



Cayman Islands
Chamber of Commerce

Board of Directors

Conor O'Dea

President

Sophia-Ann Harris

President-elect

Wayne Cowan

Treasurer

Lynne Whittaker

Secretary

Councillors

Michael Adam

David Dibben

Clarence Flowers Jr.

Gilles Langlois

Adrien Briggs

Angelyn Hernandez

W. Burns Conolly, AIA

Immediate Past President

Wil Pineau

Chief Executive Officer

wil.pineau@caymanchamber.ky

2nd floor Macdonald Square,
George Town

PO Box 1000 GT
Grand Cayman,
Cayman Islands

Phone: 345-949-8090

Fax: 345-949-0220

SELF-DETERMINATION IN THE CAYMAN ISLANDS

THE PERSPECTIVE OF NON-GOVERNMENTAL ORGANISATIONS (NGOs)

Delivered by:

Sophia-Ann Harris (President-Elect)
Cayman Islands Chamber of Commerce
8th October 2003

Once again we thank you for providing the Cayman Islands Chamber of Commerce, for and on behalf of other Non-Governmental Organisations (NGOs), with an opportunity to speak on the important issue of Self-Determination for the Cayman Islands.

In our previous address to the UN'S Special Committee on Decolonisation, we explained the unique position of these Islands due in large part to the privilege of being ranked as the fifth largest financial centre in the world, with a triple A rating from Moody's, one of only a handful of countries with such a high rating including the US and the United Kingdom (UK). The success of our Islands is such that it prompted one of the Ambassadors of the Committee to remark after our last presentation that the Islands "do not sound as if they are colonies".

Indeed due to the strength of our financial industry coupled with our

Your Partner in Business and Community Success!

www.caymanchamber.ky



Cayman Islands
Chamber of Commerce

tourism, when compared even to “Developed” countries, the Cayman Islands has one of the highest standards of living in the world, a low ratio of crime, unemployment and social disharmony, making it a true success story. The Cayman Islands has implemented legislation to regulate its International Financial Industry which far exceeds the regulatory regimes of other major financial centres such as New York City and London.

Furthermore, it is interesting then that these Islands should find themselves addressing the issue of Self-Determination.

As a result of the Chairman of the UN Special Committee on Decolonisation Ambassador Mr. Earl Huntley’s visit to the Islands in May of this year the Cayman Islands Chamber of Commerce together with a number of NGOs has undertaken the mammoth, often daunting, yet monumentally important task of educating the people of the Islands on the issue of Self-Determination.

It was then from Ambassador Huntley that we heard for the first time of the UK’s international obligation to the UN and he advised us as to the full meaning of our “... *inalienable right to Self-Determination*”.

This notwithstanding that in 2000, as a result of the ironically entitled UK legislation “Partnership for Progress and Prosperity: Britain and the Overseas Territories” upon instructions from Her Majesty’s Government (HMG), the then Governor appointed a Constitutional Review Commission in the Cayman Islands, which prepared a report, including a draft constitution. This report was ultimately forwarded to the Foreign and Commonwealth Office (FCO) in London.



The failure however to advise the people and apparently even the Governor's own appointed Commissioners of the "right to Self-Determination" has caused many to question the validity of the resulting draft constitution prepared by HMG for the Islands, a constitution which comes fraught with limitations and directions from the UK, often in direct opposition to the will of the people. Recommendations made from the public on aspects of the Bill of Rights intended to be included in the new constitution, for example, which were lifted verbatim from the UK's own Bill of Rights Act or from other overseas territories, were flatly rejected.

It is worth mentioning that in July 2002 one of the NGO's, the Concerned Citizens Group, wrote to the Governor requesting assistance from the FCO by way of providing Lecturers to assist with the education of the Caymanian people on constitutional issues during the constitution reform process.

Regretfully, in a July response from the Governor the group was advised that it was not possible for the FCO to provide lecturers to assist them. In a follow-up letter passed on to the Concerned Citizens Group, the FCO suggested that perhaps they might wish to ask the UK's locally appointed constitutional advisor on a personal basis (if he was so willing) or a lecturer at the local law school for possible assistance. This, notwithstanding that HMG are obligated by the UN resolution to assist in the education of the people on the self-determination options.



Of particular interest, for example, are the wide-ranging powers of the Governor and his power of appointment of the Attorney General of the Cayman Islands, which we understood from the UK Government to be non-negotiable. This is in contrast to Bermuda, which apparently operates as an Associated jurisdiction with the right to Self-Determination and which includes only limited powers of the Governor. We have been advised by the UK Government that should we seek a similar constitution, which provides for this level of self-government as an Overseas Territory, we must set the time table for independence.

It is with little doubt that the relations between HMG and the Cayman Islands have become strained and the importance of the role of the UN Special Committee to assist the electorate of the Cayman Islands to choose the form of constitution they desire cannot at this time be overemphasized.

Earlier this year the Cayman Government found it necessary to take the UK Government to the European Union's (EU) Court prompted by the UK Government requiring the Islands to implement the EU Tax Savings Directive of the European Community into local legislation.

Much concern was expressed as the proposed legislation, it was felt, would severely impact the financial industry of the Cayman Islands, in particular the Banking and Mutual Fund industries. There was also some concern that the initiative was designed to save the London Bond Market, to our detriment and with complete disregard for the welfare of the territory. The UK Government advised us that if we failed to implement the legislation effecting the directive, the UK



Government would pass the legislation for us by way of an “Order in Council” (commonly referred to in House of Commons as their “Nuclear Option” to bring us into submission).

Our Government in an effort to safeguard the interest of these Islands took the UK Government to the EU Court arguing, amongst other things, that the Cayman Islands had the right to request a Partnership Working Party to discuss the implications for the Cayman Islands of the eventual adoption of the directive into local law. The Court, in First Instance, although ruling that it had no jurisdiction to hear the matter in general acknowledged our right to request and receive a Partnership Working Party. We were dismayed and disappointed however, to hear only a week ago of the UK Chancellor Gordon Brown’s announcement of continued threats against the Island, to impose the legislation on the Islands, ignoring the albeit incidental but relevant statements of the EU Court. It has been a reminder that at best there is no longer a relationship of even indifference between the UK and its territory, as unfortunately there are increasing incidents that have caused us to take adversarial positions.

What is most interesting however, is that in September of this year UK Chancellor of the Exchequer, Gordon Brown, propagated the view that it was time that Europe committed itself to growth and it was his view that this meant increasing tax competition and doing away with unnecessary regulation. We understand that even Alan Greenspan publicly praised him for this new approach. It is interesting and compelling to note the contrasting approach to the Cayman Islands in forcing the EU Tax Savings Directive by compulsory legislation on the Islands.



If there is any doubt as to the difficulties that lay ahead and to explain the core of the deterioration of the relationship between the Cayman Islands and Administering Power, HMG, we are reminded of the now notorious trial that has come to be known as the ‘Euro Bank Trial’, which collapsed in a most spectacular way earlier this year in Cayman.

Without getting into the intricacies of the trial itself, it is important to note that in the judgment handed down by our Chief Justice, it is revealed that the prosecution, headed by our then Attorney General, (appointed by the UK) was forced to disclose that the UK Government through MI6 had planted moles throughout the Banking industry (and by separate accounts, had also wire tapped telephone lines), by consent of the Governor.

It also came to be known that the head of the Financial Reporting Unit (FRU) employed by our Government was on the payroll of MI6. It is worthy to note that the FRU, which was a part of the Cayman Islands Police Force, was restructured by the Attorney General to fall directly under the auspices of the Attorney General’s office. Upon becoming tipped off that a search warrant was to be issued against the head of the FRU (the search warrant resulting from suspicion of interference with the telephones of our Judiciary), MI6 instructed him to destroy all evidence that would have implicated the UK Government. Some brief mention was also made on discovery of the evidence held by the prosecution, of “the London Plan” for the Cayman Islands, which left all in wonder and bewilderment as to the true intentions of the UK Government towards the Cayman Islands.

This incident resulted in the financial industry, including the Cayman Bar Association and the Law Society, calling for the resignation of the then Attorney General and, of most concern, the



Cayman Islands
Chamber of Commerce

Cayman Government refused to sit in the Legislative Assembly with the AG, who is included as part of the Executive Council under our constitution.

It is not surprising then that in July of this year when the Governor on instructions from the FCO tried to push through a proposed Terrorism Bill which included the power for the Governor to wiretap phones on his order alone, there was a unanimous agreement in the Legislative Assembly of both Government and Opposition alike to amend the proposed legislation by transferring the vesting of the power to tap phones from the Governor to a judge of the Cayman Islands. Last Friday the Chamber, for an on behalf of twenty-two other NGOs, submitted a letter to the Governor to be forwarded to the FCO in London, indicating our support for the Legislative Assembly's amendments to the legislation.

Regretfully the waters are muddied by an approaching election year in the Cayman Islands, the UK protesting that it has no full understanding of the meaning of Self-Determination as defined by the UN and the UK suggestion that the resolution of the UN has somehow lapsed as it was made some 30 years ago.

In the interests of the people of the Cayman Islands we believe our path is clear – we must be given the opportunity to fully examine and educate ourselves on Self-Determination to ensure that the people of the Cayman Islands are not cheated of their right to determine their own future.

Part of the reason for our attendance here today however is to not only stress the urgency of the issue of Self-Determination for the Cayman Islands, driven in no small part by a push to

Your Partner in Business and Community Success!

www.caymanchamber.ky



implement a constitution that may prove detrimental to the Islands, but to express some concerns about the process of this most delicate and sensitive issue of Self-Determination.

Whilst we appreciate that there has been behind the scene communication between the FCO and the UN on this matter, for those of us that have boldly undertaken this issue, it has proven to be a daunting task for novices in this field, requiring more communication, support, information and guidance from the UN.

We also believe that there is much in common between the Overseas Territories and that we can learn from one another's experiences on the path to achieve Self-Determination. It is for this reason that the UN may wish to consider establishing a general working party between the Overseas Territories. We would welcome such a working party to operate out of the Cayman Islands.

The Special Committee has acknowledged its slow progress on achieving its objective over the years but for the Cayman Islands the idea of Self-Determination is an idea whose time has now come.

We have therefore embraced the UN's efforts to dissuade the UK from its old colonial philosophy, where the views and the will of the people of that colony are ignored, in exchange for a more acceptable concept of partnership, and it is our hope that the Special Committee on Decolonization will fully seize this opportunity.



We encourage the UK to work with us to facilitate proper education on Self-Determination and to ultimately require a referendum to conclusively determine that any change to the constitution is in keeping with the will of the people of the Cayman Islands.

Non-Governmental Organisations contributing to and supporting the contents of this paper include:

- Cayman Islands Chamber of Commerce
- Cayman Ministers Association
- Concerned Citizens Group
- People for Referendum

The presenter:

Sophia Harris, LL.B.

President-Elect, Cayman Islands Chamber of Commerce

Sophia-Ann Harris (nee Solomon) is the founder of the Cayman Islands law firm, Solomon Harris. She is a graduate of the Cayman Islands Law School and has a degree from the University of Liverpool, England. She received an award from the Chamber of Commerce and the Caymanian Bar Association for scholarly achievements and was called to the Bar in 1991. Her specialties include mutual funds and unit trusts.

Mrs. Harris is a council member of the Cayman Islands Law Society and has served as a council member of the Caymanian Bar Association. She is also a past president of the Rotary Club of Grand Cayman. Mrs. Harris has served as a member of Cayman's Labour Appeals Committee, as a director or legal advisor of a number of non-profit organizations and is currently the President-Elect of the Chamber of Commerce.