

The Impact of International Conventions on Small States and Territories

Christopher Gardner QC

Hon. Chief Justice, Turks and Caicos Islands
cjgardner@gov.tc

Mechanism of Ratification

An independent state will determine for itself whether or not to ratify an international convention. For a territory, which by definition is a geographical domain under the jurisdiction of a political unit such as a sovereign state, the process of ratification is rather different. For example, ratification by a British Overseas Territory (OT) is achieved by extension to it of a UK treaty. It does not have authority to become a party to a treaty in its own right. However, before extending a UK treaty to an OT, either at the time of the UK's ratification or at some later date, the OT's officials are consulted to ascertain whether the aims and scope of a treaty complements the OT's own objectives. It has to consider whether it is able to comply, including any reporting obligations and infrastructure required to meet its obligations, such as reporting committees or mechanisms to collect information and publish reports. Compliance may require local legislation or administrative arrangements or resource allocation if a treaty is to be extended to a particular OT. The nature and extent of this consultation will depend on a number of factors, including the extent of control that the OT enjoys over its own affairs. Consultation usually takes place during the course of the treaty negotiation so that OT governments can raise concerns as to the texts under negotiation. If a treaty relates directly to the geographical location in which OT's are located, for example the Caribbean, OT representatives may be directly involved in the negotiations or form part of the UK delegation.

Factors Influencing Ratification

However, considerations as to the impact, relevance and importance of a particular international convention are likely to be the same in the case of both a small state and territory, and will inevitably be affected by a number of factors, and in particular by its:

1. Geographical location,
2. Resources and strength of the economy
3. Political dependence/independence
4. Demographic history

This paper seeks to test this by reference to one British Overseas Territory, namely the Turks and Caicos Islands (TCI).



1. Geographical Location

This Territory spans some 40 islands and cays, which stretch for about 75 miles from east to west, at the extreme southern end of the Bahaman chain, just south of the Tropic of Cancer. It therefore enjoys a year round tropical climate with average temperatures ranging between 77 degrees during the winter months and 83 degrees in summer. It has the third largest Barrier reef in the world, miles of sandy beaches, and is a premier scuba diving location. It is growing as a tourist destination, and one of its cays is now a retreat for the rich and famous.

It is situated 100 miles north of Hispaniola (Haiti and the Dominican Republic), making it vulnerable to illegal immigration by sea.

It is only 600 miles south east of Miami, and ease of access by air has led to many North Americans buying condominiums on the Island of Providenciales, which has an international airport with services to various US destinations, including New York, Atlanta, and Florida.

The TCI also lies within the hurricane belt.

2. The Economy

The sale of land to foreign investors, who wish to build resorts, hotels and condominiums, is the main source of government revenue. This revenue has resulted in the UK Government withdrawing all economic aid, so that the Governor and the Chief Justice are paid for by the TCI. There is no income tax. Tourism contributes more than 33% to the GDP. Because it is a tax haven, and offers offshore financial services, it has been vulnerable to money laundering. The currency is the US dollar, and almost all of the food, household goods, cars, television programs etc. are sourced from the United States,

which is also the main source of tertiary education. The cost of living is on a par or greater than that of the US, by reason of the importation costs and taxes.

3. The Political Structure

Between 1673 and 1962 the TCI ranged from being a British Protectorate, to a Federation with the Bahamas, to a Dependent Colony of Jamaica. When Jamaica gained its independence the TCI received its own Administrator, with limited association with the Bahamas through the Governor and the Court of Appeal. In 1973, however, when the Bahamas attained its independence, the TCI then had its first Governor. It is governed by an Executive Council, comprising the Chief Minister and his Ministers and the Governor. Its decisions take the form of advice to the Governor, who conventionally accepts that advice unless he believes that such is against the national interest. The Governor retains ultimate responsibility under the Constitution for defence, external affairs, and international and offshore financial relations. An international convention is ratified either from an Order in Council or by the passing of an Ordinance by the Executive Council.

4. Demographic History.

The original inhabitants were Lucayan Indians, who disappeared following the discovery of the Islands by Christopher Columbus. Towards the latter part of the 17th century, the Spanish ceded the islands to Great Britain, and Bermudans occupied the Islands to the east where they established large Salinas to produce the salt needed to preserve their fish products. They imported slave labour to rake the salt. The islands to the west were populated by loyalists following the American Civil War. They attempted, unsuccessfully, to grow cotton, again using a slave workforce that they brought over from the United States.

Of the present population of some 24000, only 11,000 are “Belongers”, who are largely descended from those populations. They alone can vote and sit on juries, fill certain important posts in the government. The vast increase in construction has necessitated the importation of a manual workforce, largely from Haiti.

The Psyche of the Small State

This background, and the influences and potential conflict between those influences indicated above, highlights the risk of larger states assuming, wrongly, that such influences are less complex or important because a state or territory is small. This must not be overlooked when larger international states seek to ratify on behalf of their overseas territories, or make ratification a condition of international aid or recognition. The importance to a small state of its individual circumstances being recognized within both its regional or international communities should not be ignored by larger states that

automatically enjoy such recognition. In other words, the impact of the psyche of the small state needs to be taken into account when considering ratification and compliance.

Impact factors

The impact of an international convention will therefore depend largely upon the perception of the small state as to the effect its provisions will have on:

- Its people. For example Refugee Conventions will create anxiety among the labour force of a small state which has a high rate of unemployment. Employment Conventions will be of direct concern to entrepreneurs of small businesses, which are successful because of the use of a cheap workforce. Discrimination Conventions may conflict with the entitlements of Belongers
- Its economy. Conventions relating to protecting and preserving heritage or the environment may be seen as inhibiting development and prosperity, and that it is unreasonable to expect small states to apply the same standards as a large state with a buoyant economy. For example, in the TCI, a large cruise ship terminal is being constructed. This could not be created without dredging a passage through part of its coral reef, destroying part of its unique natural resource. In a small territory sacrifices have to be made, despite the laudable intentions of international conventions.
- Its political aspirations. For example the ability of a small state to comply with international human rights standards will inevitably be affected by the extent that it can afford to do so. Where, however, it is a matter of prioritizing resources, the desire to be seen as a responsible and caring government by larger associated nations and the international community in general, can have a significant influence. The TCI has the largest area per capita dedicated to flora, fauna and sea life preservation. Its tourist slogan is “beautiful by nature”, but it is not the hope of generating financial benefit through tourism that has motivated the creation of these areas, but rather an appreciation that such are desirable per se. It is proud to have a flag displaying the conch (this being one of the last places where diving for conch does not need to be restricted), spiny lobster and unique Turks Head cactus (so named by Columbus because its red crest looks like a Turk’s fez).



Conflicts

Often these factors will be in conflict. Take the recently created Caribbean Court of Justice (CCJ) intended as the final Court of Appeal in the Caribbean, the creation of which was first debated in 1947. The most eminent Judges from the Caribbean islands have been appointed to it, and its creation sends a very definite political message that the assistance of mother England as their final legal arbiter, in the form of the Privy Council, is no longer either necessary or desirable. And yet, so far, only two states, Barbados and Guyana, have made the CCJ their final Court of Appeal. A number of other Caribbean States have contributed to its formation, but have not yet agreed to use it. They are waiting to see how the Court is regarded internationally. They do not wish investors to be inhibited by worries as to the caliber and independence of the final legal arbiter of any dispute that may arise in relation to their investment. There is also reluctance on the part of some states to hold a referendum necessary to effect the change to their constitution.

It will be interesting to see whether the speed of adoption of the CCJ will be affected by outcry amongst the populace of many Caribbean states against recent decisions handed down by the Privy Council commuting death penalty sentences to life imprisonment. This outcry results from a feeling that the Privy Council has overlooked or ignored the need for capital sentences as a deterrent to the rise of violent crime within their communities.

In order to understand why the Privy Council feels and has felt the need to commute these sentences; one has to examine the international obligations of the United Kingdom. The UK government made an international commitment in May 1999 to permanently abolish the death penalty. This took place when it ratified Protocol 6 to the European Convention on Human Rights. This Protocol is an international human rights treaty, which commits a government to the permanent abolition of the death penalty. However, Britain had abolished the death penalty for murder in 1969, and extended that abolition to its overseas territories by Order in Council. It was therefore inevitable that the Privy Council would find itself out of step with those independent states which continue to use the Privy Council as its final arbiter, such as Trinidad and Tobago, which have not abolished the death penalty and have, in recent years, passed down many death penalty sentences, which have been commuted by the Privy Council.

Small state contribution and involvement

A significant contribution of a small state to the international community, and that community's needs to fulfill its obligation to punish and deter war crimes, has been the appointment of the Chief Justice of the Eastern Caribbean Supreme Court and a national of St. Kitts and Nevis, Sir Dennis Byron, as a Permanent Judge of the International Criminal Tribunal for Rwanda. Sir Dennis was able to be considered by the United Nations for this post because of the OECS's association and commitment to the United Nations Development Programme (UNDP) amongst others.

A number of Conventions have been ratified by the UK on behalf of its OTs, although no direct involvement of them in the treaty obligations was anticipated. For example, the Vienna Convention for the Protection of the Ozone Layer. Nothing that can happen in the TCI is going to affect the Ozone Layer, and yet it has ensured that carbon dioxide emissions from its small number of vehicles is minimised, even though its influential neighbour, the United States, defies the international community in such matters.

Another international agreement ratified on behalf of the TCI which one might have would have very little relevance to it, is the Agreement on the Rescue of Astronauts ratified in 1968. However when John Glenn put down in the sea off Grand Turk its fishermen were first on the scene. Lyndon Johnson came to the TCI to greet him and the US donated a replica of the satellite in appreciation of the TCI fulfilling its duties under the Agreement.

The Convention against Illicit Traffic in Narcotic Drugs, although coming into effect in the UK in 1991, was not extended to its overseas territories until 1995. This was particularly pertinent to the TCI, as in 1985 its Chief Minister was charged and convicted of conspiring to smuggle drugs into the US by arranging refueling of aircraft in the TCI prior to their onward journey to Miami. The extension of the Convention was therefore an important indication to the International Community, and particularly investors and tourists, that such activities would no longer be tolerated in its shores.

One of the most important Conventions and Protocols which the TCI has ratified relates to the status of refugees, as during the regime of Papa Doc in Haiti large numbers of Haitians fetched up on its shores and had to be cared for in specially constructed refugee camp, which stretched its limited resources, particularly in relation to education and health care.

When the TCI Constitution was redrawn in 1998 the European Convention on Human Rights in relation to fundamental rights and freedoms was incorporated into it ahead of the passing of the Human Rights Act in the UK.

When looking at its standing internationally, we see that the TCI Supreme Court is often asked to give effect to worldwide freezing orders emanating from London. And yet it has not ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. International contracts in world trade now rely heavily on arbitration as a means of resolving cross border disputes, and their enforcement in domestic jurisdictions is a vital requirement for their viability. Being desirous of attracting foreign investment, one might have expected this Convention to be ratified with alacrity and with little downside to the TCI, unless it is anxious to keep the determination of its contractual disputes within its own borders.

The Future

It would seem from the above that, upon achieving independence, a state which was formerly an overseas territory will already have ratified by extension a whole panoply of international conventionsⁱ. Because of the need for international standing it is unlikely to want to be seen denouncing or refusing to endorse those ratifications. Following independence one can anticipate that it will be far more circumspect in its ratifications, which will be largely determined by the influences and perceived impact factors rehearsed above. However the fact that it is not starting to have a clean sheet is bound to have an impact, as it will wish to be seen as being consistent and as concerned in international obligations as its former international administrator. On the other hand it will also wish to be seen to be taking its own decisions and to be in step with its geographical and most politically sympathetic neighbours.

- Research Assistant: Nasiya Misick LLB (Hons)

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ⁱ International Conventions ratified by the TCI:

Aviation and Outer Space
Commodities
Commonwealth
Crime
Customs
Disarmament
Drugs
Education and culture
Environmentⁱ and Wildlife
Financial Regulation
Health
Human Rights
Intellectual Property
International Maritime Law
International Organisations
Labour
Law of the Sea
League of Nations
Legal and Administrative
Maritime
Nuclear and Atomic Energy
Privileges and Immunities
Postal
Refugees and Stateless Persons
Telcommunications
Traffic in Persons
Transport