

Lauterpacht Centre for International Law

**“The evolving legal status of the Crown Dependencies  
under UK, European and international law”**

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Alastair Sutton<sup>1</sup>

1. At a time when the UK Constitution is under active discussion, with particular attention being devoted to the extent to which Scotland, Wales, Northern Ireland and even the English regions should exercise devolved authority, the constitutional status of Jersey, Guernsey and the Isle of Man is less widely-known. These three Crown Dependencies are already self-governing, with the UK retaining responsibility for defence and international relations. In the absence of a written Constitution, the relationship between each Crown Dependency and the UK has evolved pragmatically and relatively uncontroversially. Nonetheless, the gradual disappearance of a clear distinction between internal and external policies (notably as a result of the shift towards electronic commerce and services industries) has given rise to a desire for greater external autonomy for the Islands and difficult discussions with the UK authorities on the scope and implications for such “external personality”.
2. Over the last 30 years, each of the Islands has become an important international financial centre (sometimes described as “offshore” or “tax haven”). Funds currently under management in the three Islands, taken together, probably exceed £1 trillion. The close relationship between the Crown Dependencies and the City of London is of mutual benefit. Nonetheless, in many ways, the interests, policies and laws of the Crown Dependencies and the UK differ significantly (for example in the fiscal field), and this poses problems for the UK and the Islands themselves in discharging international responsibilities in defending or promoting Insular interests. Consequently, the last ten years have seen increased autonomy by the Crown Dependencies, particularly in the negotiation of international tax agreements, but also more widely. Numerous tax information exchange agreements (TIEAs) have been negotiated with third countries and each Crown Dependency has concluded tax agreements with the 27 EU Member States, as well as establishing themselves as “cooperative jurisdictions” by settling “letters of commitment” with the OECD. It remains to be seen whether the degree of “external personality” already achieved in these areas can be extended, for example by membership of the WTO, in a similar manner to that already achieved by, for example, Hong Kong and Macao.

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<sup>1</sup> Visiting Professor of Law, King’s College London; Honorary Professor of European Law, University of Edinburgh; and Partner, White & Case.

3. The Crown Dependencies' relationship with the European Community (EC) is unique, being based on Protocol 3 to the 1972 UK Act of Accession. In contrast to the situation of some other UK overseas territories (including Gibraltar), the Crown Dependencies are outside the territorial scope of the EC Treaties (as defined by Article 299) with the exception of Community rules on the customs union and the free movement of goods. Although the Crown Dependencies' relations with the EC over the last 35 years have been relatively uncontroversial (only three cases have been referred to the ECJ under Article 234 EC from Insular courts), each Island now faces the challenge of securing enhanced market access for its financial services "products" in EU markets.
4. Each of the Islands is currently reviewing its "external personality" in the context of its constitutional relations with the UK, the EU and the wider international community. This raises a unique blend of UK constitutional, EU and public international legal questions, as well as important practical issues relating to the day-to-day management of international relations by "micro-States". In this respect, a comparison with similar jurisdictions both in Europe and around the world is of particular importance. ⊕