



House of Commons
Foreign Affairs Committee

Overseas Territories

Oral and written evidence

Tuesday 11 December 2012

Mark Simmonds MP, Parliamentary Under-Secretary of State, Foreign and Commonwealth Office

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The Foreign Affairs Committee

The Foreign Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Foreign and Commonwealth Office and its associated agencies.

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Oral evidence

Taken before the Foreign Affairs Committee on Tuesday 11 December 2012

Members present:

Richard Ottaway (Chair)

Mike Gapes
Mark Hendrick
Andrew Rosindell

Mr Frank Roy
Sir John Stanley
Rory Stewart

Examination of Witnesses

Witnesses: **Mark Simmonds MP**, Parliamentary Under-Secretary of State, Foreign and Commonwealth Office, **Peter Hayes**, Director for Overseas Territories, FCO, and **Tim Colley**, Deputy Director for Overseas Territories, FCO, gave evidence.

Q1 Chair: I welcome members of the public to this sitting of the Foreign Affairs Committee. This is a one-off evidence session on the June 2012 UK Government White Paper entitled, “The Overseas Territories: Security, Success and Sustainability”. The White Paper is the first on the Overseas Territories since 1999.

I am particularly pleased to welcome Mr Mark Simmonds, the Parliamentary Under-Secretary of State at the Foreign and Commonwealth Office, who has responsibility for most of the Overseas Territories and is happy to answer questions on all of them, as I understand the situation. Minister, welcome. Is there anything you want to say by way of an opening statement? I have a fairly general question to start with, which might be a hook.

Mark Simmonds: May I begin, Mr Ottaway, by saying how pleased I am to be here before your Committee? I also thank both you and the Committee for allowing me to rearrange this evidence session, because I had to disappear off to Africa at short notice. I very much appreciate the flexibility. If it would be helpful, I am happy to make a few opening remarks—

Chair: May I stop you, Mr Simmonds? I am sorry, but there is a technical problem and no sound recording going on, so there might not be a transcript. The session is suspended briefly, while we make a phone call.

Sitting suspended.

On resuming—

Q2 Chair: Order. The sitting will resume. I advise colleagues, however, that every microphone is live. Normally, it is only the microphone in front of you, being controlled by the engineer. The request is to try not to rustle papers and for only one person to speak at a time—which of course is how we always conduct our affairs here.

Minister, deep apologies for the interruption. You were just explaining that you had to go off to the Congo when you were last scheduled here.

Mark Simmonds: I was, Mr Ottaway. I wanted to place on the record my thanks to the Committee for being flexible and for understanding the awkward necessities for a Foreign Office Minister on occasion.

I thought it might be helpful for me to set out briefly, for three minutes or so, some of the key aspects of the White Paper and how we intend to take them forward as a matter of priority over the forthcoming 12 months. As you will be aware, the coalition Government, as set out in the White Paper, have a very strong positive vision for the Territories. We want to assist the Territories to face the challenge together, with the UK and with each other where appropriate. We also want to build on the responsibilities that the Territories have for our relationship.

As you quite rightly pointed out, Mr Ottaway, while I have responsibility for most of the Overseas Territories, I do not have day-to-day responsibility for Gibraltar or the Falklands, although I am obviously prepared and happy to answer questions today. If I cannot answer the questions, subsequently I will ensure that the relevant Minister provides the Committee with the information.

This session is extremely timely, Mr Ottaway, because, as the Committee will know, we had a Joint Ministerial Council last week, when all the Territories leaders descended on London. We had an excellent day and a half of talks. In addition to that, we produced a very detailed communiqué which will set out the structure and the priorities for the forthcoming work streams for the next 12 months, in the run-up to the next Joint Ministerial Council. I also took the Territory leaders to No. 10 Downing street to meet the Prime Minister, which I understand is the first time that the Territory leaders have collectively met the Prime Minister.

Both those aspects send very strong messages that we are determined and keen to strengthen the ties between the UK and the Overseas Territories. At the JMC last week, eight of my ministerial colleagues participated in the discussions that we were having in certain sessions. Every Department has written a paper setting out how they are going to support the Territories. I would like, if I may, particularly to highlight the work of the Department for International Development, which has a very important and significant role in St Helena, Montserrat and Pitcairn, and their temporary assistance in Turks and Caicos as well. DFID’s support is making a real difference. Perhaps the most obvious example is the construction

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of the airport in St Helena, which DFID is not constructing but is providing the funds for.

In terms of the three key priority areas that I wish to focus on, the first is building capacity in the public services for the Territories. To that end, we have set up a Jubilee programme, worth more than half a million pounds, enabling Territory officials to complete secondments in the UK and enabling UK experts to go into the Territories. I was delighted that Premier Ewing from the Turks and Caicos Islands was able to join the Joint Ministerial Council. I was also pleased to be able to visit the islands for the first time after the elections that took place on 9 November and the successful reinstatement of democracy and a fully-functioning Administration in the Turks and Caicos. A joint written ministerial statement by myself and the Minister of State at the Department for International Development was placed this morning about the progress that has been made in the Turks and Caicos Islands since the suspension of the Administration back in the summer of 2009.

The second key area that I am keen to focus on is protecting the environment—again, a key plank of the White Paper—and how we are focusing on delivering the more strategic, long-term benefits, particularly through a more co-ordinated approach through the UK Government. The Darwin Plus fund is a very good example of that, where funding comes from the FCO, the Department for Environment, Food and Rural Affairs and the Department for International Development. If the Committee is interested, we can get into some of the detail of that.

The third area is the very important area of delivering more trade, economic ties and investment to benefit both the Territories and the UK. In the visits that I have had to the British Virgin Islands, Anguilla, and Turks and Caicos since I was appointed, as I see it, there are significant opportunities for UK businesses across a whole range of economic sectors, not just in those sectors where the economies are already strong, but also perhaps in assisting some of the Territories to diversify their economic base.

The final remark I would like to make is to underline that the Territory relations with the UK Parliament are critical. We said in the White Paper that we would welcome greater engagement between the UK Parliament and the elected bodies in the Territories. I would certainly be interested to hear the Committee's thoughts on how we might develop that thinking and how we might strengthen links between the elected representatives in the Territories, both to develop their parliamentary skills and to create links. I know that there are a number of extremely active all-party parliamentary groups, which take a very specific interest, and there is a very active Overseas Territories group. I am looking at whether we could do more in addition to what is already happening.

The second area on which I would very much value the Committee's thinking is this: we said in the White Paper that we wanted to update Parliament regularly on progress with the White Paper and, as I said, we put a written ministerial statement down this morning about progress in Turks and Caicos, so I wonder whether it would be a good idea, for example, on an annual basis to lay a written ministerial statement

about the progress made in the previous year, attached to which is the communiqué that comes out of the Joint Ministerial Council. I am quite keen on that, but would value your thinking on it.

Mr Ottaway, I shall be pleased to answer any and all questions you may have.

Q3 Chair: Mr Simmonds, thank you very much. We will mull over that last suggestion. It sounds quite a good idea on the face of it, but let's think about it a bit harder.

In very general terms, to what extent have you managed to ascertain the opinions of the citizens of the Overseas Territories? Has there been any consultation exercise on the White Paper?

Mark Simmonds: Certainly a very extensive consultation took place while the White Paper thinking was going on, not just with the senior politicians in the Territories but with a broader cross-section of civil society and other interested parties—business, for example. However, it needs to be remembered that not all the Overseas Territories are inhabited, so there are other parties that need to be involved; environmental NGOs are a very good example.

Certainly since I have been in this post, in the visits that I have made to the Overseas Territories, I have made it a key part of my programme to discuss—clearly with elected politicians, but also with a broader section of Territories society—views on the Territories' direction of travel and on the White Paper; people's views on the UK and its relationship with the Territories; what we are doing well and what we can improve. I think one of the complex issues that is quite difficult to analyse is that there is not necessarily commonality of view either within a particular Overseas Territory, or indeed between the Territories. They are all very individual; they are all different and they all require different support from the UK Government across the widest possible number of Government Departments. So each Territory needs to be treated—as they are—as an individual.

Q4 Chair: Can we explore the direction of travel of this White Paper? You described it as endorsing and building on the previous 1999 White Paper that your predecessor published. Is it fair to say that this is marking no major changes at all from the past?

Mark Simmonds: I would argue that, while the new White Paper brought out in June this year was building on the '99 White Paper, there was no doubt that the Overseas Territories felt that they were unloved. They felt that the links between the UK and the Overseas Territories were not strong enough and there was insufficient interest in the Overseas Territories from the UK. Certainly the White Paper released in June was driven by trying to address all those concerns.

I think the other aspect I am keen to put on the record is that, with one or two notable exceptions among individuals, I have picked up enthusiasm from the Overseas Territories both about the positive relationship that they want to have with the UK, and about their wish to strengthen the relationships between the Overseas Territories and the UK. The

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point of saying that is that it is not just a one-way street—it is not just us wishing to impose our thoughts and priorities on the Overseas Territories. It is very much the Overseas Territories wanting to strengthen their relationships with the UK as well and benefit from the whole range of issues that the White Paper talks about.

Q5 Chair: You made it quite clear that in one respect you are happy to have a more interventionist approach—say, when it comes to financial mismanagement—but would you intervene if you felt that a Territory was failing on health services or education services?

Mark Simmonds: Perhaps I can answer that question in two ways. The first is to say that part of strengthening the relationship between the Overseas Territories and the UK is developing the economic base to enable economic growth, economic development and job creation; and a prerequisite of that is responsible financial and fiscal management. That is why, where appropriate, the Foreign Office has insisted that this is enshrined both in the constitutions, where relevant, and into local legislative structures. That has happened in the British Virgin Islands, the Turks and Caicos Islands, and recently in Cayman; and we are still hoping that it will be put in place in Anguilla, as well. I think that is an important prerequisite. It also enables us to keep perhaps a closer eye on budgetary arrangements and on the relationship between debt and revenue, and local and Overseas Territories GDP, which is one of the things that went wrong in Turks and Caicos back in 2008–09 and the immediate period prior to that.

I wouldn't say we are more interventionist. We don't want to run the Territories from the Foreign Office; we want the Territories to run themselves, but we want to assist in giving the Territories the appropriate tools they need to enable them to do that.

Forgive me, what was the second part of your question?

Q6 Chair: Whether you would intervene if health services were failing.

Mark Simmonds: Yes. Public services such as health and education are a responsibility of the individual Territory; they are not a responsibility of the UK. Certainly one of the discussions that I have been having with senior politicians in-territory, is how we can help build capacity in those public services, both in health and particularly in education, by linking with educational or health establishments in the UK.

One of the interesting sessions that we had at the Joint Ministerial Council was when the Parliamentary Under-Secretary at the Department of Health came to speak and answer questions. One of the issues that emanated from that—amongst other things—was whether there were stronger links that could be created between health institutions here in the UK and some of the health institutions in the Territories. It does need to be said—particularly in regard to health care—that health care in some of the Territories is not funded on the same basis that we fund health care in the UK. There are private sector operators rather than

a national state system, which makes meshing those two together quite complicated.

Q7 Rory Stewart (Penrith and The Border) (Con): Minister, you have spoken about strengthening links, the UK's responsibility for the Overseas Territories, and the Overseas Territories wanting more influence on Britain, so when are we going to give them representation in the UK Parliament?

Mark Simmonds: That is a very good question. From my conversations with people in the Overseas Territories, I don't detect any desire to move in that direction, either in the political class in the Overseas Territory or in the broader civil society. I suspect that you are thinking about the possibility of discussing moving to the French model, where they have direct elected representatives. Of course, there is a nervousness, particularly in some of our Territories, about what would go alongside direct representation to the UK Parliament. There is a nervousness that it would mean taxation from the UK Parliament. Some of the Overseas Territories, particularly those that have very strong and thriving financial services sectors, where they benefit from setting their own taxation rates—we can talk about the regulatory structures later, if you wish—are very reliant on the income that comes from those financial services sectors to enable them to provide public sector services within the Territory, and are therefore not financially reliant on the UK. I think that is a healthy thing.

Q8 Rory Stewart: In your White Paper, you said that the Overseas Territories are a responsibility across Whitehall rather than just of the Foreign Office. What steps are you taking to make this work in practice? What changes are you introducing to make it feel like more of a responsibility across Whitehall?

Mark Simmonds: There has been very significant engagement by all Government Departments as they relate to the Overseas Territories since the White Paper was produced. Every Government Department has set out a paper detailing how they can assist the Overseas Territories. A significant number of my ministerial colleagues from a range of Government Departments came to the Joint Ministerial Council during the course of the week, heading up sessions from a range of areas—not just Health, but the Ministry of Justice, DCMS and DEFRA; and Treasury were involved in a subsequent separate meeting—to really try and drill down into some of the detail of how we can assist building capacity in the Overseas Territories. It is not just about funding, although that is a part of it, through various schemes; it is also about building capacity.

I can give you a specific example. On 12 October¹, I opened and chaired, to begin with, the first meeting of all the Overseas Territories' heads of public services. Our own Sir Bob Kerslake, the head of the civil service here, spoke, and they had a series of sessions, not only learning from what the UK has done—we are undergoing a significant civil service reform in the UK as well, so we have an enormous

¹ Note by witness: the reference to 12 October should be to 16 October

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amount to exchange; it is not just one-way traffic—but also learning best practice from each other. For example, there were things that the British Virgin Islands have been doing and that have been put into place by the interim Government in the Turks and Caicos Islands, which other Overseas Territories are really quite interested in talking about in some detail and possibly putting into place in their individual Territories as well.

Since the White Paper came out, a significant amount has been done across Government Departments. If you have time, Mr Stewart, I would suggest that you look at the very detailed communiqué that came out of the JMC last week, which details a series of follow-up and

action points, some of which are to be discussed during the course of the year. They are not just about the Foreign and Commonwealth Office; they cover a range of cross-cutting and individual Government Departments.

The final point I want to make is to re-emphasise that we are reacting to the priorities of the Overseas Territories' requirements, rather than trying to impose from the outside what we think is relevant. It is really a partnership that we are trying to develop and build.

Q9 Rory Stewart: The communiqué sets out a positive vision of what might happen in the future, but what is your sense of our performance in the past? What do you think the track record has been over the past 12 years, for example, of the Consultative Council? How much has it actually achieved?

Mark Simmonds: I think it has been mixed, to be honest. When I was doing this job as a shadow Minister, I attended the council—I am not going to tell you which specific year—but I did not feel that it was really achieving a great deal. It was a series of prepared statements that were being read, and I felt then, as I do now, that there needs to be much closer engagement and discussion about how we can assist each other and work together. I think there have been successes in the past; I am not suggesting everything was wrong.

If I can cite one area in addition to the building capacity argument that I have been talking about, I think there is significantly more we can do to deepen economic and trade ties. Certainly, if you look at one or two of the Overseas Territories, the trade figures in terms of both imports and exports are far lower, in my view, than they should be, so we are right to focus on trying to develop economic and trade ties that help growth, to help with our own UK recovery as well. To that end, Lord Green and I held a meeting last Monday with all the Territory leaders and business representatives to try to get down into the nitty-gritty of exactly what it is that the Overseas Territories individually would find helpful for UK business to focus on.

Q10 Rory Stewart: To draw you back again to the past 12 years' performance, why has it been so disappointing? What are the structural, institutional elements of the design that mean that not much has been achieved through these mechanisms for the past

12 years? For example, what status do action points have that come out of that meeting?

Mark Simmonds: The JMC meeting?

Rory Stewart: Yes.

Mark Simmonds: There are two or three things. The challenge of the past 12 years has perhaps been that there has not been sufficient follow-up on the council meetings. One of the things that we were determined to do this time was to have a detailed communiqué with action points that would then be developed by the Foreign and Commonwealth Office and other relevant Government Departments into workstreams with the relevant Overseas Territories, and to work up those ideas over the next 12 months to deliver them, rather than just to discuss them, which I think is important. I also think that there has perhaps been insufficient focus in the past, not from the Foreign and Commonwealth Office, which I think has always been focused on the relationship with the Overseas Territories, but perhaps from the broader Government agenda. I will give you an example: one of the challenges that many of the Overseas Territories face in developing their economy is expensive fuel—most of them import diesel—and I think that there is an opportunity to reduce those energy costs by facilitating and encouraging through UK businesses the Territories having a broader energy mix that includes renewable energy. Clearly, DECC and DEFRA have a significant knowledge base, contact base and involvement in that type of agenda. That is something we are working on across Government Departments in conjunction with the Overseas Territories and those who are keen to engage with that particular agenda. I do not think that sort of forensic, cross-departmental focus has happened enough in the past, and the White Paper was a very useful catalyst to enable and give a focus and drive for Government Departments to engage with that important agenda.

Q11 Rory Stewart: To conclude, if you are in front of us again in 12 months' time, how many of the points in your communiqué do you think you will have followed through on? Are we going to be able to assess you in 12 months' time and see whether you have achieved what you have promised to achieve?

Mark Simmonds: Yes, that may be a very good idea. It obviously depends on the Committee's programme, but I would be very happy to come back this time next year to discuss the progress on the communiqué. I hope that progress will have been made on all fronts. Whether we will have achieved everything we want to achieve in the 12-month period is questionable, because, as you will have seen, there is an enormous agenda to cover, but certainly I would hope to be able to come back in 12 months' time and to explain, if we haven't achieved all our goals, why we have not done so and to give very good reasons. I certainly do not want to get into a situation where the communiqué from next year's Joint Ministerial Council is the same as this year's communiqué. The agenda continually needs to move on, and we continually need to ratchet up the engagement in a positive direction in all the areas we are keen to cover.

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Q12 Andrew Rosindell: Minister, I think it is refreshing that the Government are now genuinely taking an interest in the Overseas Territories and treating them in a way that is more like they are British than foreign. However, the one message that came out of our meeting last week with some of the Overseas Territories' Heads of Government—we had three of them at an informal meeting—was that they are still not really sure, even after the Joint Ministerial Council, whether they are actually properly British or foreign. We know they are not Commonwealth, because they cannot join the Commonwealth, but where do they really fit in our British constitution? Is it the Government's intention to truly treat them as equal British subjects, or are we always going to treat them as a little bit distant from the British state and constitution? Where are we going on that one?

Mark Simmonds: I think each Territory has a slightly different take on the response that they would want me to give on that. We are keen to continue the relationship for as long as the people living in the Territories wish to stay linked to the UK. Obviously their self-determination underlines all that.

The question of sovereignty is specifically key in terms of self-determination. In terms of citizenship, as I said before in reply to Mr Ottaway's question, there is tension and nervousness about the Overseas Territories wanting, from their perspective, to be holistically part of the United Kingdom and therefore having to accept everything, including taxation and all the other issues that we know about, about being part of the United Kingdom. I think the Territories very much value their independence and their governance structures in terms of the responsibilities they have, and as I said earlier, I have not picked up any ambition or aspiration to have direct representation or to be controlled from the United Kingdom at all. That is certainly not our agenda, either. Our agenda is very much about, in partnership, providing them with the capacity and the ability to govern themselves to the maximum amount possible.

Q13 Andrew Rosindell: If you are from the Faroe Islands, you have autonomy and self-government. If you are from a French or a Dutch colony, you also have autonomy and self-government. They all have settled arrangements, depending on the type of self-government they want, but they also elect representatives to their own sovereign Parliaments. We do not do that. We are the only former colonial power that denies our British citizens the right to vote in elections for the Parliament that ultimately governs them, can declare war on their behalf, makes foreign policy and signs treaties on their behalf, and can ultimately make practically any decision, including to close down their Government, as we did in TCI, and directly rule them. Yet we deny them any right to vote or have any form of representation. Minister, we do not even allow them to have a Standing Committee of Parliament to which they can come and make representations. They have to come through the Foreign Affairs Committee, even though they are not foreign. How do we resolve this situation? How do we square that circle?

Mark Simmonds: I do not think there is any ambition within the Territories to gain direct representation in the UK Parliament. If there is a driving force for that agenda, in my experience that has come from the UK Parliament, not the other way round. We need to respect the wishes of those who are living in the Overseas Territories.

Your second point, on the links between the Overseas Territories and the UK Parliament, is a very fair one. As I mentioned in my opening remarks, one of the issues I am keen to understand and would listen receptively to helpful suggestions on is how we can strengthen those particular links. The setting up of a parliamentary Committee to respond to the concerns and look at the Overseas Territories is, of course, a matter for Parliament and not a matter for the Foreign and Commonwealth Office.

There are interesting conflicts here. I should be interested to know which of the three Territory leaders you had in front of you at the informal session last week, because I can, in a meeting with Overseas Territories representatives, get conflicting messages in the same discussion. On one hand, they are saying, "Yes, we would like to have greater links or easier access to the UK Parliament," and on the other hand they say, "No, actually, we want the UK Parliament and the UK to back off and give us more responsibility and more power to let us get on, as democratically elected representatives of the people in the Overseas Territories, with ruling ourselves."

Of course, the challenge is trying to find, in each individual Territory, through the constitutions that exist, which are different in each individual Territory, the appropriate and right mechanism to ensure that there is financial and fiscal prudence, proper governance, security, safety and all the other important matters for which the UK is responsible.

As I said at the Joint Ministerial Council last week, I do not see the individual Territory constitutions set in stone in perpetuity. They should develop over time, as indeed they have. Most of them have been updated since 1999, although a couple are outstanding. Anguilla is perhaps the most obvious one, and we are keen to engage with the Anguillan Government, to enter discussions and start that process. That is an ongoing process. Certainly, if the desire from the Overseas Territories were to move in the direction that you are suggesting, that is something that over time we could look at.

Q14 Mark Hendrick: To follow Mr Stewart and Mr Rosindell's question about parliamentary representation in the UK Parliament, you say that there is no ambition, or perhaps no desire, that you have detected for the people of those Territories to send a representative or representatives here, but is it not a case of what you have never had you never miss, in that they will not really see the benefits of it until they actually have representatives? You have an anomalous position, for example, with Gibraltar. The south-west of England is linked to Gibraltar for representation in the European Parliament, so they have European parliamentary representation, but not representation here in the UK, which has a much closer relationship with them in many ways.

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As part justification of that position, Minister, you said that it may involve, for example, taxation coming to the UK, which is something that some of those Territories may not particularly want to see happen. Obviously, they do set their own tax rates in various places. Without naming names—you did not name names—some of the islands and Territories concerned tend to shelter what I could probably regard as slightly dodgy banking and financial services regimes, which probably could do with a bit more scrutiny from the international community, given the fact that this country, for example, spends hundreds of millions of pounds on international development for countries around the world, many of whose Governments do not draw much in the way of taxation, which would negate the need for so much international development, and many of those countries have perhaps used some of the banking and finance facilities in some of the islands that we are talking about. There may be a very strong case for some of those Territories to have representation here, and for their financial systems to undergo a bit more scrutiny than they do at the moment.

Mark Simmonds: I understand the point, Mr Hendrick, you make about the Gibraltar anomaly, and I detect the Committee's enthusiasm for exploring the possibility of Territories having direct representation to the UK. I will certainly ensure that in the forthcoming year in discussions with Territory senior politicians—both those in government and those in opposition—I shall ask even more rigorously whether it is something that they would support in the future. Perhaps I can report back next year, Mr Ottaway, on their response, but certainly from my discussions, both in-territory and in the UK, with Territory leaders and others, I have detected no ambition or aspiration to move in that direction at all.

The fear has several elements. The first is the taxation point—it is not that they would necessarily be sending taxation to the UK, but that the taxation rates in the UK would be applied to them. Secondly, they fear that the autonomy that they have across a range of very important policy areas would be subsumed into the UK national policy development and policy architecture, over which they would have very little, if any, control at all because, of course, our party political structure does not necessarily match theirs in-territory. The third thing that they would be concerned about is the imposition, as they would see it, of unhelpful legislative structures that would have a detrimental and negative impact on some of their business sectors.

Can I address financial services, which I think you were driving at, because it is quite an important area that we need to clarify? I have met on a couple of occasions the regulatory authority of the British Virgin Islands. If members of the Committee have not done so, I know that time is precious, but if the opportunity arises, please do so, because they are an extremely impressive organisation, regulated up to the standards of international financial services sectors. It states in the White Paper that both the UK and Overseas Territory Governments accept the requirements to comply with international standards, particularly as it relates to tax transparency, which is often driving this

important question that you raise, but also financial regulation and tackling financial crime. As part of a communiqué that came out of the joint ministerial council last week, these were detailed in there as commitments from the territories—

Q15 Mark Hendrick: What about banking transparency?

Mark Simmonds: That as well.

Chair: We do have a series of questions coming on finance.

Mark Simmonds: I did not want to let the opportunity pass.

Q16 Mark Hendrick: To change the subject, can you update us on the policy of Argentina with regard to south Atlantic policy? I understand that the Chairman received a letter from the Argentine embassy reminding us that the Falklands—the Malvinas, as they call them—belong to them. What is their current position?

Mark Simmonds: You will not be surprised to hear that we do not agree with the Argentine position. We are absolutely adamant that the Falklands are British. Sovereignty is not in question. Their future should be determined by the people who live on the Falkland Islands. To that end, we are extremely supportive of the referendum that they are proposing to hold in March next year. Having said that, there is no question that the Argentines are ratcheting up the rhetoric and the noise on their claims to the Falkland Islands or the Malvinas, as they call them, which is why we have put in place a continuing diplomatic task to convince countries in Latin America and in the Caribbean and others of the importance of recognising the principle of self-determination. To that end, my ministerial colleague with responsibility for Latin America and the Falklands and myself—when I am travelling in the Caribbean, for which I have additional responsibility—make the point very forcefully about the necessity and importance of recognising the principle of self-determination. One suspects that the ratcheting up of the rhetoric by Argentina has probably more to do with domestic considerations than it has with the reality of international diplomacy.

Q17 Mark Hendrick: But I understand that there have been attempts to restrict the movement of British and Falkland Islands-registered vessels in the waters around Argentina. Is there any truth in that? It is not just rhetoric; it is action.

Mark Simmonds: You will no doubt have seen in the media some reports of the blocking of Royal Navy ships from docking in some of the countries in south America, and we continue to lobby vociferously to try to change that. There isn't yet any negative impact on commercial freight in terms of docking in ports in south American countries, but we are permanently vigilant. Certainly, we are watching events very closely and, when something happens like the smashing of the ferry terminal in Argentina a couple of weeks ago, we express in the strongest terms our dissatisfaction.

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Q18 Mark Hendrick: Why is there such a long delay before the referendum? It is such a small, minuscule population that a referendum could be held next week. Given the numbers involved, it certainly does not need a lot of organisation. What is the rationale behind organising one for next year?

Mark Simmonds: The reason why it is taking a period of time is that it obviously has to be done thoroughly and properly and alongside international conventions of proper referendums. The question had to be decided upon first, which has now happened. You may think that obvious, but it has taken a little time. Currently, the Falkland Islands Government are putting in place the details for election observers to come and monitor the referendum to ensure that it is done properly and thoroughly. They want to put the rules of the referendum in terms of the campaigning rules in Falkland Islands law. That will be done by the end of the year. In January campaigning will start and they are going to set down in Falklands law what the campaigning rules are as well. So the time scale is relatively quick. Certainly the plan is for the referendum to take place in March. Just for the record, there will be some preamble and the question will be, “Do you wish to remain an Overseas Territory of the United Kingdom?” A simple yes or no answer.

Q19 Mark Hendrick: The question actually is, “Do you wish the Falkland Islands to retain their current political status as an Overseas Territory of the United Kingdom?” It is a fairly long question, but it is fairly simple as well. This surely can be sorted out very quickly. Are you in any doubt as to the outcome of this referendum?

Mark Simmonds: That is a matter for the people of the Falkland Islands, obviously. I very much hope that they will vote yes.

Q20 Andrew Rosindell: The people of Gibraltar, going back to another referendum almost exactly 10 years ago, voted 99% in favour of remaining British and to stay as a Territory of the Crown. Yet their neighbour, the Kingdom of Spain, continues to ignore the chosen wishes of the people of the Rock and continues to use lots of rather unpleasant and bullying tactics against the people of Gibraltar. The latest incidents involving the incursion of Spanish vessels into Gibraltar waters continue, yet the British Government’s response has not been nearly robust enough. Could you comment on that and can you reassure the people of Gibraltar that whatever action is necessary will be taken to repel those vessels from British waters and to protect the sovereignty of the Rock and the waters around it?

Mark Simmonds: Two or three things to say, if I may, Mr Rosindell. The first is to make it absolutely clear on the sovereignty issue: our position on sovereignty has not changed. As I said at the Gibraltar day celebrations in the City—I know you were present and I just want to reiterate it for the Committee—the UK will never enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another state against their wishes, which were made very clear back in the referendum in 2002. That is the wish of the Gibraltar people. The UK will not enter

into any process of sovereignty negotiations with which Gibraltar is not content.

In the context of that, the disputes that relate to the British Gibraltar territorial waters are twofold. The first relates to a fishing dispute. You may well recall that under the previous Gibraltar Government there was an agreement that Spanish fishermen were allowed to fish in British Gibraltar territorial waters. In March this year that was rescinded by the incoming Gibraltar Government and that has caused some anxiety among the Spanish fishermen. Some of the Spanish fishermen are keen to continue to fish even though they are not allowed in the territorial waters.

It also needs to be said that the Spanish Government do not recognise the territorial waters and they argue that because the waters were not part of the treaty of Utrecht they are therefore Spanish waters. But, contrary to that, our view is that the UN Convention on the Rule of the Sea means that the territorial waters go with the land. So we believe that we have a 3-km exclusion zone, which belongs to Gibraltar. Of course, that is disputed. By the way, the convention actually says we could go out as far as 12 km, but we don’t. We stay within 3 km. That is the first aspect.²

The second aspect, which is the more worrying, is the incursion into the territorial waters by the Guardia Civil. You will be aware, Mr Rosindell, that when the Guardia Civil enter the waters, the Gibraltar forces meet them, encourage them to leave and hang around to make sure that they do leave. That gets reasonably challenging in two ways. First, they are allowed to travel through the waters, but they must do so by the shortest route possible under maritime law. The first thing that has to be done is monitor the Guardia Civil as they are coming into territorial waters and when they deviate from that shortest route, which is not always straightforward to monitor.

The second thing, which I accept is subjective, but—I think—the right decision, is that in almost every other context of international relationships, Spain and the UK have very positive relationships, whether it be in the EU or the UN. We work closely together in parts of Africa on conflict resolution and counter-terrorism, so although we wish to be, and are, firm and determined to ensure that they understand our position and abide by international law, we are not convinced that ratcheting up either the rhetoric or—and I am not suggesting, Mr Rosindell, that you are suggesting this—moving to a more aggressive gunboat diplomacy would in fact be a positive and responsible step to take.

Q21 Andrew Rosindell: Would the Minister care to comment as to whether that view is shared by the Government or people of Gibraltar?

Mark Simmonds: There is a feeling in some parts of the Gibraltar Government that we need to take a firmer line. There have been detailed discussions between the Government of Gibraltar and the Europe Minister, who is the Minister responsible for Gibraltar,

² Note by witness: in referring to the option of expanding British Gibraltar Territorial Waters, the correct measurement should be 12 nautical miles and not 12 kilometres. In referring to the distance of Gibraltar’s territorial waters, the correct measurement should be 3 nautical miles and not 3 kilometres

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about that particular issue. All I would additionally say, in addition to what I have said before, is that we, of course, keep this under constant review and we monitor the situation very closely. At the moment, we do not feel that it would be beneficial to ratchet up the rhetoric or action over and above what we are already doing to try to ensure that Spain understands the importance of recognising the territorial waters as a sovereign part of Gibraltar.

Q22 Sir John Stanley: Minister, as you know, the Foreign Secretary made a written statement yesterday announcing that the British Government had lost its initial case against the Spanish Government's designation of a Site of Community Importance, named Estrecho Oriental, which apparently covers virtually the whole of British territorial waters. They lost their case against the Spanish Government initially in the European General Court, and then the Foreign Secretary announced yesterday that on appeal we lost our case again in the European Court of Justice. Our legal defeats in both cases were stated by the Foreign Secretary to be on technical grounds. Can you subsequently submit a paper to the Committee spelling out precisely what those technical grounds are? In addition, do you care to make a response now? Given the history of bureaucratic mess-ups in the British Government leading to losses of cases of this sort by the Government, can you tell us whether the British Government's failure in both cases on technical grounds was due to incompetence inside the administrative machine of the British Government?

Mark Simmonds: What I would prefer to do, if I may, is write to the Committee, as you suggest Sir John, with the detail of the technicalities of the court case. I have nothing further to add to what the Foreign Secretary put in his written ministerial statement yesterday, which is that despite the losses, the impact of the court case in terms of the reality on the ground is negligible. Despite the court case, we do not recognise the Spanish SCI listing. We do not recognise their attempt to designate SAC either. We have made that position clear to the Spanish Government. If, however, it would be helpful for me or the Europe Minister, who will have been following the particular court cases more closely than I have, to provide additional information to you, Sir John, and the Committee, I am happy to arrange that.

Q23 Sir John Stanley: We look forward to your explanation of the technical grounds on which we lost both cases. I think the Committee fully understands the formal position of the British Government that this does not in any way, in the British Government's view, impact on the sovereignty issue. As politicians, I think we all understand that the loss of these two cases will no doubt be used to the full by the Spanish Government, particularly in view of the fact that this SCI covers the whole of British territorial waters around Gibraltar.

Can I turn to another very important issue? Would you agree, Minister, that it is deeply, deeply regrettable that within the NATO alliance a NATO member—that is, Spain—should still be enforcing serious restrictions on overflying rights in the vicinity of

Spain and Gibraltar against the military aircraft of another NATO ally, namely, the UK, and should also be enforcing serious restrictions on naval movements by RN vessels? If you agree that that is deeply regrettable, can you tell the Committee what the British Government are doing about it?

Mark Simmonds: Yes, both of the instances you have given are regrettable. One challenge that we face, of course, is that the Spanish have withdrawn from the tripartite structure that existed before the new Spanish Government came to power, which enabled the UK, Gibraltar and Spain to discuss important issues. I can't go into too much detail today but we are trying to find ways and mechanisms to ensure that communication is re-engaged between the three partners in a responsible, sensible and structured way, which would go some way to addressing some of the points that you have highlighted.

Again I cannot go into specifics, but there have also been very high-level contacts between the UK and Spanish Governments to express our continued concern about both the issues that you are referring to and the other issues raised by Mr Rosindell. Very senior people in the Spanish Government are fully aware of our view and concern about what has been happening.

Q24 Chair: Can you add to that concern the views of this Committee? I hope the sense of frustration has come over to you. You say we have a very positive relationship with Gibraltar and you don't want to ratchet up affairs. That is probably the right approach but there will come a moment when we can no longer just stand by and see people dependent on the UK harassed in this way.

Mark Simmonds: I will ensure that the Committee's views are added to the growing list of concerned parties.

Chair: Thank you very much.

Q25 Mr Roy: Minister, on natural disasters, the historical position seems to be that if there is major natural disaster in a Territory then the UK taxpayer for some reason picks up the cost of dealing with it. Does the White Paper change that?

Mark Simmonds: The UK Government are committed to honouring our responsibilities for the safety and security of the Territories and for managing a range of natural and man-made disasters that threaten them. Perhaps the most obvious example is the volcanic eruption in Montserrat, where there has been significant support from DFID to facilitate the recovery process and an attempt to start a fledgling rebuilding of both the community and the economy of Montserrat. I think £350 million has been spent in the last 15 years or so.

One of the things that the White Paper stresses—certainly one of the things that I have been keen to understand in my visits to the Territories—is the detail with which they have put in place procedures to mitigate and adapt to potential disasters, particularly in the Caribbean with hurricanes coming through. I received an excellent presentation from the disaster management team in Anguilla when I was there. It was not just about how they construct buildings to

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make sure that they are adapted to the inclement conditions that they occasionally get, but also how they instruct everybody to get to safety wherever they may be, whether it is schools or homes or wherever. We have an obligation to ensure that the Territories have in place the strategies to cope with disaster, primarily because in all circumstances—I will be corrected if I am wrong—the governor and the UK are responsible for disaster management, rather than the individual Territory.

Q26 Mr Roy: So we also have disaster management. In other words, we are responsible for paying for and mitigating the risk factor. How much does that cost the UK taxpayer?

Mark Simmonds: In individual Territories—I do not have the figures—that would not cost anything unless there was a disaster.

Q27 Mr Roy: Sorry, can I just stop you there? You said it does not cost anything, but my question is in relation to managing the risk. Is there a cost to the British taxpayer? I accept that you have already said that if anything happens, the British taxpayer will need to pick up the bill. I am trying to find out whether we also have to pick up the bill to manage that risk in the first place.

Peter Hayes: If I may, we do so in co-operation with the Territory Government. In this area, as in so many other areas, we are trying to help them to prepare for disasters. I do not have the figures for the assistance that we are providing, but we run, for example, disaster management preparation exercises with expertise provided to the Territories to make sure that their public services are working together; that they have worked through various scenarios; and that they have done exercises to prepare. The crucial thing is their capacity building, rather than us doing it to them.

Q28 Mr Roy: So we could therefore get a note on how much it costs the taxpayer to do that. Is that a yes?

Peter Hayes: Yes.

Tim Colley: The White Paper confirmed the UK Government's very long-standing position that the reasonable needs of the territories are a first call on the international development assistance budget. What we saw over the summer was an extraordinary demonstration of the havoc that can be wreaked by hurricanes. Superstorm Sandy had a great impact on New York, in the US, which is a very developed country with a lot of resilience. There is a real risk that a hurricane or a tropical storm could easily overwhelm one of the very small Territories, so it is sensible for us to work to build their resilience against those sorts of disasters.

The other very important resource that we have at our disposal is the Royal Navy's ship or ships in the Caribbean. They are an important part of the potential disaster response. My team are very busy every summer looking at the development of potential hurricanes as recorded on the weather satellites and working with the Ministry of Defence to make sure that the Royal Fleet Auxiliary or the warship is in the right place to be able to respond should one of these

hurricanes hit a territory. We do a good deal of practical planning and there is a lot of co-operation with Territory Governments. For example, we have a seminar at the beginning of the hurricane season with the responsible authorities in the Territories to ensure that they are well prepped, well prepared and that they know how to contact us and the Royal Navy. They can provide us with the assurance that we need that their systems are all in place.

Q29 Mr Roy: Minister, can I take you on to civil emergencies? Is there not a risk of moral hazard if there is an understanding that the United Kingdom taxpayer will ultimately foot the bill in civil emergencies? In other words, people will think, "If someone else is paying for it, I am not too bothered. If I do not need to pick up the Bill, I do not need to take the ultimate care." Is that not a danger?

Mark Simmonds: That is not the impression I get. There is an understanding in the Territories and a seriousness with which these issues are looked at and analysed. Solutions are put in place to mitigate any disaster that might affect them. There is willingness to work with governors in-territory and the governors' structure, but also to work with the UK Government to build capacity in the way that Mr Hayes outlined. If you go back to the 2004 hurricane that whipped through Cayman—I happened to be in Cayman just after that hurricane and the devastation was quite extraordinary—most of the funding to repair the damage was provided by the Cayman Government themselves. It did not come from the UK. It was not a universally popular strategy, but that is what happened in 2004.

Q30 Mr Roy: On that exact point, was it not the case that the leaders of the Cayman Government complained bitterly about the lack of effort from the United Kingdom in the first week after that particular storm?

Mark Simmonds: They did, you are right.

Q31 Mike Gapes: Can I take you to financial and economic issues? The White Paper suggests that the Territories' economies have made considerable strides in the past 10 years. I will ask you about three that it identifies as economic success stories—Bermuda, the British Virgin Islands and Cayman. The White Paper emphasises that that success is based on international financial markets and their niche position.

At the same time, we know that the Treasury commissioned studies in 2009—one by Deloitte—that pointed out how most of our Territories operate outside what Deloitte referred to as the "international consensus" on taxation. You referred to the need to diversify the economic base of Overseas Territories. Given what we now know about what has been happening in the international financial institutions, the problems that the world is facing as a result of what went wrong in 2008 and recent publicity about tax avoidance and tax evasion, centring to a large part on offshore territories, is there not an argument that the basis on which some of the Overseas Territories have been a success story, to quote the White Paper, is, in the long term, an unsustainable illusion?

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Mark Simmonds: I wholly agree with your reference to the necessity to diversify economically. That is absolutely right and is absolutely one of the focuses, not just for the reasons that you have outlined, but because of the Territories' ability to become more resilient to global shocks, particularly as that relates to the financial services sector. The other important issue to understand, to put it in context, is that the three Territories that you have mentioned are significantly reliant on the income that they get—I think it is 60% for BVI—from the financial services sector to support their Exchequer, due to all the priorities that we know about.

Secondly, the point I made to Mr Hendrick was that the financial services regulatory structures are very strong in the Territories you are referring to. It is not the wild west. They are very strong and they meet significant international standards of, for example, tax transparency, of financial regulation and of tackling financial crime, which, as I said earlier, was confirmed at the JMC.

Bermuda, BVI and Cayman have tax information exchanges with the United Kingdom, and they are in the process of negotiating tax information exchanges with the United States. The OECD, which is the global body that monitors these things, says that they meet current standards on tax transparency. The rates of tax are a matter for them—that is in their responsibility, and, of course, it goes back to the discussion we were having earlier on their nervousness about representation in the UK Parliament.

Now, does that mean that they have reached the end of the road in terms of a satisfactory level of regulation? No, of course not. In my view, they need to maintain and enhance their regulatory and transparency structures, and if there is one area where there is further to go and more to do, it is on ownership, so that we can see who owns what shares in a particular company so that there are no secrecy regimes. Certainly, it is true that the overseas financial centres you have alighted on are at least as compliant as major financial centres when it comes to meeting international standards.

Q32 Mike Gapes: Are you saying they are not today?

Mark Simmonds: No, I think that they are today. I suggest, as I did earlier, that, if you are interested, when the gentleman who runs the BVI financial regulatory authority is in London, you should get him in front of your Committee, Mr Ottaway, because I think that you would then begin to—appreciate is the wrong word—

Q33 Mike Gapes: May I take you up on what you have just said? Is it not true that, as the Deloitte report said, there is an expectation gap between what ought to be paid on corporate taxes and what is actually paid? Deloitte put a figure of £2 billion on that. Is it not a fact that UK taxpayers are losing out because companies and individuals are using offshore organisations, and, as a result, revenue that would otherwise be coming in to the UK taxpayer is not

being raised, or much less is being raised, by the authorities in, for example, the Caymans?

Mark Simmonds: The Public Accounts Committee are looking very carefully at this particular issue.

Q34 Mike Gapes: I am quoting Deloitte for the £2 billion figure, and the Caymans are clearly one of the major players in this.

Mark Simmonds: I have not seen that £2 billion figure anywhere except the Deloitte report. That doesn't make it wrong, but I have not seen it evidenced elsewhere. Clearly, companies need to pay the appropriate level of tax due to the UK Revenue, and any mechanism that they are using—the Public Accounts Committee are looking at the Starbucks example—is not acceptable. Both individuals and companies need to pay the requisite and appropriate amount of tax.

Q35 Mike Gapes: Okay. May I switch to other aspects? Concerns were expressed about some other Overseas Territories in that time. Anguilla has certainly been singled out, as has Turks and Caicos. Are you satisfied that progress has been made in both of those cases to deal with the concerns expressed in 2009?

Mark Simmonds: Both Anguilla and the TCI have much smaller financial services sectors than the other three that you mentioned, but they have ambitions to grow their financial services sector to diversify their economies away from a heavy reliance on upmarket tourism. The discussions that I have had in both of those Territories, as it relates to the issue that you raised, and the point that I have made to them is that if they are serious about that, they need to continue with the progress that has been made on financial regulation to meet international standards. Are those two up to the standard of the previous three that you mentioned? I think that the honest answer is no, not at the moment. Further progress is required.

Q36 Mike Gapes: Is there not a case for more action to be taken on problems of cross-border exchange of information, with individuals moving money and assets around from one place to another without transparency? Is there not a danger of hopping between one Overseas Territory island and another in order to avoid the kind of transparency that we need?

Mark Simmonds: There are two or three answers. The first is that we need to do everything that we can to ensure that all of the Overseas Territories' financial services sectors are properly regulated, and that they meet the international standards on regulation and tax transparency. The second is to ensure that there is much greater transparency of what is called beneficial ownership—

Q37 Mike Gapes: Which was highlighted in *The Guardian* the other day.

Mark Simmonds: You will not be surprised to hear that I do not tend to read *The Guardian* on a regular basis.

Mike Gapes: It was on the front page.

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Mark Simmonds: Even the front page. Whether it is *The Guardian* or not, the point is fair. There is more that needs to be done on beneficial ownership.

Q38 Mike Gapes: Final question: do the Government have any plans to increase the transparency of the arrangements in the BVI or elsewhere as a result of this debate?

Mark Simmonds: It is not a matter for the UK to impose on the Territories, but we encourage them—whether it is the five that you mentioned—to ensure that all their financial services are properly regulated. In my discussions with both the financial regulators and the politicians who are responsible for the particular economic sectors in the Territories, I have said that if there is anything the UK can do to build capacity and to ensure that they are doing exactly the right thing to meet international standards, we are willing to help.

I want to mention two other aspects to this. One is the importance of not just financial transparency as it relates to the financial services sector, but as it relates to Government structures as well. That is why putting the FFR in place in Overseas Territories law is an important part of that, as is transparent procurement in competitive tendering.

Q39 Mike Gapes: Your predecessor, Henry Bellingham, was quoted in a *The Anguillian* in August 2012. It said that he had written to the Anguillian Chief Minister saying that there were concerns about the current state of the public finances in Anguilla, and that there was a need to take corrective action on financial management. Is there any progress on getting Anguilla, and other Territories, to sign up to the Framework for Fiscal Responsibility?

Mark Simmonds: Yes, there is. We have had significant positive achievements in Turks and Caicos, where the FFR was adopted by the interim Government, and it is fully supported by the elected Government who have just come into power. The BVI have done it, Cayman have done it recently, and we are having what I hope will be last-moment tweaks of the FFR for Anguilla to put it into—

Q40 Mike Gapes: Is that a hope or an expectation?

Mark Simmonds: It is an expectation on my part. In terms of the Anguillian budget, one of the benefits of the FFR is, of course, that it enables us to keep a monitoring eye on the budgetary situation across the Territories. Hopefully, we will not get into such a situation—as you picked up on when you were Chair of this Committee, back in 2008, I think—as the problems that went on in the TCI. We have tried to put in place structures to ensure that alarm bells will go off before they went off the previous time. If I may say so, you earned enormous credit for your Committee at that time, in spotting that situation.

Mike Gapes: Thank you.

Mark Simmonds: In terms of the Anguillian 2013 budget, I have had lengthy conversations with Mr Hughes, both in Anguilla and here in the UK, and he assures me that he is determined to balance the budget. We are awaiting the detail of the overall budget for 2013, but shall continue discussions with

the Government of Anguilla to ensure that they deliver on the assurances that they gave us back in, I think, 2010.

Q41 Mike Gapes: We are not going to have a repeat of TCI?

Mark Simmonds: No. There is no suggestion in Anguilla of serious corruption and maladministration. As for the economy of Anguilla, there is no question but that it is challenging. One of the two aspects is the historic reliance on high-end tourism which, inevitably, has been impacted by the global economic downturn, even though there is some sign that it is starting to come back. The second element is that the Anguillians need to think very seriously—which they are—about finding ways to diversify the economic base, so that they are not so reliant on high-end tourism.

Q42 Mike Gapes: May I ask just one question on St Helena? The previous Government did not make a decision on support for the airport, although the Foreign Affairs Committee was pressing for one. One of the first decisions taken by the new Government in 2010 was to agree to use DFID funding for that airport. How is that going? Can I have a reassurance that the funding of the airport will be value for money, for the UK as well as for the people of the Overseas Territory who will definitely benefit from it?

Mark Simmonds: Absolutely. Interestingly enough, the issue arose in the Westminster Hall debate this morning, which was introduced by my right hon. Friend the Member for Saffron Walden. He visited St Helena some years ago, and this morning he said that his conclusion was that the only way that the island would develop economically was if there was an airport. That decision has been some time in coming. I know that the process was started under the previous Labour Government, but it was exactly the right decision. Not only has it provided an immediate, significant boost to the St Helena economy, because significant numbers of people have been employed in the construction of the airport, but it will transform the potential for economic development. On St Helena, they are giving thought to strategies about how they develop tourism or how perhaps other businesses can develop on the island as well, creating a broader economic base and more sustainable jobs. You will be aware that the airport was contracted in compliance with UK procurement regulations. My view is that it will not only significantly transform St Helena but be demonstrated to be very good value for money.

Chair: If you can build an airport in the south Atlantic for a quarter of a billion in five years, perhaps it is a steer for future airport capacity in the south-east of England.

Q43 Andrew Rosindell: Following on from that question, I want to make a brief point, Minister. What are the British Government doing to get the message over even to our own Members of Parliament about how crucial it is that we support our Overseas Territories, such as Bermuda, BVI, the Caymans and our Crown Dependencies, which are generating

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billions for the UK economy through running well-regulated small financial centres? The alternative to supporting them in raising and generating that wealth in those financial centres would be the British taxpayer subsidising their economies. Is it not crucial that we get this message over to people so that we do not go along with agendas coming, I feel, from the EU and from the United States to crush successful small international financial centres such as this?

Mark Simmonds: I agree. I think there is more that we need to do to disseminate key messages about the importance of the well-regulated financial services sector in the Overseas Territories not only to the UK Parliament, although that is important, but to the UK population at large. There is more that not only the Foreign Office and I, as the relevant Minister, can do, but that the Overseas Territories need to do to sell the positive messages. To that end, one of the issues that I have been discussing with a couple of the Overseas Territories leaders is whether we should think about having an Overseas Territories business conference in the UK to sell the good news about how well regulated the Overseas Territories are both to the financial services sector, to encourage further investment in the Overseas Territories, and to a wider range of economic sectors to sell the advantages that exist there. As I said before, I do not think we do nearly enough.

Finally, I want to pick up on another thing that you mentioned, Mr Rosindell, which is getting the European Union to understand the potential impact of some of the changes to the financial services regulatory regime on the Overseas Territories. I can assure you that I have met European Commission representatives and made the Overseas Territories' position very clear.

Q44 Chair: Minister, turning to the issue of tackling crime and corruption, the White Paper says that police and local people in the Territories should step up the fight against crime, but ultimate responsibility for fighting crime and the management of the police lies with the Governor. There would appear to be a bit of an ambiguity here. Can you throw some light on this?

Mark Simmonds: In the Overseas Territories, there is a job for both the Governor and the Governments in co-ordinating their approach to crime and the criminal justice system. Certainly, we have taken a very positive approach in trying to assist in building capacity across a whole range of areas, whether it is building capacity in the judicial system, is helping to interdict drug trafficking—a particular issue in some of the Caribbean territories—providing support through SOCA, or providing support through the police or indeed through the prisons.

I will give you an example of where there might appear, on the surface, to be confusion but where there is quite good co-ordination. In the British Virgin Islands, the Governor is responsible for the prison but the locally elected Minister is responsible for the management of the prison, so they work very closely together in trying to ensure that prison policy, offender management and the links with the courts and prosecution services are as co-ordinated and efficient as possible. I accept that there is much more that

needs to be done. We are not there yet, but there is a lot of work going on to try to build capacity in-territory to enable them to make progress in this important area.³

Q45 Sir John Stanley: Minister, as far as the Turks and Caicos Islands are concerned, do you agree or not that, as of today, there has been a restoration of free and fair elections, proper multi-party democratic government and freedom from corruption?

Mark Simmonds: May I comment on your last point, Sir John, in a minute? For the first two, the answer is yes and yes. On the third point, about freedom from corruption, I am absolutely convinced that there is certainly no evidence that the new incoming Government have been involved in corruption or intend to be involved in corruption. Indeed, I have been extremely impressed by Premier Ewing, with whom I had meetings both in TCI and in the UK. I also met the Leader of the Opposition when I was in TCI. She is a very intelligent, dynamic lady, who I think will very significantly hold the new TCI Government to account, which is obviously the job of Oppositions.

In terms of the corruption that took place prior to the suspension of the TCI Government in August 2009, clearly there are significant charges of 13 individuals that need to progress through the courts, so I was not quite sure whether your corruption charge related to the whole of TCI. There are still issues that need to be resolved and finished off. You may well be aware that ex-Premier Misick was arrested in Rio at the end of last week, which is good news. We obviously hope that he will return to the TCI, where he will stand trial.

Q46 Sir John Stanley: That brings me to my next question: does the British Government have in place extradition powers and relationships with Brazil that will ensure the return of Dr Misick to the Turks and Caicos Islands?

Mark Simmonds: Again, the gentlemen on either side will correct me if I am wrong, but my understanding is that, no, we do not. We are not sure yet whether ex-Premier Misick will challenge the extradition order, and what the implications or the time scales will be if he decides to challenge it. I very much hope that he will not. I very much hope that he will return expeditiously to TCI, where charges can be brought and trials can happen in a transparent way, so that the people of TCI can form their own judgment and the court can form a judgment.

Tim Colley: The framework is there, in the sense that the UK has a bilateral agreement with Brazil on extradition, which is extended to Turks and Caicos, and therefore there is the framework for the extradition to take place, but clearly it is a matter for the Brazilian supreme court to decide whether to extradite Michael Misick to Turks and Caicos and,

³ Note by witness: the Governor, who has constitutional responsibility for internal security, leads on any prison matters that bears on this duty. These include prisoner releases, prisoner movement and general issues concerning security within the prison. The Minister for Education and Culture is responsible for the general management of the prison and for ensuring that the expected standards of prison administration are maintained.

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indeed, to consider his application for bail, which I understand he has put in.

Q47 Sir John Stanley: That, as I heard it, was a somewhat different answer from the one given by the Minister. I appreciate that this is a technical area and if you, Minister, wish to clarify any evidence that is now in the transcript with a further written note on this important issue, we will be glad to receive it.

Mark Simmonds: Thank you.

Q48 Sir John Stanley: In answer to an earlier question, you referred to the contribution made by the Foreign Affairs Committee in the last Parliament. I believe that you were entirely justified in highlighting the importance of the decision taken by the Foreign Affairs Committee at that time, due in no small measure to the enthusiasm and dogged persistence of our former colleague Mr Andrew Mackinlay, to carry out a full-scale and long-overdue inquiry into the Overseas Territories.

The most significant outcome of that inquiry I suggest, as far as the Foreign Office was concerned, was that it exposed that the FCO was not asleep on the job on the Overseas Territories, but it was half asleep. If you, Minister, wish to see evidence of that, it lies in the fact that in the 20 years that I have been privileged to serve on the Committee, that inquiry attracted a larger number of submissions of written evidence than any other single inquiry that the Committee has undertaken in that period. The question I want to put to you is this: in the light of that experience and that shortcoming by the FCO, are you satisfied that as of today, the FCO is giving sufficient attention, priority and resources to discharging its responsibilities to the people who live in our dependent Territories, who are absolutely dependent, at the present time with their present status, on effective, fair, and just British administration as the ultimate sovereign country?

Mark Simmonds: I am absolutely determined, while I am the Minister responsible for the Overseas Territories, to ensure that we give sufficient focus and put in place rigorous monitoring mechanisms to ensure, as far as we can, that the situation that occurred in the Turks and Caicos Islands cannot happen again. The then Committee, under the chairmanship of Mr Gapes, and with Mr Mackinlay and other colleagues on the Committee—you included, Sir John—deserve enormous credit and applause for the work that you did at that time, not only to bring it to the attention of those who needed to have it brought to their attention, but for the relentless way in which you continued to follow through.

Not only is there now a real determination to ensure that a similar situation cannot occur again, but if that sort of thing were to occur again, the alarm bells would start ringing at a much earlier stage, which is one of the reasons why the White Paper and subsequent follow-through has put in place the FFR, where appropriate, in the Territories. For example, in Turks and Caicos, the chief financial officer is a DFID appointee, until DFID are taken off supporting the TCI debts, which we hope will be 2016. There is a considerable flow of regular financial information that

comes back to the Foreign Office to monitor budgets. That relates to what we were talking about before. We are determined to build the capacity of the public sector and of public services, to make sure that what allegedly happened in Turks and Caicos cannot happen elsewhere—that is, intimidation and manipulation of the public sector for political and financial ends, which is one of the reasons why we are very keen on building capacity—to put in place codes of conducts for Ministers, parliamentarians and for public services, and to reiterate to the Overseas Territories that it is important that they meet the basic standards of governance that we would expect in the UK. I am confident, and I am reassured in talking to officials in the Department and to FCO officials in-territory, that there is a real determination to ensure, in a spirit of partnership, that we do not run the Territories from the Foreign and Commonwealth Office but that we help them build capacity to run the Territories themselves—but we also monitor to ensure that we do not have a repeat of what happened in 2009.

Q49 Sir John Stanley: I am glad to hear what you said, Minister, about no repeat. I remind you that, in terms of British Government policy failure, Turks and Caicos was not the first. I am sure—I hope—that you are aware, as the Minister now with responsibility, that the child sex abuse scandal in the Pitcairn Islands went non-dealt with by the British Government for years. I am sure I need not remind you of the catastrophic failure of both foreign policy and defence policy towards the Falkland Islands under the previous Conservative Government.

I have a last question. I had the good fortune to lead the sector of the Foreign Affairs Committee that went to the Turks and Caicos Islands during the inquiry to which we have been referring. One of our most alarming discoveries there was that there were absolutely no safeguards in place against Ministers using their governmental offices for personal gain, not least in relation to decisions about Crown land. That effectively gave them the ability to make vast sums of money for themselves, their relatives and their friends through the development of choice pieces of land by the sea. Can you tell us—if you need to provide the detail subsequently in written form, I will entirely understand—Overseas Territory by Overseas Territory, for each and every one of our present Overseas Territories, whether there is in place the equivalent of the ministerial code of conduct that operates in the UK in each of those Overseas Territories?

Mark Simmonds: My instinctive reaction—I will clarify this in writing to the Committee—is that declarations have to be made, but they are not up to the standard we would accept in the UK. Therefore, this is part of the detail of what we are working on with the Territories to enable them to do so.

Tim Colley: Minister, may I remind you that we managed to get into the communiqué of the Joint Ministerial Council that we were all keen to sign up to a commitment to put in place codes of practice for Ministers, parliamentarians and public servants, and to implement those? That is something that we will

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be reporting back to you in line with the Minister's commitment to Mr Stewart.

Mark Simmonds: They are not in place at the moment.

Tim Colley: I cannot say that they all have them in place. It is sometimes difficult to say something for all the Territories, because they are so diverse, and what is appropriate for Bermuda may not be appropriate for Pitcairn, but some Territories have codes of practice in place. When we had the meeting of heads of public service, there was a good discussion with the senior official in the Cabinet Office about how the UK's codes were developed and applied, and the heads of public service were going to go back to look at the arrangements they have in place. It is certainly work that we have focused on and have begun to make good progress on.

Q50 Sir John Stanley: Minister, perhaps I could have for the Committee the information for which I have asked, Territory by Territory. I accept entirely that the Overseas Territories vary enormously, but what I hope does not vary in any one of them is a clear understanding that if you are to have decent government, Ministers should not be able to use their position for personal gain.

Mark Simmonds indicated assent.

Chair: Mr Simmonds, we booked you to come here today for a session ending at half past four. As you know, due to technical reasons, we had some delay at the beginning. Are you all right for another 15 or 20 minutes, when I think we can finish this?

Mark Simmonds: Yes.

Chair: Thank you. I am grateful.

Q51 Mike Gapes: I have one question on the Turks and Caicos Islands, following on from John Stanley's questions. The party that won the election—the Progressive National Party—was of course Mr Misick's party, and there are still individuals in that party, and some in the Government, who are closely related to Mr Misick. How confident are you that the PNP is a new party in the way that it is behaving for the future? Or are there still concerns that Mr Misick, whether in Brazil or the Dominican Republic, or wherever he is, will still be playing some role or influence? He interfered in the election by calling for people to vote for that party, rather than for the party that is now in opposition. Does he still have an influence?

Mark Simmonds: I do not think so—not that I have detected. As I said earlier, I am impressed with the new Premier, Dr Ewing. I think he has all the right instincts. He is determined to make democracy work in the TCI. I think, from the conversations I have had with him, he is determined to reinstate TCI's reputation as somewhere that can have a thriving democracy and can be a well governed Overseas Territory. That does not necessarily mean that Dr Ewing's Administration and we always agree on everything—of course not—but there is determination to make sure that democracy is cemented and works. Certainly, I have not detected any hint of any desire to go back to the bad old ways—I certainly hope not—and I am also optimistic. The Leader of the

Opposition—you will know that the election was extremely close, with a majority of only one—will hold Premier Ewing's Administration to account in a detailed way. Of course, that has to be a good thing in the context of where TCI is going.

Q52 Mike Gapes: I hope so. Can I move on to the constitutional position of Overseas Territories? You have been going through a process to upgrade and modify the constitutions. Are the constitutions of all the Overseas Territories now up to date?

Mark Simmonds: No. There are two where we still need to do some work. Anguilla is one and the other is Bermuda.

Q53 Mike Gapes: Are there particular problems where there is no agreement?

Mark Simmonds: No. As it relates to Anguilla, it is not that there are particular problems, it is a matter of process in trying to find the right moment to engage with the Government of Anguilla in their desire to modernise the constitution. The ball is firmly in their court.

Q54 Mike Gapes: What about Bermuda?

Peter Hayes: The same, I think. Of course, we do not do this to them. We encourage and try to persuade them that they would benefit from modernising the constitution, but they have their own political processes and sometimes they are not convinced immediately of the need for this. It is a process of negotiation and encouragement on our part.

Q55 Mike Gapes: When we looked at this issue in some detail in the previous Parliament, the Foreign Affairs Committee expressed concerns about some aspects of some of the constitutions, in the sense that they did not have what we regarded as international standards on outlawing discrimination, including on the basis of sexual orientation. There were also issues about migrants and people who had no legal status and issues to do with prisoners, which we also raised. There was an issue of voting rights for belongers and non-belongers, and so on. Are those issues still high up your agenda or are you content to leave them alone, on the basis that constitutions have been agreed even within inadequacies?

Mark Simmonds: Can I tackle your last point, about the belongers. TCI is perhaps the most obvious example, where, out of a population of 32,000 or 33,000, only 7,500 or 8,000 people have the vote.

Q56 Mike Gapes: Have the vote, or are registered to vote.

Mark Simmonds: One of the issues that the interim Government in TCI began to tackle was trying to put in place a structure to give some pathway to belongership, but it was felt that the detail of that needed to be worked through by the newly elected Government coming in. Of course, one of the main problems before 2009 was the way that the access to belongership was in the control of politicians, who gave with one hand and took with the other. Both Premier Ewing and the leader of the opposition recognise the necessity—I have talked to them about

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it, and it will need detailed discussions—to put in place an easily understood structure and pathway so that people know and understand the criteria they have to meet to become belonging so that there is no opportunity for corruption.

There are complexities, because one of the other things that struck me, particularly in the TCI, was the belief that there are certain jobs that need to be reserved for belongers. Of course, I believe that that is not the way to grow an economy, but they have significant problems. We should not just assume—not that you are, Mr Gapes—that these things are easy. They have a significant number of Haitian migrants in the TCI, many of whom have been there for a significant amount of time, who used to work in the construction sector. As the economy has slowed down, those jobs disappeared. Of course, with all the challenges that exist in Haiti—I am not saying this is a suggestion, because it is not, and it is certainly not going to happen in the TCI—if you were to give amnesty to all Haitians, you would suddenly get a large influx of additional Haitians, which is not the desire of the TCI Government. Those things are very sensitive, and they need to be worked through. The assurance I can give you is that the new Government and both new political parties that make up the Assembly in TCI are exercised of the need to find a solution to the problem.

Q57 Mike Gapes: Are the other issues, such as sexual orientation, still on your agenda? Or are you just accepting that the constitutions have been agreed and that is it?

Mark Simmonds: No, they are very much on our agenda.

Tim Colley: May I add two points? First, as part of the process of modernising the Territory constitutions since 1999, one of the things that has been done is that a chapter on fundamental rights has been put at the front of all the constitutions. There is some work to do to keep those chapters up to date with the development of international human rights law, which is one of the things that will need to be done in the case of Anguilla, for example. Secondly, one of the things that the interim Government in Turks and Caicos were able to put in place was a law on tackling discrimination, which had significant support from the Consultative Council in the Turks and Caicos Islands. I think that goes a very long way towards addressing those issues of discrimination that you are concerned about.

Q58 Andrew Rosindell: We have a list in front of us of the British Overseas Territories, and it lists only 14. Could the Minister tell us why it is that Ascension Island and Tristan da Cunha are not treated as equal British Overseas Territories?

Mark Simmonds: On your particular list?

Andrew Rosindell: On a Government list, Ascension and Tristan da Cunha are dependencies of St Helena; they are not given equal status. Although they have their own island, identity, character and everything, they are treated as dependencies, rather than as Overseas Territories in their own right. Is it not time that we gave them equal status to the other 14?

Mark Simmonds: Certainly in terms of their involvement at the Joint Ministerial Council, their involvement in bilateral meetings with me beforehand, the way that they engage and the assistance that we are providing them, I see no distinction between the 14 and the two that you mention.

Q59 Andrew Rosindell: But the Foreign and Commonwealth Office does make a distinction. Therefore, Minister, would you look into that and see if we can come back at a later date and include them in the list as equal Territories?

Mark Simmonds: I am very happy to look into it.

Q60 Andrew Rosindell: On that same point, what is it about the people of Ascension Island that they are not able to be granted permanent status?

Mark Simmonds: The view is that the lack of economic activity there would mean that unless people had a specific job in, for example, the military installations there, the danger is that Ascension would become very heavily dependent on the UK taxpayer.

Q61 Andrew Rosindell: Minister, is it not right—I know that this is your view about the Falklands and Gibraltar—that self-determination should be paramount and that the inhabitants of these territories should determine their own future? How is it correct that we defend, and rightly so, the right of self-determination in the rest of our overseas territories and yet we are denying the right of abode to the 873 people of Ascension Island? Bearing in mind that there are fewer people in some of our other territories, why do we not give them the same rights as all of our other territories?

Mark Simmonds: I do not think that you are comparing apples with apples. The right of self-determination is not the right of abode. I certainly think that the people on Ascension Island should have the right of self-determination in their relationship with the UK, as all the other territories do.

Q62 Andrew Rosindell: But the people of Ascension Island are being treated very differently from, for instance, inhabitants of Pitcairn or Tristan da Cunha, who do have right of abode, even though they have smaller populations.

Mark Simmonds: I accept it is a subjective view. If it is any assurance, when I first came in to office, I did push back in the way that you are doing now, Mr Rosindell, about these very issues, but probably, on balance, the decision that has been taken that to stay on Ascension, people over the age of 18 must have a specific job is, at this juncture, correct. But going forward, these things need to be kept under review. Certainly, if a way is found of diversifying the economic base, we can look at it again.

Q63 Andrew Rosindell: One final question. Going on to another overseas territory, I know how determined you are to defend self-determination of all the peoples of the overseas territories. Why does not that apply to the people of the Chagos Islands, in a British Indian Ocean Territory? A most appalling

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human rights abuse was committed against those people by our own Government. If, as may be the case—hopefully, we should hear soon—the European Court of Human Rights decides that the UK has violated the human rights of the Chagossian people, will the Foreign and Commonwealth Office ensure that those Chagossians who are British subjects who wish to return to their homeland are allowed to do so, so that they can go back to the outer islands and make that their home once again? Will the Minister also assure the Committee that there is no agreement with any other sovereign nation that one inch of those islands will be handed over to any other country, that they are British, that they will remain British, that the people of the Chagos Islands will have the right to decide their own future about their territory and it will not be decided by the British Government and that they themselves have the right to determine their own future?

Mark Simmonds: You made several important points. First, I do not want to get into the detail of the action of the European Court of Human Rights. Obviously, the UK Government are defending that action, but we will look at the result of that judgment when it comes out. There is also a judicial review in the UK courts about the marine protection area that has been established. I can certainly give you an assurance about the continuation of the sovereignty of the Chagos Islands. There is no question of us entering into negotiations with Mauritius or anybody else about its sovereignty. There are challenges about the repopulation of the islands. The first thing is that it not compatible with our defence commitments, as it relates to Diego Garcia. I am certainly not going to justify what was done in the 1960s and '70s. That was not good, but full and final compensation has been paid.

I think the other big challenge about return is the level of economic activity that would take place. You will be aware that the only real economic activity that was ever successful, although many things were tried, was coconut plantations, which are long since redundant. There is significant nervousness about how returning Chagos islanders would be economically self-sufficient. However, I am keen to encourage greater engagement with the Chagossian community, and significant progress has been made on that. We have taken Chagossian citizens back to the Chagos islands to engage with the pristine environmental aspects that are around the Chagos islands. We have involved young Chagossian students in that. I am intending to go myself during the first six months of next year because I want to make my own mind up about whether it is practicable to stick to our existing policy or whether we need to have a fresh look at it.

Q64 Chair: As you know, the lease for Diego Garcia is up for renewal in 2016. I understand that it may be extended for a further 20 years. Will we be making representations about the use of the airfield by the United States Government for rendition flights?

Mark Simmonds: The discussions with the US have not begun yet in a substantive form. My understanding is there is no formal lease as such; it is an agreement, and we will need to look at it as we run up to 2016.

With the exception of the two cases that the US acknowledge happened in 2002, there has been no further evidence of rendition. We have been reassured that there have not been, and there are not going to be, any further renditions through Diego Garcia.

Q65 Chair: As you know, the acknowledgement of those flights came after similar denials, so we have to judge these things on their merits. Would you agree, if it is an agreement, not a lease, that there is a case for taking a tougher line on this than we have done in the past?

Mark Simmonds: Yes, there is certainly a case for pointing it out.

Q66 Chair: That is not an answer to the question I posed.

Mark Simmonds: I think that there is a case that the issue you raised about rendition needs to be raised as we have further conversations about the American presence on Diego Garcia.

Q67 Chair: I don't want to have to spell it out, but as you know, this is British territory, which is being leased out to the United States. British Government policy is that we do not support the act of rendition. In fact, we take this quite seriously. As you know, there is a police investigation into other cases at the moment. It would seem to us to be appropriate that we take a tougher line here when we renew the agreement with the United States.

Mark Simmonds: I do not have a problem with that. That is absolutely right.

Q68 Chair: Thank you. On the constitutional future of the territories, the White Paper says that there should only be independence if it is a "clear and constitutionally expressed wish of the people of the Territory." How do we ascertain what is a clear and constitutionally expressed wish?

Mark Simmonds: My personal view is that there would have to be a specific territory referendum about the future relationship that the territory would want to have with the UK.

Q69 Chair: Go back a step: how do you know there is a view that leads to having a referendum?

Mark Simmonds: I think from the existing Government. I won't go into the detail, but there are a couple of premiers who have suggested to me that at some point this is a direction of travel they might like to go in. It would be a matter for the individual territory Administration at the time to set out the argument for a referendum and to hold it if they so wished. Having said that, I do not detect that there is any desire from the populations at large in the territories to loosen their ties with the United Kingdom—in fact, it is quite the opposite.

Q70 Andrew Rosindell: One final point, on the issue of independence: is there also a mechanism for countries or territories that have become independent and who would actually like to consider possibly returning to being a British overseas territory? Would it be the British Government's policy to welcome any

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country that has sought independence and would now like to return as part of the British overseas territories family? Would that be supported by Her Majesty's Government?

Mark Simmonds: Can I think about that? I need to reflect on that suggestion.

Q71 Andrew Rosindell: Your predecessor gave a very clear answer to the same question, Minister.

Mark Simmonds: I think it depends on what the country wants.

Q72 Andrew Rosindell: But if there was an express will to do so, would that be a possibility?

Mark Simmonds: In principle, I do not have an issue with it at all, but the devil is in the detail of these things. It would depend on the country, the timing and the reasons.

Q73 Andrew Rosindell: But there is no block to that happening?

Peter Hayes: The White Paper sets out the balance of responsibilities and obligations, both on the UK and on the territory, from such a relationship. That is a practicality that we would need to discuss—what would be the obligations that we would be taking on for the UK taxpayer—

Q74 Andrew Rosindell: But it is not something that Her Majesty's Government would rule out?

Peter Hayes: There is no decision that there shall be no further territories.

Q75 Chair: The final, final question is on the Commonwealth. The White Paper says that the Government are "exploring the possibility" of offering

the territories "observer or associate member status of the Commonwealth". Could you just explain your thoughts on that?

Mark Simmonds: I know that the Committee has been engaged with this particular issue in the past. We are keen to try to facilitate and enable the overseas territories to have associate or observer status in the Commonwealth, but of course that is not in our gift. It has to be agreed by all Commonwealth Heads of States. You may be aware that back in 2007 a Commonwealth sub-committee looked at this matter, and decided that only sovereign states could be members of the Commonwealth. That said, the overseas territories have benefited from some of the Commonwealth structures, particularly the Commonwealth Parliamentary Association, and have also participated in some of the Commonwealth conferences that relate specifically to small island states.

At the Joint Ministerial Council last week I invited—and the invitation was accepted—the Commonwealth secretary-general, who came and spoke to the leaders of the overseas territories, and responded to their concerns and questions. He was very positive about the role that the overseas territories have played in the Commonwealth. We continue to lobby to try to deliver that status. To that end, I have spoken to my right hon. Friend the Minister of State at the Foreign Office with responsibility for the Commonwealth about this particular issue, in the hope that we can find some mechanism to enable overseas territories to attend Commonwealth meetings in their own right.

Chair: That is very helpful. Thank you very much to you all for coming along this afternoon. You leave us briefed and better informed.

Written evidence

Supplementary written evidence from Mark Simmonds MP, Minister for Africa, the Overseas Territories, Caribbean and International Energy, Foreign and Commonwealth Office

Thank you very much for allowing me to provide evidence to the Committee on 11 December, and for the flexibility you showed in postponing the 20 November session. I found our meeting a very useful chance to get a sense of the range and depth of the Committee's interest in the Overseas Territories. I was pleased also to have the opportunity to update you on the progress the government has made in delivering the commitments in the White Paper. Since we met I have issued to the House a Written Ministerial Statement to highlight the outcomes of the Joint Ministerial Council about which I spoke.

I promised to follow up with further information or clarification on a number of points.

In relation to Gibraltar, I promised to provide *Sir John Stanley* further evidence on the technical reasons why the Government's legal case to reverse the adoption under the Habitats Directive (92/43/EEC) of a marine Site of Community Importance proposed by Spain and known as the *Estrecho Oriental* was declared inadmissible by the General Court of the European Union (Case T-115/10 *UK v Commission*), and why our appeal against this ruling has been dismissed by the European Court of Justice (Case C-416/11 *UK v Commission*). I enclose a paper which provides this information [Annex A].

Sir John Stanley also asked me to clarify the status of extradition arrangements between the UK and Brazil in respect of the possible return of former Premier Michael Misick to the Turks and Caicos Islands. The UK and Brazil signed an Extradition Treaty on 18 July 1995. This treaty was extended on 25 September 2012 by mutual agreement to cover the Turks and Caicos Islands. This means that individuals can now be extradited between Brazil and TCI.

The Brazilian authorities arrested Michael Misick on 7 December, in response to an Interpol Red Notice, and will consider both an application for political asylum that he has made, and the extradition request made on behalf of the Turks and Caicos Islands. Decisions on both these avenues are for the Brazilian authorities and Supreme Court.

Mr Frank Roy asked for information on the costs to the British taxpayer of managing the risks to the Territories from natural disasters. The main threats to the Territories are hurricanes, volcanoes, earthquakes and tsunamis. There is also a risk of man-made disasters in particular air and sea accidents and environmental disasters such as oil spills. The emergency services in a small Territory can be overwhelmed by a major incident. The UK Government recognises its responsibility to support a Territory. The main focus for the UK government's disaster management work is the annual Caribbean hurricane season from 1 June to 30 November. The FCO and DFID co-fund an annual pre-season seminar in Miami which is attended by all territory government disaster management directors, MOD, DFID, US and Caribbean response and relief agencies. This costs approximately £20,000. In the Caribbean the Royal Navy provide a year round presence (Atlantic Patrol Task (North)) whose primary role is the safety and security of the Overseas Territories. The level and cost of any UK response assistance depends on the nature of the disaster and the ability of the affected territory to prepare and recover.

The UK has supported work in some of the Caribbean territories to build their disaster management capacity and capability, such as funding UK-led capability reviews and exercises (approximately £10,000 each), the latter in line with the 2007 National Audit Office report on "Managing Risk in the Overseas Territories".

Since Hurricane Ike severely damaged the Turks and Caicos Islands in 2008, the UK has provided no financial assistance for disaster recovery. All such costs have been met by the territory government.

Sir John Stanley asked whether there existed in each Territory the equivalent of the Ministerial Code of Conduct that operates in the UK. In the communiqué that issued after the Joint Ministerial Council on 4–5 December there was an action point for the UK and Territories to work together to "put in place, as appropriate, and implement codes of practice for Ministers, Parliamentarians and public servants".

I attach a chart [Annex B] showing the information that we have received from each of the Territories on the state of play on Codes of Conduct for each of these three categories. We will continue to work with the Territories on the action point in the communiqué.

I thought it would be helpful for me to provide a further response to the questions put to me by *Mr Andrew Rosindell* about St Helena, Ascension and Tristan Da Cunha being treated as a single Territory and the rights of permanent residence on Ascension.

St Helena, Ascension and Tristan da Cunha together form one Overseas Territory grouping, sharing the same Governor, Attorney General and superior courts. Previously the Territory had been known as "St Helena and Dependencies" but, following extensive consultation with the three Island Councils and the public, the St Helena, Ascension and Tristan da Cunha Constitution Order came into effect on 1 September 2009. The change of name and dropping of the outdated and inaccurate word "Dependency" recognised that Ascension and Tristan da Cunha are not dependent on St Helena; and that St Helena's Legislative and Executive Councils do not have the power to legislate for Ascension and for Tristan da Cunha. Each of the three islands has its own

chapter within that new Constitution where the roles of the Administrators and Island Councils on Ascension and Tristan da Cunha were formally recognised and given a constitutional basis for the first time.

Ascension is a working Island populated solely by employees of the military and a handful of other organisations operating on the Island, and their dependents. These employees are on fixed term contracts and as such as there is no permanent population on the Island—employees leave the Island once their contracts expire. Granting right of abode would involve making provision for pensions, care for the elderly, social services and introducing a range of other state apparatus. This would come at very significant cost to the UK taxpayer, stretching indefinitely into the future. In this sense Ascension is unlike Tristan da Cunha, Pitcairn, or other territories which have long established populations, who quite rightly enjoy the right of abode.

I hope that this information is helpful.

Annex A

GIBRALTAR: SITES OF COMMUNITY IMPORTANCE

1. The Habitats Directive aims to establish a pan-European network of Sites of Community Interest (SCIs) in which natural habitats which satisfy specified criteria are legally protected (Natura 2000). Member States propose sites within their territory to the European Commission, which lists sites which meet the specified criteria. The Commission acts by means of a binding decision addressed to Member States. Such a decision must be approved in draft by the EU Habitats Committee, on which all Member States are represented, acting by qualified majority (QM).

2. On 23rd July 2007 Spain proposed to the Commission the Estrecho Oriental site. This proposed site overlapped the whole of the pre-existing UK *Southern Waters of Gibraltar* SCI site, virtually the whole of British Gibraltar Territorial Waters (BGTW), as well as an area of high seas and continental shelf lying seaward of BGTW. The UK was unaware of Spain's proposal and its implications for Gibraltar, as such proposals were not disclosed to other Member States. The Commission in March 2008 sent each Member State an updated list of sites that that Member State had proposed (the proposed *Estrecho Oriental* site thus appeared on Spain's list but not on the UK's list). The Commission in October 2008 forwarded to each Member State a consolidated list of all sites, existing and new, for each biogeographic region including the Mediterranean region, with a view to that consolidated list being approved by the Habitats Committee.

3. When the UK proposed the *Southern Waters of Gibraltar* site, the Commission alerted Spain to the UK proposal. In contrast, neither Spain nor the Commission alerted the UK to the Spanish proposal for the Estrecho Oriental site and its impact on Gibraltar. The UK had no reason to and did not check the thousand or so existing and proposed Spanish sites. The new consolidated list of sites was approved by the Habitats Committee and was adopted in a Commission Decision of 12 December 2008 (2009/95/EC), which was notified to the UK on the 16 December, and published in the Official Journal of the European Union on 13 February 2009.

4. As it was not appreciated that it overlapped with the existing *Southern Waters of Gibraltar* site the UK did not challenge the Commission Decision (2009/95/EC) in which the *Estrecho Oriental* SCI was first listed. It is important to note that when the UK *Southern Waters of Gibraltar* site had been proposed, the Commission notified Spain in advance of tabling their draft decision. Following notification of the UK site there were lengthy discussions between Spain, the UK and the Commission before the UK listing was agreed and adopted.

5. Upon realising the impact of the Estrecho Oriental listing's implications for Gibraltar the UK subsequently sought to initiate a reconsideration of the listing at a meeting of the EU Habitats Committee held on 15th October 2009 which was convened to approve a draft revised consolidated list for the Mediterranean region (the list of sites for each region is adopted on an annual basis). The UK pointed out that the *Estrecho Oriental* site completely overlapped the pre-existing *Southern Waters of Gibraltar* site, that this was impermissible and unworkable, and requested the Commission to reconsider the designation of the site, failing which the UK would vote against the draft decision, and invite other Member States to do the same. Despite the UK's objections the Habitats Committee approved the revised list of SCIs, which still included the *Estrecho Oriental* SCI, and the list was adopted by Commission Decision 2010/45/EU of 22 December 2009.

6. In Case T-115/10 *UK v Commission* the UK challenged Commission Decision 2010/45/EU. The UK argued that the fact that the *Estrecho Oriental* and the *Southern Waters of Gibraltar* sites overlapped was itself a substantial new fact which came to light only after the expiry of the time period for challenging the original decision to list the *Estrecho Oriental* site. Thus the subsequent decision to relist both sites in 2009 (Commission Decision 2010/45/EU) was a fresh decision capable of being challenged, which we duly did.

7. On 24 May 2011 the General Court declared the UK challenge in Case T-115/10 inadmissible. The UK lost on a technicality. The earlier decision (2009/95/EC) had already listed the Spanish *Estrecho Oriental* SCI, and the time period for challenging it had commenced with notification of that Decision, not the subsequent Decision to relist both sites. The Court held that there was no new factor arising in Commission Decision 2010/45/EU which rendered it capable of being challenged. Decision 2010/45/EU was merely confirmatory of Decision 2009/95/EC, therefore the UK's challenge was inadmissible.

8. In case C-416/11 P the UK appealed against the General Court's ruling, arguing that the Court had made manifest errors of appraisal of the facts, specifically in respect of the issue of whether a party "could have had

prior knowledge” of the overlapping of the *Estrecho Oriental* site and the *Southern Waters of Gibraltar* site. The UK claimed that the circumstances taken into consideration by the General Court were insufficient to enable the UK to know of the overlapping of the sites when the *Estrecho Oriental* was first listed under Decision 2009–95. The UK also argued that the General Court committed an error of law when it wrongly identified the parties whose “constructive” knowledge of the two overlapping sites was legally relevant; the correct test was what the UK could have realistically known in light of the deficient listing procedures, lack of transparency and ineffective consultation measures.

9. On 29 November 2012 the European Court of Justice ruled the UK’s appeal against the Order of the General Court to be inadmissible. This was due to its finding that the UK’s first argument, which called into question only the assessment of the facts made by the General Court, did not constitute a point of law which the Court could review on appeal. In respect of the UK’s second argument, the Court found that any error of the General Court in examining whether the Commission could also have known about the overlapping sites at the time of the adoption of the 2009 decision would have had no effect on the outcome of the action at first instance and therefore no bearing on the order under appeal.

10. The Foreign Affairs Committee asked whether the loss of these two legal cases on technical grounds was due to administrative incompetence on the part of the Government. The Government rejects the suggestion that the loss of these cases was due to incompetence on the part of the UK Government. In our view the current situation with overlapping SCIs was caused by deficient listing procedures and a lack of transparency and effective consultation. Furthermore the Commission itself noted in both its comments in the Habitats Committee and in its defence against our legal challenge that Spain had been under a duty to inform the UK and the Commission of its overlapping listing proposal. Prior to the dismissal of our appeal in Case C-416/11 the Government wrote to the Commission asking what action they would take in respect of this breach of duty and informing them that if our legal case did not result in a ruling in respect of Spain’s conduct we would wish to return to this question.

Annex B

EXISTENCE OF CODES OF CONDUCT IN THE OVERSEAS TERRITORIES

We have received the following information from the Territories:

<i>Territory</i>	<i>Ministers?</i>	<i>Parliamentarians?</i>	<i>Public Servants?</i>
Anguilla	None	None	Code of Ethics
Ascension	None	None	Code of Management
Bermuda	Yes	Yes	Legal requirement to declare interests
BVI	None	Register of Interests Act	There is a Public Service Code dating from 1997, issued on the authority of the Governor. The first section of this states that: “The constitutional and practical role of the public service is to assist the duly constituted Government of whatever political complexion, to formulate policies, carry out decisions and administer public services for which the Government is responsible, and to do so with integrity, honesty, impartiality and objectivity.” This Code is essentially derived from General Orders (latest revision 1982), which spells out the detail concerning the Conduct of Public Officers, eg with regard to private interests, engagement in political activities and acceptance of gifts.”
Cayman Islands	There are draft guidelines for conduct of Cabinet, including its elected government members but these have not been adopted by Cabinet.	A bill containing clear, accountable standards of behaviour for parliamentarians, civil servants and public officials, has been drafted by the Commission for Standards in Public Life, but it has not yet been adopted. In addition a Civil Service Code of Conduct is incorporated into Personnel Regulations.	
Falkland Islands	There is a Code of Conduct for the Legislative Assembly linked to the standing rules and orders for Members of the Legislative Assembly.		Yes
Gibraltar	The Government of Gibraltar has made manifesto commitments to draw up a Ministerial code of conduct, which is likely to follow the UK model.	None.	The Government of Gibraltar has made manifesto commitments to draw up a Civil Service code of conduct, which is likely to follow the UK model.

<i>Territory</i>	<i>Ministers?</i>	<i>Parliamentarians?</i>	<i>Public Servants?</i>
Montserrat	Yes	Yes	A Code of Conduct for public officers is included in the draft Public Administration Act. The draft Public Administration Act is scheduled to be submitted to Parliament in the first half of the new year.
Pitcairn	Code of Conduct for elected Council members (including Mayor and Deputy Mayor).	None (there is no legislature separate from the Council).	Code of Conduct for Pitcairn Government employees introduced 5 Jan 2009.
St Helena	Code of conduct for Councillors, plus a register of interests.	None (there is no legislature separate from the Council).	Code of Management
Tristan da Cunha	None	None	None
Turks and Caicos	There is an extensive "Code of Conduct for Persons in Public Life in TCI", overseen and enforced by the independent Integrity Commission. There are five separate chapters in the Code of Conduct; for Ministers, Members of the House of Assembly, Public Officers, Special Advisers, and Chief Executives, Members and Executive Officers of Statutory Bodies. Breaches of the Code by any person in public life are dealt with by the Integrity Commission as civil or criminal offences.		

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