

Section 62 (1) (a) and (b) of the Constitution and The Ministry of External or Foreign Affairs

I INTRODUCTION

The focus of this Paper is to explain in broad terms the functions of a Ministry of External and Foreign Affairs and highlight many of the duties and responsibilities of such a Ministry. These duties and responsibilities would arise whether Bermuda chose a Republican or a Constitutional Monarchy model of Government upon attaining self-determination or Independence.

At the instance of Bermuda transitioning to Independence; it would automatically be charged with the full and total responsibility of conducting its foreign or external affairs. These affairs are currently carried out by the U.K.'s Foreign and Commonwealth Office via the Governor who exercises his constitutional powers under section 62 of Bermuda's Constitution.

II THE RESERVED POWERS

Section 62 (1) (a) and (b) of the Constitution provide for the Governor to be charged with and be responsible for the following matters:

- a) External (or Foreign) affairs, for example, the negotiation and signing of bi-lateral and multi-lateral treaties; the negotiation of favourable trade routes for civil aviation and marine shipping etc.
- b) Defence (internal and external) including Armed Forces, for example, whether Bermuda commits troops abroad or indeed, deploys them locally for any purposes.

The Governor, of course, must report to the United Kingdom Government in these matters and adopts the practice of consulting with the Premier and members of his Cabinet who may also enjoy certain delegated powers in this area (e.g.: section 62 (1) (c) and (d) of the Constitution i.e. Internal Security and the Police). Ultimately, the Governor is not obliged constitutionally or in law to follow any 'advice or recommendation' flowing from such consultation.

III THE MINISTRY OF FOREIGN OR EXTERNAL AFFAIRS (MFA)

A. The Broad Responsibilities:

An Independent Bermuda must consider to what extent and for what purpose(s) it will operate as an INTERDEPENDENT nation.

Such a consideration will no doubt be driven by cultural, political, economic and security reasons. Which nations, international organizations or alliances should or should not Bermuda join or align itself? Which Conventions, Treaties, bilateral or multi-lateral agreements should Bermuda be a signatory to or of? Will an Independent Bermuda permit, and if so for how long, dual or multiple citizenships or passports? How, if at all, will Independence affect present consular agreements etc. in respect of visas or pre-clearance arrangements etc.? How, and in what important ways, will Independence affect our civil aviation and merchant shipping registers? These are some of the broader responsibilities a Ministry of Foreign Affairs would have to grapple with and find resolutions to. These are subjects more comprehensively dealt with in an Independence Conference and a Constitutional Conference/Commission before Independence Day.

B. The Narrower Duties:

The French are accredited with establishing the first permanent office in their administration in Paris in the early 18th century to oversee the work of their numerous embassies abroad. This office became the French Ministry of External Affairs known by its location as Quai d'Orsay; according to Kishan Rana in his paper on Ministries of Foreign Affairs, entitled, "Bi-lateral Diplomacy-Ministry of Foreign Affairs(lecture 2)". .

Kishan holds that today, every foreign ministry (MFA) is divided into two major components:

- a) the territorial divisions (also called bureaus, departments, directorates) handling bilateral relations with different regions; and,
- b) the functional divisions that handle specific tasks like administration, conference affairs or multilateral diplomacy, legal affairs, protocol and such matters.

The officials in these sub-units consist of “desk officers” at the lower rung of the pyramid, to the division or department heads, usually with two layers of supervisors in between.

Bermuda is an infinitesimally smaller country than France and could operate its MFA accordingly, utilizing its tourism offices etc. abroad to keep costs down. An examination of other smaller countries within and outside of the Caribbean offers appropriate models to/for Bermuda.

Within any foreign ministry, the desk officer is the operational base unit of the entire structure. The smooth running of the entire external diplomacy machinery depends on the professional competence of this individual. Kishan notes that, “it is vital for foreign ministries to recognize, and act on this realization, that the good performance of the entire system begins with the desk officer”. The training and the formation of the desk officer is accordingly imperative because the skills and experience gathered in that job will not only shape the career of that individual and their ascent through the ranks of ‘middle management’ and senior or higher offices later in their career, but will also strengthen the integrity and workings of the MFA as a whole.

Much of what is said above applies, with the necessary changes having been made, to the mid-level and senior officials at the MFA who typically handle bilateral work as deputy directors or directors of territorial divisions (or both). Some MFA’s operate with few divisions, entrusting large regional responsibility to each, or clustering sub-units under a bigger entity, like the Africa “Command” within the U.K. Foreign and Commonwealth Office.

Bermuda, on a much smaller scale might consider ‘missions’ in Brussels/London, Washington DC, New York and Ottawa, Canada, with contacts with the Caricom countries effected

via the Commonwealth Secretariat, of which organization Bermuda, as an Independent nation, would be a full member.

The senior most civil servant heading the foreign ministry is the Permanent Secretary, State Secretary or Vice Minister depending on a given country's choice of nomenclature. The functions of each are comparably the same or similar. This civil servant usually works with a collegial group of people who share the oversight responsibility. For instance, in practice, the British Permanent Under-Secretary functions as the "Chairman of the Management Board" and is charged with the responsibility of optimizing the diplomatic apparatus but remaining, as far as it is practically feasible, aloof from any bilateral or even multilateral diplomacy. These activities typically fall to the political director-general who handles much of the oversight of bilateral political work. In fact, at times he may even deal directly with the Foreign Minister on specified issues, always mindful that it is the top civil servant heading the ministry, who must first be informed of such contact.

In summary, and for illustrative purposes only (for the list is not exhaustive), note some of the day to day duties and activities of a typical MFA:

- 1) The desk officer to be a unique resource person at headquarters;
- 2) To integrate economic analysis with political assessments;
- 3) Master the analysis of reports and special dispatches;
- 4) Preparing records of discussion involving high-level meetings of importance;
- 5) Preparation of notes and analyses that guide and shape policy formulations, as well as policy execution;
- 6) Constant liaison with counterparts in other ministries and agencies;
- 7) Responsibility(ties) to the public at large and other non-state agencies. For example, the need to keep

citizens informed of international developments that affect them;

- 8) Ensuring the proper understanding and accurate communication between and with the foreign diplomatic missions at Headquarters;
- 9) The drafting of letters, messages, speeches, answers to parliamentary questions and other important notes and documents that flow from the nature of the diplomatic profession;
- 10) The ability to deal with a wide range of interests and issues, absorb a plethora of new ideas and to be quick learners.

IV CONCLUSION

It is comforting to know, and perhaps even to note, that if Bermuda makes a determination to transition to Independence, that the U.K. Foreign and Commonwealth Office stands ready, willing and able to offer, both before and for a time after such event, expert advice and assistance to effect a seamless transition to Independence and the concomitant matter(s) of erecting and administering a first class Ministry of Foreign Affairs as it has done in the past for many Independent Commonwealth countries both large and small.