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## ***“Self-government in the Cayman Islands: The Perspective of Non-Governmental Organisations (NGOs)”***

*Delivered by Mrs. Sophia Ann Harris, President-Elect, Cayman Islands Chamber of Commerce to the United Nations Special Committee of 24 on Decolonisation on 12<sup>th</sup> June 2003 at the United Nations in New York City, New York*

The following is a presentation that was made in Anguilla in May 2003, at the invitation of the United Nations Committee of 24 to the Cayman Islands Chamber of Commerce.

We have been asked to speak on the topic of “Self-Government in the Cayman Islands: The Perspective of Non-Governmental Organisations”.

In so doing we feel that it is first necessary to give some background information on the Cayman Islands. Although the Cayman Islands is classified as a Non-Self Governing Overseas Territory under the administration of the United Kingdom of Great Britain and Northern Ireland, since 1831 the inhabitants of the Cayman Islands have been governing themselves, creating its first form of Legislative Assembly to enable them to enact laws better suited to the particular needs of the Islands and its people.

The Cayman Islands emerged as an important offshore financial centre in about 1966, and has for the past 20 years been recognized by the international community as being one of the premier offshore financial centres. It is presently ranked as the fifth largest financial centre in the world.

The territory is presently host to approximately 500 banks including the top 100 US banks and 47 of the world's 50 largest banks. Our sophisticated infrastructure, which includes the top 4 accounting firms and internationally reputable law firms, has enabled the Cayman Islands to remain on the cutting edge and leaders in the industry.

In addition to our tourism, the financial industry has enabled the Cayman Islands to be recognized as having one of the highest standards of living in the world. As a



result when compared even to other first world countries, the Cayman Islands has a low ratio of crime, unemployment and social disharmony, which coupled with its economic strength, makes it quite unique. All of this without any direct taxes or social security. This explains why out of a population of 39,410, Caymanians make up only 53 per cent of the population, as it is clearly a jurisdiction of choice to reside in. For professionals employed in the Cayman Islands the salaries are comparable to those paid in New York and London. At the same time Cayman has implemented legislation, that is unparalleled by many of its competing onshore financial centres, to make it one of the most well regulated financial jurisdictions in the world.

Notwithstanding that we are not a Self-Governing Territory, Cayman has over the years developed a plan to virtually create itself out of nothing, with almost no aid or input from the United Kingdom Government over the past 6 decades, and has become a stable and sound financial centre. Based on the aforementioned it is clear that Cayman has done much right in its own development.

How does one then address the issue of Self Government of a Non-Self Governing jurisdiction, where that jurisdiction in question has enjoyed much success under its present system? For the record and as the representative of the Cayman Islands Chamber of Commerce, I must make it clear that according to a survey of our members, our membership has indicated that they do not want or support any movement at this time for independence. Indeed, the stability and legal system under the United Kingdom during the early years of our development did much to instil confidence in the minds of foreign investors and we are cognizant of this. The UK appointed Commissioners also reported that they were of the opinion that the people of the Cayman Islands did not support a move to independence. That being said however, for the first time, it seems that Cayman is at cross roads and must stop and ponder the question very carefully, as it has much to lose if the wrong path is taken.

There has been much development over the past 10 years that would have a significant impact on the continuing success of these small Islands, especially in view of the fact that there is clearly no level playing field. The United Kingdom's 1999 legislation, called the "Partnership for Progress and Prosperity: Britain and the Overseas Territories" referred to as the "White Paper", required its Territories to amend their legislation on certain key issues including human rights and the regulation of the financial services to meet international standards.

As a result the then Governor appointed a Constitutional Review Commission in Cayman, which prepared a report, including a draft constitution, which was subject to an extended period of public consultation and debated in the Legislative Assembly. It was forwarded to the Foreign and Commonwealth Office in London. Although there was an effort to involve the public in the process, the Chamber of Commerce and its Constitutional Review Task Force identified that there were some segments of Cayman Society that still appeared daunted or uninterested by the process and were unlikely to become involved.

The Governor-appointed Commission itself acknowledged that "while we consider the number of registered electors who have attended our meeting, or made written submissions, or who have answered our questionnaire, to



be generally disappointing it is symptomatic of the reluctance of most Caymanians to make their views publicly known and to disclose their identities publicly even when there are major issues at stake...”

It is important to remember that this call for a review of our Constitution was not by the people of the Cayman Islands but by the UK Government. Although Caymanians have indicated concern with some of the provisions in the draft constitution submitted by the Commissioners and the process by which the draft constitution has been implemented, they have indicated that in principle they have no objection to implementing a Bill of Rights. It is not clear by which means a general consensus of the people has been obtained in accepting the proposed changes to the constitution.

What is clear, however, is that the UK Government has indicated that there are certain changes that must be effected, which we have been advised are in keeping with their “international obligations” regardless if it conflicts with the will of the people, notwithstanding that it is evident that the people of Cayman are most capable and the best suited to determine themselves the best direction for its governance. What appears to then be the case is that all submissions and proposals made to date in relation to our Constitution have been at some level constrained by limitations imposed by the UK Government and may not therefore accurately reflect the desire of the people of the Cayman Islands.

We have been labouring for generations under the impression that we did not have the absolute right to self-determination as an Overseas Territory. Of particular interest, for example, are the wide-ranging powers of the Governor and his 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 thus Self Government and which includes limited powers of the Governor.

We have been advised that should we seek a similar constitution, which provides for this level of Self-Government as an Overseas Territory, we must also take the necessary measures to move towards independence.

In the Foreword by the Foreign and Commonwealth Office Secretary in respect of the White Paper, Sir Robin Cook states that “our partnership must be founded on self-determination”. However it then becomes quickly apparent, from his own words, that such self-determination includes either choosing independence or conforming to the will of the UK, which we accepted to be our only available options.

After lengthy negotiations since 2000 in respect of the OECD, the FATF, FSF and the KPMG report, all of which have culminated in the Cayman Islands being more regulated, indeed some may say over regulated, in relation to its competing onshore jurisdictions (which of course includes the UK) the UK Government then indicated that we were required to implement the EU Tax Saving 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 industry. There was also some concern that the initiative was designed to save the London Bond Market, to our detriment. 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" (referred to in House of Commons as their "Nuclear Option").

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, agreed however that.... "in requesting the establishment of a Partnership Working Party and identifying a relevant and appropriate subject matter for discussion within the framework of such a forum the convening of such a forum by the Commission which is charged ....with chairing inter alia Partnership Working Parties and providing their secretariat is mandatory".

Whilst grappling with the UK on the Issue of the EU Tax Savings Directive, earlier this year the trial that has come to be known as the 'Euro Bank Trial', collapsed in a most spectacular way.

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 Attorney General, 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 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 Governments involvement. 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's relationship with the Cayman Islands.

Without getting into any further detail, in this presentation, on the Euro Bank trial, it is understandable that all confidence in the Attorney General by the Government and indeed by the people of the Islands was lost, which resulted in the financial industry, including the Cayman Bar Association and the Law Society, calling for his resignation and, of most concern, the Cayman Government refused to sit in the Legislative Assembly with the AG, who is included as part of the Executive Council under our constitution. The UK Government has indicated in its Parliament that the Attorney General was without fault in this matter. We understand the UK Government's



position on this, given the fact that the orders to the Governor, the Attorney General and the head of the FRU originated from them.

In March of this year we read with dismay that the UK Government has ruled out giving House of Commons representations to its 14 Overseas Territories, including the Cayman Islands as it was not the UK Governments policy to do so and at present “there aren’t really prospects of looking at that”.

Consequently, and of most importance, the people of the Cayman Islands have now had to take stock of the “Partnership for Progress” that it has with the UK Government. The timing of Ambassador Huntley’s visit from the UN was most fortuitous. It was not until Ambassador Huntley addressed us, that we were advised as to the full meaning of our inalienable right to self-determination, i.e. self-determination without limitations imposed on the Islands that do not conform to the will of the people of these Islands, which was not disclosed to us in the White Paper.

It is important therefore for these Islands, that the United Kingdom acknowledge that there is indeed an inalienable right to self-determination available to us, before the Islands are able to address the issue of Self Government in any form. In view of the fact that the Islands have successfully governed themselves with little aid from the UK since 1831, have enjoyed a tremendous level of success as a result of its own decision making, and are not fiscally dependant on the UK, but feels that the time for its independence has not yet come, it is not inconceivable that the Cayman Islands should be able to request and receive a constitution that is in keeping with the will of Caymanians and if that includes a constitution similar to that of Bermuda’s, then so be it.

In December 2002, just before the outcome of the Euro Bank Trial and the Court hearing on the EU Tax Savings Directive, in response to the White Paper and our then Governors challenge to the Commissioners to “ensure the Constitution’s compatibility with the present aspirations and expectations of the people of these Islands” in the opening remarks of the representative for the Cayman Ministers Association it was stated that “ the Cayman Ministers Association embraces these thoughts and we have approached our contribution on the Draft Constitution with an open mind accepting that the UK Government stated intentions are genuine and generous in that they give the OT’s the opportunity to participate fully in the development of their own Constitution...” It is hard to imagine that, under the current climate of our recent experiences, the Ministers Association or indeed the people of these Islands, would take such a trusting approach, particularly as the UK has now made efforts to delist the Cayman Islands from the UN’s list of territories for decolonization.

How then do we move forward? Our membership has made it clear that they do not want independence. Having regard to the importance of our constitution and the ever growing need to modernize it, to ensure not only the good governance of the Islands but the preservation of the Caymanian people, and taking into account the unique development and challenges of these Islands, where over 45% of the population are expatriates, it may be that, upon a confirmation from the UK Government that, we indeed do have the right to self determination, that the Constitution should be the first item to be addressed by the Caymanian people.



We may all however have to recognise from the outset, that laws and measures used to govern a country or countries that have evolved over the centuries, with a populous of millions, will not necessarily work for an Island in the Caribbean which has clearly evolved differently, with a populous of 40,000 and one should not seek to impose such measures unless it is in keeping with the will of those people.

It is evident that the education of the people is of paramount importance, to enable them to make informed decisions. It became evident to us after Ambassador Huntley's visit that, to date, we have only been provided with limited information in respect of our rights. The Chamber to this end welcomes the UN's generous offer to assist in the education process so that all options are weighed and measured before taking any action that could affect generations of Caymanians to come. In the building blocks of a democracy it would also be an inevitable obligation, once the education and evaluation of all options have been exhausted, that the views of the majority of the Caymanian people be carried out and it may be that a referendum of the electorate would be the only way to definitively measure such will.

In this regard I would be remiss if I failed to mention that there has been a significant call for a referendum on the issue of constitutional change. We have been asked by other NGO's\* to provide their written reports to this committee on this issue for your consideration. It is also noteworthy that our current constitution provides for the enactment of a Referendum Law on such matters that are resolved by the LA to be of national importance, which has never been enacted. The Commissioners in their report do recommend that the enabling legislation be enacted at the earliest opportunity. It has been noted that the UN Resolution of 4<sup>th</sup> October, 2002 states that the Cayman Islands have a Referendum Law and this is therefore not accurate.

It may be that in advising us, the UN may also make similar recommendations to the Commission in this regard.

Sir Robin Cook states that the Overseas Territories must exercise the greatest possible control over their lives and that they are beacons of democracy...and in the White Paper it is stated that "their relationship to the UK is significant but so too is their individual character and diversity" and "we must have a substantial measure of responsibility to run our own affairs".

We agree entirely with these sentiments and look forward to working with the United Kingdom with a view to achieving the will of the people of the Cayman Islands, in the best interest of the Cayman Islands.

Since our return from Anguilla, the response from the public has either been supportive of our efforts or alternatively, where there has been misinformation as to the objectives of the Special Committee of 24, we have been met with suspicion as a result. Of some concern also is the scepticism that the UN's own relationship with the UK will be significant and robust enough to assist us in our own endeavours to achieve the true will of the people of the Cayman Islands and to ensure the UK conforms to its declaration of self determination for its Overseas Territories under the UN Charter.



In any event we remain hopeful that the UK Government will value its own relationship with the Cayman Islands and work with us in this process.

**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, (the first female president in the Cayman Islands). 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.

**About the Cayman Islands Chamber of Commerce**

The Chamber of Commerce is the largest business and community-based organisation in the Cayman Islands with representation from all industry sectors. The Chamber was established in 1965 with the central objective to promote and protect the trade, business, commerce, agriculture, industries, manufactures and public welfare of, and in, the Cayman Islands. The organisation also considers, discusses and takes action on questions directly or indirectly relating to, or affecting, business and the public welfare in the Islands. Through our membership, the Chamber represents over 650 businesses across the three islands, including the top 25 companies, over 150 businesses employing between 20-100 people, and nearly 400 enterprises employment less than 20 people. This makes the Chamber the largest and most representative organisation in the Islands.

*\*Four non-governmental organisations have reviewed and support the contents of this presentation, including the Cayman Islands Chamber of Commerce, Cayman Ministers Association, Concerned Citizens Group and the People for Referendum. Mr. Vaughan Carter, a lecturer at the Cayman Islands Law School, who specialises in constitutional law, also provided information for this paper.*