

Special Sovereignty

הביטחוניסטים IDSF
Israel's Defense & Security Forum

Breaking the False Dichotomy:

Precedents set by the western democratic world for autonomy and special geopolitical arrangements

* This paper was written in connection with the IDSF research department's project on creative solutions for peace between Israel and the Palestinians



About IDSF-Habithonistim

IDSF-Habithonistim is a movement with over 17,000 members - commanders, officers, and former members of the Israeli defense and security forces. It was founded for the purpose of defending Israel's defense needs in a manner that ensures its existence and prosperity for generations to come.

We follow a clear line: We uphold Israel's right to exist, within its safe borders – the borders of the Land of Israel. We believe that Israel's defense needs are at the top of the national agenda, and believe that the State of Israel cannot afford to lose any war. The IDF must operate freely throughout the territory to fulfill its responsibility and defend the State of Israel. We would like to make it clear that we are not a political movement, but one that is guided by the values and vision that define it.

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The New Choice

Either full Annexation or "Occupation"? International Examples Establish the Precedent of Special Sovereignty

Notwithstanding the fervent discourse concerning the future of Israel's control of the territories of Judea and Samaria ("West Bank"), a more nuanced assessment reveals that much of the passionate dispute is in regards to the specific details rather than the substantive position. On the one hand, the more conservative wing of the Israeli political map does not propose full sovereignty in all of Judea and Samaria – plans promoted by right-wing political actors typically call for the establishment of some form of Palestinian entity (a state, autonomy, self-rule, etc.) in at least some portion of Judea and Samaria. At the same time, the left wing of the Israeli political map does not support a full withdrawal to the 1949 armistice lines – most plans supported by left-wing actors recognize the need retain Israeli control of the Jordan Valley, Israeli sovereignty in the major Jewish settlement blocs, and effective demilitarization of the Palestinian entity. In any case, there is a broad consensus that a creative middle-ground solution is the practical approach to this issue, so that the arrangement assures the national security of Israel and considers the needs of the Palestinians to the maximum possible extent. However, in spite of the broad agreement that

out-of-the-box thinking will be necessary for any reasonable solution, to the best of our knowledge there has not yet been a comprehensive study that reviews the precedents around the world of territories that have a special sovereign status. Given that any Palestinian entity that will be established (if at all) would have to have certain elements of special (or limited) sovereignty, it would be wise to learn from other cases which implemented an arrangement of special sovereignty in order to address a unique geopolitical situation.

The study before you presents over 60 of the worldwide models that are governed as dependencies or areas of special sovereignty. These unique diplomatic arrangements reflect the aim of the sovereign country to safeguard its own interests through a form of limited control over the foreign affairs, security, and immigration policy of the given territory while allowing for a high measure of freedom in the governance of internal civil affairs, with the consent of the international community and completely within the scope of international law.



Photo: The Country's Porch

The New Choice

None of the following precedents should be viewed as entirely analogous to the Israeli-Palestinian context and none of the solutions should be viewed as applicable in their entirety, even with minor adjustments, to the Israeli reality. Every special arrangement is unique and is a product of its own particular circumstances. Still, we believe that acquaintance with these special cases will encourage the creative thinking that is necessary for the implantation of a workable solution to the challenge presented by Israel's presence in the territories.

The study expands on three particular models: the Dutch model, the American model and the British model.

Thus, for example, the Netherlands holds no less than six territories in the Caribbean, each with its own status, and none of which has the freedom to manage its own affairs in foreign policy, security and immigration. Neither do any of their respective peoples have the automatic right to immigrate to the European Netherlands despite the fact that they are subject to the decisions of the Dutch parliament and crown with respect to these matters.

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elections or for automatic US citizenship – this despite the fact that they pay taxes, may serve in the US military and are subject to the authority of Congress and the President. The UK rules territories and colonies whose peoples are not eligible to vote in the UK elections or make decisions on matters of foreign policy, security and immigration, although they are subject to the decisions of Parliament and crown. Consequently, there are six different types of British citizenship, among them “British subject”, “British national” and “British protected person”. All of this is endorsed by the international community and is fully in accordance with international law.

The State of Israel is not a carbon copy of the United States, the UK, or the Netherlands. It is governed by a unique form of democracy, the foundation of which is the aim to guarantee a national home for the Jewish people with certain laws and policies that are designed to safeguard the principle of Jewish independence.

The models presented herein are mostly (with the notable exception of Hong Kong) vestiges of colonialism and do not reflect the deep and undeniable connection between the Jewish people and the Land of Israel, as opposed to Americans in Samoa or Dutch in Curacao. Further, none of the territories presented herein are governed by radical ideological movements sworn to wage ongoing, uncompromising war, on the sovereign country. As such, this paper does not propose to adopt one model or another outright, but rather learn from each model and use the concepts as a springboard for a more productive, creative conversation.

This paper takes a trip around the world and asks a basic question – what is special sovereignty?

Review of "Special Sovereignty"

- **A Trip Around the World: Examples of Special Territories**

- 66 special territories around the world: not every territory on the map is an independent state.
- Disputed territories throughout the world, where there is no demand for full independence.
- Territories without territorial contiguity – enclaved states, exclaves, non-contiguous territories, overseas territories: not every political entity exists within a single and contiguous territory.

- **Three central models: The Dutch, US and UK models**

- The Dutch model
- The American model
- The British model



A "Trip" Around the World – Enclaves, Exclaves, and 66 Dependencies or Areas with Special Sovereignty

66 Exceptions

The U.S. State Department lists 66 dependencies and areas with special sovereignty that do not fall within the category of a full-scale sovereign state, yet are fully accepted by the international community.¹

	The Sovereign	Territory Name		The Sovereign	Territory Name		The Sovereign	Territory Name
1	United Kingdom	Akrotiri	24	United Kingdom	Gibraltar	48	United States	Palmyra Atoll
2	United States	American Samoa	25	Denmark	Greenland	49	Undetermined	Paracel Islands
3	United Kingdom	Anguilla	26	United States	Guadeloupe	50	United Kingdom	Pitcairn Islands
4	None	Antarctica	27	United States	Guam	51	United States	Puerto Rico
5	Netherlands	Aruba	28	British Crown Dependency	Guernsey	52		Reunion
6	Australia	Ashmore and Cartier Islands	29	Australia	Heard Island and McDonald Islands	53	France	Saint Barthelemy
7	United States	Baker Island	30	China	Hong Kong	54	United Kingdom	Saint Helena, Ascension, and Tristan da Cunha
8	United Kingdom	Bermuda	31	United States	Howland Island	55	France	Saint Martin
9	Norway	Bouvet Island	32	British Crown Dependency	Isle of Man	56	France	Saint Pierre and Miquelon
10	United Kingdom	British Indian Ocean Territory	33	Norway	Jan Mayen	57	Netherlands	Sint Maarten
11	United Kingdom	Cayman Islands	34	United States	Jarvis Island	58	United Kingdom	South Georgia and the South Sandwich Islands
12	Australia	Christmas Island	35	British Crown Dependency	Jersey	59	Undetermined	Spratly Islands
13	France	Clipperton Island	36	United States	Johnston Atoll	60	Norway	Svalbard
14	Australia	Cocos (Keeling) Islands	37	United States	Kingman Reef	61	New Zealand	Tokelau
15	New Zealand	Cook Islands	38	China	Macau	62	United Kingdom	Turks and Caicos Islands
16	Australia	Coral Sea Islands	39	France	Martinique	63	United Kingdom	Virgin Islands, British
17	Netherlands	Curaçao	40	France	Mayotte	64	United States	Virgin Islands, U.S.
18	United Kingdom	Dhekelia	41	United States	Midway Islands	65	United States	Wake Island
19	United Kingdom	Falkland Islands (Islas Malvinas)	42	United Kingdom	Montserrat	66	France	Wallis and Futuna
20	Denmark	Faroe Islands	43	United States	Navassa Island			
21	France	French Guiana	44	France	New Caledonia			
22	France	French Polynesia	45	New Zealand	Niue			
23	France	French Southern and Antarctic Lands	46	Australia	Norfolk Island			
			47	United States	Northern Mariana Islands			



¹ מקור: <https://www.state.gov/dependencies-and-areas-of-special-sovereignty/>

Territorial Contiguity?

There are those who assert that territorial contiguity is necessary for the effective existence of a state. An examination of precedents from around the world demonstrates that there can be, and are, territories that are not contiguous with the mainland of the sovereign.


⁶ In many cases, these are territories of strategic importance to the sovereign, which has its justifications not to surrender them. For example, Gibraltar for the UK, which controls the Straits of Gibraltar, which connect the Mediterranean Sea to the Atlantic Ocean, or Spanish Ceuta and Melilla in North Africa,

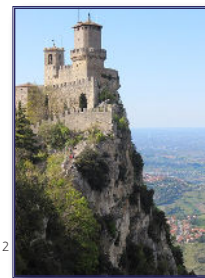
on the opposite shores of the Mediterranean basin. Other cases include legal compromises based on treaties or historical war outcomes, such as German Büsingen in Switzerland, or long-standing family property such as the Belgian Baarle-Hertog Territory amalgamation within the Dutch village of Baarle-Nassau.

Enclaves This type of territory falls under several categories:


- Enclaves: Internal landlocked territories within another country

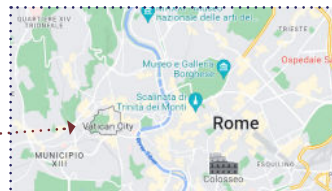
There are three such territories in the world today:

-  **San Marino** – The Constitutional Republic, and possibly even the oldest contiguous sovereign state in the world, is completely surrounded by Italian territory in the north of the country.
- Population (2022): 34,000. | Area: 61 square kilometers (0.386 square miles)



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-  **The Vatican** – Never joined the 19th century Italian Union and remained an independent territory in the heart of Rome, completely surrounded by Italian territory.
- Population (2022): 510. | Area: 0.44 square kilometers (0.17 square miles) – the smallest country in the world.



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-  **Lesotho** – A country surrounded by the state of South Africa. This territory was occupied by the Dutch and then became British territory. This status of a British enclave remained so after South Africa's declaration of independence in 1961, until becoming a sovereign upon with Lesotho's declaration of independence in 1966.



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2 https://en.wikivoyage.org/wiki/San_Marino#/media/File:Castello_di_San_Marino.JPG
 3 [https://commons.wikimedia.org/wiki/File:Vatican_City_in_Europe_\(zoomed\).svg](https://commons.wikimedia.org/wiki/File:Vatican_City_in_Europe_(zoomed).svg)
 4 <https://wikitravel.org/en/File:800px-VaticanCityentrance.jpg>
 5 https://commons.wikimedia.org/wiki/File:Border_Lesotho-South_Africa.jpg
 6 https://www.researchgate.net/publication/41592450_A_Theory_of_Enclaves

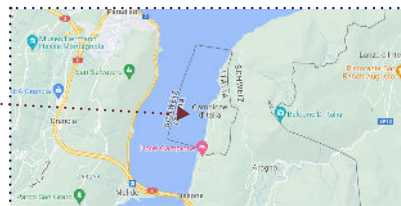
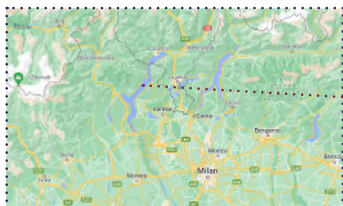
Exclave: a territory belonging to a parent country, which is completely landlocked by the territories of one or more other countries

A 2007 study listed 282 different exclaves around the world, home to a total population of 3 million, a number that has no doubt increased since then. In Europe alone, there are at least 9 exclaves, some of them towns belonging to the mother country and surrounded by another country - in one extreme case 22 enclaves within one township.

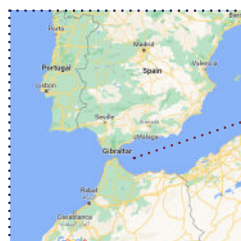
- **The UAE and Oman** - Within the UAE, there exists a 75-sq-km enclave called Madha, which is under Omani sovereignty, and within this enclave it is a counter-enclave called Nahwa, which belongs to the emirate of Sharjah in the United Arab Emirates. The final chartering of the borders was completed in 1966 and drew from a tribal declaration of allegiance of the Nahwa people to the emirate of Sharjah.



- **Italian exclave in Switzerland** - Across the Italian border on Lake Lugano in Switzerland, the Italian territory of Campione d'Italia was established, belonging to the province of Lombardy, surrounded by Swiss territory.



- **Gibraltar** - Gibraltar is a British territory of strategic importance in the Mediterranean basin, on the straits connecting it to the Atlantic Ocean. Britain's possession of the territory has caused tensions between Britain and Spain over the years. The territory was seized by Britain in 1704 and Spain recognized Britain's sovereignty over the territory in the treaty of Utrecht in 1713.



- **Ceuta and Melilla** - These are two enclaves belonging to the sovereign territory of Spain, located on the Mediterranean basin in the African continent, surrounded by the territory of Morocco. The first of the two was conquered by Portugal in 1415 and transferred to Spain in 1668 under the Lisbon Treaty, and the second was captured by Spain as part of the "reconquest" from the Muslims (Reconquista) in 1497.



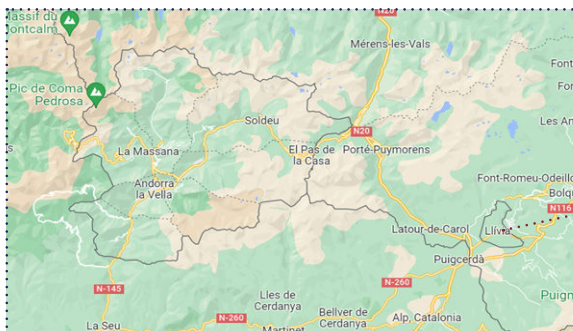
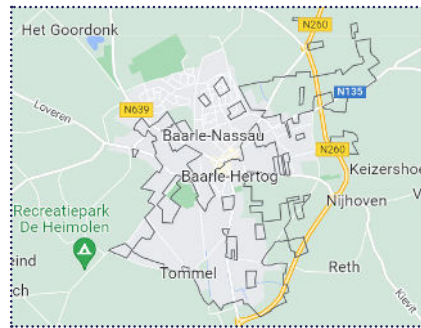
- 22 Belgian exclaves within 1 Dutch town**– This uncommon case involves 22 Belgian enclaves, collectively known as Baarle-Hertog, located within a Dutch village called Baarle-Nassau across the Belgium border in the province of North Brabant in the Netherlands. This territorial entanglement stems from family ownership of property originating in medieval times, and has become even more complex with Belgium's declaration of independence from the Netherlands in 1833. This diplomatic arrangement was finally regulated only in 1995. This town is famous for the fact that some of the village's buildings are split by the Belgian-Dutch border, while other sections of the border are marked on the pavement stones, and every building has either a Belgian or Dutch flag on it.
- Spanish exclave in France** – The Spanish town of Llívia is located 2 kilometers (1.2 miles) from Spanish territory and is situated within France as an exclave surrounded by French territory. This exclave is a result of an arrangement made under the Treaty of the Pyrenees of 1659. It belongs to the Girona region of Spain and is surrounded by the French Pyrenees region. In 2021, the town's population was only 1,504.



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9 https://twitter.com/SolihullScoop/status/730852675424813056?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E730852675424813056%7Ctwgr%5E8d9e79d78e9bd67145d78312c9c0ce452f51602e%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.telegraph.co.uk%2Ftravel%2Fdestinations%2Ffeurope%2Farticles%2Fquirky-european-enclaves-where-cultures-collide%2F

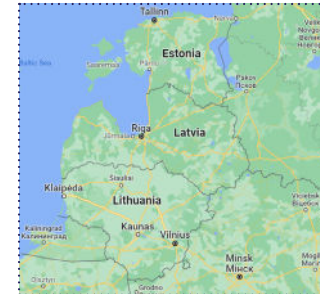
10 <https://www.bbc.com/travel/article/20171210-europes-strange-border-anomaly>

11 https://www.citypopulation.de/en/spain/cataluna/girona/17094_1l%C3%ADvia/

12 <https://barrysborderpoints.com/country-visits/spain/llivia-a-spanish-enclave/>

Non-contiguous territories:

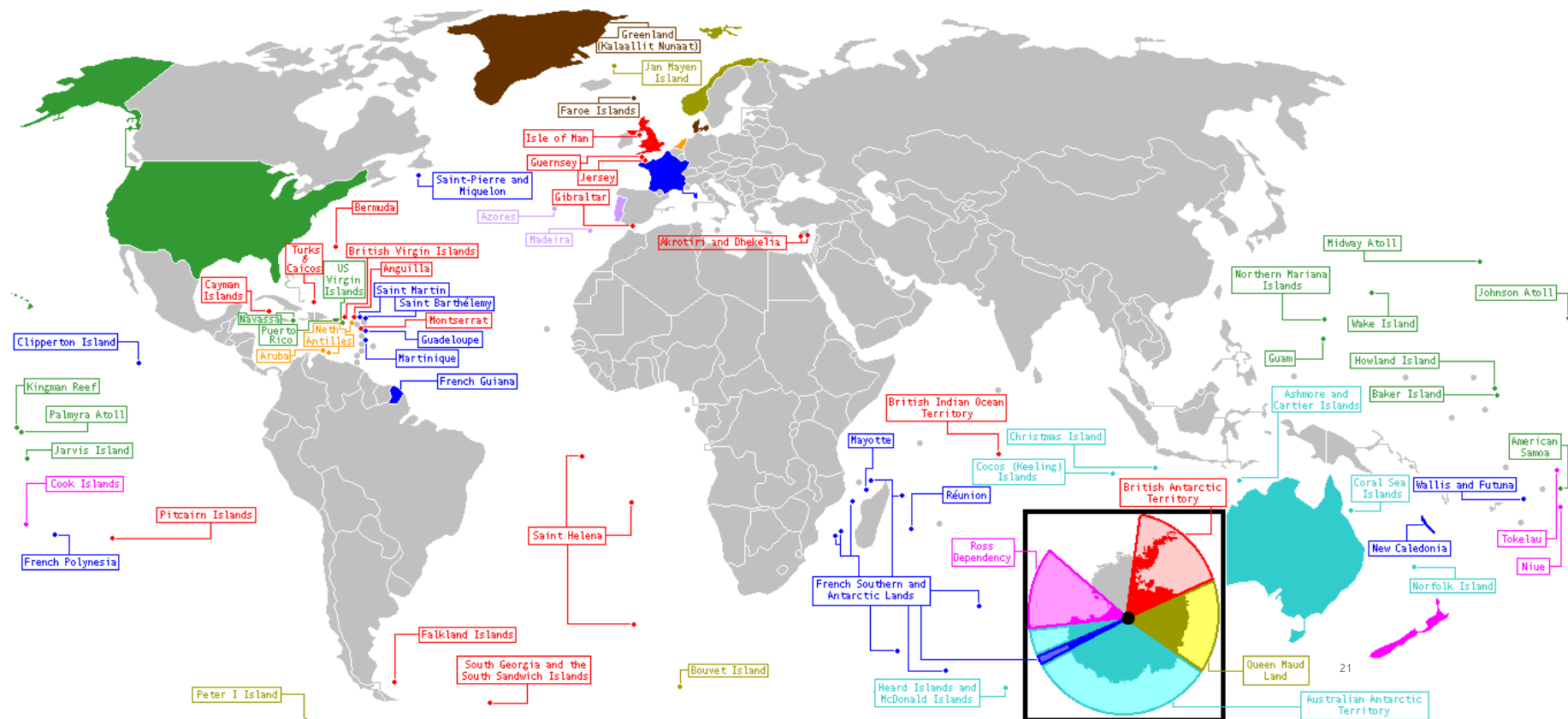
- **enclaves of significant area, which are cut off from the mother state territory by the territory of other countries.**
- **Kaliningrad** - Kaliningrad is a Russian territory cut off from Russia by the Baltic states, which declared their independence from the USSR, leaving this territory on the basin of the Baltic Sea separated from the mother country. Prior to World War II, this territory was under German control as part of its East Prussian district, but after the war the Soviet Union annexed the territory.
- **Alaska and the US** - Alaska is an American territory acquired by the US from Russia in 1867 and separated from mainland United States by Canada. Alaska can only be reached from its parent state through Canadian land or marine territory.
- **Azerbaijan** - The Nakhchivian region, called the Nakhchivian Autonomous Republic, is an Azeri territory cut off from the mother country territory of Azerbaijan by Armenia, bordered by Turkey to the west and Iran to the south. The region had a long history of Iranian sovereignty until it was transferred to Russia under the Turkmenchai Treaty of 1828. The territory underwent a number of administrative changes under the Russian Empire and was briefly occupied by the Ottoman Empire. It finally declared itself Azeri territory upon the establishment of Azerbaijan in the wake of the Soviet Union's disintegration in 1990



Overseas Territories

A large number of countries, several Western democracies among them, hold overseas territories, some which are integral provinces of the mother state and participate in its democratic processes; others hold a status of dependencies, and some have other designations. Not all residents of these territories are entitled to citizenship of the parent country, despite being controlled by it, while others are either residents or "nationals" of the parent country. Among the most prominent cases of this civil status is the "unincorporated territories of the United States".

All in all, there are 58 overseas territories around the world. The country with the largest number of such territories is the UK (17), followed France, the Netherlands, Australia, the USA, China, Denmark, the Netherlands, and Norway.¹⁴



The Freedom Index

The three special territories under control of the US, France, Britain, The Netherlands or China are rated according to the following criteria relating to the balance of rights and obligations:

The Three Levels of Autonomy

A brief review of the spectrum of models

	Low Autonomy / Major Citizenship Restrictions	Significant Autonomy / Significant Citizenship Restrictions	Major Autonomy / Low Citizenship Restrictions
Features / Examples	American Samoa; Netherlands territories of Aruba, Curaçao, and Sint Maarten	British Crown Dependencies, including the Isle of Man and the Bailiwicks Jersey and Guernsey. Different from British "Overseas Territories" (colonies)	U.S: unincorporated territories of Puerto Rico, Guam, the Virgin Islands, and the District of Columbia UK: British colonies such as Gibraltar, Falkland Islands
Level of autonomy	Mainland has full sovereignty while residents are not citizens.	Quasi-state status; cannot vote for parliament	Under full sovereignty but cannot vote.
Gov't control of local issues	US Constitution does not apply to American Samoa and thus Samoa has no freedom of religion – thus allowing territory to have its own religious laws. US Congress can override local legislature; Netherlands law does not apply to Caribbean territories – only "Constitution of the Kingdom of Netherlands". Kingdom constitution gives Netherlands parliament power in defense and foreign affairs, and can override local legislature for human rights, good governance, and public order. Netherlands islands each have their own dialing code.	power over them in matters of defense, citizenship, and diplomatic representation. It also can ensure the "good government" of the Dependencies – unilaterally intervening to prevent a "breakdown of public order or the rule of law," or "endemic corruption." Separate flag and other "symbolic" sovereign features like stamps, domain suffixes.	Local administrative autonomy, but subject to all national laws; fully under legislative authority of national legislature and subject to national constitution; subject to taxation and conscription
Citizenship	American Samoans are "US Nationals" with different passport. Netherlands: residents of the territories are citizens of "Kingdom of Netherlands" but not legal residents of the "Netherlands" and thus not EU citizens or freely permitted to live and work Schengen Area	Separate passport	Typically full citizens of mainland without separate passport.
Immigration	Residents of territories not automatically allowed to migrate to mainland. Even if allowed in as migrants, no automatic right to vote.	De-facto no immigration control, though local parliaments can restrict availability of housing and jobs to UK nationals	Allowed to move freely to mainland; Mainland citizens allowed in. Voting allowed once in mainland

The Dutch model

Taxation without representation, restricted autonomy



As per the Dutch model, the Kingdom of the Netherlands comprises four autonomous countries -i.e. constituent countries: The Netherlands, and three Caribbean countries: Aruba, Curacao and Saint Martin. The latter three do not enjoy the right to vote to the Dutch parliament while at the same time they are subjected to total Dutch supremacy in matters of military, political and emigration control. The King of the Netherlands and the Parliament of the Netherlands have the final say on the affairs of these remote islands in the Caribbean, and these states cannot declare independence or oppose the decisions of the mother country.

In addition, the Netherlands controls three Caribbean islands – Bonaire, Saba, and St Eustatius, which hold the status of “public bodies” of the State of the Netherlands as interpreted by the Dutch Constitution. This status is the same as that of local authorities in the Netherlands with certain adaptations based on size and distance from the European part of the Kingdom of the Netherlands.

The central concepts of the Dutch model:¹⁶

Citizenship: Like American Samoans, those born in these places are not citizens of the Netherlands, but only of the “parent” entity, the “Kingdom of the Netherlands.” This means they are not represented at all in elections for the Dutch parliament. Moreover, “constituent countries” can and do restrict migration amongst themselves, which means the Netherlands is not required to admit the islanders for permanent residence, and vice-versa.

¹⁷ **Legislative** authority: While the Netherlands has limited ability to legislate for the constituent countries without their consent in “internal” matters, Article 3 of the constitution of the Kingdom of the Netherlands provides that the Kingdom has supreme authority in “external” matters, dubbed “Kingdom Affairs”. Those include

foreign and security matters - the independence and defense of the Kingdom. The constituent countries are not represented in the legislative organ of the Kingdom (the umbrella entity), which is run by the parliament of the Netherlands itself.¹⁷

Foreign relations: Only the kingdom can be called a state and only it has international representation. There is one foreign minister and one foreign ministry, including embassies and missions around the world, which represents the entire Kingdom of the Netherlands – including the Caribbean countries. These countries have representatives at international missions for matters relating to their autonomous responsibilities, but are obligated to act within the limits of the kingdom’s foreign policy.



Liberties: each of the states has an obligation to uphold human rights and liberties, legal certainty, and good governance, but the kingdom has the responsibility to ensure these matters and it may respond if it deems the measures taken by the states inconsistent with its policies.

International agreements: Only the kingdom itself is subject to international law, meaning that only kingdom representatives can may enter international agreements and treaties, with each state, including those in the Caribbean, having an autonomous responsibility of implementing those treaties. But it is the kingdom that represents all of these states as a single party to these agreements. Only in areas where the constituent states have autonomy can they negotiate on their own, but they are obliged to obtain the kingdom's consent. They can only sign memorandums of understanding (MoU) if they are not in contradiction of the kingdom's foreign policy.

Governance: King Wilhelm-Alexander of the Netherlands is represented in each of the constituent countries. Each of these has a parliament of its own, however, "Kingdom affairs" are addressed in the Council of Ministers of the Kingdom, which includes ministers from the Netherlands as well as three additional representative ministers, one for each of the Caribbean countries. In contrast, the "public bodies" of the Netherlands, i.e., the three territories in the Caribbean under the control of the Netherlands itself, have far less autonomy than that of the constituent states, and the kingdom plays a central role in their internal affairs. The Dutch Caribbean Office ("Rijksdienst Caribisch Nederland"), headed by a kingdom representative, has an office on each of these three islands, and represents all Dutch ministries except the Ministry of Foreign Affairs and Ministry of Defense – which manage these affairs for the entire kingdom – and is the employer of all public servants on the islands.

Status in the EU vs. Dutch citizens: EU treaties are signed by the Kingdom of the Netherlands but are valid only for the European part of the kingdom. The Caribbean territory (the "constituent countries" and "public bodies") are considered overseas countries and territories (OCT), which grants then only a "partnership" status in the EU, and the Schengen Treaty and other laws that benefit EU citizens do not apply to them. In some cases, they may benefit from funding in EU projects and certain benefits in exports to the EU. As citizens of the Kingdom of the Netherlands, they can vote in the elections to the European Parliament.

Currency: The monetary union does not apply in the Caribbean territories of the kingdom; the euro is used only in the European part of the Kingdom of the Netherlands. Of the "constituent countries", Aruba uses Aruban Florin, and Curaçao and Saint Martin use a common currency – the Netherlands Antillean Guilder. The "public bodies" of the Netherlands in the Caribbean – Bonaire, Saba and San Eustasius – use US dollars.

16 One Kingdom - Four Countries,
<https://www.netherlandsandyou.nl/about-the-kingdom/facts-about-the-netherlands/one-kingdom---four-countries>
https://tbinternet.ohchr.org/Treaties/CRPD/Shared%20Documents/NLD/INT_CRPD_ADR_NLD_31837_E.pdf
Charter for the Kingdom of the Netherlands.
<https://www.royal-house.nl/topics/legislation/charter-for-the-kingdom-of-the-netherlands>
17 Dutch government - Responsibilities of the Netherlands, Aruba, Curaçao and St Maarten | Caribbean Parts of the Kingdom
<https://www.government.nl/topics/caribbean-parts-of-the-kingdom/responsibilities-of-the-netherlands-aruba-curaçao-and-st-maarten>



Case Study - Conditioning Aid Funds for the Coronavirus Crisis on the Dictates of the Kingdom of the Netherlands

In May 2020, during the covid-19 crisis, the Netherlands conditioned economic aid for Aruba, Curacao and St. Maarten on their full acceptance of Dutch terms. The Dutch government claimed that the millions of euros allocated to the islands were not allocated to the purpose for which they were intended. Additional economic aid is possible only every 6 weeks, during which additional conditions may be put in place. Dutch Secretary of State Raymond Knops (in charge of kingdom relations) clearly stated that "the number of conditions will increase over time. Each and every tranche will be released on the basis of results."



Among others, the Dutch government and parliament are demanding a 25% cut in salaries and compensation to which public servants and parliamentarians are entitled; significant cuts in public expenditure and in the number of public servants; to improve the situation in prisons and make them much more "humane"; tax reforms requiring the rich to contribute a larger share; and diversification of the economy so that it does not depend solely on tourism or the refining industry.

The governments of Bonaire, Curacao and St. Maarten are completely dependent on the Netherlands and cannot turn to another party for economic aid. Secretary Knops told parliament: "You can have autonomy based on the Charter [of 1954],

but if in practice you are totally dependent on others, are you really autonomous?"¹⁸ In November 2021, the prime ministers of Aruba, Curacao and St. Maarten agreed to join forces in order to form a more significant bloc against the Netherlands in the negotiations on economic aid. The Netherlands is still conditioning economic aid to those countries, which suffered a devastating economic blow during covid-19, on government reforms. They referred to the relations with the Netherlands a "cat-and-mouse game", where it came to the financing of their budgetary pit and the uncertainty regarding the scope of aid that the countries would

On February 2022, the parties reached an¹⁹

arrangement on the Kingdom Act of the Caribbean Agency for Reform and Development, COHO proposal for budgetary allocation, contingent of the approval of the Dutch senate.²⁰



Aruba



¹⁸ <https://caribbeanetwork.org/2020/05/21/aruba-curacao-and-sint-maarten-have-to-do-what-the-netherlands-demands-to-get-aid/>

¹⁹ <https://caribbeanetwork.nl/2021/11/12/aruba-curacao-and-sint-maarten-unite-to-form-a-stronger-bloc-against-the-netherlands/>

²⁰ <https://stmaartennews.org/aruba-curacao-sint-maarten-and-the-netherlands-have-reached-agreement-on-the-submission-of-the-proposal-of-the-kingdom-act-of-the-caribbean-agency-for-reform-and-development-coho/>

²¹ <https://curacao.nu/reisbubbel-met-aruba-en-sint-maarten-nu-ook-opgeheven/>

²² https://www.tripadvisor.co.il/Hotel_Review-g147248-d147644-Reviews-Renaissance_Wind_Creek_Aruba_Resort-Oranjestad_Aruba.html

The American Model

Taxation without representation; control without voting; recruitment without citizenship



According to the American model, there are five "unincorporated territories", to which the US Congress has determined that only sections of the U.S. Constitution apply.²³ Although these territories are self-governed, they are subject to the legislative authority of Congress and the authority of the US President, even though their people do not have the right to vote in the US elections.²⁴ The five territories are Guam, Puerto Rico, American Samoa, Virgin Islands, and the North Mariana Islands. Alongside them is the District of Columbia, home of Washington, D.C., which does not have the status of a full-fledged state and is not officially represented in Congress. Although all civil obligations apply to the district, it does not enjoy all civil rights

Restricted Authority – American Samoa

Citizenship: American Samoa presents a model of sovereignty without citizenship or voting rights. The territory is under full American sovereignty,²⁵ but its residents are not U.S. citizens, rather non-citizen "U.S. nationals." Unlike residents of territories in the first two categories presented, Samoans do not have a right to vote in any U.S. federal elections even if they move to the mainland nor are they entitled to U.S. citizenship. Moreover, they are not entitled to hold government jobs or obtain government benefits that are dependent on citizenship.

The status of Samoa is not an anachronism. It has just recently been upheld by an important U.S. court decision (*Tuaua v. United States*, 788 F.3d 300 (D.C. Cir. 2015)), which rejected a challenge brought by Samoans who argued that since the area is under U.S. sovereignty, those born there are constitutionally entitled to U.S. citizenship.²⁶ Notably, in one US Supreme Court case regarding the right to citizenship in U.S. territories, the court suggested that citizenship and suffrage are not natural rights, but rather rights that are "unnecessary to the proper protection of individuals".²⁷

Administration: The degree of autonomy Samoa enjoys is in many ways the same or less as territories the second category: while it enjoys local autonomy (a local legislature, constitution and governor), its laws can be overridden by Congress.

Immigration control and tourism: The U.S. and American Samoa are not a single unit for travel purposes. American Samoans are ineligible for a variety of travel and immigration visas for which U.S. citizens are eligible, and are ineligible for the family reunification citizenship process available to U.S. citizens. Just as Samoans can only migrate to the U.S. subject to immigration controls, Samoa itself controls its own migration matters (subject to limitations of U.S. federal law). At the same time, one of the justifications for not giving Samoans citizenship is the concern that extending certain U.S. constitutional doctrines about religious freedom to the territory would be incompatible with Samoan culture and customs. Again, this demonstrates the inverse correlation between level of control and electoral entitlements. Just as the any special Arab entity would not be subject to the Israeli legal system including official language, official religion, and women's rights, but would rather be ruled by their own legal system, they need not participate in the Israeli national democratic process.



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Mariana Islands



District of Columbia



Virgin Islands



Puerto Rico



Guam

- **Citizenship:** Residents of these territories are US citizens and receive US passports at birth.
- **Administration:** The US federal government maintains full sovereignty in these territories, and thus has complete control of all security and foreign policy.
 - Residents of these territories are subject to **special tax regimes**.
 - Residents of these territories **cannot vote in federal elections** - i.e. they cannot vote for President (except for Washington DC, which has a number of electoral votes equal to the least populous state in the US following the 23rd amendment to the constitution) and **they do not have senators in the Senate**. They are each represented by a **single non-voting observer** in the House of Representatives, who is permitted to speak on behalf of their constituents but is not allowed to vote on legislation.
 - **Immigration and Tourism:** As US citizens, residents of these territories are entitled to migrate freely to the US mainland. However, tourists are allowed it is possible to enter Guam without a regular US visa with a separate visa-waiver form just for Guam.³⁰

23 <https://www.doi.gov/oia/islands/politicatypes#:~:text=unincorporated%20territory,the%20United%20States%20Constitution%20apply>.

24 <https://harvardlawreview.org/2017/04/us-territories-introduction/#:~:text=American%20Samoa%2C%20Guam%2C%20the%20Northern,the%20U.S.%20Congress's%20plenary%20power>.

25 Samoa was acquired by the U.S. in the Spanish-American war in 1900; it was placed under the jurisdiction of the Department of the Interior in 1951 and given local autonomy in 1967. Unlike other U.S.-controlled territories, it has the unique status in U.S. law of an "outlying possession."

26 *Tuaua v. United States*, No. 13-5272 (D.C. Cir. 2015)

27 *Downes v. Bidwell*, 182 U.S. 244 (1901)

28 https://countries.fandom.com/wiki/United_States_Unincorporated_Territories

29 <https://humanities.guahan.org/unincorporated/unincorporated-territories-united-states>

30 <https://www.cbp.gov/newsroom/national-media-release/cbp-announces-electronic-version-form-i-736-guam-cnmi-visa-waiver>

The British Model

Taxation without representation, increasing legislation without appeal



The United Kingdom holds overseas territories and protectorates with varying autonomous and constitutional status, with the consent of the international community to an arrangement whereby there are six different types of British passports, including "subject" and "national" (as opposed to citizen). Despite the complete subordination of the dependencies of the British crown to Parliament with regard to foreign relations, security and citizenship, they are either ineligible to vote in parliamentary elections or are eligible under restrictive conditions.

The British Foreign Office Website lists six different types of British passport:

- **British citizenship**
- **British overseas territories citizen**
- **British overseas citizen**
- **British subject**
- **British national (overseas)**
- **British protected person**

No academic opinion argues that the UK's policy of six different types of citizenship and residency constitutes a violation of international law or "apartheid", and there is no claim that these distinctions constitute a violation of the human or civil rights of those who hold any of the "special" types of British nationality.



British Crown Dependencies

Citizenship: British Crown Dependencies include the Isle of Man and the Bailiwicks Jersey and Guernsey. They have a unique status from British "Overseas Territories" (colonies). They have even greater autonomy, and indeed quasi-state status. While not sovereign, they have an "international identity" distinct from the UK. At the same time, they also have no electoral participation in UK institutions, and have even fewer "citizenship"-related privileges than Overseas Territories.

Voting rights: This limited autonomy comes with a relatively limited restriction on voting – it is only territorial. That is to say, the residents of these territories can typically move to the mainland of the sovereign entity, and thereupon vote as residents of those areas. An exception to this rule is Hong Kong, whose residents were not permitted to freely migrate to mainland UK even before it was transferred to Chinese sovereignty and were designated "British National (Overseas) citizens".

Legal authority: While the Dependencies do not vote for Parliament, Parliament has supreme legislative power over them in matters of defense, citizenship, and diplomatic representation. It also can ensure the "good government" of the Dependencies – unilaterally intervening to prevent a "breakdown of public order or the rule of law," or "endemic corruption."

Foreign and security affairs: In terms of external relations, the UK is entirely responsible for their most of their foreign relations and defense policy. They possess something closer to international "state" status, and thus have many of the "dignity"-related trappings of statehood, such as their own currency and postage, top-level internet domain suffixes, and certain customs rules. They may have certain direct contacts with foreign countries, in matters such as trade and tax (but not matters of defense, international recognition, migration, etc.). In that respect, that may be permitted to open "trade offices" in foreign countries, but are typically not permitted to send ambassadors to foreign capitals.

Domestic legislation: Each Dependency is governed by its own legislature. Nonetheless, the UK Parliament can legislate for the Dependencies without their consent. In practice, this is very rare for "purely" internal matters. The UK does not need consent at all for legislation affecting the Crown's areas of responsibility – i.e. defense, international matters, and the fundamental ensuring of the "good government" of the Dependencies.

Immigration control: There is no immigration control between the UK and islands, but this is a statutory, not constitutional, arrangement. At the same time, free movement between the territories can be, and is, restricted by each entity. Thus, the Isle of Man, for example, restricts eligibility of for residential housing and jobs to UK nationals (and the UK could do the same, but does not see it as worthwhile given the small populations of the Dependencies).



British Overseas Territories

★ Anguilla



★ Bermuda



★ British Antarctic Territory



★ British Virgin Islands



★ British Indian Ocean Territory



★ Cayman Islands



★ Falkland Islands



★ Gibraltar



★ Montserrat



★ Pitcairn Islands



★ Saint Helena, Ascension and Tristan da Cunha



◦ Saint Helena



◦ Ascension Island



◦ Tristan da Cunha



★ South Georgia and the South Sandwich Islands



★ Turks and Caicos Islands



Aspects of governance:

Foreign Affairs and Security: full British Control over the territories' foreign and security affairs.

Legislation and representation: These territories have internal legislative bodies and despite British control over them, their inhabitants do not have seats in the UK Parliament

Citizenship and immigration control: All British nationals in these territories are defined as "British Overseas Citizens". Under the 2002 British Overseas Territories Act 2002, all British overseas citizens are eligible to apply for British citizenship as well as to immigrate to the UK mainland itself. It should be noted that this law was not passed until sovereignty over Hong Kong was transferred to China (see Hong Kong below).

Hong Kong – “one country – two systems”



Overview

Hong Kong first came under British control in 1839, with the territory under the administration expanding over the years until 1898. An 1898 agreement between the British and Chinese governments saw a majority of the territory comprising what is now modern Hong Kong leased to the UK for a period of 100 years.

The area in its entirety (including a smaller area that had originally been ceded to the UK in perpetuity) was restored to Chinese rule in 1997 subject to certain understandings set forth in the “Sino-British Joint Declaration on Hong Kong”.³¹ The Joint Declaration established the concept of **‘one country, two systems’**, which called for Hong Kong to maintain its capitalist system and civil liberties though it was being ceded to communist China, and **‘Hong Kong people running Hong Kong’**, which called for Hong Kong to be given a high degree of autonomy in a wide range of areas.

On the eve of the transfer of Hong Kong from British to Chinese sovereignty, Hong Kong had become the world's seventh largest trading entity and the fifth largest banking center, and possessed the world's busiest container port.³² Today, Hong Kong enjoys a GDP per capita that is more than 3 times that of mainland China.³³

Moreover, the most recent United Nations reports ranked Hong Kong the **fourth-most successful country** in its Human Development Index,³⁴ while mainland China ranked far lower at #79.

It should be highlighted that **this remarkable success of Hong Kong was achieved in spite of Hong Kong residents being subject to British “occupation”, and not enjoying full UK citizenship.**

This British policy was completely legal and acceptable to the international community, and was terminated only by the expiration of the treaty obligating the UK to transfer the territory back to China. Otherwise, the same arrangement could have held to this day and would have been completely acceptable to all parties.

In particular, the following key areas are noteworthy:

Citizenship: before the territory transferred into Chinese hands, its inhabitants were called “British National (Overseas) citizens.”

Voting: despite its former status as a dependency of the British Crown – unlike the other

dependencies (Jersey, Guernsey and the Isle of Man) – its inhabitants were not allowed to freely visit the UK freely for the purpose of voting.

Legal authority:

Foreign affairs and security: the United Kingdom was fully responsible for all of Hong Kong's foreign and security policy.

Domestic legislation: The British Parliament established the law in Hong Kong, and Hong Kong's legal system was the British legal system, wherein traditional Chinese law could be applied as a secondary choice on issues involving Chinese people.

Immigration control: there was no automatic right of immigration from Hong Kong to the United Kingdom. Even today, there are calls in Hong Kong to prefer British sovereignty, even without the right of immigration, over Chinese sovereignty.

Case Study – Suspension of the local government of the Turks and Caicos Islands by the UK government in connection with suspected severe corruption



In August 2009 the UK government took over day-to-day control of the Turks and Caicos Islands in connection with allegation of systemic corruption in the territory. The UK foreign office said that the suspension of local government was in order to put the affairs of the territory back in “good order”.

The suspension was carried out amid ongoing accusations of severe corruption on the part of the local premier, who was suspected of making millions of pounds by granted access to public lands to private real estate developers. The de-facto premiership was transferred to the British governor appointed by the UK foreign office, while day-to-day government services continued to be provided by the civil service.³⁵

Locals were divided over their opinions on the UK takeover. In spite of the anger and frustration expressed by the islands’ political elites, there were locals who supported the move. One

veteran civic leader declared that his country’s “long nightmare” had ended and that he hoped that the islands would “emerge... from this period of repression as a stronger society” and that the people of the islands would use the opportunity to rebuild their institutions wisely. Another resident declared that a “new dawn breaks in the history of the Turks and Caicos Islands... after six years of dictatorial rule, founded on ignorance and arrogance”.³⁶

The UK government maintained direct control for more than the initially-intended two-year period. In a report issued by the UK foreign office in December of 2013, it was determined that there had been “a high probability of systemic corruption in government and the legislature and among public officers in the Turks & Caicos Islands”. The report noted, inter alia, corruption in connection with public lands, deterioration of the territory’s financial system, extravagant public expenses, and abuse of discretionary powers of public officers. The report recommended the continuation of the control that the UK foreign office had asserted over the territory and conditioning the restoration of authority to local government on the implementation of structural reforms.³⁷



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31 Hong Kong – Cultural life | Britannica
<https://www.britannica.com/place/Hong-Kong/Cultural-life#ref11638>

32 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/500937/1997_Jan-Jun.pdf

33 Report for Selected Countries and Subjects (imf.org)

34 [hdr2021-22pdf_1.pdf](#) (undp.org)

35 UK seizes control of Turks and Caicos over sleaze allegations | Foreign policy | The Guardian

<https://www.theguardian.com/politics/2009/aug/14/turks-caicos-islands-corruption-allegations>

36 Islanders split as Whitehall takes over Turks and Caicos | Politics | The Guardian

<https://www.theguardian.com/politics/2009/aug/16/whitehall-takes-over-turks-caicos>

37 Turks and Caicos Islands Commission of Inquiry 2008-2009 - GOV.UK (www.gov.uk)

<https://www.gov.uk/government/publications/turks-and-caicos-islands-commission-of-inquiry-2008-2009>

38 Photo credit: Shutterstock.com | Debbie Ann Powell