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„Troubles in Paradise? The European Union's Relationship with the British Overseas Territories and the Consequences of Brexit"

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Abstract

This thesis examines the relationship between the British Overseas Territories and the European Union. We chart the development of the legal relationship from the UK's accession to the European Communities in 1973 to its withdrawal from the Union in 2020 and analyse in detail the legal basis of the Treaty on the Functioning of the European Union (TFEU) and Overseas Association Decision (OAD) which govern this relationship. We show that alongside deepened integration in Europe, the EU has developed a broader partnership with the Overseas Territories. The theory of small island developing states is used to show why the Overseas Territories would pursue such a path. The thesis sets out a detailed analysis of the links which the individual Overseas Territories have with the EU and begins to show the consequences which the UK's withdrawal will have. We identify three main ways in which the Overseas Territories have benefitted from their relationship with the EU: direct money transfers, trade and investment, and political voice. We show that despite the uncertainty surrounding the UK's future relationship with the EU, some of the Overseas Territories have begun to take concrete steps to mitigate the effects of their withdrawal. We finally show that despite their heterogeneity, all territories will be affected by the UK's decision to leave and that thought must be given to the future relationship between the UK and its territories.

Key words: European Union, Brexit, UK, Overseas Territories

Zusammenfassung

Diese Studie untersucht die Beziehung zwischen den britischen Überseegebieten und der Europäischen Union. Sie stellt die Entwicklung des Rechtsverhältnisses vom Beitritt des Vereinigten Königreichs zu den Europäischen Gemeinschaften im Jahr 1973 bis zu seinem Austritt aus der Union im Jahr 2020 dar und analysiert im Detail die rechtlichen Grundlagen der AEUV und Übersee-Assoziationsbeschluss, die dieses Verhältnis regeln. Es wird aufgezeigt, dass die EU neben einer starken Integration in Europa auch eine fundierte Partnerschaft mit den überseeischen Gebieten entwickelt hat. Die Dissertation enthält eine detaillierte Analyse der Verbindungen, die die einzelnen Überseegebiete mit der EU haben, und beginnt zu zeigen, welche Folgen der Austritt des Vereinigten Königreichs auf diese haben wird. Es werden drei Vorteile identifiziert, die die Überseegebiete von dieser Beiziehung haben: direkte Geldtransfers, Handel und Investitionen, und politische Mitsprache. Trotz der Ungewissheit über die künftigen Beziehungen Großbritanniens zur EU haben einige der Überseegebiete begonnen, konkrete Schritte zu unternehmen, um die Auswirkungen ihres Rückzugs zu mildern. Schließlich wird aufgezeigt, dass trotz ihrer Heterogenität alle Gebiete von der Entscheidung des Vereinigten Königreichs, aus der EU auszutreten, betroffen sein werden und dass über die künftigen Beziehungen zwischen dem Vereinigten Königreich und seinen zugehörigen Territorien weiterführende Überlegungen angestellt werden müssen.

Schlagwörter: Europäische Union, Brexit, Überseegebiete, Vereinigtes Königreich

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Pledge of honesty

On my honour as a student of the Diplomatic Academy of Vienna, I submit this work in good faith and pledge that I have neither given nor received unauthorised assistance on it.

David Bagshaw

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List of Abbreviations and Acronyms

ACP – African, Caribbean and Pacific

BEST – Biodiversity and Ecosystem Services in Territories of European Overseas

BOT – British Overseas Territory

BVI – British Virgin Islands

CARICOM – Caribbean Community

CARIFORUM – Caribbean Forum

DFID – Department for International Development

EC – European Communities

EDF – European Development Fund

EEC – European Economic Community

EPA – Economic Partnership Agreement

ERDF – European Regional Development Fund

ESF – European Social Fund

EU – European Union

FCO – Foreign and Commonwealth Office

FTA – Free Trade Area

GDP – Gross Domestic Product

GNP – Gross National Product

HoC – House of Commons

HoL – House of Lords

MEP – Member of the European Parliament

MFF – Multiannual Financial Framework

MLA – Member of the Legislative Assembly

OAD – Overseas Association Decision

OCT – Overseas Countries and Territories

OCTA – Overseas Countries and Territories Association

ODA – Official Development Assistance

OECD – Organisation for Economic Cooperation and Development

OECS – Organisation of Eastern Caribbean States

OT – Overseas Territory

SIDS – Small Island Developing States

SME – Small and Medium Enterprises

TEU – Treaty on European Union

TFEU – Treaty on the Functioning of the European Union

UKOTA – United Kingdom Overseas Territory Association

UN – United Nations

WTO – World Trade Organisation

Chapter 1: Introduction

In June 2016 the United Kingdom voted to leave the European Union, and on 29th March 2017 Prime Minister Theresa May formally triggered Article 50 of the Treaty on European Union (TEU). This result shocked many, and in the following months and years much discussion was had about the causes and repercussions of the decision. The run-up to the vote was dominated by discussions about sovereignty and perceived red tape in Brussels from the Vote Leave campaign, however little was spoken about what the consequences would be.[1] The immediate aftermath of the referendum was dominated by discussion of a divide in the UK between “left behinds” and those they perceived to be part of the elite.[2] Since the referendum the extent of the UK’s relationship with the EU, and the difficulty in untangling this relationship has become clear. It has become apparent that the extent and complexity of this relationship had not been fully understood by the British public, nor had it been properly explained by successive governments. In the four years since the referendum many articles and papers have been written analysing both the causes and consequences of the vote. These have covered a wide range of topics and disciplines. However, little has been written about its effect on Britain’s Overseas Territories. Just like mainland United Kingdom, however, they have developed close ties with the EU.

Each of the Overseas Territories is unique and thus it is difficult to generalise, however all of them have small economies and the majority are small island states, which makes them inherently vulnerable. Thus, any asymmetric shock to their economies, such as Brexit, will have a lasting impact. Given this, it is surprising that more has not been written about the Overseas Territories’ relationship with the EU. This thesis aims to bring together the literature on that relationship and examine the legal and economic aspects of it. Its hypothesis is that as the EU has become more integrated legally, economically and politically, so too the Overseas Territories have

[1] BBC News, *EU referendum: Leave and Remain clash in BBC Great Debate,* 22 June 2016, https://www.bbc.com/news/uk-politics-eu-referendum-36582567, accessed 5 March 2020.

[2] See for example Harry Bromley-Davenport, Julie MacLeavy, and D.J. Manley, "Brexit in Sunderland: The Production of Difference and Division in the UK Referendum on European Union Membership." *Environment and Planning C: Politics and Space*, 2018.

become closer in these regards to the EU. This thesis will set out three main areas in which the British Overseas Territories (BOTs) benefit from their relationship with the EU: direct money transfers, trade and investment, and political voice and lobbying. It will use literature on the economic development of small island states to show how these territories are vulnerable and have thus looked for external partners to aid their development. It will show that all the territories have come to rely on a close relationship with the EU, despite their wide economic and geographic differences. Having demonstrated these relationships, it will show that the UK's decision to leave the EU poses a threat to the Overseas Territories.

Chapter 2 will set out the methodology of the thesis and how the research was carried out. Chapter 3 will situate the Overseas Territories and their relationship to the UK. It will also outline the theories of trade and integration that underpin the thesis and also the concept of small island developing states (SIDS) and their vulnerabilities. Chapter 4 will review previous literature and show how this thesis contributes to research on the topic. Chapter 5 will set out the relationship between the Overseas Territories and the EU. It will cover the history of their relations since the UK joined the EC in 1973 and will outline the legal basis of this relationship. Chapter 6 will go more in depth into the relationship that each individual territory has with the EU. Chapter 7 will then elaborate on common themes from chapters 5 and 6 and look at the effect which Brexit will have on the territories. Finally, chapter 8 will conclude the thesis.

Chapter 2: Methodology

This thesis examines the relationship between the British Overseas Territories and the European Union. In order to do this, we had to first ascertain the Territories' relationship to the "mother country", the UK. This was done by looking at the constitutions of the individual territories, and the relevant UK legislation. However, the relationship is complex and not always clear, even to scholars who have studied the subject carefully; therefore, in some cases it was necessary to revert to established secondary literature to confirm and verify their status. To research the history of the relationship with the EU it was necessary to look at the past treaties of the EEC and EU and the Decisions which related to the Overseas Countries and Territories (OCTs).[3] In addition, the Green Papers and reports of the Commission helped to shed a light on some of the decision-making processes behind the Decisions. The current status of the OCTs vis-a-vis the EU is examined from both an economic and legal perspective. The TFEU, TEU and current Overseas Association Decision (OAD) are analysed to ascertain the OCTs' current legal standing.

On the economic side we use a variety of different data to examine the relationship. Trade data from the European Commission as well as from UN COMTRADE and the WTO is used to further make assumptions about the links. The COMTRADE data is taken from the Harvard University Centre for International Development's Atlas of Economic Complexity.[4] Their Bustos-Yildirim method of cleaning data ensures that there is consistency in the data.[5] In addition, we analyse the various sources of EU funding which the Overseas Territories benefit from, including development aid provided under the auspices of the European Development Fund, the BEST initiative, European Regional Development Fund, Horizon 2020 and Erasmus+. These figures are taken from the European Union's documents as well as documents from the Overseas Territories and the OCTA. Monetary data taken from European Union

[3] OCTs is the European Union's term to refer to all territories of member states as set out in Annex II of the TFEU. BOTs refers to the British territories specifically.

[4] All data available at: The Growth Lab at Harvard University, The Atlas of Economic Complexity, http://www.atlas.cid.harvard.edu, accessed 13 July 2020.

[5] For more information about their method of data harmonisation see https://atlas.cid.harvard.edu/about-data, accessed 13 July 2020.

sources is in Euros, data from UK sources is in Pound Sterling and data from the Atlas of Economic Complexity is in US Dollars. Where data is in one of these three currencies, we have not provided conversions, however data in other currencies is provided with a conversion estimate in Euros, using the rates as of July 2020.

Chapter 3: Theoretical Framework

Outline of Overseas Territories

The Overseas Territories are leftovers from the British Empire, which Jean-Claude Guillebaud would term the "confetti of empire",[6] which either have not been granted independence, voted to remain British territories or are strategically important for the UK (i.e. for military use). Rarely were these territories acquired by conquest, but rather they were settled, annexed or ceded to the Empire.[7] Initially called British Crown Colonies, they were renamed to British Dependent Territories following the British Nationality Act 1981 and again to their current name under the British Overseas Territories Act 2002.[8] There are 14 overseas territories, which can be grouped as following: five in the Caribbean (Anguilla, British Virgin Islands, Cayman Islands, Montserrat, and Turks and Caicos Islands), two in Europe (Gibraltar and the Sovereign Base Areas of Akrotiri and Dhekelia), three in the South Atlantic (Falkland Islands; South Georgia and South Sandwich Islands; and St Helena, Ascension and Tristan da Cunha) and four which are geographically alone (British Indian Ocean Territory, British Antarctic Territory, Bermuda and Pitcairn Island). Apart from their status as Overseas Territories, the territories have considerable variation geographically and economically, as well as in their relationship to the UK. They range from Bermuda, an island of 64,000 in the Atlantic which has a high degree of autonomy,[9] to Pitcairn, an island of around 50 which is heavily reliant on the UK for aid.[10]

One aspect in which the Overseas Territories are similar is in their vulnerability. With the exception of British Antarctic Territory, they are all small in size, and most of them are also islands. They are thus geographically vulnerable due to the imminent

[6] Jean-Claude Guillebaud, *Les confettis de l'empire* (Paris: Seuil, 1976).

[7] Hakeem Yusuf and Tanzil Chowdhury, "The Persistence of Colonial Constitutionalism in British Overseas Territories," *Global Constitutionalism* 8, no. 1 (2019): 163.

[8] British Overseas Territories Act 2002, available at http://www.legislation.gov.uk/ukpga/2002/8#.

[9] World Bank, https://data.worldbank.org/country/bermuda, accessed 5 March 2020.

[10] "The People of Pitcairn Island," Government of the Pitcairn Islands, http://www.immigration.gov.pn/community/the_people/index.html.

threat of rising sea levels. In addition, they are at risk of extreme weather events, such as hurricanes and cyclones (as seen in 2017 with Hurricane Irma in the Caribbean). Their small nature also means that they lack many natural resources, and thus the opportunity to exploit these for economic gain. The territories are thus dependent on imports of key resources for survival. They are also economically vulnerable, as their economies tend to be not well diversified. Thus, a shock in one sector will have a far greater impact. The five Caribbean territories and Bermuda are classified as small island developing states (SIDS) by the United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS).[11]

Due to their nature as military bases and the fact that most of their funding comes from the Ministry of Defence, this thesis will not cover British Indian Ocean Territory or the Sovereign Base Areas. Likewise, South Georgia and Sandwich Islands and British Antarctic Territory will not be considered as they are uninhabited. The main focus of attention will be on the Caribbean territories (including Bermuda), the Falkland Islands and Gibraltar. Although Gibraltar is somewhat of a special case due to its position within the EU, it has been included in this thesis because many of the characteristics of its relationship are shared by the other territories, and therefore it is likely to face similar problems post-Brexit. Concerning nomenclature, in this thesis British Overseas Territories and UK Overseas Territories will be used interchangeably, both referring to the same thing, likewise with British Government and UK Government.

Status within UK

For us to understand the relationship between the Overseas Territories and the EU, it is necessary to first outline their relationship with and position within the UK. Each Overseas Territory has its own constitution, with executive authority vested in the British monarch. The constitutions are all unique, but in general limit the power of the

[11] "Country Profiles," United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, http://unohrlls.org/about-sids/country-profiles/, accessed 7 July 2020.

British government to defence and international relations.[12] The Crown is represented in each territory by a Governor, who is appointed by the Foreign and Commonwealth Office and is usually a career civil servant. The Governor ensures that Britain's interests are properly represented in the territories and also that the territory's interests are represented to the British government. They are also responsible for good governance and are able to assent to local legislation in the name of the Crown.[13]

The legislation which underpins the UK's relationship with the Territories in the Caribbean are the West Indies Acts of 1962 and 1967,[14] with the exception of Anguilla, which is governed by the Anguilla Act 1980.[15] Initially the Territories were called Crown Colonies, before being renamed to Dependent Territories with the British Nationality Act 1981,[16] and again to Overseas Territories under the British Overseas Territories Act 2002.[17] This piece of legislation not only changed the name, but also the citizenship status of the population. Before 2002, citizens of the Overseas Territories were not automatically British citizens, and as such did not have the automatic right to abode in the United Kingdom.[18] This reflected a wider trend in the UK of disinterest in the Overseas territories, and in the period following the decolonisation of the Empire the UK government seemed to operate a "wait and see" attitude, or as Hintjens and Hodge call it "reading the tea leaves", [19] to

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[12] Charles Cawley, *Colonies in Conflict: The History of the British Overseas Territories* (Newcastle upon Tyne: Cambridge Scholars Publishing, 2015), 51.

[13] FCO response to FOI Request 0885-18.

[14] West Indies Act 1962, http://www.legislation.gov.uk/ukpga/Eliz2/10-11/19# and West Indies Act 1967, http://www.legislation.gov.uk/ukpga/1967/4.

[15] Anguilla Act 1980, http://www.legislation.gov.uk/ukpga/1980/67.

[16] British Nationality Act 1981, http://www.legislation.gov.uk/ukpga/1981/61.

[17] British Overseas Territories Act 2002, http://www.legislation.gov.uk/ukpga/2002/8#.

[18] For more information on the British Overseas Territories Act 2002 and its effects on citizenship see Rieko Karatani, "Britishness Reconsidered: Interplay Between Immigration and Nationality Legislation and Policymaking in Twenty-first Century Britain," *Journal of Imperial and Commonwealth History* 47, no. 5 (2019).

[19] Helen Hintjens and Dorothea Hodge, "The UK Caribbean Overseas Territories: Governing Unruliness amidst the Extra-territorial EU," Commonwealth & Comparative Politics 50, no. 2 (2012): 198-199.

engagement with the Dependent Territories, as they were known then.[20] This stance was called into question in the 1990s and ultimately forcibly changed by events such as a series of corruption scandals in Turks and Caicos Islands and the eruption of the Soufriere Hills volcano in Montserrat, which highlighted the flaws in the relationship (such as the aforementioned lack of the right of abode in the UK).

Starting with the Labour government under Tony Blair, there has been a succession of White Papers devoted to the Overseas Territories which aimed to renew and re-energise the British government's relations with them. The first in 1999 led to the British Overseas Territories Act 2002 and to new constitutions in all of the territories except Anguilla.[21] This did not, however, change the UK government's overall attitude to the Territories, as evidenced by its slow response to a large-scale corruption scandal in Turks and Caicos in the mid-2000s. The second White Paper came after the 2010 UK election brought the Conservative-Liberal Democrat coalition to power. However, as Clegg points out, this was similar in many ways to the 1999 Paper, and under the Coalition and the subsequent Conservative government many of the problems which had existed under Labour were still present.[22] These have in fact been exasperated further by the introduction of the Sanctions and Anti-Money Laundering Act 2018, which forces the Overseas Territories to create public registers of ownership by the end of 2020.[23] The reaction to this from the affected territories was mostly negative, with the BVI Premier calling it a "deeply flawed policy."[24]

We see thus that the territories' relationship with the UK is difficult to pin down. On the one hand, the territories benefit from the current state. As Godfrey Baldacchino notes,

[20] Sébastien Chauvin, Peter Clegg, and Bruno Cousin, *Euro-Caribbean Societies in the 21st Century: Offshore Finance, Local élites and Contentious Politics* (London: Routledge, 2018), 17.

[21] Chauvin et al, 18.

[22] Chauvin et al, 20.

[23] Sanctions and Anti-Money Laundering Act 2018, http://www.legislation.gov.uk/ukpga/2018/13.

[24] Update on United Kingdom Sanctions and Anti-Money Laundering Bill, statement by Premier Smith, Government of the British Virgin Islands, 1 May 2018, http://www.bvi.gov.vg/media-centre/statement-premier-smith-update-united-kingdom-sanctions-and-anti-money-laundering-bill.

> the current status of autonomy without sovereignty is seen as the best of both worlds – providing many of the benefits associated with political sovereignty while delegating responsibilities, enjoying security and reaping the material benefits of remaining in association with a larger, and typically richer, albeit often reluctant, patron.[25]

On the other hand, the territories are at the whim of the UK government, with both apathy and heavy-handedness representing a threat to them. Brexit represents a good example of this. Except for Gibraltar, none of the Overseas Territories participated in the referendum. However, due to their association with the UK, they have all developed relationships, both legal and economic, with the EU and thus without their consent these relationships are being dismantled. In 2019, the House of Commons Foreign Affairs Committee commissioned a report to reassess the relationship between the UK and the Overseas Territories in the light of the Brexit referendum and new direction in which Britain was heading. It concluded that the OTs were very happy and proud to be part of the "British family", but that more engagement was required between the respective governments.[26] On the Territories' side there is little appetite for independence either. Several of them have held referenda in the past on the issue (Bermuda in 1995, Gibraltar in 2002 and Falklands in 2013) with all voting to remain Overseas Territories.[27]

Free trade theories

We must also set out the theories of free trade which will underpin the hypothesis that Brexit will harm the overseas territories' economies. We acknowledge that the Overseas Territories do not form part of the Single Market, nor do they have an

[25] Godfrey Baldacchino, "Managing the Hinterland Beyond: Two Ideal-type Strategies of Economic Development for Small Island Territories," *Asia Pacific Viewpoint* 47, no. 1 (2006): 49.

[26] House of Commons Foreign Affairs Committee, *Global Britain and the British Overseas Territories: Resetting the relationship*, 15th Report of Session 2017-19 (2019), 29-32.

[27] Gerard Prinsen and Séverine Blaise, "An Emerging "Islandian" Sovereignty of Non-self-governing Islands," *International Journal* 72, no. 1 (2017): 75.

explicit free trade agreement as under WTO law, however given the provisions of part four of the TFEU, their status can be considered as if they did.

David Ricardo was one of the first to assert that trade between nations was a mutually beneficial thing, and thus a reason not to stay in complete autarky. He stated that countries will always hold a comparative advantage in some products, but also only possess a finite number of resources. They should therefore allocate these to the product where they hold such an advantage, and trade with other countries to import those which they don't.[28] Ricardo thus showed that trading would be beneficial for the welfare of the world as a whole.

Heckscher and Ohlin developed this theory further stating that countries should develop those products which utilise their abundant factor and use this to trade with others. However, there have been some challenges to these assumptions. For example, Jacob Viner's theory of customs unions stated that, when tariffs between countries are abolished, we cannot say what will happen to the country's welfare, because there will be both trade creation and trade diversion.[29] Paul Krugman points out that it is important for us to understand that, contrary to what many in the media portray, trade is not a competition between countries, but rather a vehicle for mutually beneficial exchange.[30] Winters, McCulloch and McKay go further and state that there has been very little evidence to suggest that liberalisation of trade is harmful to a country's economic growth.[31]

[28] David Ricardo, *On the Principles of Political Economy and Taxation*, First Published 1817, ed. Cambridge Library Collection - British and Irish History, 19th Century (Cambridge: Cambridge University Press, 2015).

[29] Jacob Viner and Paul Oslington, *The Customs Union Issue* (Oxford: Oxford University Press, 2014).

[30] Paul R. Krugman, "What Do Undergrads Need to Know About Trade?" *The American Economic Review* 83, no. 2 (May 1993): 24.

[31] L. Alan Winters, Neil McCulloch and Andrew McKay, "Trade Liberalization and Poverty: The Evidence So Far," *Journal of Economic Literature* 42, no. 1 (2004): 74.

Small island developing states

The other theory which underpins our research is that small island developing states are vulnerable and must therefore look to outside powers for help. Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Montserrat and Turks & Caicos Islands are classed as SIDS by the UN.[32] In his 1995 paper Lino Briguglio argues that these states' vulnerabilities are often masked by favourable economic data, such as high GDP or GNP per capita. He identifies five main ways in which SIDS are disadvantaged: small size; insularity and remoteness; proneness to natural disasters; environmental factors; other factors such as dependency on foreign aid and migration.[33] Their small size means that SIDS have limited natural resources and therefore their import content is higher. Not only that, but the size of the internal market is also small, and their share of global trade is small, meaning that they have limited influence on the prices of goods. The susceptibility to natural disasters is a particularly acute problem for the OTs. The territories in the Caribbean are in the North Atlantic hurricane belt, with Hurricane Irma in 2017 providing a reminder of their vulnerabilities and dependency on outside help when disasters hit.

Clem Tisdell also sets out some of the economic problems faced by small island states.[34] He contends that small islands are likely to suffer from imperfect competition, as their markets are not large enough to sustain many firms. This may be compounded by the small nature of the society and the fact that business managers may have personal connections with politicians. Regulation to counter this is thus difficult due to the competing interests. Tisdell notes that a common problem which small islands face is the issue of migration. It is not uncommon for such countries to be worried about both inward and outward migration. If the island's economy is stronger than those around it (which tends to be the case for the Caribbean Overseas Territories), then inward migration may lead to lower wages or the failure to adequately train locals for the skilled work needed. However, small

[32] "Small Island Developing States," United Nations Department of Economic and Social Affairs, https://sustainabledevelopment.un.org/topics/sids/list, accessed 8 July 2020.

[33] Lino Briguglio, "Small Island Developing States and Their Economic Vulnerabilities." *World Development* 23, no. 9 (1995): 1616-18.

[34] Clem Tisdell, *Economic Challenges Faced by Small Island Economies: An Overview,* Working Paper 58 (Brisbane: University of Queensland, 2009), 4-5.

islands may suffer a brain drain if locals are able to migrate to places and regions which have higher wages.[35]

We can see that most of the BOTs show characteristics of SIDS, even those which are not formally classified as such by the UN. In part, this may help to explain why these territories have remained under British rule, instead of becoming independent and why they have developed a relationship with the EU.

[35] Tisdell 2009, 5-6.

Chapter 4: Literature review

The British Overseas Territories are a niche topic. As Hintjens and Hodge note, “they remain mainly the esoteric concern of a few scholars and bureaucrats, a few more investors, and a focus of residual UK government ‘contingent liabilities’.”[36] Their relationship with the EU is even less studied, and as such the amount of literature on the matter is small.

One of the main pieces of literature for this topic comes from Peter Clegg, who published an article in *The Round Table* just after the Brexit referendum setting out possible implications for the OCTs (which was then further updated in 2018).[37] In his article Clegg sets out the areas which will be affected by Brexit and analyses possible consequences. However, this article was written when the future of the relationship between the UK and the EU was still unknown. Since then there has been a change of Prime Minister and negotiating team, and consequently a change in direction. Thus, the possible outcomes have been reduced to a binary choice between the negotiated agreement and reverting to WTO terms of trading. Clegg sets out that the main benefits for the BOTs from their relationship with the EU are trade, security, free movement and political visibility. This thesis builds on Clegg’s work by analysing in detail each territory’s links with the EU as well as providing a historical and legal analysis of the relationship.

In 2012 Paul Sutton argued that the existing frameworks for cooperation between the Caribbean OCTs and the EU were not working, and that the OCTs could not thus fully articulate their position on common issues.[38] His argument was proven right when the Council adopted the Overseas Association Decision in 2013. Maria Mut Bosque argues that Brexit and the debate about the BOTs’ relationship with the EU

[36] Hintjens and Hodge 2012, 190.

[37] Peter Clegg, "Brexit and the Overseas Territories: Repercussions for the Periphery," in Chauvin et al 2018, 543-55.

[38] Paul Sutton, "The European Union and the Caribbean Region: Situating the Caribbean Overseas Countries and Territories," *European Review of Latin American and Caribbean Studies* 93 (2012): 79-94.

has highlighted the flaws in their relationship with the UK.[39] She argues that due to their heterogeneity and differing interests from the UK, they should be allowed some autonomy in negotiating their own relationship with the EU and concluding special deals.

Dimitry Kochenov's edited collection sets out many of the legal aspects of what he calls the "EU law of the overseas."[40] He sets out that although Article 52 (1) of the TEU sets out the territorial application of the Treaties, it needs clarification from Article 355 of the TFEU as to what constitutes the territory of member states. This sets out the legal situation where neither of the treaties can act independently from the other. [41]

Sir Ronald Sanders compared the Overseas Territories in the Caribbean with the region's independent states. He argued that the BOTs benefit from their association with the UK and the EU with higher standards of living, lower national debt and lower crime rates as a few of the indicators which he cites.[42] In addition, he contends that even for the independent Caribbean nations "real independence is not possible alone; association with others is absolutely necessary,"[43] affirming the idea that SIDS must look for outside guarantors of their stability. Thus, he states that with their special status within the EU, the BOTs enjoy even more "advantageous arrangements" than the Cariforum countries, despite their EPA with the EU.[44]

Several authors have written about the relationship between a single BOT and the EU. Michael Poole and Evan Fagan separately examined the effect of Brexit on the Falkland Islands, with both concluding that trade was the most important aspect of

[39] Maria Mut Bosque, "The Sovereignty of the Crown Dependencies and the British Overseas Territories in the Brexit Era," *Island Studies Journal* 151, no. 1 (2020): 151-68.

[40] Dimitry Kochenov, *EU Law of the Overseas: Outermost Regions, Associated Overseas Countries and Territories, Territories Sui Generis* (Wolters Kluwer: Alphen aan den Rijn, 2011).

[41] Ibid, 5-6.

[42] Ronald Sanders, "The Benefits of Being neither Fish nor Fowl: The UK Caribbean Overseas Territories in the International Community," in Peter Clegg and Emilio Pantojas-Garcia, *Governance in the Non-independent Caribbean: Challenges and Opportunities in the Twenty-first Century* (Kingston; Miami: Ian Randle, 2009), 87-96.

[43] Sanders, in Clegg and Pantojas-Garcia, 94.

[44] Sanders, in Clegg and Pantojas-Garcia, 96.

the relationship.[45] Loss of this, they argue, would have serious repercussions for the islands' economy. Poole also highlights the advantages of free movement, with consultants and doctors from EU member states bringing their valuable knowledge and expertise to the islands.[46] However, Fagan also points out that the weakening of the Pound Sterling post-Brexit has the potential to offset some losses in industries such as wool and fishing.[47]

Likewise, Maria Mut Bosque wrote about Gibraltar's relationship, arguing that it would be the most affected of the BOTs.[48] She argues that Gibraltar gains most through the political voice which the EU offers. Because the EU has a different political voice to its member states, it has been able to show pragmatism in the way which it treats Gibraltar. Mut Bosque points out that Gibraltarians literally struggled for their right to participate in the European Parliament elections.[49] With the Franco-era border closure still in the collective memory, this relationship with the EU and the voice Gibraltar has gained have been brought into stark focus following Brexit.

[45] See Michael Poole, "The Potential Implications of Brexit for the Falkland Islands," *Parliamentarian* 97, no. 3 (2016): 216-218, and Evan Fagan, "Brexit and the Malvinas," *Washington Report on the Hemisphere* 36, no. 13 (2016): 5-8.

[46] Poole 2016, 218.

[47] Fagan 2016, 5-6.

[48] Maria Mut Bosque, "Brexit and the Commonwealth: New Challenges for Gibraltar," *The Round Table* 106, no. 4 (2017): 483-485.

[49] Ibid, 484.

Chapter 5: Overseas Territories' Relationship with the EU

History of EU relations

The OCTs have been linked to the EU ever since its founding with the Treaty of Rome. The original OCTs outlined in Annex IV to the treaty include many colonies of France, Belgium, Italy and the Netherlands which have since become independent (in particular those in Africa). The articles governing the relationship in the Treaty of Rome (Arts. 131-136) are very similar in content to those in the TFEU, with no major changes having been made to the wording of the articles in the treaty's intervening amendments.[50] Following an initial five-year period in which the particulars of the relationship were governed by a Convention attached to the Treaty of Rome, they have been regulated by Decisions which covered five-year periods, adopted in 1964, 1970, 1976, 1980 and 1986.[51] With the UK's accession to the EEC in 1973, the UK's colonies and territories were included in Annex IV of the EEC Treaty.[52] As with the original OCTs, many of these subsequently became independent, however, we can also see the basis of the list which still exists today.[53]

Up until the 1990s the agreements between the EU and OCTs were almost identical to those which the EU had with ACP group of countries (many of which were former OCTs) and as such were an "uncomfortable appendix" to this scheme, with the

[50] Treaty of Rome, Articles 131-136, https://www.cvce.eu/obj/treaty_establishing_the_european_economic_community_rome_25_march_1957-en-cca6ba28-0bf3-4ce6-8a76-6b0b3252696e.html.

[51] "The Overseas Association Decision," Government of New Caledonia Regional Cooperation and External Relations Department, https://cooperation-regionale.gouv.nc/en/european-affairs/overseas-association-decision#, accessed 6 July 2020.

[52] Official Journal of the European Communities, Documents concerning the accession to the European Communities of the Kingdom of Denmark, Ireland, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland, Special Edition, 1972, 18.

[53] The following were specified in Article 24 of the Act concerning the Conditions of Accession and the Adjustments to the Treaties: Anglo-French Condominium of the New Hebrides; The Bahamas; Bermuda; British Antarctic Territory; British Honduras; British Indian Ocean Territory; British Solomon Islands; British Virgin Islands; Brunei; Associated States in the Caribbean: Antigua, Dominica, Grenada, St Lucia, St Vincent, St Kitts-Nevis-Anguilla; Cayman Islands; Central and Southern Line Islands; Falkland Islands and Dependencies; Gilbert and Ellice Islands; Montserrat; Pitcairn; St Helena and Dependencies; The Seychelles; and Turks and Caicos Islands.

OCTs' mother nation conducting negotiations on their behalf.[54] The Overseas Association Agreement was updated in 1991 and 2001 and the length of applicability increased to ten years, as questions started to be raised about the applicability of ACP decisions to the OCTs.[55] The Treaty of Amsterdam in 1999 recognised that, although the OCTs had changed considerably since the founding of the European project (with many becoming independent), the EU's arrangements had remained the same. It called upon the Council to review these with the aim of,

> promoting the economic and social development of the OCTs more effectively; developing economic relations between the OCTs and the European Union; taking greater account of the diversity and specific characteristics of the individual OCTs, including aspects relating to freedom of establishment; ensuring that the effectiveness of the financial instrument is improved.[56]

The OAD of 2001 created new ways for the OCTs to interact with the EU and to increase their presence in Brussels. Article 7 provided for the creation of the OCT-EU Forum, which "shall meet annually to bring together OCTs authorities, representatives of the Member States and the Commission. Members of the European Parliament, representatives of the European Investment Bank, and representatives of the outermost regions shall, where appropriate, be associated with the OCTs-EU Forum."[57] This also facilitated the creation of the Overseas Countries and Territories Association (OCTA). The OCTA has a permanent office in Brussels to represent the interests of its 22 (now 13 following Brexit) members (all inhabited OCTs plus French Southern Antarctic Lands).[58] This has helped the OCTs to increase their visibility, and thus engage constructively with the EU. However, in terms of receiving EU funding they were still in a sort of "no man's land, oscillating

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[54] Ludger Kühnhardt, *The European Archipelago: Rebranding the Strategic Significance of EU Overseas Countries and Territories* (Bonn: Zentrum für Europäische Integrationsforschung, 2019), 11.

[55] Sutton 2012, 80.

[56] Treaty of Amsterdam, Declaration 36, https://europa.eu/european-union/sites/europaeu/files/docs/body/treaty_of_amsterdam_en.pdf.

[57] Official Journal of the European Union, Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union (Overseas Association Decision), L 344/1, 2013, Article 14 (1) (a).

[58] "OCTA Presentation," Association of the Overseas Countries and Territories of the European Union, http://www.octassociation.org/octa-presentation, accessed 6 July 2020.

between the ACP countries (African, Caribbean and Pacific countries) and the EU regions (especially outermost regions)."[59]

A Commission Green Paper was published in 2008 to address the relationship between the EU and OCTs, followed by a consultation process. The Green Paper outlined the need to move the relationship away from the "classic development cooperation approach" to an "active and reciprocal partnership."[60] The Commission received responses to the consultation from many of the OCT governments. Many governments highlighted the need to help the OCTs offset their vulnerability as small island states, balanced with an acknowledgement of their higher development status than most of the ACP countries.[61] Some of the OCTs also referred to the moral obligation of the EU to help them to correct the wrongs of the colonial past whilst some also brought this up to date with the need to mitigate the effects of climate change.[62] Some OCTs made no reference to the need for a more reciprocal partnership, insisting instead on a "continuation of the current relationship and thereby the familiar rules of a (post)colonial sovereignty game maintaining OCT dependency on the EU."[63] However, equal partnership did come up in some of the responses, if only in the decision-making process rather than regarding any contributions to the EU.[64] In general, the OCTs were looking for more visibility in Brussels and powers for the OCT Association.

[59] Association of the Overseas Countries and Territories of the European Union, *Report on the participation of the Overseas Countries and Territories in the European Union programmes during the period 2014-2018* (October 2018), 6

[60] European Commission, *Future relations between the EU and the Overseas Countries and Territories*, 2008, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008DC0383&from=EN.

[61] Sutton 2012, 81.

[62] Rebecca Adler-Nissen and Ulrik Pram Gad, *European Integration and Postcolonial Sovereignty Games: The EU Overseas Countries and Territories* (Abingdon: Routledge, 2013), 87-88.

[63] Ibid, 89.

[64] Ibid.

The Commission's response to this stressed the "unique relationship" which existed between the EU and OCTs and the belonging to the "same European family."[65] The Commission drew up three main objectives for a new agreement: enhancing the competitiveness of the OCTs; strengthening their resilience to both economic shock and natural disasters; and promoting cooperation between the OCTs.[66] Additionally, it outlined five axes of cooperation: establishing centres of excellence in the OCTs; helping the OCTs to adopt EU standards; promoting sustainable development; improving accessibility and connections to the outside world; and modernising the trading relationship.[67] In particular, the Commission raised the possibility of amending the rules of origin for the OCTs.

Following the end of the 2001 OAD, the Green Paper and the consultations with the various stakeholders, the Commission proposed a new OAD which was adopted in November 2013. This will be examined in detail along with the relevant part of the TFEU in the next section.

Legal framework of the relationship

The Overseas Territories are not part of the EU itself, but have a special status as set out in Part IV, Articles 198-204 of the TFEU, which are attached as an appendix to this thesis. The treaty sets out that, "the purpose of association shall be to promote the economic and social development of the countries and territories and to establish close economic relations between them and the Union as a whole."[68] The relationship between the OCTs and the EU is rather asymmetrical, with the OCTs always being given preference. For example, "Member States shall apply to their trade with the countries and territories the same treatment as they accord each other

[65] European Commission, *Elements for a new partnership between the EU and the overseas countries and territories (OCTs)*, COM(2009) 623 final (Brussels, 2009), 4. https://ec.europa.eu/transparency/regdoc/rep/1/2009/EN/1-2009-623-EN-F1-1.Pdf.

[66] Ibid, 5-6.

[67] Ibid, 6-9.

[68] Treaty on the Functioning of the European Union, Article 198. Accessed in Nigel G. Foster, *Blackstone's EU Treaties & Legislation 2018-2019*, 29th ed. (Oxford: Oxford University Press, 2018).

pursuant to the Treaties",[69] but each OCT "shall apply to its trade with Member States and with the other countries and territories the same treatment as that which it applies to the European State with which it has special relations."[70] In addition, whilst "customs duties on imports into the Member States of goods originating in the countries and territories shall be prohibited in conformity with the prohibition of customs duties between Member States in accordance with the provisions of the Treaties",[71] the OCTs "may, however, levy customs duties which meet the needs of their development and industrialisation or produce revenue for their budgets."[72]

These provisions serve to give the OTs preferential access to the EU Single Market, although they are not part of the single market and must therefore "comply with the obligations imposed on third countries in respect of trade, particularly rules of origin, health and plant health standards and safeguard measures."[73] Further clarification is set out in Article 355 of the TFEU which sets out the territorial scope of the Treaty. Article 355 (2) states that the "special arrangements for association set out in Part Four shall apply to the overseas countries and territories listed in Annex II" [74] but that "the Treaties shall not apply to those overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not included in the aforementioned list."[75] This therefore excludes the Crown Dependencies of Jersey, Guernsey and the Isle of Man. Article 355 (3) stipulates that "the provisions of the Treaties shall apply to the European territories for whose external relations a Member State is responsible", referring to Gibraltar in particular. In addition, Article 355 (5)(b) states that "the Treaties shall not apply to the United

[69] TFEU, Article 199 (1).

[70] TFEU, Article 199 (2).

[71] TFEU, Article 200 (1).

[72] TFEU, Article 200 (3).

[73] Council Decision 2013/755/EU, Preamble art. 4.

[74] The following OCTs are listed in Annex II: Greenland, New Caledonia and dependencies, French Polynesia, French Southern and Antarctic Territories, Wallis and Futuna Islands, St Pierre and Miquelon, Aruba, Bonaire, Curacao, Saba, Sint Eustatius, Sint Maarten, Anguilla, Cayman Islands, Falkland Islands, South Georgia and the South Sandwich Islands, Montserrat, Pitcairn, St Helena and dependencies, British Antarctic Territory, British Indian Ocean Territory, Turks and Caicos Islands, British Virgin Islands, Bermuda.

[75] TFEU, Article 355.

Kingdom Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus except to the extent necessary to ensure the implementation of the arrangements set out in the Protocol on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus."[76] Kochenov also notes that the "OCTs' association does not entail any negotiations or the signing of any agreements with the OCTs themselves."[77] Instead the rules of the association are adopted according to Article 203 of the TFEU. This states that the rules and procedure of association will be set out by the Council, acting unanimously on a proposition by the Commission.[78]

Regarding the freedom of movement for workers, Article 202 of the TFEU states that "freedom of movement within Member States for workers from the countries and territories, and within the countries and territories for workers from Member States, shall be regulated by acts adopted in accordance with Article 203." To this date no such acts have been adopted, however those BOT citizens who have British citizenship have been able to benefit from freedom of movement by virtue of that.

The relationship between the OCTs and the EU is also regulated by decisions made by the Council, the latest of which is Council Decision 2013/755/EU (Overseas Association Decision). As stated in the previous section, the 2013 OAD was a marked departure from previous ones in that it stressed that,

> the special relationship between the Union and the OCTs should move away from a classic development cooperation approach to a reciprocal partnership to support the OCTs' sustainable development. Moreover, the solidarity between the Union and the OCTs should be based on their unique relationship and their belonging to the same 'European family'.[79]

Indeed, if analysing the language of the 2013 OAD in comparison to its 2001 precursor we can see this difference. The word "mutual" appears nearly three times more in the 2013 version compared to 2001. The majority of the preamble to the

[76] Ibid.

[77] Kochenov 2011, 48.

[78] TFEU, Article 203.

[79] Council Decision 2013/755/EU, Preamble 5.

2013 OAD is taken up outlining the areas of cooperation between the EU and OCTs, whereas the 2001 version's preamble mainly sets out the legal framework on which the Decision is based, and any derogations.

Let us analyse in more detail the section relating to trade. Firstly, and one of the most important aspects, is the waiver of customs duties on products originating in OCTs coming into the EU in article 43. Just as significant is the prohibition of quantitative restrictions set out in article 44. However, OCTs are permitted to apply these measures to European goods to the extent that they "consider necessary in view of their respective development needs."[80] Trade in services is not subject to the same preferential treatment as for goods. Article 51 (1)(a) sets out that the OCTs will receive "treatment no less favourable than the most favourable treatment applicable to like natural and legal persons of any third country with whom the Union concludes or has concluded an economic integration agreement." Whilst not meaningful in that the EU has comprehensive integration agreements with third countries, the difference in language is telling, and represents a difference between the liberalisation of goods and services.

The 2013 Overseas Association Decision was important because, according to the UKOTA, it "corrected an erosion that had taken place in the competitive position of OCTs vis-à-vis the EU market."[81] In recent years the EU had concluded FTAs with countries around the world which were similar to the OCTs as well as a new ACP agreement, and thus they were losing competitiveness.

Also of importance to this thesis is Part Four, Chapters Two and Four, of the OAD which outline the OCTs' eligibility for EU funding. Article 77 (a) sets out that OCTs are entitled to funding under the 11th EDF. Article 77 (b) sets out that they are eligible for funds from "the Union programmes and instruments provided for in the Union's general budget." In addition, Article 94 stipulates that this funding is open to "natural persons from an OCTs [...] and, where applicable, the relevant public and/or private

[80] Council Decision 2013/755/EU, Art. 45 (1).

[81] Peter Clegg, *The United Kingdom Overseas Territories and the European Union: Benefits and Prospects, Part I – EU Benefits to the United Kingdom Overseas Territories*, report for the United Kingdom Overseas Territories Association (2016), 9.

bodies and institutions in an OCTs [...] subject to the rules and objectives of the programmes and possible arrangements applicable to the Member State to which the OCTs is linked.” They are also eligible for regional funding as set out in Article 93.

Chapter 6: Individual Territories' Links to EU

This section sketches out the links between the individual Overseas Territories and the EU. It also begins to make assessments of the impact of Brexit on these links and actions which have already been taken to mitigate any negative impact. There are a number of common themes which run through all of the territories. Development aid, particularly from the European Development Fund, is a vital source of income for some of the Overseas Territories. The detailed impact of each territory's allocation is outlined in their respective sections.

Anguilla

Anguilla is a small island of around 15,000 people, situated in the north of the Leeward Island chain in the Caribbean. It is located around 8 kilometres north of the island of Saint Martin, which is comprised of the French Overseas Collectivity of Saint Martin and the Dutch Country of Sint Maarten. The Dutch side is, like Anguilla, an OCT, however the French side is a part of France proper and thus part of the EU. It is classified as one of the EU's Outermost Regions. Anguilla thus has a direct external maritime border with the EU (as seen in the map in Appendix III). However, the FCO argues that the Anguilla-Saint Martin border does not constitute an external border with the EU.[82]

Anguilla is heavily reliant on its neighbouring island for transport to and from the outside world. The waters surrounding Anguilla are very shallow, which means that large ships are unable to dock anywhere on the island. In addition, Anguilla's airport is not able to cater for large jet planes and is therefore reliant on the larger Princess Juliana International Airport in Sint Maarten for arrivals from overseas. This means that essential goods and cargo must be transshipped via Saint Martin, even those which do not originate in the EU. Saint Martin is also critical for tourist arrivals to Anguilla, with over 95% of tourists passing through the French and Dutch territory.[83]

[82] Government of Anguilla London Office, *Anguilla & Brexit: Britain's Forgotten EU Border* (2017), 11.

[83] Ibid, 23.

The Dutch island municipality of Sint Eustatius is also of “paramount importance” to Anguilla, because 90% of oil imports are transshipped from the refinery there.[84] Oil is used to generate 95% of electricity and is also used in rainwater desalination. As well as being key for imports, Saint Martin is also the destination of many Anguillan primary product exports, such as fresh fish and livestock. Such exports are crucial to the Anguillan ambition to diversify its economy.[85] The imposition of tariff controls by France on Anguillan products would be disastrous for this process. The border between Anguilla and Saint Martin is problematic in other ways too. At 10pm every night the French shut the border with Anguilla, preventing complete unhindered access to the island. There is worry that post-Brexit these difficulties will only intensify, causing disruption to deliveries to the island. This is particularly acute given the British government’s lack of recognition of the border status and has thus not prioritised the diplomatic resolution of the problem.[86]

Anguilla is also dependent on the EU for development aid, receiving money as part of the European Development Fund. Under the 11th cycle of the EDF Anguilla receives €14.05 million, up from €11.7 million under the 10th EDF.[87] As set out in the Programming Document, this money is targeted towards the education sector in line with Article 33 of the Overseas Association Decision which outlines cooperation between the OCTs and EU in the field of education and training. The objective of the 11th EDF aid is the “promotion of long-term sustainable economic development and welfare in Anguilla by making primary education, secondary education and Technical and Vocational Education and Training (TVET) more relevant in meeting the current and future needs of the labour market, and resulting in a more educated and literate workforce.”[88] The 10th EDF provided Anguilla with €11.75 million to support its Medium Term Economic Strategy, which would secure macroeconomic stability and sustainable growth. These numbers are not insignificant for an economy of Anguilla’s

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[84] Ibid, 23.

[85] Ibid, 24-25.

[86] Ibid, 11-12

[87] European Commission and Government of Anguilla, *Programming Document Anguilla: The Territorial Allocation of the 11th European Development Fund* (n.d.), 6-7.

[88] Ibid, 7.

size, where the GDP in 2018 was US$299 million.[89] Indeed, the Anguillan government states that the money from the 11th EDF accounts for 36% of its capital budget.[90] This is all the more important given that the DFID deems the territory ineligible for funding due to its GDP per capita being too high. However, the Anguillan government contends that its GDP is distorted by wealthy expats, who only live on the island for part of the year.[91] This ineligibility for ODA from the UK was brought sharply into focus by Hurricane Irma in 2017, which devastated the island. Rule changes were agreed by the OECD in the case of natural disasters which have a severe economic impact; however, Anguilla's GDP per capita remains too high for it to be ordinarily eligible.[92]

The effect of the EU on Anguilla's trade is mixed. Looking at the export data from 2000-2017 we can see wide variations in the exports to the EU27, ranging from 68% in 2009 to just 3.92% in 2014.[93] On average, however, the EU27 have accounted for just less than 20% of Anguilla's exports in this time period. In comparison, the UK accounts for an average of just less than 2% of Anguillan exports in the same time period.[94] Imports are similarly inconclusive, with the EU27 accounting for an average of 16% over the time period, reaching peaks of 39% in 2009 and 2013 but a low of 5% in 2014.[95] Again the UK has a lower average of just 3.5%, peaking with 9% in 2004 and 2014.

Anguilla has also benefitted from funding under the BEST initiative. In the 2011-17 funding period four projects have been carried out in the territory.[96] Such projects have included the eradication of invasive mammals, the conservation of a rare

[89] United Nations Conference on Trade and Development, http://unctadstat.unctad.org/countryprofile/generalprofile/en-gb/660/index.html, accessed 9 July 2020.

[90] European Commission and Govt of Anguilla, 34.

[91] Govt of Anguilla London Office 2017, 15.

[92] James Landale, "UK aid for wealthier overseas territories after rule change," *BBC News*, 1 November 2018, https://www.bbc.com/news/uk-46052502.

[93] Atlas of Economic Complexity.

[94] Ibid.

[95] Ibid.

[96] European Commission, *BEST Initiative: Projects 2011-2017*, n.d.

iguana species and restoring reef habitats in a marine park. However, the signature project in Anguilla has been a €438,000 project to assess the state of sea turtles and draw up an action plan for their conservation.[97] In the period 2014-18, Anguilla also received €7.5 million from Horizon 2020.[98]

Bermuda

Bermuda is a small island in the North Atlantic Ocean, with a population of around 64,000. It has the highest population of all the Overseas Territories, and one of the strongest economies. It is also one of the territories with the highest levels of autonomy from the UK government, such that it is difficult for the British government to even legislate by Order of Council.[99]

Bermuda's economy is heavily reliant on services, with the primary and secondary sectors barely contributing 1% of the territory's GDP between them in 2018.[100] Thus, Bermuda does not benefit much from the preferential trading status under the OAD. However, Bermuda has negotiated third-country equivalency for its insurance markets under the Solvency II regime, the EU's effort to create a single market for the insurance sector.[101] This allows Bermuda's insurance companies to compete on the same level as those from member states, and at the time it was granted Bermuda was the only non-EU jurisdiction, along with Switzerland, to be granted such equivalence.[102]

[97] Ibid, 22.

[98] Association of the Overseas Countries and Territories of the European Union, October 2018, 10.

[99] Peter Clegg, "The United Kingdom and its Overseas Territories: No longer a 'benevolent patron'?" *Small States and Territories* 1, no.2 (2018): 149-150.

[100] Government of Bermuda Department of Statistics, *Annual Gross Domestic Product 2018 Highlights*, 10. https://www.gov.bm/sites/default/files/GDP-2018-annual-publication.pdf

[101] Official Journal of the European Union, Commission Delegated Decision (EU) 2016/309 of 26 November 2015 on the equivalence of the supervisory regime for insurance and reinsurance undertakings in force in Bermuda to the regime laid down in Directive 2009/138/EC of the European Parliament and of the Council and amending Commission Delegated Decision (EU) 2015/2290 [2015] OJ L 58/50, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D0309&from=EN.

[102] Cintia Cheong, "Bermuda gains full Solvency II equivalence," *The Actuary*, 30 November 2015, https://www.theactuary.com/news/2015/11/2015/11/30/bermuda-gains-full-solvency-ii-equivalence.

Bermuda's trade in services with the EU totalled €36.2 billion in 2018.[103] Bermuda's trade in goods with the EU27 has fluctuated wildly since 2000. Peaks of 90% of all exports in 2005 and 86% in 2010 have been followed by troughs of 9% in 2008 and 1% in 2013.[104] In comparison, the UK was the destination for just 4% of Bermudan exports in 2017 and has an average of 1.5% for the period since 2000.[105]

Bermuda is also a beneficiary of grants under the BEST initiative. In total, for the period 2011-17, there were two projects worth a total of €200,000.[106] These projects dealt with the eradication of the invasive lionfish, in order to promote better biodiversity on the island. Due to its high GDP per capita and isolation from EU territory, it does not qualify for any other EU funding.

According to Derek Binns, Secretary of the Cabinet of the Bermuda Government, one of the major concerns for Bermuda is the loss of freedom of movement for its citizens.[107] Former Premier Michael Dunkley expanded saying, "travel is the most important thing because many Bermudians travel a lot."[108] This is made possible by the fact that many Bermudians possess a British passport.

British Virgin Islands

The British Virgin Islands are a group of islands in the northern Lesser Antilles with a population of around 35,000. They are part of the Virgin Islands archipelago which includes the US Virgin Islands and are just less than 100 kilometres from Puerto Rico. The economy of BVI is primarily based on services, in particular financial

[103] European Commission, *Bermuda Factsheet* (2020), https://webgate.ec.europa.eu/isdb_results/factsheets/country/overview_bermuda_en.pdf.

[104] Atlas of Economic Complexity.

[105] Ibid.

[106] European Commission, *BEST Initiative: Projects 2011-2017*.

[107] House of Lords European Union Committee, *Brexit: Overseas Territories, corrected oral evidence*, 10 July 2017, 16.

[108] Henry Mance, "British overseas territories set out their Brexit priorities," *Financial Times*, 7 February 2017, https://www.ft.com/content/225fe8b6-ed59-11e6-930f-061b01e23655.

services and tourism.[109] The territory has one of the highest GDP per capita in the Americas. Because of its strong economy and relatively small goods sector, BVI is less reliant on the EU than some of the other OCTs. However, the Government of the BVI set out the following benefits: "preferential terms for trade; expertise to strengthen the private sector; funding to support sustainable development; free movement rights for many BVI citizens; and political dialogue on sectors such as financial services."[110] It continues, "these are valuable benefits for a small island territory, which have opened educational, employment and travel opportunities that enrich our society."[111] A critical opportunity which the EU offers is the opportunity to diversify the BVI economy. The BVI government has been exploring options to commercialise the fishing industry with the EU expected to be a key export market.[112] Losing the preferential access guaranteed under the OAD would put this diversification in jeopardy.

BVI's economic standing means that it does not qualify for direct aid from either DFID or the EU. However, it benefits from access to the EU's regional aid package of around US$ 100 million.[113] This package has supported cooperation between the British, Dutch and French Overseas Territories in the area of small and medium enterprise development. The BVI government has highlighted that SMEs will be the driver to boost the economy in the next few years, hence this package helps to build this capacity. The British Virgin Islands have received BEST initiative grants for two projects in the 2011-17 cycle. Both are joint projects with other BOTs to eradicate invasive mammal species.[114] Projects in the British Virgin Islands have also benefitted from grants under Horizon 2020. In the period 2014-18 BVI received

[109] "The BVI's Economy," BVI Finance, https://bviglobalimpact.com/economy, accessed 4 July 2020.

[110] Govt of BVI quoted in House of Lords European Union Committee, *Brexit: Overseas Territories*, letter to David Davis, 13 September 2017.

[111] Ibid.

[112] House of Lords EU Committee, *Brexit: Overseas Territories, corrected oral evidence*, 3.

[113] Ibid.

[114] European Commission, *BEST Initiative: Projects 2011-2017*.

almost €5.5 million.[115] It also received €268,000 under Erasmus+ in the same period.[116]

In terms of trade, the British Virgin Islands export more to the EU27 than it does to the UK. Since 2000 their exports to the EU27 peaked at 79% in 2012 and have had an average of 33%, whereas the UK's share peaked in 2005 with 17% and has been steadily declining since then.[117]

Cayman Islands

The Cayman Islands are a group of three islands off the coast of Cuba in the Caribbean Sea, with a population of around 64,000.[118] The Cayman Islands have one of the highest GDP per capita in the world with around US$ 85,000.[119]

The Cayman Islands do not receive any funding from the EU under the EDF, and nor do they from DFID. This makes the territory less dependent on the EU than some of the others. Where it does derive benefit is from the representative presence in Brussels and the knowledge-sharing capabilities of the EU. For example, the OCTA organises an Energy Summit which allows delegates from OCTs and experts in the industry to come together and share best practices about how the energy process in the territories can become more sustainable.[120] In addition, the Cayman Islands benefit from being around the table to discuss regulations for financial services. Without the UK's voice to lobby for the OTs, there is a higher risk of them being put on the EU's tax haven blacklist, which in turn damages their reputation and ability to do business. Governor Martyn Roper said, "I recognise there are concerns about

[115] Association of the Overseas Countries and Territories of the European Union (October 2018), 3.

[116] Ibid.

[117] Atlas of Economic Complexity.

[118] "Indicators," Government of Cayman Islands Economic and Statistics Office, https://www.eso.ky/indicators_page.html#3, accessed 3 July 2020.

[119] "Cayman Islands per capita GDP," United Nations Statistics Division, http://data.un.org/Data.aspx?q=Cayman&d=SNAAMA&f=grID%3A101%3BcurrID%3AUSD%3BpcFlag%3A1%3BcrID%3A136.

[120] Cayman Islands Government Office UK, *The Gazette: Annual Briefing 2017/*18 (London: 2018), https://issuu.com/cigouk/docs/cigo-annual-briefing-design_version, 14.

[being added to the blacklist] because the UK, in the past, has obviously stood up for Cayman and other overseas territories. Once we are out of the EU, we will no longer be around that table."[121]

With such a high GDP per capita, the Cayman Islands do not qualify for development aid from either the EU or the UK. The only EU funds which they receive are as part of the BEST initiative. The Cayman Islands benefit from three projects funded by the BEST initiative. One is exclusive to the Caymans and is a €100,000 grant to preserve the islands' coral reefs. The others are joint projects with other Caribbean BOTs to combat invasive species.[122]

As far as trading is concerned, the majority of Cayman Islands' exports are boats and little direct trade in other commodities is done with the EU. Financial services are by far the islands' biggest export, with service exports being 24 times larger than for goods.[123]

Falkland Islands

The Falkland Islands are an isolated group of islands in the South Atlantic Ocean situated around 500 kilometres off the coast of South America, with a population of around 3,500.[124] The territory's disputed status and the British collective memory of the Falklands War has meant that the islands featured more prominently in the Brexit debates than many of the other Overseas Territories. Debates were had as to whether the loss of the EU's support for British rule over the Falklands would have any tangible effect.[125] However, this discussion about the islands' security belies the

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[121] James Whittaker, "Amid Brexit uncertainty, few fears for Cayman," *Cayman Compass*, 17 July 2019, https://www.caymancompass.com/2019/07/17/amid-brexit-uncertainty-few-fears-for-cayman/.

[122] European Commission, *BEST Initiative: Projects 2011-2017*.

[123] World Trade Organisation, *Trade Profiles 2018* (World Trade Organisation: Geneva, 2018), 72-73.

[124] Falkland Islands Government, *2016 Census Report*, https://www.fig.gov.fk/policy/component/jdownloads/send/4-statistics/62-falkland-islands-census-2016-full-report.

[125] Matthew C. Benwell and Alasdair Pinkerton, "Brexit and the British Overseas Territories: Changing Perspectives on Security," *The RUSI Journal* 161, no. 4 (2016): 11.

fact that the biggest advantage of the EU for the Falklands is as a trading partner. The EU27 are the largest trading partner for the Falklands, accounting for 64% of all trade in comparison to the UK which accounts for just 22%.[126] The Falklands exported €212 million worth of goods to the EU 27, the vast majority of which were food products. In 2017 Spain alone accounted for 85% of the Falklands' agricultural exports, totalling $163 million, and 80% of overall exports.[127]

Privileged access to the Single Market under the OAD has always helped the Falklands, in particular the favourable rules of origin which apply. Annex VI, Article 3 of the 2013 OAD sets out which products are classified as "wholly obtained" in an OCT, and therefore granted favourable access to the Single Market. Of primary importance is paragraph 1, subsection (h) of the aforementioned Article, which states that, "products of sea fishing and other products taken from the sea outside any territorial sea by its vessels" are counted as wholly obtained. The conditions for classifying as "its vessels" are set out in paragraph 2. This states that vessels must be registered in an OCT or in a Member State; sail under the flag of an OCT or Member State; and either be 50% owned by nationals of OCTs or Member States or by a company which is based in an OCT or Member State and at least 50% owned by their nationals.[128] In practice, Spanish ships are the main sources of Falkland Islands fish, with 89% of fish exports passing through the Spanish port of Vigo in 2018.[129] Spain is a lucrative market for the Falklands, as prices for their main product loligo (a type of squid) are higher there than elsewhere in the world.[130] With prices in the US 50% lower than in the EU and in Japan 30% lower, these otherwise large markets are not as economically viable. EU tariffs on loligo are currently 6% and for toothfish (another major Falklands export) they are 15%. The Falkland Islands

[126] European Commission DG Trade, *Trade with Falkland Islands*, 8.

[127] Atlas of Economic Complexity.

[128] Council Decision 2013/755/EU, Annex VI, Article 3 (2) (a-c).

[129] "Falkland Islands and Brexit: Focus on Falkland Islands Fishing Industry," Falkland Islands Government, https://www.brexitfalklands.gov.fk/fishing/, accessed 8 July 2020.

[130] Falkland Islands Government, written evidence to House of Lords EU Select Committee, http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/european-union-committee/brexit-overseas-territories/written/69298.pdf, accessed 8 July 2020.

Government estimates that, “with no free trade and import tariffs imposed the industry would lose £8m per year just in the loligo market.”[131]

Another Falkland Islands market which is linked to the EU is agriculture. 33% of meat products from the Falklands are shipped to the EU27, with 65% going to the UK. Because of this, the production processes are set up so that the industry complies with EU rules and norms. In the worst-case Brexit scenario, where trade reverts to WTO rules, the Falkland Islands Government states that, “meat exports to the EU [would be] subjected to WTO tariffs of 12.8%, plus a fixed amount, on average, of €155.68 per 100kg, depending on the cut (corresponding to an overall levy of about 42%).”[132] Such a drastic increase would doubtless decrease EU demand for Falklands meat and without an increase from other countries and the UK would have a detrimental impact on agriculture and the rural Falklands economy. Not only this but were the standards to diverge between the UK and EU, Falkland meat producers would be forced to choose which standards to adopt, with the risk of being shut out of the other market.

Although the Falkland Islands are relatively well developed in comparison to some of the other OCTs, they qualify for EDF funding as part of the special treatment afforded to isolated OCTs as set out in Article 9 of the 2013 OAD. Under the 11th EDF the Falkland Islands have been allocated €5.9 million to be used to enhance accessibility and connectivity.[133] The objective of this support is to “strengthen delivery of transport and connectivity related infrastructure and improved air transport services” which will both reduce the impact of isolation on remote communities and promote inclusive growth.[134] In addition, improving connectivity helps to promote tourism to more isolated areas, which in turn helps to diversify their economies. The Falkland Islands do not receive any development aid from the UK government and as Roger Edwards MLA pointed out, the capital budget of the

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[131] Ibid.

[132] “Falkland Islands and Brexit: Focus on Falkland Islands Agricultural Industry,” Falkland Islands Government, https://www.brexitfalklands.gov.fk/agriculture/, accessed 8 July 2020.

[133] European Commission and Falkland Islands Government, *Programming Document of the Falkland Islands: 11th European Development Fund* (n.d.), 10.

[134] Ibid.

Falkland Islands is around £20 million per year and the operating budget around £60 million per year, so EU funding does not contribute significantly.[135] However, as previously seen this money does help to mitigate some of the limiting factors of the islands (such as their isolation) and therefore there is a desire to see this money continued.

The Falklands have also benefitted from funding through the BEST initiative. In the 2011-2017 period there were two projects carried out in the territory, with funding totalling almost €400,000.[136] These projects helped to assess the risks and effects of climate change on the native flora and fauna, and therefore provide the government with the tools to come up with an action plan to mitigate these effects.

Gibraltar

Gibraltar is the only Overseas Territory which is situated on the European continent. Sitting at the southern tip of the Iberian Peninsula, its sovereignty is disputed to this day by Spain. It has a population of around 34,000 and sits on the Strait of Gibraltar, a key shipping lane and chokepoint at the entrance to the Mediterranean.[137] It is also the only territory which was able to vote in the Brexit referendum. It was the first constituency to declare, voting overwhelmingly with 96% to remain in the EU.[138] As outlined in the previous chapter, Gibraltar is the only Overseas Territory to which the provisions of the TEU and TFEU fully apply.[139] Therefore its relationship with the EU is deeper than the other territories. On top of this, it is also subject to a sovereignty dispute with Spain.

Because of its location, Gibraltar's economy is inherently linked to Spain and the EU. Gibraltar is the second largest employer in the Campo de Gibraltar region of

[135] HoL EU Committee, *Brexit: Overseas Territories, corrected oral evidence*, 17.

[136] European Commission, *BEST Initiative: Projects 2011-2017*.

[137] "Gibraltar: Key Indicators," Government of Gibraltar Statistics Office, https://www.gibraltar.gov.gi/statistics/key-indicators., accessed 8 July 2020

[138] BBC News, *EU Referendum Results,* https://www.bbc.com/news/politics/eu_referendum/results, accessed 10 July 2020.

[139] As set out in Article 355, TFEU.

Andalusia, contributing around €800 million in GDP through trade and tourism.[140] In addition, around 7,500 of the 10,000-12,000 jobs in Gibraltar are held by Spanish nationals.[141] It is impossible for that many people to live in Gibraltar due to its small size (it is just 2.6 square miles). Not only would there be economic impacts of restricting movement across the border (loss of income tax and jobs), but there would also be human impacts. Firstly, many have friends and family on the other side of the border who would not be able to visit as easily. Secondly, there is a "cross-pollination" effect in services.[142] Both Spanish and Gibraltarian residents cross the border to access services such as banking, healthcare, schools and shops. In particular, the Government of Gibraltar highlighted the reliance of Gibraltarians on Spanish healthcare providers. The border is also important for the import of goods, such as food and fuel supplies, and the export of waste for processing.

This interdependence is one of the reasons that Spanish efforts to restrict movement across the border are not well-received. Gibraltar is outside of the EU's customs union and the Schengen Area, and therefore the border is already relatively "hard". Checks are required on goods and people who cross the border.[143] There is precedent, even in recent years, for Spain to arbitrarily close the border for several hours at a time, causing long tailbacks at the crossing.[144] There is a possibility for cross-border cooperation post-Brexit in the form of "local border traffic permits". These are regulated by EU Regulation EC/1931/2006, the Local Border Traffic Regulation.[145] This allows bilateral agreements between EU member states and their neighbours to facilitate cross-border traffic. However, as the House of Lords report

[140] House of Lords European Union Committee, *Brexit: Gibraltar*, 13th Report of Session 2016-17, 10.

[141] House of Lords European Union Committee, *Uncorrected oral evidence: Brexit: Gibraltar*, http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/european-union-committee/brexit-gibraltar/oral/44694.html, accessed 8 July 2020.

[142] HoL EU Committee, *Brexit: Gibraltar*, 14.

[143] Ibid, 13.

[144] For example, during the visit of the Earl and Countess of Wessex in 2012.

[145] Council Regulation (EC) No 1931/2006 of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention [2006] OJ L 405/1, available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006R1931&from=EN.

points out, due to the ongoing sovereignty issues there would have to be a third party who could ensure the continuing adherence by both sides to the regulation.[146]

Its position at the southern tip of the European continent means that Gibraltar is a hub for drug smugglers transporting goods from Africa. There is already significant cooperation, both official and unofficial, between the Spanish and Gibraltarian authorities on this matter. The loss of the European Arrest Warrant would be a significant blow to the cross-border cooperation. The introduction of the European Arrest Warrant has been "a blessed relief because it took the sovereignty dispute out of the equation," according to Fabian Picardo, Gibraltar's Chief Minister.[147] It gave Gibraltar a buffer, in the form of the EU institutions, on which they could rely and fall back on in case of problems.

Gibraltar does not qualify for either EDF or BEST initiative funding. However, due to its status as part of the EU it qualifies for funds which other territories did not have access to. Gibraltar has been a beneficiary of the European Regional Development Fund since 1994, receiving over €20 million since 2000.[148] The EU contributed €6 million to projects in the territory under the auspices of the ERDF during the MFF from 2014-2020.[149] This had the aim of increasing the number of SMEs in the economy in order to enhance their competitiveness and increasing the amount of renewable energy to 1.25% of total production.[150] In addition, Gibraltar has benefitted from €4.3 million in the 2014-20 MFF from the European Social Fund.[151] This funding aims to "combat unemployment, strengthen Gibraltar's entrepreneurial

[146] HoL EU Committee, *Brexit: Gibraltar,* 17-18.

[147] Ibid, 15.

[148] "European Regional Development Fund," Gibraltar EU Programmes Secretariat, http://www.eufunding.gi/index.php?url=erdf, accessed 9 July 2020.

[149] "United Kingdom - ERDF Gibraltar," European Commission, https://ec.europa.eu/regional_policy/en/atlas/programmes/2014-2020/united-kingdom/2014uk16rfop002, accessed 9 July 2020.

[150] "European Regional Development Fund," Gibraltar EU Programmes Secretariat.

[151] "European Social Fund," Gibraltar EU Programmes Secretariat, http://www.eufunding.gi/index.php?url=esf, accessed 9 July 2020.

base and improve the skills and qualifications of the labour force in a sustainable manner."[152]

In addition, Gibraltar has benefitted from the Interreg Mediterranean program and the Interreg Sudoe program. These programs help to facilitate cross-border cooperation to solve problems which are faced by the regions in the program area, such as low employment, natural phenomena and lack of transportation links.

Montserrat

Montserrat is a small island of around 4,700 in the northern Leeward Islands.[153] It is well known for the eruption of the Soufriere Hills volcano in 1995 which destroyed the previous capital, Plymouth, and forced the evacuation of much of the population to the UK. To this day the southern half of the island remains an exclusion zone, as there is still some ongoing volcanic activity. Because of the devastation and subsequent emigration, Montserrat has been dependent on development aid from both the UK and EU for the past 20 years. Under the 11th EDF Montserrat receives €18.4 million, with the aim of supporting the island's transition to sustainable economic development.[154] The current population means that the market size is too small to support any significant production activities. It is therefore necessary to stimulate the economy so that Montserratians will think about returning to the island and increasing the size of the market.

As Montserrat's Premier Donaldson Romeo said, EDF funding has been critical to the survival of the territory. In the past it has enabled the construction of hurricane-resistant houses for those who lost their house to the volcano. However, many are still waiting for adequate housing, including many in the UK who want to return.[155]

[152] Ibid.

[153] Montserrat Statistics Department, *Intercensal Population Count and Labour Force Survey 2018*. https://statistics.gov.ms/wp-content/uploads/2019/08/FINAL-REPORT-KEY-FINDINGS-CENSUS-LABOUR-FORCE-SURVEY-2018-.pdf.

[154] European Commission and Government of Montserrat, *Programming Document Montserrat: The Territorial Allocation of the 11th European Development Fund*, (n.d.), 7.

[155] House of Lords EU Committee, *Brexit: Overseas Territories, corrected oral evidence*, 17-18.

The money from the 11th EDF will help the Montserratian government to stimulate the economy and create opportunities in the private sector. This will help to identify the sectors which are competitive and therefore attractive to both foreign and domestic investment. At the same time, it will help to reduce the territory's reliance on public sector funding. Montserrat is also heavily reliant on the neighbouring French island of Guadeloupe for healthcare, and even now there are high costs for going there. The small population and destruction following the volcanic eruption means that Montserrat is unable to invest in and attract specialist healthcare professionals. However, the development aid funding from the EU is dwarfed by that from the UK which in the period 2014-18 provided £132.5 million, much of which was funding for the delivery of essential services.[156] As well as the EDF, Montserrat also receives grants under the BEST initiative. The three projects which this money supports are all about protecting the fragile indigenous ecosystem and eradicating invasive species.[157] In addition, it also received around €170,000 in funding from the Erasmus+ scheme.[158]

The French and Dutch territories in the Caribbean are also key for Montserrat's exports. In particular, Montserrat's one primary export is sand, which is able to be shipped tariff free to the nearby French territories for transshipment on to the rest of the world.[159] However, overall the trade data for Montserrat is inconclusive as to the benefits derived from the EU. Since 2000 the percentage of exports to the EU has hovered around 18-20%, with a peak of 44% in 2016 and troughs of 5% in 2009 and 2013.[160]

[156] DFID response to FOI Request F2020-178.

[157] European Commission, *BEST Initiative: Projects 2011-2017*.

[158] Association of the Overseas Countries and Territories of the European Union (October 2018), 3.

[159] House of Lords EU Committee, *Brexit: Overseas Territories, corrected oral evidence*, 6.

[160] Atlas of Economic Complexity.

Turks and Caicos Islands

The Turks and Caicos Islands are a group of islands at the southern end of the Bahamian archipelago, with a population of nearly 40,000.[161] Turks and Caicos benefits from development aid under the EDF, receiving €14.6 million as part of the 11th EDF. Indeed, the Premier of Turks and Caicos, Sharlene Cartwright-Robinson, stated that, "EU funding will be one of the greatest losses to the Turks and Caicos when the UK leaves the EU."[162] This aid is important because Turks and Caicos does not receive development aid from any other source; its GDP per capita is too high to qualify for DFID aid. Not only do Turks and Caicos benefit from individual territorial funding, but they have access to the Caribbean Regional Fund of around €40 million as well as thematic funding of around €16 million to €18 million.[163] Just as in Montserrat, the EU has also provided post-disaster development aid following Hurricane Ike in 2008. The money from the 11th EDF is aimed at improving the education sector in the wake of a significant population growth, which has meant that schools are now overstretched.[164] The European money is significant for Turks and Caicos, as they are not eligible to receive aid from DFID.

Turks and Caicos have had five projects funded under the BEST initiative during the period 2011-17.[165] These include the removal and control of invasive species and the restoration of coral reefs which are under threat from climate change. In addition, Turks and Caicos have received just over €400,000 under the Erasmus+ funding scheme.[166] Projects in Turks and Caicos also received €2.3 million in funding through the Interreg Caribbean program, which supports cross-border cooperation between regions of member states in the Caribbean.[167]

[161] World Bank, https://data.worldbank.org/country/turks-and-caicos-islands, accessed 8 July 2020.

[162] House of Lords EU Committee, *Brexit: Overseas Territories, corrected oral evidence*, 8.

[163] Ibid.

[164] European Commission and Turks and Caicos Islands Government, *Programming Document of the Turks and Caicos Islands: 11th European Development Fund* (n.d.), 5-7.

[165] European Commission, *BEST Initiative: Projects 2011-2017*.

[166] Association of the Overseas Countries and Territories of the European Union (October 2018), 3.

[167] Ibid.

Other Overseas Territories

The other Overseas Territories are remote islands with small populations and as such will be dealt with here in a single section.

St Helena is a small volcanic island in the southern Atlantic Ocean, around one-third of the way from Africa to South America. Until the opening of a new airport in 2016, the island was only accessible by ship, a five-day voyage from Cape Town. As a small island with limited natural resources and a population of around 4000,[168] St Helena is dependent on outside aid in order to survive. Under the 11th EDF program St Helena has an allocation of €21.3 million.[169] This has been earmarked to help the island with the implementation of the *Island 10 Year Plan, 2017-2027: Your Island, Your Vision, Your Future, Your 10 Year Plan*, in particular with its Digital Strategy. This would allow the island to overcome its connectivity problem, whereby it currently suffers from some of the slowest yet most expensive internet anywhere in the world. The European Union is not the only source of development aid for St Helena, it is also supported by aid from the DFID. This means that the EU's funding is not critical for the island's survival. As an example, the UK's project to cover the shortfall in funding for the public sector from 2019-2022 is worth £62.6 million.[170] St Helena also receives funds from the BEST initiative. In the 2011-17 funding period it was the recipient of around €250,000 for three main projects.[171] These included the restoration and protection of the indigenous forests and the creation and maintenance of paths in the national park to protect the ecosystem.

Tristan da Cunha is also located in the southern Atlantic, further south than St Helena. As with the former it suffers from incredible remoteness and isolation. Unlike St Helena, Tristan da Cunha still does not have an airport, so the only way in is by

[168] St Helena Statistics Office, *St Helena 2016 Population & Housing Census,* https://www.sainthelena.gov.sh/wp-content/uploads/2016/06/Census-2016-summary-report.pdf.

[169] European Commission and St Helena Government, *Programming Document of St Helena: The Territorial Allocation of the 11th EDF Fund*, n.d.

[170] "St Helena Financial Aid 2019/20 to 2021/22," UK Department for International Development, https://devtracker.dfid.gov.uk/projects/GB-GOV-1-300806, accessed 8 July 2020.

[171] European Commission, *BEST Initiative: Projects 2011-2017*.

boat from South Africa. In recent years Tristan da Cunha has benefitted enormously from the EU, securing import access for its lobster in 2014.[172] This access has allowed the island to diversify its export destinations away from the US and China. Tristan da Cunha also received around €150,000 in the 2011-17 period of the BEST initiative.[173]

Pitcairn Island is a group of islands in the Pacific Ocean, lying roughly halfway between French Polynesia and Easter Island. With a population of around 50, it is the least populated jurisdiction in the world. The island is heavily dependent on both the UK and New Zealand for survival, as well as remittances sent back from emigrants, who far outnumber the actual population of the island. The big challenges for Pitcairn are that the population is ageing and working-age emigrants are not willing to come back to the island. The EU has allocated €2.4 million under the 11th EDF, which according to the programming document will help to reform the tourism sector.[174] The UK's DFID funding helps to provide the everyday needs for the islanders, but provides very little funding for capital projects. Thus, the EU fills the gap. In order to attract migrants to the island there needs to be some private sector activity, which the EU aims to stimulate.

[172] "Tristan Lobster gains access to EU Markets," Tristan da Cunha Government, https://www.tristandc.com/newsfishingeuexports.php, accessed 6 July 2020.

[173] European Commission, *BEST Initiative: Projects 2011-2017*, 16

[174] European Commission and Pitcairn Government. *Programming Document of Pitcairn: 11th European Development Fund*. n.d.

Chapter 7: Analysis of EU Links and Possible Responses to Brexit

The previous chapters have set out the legal and economic relationship between the Overseas Territories and the EU whilst the UK was still a member. From our findings we can identify three main advantages which the EU has for the BOTs: direct money transfers, trade and investment, and political voice. This section will bring together these findings and begin to examine what effects Brexit will likely have on these areas. It will also outline and evaluate the steps which the territories have already taken to mitigate any negative impact of Brexit. The nature of the post-Brexit trade deal which the UK and EU will negotiate, if indeed there is any, is still very much unknown, and this section will not attempt to predict the future. However, it will set out possible scenarios and solutions which could be applicable whatever the outcome of the negotiations. In doing so it will analyse the relationship set out in the previous chapters and bring together the theories of small developing states and regional integration.

Direct transfers

Several OTs have been beneficiaries of direct money transfers from the EU, under either the EDF, ERDF, BEST initiative or ESF. The largest source of EU funding which is available to the Overseas Territories is the European Development Fund, which is the “main source of EU development aid for the African, Caribbean and Pacific (ACP) countries and the overseas territories.”[175] Unlike other sources of EU funding, the EDF is not a part of the main EU budget. Instead, it is directly financed by the member states. The EDF goes right back to the founding of the EU with the Treaty of Rome in 1958. Its target countries are mainly former colonies and territories of the member states (members of the ACP grouping), and as such was linked to the Yaoundé Conventions, Lomé Conventions and now the Cotonou

[175] “European Development Fund,” European Commission, https://ec.europa.eu/info/strategy/eu-budget/documents/european-development-fund_en, accessed 5 July 2020.

Agreement.[176] In the 11th EDF, which runs from 2014-2020 the 25 OCTs which are eligible receive a combined €364.5 million.[177] The funding mechanism for the EDF goes back to the early days when it was development aid for former colonies of European countries. As such the former colonial powers contributed more to the budget. As of the 11th EDF there is a push to see the EDF come under the EU's Multiannual Financial Framework and as such the Commission has proposed to make the contributions converge with those to the main budget.[178] The EDF budget has more than doubled between the 9th iteration (2000-2007) and the 11th (2014-2020) from nearly €14 billion to just over €30 billion. Consequently, the amount allocated to OCTs has also doubled.[179]

As the previous chapter has showed, the effect of this funding on the territories varies. For Montserrat and the Falkland Islands the money does not represent a significant portion of their budget. For Montserrat the European funding in 2014-20 is just 13% of what the British Government gives in the same period. Similarly, for the Falkland Islands EDF funding in the six-year period is just 8% of their yearly operating budget. For the other remote islands such as St Helena and Pitcairn which also receive aid from DFID, the money is similarly not lifesaving. For Anguilla, however, the money is a vital lifeline. In the absence of development aid from the UK, it represents 36% of the island's capital budget. Regardless of the overall impact of EDF funding for each territory, it is clear that the money has been able to fund projects which might not otherwise have been funded.

The Biodiversity and Ecosystem Services in Territories of European overseas (BEST) initiative has provided grants to almost all of the UKOTs. The initiative was adopted in 2010 at the initiative of New Caledonian MEP Maurice Ponga to "promote the conservation of biodiversity and the sustainable use of ecosystem services including ecosystem-based approaches to climate change adaptation and mitigation

[176] European Parliament, *European Development Fund: Joint Development Cooperation and the EU Budget: Out or In?* (European Parliamentary Research Service: Brussels, 2014), 4.

[177] Ibid, 9.

[178] Ibid, 10.

[179] Ibid, 9.

in the EU Outermost Regions and Overseas Countries and Territories."[180] This funding will no longer be available to the OTs post-Brexit. The UK Government runs a similar scheme called the Darwin Initiative, set up in 1992, which has been very active in the OTs. Its remit is very similar to BEST in that it aims to protect biodiversity and the natural environment through locally based projects worldwide."[181] While the money received from the BEST initiative is not as substantial as that received from the EDF or other aid sources, it still helps to contribute vital environmental work, in particular to combat the effects of climate change.

Other sources of direct transfers have been the ERDF and ESF. Both of these are integral parts of the EU budget, with the ERDF designed to "strengthen economic and social cohesion in the European Union by correcting imbalances between its regions",[182] and the ESF to "improve employment and education opportunities across the European Union."[183] The ERDF also supports the Interreg Europe program, which facilitates cross-border cooperation between regional and local governments. Gibraltar has been a major beneficiary of this, taking part in the Interreg Mediterranean and Interreg Sudoe. However, the Caribbean Territories and Bermuda have also benefitted from the Interreg Caribbean program.

Trade and investment

The OCTs enjoy a preferential status under the EU treaties, despite being neither part of the customs union nor the single market. As set out in Chapter 4 of this thesis, the TFEU sets out their status as benefitting from tariff waivers and equal trading status with member states. The preamble to the OAD states, "Trade and trade-

180 "BEST: About," European Commission, https://ec.europa.eu/environment/nature/biodiversity/best/about/index_en.htm, accessed 4 July 2020.

181 "The Darwin Initiative," UK Government, https://www.gov.uk/government/groups/the-darwin-initiative, accessed 4 July 2020.

182 "European Regional Development Fund," European Commission, https://ec.europa.eu/regional_policy/en/funding/erdf/, accessed 10 July 2020.

183 "European Social Fund," European Commission, https://ec.europa.eu/regional_policy/en/funding/social-fund/, accessed 10 July 2020.

related cooperation between the Union and the OCTs should contribute to the objective of sustainable economic development, social development and environmental protection."[184] Thus, the EU takes an active role in lowering trade barriers for the OCTs, elaborated on in Titles II and III of the OAD.

We can see from the previous chapter that trade with the EU varies wildly between territories. On the one hand, the EU is a vital partner for the Falkland Islands and Bermuda for their trade in goods and services respectively. On the other hand, for territories such as Cayman Islands trade with the EU is not significant as the USA is their largest partner. For those which rely heavily on the EU as a trading partner, agriculture and primary products are the goods which represent the highest share of trade. Falkland Islands and Tristan da Cunha are good examples of this. The rules on originating products from OCTs as set out in the OAD really benefit the Falkland Islands. Without the ability to use Spanish boats, as is set out in Annex VI of the OAD, the Falklands would not be able to fish nearly as much as they do now, and thus not be able to export as much. With the EU representing over 80% of Falklands exports, any disruption will have a devastating impact on its economy. Anguilla, too, is reliant on the EU for trade, specifically as a point of transshipment. Even with the border issues, Saint Martin remains critically important for the Anguillan economy. With the UK set to diverge from the EU on trade issues, the lack of recognition that Anguilla constitutes an external border with the EU has the potential to cause significant disruption.

Not only does the EU aim to trade directly with the OCTs but it also aims to "stimulate the OCTs' effective integration in the regional and world economies and the development of trade in goods and services."[185] For OTs which have limited goods exports, such as BVI, this has provided the opportunity to diversify their economy and reduce their reliance on a single sector. In addition, the OAD sets out that,

> the Member States and the OCTs authorities shall impose no restrictions on the free movement of capital for direct investments in companies formed in

[184] Council Decision 2013/755/EU, preamble 21.

[185] Council Decision 2013/755/EU, Article 42 (b).

accordance with the laws of the host Member State, country or territory and shall ensure that the assets formed by such investment and any profit stemming therefrom can be realised and repatriated.[186]

Political voice

Since the 2001 OAD, the OCTs have been represented in Brussels by the OCTA. This has allowed them to have more visibility when dealing with the EU, instead of having to go through their "parent" member state. The OCTs have benefitted from this in several ways, the main one being the ability to have more input in the process for the 2013 OAD and thus negotiate a more equal partnership as outlined in Chapter 4 of this thesis. In addition, this presence gives them the ability to lobby on EU issues.

The reality of what could lie ahead without this representation in Brussels was laid clear for the Cayman Islands, which were added to the EU's list of non-cooperative jurisdictions (otherwise known as the tax haven blacklist) just 18 days after the UK had left the EU.[187] According to the European Commission the purpose of the list is to "tackle tax fraud or evasion, illegal non-payment or under payment of tax; tax avoidance, use of legal means to minimise tax liability; and money laundering, concealment of origins of illegally obtained money.[188] It continues, "The aim is not to name and shame countries, but to encourage positive change in their tax legislation and practices, through cooperation."[189] The list allows EU member states to take defensive measures against countries which are on it in order to fight against tax evasion and fraud. These include increased auditing of taxpayers who benefit from such regimes, non-deductibility of costs incurred in a listed regime, withholding tax measures and limitation of the participation exemption on shareholder dividends. In

[186] Council Decision 2013/755/EU, Article 59 (2).

[187] BBC News, "EU puts Cayman Islands on tax haven blacklist," 18 February 2020, https://www.bbc.com/news/business-51484393.

[188] "Taxation: EU list of non-cooperative jurisdictions," European Council, https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/, accessed 6 July 2020.

[189] Ibid.

addition, several EU funding rules now make explicit reference to the list. For example, funds from the European Fund for Sustainable Development, European Fund for Strategic Investments, External Lending Mandate and the General Framework for Securitisation cannot be channelled through entities which are in the listed regimes.

The Cayman Islands had previously been on the grey list which gave the territory time to implement the reforms desired, however it failed to do so by the required deadline.[190] The Cayman Islands Government expects that the territory will not be on the list for long, having already implemented most of the laws required and with the rest in the pipeline.[191] However, coming so soon after the UK formally left the EU, this ruling showed the perils which losing the bloc's backing can have. As the territories lose their political voice in Brussels and the UK's voice within the institutions it is possible that more such decisions could put them at a disadvantage, particularly when compared to the remaining OCTs who will still have the lobbying capabilities. With the tourism industry facing serious problems in the wake of the Covid-19 crisis, the Cayman Islands cannot afford to also have their financial sector suffer as well. Premier Alden McLaughlin said that if the territory were not removed from the list at its next revision in October 2020, there would be "dire consequences."[192] It is not so much the other French and Dutch OCTs which the BOTs are competing against, as their financial sectors are not as big or well established. However, territories such as the US Virgin Islands are direct competitors. If the BOTs were able to keep their lobbying power and presence in Brussels, they would be able to better understand the EU's evolving regulations and put forward their own views and argue for themselves. This would give them advantages against territories like the USVI, which do not have the lobbying power in Brussels.

[190] European Council, "Taxation: Council revises its EU list of non-cooperative jurisdictions," 18 February 2020, https://www.consilium.europa.eu/en/press/press-releases/2020/02/18/taxation-council-revises-its-eu-list-of-non-cooperative-jurisdictions/.

[191] Cayman Islands Ministry of Financial Services, "Cayman Contacts EU to Begin the Delisting Process," 18 February 2020, https://www.mfs.ky/news/cayman-contacts-eu-to-begin-the-delisting-process/.

[192] Cayman News Service, "EU Blacklist a 'major worry'," 12 May 2020, https://caymannewsservice.com/2020/05/eu-blacklist-a-major-worry/.

The Cayman Islands are not the first BOT to have been put on the blacklist. In March 2019 Bermuda was briefly added to the list, before being removed two months later.[193] Anguilla finds itself on the grey list, with Bermuda and British Virgin Islands removed from the list following reforms in both territories. It is difficult to compare with French and Dutch OCTs because of the differing competences which each one has, but as of the February 2020 list there are no other OCTs on the list, with Curacao having been removed from the grey list at the same time as Cayman Islands were added to the blacklist.

In addition to economic concerns, there are security implications to consider for the BOTs. For the Falkland Islands the loss of European support for their current status and possible switch to support for Argentinian claims would be catastrophic. There is, however, already precedent for this post-Brexit referendum. British Indian Ocean Territory, also known as Diego Garcia or the Chagos Archipelago, has been the subject of dispute between the UK and Mauritius since the latter's independence in 1968. The controversy surrounding the islands is heightened by the forced removal of the inhabitants for an air base which has been used by the USA to fly into Afghanistan and Iraq in recent years. The UK has been defeated twice in the UN General Assembly in recent years on resolutions pertaining to the islands. First, in 2017, to seek an advisory opinion from the International Court of Justice on the matter (which advised that the UK should hand the islands back to Mauritius) and second, in 2019, setting the UK a six-month deadline to hand back the islands.[194] In this second vote EU members such as France, Germany and the Netherlands abstained with some, including Austria, Spain and Sweden, even voting against the UK.[195] As Ludger Kühnhardt points out, EU members such as Spain, Portugal and

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[193] European Commission, *Evolution of the EU list of tax havens*, 18 February 2020, https://ec.europa.eu/taxation_customs/sites/taxation/files/eu_list_update_18_02_2020_en.pdf.

[194] See Owen Bowcott, "EU members abstain as Britain defeated in UN vote on Chagos Islands," *Guardian*, 23 June 2017, https://www.theguardian.com/world/2017/jun/22/un-vote-backing-chagos-islands-a-blow-for-uk; and Owen Bowcott and Julian Borger, "UK suffers crushing defeat in UN vote on Chagos Islands," *Guardian*, 22 May 2019, https://www.theguardian.com/world/2019/may/22/uk-suffers-crushing-defeat-un-vote-chagos-islands.

[195] United Nations General Assembly 83rd Plenary Meeting, A/73/PV.83, 22 May 2019, https://undocs.org/en/A/73/PV.83.

France may shift their opinion on the Falklands in the future, in order to maintain or improve their relations with the Latin American countries.[196]

Sovereignty issues have also arisen regarding Gibraltar. Benwell and Pinkerton argue that the EU has “emerged as a kind of ‘guarantor’ power, providing an additional level of institutional legitimacy and security for Gibraltar, and as a source of reassurance for its political and diplomatic consistency towards the territory.”[197] Gibraltar has a different relationship to the EU from the other Overseas Territories. It is not included in Annex II of the TFEU, but instead is governed by Article 355 (3) which states that, “the provisions of the treaties shall apply to the European territories for whose external relations a Member State is responsible.” As such, Gibraltar has been able to rely on the EU in the face of hostile acts from the Spanish government. Gibraltar has implemented EU home affairs and justice legislation which allows it to cooperate on judicial and police matters, despite not being a member of the Schengen area.[198]

However, the European Council’s guidelines for negotiation published in 2017 stated that, “after the United Kingdom leaves the Union, no agreement between the EU and the United Kingdom may apply to the territory of Gibraltar without the agreement between the Kingdom of Spain and the United Kingdom.”[199] This was backed up by unhelpfully threatening rhetoric on both sides. The day after the referendum the Spanish Foreign Minister stated that the idea of co-sovereignty (rejected by 99% of Gibraltarians in 2002) was close to realisation and that the Spanish flag would soon fly over “The Rock”, as well as stating this to the UN General Assembly in October 2016.[200] This was reciprocated on the British side by former Conservative leader Michael Howard declaring that Britain would be prepared to go to war to protect the

[196] Kühnhardt 2019, 37.

[197] Benwell and Pinkerton 2016, 10.

[198] Chauvin et al 2018, 73.

[199] European Council, “European Council (Art. 50) guidelines for Brexit negotiations,” 29 April 2017, https://www.consilium.europa.eu/en/press/press-releases/2017/04/29/euco-brexit-guidelines/.

[200] Jon Nazca, “Spain seeks to jointly govern Gibraltar after Brexit,” *Reuters*, 24 June 2016, https://uk.reuters.com/article/uk-britain-eu-gibraltar-idUKKCN0ZA169.

territory.[201] The Protocol on Gibraltar appended to the Withdrawal Agreement states that the agreement is “without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to sovereignty and jurisdiction.”[202] Thus, the issue of co-sovereignty is postponed for now. However, as the Protocol also notes, there is a strong connection between Gibraltar and the surrounding Spanish municipalities. A return to the days of Franco when the border was completely closed would be catastrophic for the economy on both sides. Indeed, the Protocol acknowledges “the benefits for the economic development of the area arising from the free movement of persons under Union law,” but does not set out how such benefits might be kept post-Brexit.[203]

Responses to Brexit

Because of the changing nature of the Brexit negotiations and the changes in British politics since the referendum, it has been difficult for the Overseas Territories to prepare accordingly. Some of the territories may investigate the idea of joining the European Grouping of Territorial Cooperation, which aims to facilitate cross-border cooperation. Anguilla in particular has identified this as a possible source to continue EU funding post-Brexit.[204] Gibraltar may also be able to take advantage of this, to ensure that cross-border cooperation with Spain continues and Pitcairn may also consider it, to keep links with nearby French Polynesia.

Other territories are looking away from the European continent to their regional neighbours. Montserrat is already a member of the OECS and CARICOM, Anguilla and BVI are associate members of both, whilst the other Caribbean Overseas Territories and Bermuda are associate members of CARICOM. For those territories

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[201] Anushka Asthana, “Theresa May would go to war to protect Gibraltar, Michael Howard says,” *Guardian*, 2 April 2017, https://www.theguardian.com/politics/2017/apr/02/britain-and-eu-worse-off-without-brexit-deal-says-michael-fallon.

[202] Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, 19 October 2019, Protocol on Gibraltar, Preamble.

[203] Ibid.

[204] West India Committee, *Anguilla: Get Ready for Brexit* (2019), 44-45.

in the Caribbean there is also Cariforum, which already has an existing EPA with the EU. Pitcairn Island is already dependent on New Zealand for goods shipped in and out and many Pitcairners emigrate there in order to find employment. It is also looking at ways to collaborate more closely with French Polynesia. Joining regional integration projects in their neighbourhood would not replace the voice which they previously had in Brussels, however it would help them to retain some of the lobbying capabilities, particularly as most of the OCTs are surrounded by ACP countries which have preferential treatment from the EU.

In the Withdrawal Agreement which Boris Johnson negotiated the UK will remain party to the 11th EDF and all previous ones until they are closed.[205] Similarly, the Overseas Territories will receive any money committed under these EDF programs. This at least ensures that the short-term planning which the territories have already done will be fulfilled. However, the viability of future projects may be in doubt given that the UK has been unwilling to give foreign aid to most of the OTs. There will also be hesitance on the side of the OTs, who felt that the initial British reaction to Hurricane Irma was inferior to France and the Netherlands, whose territories were also badly affected. For the territories which also receive funding from DFID the loss of EU aid will be less of a blow than for those which are ineligible for British aid. Montserrat, for example, is almost totally reliant on the British Government for funding.

One of the possible solutions for Gibraltar is to pursue a “microstate-style” relationship with the EU, modelled on those of San Marino and Andorra, both of which are not members of the EU or the Schengen Area but de facto participate in it. This would allow Gibraltar to pursue a bespoke deal for managing the border situation. However, Spain would be unlikely to approve such a solution, a fact backed up by Spanish MEP Esteban Gonzalez Pons’ response to the House of Lords EU Committee. He stated that, “there can be no special solution for

[205] Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, Article 152

Gibraltar."[206] However, there has been little appetite among other EU members to conflate the sovereignty dispute with the Brexit process.

There is, however, the concern that the BOTs could simply become forgotten about in the EU. Because they are not sovereign states, they are not automatically members of the ACP group of countries and thus do not automatically benefit from the privileged trading arrangements which they have. This is in addition to having lost the status they had under the OAD, which in part resembles the agreements with the ACP countries. The possibilities which could be open to the BOTs are apparent more so now, because the EU and ACP group are in the process of renegotiating the Cotonou Agreement. If the BOTs were to gain access to the ACP grouping it would replicate, if not better, the agreement which they have had up until now. The ACP agreement even takes into "due account […] the vulnerability of small […] island countries."[207] With the UK determined to leave the EU behind, however, it is unlikely that the BOTs will be given authority to conclude such an agreement. In this way the BOTs will be treated worse than the least developed countries (LDCs).

Brexit provides the UK with a chance to reset its relationship with the Overseas Territories, a fact which has already been recognised with the publication of the report by the HoC Foreign Affairs Committee.[208] It found some dissatisfaction with the Territories being governed through the FCO, even though they are not foreign or part of the Commonwealth. There was also a feeling among territories that the UK sometimes used too heavy a hand to govern. It found, however, no appetite among the territories (even very autonomous ones such as Bermuda) for independence. With the pivot away from the EU, Brexit represents the perfect chance for the UK to modernise its relationship with the BOTs and we recommend that this should be studied further.

[206] HoL EUC, *Brexit: Gibraltar, 25.*

[207] 2000/483/EC: Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, Article 35 (3). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22000A1215%2801%29.

[208] HoC Foreign Affairs Committee, 15th Report of Session 2017-19 (2019).

Chapter 8: Conclusion

The wave of decolonisation following the Second World War left the UK with a scattered handful of territories around the world. It pivoted from being the centre of a large empire to joining the European Communities in 1973. With this its remaining Dependent Territories also became associated with the European integration project. These territories chose to remain associated with the UK (sometimes, as with Anguilla, forcefully so) in part because of their vulnerability as small states.

As OCTs associated with the EU, the BOTs' relationship with the EU was governed through Part IV of the TFEU. This was further expanded on by a series of Overseas Association Decisions. The relationship evolved from one which mimicked the ACP countries to a veritable partnership based on mutual development. Due to their heterogeneity, it is impossible to generalise and draw a single conclusion which fits all territories. However, this thesis has outlined three main advantages which the BOTs have gained from their relationship with the EU: direct transfers, trade and investment, and political voice. The UK's decision to leave the European Union also means that the Overseas Territories will no longer benefit from this special partnership.

The BOTs have had access to EU funding schemes, as set out in the OAD. The most important has been the EDF, which has provided a lifeline for territories which do not otherwise qualify for development aid, such as Anguilla. In addition, the BEST initiative has helped to protect and strengthen their exceptional biodiversity. ERDF, ESF and Interreg have also been sources of funding for the BOTs. As the OAD evolved into a mutual development partnership, the OTs were able to have more of an input into the process and influence the outcome of the development aid.

The OAD also granted preferential trading rights including tariff elimination and expanded rules of origin, which benefitted some of the Territories enormously. Anguilla and Falkland Islands will be the biggest losers, with some sectors facing total collapse without negotiated access to the EU market. In addition, the OAD facilitated the integration into the world economy and provided stimulus for OTs to diversify their economies, an inherent problem for SIDS.

Thirdly, the EU has allowed the BOTs to have a political voice. As this thesis has shown, these territories are reliant on external powers to guarantee their security and in most cases their economy. The EU has been an important guarantor of Gibraltar's sovereignty by allowing it to engage with the institutions (and by extension the Spanish authorities) without having to go bilaterally. It has also allowed the territories to consult on its tax and financial services initiatives.

The EU's change to a relationship based on mutual interest and development has benefitted the territories and as such they have gained more agency and voice in decision making processes. For small island developing states this is key, as they are able to use this to further their development, thereby reducing their dependency on outside powers. Brexit threatens to reverse this.

For high-income, services-oriented territories such as Bermuda, Cayman Islands and BVI, Brexit will only threaten their political voice and visibility. They have benefitted from engagement with the EU and representation in Brussels, but in terms of trade and direct funding the EU has not played a major role. Similarly, the low-income, remote islands, for example Montserrat and Pitcairn, are already reliant on DFID aid, and therefore Brexit will not mean the loss of all sources of funding. However, for Anguilla, Falkland Islands, Gibraltar and Turks and Caicos Brexit means substantial losses. The extent of their relationship with and reliance on the EU has been realised and with the Withdrawal Agreement only safeguarding the 11th EDF funds and the future trading arrangement likely to be less free than before, there will be trouble ahead for these territories.

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Appendices

Appendix I - TFEU Part IV

PART FOUR

ASSOCIATION OF THE OVERSEAS COUNTRIES AND TERRITORIES

Article 198

The Member States agree to associate with the Union the non-European countries and territories which have special relations with Denmark, France, the Netherlands and the United Kingdom. These countries and territories (hereinafter called the 'countries and territories') are listed in Annex II.

The purpose of association shall be to promote the economic and social development of the countries and territories and to establish close economic relations between them and the Union as a whole.

In accordance with the principles set out in the preamble to this Treaty, association shall serve primarily to further the interests and prosperity of the inhabitants of these countries and territories in order to lead them to the economic, social and cultural development to which they aspire.

Article 199

Association shall have the following objectives.

1. Member States shall apply to their trade with the countries and territories the same treatment as they accord each other pursuant to the Treaties.
2. Each country or territory shall apply to its trade with Member States and with the other countries and territories the same treatment as that which it applies to the European State with which it has special relations.
3. The Member States shall contribute to the investments required for the progressive development of these countries and territories.
4. For investments financed by the Union, participation in tenders and supplies shall be open on equal terms to all natural and legal persons who are nationals of a Member State or of one of the countries and territories.
5. In relations between Member States and the countries and territories the right of establishment of nationals and companies or firms shall be regulated in accordance

with the provisions and procedures laid down in the Chapter relating to the right of establishment and on a non-discriminatory basis, subject to any special provisions laid down pursuant to Article 203.

Article 200

1. Customs duties on imports into the Member States of goods originating in the countries and territories shall be prohibited in conformity with the prohibition of customs duties between Member States in accordance with the provisions of the Treaties.

2. Customs duties on imports into each country or territory from Member States or from the other countries or territories shall be prohibited in accordance with the provisions of Article 30.

3. The countries and territories may, however, levy customs duties which meet the needs of their development and industrialisation or produce revenue for their budgets.

The duties referred to in the preceding subparagraph may not exceed the level of those imposed on imports of products from the Member State with which each country or territory has special relations.

4. Paragraph 2 shall not apply to countries and territories which, by reason of the particular international obligations by which they are bound, already apply a non-discriminatory customs tariff.

5. The introduction of or any change in customs duties imposed on goods imported into the countries and territories shall not, either in law or in fact, give rise to any direct or indirect discrimination between imports from the various Member States.

Article 201

If the level of the duties applicable to goods from a third country on entry into a country or territory is liable, when the provisions of Article 200(1) have been applied, to cause deflections of trade to the detriment of any Member State, the latter may request the Commission to propose to the other Member States the measures needed to remedy the situation.

Article 202

Subject to the provisions relating to public health, public security or public policy, freedom of movement within Member States for workers from the countries and territories, and within the countries and territories for workers from Member States, shall be regulated by acts adopted in accordance with Article 203.

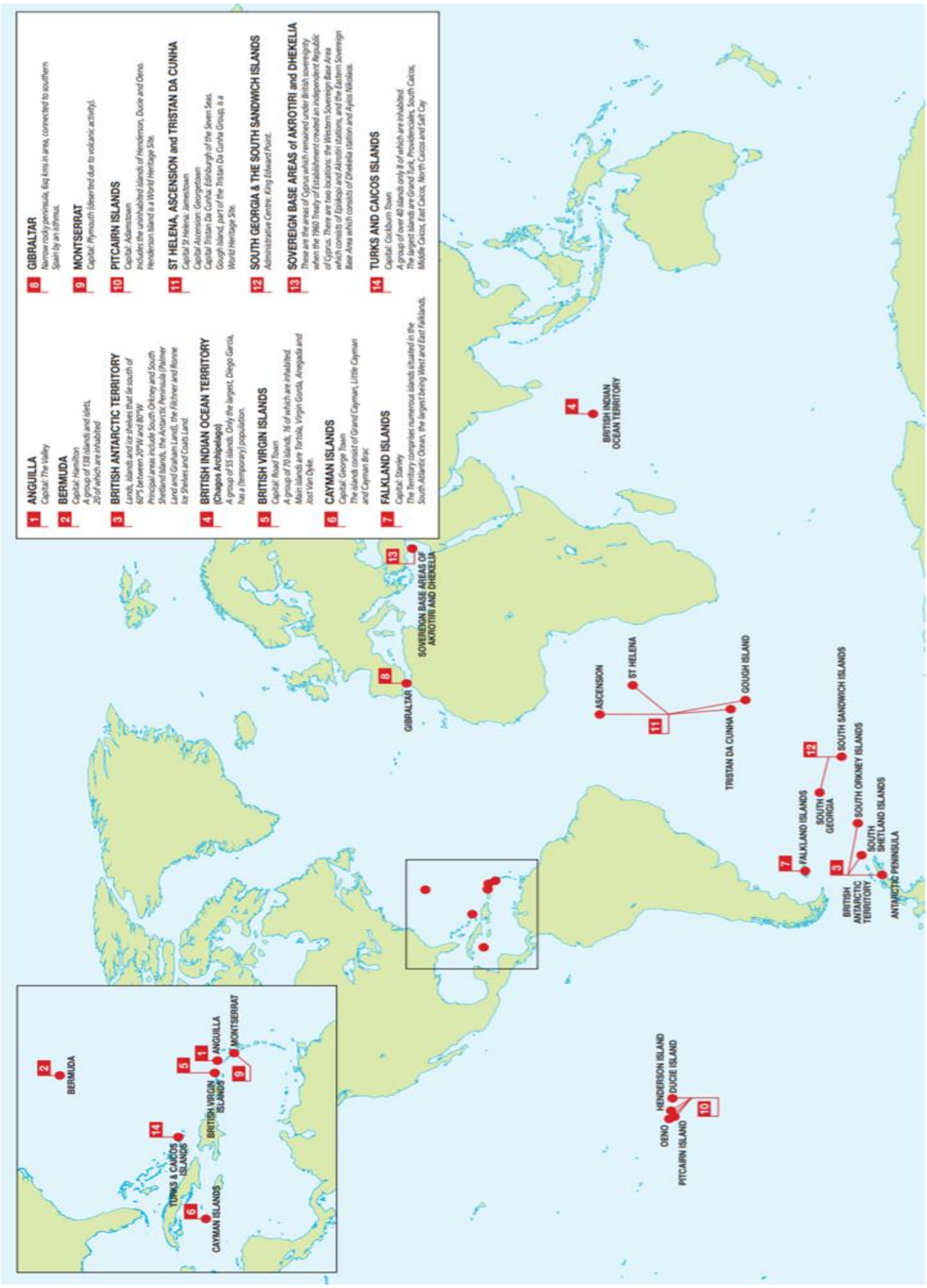
Article 203

The Council, acting unanimously on a proposal from the Commission, shall, on the basis of the experience acquired under the association of the countries and territories with the Union and of the principles set out in the Treaties, lay down provisions as regards the detailed rules and the procedure for the association of the countries and territories with the Union. Where the provisions in question are adopted by the Council in accordance with a special legislative procedure, it shall act unanimously on a proposal from the Commission and after consulting the European Parliament.

Article 204

The provisions of Articles 198 to 203 shall apply to Greenland, subject to the specific provisions for Greenland set out in the Protocol on special arrangements for Greenland, annexed to the Treaties.

Appendix II - Map of British Overseas Territories



Source: Foreign and Commonwealth Office. *The Overseas Territories: Security, Success and Sustainability* (2012), 10.

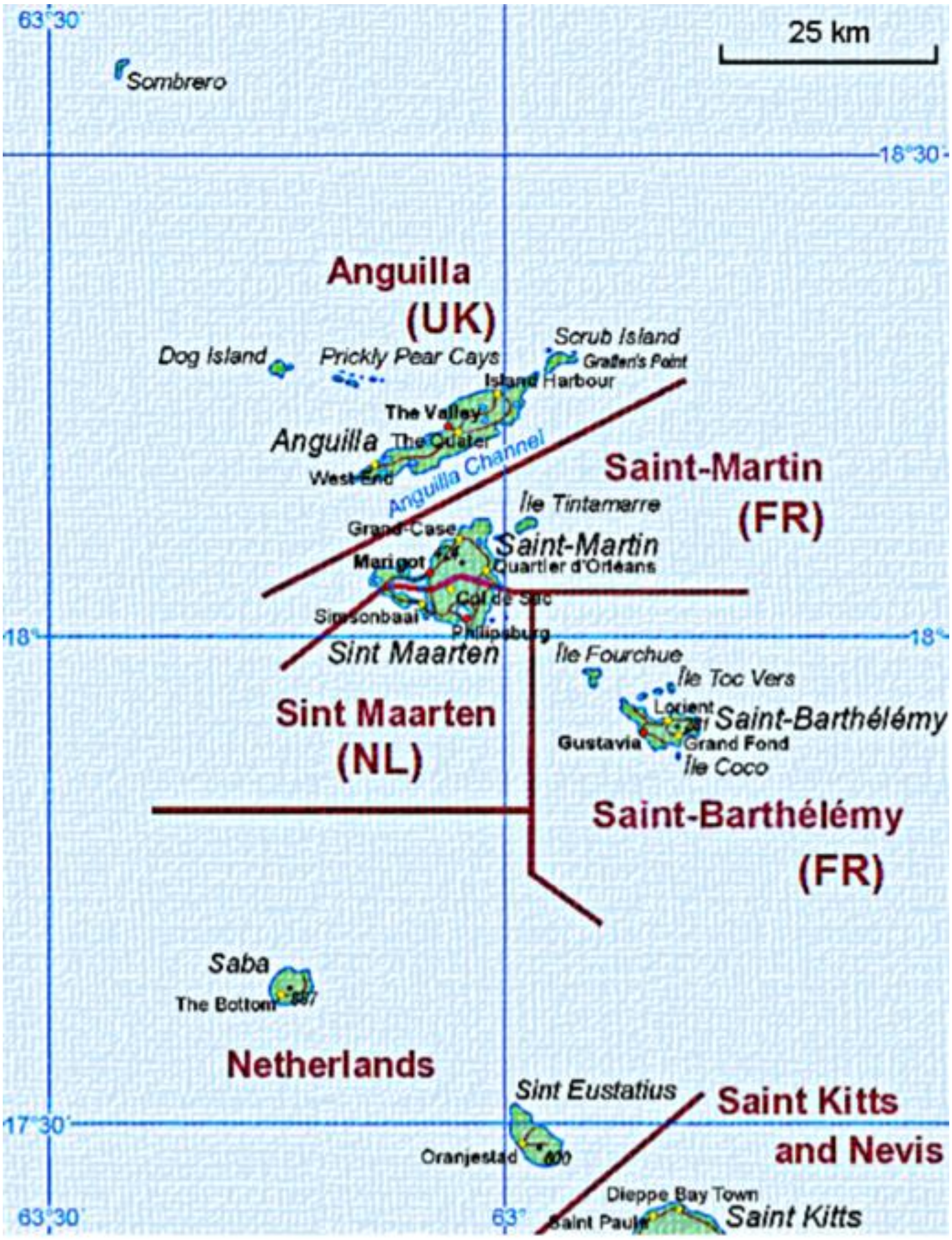
Appendix III – Key Characteristics of non-European BOTs

Overseas country or territory	MS[a]	Surface (km^2)	Pop.[b]	Density (pop./km^2)[c]	GDP/capita (€)	EU support (2014-2020, million €)[d]	Main economic activities
British OCTs (not included in the current proposal)							
Anguilla	UK	132	15 962	121	18 763	14.0	Tourism, construction, financial services
British Virgin Islands	UK	153	28 213	185	30 124	–	Financial services, tourism
Cayman Islands	UK	259	55 000	213	55 966	–	Financial services, tourism
Montserrat	UK	102	5 000	50	11 160	18.4	Construction, tourism, agriculture, banking
Turks and Caicos Islands	UK	948	38 435	41	20 868	14.6	Tourism, construction, financial services
Bermuda	UK	54	64 237	1 190	80 441	–	Financial services, tourism
British Indian Ocean Territory	UK	–	none	n/a	n/a	–	n/a
Pitcairn	UK	5	55	11	n/a	2.4	Subsistence fishing, horticulture, handicrafts
British Antarctic Territory	UK	–	none	n/a	n/a	–	n/a
Falkland Islands[e]	UK	12 173	2500	1	89 941	5.9	Fisheries, agriculture, tourism
Saint Helena, Ascension, Tristan da Cunha[e]	UK	121 88 98	4 177 710 260	35 9 3	6 378	21.5	Tourism, coffee, stamp sales
South Georgia and the South Sandwich Islands	UK	–	none	n/a	n/a	–	n/a

[a] MS: associated Member State: Denmark (DK), France (FR), the Netherlands (NL), or the United Kingdom (UK)
[b] Pop.: permanent population. [c] Density rounded up to the unit. [d] EU support: Greenland : MFF 2014-2020, other OCTs: EDF 2014-2020 indicative allocation. [e] Isolated OCTs as listed in Decision 2013/755/EU.
Data source: Surface area and population: Association of the OCTs (OCTA), accessed 4 October 2018; GDP per capita and main economic activities: EPRS, April 2017 (except for the TAAF: OCTA); EU support: European Commission, accessed 4 October 2018.

Source: Eric Pichon, *European Parliament Briefing: A new association of the Overseas Countries and Territories (including Greenland) with the European Union* (European Parliamentary Research Service: Brussels, 2019), 2-3.

Appendix IV - Map of Anguilla showing border with EU



Source: Government of Anguilla London Office, *Anguilla & Brexit: Britain's Forgotten EU Border* (2017), 38.