. Perceptual uncertainties might also emerge about financial services as there is still a significant lack of understanding in many EU capitals about the centrality of the industry to the economies of the BVI and Cayman.

The UK government’s stated policy is to make every effort to ensure that its Territories are consulted and their interests defended. This implies that if it comes to Britain having to negotiate an exit and develop a new relationship with Europe, some priority would have to be given to incorporating the thinking of its micro states.

For this reason, some voices in Britain’s Overseas Territories see the issue as presenting the opportunity for a wider debate. They suggest that the proposed study on the implications of Brexit offers the opportunity, irrespective of the outcome of the UK vote, to enable Overseas Territories to identify and debate a new status with both the UK and the EU that advances the process of self-governance and self-reliance. They suggest that irrespective of whether the UK votes to remain or leave, consideration of the implications offers the chance to clarify the relationship with Europe and the UK and to determine where future opportunity lies.

In most of the Overseas Territories there is a recognition that when the they have reached a higher level of development, self-determination will be the goal; a point made recently by the BVI’s Premier, Dr Orlando Smith, in a thoughtful conclusion to his annual budget speech.

Brexit is an unknown quantity that would directly impact Britain’s Overseas Territories in the Caribbean. For this reason, an out vote requires consideration now. Understanding how it might relate to the UK Caribbean Overseas Territories’ longer term objectives could well be thought provoking for the region as a whole.
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