



House of Commons
Foreign Affairs Select Committee

Overseas Territories

This is a volume of submissions, relevant to the 'Overseas Territories', which have been reported to the House.

Only those submissions written specifically for the Committee have been included.

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Letter to Mike Gapes MP from Janez Potočnik, Member of the European Commission

Thank you for your letter of 1 March 2010 on behalf of the Foreign Affairs Committee of the UK House of Commons, seeking clarification about the decision of the European Commission to list 'Estrecho Oriental' as a Site of Community Importance pursuant to Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

As far as the Commission understands, the territorial dispute between Spain and the United Kingdom in relation to the marine waters off Gibraltar is long-standing, predating the accession of both Member States, with both countries claiming sovereignty in relation to this geographic area. The Commission is not aware that the dispute arising from the individual position of the two Member States has been resolved within the framework of the United Nations Law of the Sea or another process under international law.

Under the Habitats Directive Member States are obliged to contribute to the creation of a network of designated sites across Europe (the Natura 2000 network) aimed at assuring the long-term survival of Europe's most valuable and threatened species and habitats. The role of the Commission in this process is one of coordination – it collates the list of proposed sites sent by the Member States and oversees the process for adoption of the overall list.

The Commission considers that, following the principle of sincere cooperation under Article 4 of the Treaty on the Functioning of the EU, a Member State designating a site in an area which it knows is the subject of a territorial dispute should notify the other concerned Member States before submitting it to the Commission. The Commission does not consider that the Habitats Directive is an appropriate mechanism to resolve such disputes between Member States in relation to sovereignty claims over the same territory. Nor does the Commission consider that the listing of the overlapping United Kingdom site "Southern Waters of Gibraltar" and the Spanish site "Estrecho Oriental" as Sites of Community Importance for the Mediterranean Region changes the situation in relation to these disputing sovereignty claims, which ultimately will have to be resolved under appropriate international and bilateral mechanisms.

It is not the first time that, due to the existence of jurisdictional disputes, an overlap in areas nominated under the Habitats Directive by two Member States has arisen. Other instances include Lough Foyle, which borders Ireland and the United Kingdom in Northern Ireland, and the Ems-Dollard between Germany and Netherlands. The Commission has no competence in relation to disputes of this kind. There are cooperation mechanisms in place for trans-frontier protected areas. For example, within the framework of a trilateral cooperation, Denmark, Germany and the Netherlands work together in protecting the Wadden Sea, one of the most important and largest wetland areas in Europe. This has involved the setting up of common objectives and the setting of standards for what should be done by the countries to ensure that the Wadden Sea is protected as an entity and used in a sustainable way. Most of the Wadden Sea is protected by the three Member States concerned within the Natura 2000 network of protected areas.

The listing of the two marine sites off Gibraltar demonstrates that both Member States recognise the ecological value of these marine waters. However, as far as my services are

aware neither Member State consulted the other before formally notifying their sites for protection under the Habitats Directive. Given the sensitivity of the matter the Commission did make contacts with the United Kingdom subsequent to its initial notification, which confirmed that both Member States maintained their respective claims of sovereignty in relation to the disputed waters. I would emphasise however that this contact was not part of the formal procedure set out under the Habitats Directive. Before adopting its Decision in December 2008, and in accordance with the procedure set out in Article 4 of the Habitats Directive, the Commission had consulted all the Member States concerned and had received a favourable opinion from all Member States, including the United Kingdom, to the proposed update of the list at a meeting of the Habitats Committee dated 22 October 2008. This was exactly the same formal procedure that led to the earlier adoption of the list of Sites of Community Importance on 25 April 2006, containing the United Kingdom site “Southern Waters of Gibraltar”.

Given that there is an application from the Gibraltar Government to the EU Court of First Instance (now referred to as the ‘General Court’), aiming at the annulment of the Commission decision including the site “Estrecho Oriental” in the list of Sites of Community Importance for the Mediterranean region, adopted in November 2008, I would consider it inappropriate to comment further as this matter is awaiting a decision by the Court.

It would appear to me that this matter require cooperation between the United Kingdom, Gibraltar and Spanish authorities. The Commission is aware of existing mechanisms for dialogue, notably the Trilateral forum for dialogue on Gibraltar between the UK, Spain and Gibraltar authorities, the 3rd ministerial meeting of which took place on 21 July 2009 and at which environmental issues, including the disputed designations, were discussed.

The Commission has indicated to both the United Kingdom and Spain that it is willing to facilitate a process of dialogue and any joint initiatives that they are willing to undertake with a view to ensuring the conservation and management of the disputed marine territory off Gibraltar, including, if they consider appropriate, work on the preparation of a joint management plan for the protection and attainment of the conservation objectives for the site. The Commission has invited the two Member States concerned to engage in such a process and stands ready to respond positively to any steps in that regard.

22 April 2010

**Letter to the Chair of the Committee from His Excellency Mr Gordon Wetherell,
Governor, Turks and Caicos Islands**

When I called on the FAC on 18 November, Sir John Stanley asked whether decisions to prosecute individuals being investigated by the Special Investigation and Prosecution Team would be taken by the Governor, the Attorney General or the Special Prosecutor. I said it would be the Attorney General; but undertook to check. Having consulted the Attorney General and FCO legal advisers, I can now confirm that, while the Special Prosecutor will recommend prosecutions, the final decisions on whether to prosecute persons under investigation by the SIPT will rest with the Attorney General.

Mr Gapes asked whether the TCI had an extradition agreement with the Dominican Republic. I can confirm that it does not.

1 December 2010

Letter to the Chair of the Committee from Rt Hon William Hague MP, Secretary of State for Foreign and Commonwealth Affairs: Turks and Caicos Islands (TCI)

Further to my letter to you of 15 November, in response to the FAC's report on TCI of 31 March, I am writing to update you on latest developments with regard to the Territory.

On 14 August 2009, an Order in Council was brought into force which suspended ministerial government and the House of Assembly for a period of two years (which could be lengthened or shortened) and removed the constitutional right to trial by jury. The Cabinet no longer exists and the House of Assembly has been dissolved. Members' seats have been vacated. The Governor has charge of government subject to instruction by the Secretary of State.

When ministerial government was suspended we said our aim was for elections to be held in July 2011, if not sooner. This was when they would have been due to take place had the House of Assembly not been dissolved by Order in Council. We thought that two years would allow the current TCI Government sufficient time to restore the principles of good governance, sustainable development and sound financial management to the Territory. However, it was not until after the Constitution was suspended that the extent of the previous TCI Government's financial mismanagement was uncovered. The full picture of the financial crisis and previous financial mismanagement has now emerged and is even worse than we and the Governor had feared. Our deeper engagement has also revealed major weaknesses in areas not fully addressed by the Commission of Inquiry, such as the police.

I have therefore decided to extend the application of the 2009 Order in Council, thus continuing the suspension of parts of the TCI Constitution. The Order will be submitted to the 15 December meeting of the Privy Council. If made, it will be laid before Parliament on 16 December. Extending the Order will, of course, enable us to postpone the timing of the elections.

As you will recall, during his visit to TCI in September, Henry Bellingham announced that elections would not take place until after July 2011. He explained that he did not want the postponement to last any longer than necessary, and he would issue a statement before the end of the year setting out milestones which must be met before elections can be held. The milestones which we currently assess will need to be met are set out in the enclosed joint FCO/DFID Written Ministerial Statement (WMS)¹, which will be made on 9 December.

7 December 2010

¹ Not published. See HC Deb Column 40WS

Letter to the Chair of the Committee from Mr Henry Bellingham MP, Minister for the Overseas Territories, Foreign and Commonwealth Office: Anguilla

The Secretary of State has, in accordance with section 57(2) of the Anguilla Constitution, instructed the Governor to reserve Anguilla's recently passed Appropriation Bill, which contains the 2011 budget, for the signification of Her Majesty's pleasure, meaning that the Bill can only be assented to by Her Majesty through a Secretary of State.

I am writing to explain the reasons behind this decision, and to outline how the Government of the United Kingdom is proposing that it could work together with the Government of Anguilla (GoA) to find a way forward.

The decision to intervene was taken following discussion with the Minister of State for International Development of available options for responding to Anguilla's precarious financial position.

The economy of Anguilla has been severely affected by the global economic crisis which has pushed the territory to the edge of financial stability. GoA has continued to borrow to support the economy, failing to build reserves. UK Ministers and officials have continued to press for more credible expenditure and revenue figures

The UK Government has been in regular contact with GoA regarding the state of its public finances and is very keen to see a strengthening of the economic and financial position of Anguilla.

At the request of GoA, the FCO funded revenue and expenditure studies, which reported in April and May 2010 respectively. The revenue study identified four priorities for short-term reform (i.e. measures capable of being implemented within a 6-12 month time frame) which would collectively simplify Anguilla's tax system. It also made recommendations for medium- and longer- term reforms to broaden the tax base and provide a more stable revenue yield from year-to-year.

The expenditure study concluded that GoA's current patterns of expenditure were not sustainable. It noted in particular that expenditure on personal emoluments had continued to rise, and was taking an increasing and unsustainable share of total expenditure.

On 16 June 2010, I wrote to GoA offering to authorise new borrowing of up to EC\$50 million (approx. US\$19.2 million) in 2010 and agreeing to UK Government officials supporting Anguilla's application to the Caribbean Development Bank for a policy based loan, subject to the Executive Council agreeing a credible three-year fiscal plan.

Anguilla's Executive Council subsequently adopted a package of deficit reduction measures and a three-year fiscal plan to return the overall budget into balance by the beginning of 2013. This combination of revenue and expenditure measures did not fully reflect the recommendations made in the revenue and expenditure studies, but we recognised the measures as a welcome starting point. I therefore wrote to GoA on 24 June 2010 and

confirmed the UK Government's permission for GoA to extend its borrowing by EC\$50 million subject to a number of conditions.

The conditions were that:

- no further borrowing would be permitted in the 2010 fiscal year beyond the EC\$50 million;
- if revenue forecasts turned out to be too optimistic, further expenditure cuts would be made to adhere to the three year plan;
- work must start immediately towards implementing the new revenue-raising measures that had been announced no later than the beginning of the 2011 fiscal year;
- a copy of the draft 2011 budget would be passed to the Governor by 31 October 2010; and
- there must be a renewed focus on improving revenue collection.

The Chief Minister had previously written (21 June) to express his unwavering commitment to restoring the recurrent budget to a balanced position by the end of 2011 (Anguilla's financial year is the calendar year), as well as to balancing the overall budget by 2013. However, despite this commitment, the draft 2011 budget proposed a deficit in the recurrent budget.

During subsequent Ministerial and official visits to Anguilla the GoA were reminded of the need to remain focussed on maintaining fiscal discipline in order to restore the public finances of Anguilla to a sustainable level.

During a visit in October 2010, officials found that GoA's plan to return the overall budget into balance by the beginning of 2013 was off course. Revenues for 2010 were substantially lower than the three year fiscal plan anticipated, in part due to delays in the introduction of new revenue measures and the fact that only limited efforts had been made to respond to this by making complementary cuts in expenditure. The GoA was reminded of the conditions in my letter of 24 June and was encouraged to look again at the recommendations made in the revenue and expenditure studies produced earlier in the year.

At bilateral meetings with the Chief Minister held around the November 2010 Overseas Territories Consultative Council, officials and I continued to repeat that the UK Government was not prepared to approve further borrowing by Anguilla until the public finances were back on track. This message was reiterated in my letter of 25 November, stating that the UK was not prepared to approve further borrowing until the draft 2011 budget, and the revised three-year fiscal plan, demonstrated a credible path to achieve the overall balance within the timescale agreed.

When presented to the FCO, the draft 2011 budget did not meet the conditions set out in the letter of 24 June. Despite the significant under-performance of revenue in 2010, the 2011 draft budget projected an overall increase rather than a decrease in expenditure.

UK Government officials requested that GoA officials explain the basis for the proposed 2011 budget and the projections in the revised three-year plan. They also sought an explanation of what other options had been considered to increase revenue and reduce expenditure and why these had been rejected. No clear explanation of the basis for the projections was given. Budget decisions appeared to be driven by the annual cycle rather than being set in the context of the three-year fiscal plan. No evidence was provided of analysis of the costs and benefits of options to further increase revenue and cut expenditure in order to get the public finances back on track.

The subsequent 2011 budget contained in the Appropriation Bill presented by GoA and passed by Anguilla's House of Assembly, although slightly adjusted from the original draft budget, also failed to meet the conditions in my letter of 24 June, such that the UK Government is not confident that the budget is consistent with returning GoA's overall budget into balance by the beginning of 2013. The Secretary of State has, therefore, instructed the Governor to reserve Anguilla's Appropriation Bill for the signification of Her Majesty's pleasure.

As a sign of its commitment to assist GoA, the UK Government has offered to fund the immediate deployment of independent experts to review what action can be taken on revenue and expenditure in the short- and medium-term to deliver sustainable public finances.

In the meantime GoA will continue to fund its public services in accordance with the 2010 budget, which its law permits it to do.

The UK Government remains keen to see a strong and improving financial and social position in Anguilla. It also remains committed to meeting the reasonable needs of the Overseas Territories, while recognising the UK Government has a duty to UK tax payers to explore the options which would allow the Government of Anguilla to operate within its own resources.

I will keep you informed of the situation as it develops.

15 January 2010

**Letter to the Chair of the Committee from Rt Hon Alan Duncan MP, Minister of State,
Department for International Development**

TURKS AND CAICOS ISLANDS (TCI)

I know the FAC maintains a close interest in the Overseas Territories and in TCI in particular. I welcome this interest and I hope it will continue as the Government develops its relationship with the Territories.

You will wish to know that we have now received Treasury approval in principle to proceed to provide a DFID guarantee in respect of commercial bank lending for an amount of up to US\$ 260 million (around £160 million at the current exchange rate).

I enclose a copy of the Departmental Minute which notifies Parliament of this contingent liability.¹ It is normal practice to provide 14 parliamentary sitting days notice before taking on contingent liabilities. Due to the need to provide sufficient time to take all the steps required to allow the TCI Government to have a budget, with its much needed fiscal measures, in place for the financial year starting 1 April 2011 the period of notice will end on 17 February. These steps include: completion of the commercial negotiations and legal documentation of the loan and guarantee arrangements; finalising a budget on the basis of the certainty that the loan and guarantee arrangements provide; and TCI Government approval of the budget.

Please let me know if you would like to discuss the proposed guarantee arrangement.

3 February 2011

¹ http://www.fptci.com/index.php?option=com_content&view=article&id=2180:dfid-proposes-tci-loan-guarantee-through-2013&catid=18:local&Itemid=26

**Letter to the Chair of the Committee from Mr Henry Bellingham MP, Minister for the
Overseas Territories, Foreign and Commonwealth Office**

**OVERSEAS COUNTRIES AND TERRITORIES (OCT): RELATIONSHIP WITH THE
EUROPEAN UNION**

In view of the FAC's interest in our Overseas Territories, I wanted to update the Committee on the latest developments in the OCT—EU relationship.

The current Overseas Association Decision (OAD) determining the relationship between the EU and the Overseas Countries and Territories expires at the end of 2013. The renewal of the OAD was the focus of the annual EU—OCT Forum held in New Caledonia earlier this month.

My officials have been working with the Territories and their associated Member States (France, the Netherlands, and Denmark) to prepare a Joint Position Paper (JPP) outlining areas that should be covered in the new OAD. All have agreed that the JPP should focus on: future OT funding; enhancing economic competitiveness, strengthening OT resilience, promoting regional cooperation; and the environment and climate change. Our key objective is to ensure that under the new Decision the overall package should be at least as beneficial as it is under the current OAD. The final agreed text of the JPP was signed by the Territories and the associated Member States at the Forum and passed to Commissioner Piebalgs who led the European Commission delegation. I am pleased that the UK's key objective is included as one of the JPP's key messages. A copy of the JPP is enclosed.¹

The Commissioner welcomed the JPP and told the Forum that all the views expressed in it would be taken into account as the Commission prepared the legislative package, which they aimed to put to the European Council by mid 2012. My officials will continue to engage with our Territories and the other associated Member States during the re-negotiation of the OAD in order to obtain the best possible outcome for our Territories. During my visit to Paris last week, I discussed the OAD with Marie-Luce Penchard, the French Minister for the Overseas Territories.

I will keep the Committee informed of progress.

I am copying this letter to the Chairman of the European Scrutiny Committee as they debated the future relationship between the EU and the OTs in October 2008 and February 2010.

30 March 2011

¹ Not printed.

**Letter to the Chair of the Committee from Mr Henry Bellingham MP, Minister for the
Overseas Territories, Foreign and Commonwealth Office**

TURKS AND CAICOS ISLANDS

Thank you for your letter of 9 March asking for an update on the situation in TCI, in particular the latest arrangements for support of the territory's economy, the projected timetable for bringing prosecutions relating to corruption and for holding elections.

I welcome the FAC's continued interest in the Overseas Territories and in TCI in particular. As you will be aware, there have been a number of positive developments in TCI since the Foreign Secretary wrote to you in November and I have ensured that you have been kept informed of key announcements such as the Written Ministerial Statements (WMS) made by both the FCO and DFID. The joint FCO/DFID WMS in December gave detailed milestones against which we want to see progress before making a decision on the new election date. A DFID WMS in February announced that they had finalised a bank guarantee to provide TCIG with access to a maximum capital amount of US\$260 million over the next five years.

I had hoped to be able to give you a comprehensive update on TCI by the end of March. However, several key events have been delayed. The TCI budget presentation to the Consultative Forum has been delayed until next week to allow more time for local discussion. Therefore the budget and key economic measures will not be finalised until later in April. In addition, the next of my regular Steering Group meetings with my DFID colleague will not take place until next week.

Kate Sullivan, our Constitutional and Electoral Reform Adviser, has submitted her final recommendations to the Government. On the basis of her recommendations, and representations we have received from TCI, we have produced the enclosed draft Constitution which was published in TCI on 8 March.¹ This will be the subject of a further period of consultation in TCI. The visit to TCI by a team from the FCO to support that process has been postponed until May, to ensure that it does not overlap with the budget discussions.

Rather than give you an incomplete and possibly out of date report, I would prefer to delay my response slightly in order to provide you with the fullest update possible. I therefore propose to reply to you in more detail after the House sits again on 26 April.

I look forward to discussing developments in TCI with you during your informal session on the OTs on 5 May.

30 March 2011

¹ Not printed

Letter to the Chair of the Committee from Mr Henry Bellingham MP, Minister for the Overseas Territories, Foreign and Commonwealth Office: Turks and Caicos Islands

1. Thank you for your letter of 9 March asking for an update on the situation in TCI, in particular the latest arrangements to support the territory's economy, the projected timetable for bringing prosecutions relating to corruption and for holding elections. As I said in my letter of 30 March, I had hoped to be able to give you a comprehensive update on TCI by the end of the month. However, several key events including the budget process were delayed.

THE BUDGET

2. The previous TCI Government (TCIG) left the territory on the verge of bankruptcy. The Governor and his team are working hard to help TCI recover from this legacy, to restore good governance, rebuild international confidence in the islands and ensure that TCIG is able to meet its obligations.
3. In February, the Secretary of State for the Department for International Development (DFID) approved a guarantee in favour of Scotiabank (Turks and Caicos) Ltd to provide TCIG with access to a maximum capital amount of US\$ 260 million over the next five years. This financial support package requires TCIG to balance its budget and achieve a fiscal surplus by March 2013 in a controlled way. It is designed to protect key services, and avoid bankruptcy.
4. But at the same time TCIG must continue to tackle its severe structural fiscal problems if it is to achieve a surplus in 2012/13. The only way to do this is by introducing new measures to raise revenue and to cut expenditure. The recent budget sought to do this.
5. The TCI budget for FY 2011/12 was published on 5 April. Work on this has been led by Caroline Gardner, the DFID-funded Chief Financial Officer, who is tackling the very challenging task of turning around TCI's finances. I attach the three key documents issued in TCI: the budget statement given by the Permanent Secretary Finance; the Summary of the Budget statement issued as a press release by the TCI Ministry of Finance; and a guide to the Budget.¹
6. The Consultative Forum's discussion of the budget (which was scheduled for 5 April) was cancelled after a number of members told the Chair that they would not attend the meeting because they needed more time to consider the budget booklet (circulated on 1 April). Given the information already made available to them, the Chair saw no need for further delay (the meeting had already been postponed for one week) and, in the absence of a quorum, cancelled the meeting. Following this, the Governor issued a statement noting that in view of the urgency of some of the measures that had to be introduced, he

¹ Not printed

would take the necessary steps to enact the budget without the benefit of further advice from the Forum. Six members of the Forum have criticised the cancellation of the meeting, but have confirmed their continuing commitment to the Forum.

7. The budget announced key revenue raising measures including: introducing VAT (in 2013); a 4% Customs Processing Fee; increased fees for business, vehicles and drivers licenses; raising work permit fees; a new 10% sales tax on water for commercial customers; a carbon tax on electricity generators; a bank tax of 10% and an insurance tax of 2.5%. These new measures will also help broaden the tax base. In reaching the decision to introduce these revenue raising measures, TCIG has consulted widely and listened to public concerns. For example, proposals to introduce a property tax or a sales tax on electricity were considered but ruled out.
8. Work has also begun to improve collection in the two Ministries that yield most in terms of revenue – Customs and Immigration. The FCO has funded a Customs Adviser since September 2009 and an Immigration Adviser since September 2010 to bring order to two of TCIG's key revenue producing departments. The Immigration Adviser will also work on establishing and implementing a transparent process for acquiring Belongership – another one of the milestones. We intend to recruit additional staff to support the work already underway in these two Ministries.
9. The budget also set out key measures to control public expenditure, including stopping public servants and students from receiving payments to which they were not entitled. UK funded advisers have uncovered many instances where overpayments have been made, including where retired public servants have been drawing two pensions. To ease the adjustment period for those most affected, with cases of some hardship, TCIG will put in place transitional arrangements. The FCO has contributed £2million towards these arrangements and wider public sector reform.
10. Overpayments were also identified on scholarships. Over 35% of students were paid more than they were entitled to, and some received scholarship benefits in excess of \$250,000, when the maximum amounts set out in their agreements were no more than \$50,000 to \$90,000.
11. While it is important that steps are taken to cut expenditure and raise revenue, the current TCIG has also worked to ensure the impact of new measures is spread as fairly as possible, and that the budget:
 - protects key services such as the police, immigration, and criminal justice. These services will also be improved through the broader process of public sector reform, the new leadership of the police funded by the Canadian Government, and the work of UK funded advisers.
 - supports growth. Last year, the UK Government gave permission for TCIG to proceed with the expansion of Providenciales airport to stimulate the economy and improve access to the islands. Work on the airport is continuing this year, and once the runway has been resurfaced and expanded, it will be able to accommodate larger aircraft and long haul flights from Europe. This will help to expand the tourist base, until now

focussed mainly on the USA and Canada. In February, Jet Blue and Continental started flights from several US cities to Providenciales. Other North American carriers have expanded their routes to TCI. International passenger flows at Providenciales have begun to recover, and in 2010 rose by 10% year on year.

- allows TCIG to invest in achieving the milestones in the 9 December Written Ministerial Statement. The Interim Government therefore allocated \$8.6 million to these priorities. Provision has also been made within the budget to strengthen the judiciary, the Integrity Commission, and the AG's Chambers. This investment will enable TCIG to reach the milestones by supporting the introduction of the new constitution; strengthening the criminal justice system; and providing funding to strengthen critical public services.

THE TIMETABLE FOR PROSECUTIONS

12. As you are aware, the Special Investigation and Prosecution Team (SIPT) investigation in TCI is independent of the UK and TCI Governments. At a press conference in TCI in April 2010 the Special Prosecutor, Helen Garlick, estimated that 18 months was a reasonable time for the investigation to be completed. In a statement issued on 29 September 2010 Ms Garlick confirmed that the SIPT was continuing to make good progress and was confident of meeting the targets and deadlines that it had set and agreed with the Strategic Oversight Group which was established to oversee the progress of the investigation and the management of its budget. There have been no further public statements by Ms Garlick on the timing of the prosecutions. Vital legislation came into force in TCI (trial by judge alone and preliminary inquiries) which will remove the risk of juries being intimidated or influenced by pre-trial publicity, and reduce the potential for inordinate delay between charge and trial. The FCO has also funded the purchase of additional IT equipment for the AG's Chambers, and support for the legislative drafting that is needed.
13. On 10 March, the Foreign Secretary was pleased to announce that, mindful of the recommendations of the FAC, he had exceptionally approved a discretionary grant of £6.6million to TCIG to reimburse the costs incurred in the past year pursuing corruption and violent crime. This covered the SIPT costs for the financial year 2010/ 2011, the civil recovery costs for the same period, and contributed to the costs of Operation Alpha, the exercise mounted by the TCI police in response to the increase in violent crime in the second half of 2010.
14. Our basic principle remains that it is an integral part of good governance for a Territory government to ensure that the criminal justice system is properly funded. Territories should not look to the UK to fund criminal investigations or prosecutions that they are reluctant to pursue themselves. But the burden in this case has been exceptional. It will support the lending guaranteed by DFID to enable future costs to be met from the TCIG public purse in the normal way.

CIVIL RECOVERIES

15. At the end of 2009, and after a competitive tender, TCIG appointed the international law firm of Edwards Angell Palmer & Dodge UK LLP (EAPD) to work with the Attorney General and his Chambers in dealing with the civil recovery programme which had been recommended by the Commission of Inquiry. Since their appointment, EAPD have been engaged in reviewing the significant number of cases identified by the Commission of Inquiry as giving rise to potential civil claims. They have also discovered a significant number of other civil claims which had not been identified by the Commission. EAPD co-ordinates its work closely with Helen Garlick and the criminal team, to ensure that there are no conflicts.
16. So far, EAPD have more than 50 open cases. They have commenced six major sets of proceedings in the TCI Courts. Three of those concern large developments identified by the Commission's Report - Salt Cay, Joe Grant Cay and the Third Turtle Club. Trials are expected in the first two cases later this year. Two large claims for 'flipping' - the process of a TCI Belonger acquiring Crown Land at a deep discount and then immediately selling it on at a substantial profit - have also been commenced against Belongers, one of whom is a senior Crown servant on the Islands. One further claim concerns Stamp Duty evasion. In each of these cases, the land and damages claimed are substantial seven or eight figure sums.
17. To date, EAPD has recovered some \$3.1m of land and cash under the programme. Aside from the major cases, the firm is hoping to recover a further \$4m - \$5m of land and cash over the next few months where claims are imminent or progressing towards a conclusion. It is expected that claims and cases will continue into 2012, though it is hoped that the majority will be completed by the second half of 2012, subject to any appeals which might be lodged.

THE TIMETABLE FOR ELECTIONS

18. You will remember that in September 2010 I announced, in TCI, that the UK Government did not want to postpone elections any longer than necessary, but that they could not be held in 2011. In the 9 December joint WMS, Alan Duncan and I announced that the suspension of parts of the TCI Constitution would continue beyond August 2011.
19. Reaching the milestones that we have identified will require time, care and hard work by the UK and TCIG, and particularly by the TCI public service. It will also need the support of the community. There has been, and will continue to be, public consultation across the territory on a wide range of issues. We have encouraged the political parties to engage fully in these consultations.
20. It is currently not my intention to postpone elections beyond 2012, if adequate progress has been made. We will continue to monitor carefully whether the territory is on track to

reach the milestones. If so, this would pave the way to confirmation that sufficient progress has been made, and ultimately to an announcement of the election date.

CONSTITUTIONAL AND ELECTORAL REFORM (CER)

21. In 2010, Ms Sullivan, the CER adviser conducted two rounds of public consultations on her recommendations for constitutional reform in TCI. In February she published her final recommendations. Both political parties contributed to the process. The Foreign Secretary and I have agreed a draft Constitution, which takes into account recommendations by Ms Sullivan and Sir Robin Auld's Commission of Inquiry and addresses some of the concerns raised in TCI. I sent you a copy of the draft on 31 March.
22. The draft Constitution is designed, among other things, to improve the management and transparency of TCI's public finances. It includes extensive new public financial management provisions. The key issues of concern in TCI are:
 - TCI Belongership (acquired by birth, marriage and grant) which, most importantly, allows holders to vote and to acquire crown land. The draft includes a definition of Belongership. Many in TCI support the introduction of a clear and objective process for granting Belongership, and the removal of any political role, but there is concern about the time period an individual should be resident in TCI before they can apply. The draft proposes five years after acquisition of Permanent Resident Status (many residents will have already completed a long period of qualifying residency prior to gaining this status).
 - Changes to the voting system are proposed in order to produce a Legislative Assembly that broadly represents the views of the electorate; allows for the formation of a stable Government and effective Opposition; provides more equal voting power across the territory; and reduces the potential for influence and intimidation in the electoral process. Although many in TCI want to retain the current model of first past the post in single member constituencies, it is not clear that it can deliver these goals. The draft proposes an Additional Member System (used to elect the Scottish Parliament, the National Assembly for Wales and the Greater London Assembly) to elect 6 island members on a FPTP basis, and 9 territory ('at large') members on a compensating proportional basis.
 - The role of the Governor. A system of governance principles, issued by the Foreign Secretary, is proposed to improve accountability. The Governor would be empowered to take action to implement or protect the governance principles – this includes the power to reject cabinet advice and reserve non-compliant Bills if required. The Governor remains the head of the TCI Government, but changes are made to improve understanding of his role in promoting good governance, and the powers he can exercise in support of this role.
23. The draft constitution was published in TCI on 8 March and a further period of consultation will run until mid-May when an FCO team will visit to conduct more public meetings. Ministers will then agree a final Constitution which will be submitted to the

Privy Council in the summer. This will enable TCIG to start the electoral work needed for elections to take place in 2012.

SUPPORT TO POLICE FORCE

24. In December 2010, in response to the increase in violent crime, the FCO funded the deployment of a team of five UK police officers to TCI for three weeks to review the most serious incidents of unsolved crime. Their subsequent report, identifying a number of recommendations, was presented to the Commissioner of Police. Recent figures show that through the latter part of 2010 there was a significant reduction in overall crime, particularly violent crime, as the result of enhanced police operations and that trend has continued through 2011. Legislation was also introduced during November last year making significant changes to the laws relating to firearms and offensive weapons to provide the courts with greater powers to deal appropriately with offenders.
25. At the beginning of March two experienced Canadian Police Officers were appointed to the posts of Commissioner and Deputy Commissioner of Police. The Commissioner is currently compiling a report on competency and capability gaps in the police force. Once his report is received we will consider what additional support can be provided to assist in addressing these gaps.

RECENT UNREST IN THE TERRITORY

26. Finally, I would like to take this opportunity to update you on the demonstrations in TCI in March. A group called 'Turks and Caicos Islanders United for Justice and Equality' blocked the main road to the airport for 5 days, demanding that the Governor announce a date for the elections. The disgraced former premier, Michael Misick together with other former ministers and associates of his administration took part in the protests. There were also some small demonstrations on Grand Turk. The number of protesters ranged between 30-100, their numbers sometimes swelled by curious onlookers.
27. Initially, access to and from the airport was restricted by the blockage delaying a limited number of passengers from connecting with their international flights, but the police quickly identified and secured an alternative route to the airport. The protesters were vocal rather than violent and the Governor supported the police approach of negotiation rather than confrontation. This approach paid off and the vehicles, and other materials, blocking the road were eventually removed without incident.
28. The Governor was clear in his messages to the protesters that announcing a date for elections would be inconsistent with the terms of the 9 December WMS. He also made clear that by blocking the main road to the airport they were not only committing an offence, but they were also damaging TCI's tourist industry, with the potential to have a disastrous effect on TCI's fragile economy.
29. There was further protest on 24 March when, in response to a call by the Civil Service Association (CSA), a number of civil servants did not report for work on the grounds

that they were ill. The response was patchy, but included staff across government departments and teachers. Most damaging to the key tourist industry was the decision of fire-fighters to take part in the protest. Their action meant that, in the absence of the minimum number of fire fighters needed to meet safety standards, the international airport at Providenciales was closed for a day. This action again harmed TCI's most important source of revenue – the tourist industry.

30. The CSA justified their action on the grounds that TCIG had failed to meet a list of demands rejecting proposed changes to public service allowances and pension provisions to bring these into line with long standing legislation, and demanding the reinstatement of 10% cuts in salaries made last year. These planned changes, as announced in the budget, are necessary to secure the savings needed to achieve the goal of a balanced budget by the end of FY2012/13. Whilst the Governor and Chief Executive Officer continue to meet and engage with the CSA, they are committed to implementation of plans to reduce public sector expenditure and to eliminate costly anomalies and abuses in the TCIG payroll. Where possible every effort is being made to apply reasonable transitional arrangements for the introduction of change.
31. I do hope that this update has been helpful and has provided further background to the issues we will discuss at the informal FAC session. I have agreed the letter with Alan Duncan, Minister for International Development.

3 May 2011

**Letter to the Chair of the Committee from Mr Henry Bellingham MP, Minister for Africa,
the UN, Overseas Territories and Conflict Issues**

ANGUILLA'S PUBLIC FINANCES

I wrote to you on 15 January to report that the Secretary of State had, in accordance with section 57(2) of the Anguilla Constitution, instructed the Governor to reserve Anguilla's Appropriation Bill, which contained the 2011 budget, for the signification of Her Majesty's pleasure. I am pleased to report that Her Majesty's assent to the Appropriation Bill has now been given through the Secretary of State for Foreign and Commonwealth Affairs.

In January, we were not confident that the budget for 2011, contained in the Appropriation Bill and passed by Anguilla's House of Assembly in December 2010, was consistent with the Chief Minister's commitment to return the Government of Anguilla's (GoA) overall budget into balance by the beginning of 2013. The Secretary of State, therefore, instructed the Governor to reserve the Appropriation Bill.

The UK Government's offer to fund the immediate deployment of independent experts to review what action could be taken on revenue and expenditure in the short and medium-term to deliver sustainable public finances was accepted by GoA. The experts concluded that there was little immediate scope to reduce expenditure and recommended a number of measures to increase revenue in 2011. The legislation to implement these measures is now in place.

The GoA has also accepted the experts' recommendations to increase revenue further in 2012. It has adopted an action plan which includes taking forward reform of Anguilla's tax system, a review of the staffing and organisation of each Government Department, and an independent review to make recommendations on future health care provision in Anguilla.

The experts concluded that if the GoA achieves the revenue and expenditure figures in the report, it should be able to meet all its expenditure obligations without the need for additional borrowing over and above existing overdraft facilities. Therefore as the GoA agreed to the recommendations in the experts' report and has taken action to put in place the legislation for new revenue raising measures, the Secretary of State assented to the Appropriation Bill.

The experts also advised that GoA would need technical assistance to deliver fully the measures in the action plan. As a further sign of the UK Government's commitment to assisting GoA to put their public finances on a sustainable footing, the Department for International Development has agreed to fund technical assistance for six months in the three areas recommended for assistance by the experts.

This now looks much more encouraging.

11 May 2011

**Letter to the Chair of the Committee from the Rt Hon David Lidington MP,
Minister for Europe, Foreign and Commonwealth Office**

US/ SPAIN DEFENCE AGREEMENT: IMPACT ON UK/ GIBRALTAR

My Department recently received an information request from the Foreign Affairs Committee, relating to the US/ Spain Bilateral Defence Agreement signed in March of this year, and its possible impact on UK governance of Gibraltar. In particular it asked:

“what is the Government’s position on this, how does this effect British control of Gibraltar, was the FCO aware of negotiations (did the Americans inform the Department) etc.”

I would like to reassure the FAC that the signing of this Agreement has no impact on the UK’s governance of Gibraltar, nor on the military assets in Gibraltar’s NATO status.

The bilateral defence agreement between the US and Spain has been in place for 20 years. It contains both policy and standard operating procedures (SOPS) and is reviewed on an annual basis by both parties. As and when the SOPS need updating, the Agreement is revised and re-signed. This was the case in March 2011. There is now an added technical reference to US special use of Bases at Rota and Moron for Single Nation concerns. This has no UK / Gibraltar impact.

On this occasion, given that the US and Spain were conducting routine bilateral business, the UK was not consulted. We remain in regular touch with both and are confident there has been no change by either side in their approach to Gibraltar.

16 May 2011

Memorandum by the Foreign and Commonwealth Office

(submitted in response to a letter from the Chairman of the Foreign Affairs Committee)

Her Majesty's Government's current policy towards the UN Decolonisation Committee

The role of the UN Special Committee on Decolonisation

1. The Special Committee on Decolonisation (known as the C24) was established by the UN General Assembly (UNGA) in 1961, to oversee implementation of the 1960 UN "Declaration on the Granting of Independence to Colonial Countries and Peoples" (UNGA resolution 1514 (XV)). The C24 hosts conferences and regional seminars on the status of Overseas Territories (OTs), and organises special missions in order to collect first-hand information on the economic and political development of OTs. It also reviews reports submitted to the UN Secretary-General by the UN Secretariat (which "Administering Powers" such as the UK contribute to), pursuant to Article 73 of the UN Charter, on developments in their OTs (Or "Non-Self Governing Territories" in UN parlance). The C24 also hears oral "petitions" from individuals and groups from the territories, as well as any statements from the Administering Powers, and calls on the General Assembly to agree to their programmes of work. The C24 then adopts resolutions on each territory. Most of these are then forwarded to the UNGA, via its Fourth Committee. All C24 resolutions on UK OTs reach the UNGA, except that on the Falklands (a position agreed by the UK and Argentina since the resumption of bilateral relations in 1989/90). On Gibraltar the C24 adopts a consensus decision, which both Spain and the UK support. The Fourth Committee debates and adopts the consensus decision, and UNGA simply takes note of the decision.
2. Under the UN Charter, the UK as an Administering Power is to ensure, among other things, the OTs' political, economic and social advancement and the development of their "self-government". Territories come off the UN list of Non-Self-Governing Territories ("de-listing") once they have been deemed to have achieved "a full measure of self-government". The C24 has a role in recommending territories for de-listing. This issue has been a point of much dispute between Administering Powers and the C24.
3. The Committee has 29 members, listed at the end of the memorandum (Annex A). None of the four remaining Administering Powers - the UK, France, New Zealand and the US - are members. Neither are there any EU or Western Group States members on the Committee. France and New Zealand both formally participate in the Committee's work, in respect of their territories. The US does not.

Background on the UK's historic position towards the UN Decolonisation Committee

4. Despite abstaining on the Declaration on the Granting of Independence to Colonial Countries and Peoples, and the General Assembly resolution setting up the C24, the UK agreed to join and cooperate with the C24. This it did until 1971, when it left the Committee. The UK was concerned at that time by the Committee's recently adopted "programme of

action” to implement 1514 (XV), its reluctance to address the issue of small territories, as well as its unfavourable composition.

5. In 1974 the UK resumed cooperation with the Committee, without rejoining. The US and France were not members either. However, by mid-1985, again frustrated at the Committee’s work, the UK decided to cease cooperation (with effect from January 1986), while reserving the right to participate in the C24’s debate on the Falklands. In a letter to the then C24 Chair, the UK Permanent Representative in New York explained the UK’s decision on the grounds that the territories which remained in close association with the UK had chosen to do so, that this was unlikely to change in the near future, that the UK and its (then “Dependent”) Territories, therefore considered the colonial era over, and hence the UN’s interest in these territories’ affairs should cease.
6. UK policy evolved again by the mid-1990s, when it resumed some informal cooperation with C24, although the UK did not participate in formal Committee meetings. In 1999, the UK policy became one of an “informal dialogue on de-listing”. The UK started informally discussing with successive C24 chairs the possible modalities for de-listing its Overseas Territories (OTs). Despite much discussion (and even a C24 visit to Bermuda in 2005), these efforts came to nothing and no territory has been de-listed.
7. Since then the UK has maintained “informal cooperation” with the C24. It attends C24 meetings but does not sit in the UK seat, nor make any statements. Counsellors from the Falkland Islands address the Committee annually, to put forward their case. Representatives of the Gibraltar government have also petitioned the Committee. The UK continues, however, to be frustrated that the C24’s resolutions on its OTs do not properly reflect developments in the territories, including their wish to retain links to the UK, nor explicitly acknowledge the Falkland Islanders or Gibraltarians right of self-determination.

How does the UK currently make its case in the UN and other international fora?

8. Our position of informal co-operation allows the UK to maintain a dialogue with the Chair of the C24, as well as C24 members. When resolutions on UK OTs are considered by the UNGA’s Fourth Committee, the UK also takes full advantage of the opportunities provided to make statements, explanations of vote and positions as well as rights of reply. Most recently, in October 2010:
 - The UK voted against texts calling for “Member States to intensify their efforts to continue to implement the plan of action for the Second International Decade for the Eradication of Colonialism and use those efforts as the basis for a plan of action for the next Decade” and “urging Member States to do their utmost to promote effective measures for the full and speedy implementation of the Declaration in all Non-Self-Governing Territories to which the Declaration applied”. The UK argued that the proposals for the Third International Decade and the Fiftieth anniversary of the Decolonisation Declaration were “unacceptable”, as the texts failed to recognise the progress made in the relationship between the United Kingdom and its territories.

With regard to the text relating to the Third International decade, the UK stated that the UK considered the “Special Committee of 24” to be outdated. The UK also took the opportunity to stress that none of the UK’s overseas territories should remain on the UN list of Non-Self Governing Territories. The resolution which called on member states to intensify their efforts to implement the C24’s plan of action was passed with 130 votes in favour, three against (the UK, US and Israel) and 20 abstentions. The resolution calling for member states to promote effective measures for the implementation of the Declaration in all Non-Self-Governing Territories was passed with 150 votes in favour, three against (the UK, US and Israel) and no abstentions.

- The UK also abstained in UN Fourth Committee votes relating to the transmission of economic and other information on Non-Self Governing territories. The UK explained that it did not take issue with the resolution’s main objective and continued to meet its obligations in that regard. However, the UK believed that a decision as to whether a Non-Self-Governing Territory had reached a level of self-government was ultimately for the government of the Territory and the administering Power concerned (in this case, the UK) to decide, and not the UNGA.
- The UK also used its right of reply to address specific points raised by a number of States regarding the Falkland Islands. The UK representative said that the UK had no doubt about its sovereignty over the Falkland Islands, and attached great importance to the principle of self-determination, which underpinned the UK’s position on the Falkland Islands. The democratically elected representatives of the Falkland Islands had asked the “Committee of 24” to recognise that they, like others, should be free to exercise the right of self-determination.

9. Further information on the position of the UK in Fourth Committee sessions can be found on the UN website: (<http://www.un.org/News/Press/docs/2010/gaspd455.doc.htm>).

The EU and the Overseas Territories

10. The relationship between the EU and the Overseas Countries and Territories (OCTs - Gibraltar excepted) is determined by the 2001 Overseas Association Decision (OAD). Article 2 states that “the Association shall be based on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law. These principlesshall be common to the Member States and the OCTs linked to them.”
11. The current OAD is due to expire at the end of 2013. Work has already started on drafting its successor. To help inform the process the Member States and the OCTs prepared a Joint Position Paper (JPP) outlining areas that should be covered in the new OAD. The JPP was handed to the European Commission in March 2010. The JPP, which was sent to the FAC on 10 March, notes that the future EU – OCT relationship should be based on the principle of solidarity, mutual interest over the long term and should recognize and respect the OCTs’ diversity and vulnerabilities. It also notes that the different constitutional relationships with

the Member State to which they are linked needs to be respected. The FCO will keep in regular contact with Commission officials and the other Member States, which have OCTs, to ensure that these fundamental principles are retained in the new OAD.

12. Gibraltar is the only UK OT within the EU. Under Article 355(3) TFEU, the EU Treaties apply to Gibraltar as a European Territory for whose external relations a Member State (the UK) is responsible. Although under the United Kingdom's Act of Accession of 1972, certain Treaty provisions do not apply to Gibraltar (such as free movement of goods and the Common Agricultural Policy), Gibraltar is in many areas highly integrated in the EU. The locally-elected Government of Gibraltar is responsible for introducing legislation that transposes EU measures, and the UK is responsible for ensuring that Gibraltar complies with its obligations under EU law.

How can the UK best make its case in the UN in respect of its Overseas Territories?

13. In the UK's statement to UN 4th Committee on Non-Self Governing Territories in October 2010, our Deputy Permanent Representative said:

“The British Government's relationship with its Overseas Territories is a modern one based on partnership, shared values and the right of each Territory to determine whether it wishes to stay linked to the UK or not. The UK has no intention of imposing independence against the will of the people concerned. Where independence is an option and is the clear and constitutionally expressed wish of the people of the Territories, the British Government will give every help and encouragement to those Territories to achieve it. For as long as the UK's Overseas Territories wish to retain the link to the UK, the British Government will remain committed to their future development and continued security.”

14. When considering how the UK can best defend its OT interests in the UN any potential options must support the UK's primary objectives in this regard:

- To ensure that our sovereignty over the OTs is respected, and that the rights of the peoples of the OTs to self-determination is respected.
- To uphold the constitutional settlements that we have reached, or may wish to reach, with our OTs, and to protect the interests and democratic rights of their populations.
- To ensure the UK's relationships with its OTs are presented in the most accurate light.

15. The (then) Chairman of the C24, Mr. Donatus Keith St Aimee, suggested to the FAC on their recent visit to New York that the UK should reconsider its relationship with the C24. He suggested that this would allow the UK to be better able to put forward its point of view on the territorial dispute with Argentina over the Falklands, and highlight positive developments in the UK's relationship with its other OTs, such as the Gibraltar-UK-Spain relationship. Such formal engagement would require the UK to speak at meetings and contribute to resolutions.

16. The FCO keeps the UK's relationship with the C24 under review. We have considered whether more formal engagement would allow us to better defend our position. However, we have decided that the UK's current policy of informal cooperation will be maintained. Any proposal to increase engagement with the C24 would need to be balanced against the risk of adversely affecting UK interests in Gibraltar and the Falklands. Informal cooperation is also in line with the UK's position that the C24 process is outdated, and not one in which we should engage more systematically. Furthermore, we are able to defend our position in the UNGA irrespective of our position on the C24.
17. We will continue to monitor our relationship with the C24. Should we identify an opportunity to increase engagement without risking our wider bilateral relations or our policies towards our OTs, we will look to pursue it.

May 2011

Members of the C24

Antigua and Barbuda
Bolivia
Chile
China
Congo
Cuba
Dominica
East Timor
Ecuador
Ethiopia
Fiji
Grenada
India
Indonesia
Iraq
Iran
Ivory Coast
Mali
Nicaragua
Papua New Guinea
Russia
St Kitts and Nevis
St Lucia
St Vincent and the Grenadines
Sierra Leone
Syria
Tanzania
Tunisia
Venezuela

Memorandum from the Foreign and Commonwealth Office

FOREIGN AFFAIRS COMMITTEE: OVERSEAS COUNTRIES AND TERRITORIES – RELATIONSHIP WITH THE EU

Introduction

1. The Foreign Affairs Committee has asked for further information on the Overseas Countries and Territories (OCT) Relationship with the EU following Henry Bellingham's letter of 30 March informing the Committee of a Joint Position Paper (JPP).

Background to the Joint Position Paper (JPP)

2. The current Overseas Association Decision determining the relationship between the EU and the Overseas Countries and Territories expires at the end of 2013. The Overseas Countries and Territories, together with their associated Member State, have prepared a Joint Position Paper on what they would like to see covered in the new Overseas Association Decision. All stakeholders have agreed that the Joint Position Paper should focus on: future Overseas Territory funding; enhancing economic competitiveness; strengthening Overseas Territory resilience; promoting regional cooperation; the environment and climate change. The Joint Position Paper was handed to the European Commissioner for Development, Andris Piebalgs, at the EU – Overseas Countries and Territories Forum on 1 March. The Joint Position Paper is intended to help the European Commission formulate their proposals for the new Decision. The Commission continue to discuss with the four relevant Member States and the Overseas Countries and Territories views on the future EU – Overseas Countries and Territories association. The Commission has been tasked with preparing a draft legislative package for Council consideration by July 2012.

Were the Territories consulted in advance of negotiations?

3. The drafting of the Paper, which was led by the Overseas Countries and Territories Association (a body representing the Territories), was an inclusive process. The UK-based Territory representatives (all of whom are members of the Overseas Countries and Territories Association) were involved fully in the drafting of the Paper. They participated in meetings in Brussels, London and Paris together with representatives from the other Territories (French, Dutch and Danish), the UK, France, the Netherlands and Denmark. The FCO also held separate meetings with UK Territory representatives.

What are the Territories impression of the Paper?

4. It is for the Territories to comment on their impressions of the Paper, but the fact that no amendments were offered by Overseas Countries and Territories politicians at the pre-Forum meeting suggests that they were broadly content.

Why haven't all the UK OTs signed the Paper?

5. We are aware that not all the UK's OTs have signed the Joint Position Paper. Gibraltar is already within the EU by virtue of the UK's membership, and the Sovereign Base Areas in Cyprus are within it for limited purposes. Therefore they are not covered by the Overseas Association Decision. The Overseas Association Decision, in accordance with the wishes of the Government of Bermuda, does not apply to Bermuda, which has therefore not been involved in the renegotiation process. Unfortunately, the Cayman Islands have not yet signed the Joint Position Paper. We have encouraged the Premier, who did not attend the Forum, to do so and stand ready to answer any queries he may have. South Georgia and the South Sandwich Islands, the British Antarctic Territory and the British Indian Ocean Territory have no permanent residents and therefore have not signed the Joint Position Paper, as was the case for the last Joint Position Paper signed in 2003.

Why did the UK send only an official to negotiate the Paper while other participants sent Ministers?

6. Ministers from the four relevant Member States were not involved in the negotiation process, but Mr Bellingham, the Minister for the Overseas Territories, agreed the draft Joint Position Paper before the Forum. He agreed that it was helpful to set out joint Member State/Territory views for the new Overseas Association Decision. Heads of Delegation from the Territories, most of whom were elected politicians, were given the opportunity to discuss the Joint Position Paper and make any final amendment at the EU – Overseas Countries and Territories Forum in New Caledonia prior to its signature. Only France, which has a Minister who is responsible only for the Overseas Territories, was represented at Ministerial level at the Forum, which took place in the French Territory of New Caledonia. Mr Bellingham was unable to participate due to other commitments. The UK, together with the Netherlands and Denmark, also considered that it did not offer sufficient value for money for Ministers to travel to the South Pacific, and were therefore represented by officials. At the Forum the Head of the UK Delegation read a message from the Minister noting the importance of the EU OT relationship, stressing that this should be mutually beneficial and successful. For the future, the UK has suggested to the Commission and other stakeholders that we should consider carefully whether the significant additional costs involved in regional Forum meetings provide sufficient added value to the EU – Overseas Countries and Territories relationship.

19 May 2011

**Letter to the Chair of the Committee from Mr Henry Bellingham MP, Minister for Africa,
the UN, Overseas Territories and Conflict Issues, Foreign and Commonwealth Office**

TURKS AND CAICOS ISLANDS

In my letter to you of 3 May I mentioned that an FCO team would be visiting TCI in May to conduct a series of public meetings on the draft constitution (I sent you a copy of this draft on 31 March). This visit to TCI took place from 16-21 May and was the culmination of a process on constitutional reform which started in early 2010.

As I mentioned in previous correspondence, Ms Sullivan, the UK-appointed TCI Constitutional and Electoral Reform Adviser, conducted two rounds of public consultations on her recommendations for constitutional and electoral reform. Her consultations included holding public meetings on all the inhabited islands in the territory. In February 2011 she published her final recommendations. The draft constitution, based on those recommendations and recommendations of Sir Robin Auld's Commission of Inquiry, was published in TCI on 8 March with a deadline of 28 May for comments.

The FCO team met a wide range of people in TCI, including political parties, local communities, the Advisory Council, the Consultative Forum, the Church, Chamber of Commerce and Bar Council. The team listened to many speakers raising numerous objections and points of view, and noted the clear concern that local views would not be taken into account back in London. To remedy this and to underline my willingness to give serious consideration to the concerns raised, I have invited a TCI delegation to visit London next week (15-16 June) for further discussions. The delegation consists of:

Lillian Misick (Chair, Consultative Forum)

Doreen Quelch-Missick (Advisory Council)

Clayton Greene (Leader, PNP)

Doug Parnell (Leader, PDM)

Wendall Swann (Former Chair, All-Party Commission on the Constitution and Electoral Reform)

Pastor Bradley Handfield (Church)

Trevon Farrington (Youth Ambassador)

The Governor will also be present. The TCI Government will fund the costs of the delegation. The political parties have asked if they might bring bigger delegations. I have exceptionally agreed that each party may bring up to two additional colleagues (at their own cost) but that, in the interests of equal treatment, while these may be present in the meeting room as advisers or note-takers only one person from each party may sit at the table and participate in the discussions. I want to try to avoid a repeat of public meetings in TCI where those with a clear political agenda drowned out others who tried to make sensible comments.

My intention is to open the discussion, with my DFID colleague Alan Duncan, and listen to initial comments from the members of the delegation. Senior officials will then take forward the discussions over two days. The issues that are likely to provoke most discussion are: the voting system and composition of the House of Assembly; the powers and accountability of the Governor; whether the Deputy Governor should be a Belonger; the process for acquiring Belongership; public finance and watchdog institutions; the right to trial by jury. I will return to the talks for the closing session on 16 June to set out the final constitution package.

Tough decisions will be needed on sensitive issues. I do not expect there to be universal agreement on all provisions. Whilst I am prepared to be flexible, it is important that UK interests and those of the TCI people are protected as robustly as possible to avoid a return to the situation which the FAC highlighted and which prompted the establishment of the Commission of Inquiry in 2008.

The political parties are likely to complain that they need further time. But this has been a lengthy consultation process and it is time to draw a line and move on. I want to see continued progress against the milestones I identified in December, which I still judge are necessary to enable us to hold elections in TCI in 2012.

When the talks have concluded I will send you an update on the discussions and a copy of the final draft constitution which I aim to submit to the Privy Council in July.

13 June 2011

**Letter to the Chair of the Committee from Mr Henry Bellingham MP, Minister for the
Overseas Territories, Foreign and Commonwealth Office**

TURKS AND CAICOS ISLANDS

In my letter to you of 13 June I said I would send you an update on the constitutional talks that I held with the Turks and Caicos Islands (TCI) delegation on 15/16 June and that I would send you a final copy of the draft constitution which will be submitted to the Privy Council in July.

The talks went well and I was pleased that the Foreign Secretary was able to join us briefly. He made clear to the TCI delegation that there could be no return to the previous situation in the territory and said that it was now time for TCI to move towards a more positive future.

After two days of discussion, I set out the final constitutional package. The key decisions were:

- **Electoral reform:** I agreed to drop our proposal for a mixed member proportional system and to keep to the existing first past the post system;
- **Membership of the House of Assembly:** to remain at 19 but the 15 elected members to consist of 10 constituency members, 5 ‘at large’ or ‘territory wide’ members and 4 appointed members;
- **Term limits:** the Governor will not appoint as Premier a person who has held office as Premier during two consecutive Parliamentary terms, unless at least one Parliamentary term has expired since he/she held office;
Governor’s powers: the Governor will be required to consult the Secretary of State before exercising many of these powers, thus providing a check on the Governor in the exercise of his functions;
- **Belongership:** I have removed the provisions taken from the immigration ordinance on belongership by right, but have retained the minimum conditions for the grant of belongership. The term *belonger* will be replaced with ‘Turks and Caicos Islander’;
- **Deputy Governor:** will be a Turks and Caicos Islander;
- **Trial by jury:** I will retain the flexibility to hold trials by judge alone;
- **Preamble:** I have accepted the delegation’s suggestion for a preamble which underlines the importance of religion in the territory.

I attach a copy of the draft constitution which will be laid before the Privy Council on 13 July and a list of the amendments made following the talks with the TCI delegation in June and which have been incorporated into the draft constitution.¹

4 July 2011

¹ Not printed

Written evidence from the Foreign and Commonwealth Office

Updating the Foreign Affairs Committee on developments on IOC recognition of Overseas Territories

1. In the 2008 report on the Overseas Territories, the previous Foreign Affairs Committee made the following recommendation:

"We conclude that it is wrong for some Overseas Territories to have access to the benefits of International Olympic Committee (IOC) recognition while others do not. We recommend that the FCO should make representations to the IOC about recognition for all the UK Overseas Territories." (Seventh Report of 2007-08, paragraph 136).

2. In its reply, the then Government stated that:

"We will consider what more might be done on behalf of all the Territories, taking account of the broader issues that are likely to be involved and the outcome of an ongoing case brought by one Territory which is currently before the courts." (Cm 7473, para 54)

3. The Committee Secretariat wrote to the FCO on 29 June 2011 to ask for a memorandum from the FCO updating it on any developments on IOC recognition of Overseas Territories that have taken place since 2008, and also setting out the current Government's policy on this issue.
4. Since the Foreign and Commonwealth Office's response of September 2008, the Swiss Federal Courts have twice ruled in favour of the International Olympic Committee in respect of Gibraltar's bid for individual recognition. The Gibraltarian plaintiffs are currently awaiting the outcome of a further appeal and unless that appeal is successful, Gibraltar will continue to fall under the remit of the British Olympic Association (BOA). The decision confirms the amendment to the Olympic Charter in 1996 which defined 'country' to mean 'an independent state recognised by the international community', as the basis for determining NOC applications. Bermuda, the Cayman Islands and the British Virgin Islands had all been recognised by the IOC before 1996.
5. The practical effect of the Court decision is that there is little prospect of securing IOC recognition of Overseas Territory NOCs without an amendment of the Charter. The Government also believes that there is little prospect of securing the necessary majority of votes to amend the Charter to reverse the 1996 amendment.
6. The British Olympic Association (BOA) continues to act as the representative NOC for those Territories that are not recognised by the IOC. The BOA wrote to all UK Overseas Territories in February 2011 to explain that as long as the existing requirements under the Charter remained, Territories should focus their energies on the development of their sporting infrastructure and work with the BOA to ensure that any athlete eligible to compete at the Olympic Games as part of Team GB be given the opportunity to do so.

7. Any individual from Territories not recognised by the IOC who holds a valid British passport (all citizens of the Overseas Territories are entitled to a British passport following entry into force of the British Overseas Territories Act 2002) is eligible to compete for the Great Britain Olympic Team (Team GB) provided that: a) they are affiliated to the relevant British National Governing Body of sport (NGB) which is a member of the BOA; and in turn is affiliated to the appropriate International Federation of that sport; and b) they meet the Olympic qualifying standards for their chosen sport.
8. The BOA's efforts have already resulted in success. Shara Proctor of Anguilla, a 22-year-old long jumper, made her debut at the European Team Championships in June 2011 representing Great Britain, where she took third place with a jump of 6.6m.
9. The Government agrees with the Committee that the present position is unsatisfactory. We will continue to work with the BOA to ensure that opportunities for the Overseas Territories to engage with Team GB, continue.
10. A copy of the BOA's policy on this matter is enclosed.

1 August 2011

British Olympic Association (BOA) Policy: Support for UK Overseas Territories

Background

The British Olympic Association (BOA) is the National Olympic Committee (NOC) for Great Britain and Northern Ireland, the Isle of Man, the Channel Islands and UK Overseas Territories which do not have their own National Olympic Committees.

The following Crown Dependencies fall under the remit of the BOA:

- Isle of Man
- Channel Islands: Baliwick of Jersey, Baliwick of Guernsey (includes Guernsey and its dependencies)

The following UK Overseas Territories fall under the remit of the BOA:

- Anguilla
- British Antarctic Territory
- British Indian Ocean Territory
- Falkland Islands
- Gibraltar
- Montserrat
- Pitcairn, Henderson, Ducie and Oeno Islands
- St Helena and St Helena Dependencies (Ascension and Tristan da Cunha)
- South Georgia and South Sandwich Islands
- Sovereign Base Areas of Akrotiri and Dhekelia
- The Turks & Caicos Islands

The following UK Overseas Territories have their own NOC and are not connected to the BOA:

- Bermuda
- British Virgin Islands
- Cayman Islands

Eligibility for Team GB

Any individual who holds a valid British passport is eligible to compete for the Great Britain Olympic Team (Team GB). In addition, individuals must be affiliated to the relevant British governing body of sport which is a member of the BOA and in turn is affiliated to the appropriate International Federation of that sport.

IOC Recognition

Several UK Overseas Territories, which fall under the remit of the BOA, have sought individual recognition from the IOC (i.e. to be able to form their own NOC). The matter is governed by rules within the Olympic Charter, specifically:

3. Recognition by the IOC:

2. The IOC may recognise as NOCs national sports organisations, the activities of which are linked to its mission and role. The IOC may also recognise associations of NOCs formed at continental or world level. All NOCs and associations of NOCs shall have, where possible, the status of legal persons. They must comply with the Olympic Charter. Their statutes are subject to the approval of the IOC.

Bye-law to Rules 28 and 29:

1.2 At least five national federations included in an NOC must be affiliated to the IFs governing sports included in the programme of the Olympic Games.

31. Country and Name of an NOC

1. In the Olympic Charter, the expression “country” means an Independent State recognised by the international community.

The IOC changed the Olympic Charter in 1996 to only acknowledge independent states as recognised by the international community, as the basis for determining future NOC applications. Bermuda, the Cayman Islands and the British Virgin Islands applied for and were granted recognition by the IOC before the 1996 amendment came into force; they became NOC’s in 1936, 1976 and 1982 respectively. (This was the same for other territories, e.g. Hong Kong, the US Virgin Islands, Guam, American Samoa and the Netherlands Antilles).

Since the change to the Charter, most notably, Gibraltar has sought to be recognised by the IOC as an NOC which resulted in a four year legal process through the Swiss Courts. In 2008, the judgement was ruled in favour of the IOC and thus Gibraltar remains under the jurisdiction of the BOA. The Turks and Caicos Islands have also applied for independent NOC status and been declined several times by the IOC on the grounds that they do not fulfil the Charter requirement of being an „independent state“.

BOA Support

It is clear that as the Olympic Charter requirements remain, the UK Overseas Territories which fall under the remit of the BOA, do not fulfil the criteria to be recognised as independent NOC’s by the IOC.

The BOA’s advice to those UK Overseas Territories therefore, is that while the existing requirements under the Charter remain, they should focus their energies on the development of their sporting infrastructure and to work with the BOA and the relevant British governing bodies of sport (NGBs), to ensure that any athlete eligible to compete at the Olympic Games as part of Team GB is given the opportunity to do so.

Specifically, the BOA commits to providing greater support to the UK Overseas Territories in the following areas:

Engagement with British NGBs:

As outlined above, any athlete with a British passport is eligible for selection to Team GB, provided they meet the qualification standard and are affiliated to the relevant British NGBs (which is in turn affiliated to the relevant International Federation). Therefore, in order to ensure that any athlete from the UK Overseas Territories is known by the high performance system within each NGB (and thus cannot „slip through the net“) it is paramount that the British NGBs are aware of and have good relationships with their counterpart NGBs in the UK Overseas Territories.

Such relationships can also foster opportunities for athletes, coaches and support staff from the UK Overseas Territories to learn from the British NGB in the form of experience sharing, work placements and training camps, for example.

The BOA will:

- Seek a list from all UK Overseas Territories of the NGBs which currently operate and whether they are recognised by the International Federations of those sports.
- At the meeting of the National Olympic Committee, highlight this policy to its member NGBs and encourage direct communication with any NGBs from the UK Overseas Territories (providing contact details as gathered above).
- Thereafter, the BOA will annually review the communication between its member NGBs to ensure their responsibilities to their UK Overseas Territory counterparts is working effectively.

Athlete Eligibility:

The BOA has not and will not discriminate against any athlete eligible to compete for Team GB (eligibility as outlined above). In the past it appears some UK Overseas Territories have not recognised that an athlete with a British passport is eligible and that the BOA in some way was “preventing athletes from being selected”. This is not the case and the BOA will communicate this to all UK Overseas Territories.

That said there is some concern that if an athlete from the UK Overseas Territories was selected and did compete for Team GB at the Olympic Games that it would preclude them from competing for their country at other international events. This again, should not be the case. The parallel example is athletes competing for their Home Nation, Wales for example, on the international stage whilst still remaining eligible to compete for Team GB at the Olympic Games and vice versa.

In order to seek clarification the BOA will:

- Work with the sports federations within the Overseas Territories who are unsure of the rules around eligibility for national representation and Olympic representation within their International Federation, to ensure that there is no barrier to represent both their territory internationally and Team GB at the Olympic Games.

- Commit to negotiating with International Federations and the IOC if anomalies exist whereby UK Overseas Territory athletes would be excluded from representing their country on the international stage if they are to compete for Team GB at the Olympic Games. We do not anticipate any such circumstances.
- Provide template letters to British NGBs which can be sent to their International Federation, clarifying the UK Olympic representation of British NGBs with regard to the Overseas Territories.

Funding and Support:

Unlike the majority of NOCs, the BOA receives no government or National Lottery funding; it is a not-for-profit, autonomous organisation. The UK sports system is currently funded through a mixture of National Lottery, exchequer funding, and funds raised from the private sector which is distributed to sport through the Sports Councils (UK Sport and the four Home Nation Sports Councils). For high performance sport, the funding is directed to the NGBs who provide the framework for athletes to train and compete.

The BOA therefore, does not directly fund athletes or NGBs, rather as a membership organisation it provides services to current athletes, Olympians and NGBs – for example in Pre-Games Preparation Camps and sports science/medical support. It is therefore out of the BOA's jurisdiction to fund sports programmes of any kind (including in the Overseas Territories). Any request for funding for sport should be directed to the Sports Councils and funding for an athlete with the potential to compete for Team GB should be directed to the relevant British NGB, in the first instance.

As a result of London hosting the Games in 2012, the BOA's commercial rights have been transferred to the London Organising Committee for the Olympic Games (LOCOG), to ensure LOCOG can generate the revenue required to stage the Games. As such, the BOA cannot raise funds through traditional sponsorship channels as it had done previously and must now increase its fundraising activity in order to make up the considerable shortfall which is more apparent given the increase in the BOA's responsibility and status as a host nation NOC.

The BOA is a small organisation (60 staff) and particularly in this demanding period in the lead up to 2012, its resources are stretched to capacity. However, the BOA is committed to supporting the Overseas Territories in the following areas:

Engagement

- The BOA will provide an individual member of staff as a point of contact for all UK Overseas Territories. More generally, the BOA will seek to engage with the UK Overseas Territories, gaining a better understanding of their high performance sports structures and identifying areas where we can support them in the future.

- The BOA will introduce the relevant sports organisations in the UK Overseas Territories to the United Kingdom Anti-Doping Agency (UKAD) in order to provide information and support in anti-doping education.

Olympic Solidarity

- The IOC's Olympic Solidarity programme aims to provide assistance to NOCs, particularly those most in need, to help develop sport in their country. NOCs can apply for grants in various areas including for sports development and Olympic Games subsidies.
- The BOA will communicate to all UK Overseas Territories when an Olympic Solidarity grant application process is released by the IOC. If an UK Overseas Territory believes they have a project, programme or individual which meets the criteria for that particular grant, the BOA will include the example in their process of grant selection and if successful, will work with the Overseas Territory to formulate an application to Olympic Solidarity on their behalf.

British Olympic Foundation

- The BOA's charitable arm, the British Olympic Foundation (BOF) works to promulgate the Olympic Values through youth and sport programmes. Again, it is resource limited and works with other agencies to produce education materials and run programmes in the education and youth sectors.
- The BOA commits to providing the UK Overseas Territories with access to BOF materials for use and providing a contact whereby advice can be sought with regard to the development of youth and sport programmes.

June 2010

Letter to the Chair of the Committee from Rt Hon William Hague MP, Secretary of State for Foreign and Commonwealth Affairs: Anguilla

You asked for a note on the proposed transfer of some Permanent Secretaries (PSs) within the public service of Anguilla. This is an issue that has also been raised by Lord Jones of Cheltenham (PQ ref. HL11389) and Lord Anderson of Swansea (letter dated 21 July). The UK Representative of the Government of Anguilla has also made representations on this to the Overseas Territories Directorate in the FCO.

Under the Anguilla Constitution, power is vested in the Governor to make appointments to public offices, in most cases after consultation with the Public Service Commission and, in the case of appointment to the office of permanent secretary and head of department, also with the Chief Minister.

Responsibility for ensuring that the Anguillian Public Service is appropriately staffed and run has been delegated by the Governor to the Deputy Governor, who is the most senior member of the public service. The UK Government has no direct responsibility for making Anguillian public service appointments.

The transfer of portfolios among Permanent Secretaries is good practice and helps to ensure that they remain independent and are able to offer non-partisan advice. In the current case, I understand that the Chief Minister and the Executive Council were consulted about the proposed changes. Appointment decisions take into account individuals' skills and experience and the wider need of the service to develop leaders and strategic thinkers.

The Government of Anguilla have provided some additional background information on the proposed transfers. We understand that Dr Aidan Harrigan and Mr Foster Rogers will assume responsibility for the Finance portfolio and the Economic Development, Investment, Commerce and Tourism portfolio respectively. Dr Harrigan has served as Permanent Secretary responsible for Economic Development, Investment, Commerce and Tourism for the past five years. Mr Rogers has served as the Permanent Secretary responsible for Immigration, Labour, Land and Planning issues for the past six years. For five of these six years Mr Rogers held responsibility for regional (Organisation of Eastern Caribbean States and CARICOM) matters. Mr Rogers and Dr Harrigan have both significant experience relevant to their proposed posts. These appointments are due to take effect in January 2012, which will allow for sufficient briefing, training and transfer of responsibilities.

2 August 2011

**Letter to the Chair of the Committee from Rt Hon William Hague MP, Secretary of State
for Foreign and Commonwealth Affairs: Strategy**

The Government has now agreed, through the National Security Council, our overall strategy on the Overseas Territories. I will set this out before Parliament in a Written Ministerial Statement on 14 September.

The strategy is a framework to enable the Government to pursue policies relating the Overseas Territories consistently and effectively. Many of these policies, designed to ensure the security and good governance of the Territories, are already being implemented. We are now beginning a process of consultation to identify the specific measures we should pursue to deliver the three policy goals set out in my Ministerial Statement.

We will be consulting widely, both with Territories and their Governments and other stakeholders. Henry Bellingham will visit more of the Territories this year, when he will hear Territory leaders' thoughts and those of their people. The DfID Minister of State, Alan Duncan, will also be visiting some Territories later this year. Territory leaders will be in the UK in the week beginning 21 November for the Overseas Territories Consultative Council (OTCC) on 23 November. Your Committee might wish to meet them during that period.

We will also be working closely with Departments across Government as they develop their Papers setting how they can engage with and support the Territories. This follows up the NSC agreement.

It remains the Government's intention to publish a White Paper on the Overseas Territories early next year. I welcome your Committee's desire to engage with us on the White Paper which you expressed in your report on the FCO's role in Government. I would be delighted if your Committee could find an opportunity to discuss the proposed White Paper with Henry Bellingham; alternatively, I would be very pleased to take questions at our next Evidence Session. I am grateful to you and your colleagues for the interest you take in our relationship with the Overseas Territories and would like to hear your thoughts and suggestions early on in the process of producing the White Paper.

13 September 2011

**Letter to the Chair of the Committee from Jeremy Corbyn MP, Chair of the All Party
Parliamentary Group—Chagos Islands**

Jurisdiction of the Parliamentary Commissioner for Administration in regard to Overseas
Territories governed exclusively from London

I would like to bring to your attention what I believe is a serious anomaly in the immunity from scrutiny by the PCA (“Ombudsman”) of the FCO where the alleged maladministration is committed “in connection with the government of” an overseas territory of the crown.

This extensive and alarming anomaly arises from Paragraph 3 of Schedule III to the original Parliamentary Commissioner Act 1967 which sets out those “matters which are not subject to investigation” and includes the following:

“3. Action taken in connection with the administration of the government of any country or territory outside the United Kingdom which forms part of Her Majesty's dominions or in which Her Majesty has jurisdiction.”

The archaic language reveals the drafting at a time when many colonies were yet to become independent but nonetheless may have had functioning democratic legislatures of their own and their own charters of rights and forms of redress. I question whether this blanket indemnity is valid today when there are so few overseas territories, particularly as two of them (the British Antarctic Territory and the British Indian Ocean Territory) are governed by officials of the FCO in London.

The case in question

This little-known immunity from scrutiny has recently been highlighted by the Ombudsman who has been prevented from investigating a detailed and potentially serious course of conduct which has culminated in the continued exile of the entire population of the BIOT whose future is the concern of our own APPG. Specifically there is complaint of the interference by the FCO with the conduct by outside consultants of a “Feasibility Study” established by the Foreign Secretary Robin Cook in 2000 following the ruling of the High Court in November of that year that the population had been unlawfully deported. Its purpose was to investigate the implications of the resettlement of the exiled population who have continued to live in poverty in Mauritius and Seychelles, suffering high rates of morbidity and mortality, discrimination in employment and healthcare and with restricted access to social facilities.

Great hopes were generated by the Foreign Secretary who accepted the High Court judgment, restored the exiles' right of return, and set up the Feasibility Study to investigate modalities of

return. However, the study appears to have suffered from the following acts of maladministration by the FCO which were the subject of the complaint to the Ombudsman:

1. The FCO failed to adhere to/or honour the agreed Terms of Reference for the study and in so doing, knowingly and intentionally extended its duration and the likelihood that it would not be completed, or in the alternative were negligent in failing to appreciate that this would be a consequence.
2. The FCO also failed or were negligent in progressing the extended study in a timely fashion, particularly in its latter stages when delay gave way to deliberate obstruction.
3. It was the legitimate expectation of the Chagossians that the study would not be terminated before its natural completion, which was never achieved.
4. As a result of the failure of the FCO to follow its own procedures and/or to exercise diligence and a duty of care in the practice of retaining relevant material or in the alternative as a direct and deliberate act of destruction of relevant material, members of the Chagossian community have been seriously disadvantaged in their ability to challenge the official findings of the Phase 2B report, and to examine whether these findings truly represent the views of “*independent*” consultants as the FCO and HM Government have consistently and publicly maintained.

Notwithstanding these matters, the FCO has at all times relied on what it has declared to be the conclusions of ‘independent consultants’.

The consequences of the alleged maladministration

The consequences could hardly be more serious and extensive. The challenged conclusions of the Study were expressly relied upon by Ministers who then decided to abolish the Right of return, thereby setting aside the Court judgment in 2000, by enacting Orders-in-Council in 2004. Thereafter there ensued litigation right up to the House of Lords and now before the ECtHR in Strasbourg, with judgments going both ways. A total of seven judges held that the Government lacked the power to continue the Exile, but by a split decision of the HL, three judges held that abolition was within the power of government.

As a result, the 5,000 or so British Citizens who are native to the Chagos islands have been held in exile for a generation, deprived of what the Court of Appeal held to be “one of the most fundamental liberties known to man”—the right to return to the country of one’s birth. The judges in the Divisional Court and Court of Appeal held the Orders-in-Council to be unlawful without considering the terms of the Feasibility Study, but the three HL judges who found for the Government felt the terms to be of significance. Only after the HL decision in October 2008 did evidence emerge, following an investigation reported in the Times of 22 April 2010, that advice in favour of resettlement by the FCO’s own consultants had been suppressed. The Courts were therefore prevented from considering what had been done and a default of justice has emerged. The Ombudsman could however, if she had jurisdiction, have an important role in establishing what wrongdoing had been practised to cheat the population of its legitimate expectation of return.

The appropriateness of immunity for acts of maladministration connected to the governance of an overseas territory

The origin of this immunity is possibly based upon the existence of local legislatures, as was the European Convention of Human Rights (which requires the metropolitan State to extend Convention rights to an overseas territory before the inhabitants could benefit from it).¹

Colonies achieved independence before and after the enactment of the PCA 1967 when there were about 27 remaining colonies. The standards of rights and civil protection were largely determined by the local legislatures in accordance with “local standards”. It was no doubt felt that acquiescence by officials here in standards of administration which affected an overseas territory but which would be unacceptable in the UK, should not fall to be examined by the Ombudsman.

But the scene has radically altered since then. In particular, the remaining OTs are both small in number, small in territorial extent, and have small populations. Two of them have no permanent population and are governed from the FCO—BAT and BIOT. There is no good reason for retaining an archaic immunity when all the actions are taken in London by regular officials of the FCO, all the relevant records are retained (if at all) in Whitehall, and the subjects are full British Citizens. Of course it is also a pre-requisite for the jurisdiction of the Ombudsman that the complainant should be resident in the UK.

The options available for Parliamentary action

Any enquiry by the Public Administration Committee (which regularly considers the reports made by the Ombudsman) might focus on recommending a modest amendment to the jurisdiction of the Ombudsman by an amendment to para 3 of Schedule III so as to exclude from the immunity those territories ruled from London. This would not require Parliamentary time, since amendment could be achieved by the Order-in-Council procedure which is prescribed by para 5(4) of the 1967 Act. Parliament in 1967 plainly wished to make it possible in the future for such restrictions on the Ombudsman’s jurisdiction to be removed without the need for primary legislation.

A further suggestion would be for the FAC to consider the position of the other OTs in order to assess whether it would be appropriate to extend the Ombudsman’s jurisdiction to acts by UK officials relating to their governance. It might also be appropriate to make an investigation by the Committee itself into the conduct of the FCO in relation to the Feasibility Study, or perhaps to investigate the policy of Exile itself. In this connection the FAC will recall its recommendation (Seventh Report of Session 2007–8, HC 147–1) that:

¹ See Ghosts of Colonialism in the ECHR, British Yearbook of International Law 2005, by Prof AWB Simpson and Louise Moore <http://bybil.oxfordjournals.org/content/76/1/121.extract>

“We conclude that there is a strong moral case for the UK permitting and supporting a return to BIOT for Chagossians...The FCO has argued that such a return would be unsustainable, but we find these arguments less than convincing”

An investigation by the FAC, alternatively by the Ombudsman, would be likely to get at the truth behind the arguments advanced by the FCO, claims which the FAC has already rejected, only for the FCO to adhere to its position.

I am enclosing with this letter:²

1. The report in the Times of 22 April 2010 “Study was Doctored to keep families from their Homes”
2. The Complaint to the Ombudsman dated 3 March 2011
3. The Ombudsman’s letter dated 27 April 2011

June 2011

² Enclosures not printed.

Letter to the Chair of the Committee from Rt Hon William Hague MP, Secretary of State for Foreign and Commonwealth Affairs: port access for vessels flying the Falkland Island flag

I appreciate that you and Committee members will be concerned about the current situation arising out of Mercosur's declaration on 20th December on port access for vessels flying the Falkland Island flag.

The Foreign Office sent you yesterday morning a copy of the Written Ministerial Statement, which reiterates the British Government's clear position on this issue, as well as explaining the action we have taken since. I attach the WMS to this letter for ease of reference.¹

The announcement by Mercosur governments against the Falklands flag is, in our view, wholly unjustified and has no basis in international law. Our clear priority, however, has been to ensure that this political statement has no impact on the ability of all Falklands-related shipping to continue to enjoy access to South American ports. I am confident that, after discussions with Brazil, Chile and Uruguay, these commercial links will be preserved. I made clear to them that participation in an economic blockade of a vulnerable group was completely unfitting of modern, democratic states

Given the confidential nature of these discussions with foreign governments, I do not wish publicly to go into the details of our exchanges. But I recognise, and welcome, the close interest of the FAC in this issue and am very happy to invite you and colleagues into the Foreign and Commonwealth Office for an in-confidence briefing on the latest developments.

Please be assured the British Government remains fully committed to the security and prosperity of the Falkland Islands. We have no doubts about our sovereignty over the Islands, and the principle of self-determination and the rights of the Falkland Islanders to develop and sustain a strong economy remains fundamental to our approach on this issue.

11 January 2012

¹ Not printed