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SECOND INTERNATIONAL DECADE FOR THE ERADICATION OF COLONIALISM

Pacific Regional Seminar on the implementation of the Second
International Decade for the Eradication of Colonialism:
priorities for the remainder of the Decade

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AFTER THE REFERENDA - TOKELAU 2008

DISCUSSION PAPER



INTRODUCTION

1. The purpose of this paper is to provide a brief overview of the Tokelau² experience of the development of self-government, the self-determination referenda and the situation since the last regional seminar in May 2007. The paper covers matters which are Tokelau specific but also seeks to draw from the Tokelau experience some more general points that may be of wider relevance to decolonisation.
2. This paper deals first by way of overview with the Tokelau preparation for its referenda, then with the two referenda and finally with the situation in Tokelau as it is today. In respect of the present situation, comment will be made on the Tokelau village elections of January 2008, the situation in Tokelau from the point of view of self-government in the aftermath of the 2007 referendum, and also on possible future self-determination in Tokelau.

DEVELOPMENT OF SELF-GOVERNMENT IN TOKELAU

3. The Tokelau preparation was based on the ideas of a ground up or Tokelau managed process that is unlike the situation of the earlier New Zealand decolonisations of the Cook Islands and Niue. Tokelau's was a process similar in many ways to the community based one followed by Western Samoa in 1961.
4. The Tokelau model for the development of self-government is one of autochthony. In the case of Tokelau this meant a high degree of self-creation of government. That possibility of internal development of structures and rules will be available in most cases but was particularly accessible in the case of Tokelau because of the small scale nature of government and its rudimentary nature as at 1993.
5. 1993 was the beginning of the main move towards a degree of self-government appropriate for the making of an act of self-determination under the international rule system. It is important to emphasise that fact of self-government of a type appropriate for the international rules of self-determination. For over a thousand years it is clear that Tokelau has had self-government but that self-government was not of the kind appropriate to or recognised by the international community. In particular, the Tokelau customary model of government does not separate governmental functions into executive legislative and judicial elements, but was a seniority based system of centralised government founded on families.
6. Additionally the system was, as is typical of customary law systems, inward looking and concerned almost exclusively with management of domestic matters. In the case of Tokelau it provided little for the interrelationship of the three villages and even less (or not at all) for relationships outside of the Tokelau realm of activities.

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² Tokelau is a non-self-governing territory of New Zealand situated north of Samoa and just south of the Equator. It consists of three small tropical atolls separated from each other by high seas. The population of 1,500 is spread approximately equally among the three atolls. There are no airstrips or harbours; access is only by ship; transport links to the outside world are through the port of Apia in Samoa. The only natural resource of any significance is the fishery of the exclusive economic zone.

7. Engaging the colonial powers over the last one and a half centuries involved a minimum of interaction with those powers. The colonial system however did provide encouragement and facilitation of interaction between the three villages of Tokelau; but there was no increased involvement or capacity to engage with the outside world. The international capacity was one exercised by the colonial power. A century ago the British colonial system introduced a form of separation of powers to Tokelau but that was only in the law and was an abstraction as far as the Tokelau communities were concerned.
8. The real beginning of the self-government movement in international terms was about twenty years ago following the first three visiting missions by the UN. Tokelau, till 1994, showed no interest in the decolonisation prospect but was affected by the visiting mission recommendations as they related to the development of governmental structures and law within Tokelau.

Creation of National Government Institutions

9. The General Fono became the key mechanism for development of self-government in Tokelau. It was originally a Tokelau arranged meeting of the three communities for the purpose of discussing with the administering power (New Zealand) things that would be useful for Tokelau and were matters of common interest to the three villages.
10. By the 1980s the General Fono had become an important institution and practice because it was at the General Fono that New Zealand discussed its annual budgeting exercise with Tokelau. For Tokelau it was internally the only institutional body that was in any way of national significance. Everything else was purely a village matter, or alternatively a matter for the administering power. The practice of national government was left to New Zealand and for the members of the Tokelau Public Service who worked from a base in Samoa. National government was therefore both physically, and seen as, remote and offshore.
11. By 1994 the situation in Tokelau was changing. There was for the first time a full time Administrator of Tokelau within the New Zealand government structure. Further there were significant changes in attitude and personnel within the directorships of the Tokelau Public Service, and there was the impending visit of the fourth visiting mission of the United Nations.
12. Several catalysts for autochthony and the development of self-government began to be evident in 1993/1994: self-creation of systems, delegation of power, transfer of power, and withdrawal of influence. The first was a move to delegate power from New Zealand government authority towards Tokelau in respect of the Tokelau Public Service late in 1993. In 1994 the Administrator's office considered following the same pattern and explored the possibility of delegating most of the Administrator's executive authority in respect of Tokelau. Immediately the question was, "to whom should the delegation be made?"
13. Tokelau was eager to have greater legal authority in respect of its own affairs, so the offer of delegation was not a matter of great debate. The Administrator's authority was a national authority; therefore the thinking was that the delegation should be to a national authority. The only existing possibility was the General Fono which could be viewed as a nascent Tokelau national parliament. The General Fono at that stage, however, was not an institution of the law and was in many respects an informal body of representatives of the three islands which was called together from time to time to discuss matters of common interest.

14. The Administrator, in consultation with Elders from the three islands, decided that the delegation would be to the General Fono. Two supplementary questions followed that decision. The first was "in formal terms what was the nature of the General Fono?" and "what were the rules of its operation?" The second question related to the fact that the General Fono met infrequently and often (because of transport services and the vagaries of the weather) unpredictably – so, "how would the national executive function be exercised by the General Fono when it was not in session?"
15. The first question was resolved by agreement on a set of internal rules/procedural rules/in-house rules/standing orders, for the General Fono. Those early rules provided for the composition of the General Fono and its meeting procedures and also provided, by way of answer to the second question, for a standing committee/cabinet/executive committee for the General Fono, which would operate when the General Fono was not in session. Those procedural rules did not indicate the powers of the General Fono.
16. The executive committee was identified as a body made up of the Faipule (chairperson of the village council) of each island. Therefore there was a standing committee of three persons. The choice of the three Faipule to perform this function followed from the existing practice of the Administrator's office. That practice was, in the event the New Zealand government wished to obtain the view of Tokelau on a specific matter when the General Fono was not in session, for the New Zealand government to make contact with the Faipule of each village (by radio), and by that means an appreciation of Tokelau views on particular issues could be obtained. In this way in many cases approval by the villages of Tokelau was obtained for specific actions that the New Zealand government was to take.
17. Therefore the establishment of the national government can be seen on the one hand to have been by a process of self-creation of an institution and some rules for internal governance of that institution by the institution itself, and on the other hand the recognition and practice of that institution by the delegation to it by the particular constitutional powers.
18. The control of the public service was by an independent public service agency in New Zealand and not the Administrator. The delegation by that employment authority in 1993 was in the first instance to individuals. As a result of continuing pressure from Tokelau to have control of its own public services, Tokelau established with the agreement of the New Zealand authorities an alternative public service structure. The delegation evolved to a situation of Tokelau control and, on a date agreed between the governments of Tokelau and New Zealand, the New Zealand government withdrew from its role of control of the Tokelau public service by repealing the relevant New Zealand statutory provisions.
19. In both cases therefore although authority at a national level was taken over by the Tokelau government it did so as a result of the growth of its own institutions and in neither, the establishment of the executive authority nor the control of the Tokelau public service, was there a direct transfer via the administering power to the government of Tokelau.

Law-Making

20. The creation of the Tokelau Public Service within the Tokelau government structure was facilitated by the grant to Tokelau in 1996 of a national law-making power. This power has over the last decade proved to be one of the most significant aspects of the autochthonous development of government in Tokelau and of its move towards self-determination.
21. The law-making power given to Tokelau by the New Zealand Parliament in 1996 was the result of a Tokelau request of about ten years earlier. The initial Tokelau request had been for a limited law-making power so that Tokelau could gain some experience of law-making at an international level. There had, until 1996, been a village law-making power but no formal way to coordinate the rules system of each of the three villages. In 1996 this was changed and the General Fono was given the power to make laws which would be superior to that of each of the villages but which (given the continuing colonial status of Tokelau) would be subject to Acts of the New Zealand Parliament, and to any regulation made for Tokelau by the Governor-General³; General Fono rules are also subordinate to the rules of any international obligation applicable to Tokelau.
22. The colonial authority was maintained by the subordination of Tokelau laws to those of the New Zealand Parliament and of its delegate the Governor-General. The 1996 power did however give authority to amend all previous laws other than Acts of the New Zealand Parliament. Using that power Tokelau has over the following ten years reduced the number of New Zealand laws applying to it effectively to 15 Acts of Parliament - all but one or two of which relate to the constitutional colonial relationship of Tokelau to New Zealand or to matters of international law such as diplomatic immunities and privileges and the United Nations.
23. Progressively Tokelau used its legislative power to patriate all relevant laws of non-Tokelau origin and to repeal all laws of no continued relevance to Tokelau. In its legislating for local matters or in its bringing home of regulations originally promulgated by New Zealand, the General Fono inserted in those regulations, officials and institutions of Tokelau in place of those of the administering power. The result of that process was that the position of the Administrator in most Tokelau law (as it stood in 1996) has been replaced by a reference to the General Fono, to the Council for the Ongoing Government, or to the relevant Director of the public service. An effect of this process has been that what in 1994 were quite significant delegations by the Administrator to Tokelau authorities have ceased to the powers of the Administrator. Therefore the delegation in the form in which it exists in 2008 has greatly reduced significance.
24. The Administrator retains, under New Zealand and Tokelau law, a responsibility for the executive government of Tokelau but has very few specific authorities under Tokelau law. This is consistent with the development of self-government, the aspirations of Tokelau and the policy of the New Zealand government. It is however important to note the situation in 2008 - the process of development of self-government has the international responsibility for Tokelau firmly with the government of New Zealand but under the laws currently in place (as distinct from the laws that New Zealand as the administering power could any time be put in place), there is little legal authority for the government of New Zealand or its Administrator to actively intervene in the affairs of Tokelau.

³ The Governor-General of New Zealand is the representative of the Head of State for the Realm of New Zealand: New Zealand, the Cook Islands, Niue, Tokelau and the Ross Dependency.

25. This state of affairs calls for reflection by the New Zealand government but has not to date been the cause of any law-making by the New Zealand government. The New Zealand government policy has remained consistent on the issue of self-government.

Decolonisation Methods

26. Autochthony has not been the common model for decolonisation or self-determination. The standard British and French pattern for the development of self-government has been by way of transfer of powers; for instance, most of the countries of the Commonwealth gained independence on the basis of a constitution enacted as subordinate legislation in the United Kingdom. This was the pattern followed by New Zealand also in relation to the Cook Islands and Niue; both of their constitutions in the original form were schedules to Acts of the New Zealand Parliament. In the case of the Cook Islands a statute was enacted specifically for the Cook Islands as a freely associated state, and as New Zealand and Niue law in the case of Niue. The constitutions of Samoa and of Vanuatu followed a pattern where they were the product of national constitutional conventions approved by the peoples of those countries.

27. The developmental aspect of self-government typically follows a similar pattern whether the self-government follows from the grant of authority by the administering territory or from the development of authority internally by the territory itself. British, French and Tokelau patterns are all consistent in providing first for self-government at what might be called a local government level (domestic matters, control of animals, the lighting of fires, village cleanliness, domestic fishing controls, etc) and at the other extreme international authority such as treaty-making powers, defence and foreign relations being reserved to the administering state. In the mid-ground there is a large range of significant matters which are typically not purely domestic nor totally international - the operation of airports, control of shipping, customs and import management and security are matters that typically move from the control of the administering power to the territory as self-government develops. Whether those powers are transferred from the administering power to the territory or whether they are progressively taken over or performed by the administering territory makes the conceptual and personalising difference between an internally driven self-government or an externally managed development of self-government.

Tokelau's Government in 2008

28. The practice of Tokelau is that it is almost entirely self-governing. The legal situation is that it is self-governing but that it is subject to the control of the law-making control of the New Zealand Parliament; internationally Tokelau has very limited personality independent of that of the state of New Zealand⁴. In practice the executive and legal functions, legislative functions on a day-to-day basis are performed by the Tokelau government. The judicial function, it is not unfair to say, does not operate as the formal constitutional position would suggest.
29. There is a court system based on the presence of a lay judge in each village of Tokelau. Above that in the hierarchy is the High Court of New Zealand and above that the Court of Appeal of New Zealand. No case has ever gone to the New Zealand High Court or Court of Appeal on a Tokelau matter. The village judge is a respected member of the village. That person will invariably be untrained in the law and very often not be fluent in English. Depending on the individual who is the designated judge, the local court may or may not function in a manner recognisable to outsiders. In all cases the local court functions under the authority of the village elders and often in conjunction with them. In other words the

⁴ Eg Tokelau participates in its own right in a number of regional organisations.

favour of self-determination. The Elders were aware of that possibility but there is no record of extensive discussion of it and they came out strongly in favour of the individualising of the vote.

Advocate for self-determination

40. Another particularity of the Tokelau situation is that there was no clear promoter of the self-determination option. The option was supported by the General Fono and by each of the villages after extended negotiation with the government of New Zealand. To all intents and purposes the package was one that was agreeable to everybody - there was no forced or compromised element in any of it and it is difficult to see (short of the amounts involved in the financial aspects) what more Tokelau might have wanted.
41. Within the free association model as conceived by Tokelau and New Zealand this was in concept a good package for Tokelau. There was however no promoter of the package as such. The government of Tokelau had agreed to the package and had arranged substantial information services for the people of Tokelau in relation to the package. The New Zealand government made it clear that it supported the package but it was not for it to tell the voters of Tokelau what to do. Equally the government and the Tokelau Public Service saw their role as a neutral one, ie that the package would be explained and questions would be answered but in the end individuals would have to make up their own minds as to whether they should vote for or against. This is quite unlike the situation where there is a political party which campaigns in favour of a self-determination package (for example the Cook Islands self-determination voting or the situation where there is an independence movement with a programme to end colonialism which is typically in the situation where the colonial experience is or has been a negative one).
42. In the standard international sense there are no politics in Tokelau, there are no political parties and there was no single group promoting the self-determination. This approach has much to recommend it in theory, but also creates a number of difficulties in the sense that the proposal is very vulnerable to opportunistic comment. Foreign media reports particularly near to referendum time and external and opposed lobby groups can gain the rhetorical high ground. Whether these external activities affected the Tokelau result or not is not known. The fact is that the response of the Tokelau Government and its officials was typically slow and, consistent with policy, neutral; that is to say factual matters were addressed and corrected but there was no response at the rhetorical level. Tokelau took some steps to manage this internally in respect of its second referendum but the absence of a strong advocate for self-determination makes dealing with these matters and international media particularly difficult.

The role of media

43. Related to the advocate role is that of the media. Relative to its size the two Tokelau referenda had very high media coverage both in New Zealand and internationally. It was high profile but unfortunately, even from the most respected of journalists, it was sometimes wrong. The most common difficulty from the referendum point of view was the persistence in the media in identifying the vote as one relating to the independence of Tokelau. As the table shows there is one thing that the referendum was clearly not concerned with and that was independence. Independence was not in the package, and as a proposal it would have had little or no support in Tokelau. For Tokelau independence was very definitely not wanted and in all the main Tokelau forums would have been dismissed out of hand as a radical and irrelevant suggestion. Why then were the headlines about independence? Maybe it is that the journalists did not understand the package or the nature of free association. They certainly did not understand Tokelau. More likely is that

the notion of free association was understood, but that a headline indicating that 1500 people will vote on their independence is eye-catching. Equally unhelpful was the suggestion that Tokelau in the package claimed ownership of the fourth island of the archipelago. The fourth island is mentioned in a cultural context, but the people of Tokelau have committed themselves to treaty succession in accordance with international law principle and further understand (admittedly painfully in many circumstances) that Tokelau both as a matter of New Zealand and international law consists of three atolls. The impact of the media is largely on the diaspora with approximately one in seven Tokelauans living in metropolitan New Zealand. For them reading of potential independence of Tokelau was deeply unsettling. It is a safe assumption that some of that was reflected in the voting by family members in Tokelau.

44. For any in a situation like that of Tokelau these matters of publicity and the maintenance of the flow of accurate information are potentially critical.
45. After the vote in October 2007, there was no need for a New Zealand Act of Parliament to acknowledge the result of the Tokelau decolonisation referendum. Such an Act had been prepared in draft form; it was a very simple one which basically would have acknowledged Tokelau self-government, the result of the referendum and the end of New Zealand's constitutional position as a colonial power. That Bill is no longer on the New Zealand Parliamentary agenda.
46. What has happened as a consequence of the 2007 referendum is that the Tokelau constitution continues in its pre-referendum form as the body of constitutional rules governing the operation of the Tokelau national government. It is in an un-entrenched form and can be changed as other laws of the Tokelau Government and, because Tokelau remains a colony of New Zealand, the constitution is subject to the rules of any superior legislation that may be passed by the New Zealand government.
47. That constitution is as at October 2007. The additional provisions that were provided for the free association constitution would only have become effective at the time of formal self-government; those clauses have not become effective. They relate principally to the court system, to the role of treaties and treaty-making, and to the sources of law for Tokelau.
48. In Tokelau the debate on constitutional issues such as proportional representation of the islands of Tokelau or equal representation continues, the discussions about maritime transport and the provision of a new ship continues, the debate about the flag for Tokelau continues, and the draft treaty governing a possible future relationship with free-association with New Zealand is to use the words of the Prime Minister New Zealand "parked" until such time as Tokelau wishes to revisit it.
49. In the Tokelau context the self-determination that was proposed could be a model for integration, it could be a model for independence, and it could again be a model for Tokelau for free association.
50. In that latter context it is interesting to speculate what might be varied within the free association context or what might be kept the same. The possibilities relate principally to the key items desired by Tokelau; citizenship, self-government (autonomy), economic support and a degree of self-determination in respect of foreign relations. An immediate reaction to the model might be that Tokelau could want more in respect of finances. That question of quantum was however outside the draft treaty and in one sense was already

well secured in the rolling 3 year economic support arrangement agreed between the government of New Zealand and the government of Tokelau.

51. The most obvious type of variation would be for a lesser degree of autonomy than that in the present proposal. For instance Tokelau might use New Zealand courts without having an independent court system; Tokelau might abandon claims to specific foreign relations powers.

Matters of More General Resonance

Diaspora

52. The question of the role and rights of a diaspora is a difficult and, in the case of Tokelau almost intractable problem. The only apparent way forward short of ignoring the diaspora (which is not a Tokelau option) is to engage extensively with them at least to inform and hopefully to obtain their support. As indicated in the statements by the Administrator of Tokelau to this committee last year, Tokelau made additional efforts in 2007 to engage with the Tokelau communities abroad, particularly the more far-flung ones in Hawaii and Australia. It is clear there was substantial support from those communities for the Tokelau endeavours and appreciation of the effort to inform them of what was taking place and the reasons for it. In many cases there was an expression of general support and good wishes for the endeavour, though some leading members of the various communities expressed strong personal views against the referendum and the notion of free association.
53. Tokelau is not a situation where persons normally resident or inhabiting the territory in question have been displaced by political or other forms of social upheaval. The great bulk of the Tokelauans overseas are in New Zealand and they and those in Australia, Samoa, American Samoa and Hawaii (being the biggest communities abroad) have chosen voluntarily to reside outside of Tokelau. Further there is no impediment to their return to reside in Tokelau.
54. Indeed the referendum rules provided the opportunity for overseas resident Tokelauans to acquire residency in Tokelau in the period leading up to the referendum if they had wished to do so. Culturally these are Tokelauans. By custom they are people with land rights in Tokelau, and in some cases the heads of the land owning families are resident abroad. The overseas community is therefore a potentially and actually important one for a vote on the future status of Tokelau. For some, free association was wrosgly perceived as a breaking of ties between New Zealand and Tokelau and ultimately as affecting their rights both as New Zealand citizens and as persons able freely to visit the homeland. The decolonisation rules speak of the inhabitants of the territory and Tokelau readily set the rule that those entitled to vote were residents; that was supported both by the government of New Zealand and by this Committee. In discussions with the overseas communities the leaders of Tokelau have strongly defended that approach to the right to vote on decolonisation. The potential for the future of those, whose home is Tokelau to be determined by those who have chosen not to live in Tokelau, would be the consequence of any alternative approach to this voting issue.

Knowing the facts

55. It is important for the facts of the situation not only to be clearly presented but also for them to be well established. In the lead up to the referendum in 2006 and in the immediate aftermath there was considerable discussion of the number of registered voters (the constituency) and some criticism of the compilation of the register. The main criticism was that the numbers were too low and therefore it would be an unrepresentative group that had the right to vote. Some suggestions were that perhaps only seventy percent of

eligible voters were registered. The population of Tokelau is and was at all critical times about 1500 people. The vote in 2006 was 584, and in 2007 697 and interestingly in the Tokelau village elections of January 2008 there were 669 votes cast. This last figure shows that the referendum poll was not significantly out of line with the regular pattern of elections in Tokelau. It should be noted that the voter register for the 2007 referendum was inflated by the retention of the role from 2006 plus the persons qualified between the time of the 2006 referendum and the 2007 referendum. That meant that persons on the 2006 roll who would have been no longer able to register for the 2007 referendum retained the right to vote.

Determinative voting systems

56. The Tokelau vote could have decided the decolonisation of Tokelau but it did not. The primary reason for this is that the referendum question was single, there were no choices. A failure of the vote then did not produce a decolonisation result; only a "yes" vote would have bought about that result. Some self-determination votes have been for the full array of self- government options: independence, free association, or integration. An example of that was the situation in the Cocos Islands. Tokelau deliberately chose to focus on the suitability of a single option and the development of that proposal as a single option was supported by the government of New Zealand; in other words an insufficient "yes" vote meant no change in the colonial relationship.
57. Had the Tokelau government put up two options then it would have been possible for the referendum to have resulted in de-colonisation on the basis of one of those option - that is the one favoured by the voters. To present three options at the level of detail of the Tokelau package would have required considerable effort and, in the case of Tokelau, would have been effort almost certainly wasted. The Tokelau approach from 2003 had essentially been one of taking a straw poll of options, and it was unanimous that the free association option was the one to be pursued. There was no support for an independence option and only sporadic discussion of the integration option. The effort was therefore put into the development of a relatively refined free association package. For the future, the running of a straw poll of voter preference might be appropriate, on the other hand it is likely to be no more indicative than was the process for the proceeding to referenda with 64 per cent voting in favour of the package on offer in 2007. A straw poll with an overwhelming majority in favour of such a package would be required to give any certainty as to the outcome of the actual vote.

Voting majorities

58. The threshold for the voting in Tokelau has been the matter of some comment. Tokelau chose two-thirds as the necessary minimum. From an external point of view, it could be said that Tokelau proceeded on the basis of an analogy with a constitutional change rather than for a political election. That analogy is probably a good one; it was, however, not the main reason for the choice of the two-thirds majority requirement in Tokelau. The main discussion in Tokelau was between a 50% vote and the two-thirds vote. One option was 50% plus one on each of the three islands or 50% plus one across the three islands. The island by island approach was rejected on the basis that this was to be a national vote and the outcome of polling by individual islands had the potential to be nationally divisive. The same thinking indicated that two-thirds for a national poll was appropriate so that an overwhelming majority of votes in two islands could not decolonise Tokelau in the face of an overwhelming rejection in the third island. On this general basis it was taken that the requirement of a two-thirds majority would mean that there was a basic support for the result on each of the three islands.

The status quo

59. The status quo is a perennial subject of discussion for Tokelau and also the topic of comment in these regional seminars. It would not be unreasonable to state that a vote for the status quo has not been generally considered as an option for the self-determination vote. The question therefore is how to present a status quo as within one of the international law options.
60. In the case of Tokelau this was easy because the status quo now corresponds very closely to the free association model. However, the greater the correspondence between the status quo and the option, the less easy it may be to convince people that they should bother to vote or, alternatively, that because the vote is a requirement of maintaining the status quo there has to be some hidden agenda which immediately makes people suspicious of the proposal!
61. As the chart shows the main difference for Tokelau would have been to obtain some certainty and a degree of internationally acceptable guarantee for the maintenance of the status quo. Constitutionally what the voters were debating and ultimately rejecting was that aspect of cultural protection and economic support. The significance of the status quo is that Tokelau is clearly subject to the state of the New Zealand economy and dominant cultural attitudes in the same way as it would be as an integrated area of New Zealand. It is hard to imagine that voters would not want guarantees. More likely therefore that they were suspicious of the agenda or believed some of the international media which suggested that the ties with New Zealand (despite the express provisions in the package) would be weakened. Perversely this might indicate that the greatest levels of internal self-government should not be fully developed prior to a decision on self-determination because, in a situation like Tokelau's, having got a full measure of self-government it is not perceived that there is anything to be gained by the international decolonisation process.

Importance of listening

62. There is also an important lesson in the Tokelau example for administering powers. Not only listen to what the non-self governing territory says about the decolonisation process but also be attentive to what is said. In the case of Tokelau (as mentioned in the report to the regional seminar in Nadi in 2006) Tokelau set out quite a full agenda in its statement to the UN in 1994. Over the years those agenda items were mostly met and well met. Nevertheless, by the time of the 2006 referendum there were some matters such as transport which were outstanding. In the period leading up to the 2006 referendum the New Zealand government made a substantial effort to address the question of shipping. That momentum was by and large continued through 2007, but although the matter is still actively being dealt with the timeline for satisfaction of that desire seems to extend. There are other matters which are also on the 1994 list which at a late stage New Zealand moved to address, but which since the 2006 referendum have either ceased to be a priority for the New Zealand government or have stalled completely.
63. In terms of any future decolonisation endeavour in Tokelau, it is inevitable that these matters will be raised and the administering power will be seen not to have done its part in the preparation for Tokelau's self government. The message clearly is one to take account of the stated requirements of the non-self-governing territory and, to the extent that they can be met or it is agreed that they will be met, they should be met to avoid misunderstandings in the future or criticism by the non-self-governing territory of lack of critical support by the administering state.

Role of third party states

64. It is possible to direct criticism also to third-party states who undoubtedly in the United Nations context support decolonisation and the endeavours of non-self-governing territories to be fully self-governing. In the case of Tokelau's self-determination referenda despite the support of rhetoric, several states of the region, did not and have not, by their actions supported the Tokelau endeavours.
65. It is unlikely that the failure of New Zealand to complete certain desired actions before the Tokelau referendum or the failure of regional states to do their part in respect of Tokelau's decolonisation effort, made the difference in the final result. However, the potential is there for such behaviour to do so and indications are that in the respect of any future self-determination referendum in Tokelau that the failure to fulfil those promises or to give that support may be critical to the end result. The history of the Tokelau self-government exercise indicates that international support particularly from those most closely involved with the non-self-governing territory is of importance and is to be encouraged.
66. For whom is the self-determination? Is it for the territory? Is for the administering power? Is it for the United Nations? The legal answer is clear but given the three key players, and sometimes the fourth party players⁶ it is easy to have attention focused away from the territory. The focus is of course on the territory and particularly on those territories which aspire to decolonisation. Where the territory itself is not interested, there is a little to do or that can be done beyond provision of information. More critical for this Committee and for the United Nations and the international community generally is the situation where the administering power is not interested. Tokelau is probably the case of a territory which is not particularly interested in decolonisation, but in its case, at least it is providing a record of its position on this matter. In the case of some other territories the precise attitude is not as clearly marked.

CONCLUSION

67. The Tokelau referenda give cause for reflection. The Tokelau experience is an interesting one. It has been a positive one for Tokelau. The referenda results aside, Tokelau has, as it desired, benefited from the process of developing self-government.
68. Some aspects of the experience are Tokelau specific and may not obviously assist other non-self-governing territories. Some aspects of the experience may be of more general relevance and assistance. The Tokelau mode of developing self-government and its free association example may serve as a template for others and hopefully, at the least serve as a starting point for discussion on how to formulate a territory specific proposal for self-determination and decolonisation.

⁶ The diaspora, the media

RECOMMENDATIONS

- That the UN and the administering powers support to the greatest extent possible, the autochthonous development of self-government in the non-self-governing territories.
- That all members of the UN strive to achieve a high level of self-disinterest as they support the self-determination aspirations of the non-self-governing territories.
- That in-depth consideration be given to the manner in which territories with well developed government structures may use the status quo as the basis for their self-determination.
- That administering powers be attentive to and strive to accommodate the priorities of self-government as they are perceived by the non-self-governing territory.
- That the UN continues to engage with and support non-self-governing territories and administering powers with the goal of self-determination and decolonisation.

Key features of article 73 of the UN Charter, and of General Assembly Resolution 1541

Article 73

“... the interests of the inhabitants of these territories are paramount...[La primauté des intérêts des habitants]”.

“... accept as a sacred trust the obligation to promote to the utmost... the wellbeing of the inhabitants of these territories...”.

“b. to develop self-government [De développer leur capacité de s’administrer elles-mêmes], to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of development;”

.....

UNGA Resolution 1541 (XV)

Principle VI

“A Non-Self-Governing Territory can be said to have reached a full measure of self-government by:

Emergence as a sovereign independent State;
Free association with an independent State; or
Integration with an independent State.”

Principle VII- “(a) Free association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes. It should be one which respects the individuality and the cultural characteristics of the territory and its peoples, and retains for the peoples of the territory which is associated with an independent State the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes.

(b) the associated territory should have the right to determine its internal constitution without outside interference, in accordance with due constitutional processes and the freely expressed wishes of the people...”.

A Model for Tokelau

	Factors of importance			
	Culture protection	NZ citizenship	Economic support	International relations
Free association (quasi status quo) Tokelau model	✓	✓	✓	✓
Integration Admin would change Tokelau would vote	✓?	✓	✓?	✕
Independence (Treaty of Friendship?)	✓	✕	✕	✓

The Tokelau model gives certainty and some international guarantee.
 The Tokelau model clearly differentiates integration/independence.