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International Decade for the Eradication of
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DISCUSSION PAPER

TOKELAU 2006

I INTRODUCTION

This paper will consider aspects of Tokelau's recent constitutional development,¹ reflect briefly on the Tokelau decolonisation referendum of February 2006², address some of the challenges in the current era of decolonisation for the smaller non-self-governing territories of the world,³ and in light of the result of that referendum, consider what has been achieved by the development of self-government in Tokelau and what has not been achieved.

II TOKELAU'S JOURNEY

A "The New Voice of Tokelau", 1994

There are many dates that could be considered the beginning of Tokelau's decolonisation. A recent one is for present purposes the most appropriate because it may cast special light on what has been achieved, what remains to be achieved, and what the challenges are for the future.

In 1994, Tokelau presented the UN Special Mission to Tokelau⁴ with a document: "Tokelau's Voice 'New Wind, New Waters, New Sail – The Emerging Nation of Tokelau' ". This document represented a change in the position of Tokelau and ostensibly identified preconditions for an exercise of a vote for self-determination. It is interesting now to consider the main elements of that statement.

First, it emphasised that survival in Tokelau depends on the strength of the villages. Second, the document celebrated what was then the new national identity personified in the recently empowered Council of Faipule. There was also a declaration that it was important to avoid external organisational structures that would undermine the culture of Tokelau as it developed self-government. The fourth point to note is that the national assembly was referred to as the National Fono not as the General Fono. It was indicated that there was a 10 year plan which involved the production of a constitution and a national flag⁵. In the fifth point, the fear of future neglect was identified as a significant factor in relation to any decolonisation decision. The document then went on to set out what in part must be seen as a blueprint – a set of main points relating to the development of self-government through to a vote on decolonisation.

¹ Tokelau is three small atolls in the South Pacific lying to the north of Samoa. Tokelau is a non-self-governing territory for which New Zealand is administering power.

² Tokelau voted on decolonisation in the week of 11 February 2006. The decolonisation package can be accessed at <<http://www.tokelau.org.nz>>

³ There are currently 16 territories on the UN decolonisation list. Most are small territories of the Pacific and the Caribbean.

⁴ The report is available on the UN website as document A/AC.109/2009. The Tokelau document is also available in *TOKELAU A Collection of Documents and References* (Government of Tokelau, Wellington, 2003).

⁵ The flag to be flying by 1995.

This blueprint began with a statement that (1) though no choice had been made about which UN option was the best for Tokelau, free association seemed likely to be the best for Tokelau and (2) New Zealand would be the best partner for free association. It was clearly stated that the timing of decolonisation was largely irrelevant. What was of importance were the social and material conditions of Tokelau.

The main points then listed were –

- that there should be a Tokelau national legislative power⁶,
- that communications should be well established (this included both telecommunications as an essential element of self-government and good shipping),
- that the judicial system with its links to the New Zealand judicial system would continue, and
- that the external boundaries of Tokelau would be fixed by treaty⁷.

It was also indicated that in the future Tokelau would probably prefer to be self-governing but within the Realm of New Zealand.

Financial support loomed large, with reference both to the maintenance of basic budgetary support and the indexing of that support to provide future security. Non-financial support was identified as of particular importance in that it enabled the provision of expertise to Tokelau that would not otherwise be available. International affairs support, the continuation of New Zealand citizenship⁸, and access to New Zealand for health and educational purposes were all seen as essential. The New Zealand currency was mentioned as the future currency of preference⁹.

B UN Mission to Tokelau, 2002

The 5th Mission of the Special Committee on Decolonisation to Tokelau was in 2002¹⁰. There had then been significant development in self-government in Tokelau since 1994, but in the address to the Mission by the Ulu¹¹ it was early noted that Tokelau was struggling to make sense of the decolonisation process. His 2002 statement emphasised the need to strengthen village governance, the continuing fear of future neglect, and indicated integration as an option still to be fully explored with New Zealand. The 1994 statement to the UN was described by the Ulu as listing “the prerequisites” for an act of self-determination. Further, the Ulu called for the nature of the relationship with New Zealand to be set out “in black and white”. Special comment was made on the existing limitations on the legislative power of the General Fono, on the inadequacy of the shipping service and on the inadequacy for modern government purposes of the telecommunications system. The statement looked

⁶ The legislative powers were at that time vested in the New Zealand Parliament, the Governor-General, and each village of Tokelau (under the Tokelau Village Incorporation Regulations 1986). There was no Tokelau based power to legislate for Tokelau as a nation.

⁷ The boundary with the United States of America is fixed by the Treaty between the USA and NZ of 2 December 1980; and with France by the Treaty between NZ and France of 2003. The boundaries still to be settled are with the Cook Islands, Kiribati, and Samoa.

⁸ The people of Tokelau have access to New Zealand citizenship under the Citizenship Act 1977 (NZ).

⁹ The NZ currency was made legal tender in Tokelau by virtue of section 3 of the Decimal Currency Act 1974 (NZ).

¹⁰ See UN records A/AC.109/2002/31. This mission was the first since 1994, and the most recent.

¹¹ Chief Minister of Tokelau.

forward to the then imminent review of the New Zealand support for Tokelau and also for a statement of what was described as the “framework of the relationship”.

For its part, the Visiting Mission “laud[ed] the steps being taken ...”. The Mission emphasised the need for dedicated shipping, commented on progress with the 24 hour power project, and on the telecommunications system. The Mission report also commented on the need to “strengthen unity” at a national level. And finally, and with the benefit of hindsight, perhaps significantly, the Mission reported on the difficulties it had had both in Tokelau and with the Tokelauan community in New Zealand in explaining the three options available to Tokelau and the fact that an act of self-determination would not necessarily “entail a severing of links with the administering power”.

C Tokelau, 2006

Now, in late-2006, it is possible to reinforce the fact that survival and progress in Tokelau depends on the strength of each of the villages. Further, it is clear that the developing of national identity mentioned in 1994 is, at the political and international level, still in the process of developing. The Council of Faipule¹² (now the Council for the Ongoing Government¹³) does not and cannot meet on a frequent or regular basis for, among other reasons, a number of physical conditions: The shipping schedule and demands of external travel mean that the six persons key to the management of Tokelau’s national government are able to meet little more frequently than when the national assembly (the General Fono) meets for a few days three or four times a year. Meetings by telephone conference call are not yet a fully exploited option.

There is clearly much that may still be done in terms of strengthening governance at the village level and also much that may be done to respond to the call of the 2002 Mission to strengthen unity at the national level.

On the positive side of the ledger, Tokelau has substantially avoided external organisational structures that might undermine its culture. The General Fono developed the rules for a Constitution and collected those rules in the document of that name for the purposes of the February 2006 vote. Following the vote, the formal collation of those existing rules in a single document called “The Constitution” has been retained.¹⁴ Decisions on the flag, a national symbol, and an anthem however remain elusive.

The fear of future neglect was a matter that attracted considerable attention in the course of the negotiation of the self-determination package. In 2003, a substantial document called “The Principles of Partnership” was signed with the government of New Zealand.¹⁵ Those principles set out in general terms the key elements of the relationship between Tokelau and New Zealand. That was followed a year later by an

¹² The Faipule of each village is the elected officer responsible in particular for the relationship of the village to the outside world. The Council was a grouping of the three Faipule established in 1993 to act as an executive committee for the nation.

¹³ This Council includes the Puleenuku (the Mayor) of each village. It replaced the Council of Faipule from 2003.

¹⁴ By decisions of the General Fono in May and August 2006.

¹⁵ The Joint Statement of the Principles of Partnership Between Tokelau and New Zealand, 21 November 2003. The text is printed in *Tulafono a Tokelau 2005* (Manulele Tokelau, 2005) vol 2, 486.

economic support package for the triennium 2004-2007.¹⁶ Both those documents appear in the self-determination package¹⁷ in an evolved form and go a substantial way to addressing the concerns about possible future neglect.

A legislative power was granted to the General Fono in 1996¹⁸ and, even though limited in nature¹⁹, has proved to be no practical impediment to the General Fono in its law reform endeavours. The technical impediments in the grant of law-making power were programmed for removal at the time of self-determination.

Communications remain difficult. In particular, no decisions have yet been made on how to settle the maritime transport issues.²⁰ The current charter arrangement is insecure because the Samoa ship used is not always available to meet Tokelau's need and further the ship (an inter-island car ferry with overnight accommodation) is not designed or suitable for the ocean-going voyages for several days for passengers and cargo to Tokelau.

The treaty²¹ package agreed with New Zealand would have provided:

- for the continuation of the present judicial links with the judiciary of New Zealand,
- for Tokelau to be internally self-governing but to remain part of the Realm of New Zealand under the Crown in right of New Zealand,
- for the current financial support system²² to be the base for the future,
- for a system of greater clarity in respect of a continuing administrative support from New Zealand government agencies²³, and
- for health and education access by Tokelauans to New Zealand.

Citizenship rights and support on international relations matters were assured.

The external relations decisions requested in 1994 remain a work in progress: Three external boundaries²⁴ remain to be settled, and the crucial relationship²⁵ between Tokelau and Samoa remains informal.

By way of summary therefore, there are a number of matters which remain on the table for consideration from the Tokelau perspective: internally, work continues on village governance and strengthening unity at the level of national government; externally, the material conditions of communication remain the most obvious and

¹⁶ The Arrangement between New Zealand and Tokelau on Economic Support to Tokelau 2004/05 – 2007/08 of 9 August 2003. The text is printed in *Tulafono a Tokelau 2005* (Manulele Tokelau, 2005) vol 2, 492.

¹⁷ The decolonisation package can be accessed at <<http://www.tokelau.org.nz>>. It is also available in hard form: (*TOKELAU Self Determination Package*) from the Tokelau Liaison Office, Apia Samoa.

¹⁸ Tokelau Amendment Act 1996 (NZ).

¹⁹ See in particular section 3A (4) and section 3B of the Tokelau Act 1948.

²⁰ Tokelau has a small vessel of its own, designed for inter-atoll travel. There are also frequent charters of Samoan vessels.

²¹ The draft treaty is part of the self-determination package. See above n 17.

²² See above n 16.

²³ The elaboration of the administrative support in the draft treaty package followed an earlier Cabinet decision on administrative support by NZ government departments to Niue and Tokelau. The document is also in large part a statement of the pre-existing practice.

²⁴ See above n 7.

²⁵ Samoa is the sole port of entry for Tokelau. Samoa is the entrepot for Tokelau and is the country of transit for all who travel between Tokelau and the outside world.

most commented on issue. Settling the maritime boundaries and formalising the relationship with Samoa are also significant matters both for governance and for the better management of the Tokelau EEZ.²⁶

III REFERENCE 2006

In 2003, the General Fono unanimously agreed to pursue with New Zealand the option of free association. From then on the other main possibility, that of integration with New Zealand, has not been pursued.

The self determination referendum was conducted in accordance with the Self Determination Referendum Rules 2005. Those rules established a Referendum Commission to supervise the preparation for the referendum and to oversee the voting and announce the results.

The Commission had three representatives of each island. It was originally envisaged that registration would close on 1 November 2005 with a view to a possible vote before the end of 2005. In the event, that date was advanced to the end of the year to give a greater chance for all interested to register and some further time for village discussion before the referendum itself.

The referendum date was set for 11 February 2006.²⁷

The basic criterion for voting was that a person be an adult resident of Tokelau.²⁸ This criterion caused some consternation in the Tokelau communities abroad who felt that they should be able to cast a vote in the referendum. With more than 7,000 Tokelauans in the diaspora and 1500 in Tokelau, a vote by the overseas members, regardless of the logistical difficulties that would have arisen, was probably never a serious possibility. The residency based qualification was consistent with the UN resolutions²⁹ and accepted by both the New Zealand government and the United Nations.

There was voting at four places: Apia and each of the three atolls. The voting took place consecutively and there was a single ballot.³⁰ The result was that 349 people voted in favour of the package; 232 rejected it; there were three invalid votes; 95% of registered voters voted.³¹ The whole referendum was conducted in a very public

²⁶ Tokelau, with NZ surveillance and technical assistance, manages its own EEZ under the Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977 (NZ) and the Exclusive Economic Zone Fishing Rules 1988 (originally the Tokelau (Exclusive Economic Zone) Fishing Regulations 1988 – SR 1988/262 (NZ)).

²⁷ The date was fixed by the Commission and confirmed by the General Fono in August 2005. The date had, as the Administrator of Tokelau suggested, a certain resonance: Tokelau came under the administration of the Governor-General of NZ on 11 February 1926 (see *NZ Gazette* 1926, No 15 of 1926, p 659).

²⁸ Rule 8 of the Self-Determination Referendum Rules 2005 (Tok).

²⁹ See especially UN GA Res 742 (VIII) of 27 November 1953 (which speaks of the “opinion of the population of the Territory”), and UN GA Res 1541 (XV) of 15 December 1960 (which speaks of “the peoples of the territory” (Principle VII), and “the freely expressed wishes of the territory’s peoples” (Principle IX)).

³⁰ Voters were not restricted to a particular voting place, but the bulk of the voters in Apia were Tokelauans in transit or Tokelau public servants based in Samoa. The first voting day was in Apia: it was followed two days later by voting successively in Atafu, Nukunonu, and Fakaofu.

³¹ The shortfall was in the voting by absentees (primarily students and invalids abroad).

fashion and under the scrutiny of two UN appointed observers.³² It was uniformly agreed that, as a voting exercise, the referendum was exemplary.

The referendum was in legal and organisational terms a great success. It is a matter for speculation only why 40% of the voters did not accept the package.³³ General observations by commentators would suggest that the failure to win the 67% 'yes' vote needed came as something of a surprise to members of the Tokelau community. That may well reflect on the nature of the referendum itself and the novelty of the experience for the people of Tokelau.

There has been voting in Tokelau in respect of village administrative leaders for decades. However, this referendum was the first vote in Tokelau to be run in accordance with external procedures that required advance registration of eligible voters, a programme of information as to the nature of the vote, and a formal and totally secret system of balloting. This was not a cultural event. The outcome was not as expected nor as decreed by the elders of the community. It may well be therefore that this was an essential first step to a final self-determination vote and also an important part of the information gathering process for the people of Tokelau. In the event of another referendum in the short to medium term, the community would have the advantage of the experience of February 2006 in the exercise of their right to vote.

The package was a good package. After extensive discussions over two years, it had been agreed to by the Council for the Ongoing Government and by the General Fono. If not the best possible package for Tokelau, it was certainly a package generally acceptable to the leadership of Tokelau.³⁴ The referendum was therefore a procedure against tradition because the right to accept or reject the package was the right of the people of Tokelau.

The question may be asked whether the people fully understood the package. It is possible that the package was not fully understood because these issues are rather difficult to understand for people who are not lawyers, politicians or engaged with the problems of national government on a day to day basis. Nevertheless, there was extensive and repeated consultation with the people of Tokelau at all levels over the two year period leading up to the referendum. All documentation was in both English and Tokelauan, and many of the meetings in the community were broadcast live on local FM radio. At the very least, all the information was made accessible to all in the villages of Tokelau. Despite that, both before the referendum and immediately after, there have been comments from Tokelau and the communities in New Zealand about confusion about the issues, and some of the concerns mentioned by the UN Visiting Mission in its report of 2002³⁵ remain.

The New Zealand communities, it may be surmised, by majority do support the development of self-government and the leadership proposals in Tokelau. Apart from the dismay of many that they would not be able to vote in the referendum, there

³² For the UN report on the conduct of the referendum, see *The Referendum in Tokelau – 11-15 February 2006* (Report of the UN Election Monitoring Team, New York, 2006).

³³ There have been several comments published. A substantial comment by an outside observer and long time Tokelau specialist is A Hooper "Against the Wind" (forthcoming journal article).

³⁴ Comment on the referendum has related to "lack of understanding" or lack of "political readiness", but not to the content of the decolonisation package.

³⁵ See above n 10.

remains confusion that a “yes” vote would lead to independence and therefore to the severing of the links between Tokelau and New Zealand and consequentially the potential loss of citizenship and the division of families across state boundaries. The free association option appears to be difficult of comprehension for many people. Indeed most of the media, although very well informed of the nature of the referendum, categorised the Tokelau vote as being a vote on independence.³⁶

IV THE DECOLONISATION OPTIONS

For Tokelau and other non-self-governing territories for whom independence is not the most likely of self-determination options, there are several challenges. What is it that these territories should opt for and how is a free association option to be explained both to the communities who will vote on the proposal and to the diaspora which typically has ongoing links with the cultural homeland?

In the absence of a liberation movement or a political party espousing independence or a particular self-determination option³⁷, the information challenge is great. Many of the non-self-governing territories would appear to be reasonably happy with the status quo. Few, it may be expected, would reject the possibility of a greater degree of internal self-government, but many are small, remote, and lacking in natural resources or income-producing capacity. Therefore independence is unlikely to be a favoured option.

A difficulty is that the status quo is, self-evidently, not one of the three options expressly listed in the UN resolution³⁸, although in theory it may not be excluded because of the statement in GA resolution 2625.³⁹ The emphasis has always been on the favoured outcome (which is independence), and on the other clear but lesser options of free association with another state or integration with another state.

If for a country like Tokelau the status quo were an acceptable condition and one that would in a vote receive the support of the majority of the population, how could that popular view be formulated or presented as one of the three options promoted by the United Nations? And further, if a community is by and large content with the status quo, why should that community take the effort to vote for the situation that it already enjoys? If the self-determination option presented is the status quo formulated in terms of the requirements of the UN resolutions, then a likely dialogue will be: “Why should I vote in favour of this package?” Answer: “Because this will guarantee the status quo into the future.” Question: “And if I vote ‘No’, what will be the consequence?” Answer: “The consequence will be that things will remain the same”, ie the status quo.

³⁶ Eg Parker “Birth of a Nation?” *The New Yorker* 1 May 2006, 66.

³⁷ There was no organised political movement in Tokelau promoting or opposing the referendum package. This was with hindsight a difficulty and a factor indirectly commented on in the Report of UN Monitoring Team – above n32.

³⁸ UN GA Res 742 (VIII) of 27 November 1953 para 6, and UN GA Res 1541 (XV) 15 December 1960 - Principle VI.

³⁹ See the Annex, Principle 5 para 4 “or the emergence into any other political status freely determined by people”.

Surely this is a perplexing scenario for any but those who understand well the United Nations' goals and the position of the decolonisation agenda at international law.⁴⁰ For others, and this is likely to be the bulk of the population in non-self-governing territories of the Pacific, there is likely to be considerable suspicion of an activity, which involves considerable effort, investment and international attention, which will simply result in things remaining as they are.

Not only is it hard work to achieve one's highest inspirations (*per ardua ad astra*), but particularly hard work if the decolonisation goal is essentially to maintain the status quo (*per ardua ad statum quo*).⁴¹ It is therefore likely that, for many communities, there is a need for some creative and perhaps more assertive methods of explaining the nature of the UN mandated self-determination exercise. Needed from the UN is an indication of the minimum requirements for the maintenance of the status quo that are compatible with the international legal norms, so that where the sentiment is truly in favour of the maintenance of the current situation the community concerned may proceed quickly and easily (and without suspicion) to confirm its view; and the UN goal of decolonisation can be achieved with minimal complication or confusion.

All non-self-governing territories can benefit substantially from the development of internal self-government in accordance with the UN guidelines. Many of those territories, having achieved better internal social economic and governance systems, will confirm a situation which constitutionally is the status quo - that is, they will if they are very small see themselves as integrated in terms of the UN resolutions. Perhaps where a community is culturally coherent and it has the resources to maintain for itself (with the support of another nation) a minimal degree of self-government, then a free association package such as that agreed by Tokelau and New Zealand would be appropriate.

The attainment of independence by self-determination vote is one which is totally free, at the choice of the non-self-governing territory. The other two options require agreement with another state and typically that state will be the administering power. The negotiation of an integration package or a free association package therefore involves the interests of the trustee nation. The non-self-governing territory which aspires to integration or to a status of free association is dependant first on the offer of either of those status to it by a state, and second on the conditions of each of those status that can be negotiated with the state concerned.

In law, the differences between an independence package, a free association package, or an integration package need not be great. One status can fade into another easily. Take, for instance, the Tokelau free association package. There is no legal reason why the treaty to establish the free association package could not equally have followed a vote for independence and been a treaty of friendship between Tokelau and New Zealand with the same or similar conditions to the free association package. Some things almost surely would be different but, if Tokelau were to opt for independence and New Zealand were to agree to a treaty of friendship with the new state, in theory the same conditions could be assured by that treaty. For New Zealand, a different set of political considerations would probably come into play. A feature of

⁴⁰ Eg The Second International Decade for the Eradication of Colonialism, 2001 – 2010 (UNGA resolution 55/146 of 8 December 2000).

⁴¹ The reference is to the paper of that name presented by AH Angelo to the UN Regional Seminar on Decolonisation, Nadi, Fiji, May 2002.

the present package which might not be a feature of a treaty of friendship is the right of people of Tokelau to New Zealand citizenship. The particular rules in relation to support with international affairs and administrative support currently reflect the particularly close nature of free association and the joint belonging of New Zealand and Tokelau to the Realm of New Zealand⁴² - the broad constitutional framework which includes also the Cook Islands and Niue. Independence could make a difference to these matters.

If the Tokelau status quo were to be presented as integration, again many of the conditions would not necessarily change. There would however be no need to mention citizenship nor, presumably, international relations.⁴³ A new element - required by the UN criteria - would be that the people of Tokelau should have the right to vote for the government of New Zealand.⁴⁴ Ultimately, under an integration package the future of the relationship would depend on the goodwill and good faith of the dominant party to the negotiations.

V *PRIORITIES FOR ACTION*

There are clearly things that the United Nations can do and continue to do by way of encouraging administering powers in non-self-governing territories to advance towards an act of self-determination. Non-self-governing territories for their part need to engage and take an interest in the process, if only from the selfish point of view of seeing what advantages there may be for them in the course of the development of self-government.

The biggest responsibility clearly lies with the administering powers. The answer to a question about priorities for action is simply "Do something!". The decolonisation agenda is not a new one; it has been around for at least half a century and, more recently, there has been a First International Decade for the Eradication of Colonialism. We are now half way through the Second International Decade for the Eradication of Colonialism. The starting-point is a treaty obligation solemnly undertaken. That is found in article 73 of the Charter of the United Nations. That article, among other things, says that administering powers "recognise the principle that the interests of the inhabitants are paramount, and accept as a sacred trust ... to develop self-government...".

This is not a resolution of the General Assembly or a question of the options available to a non-self-governing territory to achieve a full measure of self-government. This is a treaty obligation and article 73 emphasises two points.

The first is that "the interests of the inhabitants are paramount". Self-interest should either be absent or be subordinate to the greater interest of the inhabitants of the non-self-governing territories. Put in other words, the administering powers "accept as a sacred trust" the obligation to do right by the colonial people. The administering powers are trustees. They cannot, in relation to the non-self-governing territories, self deal nor put any interest above that of the non-self-governing territories.

⁴² See Letters Patent 1983 of New Zealand, SR 1983/225.

⁴³ But see eg the law of French Polynesia in which specific provision is made for the exercise of international relations powers by that part of France. See, Loi organique no 2004 - 192 du 27 fevrier 2004 portant statut d'autonomie de la Polynésie française); and the Noumea Accord.

⁴⁴ UNGA Res 742 (VIII) 27 November 1953 annex third part A 6, and ICCPR art 25.

The second is that the administering powers must “develop self-government”. The requirement is to do it in a manner appropriate and attuned to the needs of the particular territory. The English language version of the Treaty is rather bland in that it simply says that the self-government will be developed, but does not indicate clearly the manner in which that will be done. By contrast, the French language version makes it clear that the role of the administering power is to support the non-self-governing territory in its development of self-government. Therefore, the administering power does not itself develop self-government, but encourages, assists, and is supportive of the development of self-government by the territory.

Are these obligations being honoured by the administering powers of the 16 non-self-governing territories? What steps have been taken in the last 50 years, or in the last 15 years? To what extent have those steps been to advance the interests of the administering power? Are basic social facilities provided – eg to what standard are the health and education facilities in the territory?⁴⁵ And what about transport and the justice system? How many of the administering powers and non-self-governing territories completed the work programme exercise of 2000?

For all these matters to be attended to and well managed, is simply to do what might normally be expected of a government for its citizens. Over and above that is the requirement of article 73 of the Charter to advance self-government with a view to decolonisation. If, as a result of the advanced state of self-government, the status quo appears to be the best self-determination future, what does that mean? Some kind of integration? In the case of the very small non-self-governing territories, it is typically assumed that self-determination will not be for independence pure and simple. That assumption makes integration a difficult thing to negotiate for the non-self-government territory precisely because of the assumption that the territory has no option.

One interpretation of the present situation is that there is a good deal of self interest for administering powers in the status quo. Were it not for that, it is most unlikely that there would be any non-self-governing territories in the 21st century. A good way to test this assumption would be for each of the non-self-governing territories today to all decide that, as of 1 January 2007, they will become independent states. In how many of the 16 cases will the administering power welcome the declaration?

The way ahead is for the administering powers to do something. They can, for instance, settle boundaries. Why should this not be as much a matter of interest to the administering power as it is to the non-self-governing territory? On the other hand, this is an important part of the development of self-government and the situation would be rare where a non-self-governing territory would wish to self-determine (except perhaps for a status of integration) without knowing precisely what its territorial boundaries are and, as a new and weak player in the international field, face the prospect of border disputes. Second, administering powers should at an early stage engage the non-self-governing territories in those foreign relations matters which are of particular interest to the non-self-governing territories. The administering powers should encourage participation in regional organisations, include

⁴⁵ To quote the criterion used by New Zealand in respect of the small and isolated communities for which it is responsible – are the health and education facilities at least as good as those for a rural centre in the metropol?

representatives of the non-self-governing territories in treaty negotiating delegations, maintain a strong presence before this Committee, and generally develop the knowledge and skills of international life which are today an integral part of domestic self-government.⁴⁶ Thirdly, administering powers can, to the extent that there is no active local legislature, engage the people of the non-self-governing territory in law making appropriate to that territory, and so develop for the territory a body of tailor-made laws to replace what in many cases is either an incomplete system of laws or a body of legislation which has been handed down from elsewhere and ill fits the local situation.

There is, of course, a cost for all these endeavours and many may be seen to be, relative to the non-self-governing territory's size, very expensive on a per capita basis. The answer is first that that is the obligation undertaken under article 73. Second, none of these costs are great relative to the expenditures of the administering powers and may, in fact, be said to be derisory; indeed, so small that they can easily be overlooked or ignored as apparently insignificant!

VI STOCKTAKE

The necessary majority for the decolonisation of Tokelau was not achieved in the referendum of February 2006. The question may be asked therefore whether the process leading up to that referendum was worthwhile. Although it is difficult to provide an objective assessment of these matters, it may be stated with confidence that the material conditions in Tokelau have improved substantially since 1994, and that the extent of self-government at the national level has increased from a very low level to the point where self-government is now almost 100%. It certainly is 100% in all practical senses. The legal system has also been developed to the point where, apart from the key New Zealand laws which relate to Tokelau's colonial status⁴⁷, the legal system is now totally patriated.⁴⁸ The body of law which in 1994 was law "made in New Zealand" is now law made in Tokelau and under the control of General Fono.

Undoubtedly, much of the material development would have occurred independently of any move associated with preparation for an act of self-determination. However, the degree of development of self-government at national level and the patriation of the laws of Tokelau would almost certainly not have taken place without the impetus of decolonisation. There is therefore much that has been achieved and much that Tokelau, the New Zealand government and the United Nations can take pride in. Tokelau has repeatedly over the years emphasised its interest in being self-reliant to the greatest possible extent and also in its having the ability to make the decisions that affect its future. Those desires have been met.

⁴⁶ See, for instance, the example of France in relation to French Polynesia and New Caledonia.

⁴⁷ Eg the Tokelau Act 1948, the Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977 and the Administration Rules 1993.

⁴⁸ In 2003 and 2004 a number of NZ laws which had been extended to Tokelau by NZ were either repealed or repromulgated as General Fono Rules eg Application of New Zealand Law Rules 2004, or were amended to refer to Tokelau institutions and entitled Rules in place of their earlier designation as Regulations.

The single most important thing in respect of an act of self-determination on the basis of the present decolonisation package is undoubtedly the strength and unity of the national government system. This is because the free association package is not concerned with the village or local government of Tokelau, but with the external relations of Tokelau and in particular with the continuing relationship between the three atolls of Tokelau and the government of New Zealand. A strengthening of the national focus will be assisted by the strengthening of governance at the village level. That need not be at the expense of the village systems, because the fields of action of the national government and the village governments are clearly distinct. Strengthening of the national government and its unity needs to be supported by the resolution of problems with, and confidence in, the communication and transport systems.

As in 1994, the material and social conditions are of great importance in Tokelau and the question of timing of eventual decolonisation is not the primary concern. There is no indication that these aspirations will not be achieved in time, nor that Tokelau will not continue to strive towards their attainment. Indeed, at its August 2006 meeting, the General Fono of Tokelau voted unanimously to hold a new referendum in November 2007 on the same decolonisation package.

RECOMMENDATIONS

- That the United Nations give indications as to what is required to enable the principal conditions of the status quo to be retained while at the same time colonisation is eradicated;
- That all non-self-governing territories engage with United Nations in the process of eradicating colonisation;
- That the United Nations continue to promote decolonisation goals and to provide support to administering powers and to non-self-governing territories in the developing of self-government;
- That administering powers be reminded of the obligations they have undertaken under article 73 of the Charter of the United Nations, and encouraged to promote and support the development of self-government in non-self-governing territories;
- That all administering powers complete the United Nations work programme schedules for each non-self-governing territory;
- That standards for infrastructure in territories be set on the basis of metropolitan comparisons;
- That all territorial and maritime boundaries not settled, be settled urgently;
- That administering powers involve non-self-governing territories as much as possible in those matters of international relations that affect the territory;
- That where it is constitutionally possible, non-self-governing territories be encouraged to participate in regional organisations and be given the support necessary for that purpose;
- That all administering powers and non-self-governing territories attend the United Nations decolonisation annual meetings and regional seminars;
- That all non-self-governing territories be involved in the elaboration of the laws of the territory.