

# REPORT TO THE MEMBERS OF THE LEGISLATIVE ASSEMBLY OF THE COOK ISLANDS ON CONSTITUTIONAL DEVELOPMENT

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1 At your invitation, and as a result of arrangements made by the New Zealand Government, we visited Rarotonga between 22 and 31 August 1963. On Friday, 23 August, we attended a sitting of the Legislative Assembly in order to listen to a general discussion of the problems of constitutional development based on Legislative Assembly Paper No 18 (1963) (*Future Political Development*) (see Annex).

On Monday, 26 August, the Assembly suspended standing orders to enable us to take part in discussions held in Committee of the Whole. We presented a suggested list of topics for discussion. This included matters arising from Paper No 18 or suggested by members or by

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Mr J B Wright, CBE is High Commissioner for New Zealand in Western Samoa. A career public servant with lengthy experience in senior positions in both the Cook Islands and Western Samoa, Mr Wright was also Secretary of Island Territories. On his retirement from this position and the public service, he lived privately in Western Samoa for a short period before being appointed to his present post.

ourselves. Consideration of these topics, and of several others subsequently introduced by members, was completed in the week as a result of the extension of your normal sitting hours. We are satisfied that we obtained a statement of your views on the topics discussed; and we were given an ample opportunity of making you fully acquainted with our own thinking on these topics.

2 Since the discussions were recorded and subsequently broadcast, and since they were also reported in considerable detail in the *Cook Islands News*, a significant section of the people throughout the Cook Islands became acquainted with the various problems under consideration. We think that the Government should be commended for ensuring such a wide publicity for these constitutional discussions. An informed and interested electorate is a necessary condition for the success of democratic self-government. The Government has thus established an excellent precedent in this regard.

3 As we understood it, our main task was that of assisting you, in defining your views on the political and constitutional development of the Cook Islands, so that you would be in a position to present to the New Zealand Government definitive proposals for constitutional change. This involved consideration with you of the various proposals that had already been made, the presentation of possible alternatives, and the attempt to relate these proposals to their constitutional and political background. We took it for granted that the satisfaction of the particular needs and expressed desires of the people of the Cook Islands was our objective; but we sought to express these in terms that would not raise unnecessary difficulties of a constitutional kind.

4 During your 1962 Session you discussed a statement made by the Minister of Island Territories, the Hon Sir Leon Gotz, and considered four broad alternative courses of political development: complete independence; integration with New Zealand; a Polynesian federation; and full internal self-government. On 13 July 1962 you passed the following resolution:

This Assembly:

- (i) Records its appreciation of the Minister's speech and of the New Zealand Government's proposals as outlined by him for the future political development of the Cook Islands;
- (ii) declares that full independence as recently granted to Western Samoa is not the goal of the people of the Cook Islands;

- (iii) requests that the New Zealand Government proceed with its plan for giving the Cook - Islands the fullest internal self-government, while at the same time preserving for the Cook Islands people their present status as New Zealand citizens;
- (iv) reaffirms its loyalty to the Crown and its faith in New Zealand's willingness to continue giving aid and assistance to the Cook Islands without thought of any gain, other than the friendship and goodwill of the people.

Although thinking had naturally developed during the year that had elapsed between the passing of that resolution and our arrival in Rarotonga, it became clear to us that the resolution still expressed your broad aims. The discussions that we had with you ranged more widely over various alternative lines of development that seemed possible either in theory or in practice. We felt it our responsibility to ensure that these alternatives were placed before you. But we returned in the end to proposals that differed in matters of detail, rather than in basic ideas, from those in the Assembly's resolution.

5 We came to appreciate that your views on constitutional development are firmly based on the geographical facts of your position and the interests and feelings of your people. The Cook Group comprises fifteen islands which are spread over 850,000 square miles of ocean but have a total land area of only about 90 square miles and a population of fewer than 20,000. While some of the larger islands such as Rarotonga and Mangaia are reasonably fertile, many of the smaller ones are not, and there are no mineral resources of any significance. The scope for economic development is thus limited. It is inevitable that many of your people should look elsewhere for opportunity and for the means of economic and educational advancement; and it is natural that you should look to New Zealand. At the present time a very high proportion of the Cook Islands budget is being provided by grants from the New Zealand Government, and each year large numbers of the Islands' people, as well as nearly all of their exports go to New Zealand. It is not surprising, therefore, that you attach the highest importance to the maintenance of your association with New Zealand and, in particular, to the preservation of the status of your people as New Zealand citizens.

6 At the same time, it is quite reasonable and understandable that you wish, as far as possible, to manage your own affairs. Though closely linked with, and heavily dependent on, New Zealand, the Cook Islands are a distinct entity geographically, historically, economically, and socially. Forms and practices worked out for New Zealand conditions are not necessarily well adapted to the needs of the Cook Islands. It is also important that as full an opportunity as possible should be provided for the exercise of responsibility in the Cook Islands, as a counter, in some degree, to the inevitable attraction to your people of the broader opportunities available

to them in New Zealand. These factors we take to be the basis of your view that it would not be in the interests of the people for there to be a complete political merger of the group with New Zealand. Your problems need to be dealt with separately and in the Islands themselves, and it is fitting that the responsibility should be assumed by the elected representatives of the Cook Islands people.

7 To give effect to your own wishes we are recommending in this Report a constitution which provides for full self-government, but also allows for continued association with New Zealand under a common head of state, the Queen, and with a common citizenship, that of New Zealand. There are other respects in which there is likely to continue to be a close connection with New Zealand: for instance, the New Zealand Government will act for you in external affairs; you will rely heavily on the New Zealand Government for financial assistance; you will expect to sell most of your products in New Zealand; you may wish the Supreme Court of New Zealand to hear appeals from your High Court, and the New Zealand Controller and Auditor-General to audit your public accounts; in the immediate future, you prefer to have a New Zealand official as representative of the Queen; and in this Report we discuss possible ways in which the Cook Islands could be associated with the New Zealand Parliament. On the other hand, the constitution we are recommending provides for the establishment of full cabinet government under which your Cabinet would have full control in the executive and administrative spheres. That Cabinet would be responsible to a Legislative Assembly elected by the Cook Islands people, and having full legislative autonomy. This would mean that the Assembly would have the power to amend all New Zealand legislation applicable to the Cook Islands, including the constitution itself.

8 As far as we can judge the recommendations we are making for constitutional development are in full accordance with the wishes of the Cook Islands people, as expressed by you, their elected representatives. Moreover, our proposals would not restrict your freedom to develop along different lines in future, if this should be your wish. In other words, they fulfil the principle of self-determination on which all international discussion of colonial questions is now based.

## *I THE EXECUTIVE GOVERNMENT*

9 The transfer of the control of the Executive Government from the Resident Commissioner to representatives of the people of the Cook Islands is, at this stage of political development, the central issue for discussion. We are, therefore, dealing with it first.

10 A proposal on this matter was made by the Minister of Island Territories and included in Legislative Assembly Paper No. 18. It was proposed that in 1964 the present Executive Committee<sup>1</sup> should legally be "given the power of decision on all matters of policy" and should from that time onwards be known as Cabinet. It was further proposed that the members of Cabinet should exercise a joint responsibility in respect of all the departments and functions of Government. In other words, individual members would not be allocated particular portfolios in accordance with normal Cabinet practice it was suggested in the paper that the proposal for "joint responsibility" might be better suited to the Cook Islands than normal Cabinet procedure in view of the small population of the territory.

11 We discussed this proposal fully with you; and you made it clear that there was now a strong preference for a normal Cabinet system, with the allocation of portfolios to individual Ministers. We share your opinion on this matter. We consider that the conferring of responsibility for particular departments or subjects upon individual Ministers is the most effective way of ensuring that full and informed control of the Executive Government is exercised by the Cabinet. On the other hand, the reference to population in Paper No 18 is an important one. It draws attention to the fact that proposals for the establishment of Cabinet Government must be framed with careful regard to the need for economy and simplicity.

#### *A Cabinet*

12 Our considered view is there should be a cabinet of five - Premier, or Chief Minister, and four other Ministers. We feel that in the circumstances of the Cook Islands you should hesitate to have more than this number. A number of departments, such as Justice, Police, Survey, and the Post Office, rarely raise issues of policy that would require the detailed attention of a Minister. Responsibility for these departments could readily be combined with responsibilities for one or more of the major policymaking departments. The actual allocation of portfolios in any Cabinet would be made by the Premier or Chief Minister with regard to the particular qualifications and interests of his Ministerial colleagues, but a number of groupings have been suggested that would be consistent with a Cabinet of five members.

13 Our preference for the terms Premier or Chief Minister, rather than Prime Minister, perhaps deserves some comment. In Australia the title of Premier is held by the heads of the

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1 Section 8 of the Cook Islands Amendment Act 1957 (as substituted by s 15 of the Cook Islands Amendment Act 1962) creates an Executive Committee of up to ten members - the Resident Commissioner, the Secretary to the Government, the Treasurer and not more than seven other elected members of the Legislative Assembly chosen by the Assembly.

governments of the individual states and that of Prime Minister only by the head of the government of the Commonwealth. The term Premier is also used in Tonga. In India and in the newly established Federation of Malaysia the title of Chief Minister is held by the heads of the governments of the constituent states. It might also be attractive to you, in that it is a fairly close translation of the term that you are using in the Maori language for the office. In view of the desire of the Cook Islands for self-government, rather than independence, and of the small size of the territory, we think that one or other of these terms is probably more appropriate than that of Prime Minister; but this is a matter on which we wish to express merely a preference.

### *B Selection of the Premier and other Ministers*

14 The absence of a party system at present in the Cook Islands raises a problem in regard to the selection of the Premier (as, for convenience, we shall refer to him in this Report) and of other Ministers. We believe that the solution adopted in Western Samoa, in similar circumstances, is the most suitable one. After each general election, and on any other occasion on which the position of Premier might have become vacant (for example, through resignation or death), the Assembly would consider which of its members should be nominated for the position. If more than one member were nominated, a ballot (or succession of ballots) would be held to ascertain the wishes of the majority of members.

15 The selection of the other Ministers raises the question of the collective responsibility of Cabinet to the Legislative Assembly. If they were nominated by the Assembly, in the same way as the Premier, they would tend to feel individually responsible to it, since it had selected them; and differences of opinion within the Cabinet might be reflected in Ministerial statements in the Assembly. If this occurred, the Cabinet system would be dangerously weakened. For this reason, we recommend that the Premier should select his own Ministers. Such an arrangement, which is in accordance with normal practice in Commonwealth countries, would ensure that Ministers fully accepted their obligation to support the Premier and the Cabinet as a whole. It would also enable the Premier to build up a balanced Cabinet, containing the variety of talents needed for efficient government. It would not, in practice significantly weaken the influence of the Assembly. Anyone nominated by the Assembly as Premier would have to select a group of colleagues whom he believed would have the Assembly's support. He would have to take account of factors such as the natural desire of both Rarotongan and Outer Islands members for representation in Cabinet. If he failed to satisfy the Assembly in these ways, it would be in the Assembly's power, through the passing of a vote of no confidence, to force his resignation and that of his Cabinet.

### *1 Cabinet and the administration*

16 The effectiveness of Cabinet Government depends, in no small measure, upon the relationship between Ministers and their senior permanent officials. This is primarily a matter of relations between individual Ministers and the heads of the departments under their control. The Minister is responsible for decisions taken at the departmental level and for the presentation to Cabinet of matters requiring Cabinet approval; he must be ready to shoulder the blame when mistakes are made. The permanent head is responsible for providing the Minister with expert, professional advice; and he must loyally serve the Minister in the formulation and execution of policy, even when it may be contrary to his personal opinions.

17 We consider that the position of Secretary to Cabinet is one of crucial importance to the success of Cabinet Government. All submissions to Cabinet by Ministers would be received by him in advance of the meeting at which they were to be discussed. It would be his responsibility to ensure that all the necessary information was provided or obtained, so that Cabinet might be adequately informed. He should personally attend Cabinet meetings, in order that his professional knowledge and advice might be available to members. We recommend that the position of Secretary to Cabinet should be held by the permanent head of the Premier's Department. This office would occupy the position at present held by the Secretary to the Government. Under the new constitution we think that the position should be renamed as Secretary of the Premier's (or Chief Minister's) Department; but, like the Secretary to the Government, he should be described in the relevant legislation as "the principal administrative officer of the Government of the Cook Islands". Such an arrangement would ensure, in our opinion, that the Cabinet obtained the professional assistance that it would require and also that the Secretary's status, in relation to other heads of departments, would be clearly defined.

18 It is also important that the most suitable office and secretarial arrangements should be made for the Ministers individually. As each Minister will be responsible for several departments, it would seem most convenient for them all to be accommodated in the proposed new central administrative building. If all Ministers had their offices in that building, they would be in easy contact with one another and close to the places in which meetings of the Cabinet and of the Assembly would be held. In addition, they could make use of the secretarial and typing facilities that will be available there; and a central filing system could probably handle the papers of all Ministers. Such an arrangement could be administratively effective and, by avoiding unnecessary duplication, would also be economical.

19 We understand that most of the permanent heads of departments will also have their offices in the central administrative building. If this should be the case, the effective working of

the ministerial system will be further assisted. Several permanent heads, however, may need to have their offices elsewhere, in order to be in closer touch with the staff under their control. In these cases, it might be necessary for the Minister concerned to have a second office for use at times when he needed to work in continuous contact with the permanent head, for example, when the department's annual estimates were being compiled.

## **2 *Salaries of Members of Cabinet***

20 The establishment of a Cabinet system will involve some increase in the cost of government, in that salaries, offices, and secretarial assistance will have to be provided for Ministers. This cost is, of course, fully justifiable, since it will enable the Cook Islands to gain the benefits of self-government; but in view of the limited resources of the territory and of dependence on New Zealand assistance, it is necessary to keep it to the lowest practicable figure. Our proposals regarding the size of the Cabinet and the arrangements for secretarial assistance have been made with this fact in mind. The matter of Ministerial salaries is also involved.

21 In determining the appropriate salaries and allowances for the Premier and other Ministers, it is necessary to keep several points in mind. First of all, they will be occupying positions of great importance and responsibility. Their work will probably occupy most, though not necessarily all, of their time. However, even to the extent that they have time available for the maintenance of private economic interests, they will be restricted by their official responsibilities in the use that they can make of that time. In other words, most Ministers will probably continue to enjoy some income beyond their official salaries, but it will be considerably less than they would have gained if they had been free to devote themselves without restriction to their private affairs. On the other hand, the honour of holding Ministerial rank is in itself some compensation for loss of income, provided it does not impose actual hardship.

22 Ministerial salaries are not usually as high as the incomes of successful business men or planters. In many countries they are lower than those which are paid to the permanent heads of the major departments. They are so in New Zealand, and we believe that a similar situation should apply in the Cook Islands. The country could not well afford to pay Ministers as much as it will be necessary to pay, for example, the Secretary of the Premier's Department or the Chief Medical Officer, since these officers will possess qualifications that would enable them to obtain similar employment elsewhere at equivalent rates of pay. Nor will it be necessary to pay Ministers so highly since they will, in many cases, be able to enjoy outside earnings, not available to most public servants (particularly to imported officers).

23 We do not feel competent to suggest actual salaries for the Premier or for the other Ministers. Such a determination would involve detailed consideration of salaries paid in the Public Service and of the rewards obtained in private business. In some countries a special commission composed of leading citizens not actively engaged in politics is asked to make a recommendation, which is then embodied in a Bill submitted to the legislature. Such a procedure has much to commend it. We think that it might be applicable to the Cook Islands. On the other hand, it might be considered that suitable people unconnected with either politics or the Public Service are not available or that the procedure is unnecessarily complicated. In any event, it might be too slow a procedure to adopt when salaries have to be fixed initially. We are aware that the New Zealand State Services Commission is familiar with the issues that have arisen in the determination of such salaries in New Zealand and in Tonga. The Commission might well be asked, in our opinion, to suggest the name of a suitable person to make recommendations in respect of the Cook Islands for the consideration of the legislature.

### ***3 Private Interests of Members of Cabinet***

24 Reference has been made to the likely reduction in earnings, other than official salary, that would generally accompany the acceptance of office as a Minister. In part, this would result from the fact that a Minister would be devoting most of his time to his official duties and would not be able, for example, to supervise a plantation in the same way as he could were he not a Minister. Most importantly, it would result from the restriction that it is necessary to impose on a Minister's private interests, in order to eliminate possible conflicts of interest with his official duties.

25 It might be useful if we were to set out the two basic principles that are observed by Ministers in New Zealand and in Western Samoa in the arrangement of their private interests while holding office

- (i) A Minister must ensure that no conflict exists, or appears to exist, between his public office and his private interests which is sufficiency direct and substantial to exert an influence on the impartial performance by the Minister of his official duties.
- (ii) A Minister is expected to devote his time and talents to the carrying out of his public duties without the distraction of other active and competing interests.

Conformity with these basic principles may require that a Minister should, on assuming office, resign from directorship in a company; cease to engage in professional practice; or cease to carry on the daily routine work of any business or to take an active part in its day-to-day management.

26 It will be seen, therefore, that although it does not necessarily follow that a Minister must give up all his private interests or dispose of his business, he is expected to ensure that those interests neither conflict with his public office nor take up time which he should be devoting to his Ministerial duties. If any matter of public business coming up for discussion in Cabinet should impinge upon a private or personal interest of a Minister, he should immediately say so and withdraw from the meeting till the matter had been disposed of. To some extent, the subject of private interests can be dealt with in a statement of principles, and we suggest that, on the establishment of cabinet government, a statement of principles applicable to conditions in the Cook Islands should be adopted by the Legislative Assembly. However, in practice, a satisfactory handling of the problem requires also the continued exercise of individual and collective good sense by members of the Cabinet. Cabinet decisions must be based on consideration of the interests of the country as a whole; and it must be evident to everyone that they are so based.

27 A special problem arises in the Cook Islands as a result of the eligibility of public servants for membership of the Assembly. Obviously any such member should cease to draw his salary as a public servant if he should be appointed as a Minister. The question arises, however, as to whether he should be required to resign from the Public Service or be placed on leave without pay. We discussed this question with you; and it became clear that there was considerable feeling among members, including public servants, that resignation was preferable. We share this view. However, we think that there is a case for considering whether special arrangements might not be made in order to safeguard, for a limited period, the superannuation rights of a public servant who resigned on appointment as a Minister. We suggest, as a basis for discussion, that such a person might be permitted to leave his contributions in the superannuation fund for a period after his resignation from the Public Service. If he should cease to be a Minister and be reappointed as a public servant before the end of that period, he should be permitted to resume his superannuation rights. If he did not seek, or obtain, reappointment to the Public Service within that period, his contributions should be returned to him, as to other public servants on resignation.

## **II THE HEAD OF STATE**

28 Under the system of Cabinet Government, as it has developed in Commonwealth countries, certain formal political functions are performed by a head of state. These include the appointment of Ministers and Judges, the giving of assent to Bills passed by the legislature, the dissolution of the legislature and the authorisation of the issue of writs for the election of members of Parliament. In all these cases, the head of state acts on advice which, except in very

special circumstances, he is required to accept. But it is his action that gives legal force to the appointment, or Bill, or other matter on which advice has been tendered.

29 At the present time, these powers, with certain exceptions, referred to in paragraph 48 below, are vested in the Resident Commissioner, who is appointed by the Governor-General of New Zealand on the advice of the New Zealand Cabinet. The Governor-General is, of course, the direct representative of Her Majesty the Queen, the actual head of state of New Zealand (including the Cook Islands), on whose behalf both the Governor-General and the Resident Commissioner exercise their powers.

30 You have clearly expressed the wish that Her Majesty the Queen should remain the head of state of the Cook Islands; and this wish is, in our view, consistent with your desire for self-government. Questions do, however, arise as to the status, functions, and manner of selection of the person who would act as Her Majesty's representative in the Cook Islands. We discussed various possibilities with you, including the nomination of such a representative by the Government of the Cook Islands or his election (though this would have represented an innovation in Commonwealth practice) by either the Legislative Assembly or the people. We also suggested that it might be possible to work out an arrangement under which the function of representing the Crown might be performed by the Premier.

31 You indicated a clear preference for the appointment, in the period immediately ahead, of a New Zealand official as representative of the Queen in the Cook Islands. This official would, in addition, act as the New Zealand Government representative. We suggest that he might be known as the Commissioner of the Cook Islands. He would be appointed by the Governor-General; and the New Zealand Government, before making a recommendation for his appointment, would consult the Government of the Cook Islands. You were not sympathetic to a proposal that the Commissioner of the Cook Islands, in his capacity of representative of the Queen, should act jointly with a Cook Islander.

32 We are endorsing your views on the selection of the representative of the Queen within the limits that you yourselves placed on it, ie that it provides a solution to the problem for the time being. The combination of the functions of the representative of the Queen and New Zealand Government representative in one person has much to commend it on grounds of economy; but we feel that in practice the two roles may not be easy to combine. As representative of the Queen, the Commissioner of the Cook Islands, would stand above the unavoidable conflicts of practical politics; but, as the New Zealand Government's representative, he might have to present a point of view that the Government of the Cook Islands would regard as highly controversial. Experience might show that the combination of these two

roles was an embarrassing one. For this reason, we believe that the possible separation of the functions of representative of the Queen from those of New Zealand representative at a later stage should be kept in mind. There are indeed, additional and in our view no less important reasons for envisaging such a development. You emphasised that, in your opinion, the position of Commissioner should continue to be held by a New Zealand official. It is possible, in our opinion, that the desire may grow to have the functions placed in the hands of a Cook Islander; and, in those circumstances, the New Zealand Government might wish to appoint a separate person who is in closer touch with its own policies and outlook as its representative.

There is one further matter relating to the functions of the Commissioner of the Cook Islands that we should like to discuss. The Constitution of the Independent State of Western Samoa provides for an Executive Council consisting of the Head of State and the members of Cabinet. This Council, of which a meeting may be called by either the Head of State or the Prime Minister, has power to discuss any Cabinet decision. It has no power to vary or negative any such decision, but merely provides an opportunity for further thought and discussion, after which the Cabinet may reaffirm or vary its original decision as it wishes. We consider that the adoption of a similar procedure would be useful in the Cook Islands, since it would enable the Cabinet to benefit from discussions with the Commissioner of the Cook Islands without having its own final power of decision in any way limited. We, therefore, recommend that an Executive Council consisting of the Commissioner and the members of the Cabinet should be established.

### **III THE LEGISLATIVE ASSEMBLY**

#### **A Composition**

34 Under the provisions of section 32 of the Cook Islands Amendment Act 1957 the Legislative Assembly can comprise up to twenty-six members

- (a) fourteen elected under universal suffrage from the various islands;
- (b) seven elected by the Island Councils of Aitutaki (one), Atiu (one), Mangaia (one), Rarotonga (four);
- (c) one elected by the European electors of the Cook Islands;
- (d) two official members—the Secretary to the Government and the Treasurer; and
- (e) two further official members nominated by the Resident Commissioner.

35 Legislation is at present before the New Zealand Parliament under which the European seat will be abolished as from the dissolution of the present Legislative Assembly. Henceforth, all persons will vote on a common roll.

36 The recommendations we have already made in regard to the establishment of Cabinet government necessarily involve a recommendation that there should no longer be any official members in the Legislative Assembly.

37 The ten unofficial members of the Legislative Council of the Cook Islands, established under the Cook Islands Amendment Act 1946,<sup>2</sup> were elected by Island Councils. Professor Aikman in his two Reports<sup>3</sup> which led to the replacement of the Council by the present Legislative Assembly favoured direct election to the Assembly. However, he proposed that for a transitional period there should be the dual system that now obtains, under which some members of the Assembly are directly elected and others elected by Island Councils. This proposal was largely based on the fact that, at the time, the terms of office of the members elected by the Island Councils still had some time to run. We agree with you that this transitional period should now be regarded as over and that, as from the next election to the Legislative Assembly, all members should be elected by direct election of the adult population of the Cook Islands.

38 At present, each of the Islands entitled to representation on the Legislative Assembly comprises one constituency. Thus in both Rarotonga, where there are four directly-elected members, and in Aitutaki, where there are two such members, there is the one roll and electors are required to select four and two members respectively. We have discussed with you whether, in a situation in which Aitutaki will have three members and Rarotonga as many as nine, these islands should remain single multi-member constituencies or should be divided into a number of single-member constituencies. The latter alternative would appear to have the advantage that members would represent particular districts, and each elector would be able to identify his own representative. On the other hand, experience in Island Council elections suggests that in Rarotonga, in particular, there would be difficulty in allocating the constituencies amongst the various villages. Moreover, even the largest island, Rarotonga, is small enough to permit every elector to establish direct contact with one or more of the Rarotongan members of the Assembly. In these circumstances, the Assembly may decide to continue single multi-member constituencies. We believe, however, that there is a special case for considering the division of Rarotonga, with

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2 Sections 2-18 (now repealed).

3 *First Report on Constitutional Survey of the Cook Islands*, Department of Island Territories, 1 October 1956 and *Supplementary Report*, Department of Island Territories, 20 February 1957.

its nine members, into several multi-member constituencies probably three. This would be more likely to ensure that particular areas of the Island were adequately represented in the Assembly.

39 We recommend that the representations of the various islands on the Legislative Assembly be as follows :

ISLAND	POPULATION <sup>4</sup>	NUMBER OF MEMBERS
Rarotonga (and Palmerston)	8,676 (and 86)	9
Aitutaki	2,582	3
Mangaia	1,877	2
Atiu	1,266	2
Mauke	785	1
Mitiaro	307	1
Pukapuka (and Nassau)	718 (and 109)	1
Manihiki	1,006	1
Rakahanga	319	1
Penrhyn	628	1

(Manuae, with a changing population of plantation labourers, might be attached to either Rarotonga or Aitutaki.)

These figures would give each island the same representation as in the present Assembly except that Rarotonga, the population of which has markedly increased since 1957, would be given an additional representative. The membership of the Assembly would thus be twenty-two as compared with the present membership of twenty-six (see paragraph 34 above).

40 We have considered whether the legislation constituting the Legislative Assembly should write in an automatic method of adjusting representation according to changes in population. We feel, however, that this would be undesirable. We believe that the size of Assembly we are suggesting is adequate, and we would not feel that a substantial increase in the

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4 These population figures are taken from *Reports on the Cook, Niue and Tokelau Islands*, [1963] AJHR A3, 7.

population of the Cook Islands should necessarily lead to an increase in the number of members of the Assembly.

41 The abolition of the European seat will enable the distinction between "Native" and "European" electors to be abolished. We recommend that persons qualifying to be candidates and electors should be adult British subjects who:

- (a) in the case of persons born in the Cook Islands, have been resident there for the three months preceeding an election; and
- (b) in the case of persons not born in the Cook Islands, have been resident there for the twelve months proceeding an election.

42 Our attention was drawn to the fact that the Cook Islands Legislative Assembly Regulations 1958 (1958/120) make no provision for the payment of a deposit by candidates for election to the Legislative Assembly. This has led to there being such a large number of candidates at general elections and by-elections that the results may not have accurately reflected the wishes of the majority of voters. We suggest a deposit of £10 and a requirement that a candidate should forfeit his deposit if he does not obtain 25% of the votes received by the successful candidate or, in multi-member constituencies, by the successful candidate receiving the fewest votes.

43 Five of the twenty-one elected members of the present Legislative Assembly are public servants. This position is understandable, because in a developing country like the Cook Islands many of the best educated and ablest residents are likely to be employed in the Public Service. On the other hand, we are not surprised that the presence of elected public servants in the Assembly has led to difficulties, and we think that these difficulties are likely to increase under a Ministerial system. A public servant will be able, as a member of the Assembly, to criticise the actions of his Minister and of his own department. On the other hand, the member's position as a public servant may prevent him from effectively representing the interests of his constituents. And there is the danger that the presence of a member of the Assembly on the staff of a department will create problems of discipline within that department.

44 Our view is that it will not be possible to continue indefinitely to allow public servants to remain public servants while they are members of the Legislative Assembly, and we propose that there should be a transitional period of, say, six years. During this period public servants, with the exception of heads of departments and members of the Premier's department, might be permitted to sit as members on the following conditions:

- (i) Public servants elected to the Assembly would take leave without pay while the Assembly was in session and receive only the emoluments payable to members of the Assembly.
- (ii) The Secretary of the Premier's Department, acting with the concurrence of the Premier, should be entitled to transfer a public servant who was a member of the Assembly from one department to another, if the Secretary should think that this transfer was desirable in the public interest.

Towards the end of the six-year period the position should be reviewed, so that it might be decided whether public servants who became members of the Assembly should resign or be given leave without pay while they were members or whether the present position should be continued for a further period. The emoluments payable to members might also be involved.

45 The question of the payment of members of the Legislative Assembly has been discussed. We have no firm recommendation to make, but this is a question that might be considered by the same procedure as that adopted for determining the salaries and allowances of Ministers (see paragraph 23 above). We have some preference for the payment to members of a fixed annual payment, rather than a payment based on the number of days on which the Assembly sits; but, if there is strong support for the continuation of the latter practice, payment to members might be made up of:

- (i) a fixed annual payment - in part, this payment would reflect the responsibilities of members while the Assembly was not in session; and
- (ii) a daily payment while the Assembly was in session.

46 The Resident Commissioner at present presides over the Legislative Assembly, but in future the Assembly should elect its own Speaker. Desirably, this Speaker should be selected from the members of the Assembly, but the possibility need not be excluded of the Assembly choosing a suitable non-member for an interim period. The salary and allowances of the Speaker should be considered at the same time as the salary and allowances of Ministers and of members of the Assembly are being considered.

47 In drafting regulations to replace the Cook Islands Legislative Assembly Regulations 1958 (1958/120), consideration should be given to the extent to which it is proper for members of the Legislative Assembly to have contractual relations with the Cook Islands Government.<sup>5</sup>

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5 See ss 2(l) and 26 of the Electoral Act 1956 (NZ).

Clearly, there are some classes of contracts with the Government (for instance, those dealing with the disposal of fruit grown on a member's plantation) which must continue to be permissible.

**B Powers of Legislative Assembly**

48 Legislative Assembly Paper No 18 contemplated increases in the legislative powers of the Cook Islands Legislative Assembly. We agree that there should be such increases; indeed, we believe that the Assembly should be given complete legislative autonomy. This autonomy would involve the elimination of:

- (i) reserved enactments of the New Zealand Parliament, ie enactments which preclude the passing of inconsistent legislation by the Cook Islands Legislative Assembly;<sup>6</sup>
- (ii) the power of the Resident Commissioner to reserve bills for the Governor-General's pleasure;<sup>7</sup> and
- (iii) the power of disallowance given to the Governor-General.<sup>8</sup>

In addition it would need to be recognised that Parliament would not enact legislation applying to the Cook Islands except at the request or with the consent of the Assembly or the Government of the Cook Islands.

49 On the other hand, it should be accepted that some New Zealand legislation will continue to be in effect in the Cook Islands. The Cook Islands Government will find it difficult, if not impossible, to maintain the law drafting and legal advisory services which would be necessary if it were to undertake a comprehensive, legislative programme. It follows that the Cook Islands Government should, so far as possible, take advantage of legislation passed by the New Zealand Parliament. This could be achieved in two ways:

- (i) by requesting or consenting to the enactment by Parliament of legislation having force in the Cook Islands; or
- (ii) by the Legislative Assembly itself applying New Zealand legislation in the Cook Islands.

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6 Section 39, Cook Islands Amendment Act 1957.

7 Sections 42, 46 and 47, Cook Islands Amendment Act 1957.

8 Section 45, Cook Islands Amendment Act 1957.

50 Ideally, a request to the New Zealand Parliament that New Zealand legislation should be applied to the Cook Islands should be made by the Legislative Assembly of the Cook Islands, but in practice this will not often be possible. The New Zealand Government could not undertake to send its draft Bills for consideration by the Assembly before they are submitted to Parliament. For one thing, the Assembly would not always be in session at the appropriate time. The most that would be possible in many cases would be for the New Zealand Government to transmit a summary of the provisions of a Bill and to ask the Cook Islands Government whether that Bill should be made applicable to the Cook Islands. In any event, the elimination of reserved enactments would mean that the Assembly could always amend or repeal the New Zealand legislation in so far as it applied to the Cook Islands.

51 In many cases the Legislative Assembly might find the alternative procedure described in paragraph 49 above more convenient, ie the procedure under which the Assembly would itself pass an Ordinance making a particular New Zealand Act (with or without amendment) applicable in the Cook Islands.

52 There is later in this report a section dealing with the future relations between the Cook Islands and New Zealand (paragraphs 71 ff). Legislation passed by the Cook Islands Legislative Assembly which affects matters dealt with in that section eg legislation affecting external affairs may be of direct interest to the New Zealand Government. If this is the case, the Commissioner of the Cook Islands may wish, in his capacity as representative of the Government of New Zealand, to make representations to the Government of the Cook Islands. We believe that it would be appropriate that the Commissioner should make these representations to the Executive Council. We, therefore, propose that the procedure under which the Cook Islands Executive Council would refer Cabinet decisions back to Cabinet (see paragraph 33 above) should be extended to enable the Executive Council to refer Bills back to the Assembly for further consideration before they are assented to by the Commissioner. If the Assembly still wished to proceed with the original measure, the Commissioner would then be obliged to give his formal assent.

#### **IV POSITION OF TRADITIONAL LEADERS<sup>9</sup>**

53 In our discussions we took account of the position of the traditional leaders, the *Arikis*.<sup>10</sup> Although we have not felt ourselves competent to make an adequate assessment of their

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9 See comment by Professor Davidson at the end of this Report.

10 *Ariki*: the recognised ruler or chief of a tribe.

status, we were conscious that the traditional pattern of society in most Islands in the Group has to a large extent disappeared and that with this development the influence of the *Arikis* has waned. We were also aware that no family had established its ascendancy over the Cook Islands as a whole, as distinct from a particular island, and that in some islands there were no *Arikis*. The questions therefore arise: Is an attempt to give the *Arikis* an established position in the new constitutional structure practicable, and, if so, is it a true reflection of their political and social significance? Alternatively, would their deliberate omission from the constitutional structure mean that the final step was being taken to deprive the *Arikis* of influence and status at the "national" level?

54 The *Arikis* are now *ex officio* members of the Islands Councils and two of the three *Ariki* members of the Legislative Assembly are members under the present procedure enabling certain Island Councils to nominate members of the Assembly (see paragraphs 34 and 37 above). The third *Ariki* member was directly elected. Such support as there is for the retention of nominative seats in the Assembly is from those who feel that these seats provide an opportunity for *Arikis* to obtain a seat on the Assembly without their having to seek direct election. Nevertheless, it was obvious to us that you feel that the position of the *Arikis* does not itself provide a sufficient reason for retaining the seven nominative seats which at present exist. Indeed, our discussions with you suggested that you had little sympathy for a proposal that even one or two seats (eg one for Rarotonga and one for the Outer Islands) should be reserved for *Arikis*.

55 The possibility that the *Arikis* should compose a second Chamber a House of *Arikis* was raised, but we did not consider it a serious proposal, if only because a second Chamber would be an elaborate and expensive device for a small country like the Cook Islands.

56 We discussed one other proposal with you: that a selected *Ariki* might act as representative of the Queen. It was suggested that you might like - if not in the immediate period, then later-to contemplate a procedure under which a Cook Islander might be selected as representative of the Queen in the Cook Islands (see paragraph 32 above). This person might or might not be selected from the *Arikis*. The proposal was also made that during the immediate period you might like to have a Cook Islander sitting with the Commissioner of the Cook Islands and accepting with him joint responsibility for such of his functions as belonged to him as representative of the Queen. However, we interpreted the resolution of the Assembly favouring the appointment of a New Zealand official as an indication that you felt that any attempt to give any one *Ariki* a position of prominence would lead to an undesirable division of opinion and, perhaps, ill-feeling.

57 We feel that the *Arikis* still have an important part to play at the Island Council level, and you may consider that, if they wish to extend their political activities beyond that level, they should seek direct election to the Legislative Assembly. But it should be recognized that the result of this conclusion, in Rarotonga especially, is likely to be that the Premier and members of the Cabinet, and eventually, perhaps, a representative of the Crown who is a Cook Islander, will take over many of the ceremonial and social functions traditionally performed by the *Arikis*.

## V THE JUDICIARY

58 Part III of the Cook Islands Act 1915 constitutes the High Court of the Cook Islands. We believe that the High Court should continue to be the judicial authority in the Cook Islands, but questions arise as to the method of appointing Judges and as to the constitution of an appeal authority.

59 Judges and Commissioners of the High Court and Justices of the Peace are at present appointed by the Governor-General of New Zealand who in making the appointment acts on the advice of the New Zealand Government. In future these appointments should be made by the Executive Council, acting on the advice of the Premier or of the Judicial Service Commission referred to in the following paragraph.

60 The appointment of the Judge of the High Court, as the chief judicial officer in the Cook Islands, should be made on the advice of the Premier. To ensure the independence of other judicial appointments, they should be made on the advice of a body with non-political representation. We propose the establishment of a Judicial Service Commission for the purpose, consisting of:

- (a) the Judge of the High Court;
- (b) a person nominated by the Minister in charge of the Justice Department; and
- (c) a person unconnected with Government and nominated, with the concurrence of the Judge of the High Court, by the Minister in charge of the Justice Department.

The powers of the Commission should extend, in our opinion, to the appointment of Judges of the Native Land Court. When such an appointment was being considered, however, the Minister in charge of the Justice Department, in making nominations to the Commission, might find it advisable to include, for that occasion, a person with special knowledge of the work of that Court.

61 Appeals from the High Court of the Cook Islands are at present heard by the Supreme Court of New Zealand. We believe that, for the time being, there is no satisfactory alternative to the continuance of this arrangement. It has the disadvantages that it involves an appeal to a Court which is not a "Cook Islands Court" and can also involve litigants in considerable expense. On the other hand, there are no persons in the Cook Islands who might constitute an appellate court, and there are inadequate library facilities and no legal practitioners. The establishment of an appellate court in the Cook Islands would therefore involve the Government in the expense and difficulty of bringing judges from abroad, while litigants, if they were to have their cases presented in a satisfactory manner, would find it necessary to bring legal practitioners from New Zealand or elsewhere.

62 We should like to add, at this point, that the need to establish effective appellate procedures in Pacific countries like the Cook Islands suggests that this is a field in which there is scope, for collaboration between these countries. Discussions might be instituted on the possibility of an arrangement under which one country which wished to constitute a Court of Appeal might draw judges for that Court from neighbouring countries. Such an arrangement might eventually lead to the establishment of a South Pacific Court of Appeal.

63 The Supreme Court of New Zealand at present exercises some original jurisdiction in respect of civil and criminal matters arising in the Cook Islands. We have not given detailed consideration to the desirability of abolishing this jurisdiction, but we understand that it has on occasion proved to be an advantage to the Cook Islands authorities and to residents in the Cook Islands to have some cases heard in New Zealand. We propose, therefore, that the jurisdiction be maintained for the time being. The Cook Islands Government may wish to have the position reviewed at a later date.

## **VI CONTROL OF THE PUBLIC SERVICE**

64 At present, control of the Cook Islands Public Service is vested in the New Zealand State Services Commission, which, in practice, delegates certain of its powers to the Secretary to the Government of the Cook Islands. With the establishment of self-government it will become necessary to establish some form of wholly local control.

65 There seems to us to be two principal ways in which this might be done. Either a local Public Service Commission on New Zealand lines could be set up, or the Public Service could be administered by a senior official subject to the general policy control of Cabinet. Having regard to the size of the Cook Islands and to other conditions there, we have decided to favour the latter alternative.

66 We recommend that the Secretary of the Premier's Department should be appointed by the Executive Council, on the recommendation of the Premier. All other appointments in the Public Service should be made, we consider, by the Secretary. In respect of each senior position, including those of heads of departments and others carrying a salary above a certain figure (which Cabinet should designate), Cabinet should be informed of the name and qualifications of the person whom the Secretary proposes to appoint, and concur in the appointment.

67 In order to define the general limits within which the Secretary should exercise his powers, a body of public service regulations should be enacted. In addition, Cabinet should be given power to issue directions to the Secretary on matters of policy relating to the Public Service. From the beginning, in our opinion, such directions should include matters such as the salary structure of the Public Service, preference for local officers, the undertaking of appropriate training programmes, and the conditions under which imported officers may be appointed or reappointed. In these ways, Cabinet control in respect of broad policy objectives could most readily be reconciled with the administrative responsibilities of the Secretary.

68 We gave some attention to the desirability of establishing a system of appeal to an independent authority from decisions of the Secretary of the Premier's Department. We are clear that it would not be appropriate to provide a right of appeal in respect of those senior appointments that are referred to Cabinet in accordance with the procedure set out in paragraph 66 above; and we do not believe that imported officers, should be given the opportunity to appeal against the appointment of local officers.

69 The question whether a Board of Appeal should be established to deal with appointments other than those referred to in the last sentence of paragraph 68 is, in our view, a difficult one. It deserves more detailed examination than we have been able to give it and we have, therefore, decided to make no recommendation. We are aware that an appeal system, by providing a positive assurance to public servants that merit should determine promotion, is of great importance in maintaining harmony and a sense of confidence in the service. On the other hand, we are conscious that such a system can lead to decisions that impair the smooth working of the Executive Government; and that in the Cook Islands situation it will be difficult to constitute a Board of Appeal that does, in practice, command general confidence.

70 After local control of the Cook Islands Public Service had been established, it would still be important to retain the continuing interest of the New Zealand State Services Commission. The Commission, with its long experience and specialised staff, could offer assistance in a number of ways. We would hope, and we are sure you would too, that it would continue to make available to the Cook Islands its expert advice on such subjects as the drawing

up of salary scales, staff training, and the organisation and method of departments. We would expect, as well, that the Commission would agree to act as the agent of the Cook Islands Government in the recruitment of expatriate officers for positions for which there is as yet no local officer available. In carrying out this last function, the Commission, as well as the Cook Islands Government, should in future place emphasis on the need to select officers who not only have high professional qualifications in their particular field, but who also have the ability and desire to train local officers to succeed them.

## **VII RELATIONS WITH NEW ZEALAND**

71 Some aspects of the continuing relationship between the Cook Islands and New Zealand have been referred to in earlier sections of this Report. These include: the appointment by the Governor-General of a Commissioner of the Cook Islands; the retention of New Zealand citizenship; provision for the application of New Zealand legislation to the Cook Islands to the extent that the Legislative Assembly may decide; and the use of the New Zealand Supreme Court for the hearing of appeals. It remains for us to consider one or two more specialised aspects of that relationship and also the actual procedure by which the governments of the two countries might conduct the negotiations and discussions that the various aspects of their relationship will involve.

### **A External Affairs**

72 The conduct of the external relations of the Cook Islands will, of course, remain a responsibility of the New Zealand Government. This is a consequence of your choice of self-government, rather than independence. It is necessary to consider, however, the ways in which the New Zealand Government can be kept informed of the needs and wishes of the Government of the Cook Islands. In some cases of primarily Cook Islands concern, such as the conduct of negotiations to open up foreign markets to Cook Islands products, New Zealand might delegate to the Government of the Cook Islands the power to act on its own behalf. The latter Government might consider that in this way its interests would be best served. In other cases, the New Zealand Government would have to consult the Government of the Cook Islands on issues of external relations of concern to the Cook Islands, and sometimes, too, the latter Government would have to be informed of the consequences of international commitments entered into on its behalf by New Zealand. An example would be the ratification by New Zealand of an ILO Convention relating to some aspect of labour conditions. Here New Zealand would be required to take the initiative in asking whether the Cook Islands wished, in the particular case, to be associated with New Zealand's action; and, if the obligation were entered

into on behalf of the Cook Islands, the New Zealand authorities could advise the Cook Islands Government as to how legislative effect might be given to that obligation.

73 In all such cases the normal channel of communication between the two Governments should be the Commissioner of the Cook Islands in his capacity of New Zealand Government representative. The Commissioner would also need to concern himself with the impact of legislation passed by the Legislative Assembly in respect of such of New Zealand's international obligations as are related to the Cook Islands. It seems unlikely that there would be many instances of basic disagreement between the two Governments in relation to external affairs; but, if such disagreement should emerge, it would be natural for the particular subject of disagreement to be discussed directly between representatives of the two Cabinets.

74 It is difficult to define in advance the area in which the Cook Islands might wish to act on their own behalf. This might best be left for decision as a result of actual experience. However, certain subjects suggest themselves as possibilities. We have already mentioned trading arrangements relating to the disposal of the islands' major products. Similarly, if the Cook Islands wished to join neighbouring Pacific countries in the development of joint educational facilities or agricultural or other technical services, the Cook Islands Government might wish to take a particular responsibility for the conduct of negotiations.

75 The question arises as to the relationship of the Cook Islands to international organisations, and, in particular, as to whether the Cook Islands should seek membership, or associate membership, of any such organisations. In many cases, membership is ruled out by the fact that the Cook Islands will not be an independent state. In others, where it is not, the financial burden of membership would make it an impossibility in practice. New Zealand's membership of such organisations will, nevertheless, enable the Cook Islands to enjoy, as they do at present, the services which the organizations provide. The research and technical assistance programmes, for example, of FAO, WHO and ECAFE, can be extended to the Cook Islands in this way, without the need for separate Cook Islands membership.

76 The one organization in which separate Cook Islands participation seems likely to develop is the South Pacific Commission. A member of the Cook Islands Executive Committee has already attended a session of the Commission as a member of the New Zealand delegation. We are aware that the Commission is considering ways of enabling territories such as the Cook Islands to participate in its work in their own right. If and when this development comes to fruition, we believe that the Cook Islands should welcome it.

## **1 Finance**

77 The Government of New Zealand, like yourselves, recognises that substantial financial assistance will continue to be necessary to the Cook Islands for a long time to come; and it has been made clear that this assistance will be provided in the future, as at present. Under the present arrangements, responsibility for the provision of a substantial part of your revenue rests with New Zealand and control of its expenditure rests with the Government of the Cook Islands. The smooth working of such arrangements requires the display of goodwill and the exercise of restraint on both sides. And this in turn requires both the development of effective procedures for the conduct of financial discussions and the wide dissemination of knowledge of the actual facts of the situation.

78 You have indicated that you would like the New Zealand Government to determine its grants on a three-yearly basis, as it is doing at present. We agree with you on this matter. A period of three is long enough to permit you to plan ahead but not so long as to restrict you in necessary redefinition of your policies or to face you with the acute difficulties that might arise from unexpected changes in costs.

79 We consider that most of the preliminary discussions regarding proposals for each three-yearly period should be conducted between the Cook Islands Cabinet and the Commissioner of the Cook Islands, as representative of the New Zealand Government. When proposals have been finalised at that level, it might be desirable for direct discussions to take place with the New Zealand Government under the procedure discussed in paragraph 89 below.

80 The great freedom that the New Zealand Government already accords you in regard to the actual expenditure of New Zealand grants carries with it, of course, an obligation to satisfy New Zealand that your use of such funds is not extravagant and is regulated in accordance with an effective financial procedure. This does not mean that New Zealand would doubt the sense of responsibility or the political wisdom of the Cabinet or the Legislative Assembly. It is merely the common-sense way of ensuring the continuance of goodwill between the two countries. In this regard, we consider that the position of the Commissioner of the Cook Islands is an important one. Through the procedure that we have suggested for the Executive Council, he should be kept informed of any major changes from the pattern of expenditure that was envisaged at the time a three-yearly grant was being negotiated; and he should be able to express any views he might have on such changes. In such ways, at the level of inter-governmental negotiation, the financial relations between New Zealand and the Cook Islands would be kept on a smooth-working basis.

## 2 *Audit*

81 Audit procedure may also be referred to at this point. As part of the responsibilities of self-government, the Legislative Assembly should each year receive and discuss an auditor's report covering all matters relating to the receipt, custody, and expenditure of public money and government stores. Such a report is one of the most important ways in which a legislature can satisfy itself that, in its financial dealings, the executive government has acted in accordance with the authorisations given to it. In the Cook Islands, such a report will also serve to satisfy the New Zealand Government that its grants have been properly used.

82 Final responsibility for the presentation of such a report can only be reposed in a person of fine judgment, complete impartiality, and wide experience. It would be an extravagance for the Cook Islands to appoint an auditor of its own of sufficient seniority to satisfy these requirements. We, therefore, recommend that the New Zealand Government should be asked to allow the New Zealand Controller and Auditor-General to continue to perform these functions.

## 3 *Relations with New Zealand Parliament*

83 We have also considered what procedure might be developed, in addition to formal consultation between representatives of the executive governments of the two countries, for discussion between Cook Islands representatives and New Zealand Members of Parliament. In view of the position of Cook Islanders as New Zealand citizens and of Cook Islands dependence on New Zealand grants and on trade with New Zealand, it is obviously desirable that there should be some relationship between the Cook Islands and the New Zealand Parliament. The Cook Islands Government should be in a position to make its views known to Parliament and to inform itself of Parliamentary opinion. Moreover, Parliament itself should be as widely informed as possible on Cook Islands affairs.

84 It might seem that the obvious way of achieving this objective would be through provision for a Cook Islands member in the New Zealand Parliament. Such an arrangement would be a logical one, constitutionally; and there are ample precedents for it. It would ensure that full discussion of Cook Islands matters could take place publicly and with the participation of representatives of both New Zealand and the Cook Islands.

85 There are, however, a number of difficulties. On the New Zealand side, there would obviously be a reluctance to concede full voting rights to a Cook Islands member, since the residents of the Cook Islands do not pay New Zealand taxes and since the population of the territory is somewhat less than that of an ordinary New Zealand electorate. There might be less

objection to having a member with the right to vote only on matters relating exclusively to the Cook Islands, an arrangement that would be in line with Australian practice in regard to the representation of the Northern Territory in the Commonwealth Parliament. Either proposal, however, would represent an innovation from the New Zealand point of view: and one could not predict the reception that would be accorded to it by the New Zealand Parliament.

86 If the New Zealand Parliament favoured Cook Islands representation, it might consider that the Cook Islands member should, like all other members, be directly elected by the people. A member so elected would not necessarily share the views of the Government of the Cook Islands; and, in that event, his influence might tend to embarrass the Government in its direct dealings with New Zealand. Differing opinions may be held as to the importance of such a conflict of views; but it is at any rate, a matter to be borne in mind. From the Cook Islands point of view, there would be some advantage in having a member nominated either by the Cabinet or by the Legislative Assembly. Parliament might, however, find difficulty in agreeing to a system of nomination, as the direct election of members by the people is basic to its constitution and political role.

87 Parliamentary representation raises at least one further difficulty. A Cook Islands member would, presumably, receive the same salary and allowances as other members of Parliament. These emoluments might well be higher than those which the Cook Islands felt able to grant its own Ministers. If the member possessed only limited voting rights and, in practice, participated only in debates on Cook Islands matters, he would have very little work to do. Although for some period of the year he would have the expense of living in New Zealand, he would seem, in comparison with Cook Islands Ministers who would be bearing the main burden of government, to be overpaid.

88 We consider that the question of representation in the New Zealand Parliament may be deserving of your further consideration. On the other hand, it is clear that it raises a number of difficulties.

89 It seems to us that many of the advantages of such representation might be gained by other, and less controversial, means. Parliament might be asked to establish a Select Committee on Cook Islands Affairs that would meet each year with representatives of, the Government of the Cook Islands. Members of the Select Committee might visit the Cook Islands from time to time; and, in some years, the Committee might perhaps hold its formal meetings in Rarotonga, rather than in Wellington. Discussions could include consideration of New Zealand grants, of proposed legislation applicable to the Cook Islands, and of all other aspects of relations between New Zealand and the Cook Islands. The existence of such a committee would ensure

that a group of New Zealand Members of Parliament, from both the Government and the Opposition, was aware of Cook Islands problems and of the policy of the Government of the Cook Islands in regard to them. We believe that a possible solution along these lines merits your most serious consideration. If you should favour it, you should seek an assurance from the New Zealand Government that it would recommend its adoption to Parliament.

***B Cook Islands Representation in New Zealand***

90 We have given some thought to the matter of Cook Islands representation before such a Select Committee, if it should be set up; and this has led us also to consider other aspects of Cook Islands representation in New Zealand. We believe it would be wise for you to establish the practice that one member of Cabinet perhaps the Premier himself, when he was able to spare the time should visit New Zealand each year. In any particular year, other Ministers might also have to make visits, probably of shorter duration than the Premier's. We have it in mind that the Minister who would, be the principal representative of the Government of the Cook Islands should be able to undertake a number of tasks and to establish contact with various sections of the New Zealand community. He should, in our opinion, be accompanied by a senior member of the Cook Islands Public Service. Between them, they could handle a considerable proportion of, the business of the Cook Islands Government in New Zealand. This would include, of course, discussion with New Zealand Ministers and their senior officers and discussions with the Select Committee; but it would also include negotiations with commercial and other non-governmental bodies and participation in the interviewing of candidates for posts in the Cook Islands Public Service. Your government would, no doubt, make arrangements with New Zealand Government departments and agencies, and perhaps with private firms, for the conduct of routine business, such as the purchase of stores. But an annual visit along the lines we have suggested would ensure that the business of your Government was being carried out with efficiency and economy.

91 Possibly, in future, you may wish to consider the appointment of a full-time Cook Islands representative in New Zealand; but such an appointment, with the additional expenditure that it would necessarily involve for office accommodation and secretarial staff, seems likely to be unnecessary for some time to come.

92 Later in this Report (see paragraphs 99 ff) we are recommending transitional changes that would give members of the Executive Committee responsibilities similar to those which will be borne by Ministers when full Cabinet government is introduced. If these transitional arrangements are agreed to, we would consider it desirable for some members of the Executive Committee to visit Wellington to discuss the matters raised in this section of the Report. Our

proposals regarding relations between the Governments of the Cook Islands and New Zealand do not require any complex legislative changes for their implementation; but they are, dependent, in the main, on a full understanding by all concerned of the political and administrative procedures involved. Such an understanding could best be reached through direct discussion between representatives of the Cook Islands Government and members of the New Zealand Cabinet, Parliament, and Public Service.

### **VIII ENACTMENT OF CONSTITUTION**

93 Legislative action by the New Zealand Parliament will be required before effect can be given to certain of the recommendations contained in this Report. We propose that if these recommendations are acceptable to the parties concerned they should be incorporated in a New Zealand Act, preferably in a new Act with an appropriate title rather than by amendment to the Cook Islands Act 1915.

94 We have recommended (paragraph 48 above) that the Cook Islands Legislative Assembly should have full legislative competence and that in future there should be no New Zealand enactments, applicable to the Cook Islands, which are reserved so that they cannot be amended or repealed by the Assembly. Acceptance of this proposal in its entirety would mean that the Assembly could amend the constitutional enactment, referred to in the preceding paragraph. A special status and sanctity might be given to these constitutional provisions if the New Zealand enactment were to provide that its amendment by the Assembly should require a two-thirds majority at the second and third readings in the Assembly of the Ordinance involved and the elapse of ninety (90) days between the second and third readings. This procedure would ensure that ample opportunity was given for consideration of the issues involved, and that no important constitutional chance was made by a simple majority.

### **IX TRANSITIONAL ARRANGEMENTS**

#### ***A The Legislative Assembly***

95 We discussed with you some of the timetable Problems which arise in relation to the introduction of the proposals contained in this report. In the first place, authorising legislation will be required from the New Zealand Parliament. The present session of the New Zealand Parliament is about to close, and it is unlikely that it will be possible to pass comprehensive legislation affecting the Cook Islands before, say August or September of next year. Another complicating factor is that the Resident Commissioner is, under the provisions of section 33 (3) of the Cook Islands Amendment Act 1957, required to dissolve the Legislative Assembly of which you are members within three years of the last election ie not later than 4 May 1964.

96 It is obviously undesirable that an election should take place early in 1964 under the existing provisions of the Cook Islands Act relating to the composition of the Legislative Assembly (see paragraph 34 above). Members elected on this basis could reasonably expect to hold office for three years. Moreover, there is some advantage in the present Legislative Assembly staying in office until the present constitutional discussions have been completed. We propose that the life of the, present Assembly should be extended by up to one year. This would enable legislation to be passed in New Zealand giving effect to constitutional changes before the next election to the Assembly.

97 To make an extension of the term of office of members of the Legislative Assembly possible, an amendment to section 33 (3) of the Cook, Islands Amendment Act 1957 would be required. We have already proposed to the Minister of Island Territories that a provision should be incorporated in the Cook Islands Amendment Bill, recently introduced in the House of Representatives, to enable the Resident Commissioner to postpone the dissolution of the Legislative Assembly for up to one year. One of the clauses of the same Bill abolishes the European seat in the Legislative Assembly, but, if the proposed amendment to section 33 (3) were made, the European member would automatically retain his seat until the next election.

98 On the basis of this extension of the term of office of the Legislative Assembly, we envisage the following tentative timetable

- (i) August-September 1964 New Zealand legislation giving effect to new constitutional proposals;
- (ii) February 1965 dissolution of Legislative Assembly;
- (iii) April 1965 holding of election;
- (iv) May 1965 meeting of new Legislative Assembly, election of Speaker, selection of Premier and establishment of cabinet government.

#### ***B Establishment of Member System***

99 We discussed with you the possibility of taking steps of a transitional character to enable members of the present Legislative Assembly to gain more experience of the work of the executive government. We are particularly concerned that some members of the Assembly should be brought into closer touch with work in the departments as soon as possible. There is, some case for the immediate establishment of an informal cabinet system, but this would create some

difficulties because of the present statutory position of the Resident Commissioner, the Secretary to the Government and the Treasurer. We, therefore, propose that an Executive Committee<sup>11</sup> constituted under the present legislation should be made the basis of what has been called the "member system".

100 The present Executive Committee includes seven elected members who would ordinarily have expected to remain in office until about March 1964 when a general election would have been held. We suggest that the seven elected members of the Committee should be asked to resign before the end of the current session of the Legislative Assembly with a view to their replacement by five members ie the number of members we have recommended for the Cabinet.<sup>12</sup> The Assembly would then proceed to elect one of its members as Leader of Government Business. Although the Assembly would possess the power, under present legislation, to choose his four colleagues, it would seem wise to permit him to make the sole nominations for these positions. The Assembly would then formally elect the four nominees. If this procedure were followed, the members of the new Executive Committee would have the same sense of responsibility to the Leader of Government Business as the members of the future Cabinet will have to the Premier.

101 Each of the five new members of the Executive Committee should be allocated one or more departments for which they would be responsible. These departments would include the departmental responsibilities of the Secretary to the Government, which would be allocated to the Leader of the Government Business, and the departmental responsibilities of the Treasurer. The two officials concerned would remain primarily responsible for their departments while they remained members of the Executive Committee, but the Leader of Government Business and the member of the Committee allocated to the Treasury (who might be known as the Under-Secretary of Finance) would understudy the Secretary to the Government and the Treasurer respectively. It would be expected that other departments would also be allocated to the Leader of Government Business and the Under-Secretary of Finance.

102 The Resident Commissioner would continue to have the statutory authority to preside at meetings of the Executive Committee, but he should make a practice of not always attending

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11 See note to paragraph 10 above.

12 Section 8 of the Cook Islands Amendment Act 1957 (as substituted by s. 15 of the Cook Islands Amendment Act 1962) provides that the Executive Committee shall include not more than seven elected members of the Assembly, ie there could be only five such members.

meetings of the Committee, so that the Leader of Government Business could preside.<sup>13</sup> The Secretary to the Government should attend meetings regularly, but the Treasurer could frequently leave the representation of the Treasury in the Committee to the Under-Secretary of Finance.

103 It would be desirable that member of the Executive Committee responsible for particular departments should be allocated certain matters which fall within their direct authority, as distinct from matters on which they would be required to seek a decision from the Executive Committee. To make this possible, the delegation of the Resident Commissioner's functions and powers to the Executive Committee might be extended to cover delegation of any of the Resident Commissioner's functions or powers to a member of the Executive Committee.<sup>14</sup>

104 If the procedure set out above were adopted, elected members of the Executive Committee who were allocated responsibilities for particular departments would, in the Legislative Assembly, speak and introduce legislation on behalf of those departments. So far as possible, the Leader of Government Business and the Under-Secretary of Finance would speak on behalf of the Secretary's Department and the Treasury respectively, and the Secretary to the Government and the Treasurer could plan to be absent frequently from the Assembly.

105 Section 35 of the Cook Islands Amendment Act 1957 authorises the Resident Commissioner to preside over meetings of the Legislative Assembly; but, in the absence of the Commissioner, the members of the Assembly are to elect one of their number to preside. We suggest that it may be appropriate that the Resident Commissioner should commence a practice of absenting himself with increasing frequency from meetings of the Assembly and that you elect one of your number, other than a member of the Executive Committee, the Secretary to the Government or the Treasurer, to preside over meetings. That person would thus gain experience of the duties of Speaker of the Assembly.

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13 Under s 10 of the Cook Islands Amendment Act 1957 (as substituted by s 15 of the Cook Islands Amendment, Act 1962) the Deputy Resident Commissioner (who is Secretary to the Government) presides at meetings of the Executive Committee in the absence of the Resident Commissioner. An amendment to these provisions should ensure that the Committee can elect its own presiding officer in the absence of the Resident Commissioner.

14 This would be effected by the addition of the words "or to any member thereof" after the words "Executive Committee" s 9 (1) of the Cook Islands Amendment Act 1957 (as substituted by s 15 of the Cook Islands Amendment Act 1962).

### **1 *Island Councils***

106 We did not have an opportunity to discuss with you the future composition and functions of Island Councils; nor was this subject, perhaps, directly relevant to the matters on which you had asked for our advice. There are, however, several points that we should like to make.

107 If decisions are taken to bring into force the constitutional changes that we are recommending, the position of the Resident Agents, who are at present responsible to the Resident Commissioner, will be affected; and it would seem appropriate that their future relationship with Island Councils should be reviewed. Any other changes that you might wish to consider regarding Island Councils could usefully be discussed at the same time. If you undertook such a review during 1964, it would probably be desirable to postpone the forthcoming Island Council elections, in the same way as we are proposing in respect of Legislative Assembly elections (see paragraph 96 and 97 above).

108 There is, indeed, another (and more pressing) reason for considering such postponement. The present members of the Assembly elected by Island Councils will cease to be members of the Assembly when new Island Councils are elected. Our proposal that the Assembly remain in session for a further period would therefore mean that those members should continue in office until the Assembly itself is dissolved.

109 We, therefore, recommend, that the elections, for Island Councils should be postponed until 1965, when they might conveniently take place on the same day as the general election for the Legislative Assembly.

### **X *ACKNOWLEDGEMENTS***

We should like to say, in conclusion, that we appreciated the manner in which you, the members of the Legislative Assembly, assisted us in our work. Both in and outside the formal meetings of the Assembly you were both frank and kind. We are also grateful for the help we received from officials of the Cook Islands Government and for the sympathy and support given by the Resident Commissioner, Mr Dare. And this Report could not have been completed without the help of the secretaries in Western Samoa and in New Zealand who cheerfully struggled with innumerable drafts at unconscionable hours.

C C Aikman, J W Davidson, J B Wright, September 1963.

## **POSITION OF TRADITIONAL LEADERS**

### ***Comment by Professor Davidson***

1 I wish to add a comment on paragraphs 53-57 of the Report. I did not associate myself with my two colleagues when they raised with you various suggestions regarding the political position of the *Ariki*; nor do I associate myself with this section of the Report. I fully support my colleagues in their statement that little support was shown for any of the proposals put forward. On the other hand, I believe that the discussion of these proposals can do no good and may, indeed, tend to injure the harmony of political life in the Cook Islands.

2 The position of the *Ariki*, admittedly, has greatly changed during the period that has passed since the coming of Europeans to the Cook Islands. On the whole, this change has represented a decline in the powers that they formerly exercised. On the other hand, the position of certain *Ariki* has been built up, at various times, so as to give them a position of prominence in the central government. This latter change has been, in my opinion, merely a device of colonial government, with no adequate basis in custom and little support in Cook Islands opinion. I do not think it is wise to accord a special position to the *Ariki* in the political structure of the Cook Islands under self-government.

3 Like my colleagues, I do not think it is likely that you, would accord such a special position to the *Ariki*. However I think that the problem goes a little deeper than that. The colonial past cannot be sloughed off as painlessly as a snake sheds its skin. The position that some *Ariki* have occupied during parts of the colonial period could only be consigned to history through public debate to the accompaniment of political tension and some pain to those concerned. It would be far wiser, politically, in my opinion, to let the issue lie fallow for the present. Time will provide the answer; and I have little doubt what that answer will be.

## **SUMMARY OF RECOMMENDATIONS**

### ***General***

1 The Cook Islands should have a constitution which provides for full self-government but allows for continued association with New Zealand under a common Head of State, the Queen, and with a common citizenship, that of New Zealand (paragraph 7).

### *The Executive Government*

2 A cabinet should be chosen from members of the Legislative Assembly, and responsibility for particular departments or subjects allocated to individual Ministers in the cabinet. (paragraph 11)

3 The Cabinet should consist of a Premier or Chief Minister and four other Ministers. The Premier should be elected by the Assembly and he should select the other members of the Cabinet and allocate portfolios among them. (paragraphs, 12, 14 and 15)

4 The position of Secretary to Cabinet should be held by the permanent head of the Premier's Department who should occupy the position at present held by the Secretary to the Government and should, like him, be described in legislation as "the principal administrative officer of the Government of the Cook Islands". (paragraph 17)

5 The New Zealand State Services Commission should be asked to nominate a suitable person who would make recommendations as to the salaries and allowances of Ministers. (paragraph 23)

6 A statement of principles regarding the private interests of Ministers should be adopted by the Legislative Assembly. (paragraph 26)

7 A public servant should resign if he is appointed as a Minister, but some steps might be taken to protect his superannuation rights. (paragraph 27)

### *The Head of State*

8 The Queen should remain Head of State of the Cook Islands (paragraph 30)

9 For the time being the Queen's representative in the Cook Islands should be a New Zealand official who should also act as the representative of the New Zealand Government. This official should be known as the Commissioner of the Cook Islands and he should be appointed by the Governor-General of New Zealand on the recommendation of the New Zealand Government after consultation with the Government of the Cook Islands. (paragraph 31)

10 The possibility of separating at a later stage the functions of representative of the Queen from those of New Zealand Representative should be kept in mind. (paragraph 32)

11 An Executive Council comprising the Commissioner and the members of Cabinet should be established with power to discuss and to refer back to Cabinet, but not to vary or negative, any Cabinet decision. The Commissioner and the Premier should each have power to convene a meeting of the Council. (paragraph 33)

### *The Legislative Assembly*

12 All members of the Legislative Assembly should be elected by direct election of the adult population of the Cook Islands. (paragraph 37)

13 Each island in the Group should continue to comprise one constituency, except that Rarotonga might be divided into three multi-member constituencies. (paragraph 38)

14 There should be twenty-two members of the Legislative Assembly representing the various Islands as follows: Rarotonga (including Palmerston) 9 members, Aitutaki 3, Mangaia and Atiu 2 each, and Mauke, Mitiaro, Pukapuka (and Nassau), Manihiki, Rakahanga and Penrhyn one each. (Manuae might be attached to either Rarotonga or Aitutaki.) (paragraph 39)

15 Adult British subjects who were born in the Cook Islands and have been resident there for the three months preceding an election, and adult British subjects who were not born in the Cook Islands but have been resident there for the twelve months preceding an election, should qualify to be candidates and electors. (paragraph 41)

16 Provision should be made for the forfeit of deposits by candidates not receiving a certain percentage of the votes. (paragraph 42)

17 Except in certain cases and only for a transitional period it should continue to be possible for public servants who are elected as members of the Legislative Assembly to remain public servants. (paragraph 44)

18 The payments to be made to members of the Legislative Assembly and to the Speaker of the Assembly should be determined by the same procedure as that adopted for determining the salaries and allowances of Ministers. (paragraphs 45 and 46)

19 The Legislative Assembly should elect its own Speaker, preferably from among its own members. (paragraph 46).

20 The Legislative Assembly should, be given complete legislative autonomy, including the power to amend or repeal all New Zealand legislation in force in the Cook Islands, and the powers of reservation and disallowance at present held by the New Zealand Government should be eliminated. The New Zealand Parliament might continue to legislate for the Cook Islands at the request or with the consent of the Cook Islands' Government. (paragraphs 48-50)

21 The Executive Council should have power to refer Bills back to the Legislative Assembly for further consideration before they are assented to by the Commissioner. (paragraph 52)

### ***The Judiciary***

22 The Judge of the High Court of the Cook Islands should be appointed by the Executive Council acting on the advice of the Premier. (paragraph 59)

23 Judges of the Native Land Court, Commissioners of the High Court, and Justices of the Peace should be appointed by the Executive Council on the advice of a Judicial Service Commission. (paragraph 60)

24 Appeals from High Court of the Cook Islands should for the time being continue to be heard by the Supreme Court of New Zealand. (paragraph 61)

25 Discussions should be instituted on the possibility of an arrangement with other South Pacific countries under which a country wishing to constitute a Court of Appeal might draw judges for that Court from neighbouring countries. (paragraph 62)

26 The Supreme Court of New Zealand should for the time being continue to exercise the original jurisdiction which it exercises at present in respect of civil and criminal matters arising in the Cook Islands. (paragraph 63)

### ***Control of the Public Service***

27 The Secretary of the Premier's Department should be appointed by the Executive Council on the recommendation of the Premier. All other appointments in the Public Service should be made by the Secretary, but in respect of each senior position Cabinet should be informed of the name and qualifications of the person whom the Secretary proposes to appoint, and concur in the appointment. (paragraph 66)

28 In order to define the general limits within which the Secretary, should exercise his powers, a body of public service regulations should be enacted and Cabinet, should be given power to issue directions to the Secretary on matters of policy relating to the Public Service. (paragraph 67)

### ***Relations with New Zealand***

29 The conduct of the external relations of the Cook Islands should remain a responsibility of the New Zealand Government. In some cases New Zealand should delegate to the Cook Islands Government the power to act on its own behalf and in others should consult or inform the latter about its actions. (paragraph 72)

30 The grants made by the New Zealand Government to the Cook Islands Government should continue to be determined on a three-yearly basis. (paragraph 78)

31 Preliminary discussions regarding proposals for each three-yearly grant should be conducted between the Cook Islands Cabinet and the Commissioner of the Cook Islands as representative of the New Zealand Government. The Commissioner should be kept informed through the Executive Council of any major changes from the pattern of expenditure that was envisaged at the time a three-yearly grant was being negotiated. (paragraphs 79 and 80)

32 The New Zealand Government should be asked to allow the New Zealand Controller and Auditor-General to continue to audit the accounts of the Cook Islands Government. (paragraph 89)

33 The New Zealand Government should be asked to recommend that the New Zealand Parliament establish a Select Committee on Cook Islands Affairs to meet each year with representatives of the Government of the Cook Islands. (paragraph 82)

34 At least one member of the Cook Islands Cabinet should visit New Zealand each year to represent the Government of the Cook Islands. (paragraph 90)

35 If the transitional measures listed in recommendations 39 to 42 below are agreed to, some members of the Executive Committee should visit Wellington to discuss the questions raised in the section of this report dealing with relations with New Zealand. (paragraph 92)

#### *Enactment of the Constitution*

36 Recommendations in this Report which are acceptable to the parties concerned and which require legislative action should be incorporated in an Act of the New Zealand Parliament which is not merely an amendment to the Cook Islands Act 1915. (paragraph 93)

37 The Constitution Act should provide that its amendment by the Cook Islands Legislative Assembly should require a two-thirds majority at the second and third readings in the Assembly of the Ordinance involved and the elapse of ninety days between the second and third readings. (paragraph 94)

#### *Transitional Arrangements*

38 The term of office of the present Legislative Assembly should be extended by up to one year to enable legislation to be passed in New Zealand giving effect to constitutional changes before the next general election to the Assembly. (paragraph 96)

39 The Executive Committee of the Assembly constituted under the existing legislation should be made the basis of a "member system". (paragraph 99)

40 The present seven elected members of the Committee should be asked to resign and the Assembly should, before the end of its current session, elect a Leader of Government Business and four other members chosen by him. (paragraph 100)

41 Each of the five new members of the Executive Committee should be allocated one or more departments for which he would be given responsibility, but the Secretary to the Government and the Treasurer should remain primarily responsible for their departments until the new constitution comes into force. The Leader of Government Business and an Under-Secretary of Finance should understudy the Secretary to the Government and the Treasurer respectively in the Executive Committee and the Legislative Assembly. (paragraphs 101 and 104)

42 The Resident Commissioner should continue to have power to preside at meetings of the Executive Committee and of the Legislative Assembly, but he should make a practice of not always attending. The Leader of Government Business would then preside at meetings of the Executive Committee and a member elected by the Assembly at meetings of the Assembly. (paragraphs 102 and 105)

43 The relationship of the Resident Agents with the Island Councils should be reviewed in the light of the new constitution. (paragraph 107)

44 The next elections for the Island Councils should be postponed until 1965 and should take place on the same day as the general elections for the Legislative Assembly. (paragraph 109)

## ANNEX

### LEGISLATIVE ASSEMBLY OF THE COOK ISLANDS 1963

#### LEGISLATIVE ASSEMBLY PAPER NO 18

#### *Legislative Assembly of the Cook Islands*

#### RAROTONGA

#### *Members*

#### **FUTURE POLITICAL DEVELOPMENT**

By direction of the Hon Minister of Island Territories I have the honour to present the following proposals for future political development in the Cook Islands.

Members will recall that at its last session the Legislative Assembly was asked to consider the four possible alternatives of complete independence, integration with New Zealand, a Polynesian federation and full internal self-government as a means of deciding the political future of the Cook Islands. On 13 July 1962 the Assembly passed the following resolution

This Assembly:

- (i) Records, its appreciation of the Minister's speech and of the New Zealand Government's proposals as outlined by him for the future political development of the Cook Islands;
- (ii) declares that full independence as recently granted to Western Samoa is not the goal of the people of the Cook Islands;
- (iii) requests that the New Zealand Government proceed with its plan for giving the Cook Islands the fullest (possible degree of) internal self-government, while at the same time preserving for the Cook Islands people their present status as New Zealand citizens;
- (iv) reaffirms its loyalty to the Crown and its faith in New Zealand's willingness to continue giving aid and assistance to the Cook Islands without thought of any gain, other than the friendship and goodwill of the people.

Since that date an Executive Committee has been elected by secret ballot as a first step in meeting the expressed desire of the Cook Islands people to advance towards full internal self-government and this Committee was given legal status with the passing of the Cook Islands Amendment Act 1962. This Act also defined the powers and functions of the Committee. The Committee has had almost twelve months' experience in dealing with the more important and complex problems of administration and the time has now arrived when further steps should be taken along the road of political development. As a basis for discussion the New Zealand Government has prepared a programme for the future, and Members are now asked to consider the following timetable:

1964: (i) "The two official members appointed by the Resident Commissioner to be withdrawn from the Legislative Assembly."

In effect this would mean that in addition to the President, the only official members in the Assembly *next* session will be the Treasurer, and the Secretary to the Government.

(ii) "The Executive Committee to be reconstituted as a Cabinet."

The present Executive Committee acts under authority delegated to it by the Resident Commissioner. Next year it is intended that the Executive Committee will be re-named "Cabinet"

and, together with the Resident Commissioner (and, subject to the wishes of the Assembly, perhaps the Secretary to the Government) it will become the major policy-making executive of the Cook Islands. In New Zealand the Cabinet consists of Ministers who have been allocated responsibility for separate departments within the Government. This system operates very well in a country which has a population of two and a half million persons, but in the Cook Islands with a population of about 20,000 the territory is far too small to support such a structure. Rather than having a Minister of Agriculture, a Minister of Finance, a Minister of Radio, Transport, etc, each with his own office and staff, it is proposed that the new Cabinet should have a collective responsibility rather than an individual one. In other words Cabinet next year should function in the same manner as the present Executive Committee except that it will legally be given the power of decision on all matters of policy, rather than exercising any functions delegated to it by the Resident Commissioner.

(iii) "Legislation to be enacted to withdraw the Treasurer from the Assembly in 1965."

The Treasurer of the Cook Islands, together with the Secretary to the Government, is appointed under section 32 of the Cook Islands Amendment Act 1957 as a member of the Legislative Assembly. By 1965, it is anticipated that the Assembly will have gained sufficient experience to conduct its business without the assistance and guidance of the Treasurer as an official member and it is, therefore, proposed that this officer should cease to be an official member in two years' time. When this stage is reached the only official members remaining in the Assembly will be the Resident Commissioner and the Secretary to the Government. It could be arranged that the Treasurer, or any other Departmental Head, could be present if required by the Assembly but in such case he would, of course, have no right to vote. The Cabinet, also, would be entitled to call for the presence of the Treasurer when required at Cabinet meetings.

(iv) "Programme of progressively removing the reservation from New Zealand legislation . . . thus enabling local legislation to be substituted."

The Cook Islands are administered under the provisions of the Cook Islands Act 1915, and its amendments. With minor exceptions the whole of this Act is "reserved" which means in effect that the Cook Islands Assembly is at present, unable to pass Ordinances on matters which are the subject of New Zealand legislation. In conformity with the policy of placing increasing responsibility on the local legislature it is contemplated that each year the reservation on certain sections of New Zealand legislation shall be removed to enable local Ordinances to be substituted in their place. This year, for instance, a start will be made by revoking the Cook Islands Immigration Regulations 1937 and this session, members will be asked to consider a local Ordinance dealing with immigration and emigration procedure.

1965: (i) "Withdrawal of the Resident Commissioner from the Legislative Assembly and his appointment as constitutional head of state."

(ii) "Establishment of an Executive Council presided over by the head of state."

In 1965 it is proposed that the Resident Commissioner withdraw from the Assembly and take up his appointment as, the New Zealand Government's representative in the Cook Islands. He will also withdraw from Cabinet. Although the title of "head of state" has not yet been decided upon, his functions shall be similar to those of the Governor-General in New Zealand. His link with the Executive Government will be preserved through an Executive Council which will be formed in 1965. This body will simply be the members of Cabinet meeting together under the presidency of the "head of state"; the Council will have power to review or refer back to Cabinet any decision taken by Cabinet in any case where some doubt may exist about the correctness of such decision. This is based on the broad outlines of the system adopted in Western Samoa, and a copy of Article 40 of the Constitution of Western Samoa which sets out the functions of the Executive Council, is attached to this paper for the information of Members.

(iii) "Further increase in legislative powers of the Assembly."

As mentioned previously the programme of progressively removing the reservation on New Zealand legislation will be continued year by year.

The timetable set out above is in very broad outline and there are several other important matters of detail which should be decided by the Assembly if the political programme is agreed to. One course which should be taken at an early date is to elect a member of the Executive Committee as "Leader of Government Business." This member should sit (in the Assembly) with the Secretary to the Government to gain experience in the position and then replace the Secretary when he is competent to handle by himself the various matters which are dealt with in the Assembly meetings. Another decision is required as to whether the Secretary to the Government will continue to remain a member of Cabinet after the Resident Commissioner retires from that body. I feel sure that Cabinet would welcome his continued advice and assistance in their deliberations (particularly in the early stages), but the point should be decided whether he is to have full voting rights or whether he should sit in Cabinet as an ex officio member without voting rights.

Members of the Assembly are therefore asked to consider the proposals set out above and to decide for themselves whether the timetable for future political development is acceptable to them. Members will recall that when the Minister of Island Territories was in Rarotonga recently he stated at a public meeting that "The New Zealand Government had opened the door to

political advancement and it is up to the people of the Cook Islands to walk through it as slowly or as quickly as they please." The pace of development is to be decided, not by New Zealand, but by the Cook Islands people themselves. To assist the New Zealand Government in its planning for the future, the Assembly is asked to indicate its acceptance or otherwise of the timetable included in this paper.

*A 0 Dare*

*President of the Legislative Assembly*

#### APPENDIX

#### ARTICLE 40 OF THE CONSTITUTION OF WESTERN SAMOA

##### *Consideration of Cabinet Decisions by Executive Council*

40 (1) The Head of State, acting in his discretion, or the Prime Minister may summon a meeting of the Executive Council to consider any decisions recorded in the minutes of a Cabinet meeting.

(2) If at a meeting of the Executive Council thus summoned the Head of State supports the decision concerned, that decision shall take effect as a decision of Cabinet.

(3) If at a meeting of the Executive Council thus summoned the Head of State opposes the decision concerned or requests any amendment thereto, Cabinet shall thereupon be summoned under the provisions of Article 36 and requested to reconsider that decision.

(4) If Cabinet after that reconsideration reaffirms its original decision or accepts the amendment requested by the Head of State, the original decision or the decision as so amended, as the case may be, shall forthwith take effect as a decision of Cabinet.

(5) If Cabinet after that reconsideration adopts a decision which incorporates an amendment to its original decision, other than an amendment requested by the Head of State under the provisions of Clause (3), the decision as so amended shall operate as a new decision of Cabinet to which the provisions of Clauses (5) and of Article 37 shall apply.

