

**United Nations Special Committee on the Situation with regard to the Implementation of the
Declaration on the Granting of Independence to Colonial Countries and Peoples
United Nations Headquarters, New York City, New York.**

Statement by

Pastor Al Ebanks, Co-Chairperson,
Cayman Islands NGO Constitutional Working Group

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Contributors to this presentation include:

- Cayman Islands Chamber of Commerce
- Cayman Ministers Association
- Concerned Citizens Group
- People for Referendum
- Cayman Democratic Initiative
- The Forum

Mr. Chairman, distinguished delegates of the Special Committee on Decolonization (C24) and representatives from the United Nations (U.N.) Secretariat's office, thank you once again for providing the Cayman Islands Non-Governmental Organizations (NGOs) and Citizens Groups with an opportunity to inform the Special Committee as to the constitutional developments that have transpired since last year's C24 meeting and to reiterate our appeal for assistance in educating the people of the Cayman Islands about self-determination. Congratulations on your recent appointment and we wish you and your colleagues much success with fulfilling the goals of this Committee.

With an estimated population of 44,000, the Cayman Islands is a remarkable success story by world standards, with a Triple A rating from Moody's – one of only a handful of countries with such a high rating including the United States and the United Kingdom (U.K.) – one of the highest standards of living in the hemisphere, a well-regulated International Financial Industry, a vibrant tourism sector, a relatively low crime rate, racial and social harmony, excellent infrastructure and a rich seafaring heritage steeped in a strong belief in Christian values.

Preserving and protecting our socio-economic position is of paramount importance to us and we believe there is no single issue deserving greater attention, focused discussion and deliberation than our right of self-determination in the development of our revised Constitution.

We have therefore returned to address the C24 with a mission:

- 1. To provide an update on the activities of our Constitutional Working Group since the last meeting in June 2003 bringing to your attention misleading representations by Her Majesty's Government (HMG) regarding their obligations under various U.N. Resolutions;**
- 2. To appeal for the expeditious implementation of the C24 Action Plan that was approved by the C24 in June 2003 and then ratified by the U.N.'s Special Political and Decolonization Committee (Fourth Committee) in October 2003 and request that the Cayman Islands is included on your list of upcoming visiting missions for the year;**
- 3. To inform the C24 of plans by our Constitutional Working Group to host an Overseas Territories Constitutional Forum in the Cayman Islands in September 2004 and to seek funding and expertise from the C24 to educate the conference delegates and the people of the Cayman Islands of the U.N.'s self-determination options and their potential ramifications;**
- 4. To bring to your attention errors and omissions in the 8th April 2004 Cayman Islands Working Paper. (AC/109/2004/15)**

Last year, Mrs. Sophia Ann Harris, then President-Elect of the Chamber of Commerce, addressed this esteemed body, speaking for the first time on behalf of the NGOs and citizens groups that had formed a Constitutional Working Group to study constitutional issues and to inform the people of the Cayman Islands, and each other, about issues relating to the UK-mandated Constitutional Review. She explained that the U.K. had failed to share any information about U.N. Resolutions 1541 and 2625 as part of the Constitutional Review process. She spoke of the fractured and increasingly competitive relationship between the Cayman Islands and the Administering Power and how the interests of the Islands and the U.K. were increasingly at odds. At the June meeting of the C24, presentations were also made by Mrs. S. Alice Mae Coe, then Deputy Chairperson of the Concerned Citizens Group and by Ms. Sandra Catron on behalf of the People for Referendum. At this time, we wish to publicly express our gratitude to former Chairman of this Special Committee, Ambassador Earl Huntley, who

accepted our invitation to visit the Cayman Islands in April 2003. Until Mr. Huntley's visit we were unaware of all our options regarding self-determination as prescribed by various U.N. Resolutions and Re-affirmations.

Our Working Group is fully committed to the mission of informing the people of the Cayman Islands about their fundamental human right of self-determination and raising awareness of the building blocks of democracy. Our group includes NGOs such as the Chamber of Commerce, the Cayman Ministers Association, which I chair, and citizens groups such as the People for Referendum, the Concerned Citizens Group, the Forum and the Cayman Democratic Initiative. With me today are Mr. Dennie Warren Jr., President of the People for Referendum, Mrs. S. Alice Mae Coe, Chairperson for the Concerned Citizens Group and Mr. Wil Pineau, Chief Executive Officer of the Chamber of Commerce and Secretary to the Working Group. While holding different views on some of the constitutional issues facing the Territory, each group has put differences aside and is working collaboratively to inform the people of the Cayman Islands of their inalienable right to self-determination. This presentation is delivered in the spirit of partnership and the views expressed here are endorsed by each of the above groups.

Much has transpired since the historic Caribbean Regional Seminar in Anguilla on Advancing the Decolonization Process in the Caribbean and Bermuda in May 2003 and our address to the C24 in June 2003 and to the Special Political and Decolonization Committee (Fourth Committee) in October of last year. The U.K. continues to flex its muscles of parliamentary sovereignty with threats of exercising its "nuclear option" of imposing legislation by Order-In-Council, including financial matters. The debacle of the Euro Bank trial and the U.K.'s most unfortunate role in that fiasco, including the alleged questionable conduct of the former Attorney General, continues to send legitimate fears throughout the Cayman Islands as to the U.K.'s true intentions as to our economic welfare.

We are appalled that to date no public inquiry has resulted from the events leading to the removal of the Attorney General or the head of the Financial Reporting Unit, who was a covert agent of MI-6, in connection with the failed Euro Bank trial. The Chief Justice identified several miscarriages of justice in the trial. In his ruling, he revealed that:

"Mr. (Brian) Gibbs told lies, deliberately failed to disclose and knowingly destroyed evidence which he was aware was highly relevant to the Euro Bank trial on the instructions of his controlling agent of the U.K. Government."

More recently, we have seen further moves by the U.K. to maintain its colonial power structure, by insisting that the Governor retains power to wiretap telephone lines without consent of the judiciary. These issues are not simply political, but are of great concern to many and highlight our need to revisit the process of self-determination and constitutional change in order to protect the reputation of the Cayman Islands.

Our research has shown that Anguilla, Bermuda, Montserrat and Gibraltar as Overseas Territories are far more progressive in their approach to constitutional change than we have been. The Constitutional Commissioners, politicians and people of Montserrat, for example, have done considerable work beyond that done in the Cayman Islands on addressing the powers of the Governor, and we would do

well to learn from their experiences. In some instances, recommendations contained in our proposed “new Constitution” are some 40 years behind Montserrat’s current Constitution.

We acknowledge and appreciate the valuable work that has already been done on the draft Cayman Islands Constitution by so many, but the recent suspension of the Constitutional talks provides the C24 with the perfect opportunity to assist our Working Group to educate the people of the Cayman Islands on all the options for self-determination. With your assistance, we can ensure that the Constitutional Modernization process reflects the essence of our people, our vision, spirit and values.

Following our address in October 2003 to the U.N.’s Special Political and Decolonization Committee (Fourth Committee), we wrote all of our elected politicians requesting their assistance with inviting the C24 to the Cayman Islands on a visiting mission. Unfortunately, we did not receive any response and this situation is not likely to change now with national elections planned for 17th November of this year.

In late January 2004, our Working Group wrote to the U.K. opposing, for the second time, HMG’s desire to hold closed-door discussions in London between the two political groups to work out the terms of the Draft Constitution. We wrote that all meetings dealing with constitutional modernization should be held in the Cayman Islands and the public, civil servants and the media should be able to access all discussions with full reports available to all interested persons.

In the spirit of the U.K.’s expressed desire for more participation, transparency and openness in the OTs as promised in the 1999 Partnership for Progress and Prosperity report, we also requested that HMG invite representatives from the NGOs Constitutional Working Group and the UN’s Decolonization Committee of 24 to attend the meeting. HMG has not yet responded to our letter.

In addition, we are concerned by the possibility of the outcome of the upcoming general elections being interpreted as a mandate for constitutional change without the electorate first having the benefit of further education on the options for Self-Determination. A Constitutional referendum is an extremely important ingredient in any democratic constitutional modernization process. To ensure that the outcome is the clearly expressed wishes of the people, all controversial issues must be settled by a binding referendum.

In fact, there has been a continuing call for the inclusion of referendum in our Constitution and many of the current members of the Legislative Assembly have supported this call as recorded in the Hansards of the Legislative Assembly. All constitutional reviews have heard this request, but the only result has been the mention in the current Constitution that the Government could pass a law to give effect for the conduct of a referendum. Indeed, the U.N. Resolution of October 4th 2002 states that the Cayman Islands has enacted a Referendum Law. This information is false. The Legislative Assembly passed Motion 12 of 1999 for a Bill for a Referendum Law, but this Bill was never introduced despite support from NGOs to include Initiative, Referendum and Recall in the Constitution.

In July 2003, the *Caymanian Compass*, published an article entitled “FCO Confirms UN Options”. In the article, the FCO acknowledged for the first time that there are “at least three, probably four, options for constitutional change open to the OTs.” The Cayman Islands had been under the impression that it had only two options, namely maintaining the status quo or independence. To the best of our

knowledge, it is the first time that the UK confirmed that a fourth option is available. That fourth option (as found in Resolution 2625), which we understand is: Negotiation by mutual agreement with an Administering Power may prove difficult considering there is not equal bargaining power and the U.K. has made it clear that a Bermuda-type constitution is not available to us.

What is clear, however, is that none of the above options were ever disclosed to us at the time that the U.K. instigated the constitutional reform process in 2001. Last year, we indicated to the C24 that our Working Group fully supports an education campaign that informs us of all of our options to achieve self-determination. It is unfortunate; however, that in a few instances our Working Group has been met with skepticism due in large part to the title of the Special Committee of 24 on Decolonization.

We know that the objective of the committee is not independence of the colonies, but self-determination of colonies and, in fact, there have been colonies that have been removed from the U.N.'s list of targeted colonies as the U.N. has been satisfied that such colonies have achieved self-determination. We understand that the U.K. has attempted to have the Cayman Islands de-listed. We trust that any future attempts to de-list us would be completely rejected by the C24, without clear evidence as would be achieved by referendum that such actions are in keeping with the democratically expressed wishes of the people of the Cayman Islands.

In November 2003, Mr. Bill Rammell, MP, Parliamentary Under Secretary of State in the Foreign and Commonwealth Office, released a statement following the Anguilla seminar that contradicted the statement released by the FCO in July and the excellent work that had begun between the C24 and the Administering Power. In the written statement preceding the meeting of the Overseas Territories Consultative Council in London in December 2003, Mr. Rammell wrote:

“I understand that the UK Government was criticized at the UN C24 seminar on Anguilla in May (and has been since) for informing Territory governments, as part of the constitutional review process, about the options for self-determination in UN General Assembly Resolution 1541 of 1960 ie. Independence, integration and free association. The UK did not vote for Resolution 1541 and is not bound by it. Nor does the UK Government accept that it exhausts all the options for de-listing.

...The UK Government’s position on self-determination is clear. It is for Territories to decide whether they want independence; if so, and provided that there is a broad majority in favour, we would not stand in the way. The exception to this is Gibraltar, given the terms of the Treaty of Utrecht. Integration, however, is not part of UK government policy and is not, therefore, on offer.

At the Anguilla seminar, there was much interest in the concept of “free association”. We welcome the fact that the Overseas Territories wish to retain their link with the UK and are proud that they remain British. We acknowledge too the aspirations in several territories for constitutional development, hence the various reviews currently underway. But the concept of free association as it is defined by the U.N. would cause us difficulty. This definition provides that a Territory “should have the right to determine its constitution free from outside interference.” On the face of it, this would mean that Territories would be able to draw up their Constitutions without the involvement of the UK Government. This would leave us in an impossible position. The UK Government would be left with continuing responsibilities while being denied any ability to ensure good governance, fulfill our international obligations or protect the British government and taxpayer from significant

contingent liabilities should things go wrong. You will understand why this is unacceptable. It is certainly not the partnership envisaged in the 1999 White Paper.

The constitutional review discussions underway in several territories allow us to discuss the proper balance of responsibilities between us. Most territories already have considerable control over their domestic affairs: the issue really turns on the extent to which the U.K. Government needs to retain sufficient reserved powers to discharge its overall responsibility for the territories' good governance and compliance with international obligations (and to protect key values such as the independence of the judiciary, and the political impartiality of the public service, including the police). Different circumstances will apply to each territory: Constitutions will not necessarily be uniform."

The NGO Working Group immediately transmitted a copy of Mr. Rammell's statement to the C24 for a response since it appeared that the U.K.'s position differed quite dramatically with the UN's Resolutions. In a letter to Mr. Rammell from the Chairman of the C24 dated 3rd December 2003, Ambassador Huntley responded:

"If all U.N. members were to claim to not be bound by Resolutions for which they did not vote, then the U.N. could not function. In fact, the U.K. was one of the authors of the resolution and, in particular, the concept of the three options. Its abstention during voting was only linked to disagreement with the issue of transmission of information." (SC24/46/03)

The C24 also differed with the U.K.'s interpretation of free association stating that:

"It is unfortunate that the U.K. still wants to limit the options facing the Territories to gaining independence or maintaining the status quo. We have pointed out and wish to emphasize that the "free association" option offers the flexibility to allow both parties – the Territories and the U.K. – to achieve their objectives."

Responding to Mr. Rammell's statement, our Working Group in a letter dated the 5th December 2003 strongly refuted the various points that were raised by Mr. Rammell, particularly in relation to the options for self-determination. In our six-page response, we concluded after citing numerous U.N. documents that the U.K. now needed to explain their conflicting and contradictory positions on this matter. Attached to our presentation of today for the C24's reference are three documents: Mr. Rammell's statement, C24 Chairman Mr. Huntley's response and our Working Group's letter to Mr. Rammell.

To date we have not yet received a response to our letter.

Among the points in our letter, we reminded Mr. Rammell that the UK is also signatory to both the UN International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights which states:

"All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual

benefit and international law. In no case may a people be deprived of its own means of subsistence. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination and shall respect that right, in conformity with the provisions of the Charter of the United Nations. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant. Each State Party to the present Covenant undertakes: To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;”... (Articles 1&2)

We believe this effort by the UK to circumvent its international obligations demonstrates why our Working Group is appealing to the C24 to remain steadfast in its commitment to continuing dialogue and discussions with the Administering Power and the OTs.

In May 2004, Lord Davies of Coity, the Chairman of the Cayman Islands All-Parliamentary Group, in a speech in the British Parliament, called for a “rebalanced” constitutional relationship between the UK and the Cayman Islands. “Handled with care and goodwill, this can lead to improved constitutional advancement without damage to the relationship with the UK,” he said. Lord Davies defended Cayman’s rigorous financial regulatory regime and its commitment to implementing international financial measures including the OECD and Financial Action Task Force initiatives. Lord Davies continued to say:

“There is no doubt that, if there is not measured progress towards democratic accountability and elements of internal self government, there is a risk that the demands for full-blown independence will become much greater. As different levels of internal self-government already exist among different territories, there is bound to be a feeling of some unfairness and a desire on the part of some territories to catch up.”

Because the constitution of a country is its supreme law, no effort must be spared to encourage and ensure that the people exercise their democratic right of self-determination in developing modern democratic constitutions which have open, transparent and accountable government as its stated goal. The implications for the people are too significant to be ignored and too complex to be properly dealt with by any single individual, party or group. The process demands partnership, consultation and agreement at all levels, and must incorporate a comprehensive public education campaign, which fully informs the people of the OTs of their inalienable right to Self-Determination.

In this regard, the U.N. and the U.K. must be prepared to fulfill their international obligations by providing the necessary assistance to the Cayman Islands and other Territories as required by various UN resolutions and reaffirmations. The expertise available in the OTs must also be galvanized through partnership, participation and the sharing of information and ideas. It is in this spirit that the NGO Working Group wishes to inform the C24 of its intention to host a Constitutional Forum for the British Overseas Territories in September. The objective of the forum will be to facilitate the efforts of the C24, HMG and the Overseas Territories by engaging in further discussions and educating the people of

the options available. We see this conference as another important step in keeping with the C24 action plan.

The NGOs fully endorse the work of the C24 in recognizing the deficiencies of past constitutional reviews by HMG and putting those behind us, to establish not only a defined process but also a schedule to move the constitutional status of the Cayman Islands forward as outlined by the C24 at the Anguilla seminar in May 2003 and in subsequent meetings and correspondence. We believe that our efforts would be in keeping with your stated objective of eradicating colonialism by 2010. Our Working Group shares the concern of the Chairman that if the process is not expedited the C24 will not accomplish its objectives and will need to extend the work of this committee for another decade. Mr. Chairman, we are encouraged by your commitment to continue the progress started in Anguilla by working with the U.K. and the Territories to reach a satisfactory solution that would take care of the aspirations of the people and address the concerns of the Administering Power. The ball is certainly in the court of the C24 to act and we look forward to the Committee's participation, beginning with the September forum in the Cayman Islands.

Recently, we obtained and reviewed a copy of the above noted Working Paper on the Cayman Islands. This paper includes important information about constitutional, political and legal issues, economic and social conditions, the position of the Administering Power and relations with international organizations. We have identified some important errors and omissions in the report and we plan to submit this information to the C24 at a later date.

We respectfully recommend that the C24 updates its website to include all documents relating to the work of the Special Committee so that the OTs and others interested in Self-Determination and Decolonization can remain informed. Documents released at the regional seminars should also be posted on the U.N.'s website.

UN Secretary General Mr. Kofi Annan on 19th May 2004 in a message to the C24's Pacific regional seminar stated that "...more effort is needed for decolonization..." and that it was "...up to the United Nations and the international community... to support the political, economic and social advancement of the Non-Self-Governing Territories in their quest for self-determination..." We fully agree with Mr. Annan's statements.

We would like to end our presentation with a note of optimism. In a recent statement at the country conference for the University of the West Indies in the Cayman Islands, His Excellency the Governor Mr. Bruce Dinwiddy, CMG, acknowledged that there is a need for a new template and more discussion between the U.K. and its OTs to address constitutional matters.

Baroness Scotland has also advocated a strong position on Self-Determination and constitutional change when she declared:

"Constitutional change is not a matter to be entered into lightly. There must be full consideration and consultation across political parties, and the community as a whole, as well as with HMG. We stand ready to consider ideas that have been fully discussed locally, and command wide local support and are appropriate, realistic and compatible with our international obligations and consistent with good government... Our commitment to maintaining the right of Self-Determination is unshakable."

The people of the Cayman Islands are equally unshakable in their commitment to develop a modern democratic constitution while maintaining and exercising their inalienable right to Self-Determination, in the spirit of true partnership and in compliance with international obligations under which all parties are bound.

We firmly believe that in the process of decolonization there is no alternative to the principle of Self-Determination, which is also a fundamental human right.

Copies of this presentation are available online at www.caymanchamber.ky or by contacting:

Mr. Wil Pineau
Secretary to the Working Group
P.O. Box 1000 GT
Grand Cayman, Cayman Islands
Telephone: 345 949-8090
Facsimile: 345 949-0220
info@caymanchamber.ky