

Tokelau constitutional development

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I. Background

Tokelau¹ is three small atolls close to the equator north of Samoa inhabited by approximately 1,600 people of Polynesian tradition. After first European contact in the 18th century Tokelau became, successively, a British protectorate in 1889, part of a British colony in 1916, a British territory, and finally a part of New Zealand by 1949. In 1962 New Zealand placed Tokelau on the list of colonies and non-self-governing territories watched over by the United Nations Committee of 24.

Physically and geographically Tokelau's identity is clear and virtually beyond dispute.² Its population is also clear and virtually beyond dispute.³ Tokelau regards itself as a single entity with close cultural, familial, religious, and language links. What is not so clear at the constitutional legal level is the governmental identity of Tokelau. The difficulty in this area can be seen to arise from the fact that Tokelau comprises several atolls. In accordance with custom each atoll is governed by its council of elders and each island is in that sense governmentally independent and separate from the others.⁴ At the time of first European contact there was communication between the atolls by sailing canoe and they were run as a feudal domain under the kingship of the leader of Fakaofu. The other atolls paid annual tribute to Fakaofu.⁵ More recently that kingdom was abolished following the introduction of Christianity to Tokelau in the 19th century. Travel by small boat between the islands was prohibited by the British government early in the 20th century.

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¹ Basic material on Tokelau and its law is found in A H Angelo, "Tokelau — Its Legal System and Recent Legislation" (1987) 6 *Otago Law Review* 477, "Tokelau" in M Ntuny (ed) *South Pacific Islands Legal Systems* (Honolulu, 1993), *Report of the Administrator of Tokelau for the year ended 30 June 1993* (Wellington, 1994), *Report of the Administrator of Tokelau for the year ended 30 June 1994* (Wellington, 1995), *Report of the United Nations Visiting Mission to Tokelau 1994 A/AC.109/2009*, 7 September 1994. The recent Tokelau documents referred to in this paper — the Delegation to the General Fono, the Standing Orders of the General Fono, the Letter of Understanding, the National Strategic Plan, and the "Voice of Tokelau" — may be found in Rosemary Gordon *Tokelau: A Collection of Documents and References Relating to Constitutional Development* (2nd ed, Apia, 1995).

² Tokelauans still claim the fourth atoll of the archipelago, Olohega, which was incorporated in the US territory of American Samoa in 1925. See Angelo and Kirifi "The Treaty of Tokehega — an exercise in law translation" (1987) 17 *VUWLR* 125.

³ Tokelauans regard being Tokelauan as a cultural matter. The citizenship law operates on the basis of place of birth or descent. The law as to the population and the cultural expectation therefore do not always coincide.

⁴ Tokelau Village Incorporation Regulations 1986, *NZ Statutory Regulations* 1986/319.

⁵ See Hooper "Ghosts of Hierarchy I: The transformation of chiefly authority on Fakaofu, Tokelau" and Huntsman "Ghosts of Hierarchy II: Transformations of the wider Tokelau polity" (1994) 7 *History and Anthropology*, pages 307-320, and 321 to 338 respectively.

For all external governmental purposes and at the international level Tokelau is regarded as a unit. There is however no traditional body that can speak legally for Tokelau. The New Zealand Government early recognised the need to develop a body with territory-wide influence and, building on the pattern of traditional meetings, developed a system of annual or twice yearly meetings of representatives from the three islands as a General Fono to deal with matters of common interest such as the cargo boat schedule, communications with the outside world, the copra trade, schooling, and building programmes.

The General Fono has over the last 10 or 12 years become so well settled in its practice that the holders of the powers (*e.g.* New Zealand Government officials) have, in some instances and in some areas, not exercised their legal authority. The result by 1990 was that the practice of the General Fono had been accepted, in the absence of formal legal decision, to be the rule for Tokelau. This affected matters of finance, policy, and executive government.

The General Fono is not established by law and it is referred to only twice in the law.⁶ It does however have a life of its own and practices have been established relating to its operation. It now meets several times a year and, by virtue of the delegation of power to it by the Administrator in 1994, takes all major decisions for Tokelau. In particular it controls the finances of Tokelau.

In the context of the exercise by Tokelau of its right to self-determination and the operation of the United Nations' guidelines⁷, it is crucial that Tokelau should develop the institutions and the patterns of self-government that make the options of government in free association with another state or independence, real options. For this reason too there is a need for a Tokelau-wide body — for an authority with power to make Tokelau policy.

II. Steps to self-government — 1992-1994

The last three years have been a period of intense governmental development in Tokelau. Some of that development has been desired by Tokelau, some of it has been planned for, and some has been coincident with events outside the control of the government of Tokelau.

1. Physical location

The three villages of Tokelau — Atafu, Nukunonu, and Fakaofu — have always been self-governing, but the territory as a whole has been governed from outside since the arrival of European interests. Tokelau has long desired to bring its government home.

The government has been from the outside in two senses. It has been physically situated outside Tokelau and it has been government by non-Tokelauans. Early

⁶ Tokelau Amendment Act 1982 (NZ Statutes no.148 of 1982), and the Tokelau Administration Regulations 1993 (NZ Statutory Regulations 1993/257).

⁷ Principally United Nations Resolutions 1514 (XV): Declaration on the granting of independence to colonial countries and peoples, and 1541 (XV): Principles which should guide members in determining whether or not an obligation exists to transmit the information called for under article 73e of the Charter.

administration was by the Western Pacific High Commission in Suva, then by the government of the Gilbert and Ellice Islands Colony from Ocean Island, and latterly in a range of forms by the New Zealand Government from Western Samoa.

Since the 1960s the visible aspect of Tokelau government was the Office for Tokelau Affairs situated in Apia, Western Samoa. The head of the Office and head of the Tokelau Public Service was the Official Secretary who was typically an official of the Ministry for foreign affairs in Wellington. This Office was, in Western Samoan terms, a big enterprise with a large staff, workshops, stores, radio station, surgery, and general responsibility for the nearly 200 members of the Tokelau Public Service working in Apia and Tokelau. The Office was not a diplomatic post and operated in Western Samoa as an ordinary commercial or business activity. The Government of Western Samoa was however supportive of Tokelau interests in a number of ways and the peculiar nature of this government of Tokelau from a distance seems not to have caused any serious problems in Western Samoa. It was even the case on at least one occasion (regarding the status of the Tokelau Office in Apia) that the Government of Western Samoa was more ready to recognise the nascent national government of Tokelau than were the New Zealand authorities.

The siting of the Tokelau government outside rather than in Tokelau was largely a matter of necessity for colonial administration. Communications with and within Tokelau have for a long time been rudimentary. Till 1993 there was no internal shipping service, and the supply ship operating from outside came infrequently and according to no reliable timetable. Telecommunications remain rudimentary. The establishing of Apia as the base⁸ for Tokelau supply, communications and administration therefore was a fairly natural choice for the Government of New Zealand when Great Britain transferred administrative responsibility for Tokelau to New Zealand in 1926. The consequence of this for Western Samoa has been that it has had all traffic for Tokelau flowing through it and that a large portion of the Tokelau budget has been spent there.

The feeling in Tokelau of loss of control of its affairs increased as the size of the Tokelau budget expanded, the number of public servants grew, and the nature and sophistication of services developed. There was general agreement that this state of affairs would have to change, but without better communications it was not clear how a change might be managed. A major effort was made in the 1980s to establish an international telephone link but was, for technical reasons, unsuccessful. At about the same time there was also the transfer to the villages of responsibility for public works projects in the villages. In 1988 another step to localise government was taken with the appointment of a Tokelauan to the position of Official Secretary. From that time on the Tokelau Public Service was effectively a Tokelauan one, though the question of taking the service home remained.

⁸ And in 1941 as the port of entry for Tokelau by Ordinance 1 of 1941 — An Ordinance further to amend the Gilbert and Ellice (Quarantine) Regulations 1909, and the Gilbert and Ellice (Customs) Regulation 1912, *Western Samoa Gazette* Supplement, 4 March 1941, 805.

At this point nature intervened. In 1990 and 1991 there were major cyclones in the region and parts of Tokelau were devastated. All available human and material resources were mobilised to restore and rebuild the islands and that involved more public servants being based in Tokelau than would otherwise have been the case. The opportunity was taken to begin the permanent move for many of the Tokelau public servants.

The physical move began in a small but determined way after the cyclones. A final link in the chain was made with the arrival in Tokelau in 1992 of a new purpose built inter-atoll vessel, the *Tutolu*. With the *Tutolu* came inter-atoll mobility for Tokelauans generally and for the civil servants in particular. The way was then largely clear for the locating of most government services in Tokelau, for their substantial rationalising, and even for the expansion of some of them.

A good telecommunications link was not in place but, with the prospect of a satellite link in the near future, all attention was directed to making the big shift from Apia. Several things then became apparent. The islands were not physically equipped to accommodate the arrival of all the new residents. Decisions had to be taken about which island the services should go to — which departments and services should be located where? Related questions were whether there should be a capital village and whether the head offices of departments should rotate among the atolls or be shared. Several of these issues remain officially unresolved. However the Public Service has returned home and, in the absence of formal decisions, the leaders, the *Faipules*, have shared the departments among the islands and have agreed that the centre of government will shift from one village to the next on an annual basis as the role of chief minister rotates among the *Faipules*.

2. The executive authority

There were New Zealand government changes too in the same period. Mr Brian Absolum a senior New Zealand diplomat, was appointed as Administrator of Tokelau. This was significant because Mr Absolum was the first full-time appointment to the post.⁹ After a short but busy time in office he was followed in March 1993 by another senior diplomat, Mr Lindsay Watt, again as a full-time Administrator of Tokelau.

The move of the Tokelau civil service to Tokelau brought into stark relief the constitutional realities of Tokelau's situation. For many years major policy decisions and budget allocations had been made by the General Fono. That body had however no legal status, no legal powers, and no executive machinery to oversee the implementation of its decisions. The legal powers were all held in Wellington. The New Zealand Parliament or the Governor-General in Executive Council held the legislative powers, and the Administrator of Tokelau and the State Services Commission between them held the executive power. With the shift from Apia, the management of Tokelau became even more remote from the governors in Wellington on a day to day basis. The people of Tokelau

⁹ In prospect at that time was the visit of the delegation from the United Nations Committee of 24 to monitor the decolonisation progress in Tokelau.

were left wondering where the power really was while ever present in the mind of the New Zealand government was its responsibility under the United Nations Charter to develop self-government in Tokelau as a prelude to the exercise of the right to self-determination.

Tokelau therefore had the task of forming an island-based national government to take over from the external agencies.

Ideally such a development required devolution of authority by law, but contemplating that constitutional step immediately raised questions about the identity of the General Fono and also to whom the executive governmental powers could be transferred. That person or body (and it was assumed that it would be the General Fono) needed to be more clearly identified. How many members should it have? How should they be chosen? What should be the representation of each atoll? Should representation be on the basis of equality, or should it be on the basis of population? Having identified the national body, the next question was to determine the bases upon which it might take legally binding decisions. What for instance should the quorum be, and should any quorum take account of representation from each of the three atolls? Should decision-making be by consensus in accord with tradition, or by vote? And if by vote, should it be by simple majority? Should any majority include the votes of at least some members of each of the atolls?

Once the initial decisions about the identity and rules for the national governing body for Tokelau were taken it was still necessary to identify an executive committee or secretariat which could, between meetings of the General Fono, take the decisions necessary for the administration and executive government of Tokelau. New questions arose in connection with such a secretariat. First there was the question of its identity and in particular how many persons it should include. In the past, when the General Fono was not sitting, decisions were taken by the head of the Tokelau Public Service (the Official Secretary) in consultation with the Faipule of each island. The easiest approach was for that practice to continue. It had worked well, though in many cases that had been so because it was informal and lacked legal authority. For communities used to running their own affairs on a communal and consensual basis, the thought of vesting power in one person or in three persons, two of whom were outside a particular village, was not easily accepted.

Eventually it was agreed that the chief executive body would be the General Fono and that it would act through the three Faipules, "the Council of Faipule", which would also be its standing committee. This was confirmed in August 1992 when the General Fono adopted a set of standing orders for the better conduct of its affairs. The Standing Orders state that "The Chairperson of the General Fono shall be the Chairperson of the Council of Faipule". "Where the General Fono is not in session, business of the General Fono shall be referred to the Council of Faipule which shall, after such consultation as it thinks fit, take the decisions necessary for the effective administration of Tokelau". The same meeting also decided that the "members of the General Fono should continue to be chosen by the Village Council in the traditional way but be limited to nine for each island, including the Faipule and the Puluenuku".

3. Delegation of powers

On the legal side little has been visible of the major changes taking place. Since 1992 there have been only three published documents of constitutional significance. Two of those were New Zealand legislation: the Tokelau Administration Regulations 1993,¹⁰ and the Tokelau Amendment Act (Community Services Levy) Order 1994.¹¹ The third was the resolution¹² at the United Nations which accepted the report of the 1994 Visiting Mission to Tokelau.

The reason for the lack of visible activity is that both the Administrator and the State Services Commissioner have devolved authority to Tokelau by means of delegation. The State Services Commissioner was able to do this under the existing law, section 7 of the Tokelau Amendment Act 1967; the power is now exercised in Tokelau by two Commissioners, Mr Michael Collins of Wellington and Mr Feleti Lopa of Atafu. These two were responsible for appointing a new set of Directors for the Tokelau Public Service in December 1993 and for overseeing the early moves for the location of the Service in Tokelau. The position of Official Secretary was dis-established, and a officer on a term appointment acted as transition officer in Apia until the new regime was in place.

The changes were not so easily made in the case of the Administrator. The Tokelau Administration Regulations 1980 permitted delegation only to the members of the Tokelau Public Service. Accordingly a small legislative change was needed to give the Administrator a power of the kind exercised by the State Services Commissioner. The result was the Tokelau Administration Regulations 1993. Though the regulations were ostensibly new, the substantive change was the small one in relation to the power to delegate.¹³ The regulations came into force on 1 October 1993, and on 27 January 1994 after substantial consultation with Tokelau the Administrator delegated to the General Fono "all the powers exercisable by me in respect of Tokelau under any enactment" and further provided that "the Council of Faipule may exercise any power delegated to the General Fono by this present delegation, in any case where the General Fono is not in session".

The General Fono met in late January 1994 and responded enthusiastically to the devolution of power. Such was the enthusiasm that Tokelau wished to declare a public holiday to celebrate — only to discover that power to do so was vested in the Governor-General in Wellington!¹⁴ Speaking for the Council of Faipule in a message to the Administrator on 31 January 1994 the Ulu (Chairperson of the Council of Faipule) described the delegation as a "lengthening of the string" that holds Tokelau and New Zealand together. He expressed the hope that the "endeavour to exist as one people and deal with the world outside of Tokelau as one nation" would not take long. On the same date a message was received from Teata Tinielu, speaking for the Elders of Tokelau. He said Tokelau had

¹⁰ NZ Statutory Regulations 1993/257.

¹¹ NZ Statutory Regulations 1994/187.

¹² A/AC.109/2009

¹³ Cp. Regulation 5(1) of the 1980 regulations with regulation 5(1) of the 1994 regulations.

¹⁴ See Acts Interpretation Act 1924 (NZ) which was extended to Tokelau by s.8 of the Tokelau Act 1948. See also Public Holidays Ordinance 1917 (Ordinance 7 of 1917 of the Gilbert and Ellice Islands colony).

known autonomy before but that that was in the running of the villages. Now “we can draw on both the old and the new to come together as one person” — as one nation. His message ended “A new dawn has arrived. Malo Fakafetai”.

In discussions before the making of the delegation, the Faipules had raised a number of issues about the delegation. What exactly were the powers that would be delegated? What authority could the Administrator give? What power would remain with him or some other officer of the Crown in New Zealand? What, if any, conditions were attached to the delegation? When, if at all, would the Administrator exercise the powers personally in order to intervene in the conduct of Tokelau affairs by Tokelau? What if things went wrong? How could Tokelau deal with matters outside its range of experience? The Administrator sought to reassure the Faipules about the true nature of the delegation. On the one hand he was not cutting Tokelau loose to fend for itself — advice and assistance would always be available. There were also conditions and constraints on the exercise of the powers by Tokelau. As a possible constraint the Faipules were reminded that Tokelau was an integral part of New Zealand and as such would in its government be expected to maintain the basic standards of international behaviour accepted by the New Zealand government. On the other hand, delegation would be the same in nature as it had been to the Official Secretaries of the past. The practice in respect of that delegation had been one of non-intervention, and it was intended to continue that practice under the new regime.

The results of these discussions were incorporated in a three page Letter of Understanding¹⁵ that was sent to the General Fono with the Delegation of Powers on 27 January 1994. In terms of content and its discussion of the relationship of the two parties to the delegation, the Letter of Understanding is not unlike the Letters Patent and Instructions of colonial governors.

4. The future

Adapting to the new constitutional conditions will take time. The General Fono, and to an even greater degree the Council of Faipules, have entered into the spirit of the new system and new practices are developing rapidly. The meeting of the General Fono in June 1994 addressed the annual budget in a manner that responded to the new needs, and also adopted the “National Strategic Plan — Charted Course for the Government of Tokelau”¹⁶.

The budget discussion brought to light an unwanted constraint on the powers of the General Fono. The General Fono decided to increase the rate of taxes in the coming financial year as part of its fiscal planning. However, by the Tokelau Amendment Act 1982 the power to change the tax is vested in the Governor-General. Legislative action was therefore required in New Zealand. By special arrangement the necessary Order was made quickly and came into force on 1 November 1994. Nonetheless, that commencement date was late for the fiscal year and involved consequent loss of revenue for Tokelau. Steps are now being taken to give the General Fono a legislative power. This will not only allow further development of internal self-government in Tokelau but enable it to be

¹⁵ See above n.1.

¹⁶ See above n.1.

financially responsible in the field of fiscal legislation.

The National Strategic Plan was the product of thorough discussion at all levels of Tokelau society. Although it follows the general pattern of metropolitan management documents of this name and includes a SWOT¹⁷ analysis, the product is a peculiarly Tokelauan one. In part it identifies in the Preamble, as some national constitutions do, what the underpinnings of Tokelau society are — what it is that makes Tokelau Tokelau — and what the elements essential to the future of Tokelau as a nation are. The document relates the ideals of the past to the present and future, affirms respect for the rights of the individual, and looks forward to a greater degree of self-government and self-sufficiency. The document is not static and will be the subject of annual review so that it may be the touchstone for all Tokelau's governmental and other activities.

Out of this initiative has come discussion on a constitution for Tokelau. Thinking was encouraged by the visit of the United Nations delegation, and was advanced by a Pacific study tour undertaken by the Faipules in October and November of 1994.

The United Nations Visiting Mission arrived in Tokelau on 28 July 1994. Tokelau had been visited by the United Nations previously in 1976, 1981, and in 1986. On those occasions Tokelau had addressed itself orally to the United Nations. For the 1994 visit Tokelau prepared a "Solemn Declaration on the Future Status of Tokelau (The Voice of Tokelau)".¹⁸ In it Tokelau brings together its concerns about the retention of its cultural heritage, the principles set out in the National Strategic Plan, moves towards the development of an autochthonous constitution, and its fears and aspirations regarding self-determination. This document, along with the Administrator's Letter of Understanding of 27 January 1994, and the National Strategic Plan of June 1994, provide the basis of current and future government in Tokelau and also a guide to the nature of the evolving relationship with New Zealand. The form of the possible post-self-determination Tokelau can here be glimpsed in vague outline.

The formal submission to the United Nations Visiting Mission on 30 July 1994 ended in symbolic form characteristic of the oral tradition of Tokelau. The story was told of two brothers of legend who when asked to record the wealth of their father, spoke of their mother — the white stone,¹⁹ "She who must go through pain in order for others to survive". At the end of their story the brothers went to the sea and were never seen again. "But the people of Tokelau continued to live by the endowment of their mother".

¹⁷ *I.e.*, strengths, weaknesses, opportunities, threats.

¹⁸ See above n.1.

¹⁹ The reference is to the *fatupaepae*, the matriarch of a Tokelau family. In "The Voice of Tokelau" this was presented as "the white stone". *Fatupaepae* is better translated in its literal sense as "paving stone".

III. Post script 1995

Tokelau has, despite continuing difficulties in respect of communication, maintained the impetus of development of 1993 and 1994.

Shipping was considerably more difficult in 1995 than it had been in many recent years. Suitable charter boats for the regular supply of the islands and the movement of persons proved extremely difficult to come by. There is currently no regular charter arrangement in place and questions of access to Tokelau and the outside world remain a priority concern for the government of Tokelau. The transport difficulties were offset somewhat by improved voice communication facilities under the Peace Sat arrangement.²⁰

The focus in Tokelau on devolution, stronger internal self-government and steps towards self-determination were evident in a number of areas. The General Fono of Tokelau declared 1995 the year of the constitution: 1995 was to be a year with focus on the development of constitutional law.

In March, over a period of 5 weeks running till the middle of April, a series of constitutional workshops were held on each of the islands of Tokelau with the support of the UNDP. The constitutional workshops were open to all members of the community and provided three days of discussions on matters of constitutional development, political choice and the issues then before Tokelau as they related to the topic of nation building. The elders on each island took an active part in the workshops and also met in their traditional way to discuss those same matters. Aspects of the rule of law were promoted in a separate set of workshops designed specially for the police officers and the law commissioners (lay judges) of the islands.

At the end of the series of workshops, a special committee to advise on constitutional development was established. Its purpose was to take up the constitutional building work from the point at which it had been left in the workshops. The committee has, since April, convened meetings on each of the atolls and preliminary reports have been prepared by island sub-committees. It is anticipated that a formal report by the committee will be made late in 1995 or early in 1996. This special ad hoc Committee for Constitutional Development is in addition to two standing committees of the General Fono which deal with matters of national interest of a constitutional nature — the Constitutional Special Issues Committee and the Committee on Swains Island.

Contemporaneously, progress within the restructured, relocated public service was reviewed by an independent two-person team at the request of the public service commissioners.

An important aspect of constitutional development that was thrown into sharp relief by the constitutional developments of 1994 was the absence of a national legislative power in Tokelau. In his report for the year ended 30 June 1994²¹ the Administrator of Tokelau noted that "The conferral of a national legislative power will be significant in the context of Tokelau's development of responsible internal

²⁰ The Tokelau government now has the equipment to use that limited facility also for facsimile communication.

²¹ At page 23.

government and its preparation for an act of self-determination The form in which the legislative power is expressed in the pending Tokelau Amendment Bill has still to be finalised Whatever the final form of the Bill, the overall requirement is that Tokelau should be able to gain all-round experience of administration, ... In voting on the planned measure, Parliament will be giving Tokelau's paramount institution, the General Fono, what each village already has, legal recognition and an independent law-making power". Tokelau raised the matter specifically with the UN visiting mission in July of 1994²²: "At this stage, Tokelau wishes to advance self-government by having a national legislative power ...". The UN in its turn reported²³ that "Minister Gray noted the necessity to give Tokelau a legislative power. He believed the New Zealand Parliament would take this step as soon as possible".²⁴

In June 1995, in his statement to the General Fono, the Administrator of Tokelau indicated that a first draft of a Bill had been produced and as at October 1995 the Tokelau hope remains that a Tokelau Amendment Bill will soon be before the New Zealand Parliament for the purposes of granting a legislative power to the General Fono.

What form that grant of legislative power may take is unclear but it may be expected to be general in character but subject to a New Zealand government control either in the form of a reservation for consent or a power of disallowance. Within the hierarchy of sources of law, the legislation of the General Fono may be predicted to be ranked subordinate to Acts of the New Zealand Parliament and to any regulation made by the Governor-General in Council, but superior to any legislation made by a Tokelau village.

This pattern of constitutional devolution is unlike that followed by the British government in most of its territories and colonies, and also unlike that followed by the New Zealand government in respect of Niue and the Cook Islands.²⁵ In those cases there was, in legal terms, many years of experience of the exercise of a legislative power at both village and national level. The prospect in the case of Tokelau is for an act of self-determination within the decade, and perhaps, given the expressed desires of the United Nations decolonisation committee, within this century.

In legal terms, the villages of Tokelau each had a legislative power from 1916 to 1975.²⁶ The empowering legislation was repealed by New Zealand in 1975.²⁷ A village legislative power was reinstated by the Tokelau Village Incorporation

²² Paragraph 21 of *The Voice of Tokelau*.

²³ Paragraph 74 (p.17) of its report.

²⁴ Sir Robin Gray, Associate Minister for Foreign Affairs and Trade, the minister with special responsibility for Tokelau.

²⁵ E.g. A central legislative authority in Niue and in the Cook Islands was acknowledged in 1901 in the Cook and other Islands Government Act 1901, and confirmed in the compendious Cook Islands Government Act 1908. The Cook Islands became fully self-governing on 4 August 1965 following its act of self-determination; Niue followed suit on 19 October 1974.

²⁶ The Native Laws Ordinance 1917 (No. 2 of 1917, Gilbert and Ellice Islands Colony).

²⁷ See s.12 Tokelau Islands Amendment Act 1970, and commencement order SR 1975/261.

Regulations 1986. The General Fono of Tokelau is the only national body but it has never had a legislative power. The existing legislative power for Tokelau resides in Wellington in the Parliament and in the Governor-General in Council. Within Tokelau, legislative reform can be achieved only by less obvious or less direct means. The three prime examples which have been considered, or to a small degree used, to achieve what might otherwise be achieved by the exercise of a national legislation-making power are:

- 1) Co-ordination of legislation made by each of the three villages (It should be noted, however, that even if the legislation were identical in each of the three villages, its significance would, because of the jurisdictional limits on each village, be less than that of similar legislation promulgated at a national level.);
- 2) The diversion of financial resources by the General Fono from a particular field of government activity;
- 3) Autonomous self-regulation by consensus. An example of this in practice is the Standing Orders of the General Fono of Tokelau. It is these rules which established the Council of Faipule by national agreement in Tokelau, and the existence and operation of those rules of internal regulation were built on by the Administrator of Tokelau in his formal delegation of powers to the General Fono and, when the General Fono was not in session, to the Council of Faipule.

The present chapter in the constitutional story of Tokelau is not yet ended. What ending Tokelau will choose to give to it is not known because Tokelau has not decided. There is no doubt that the writing of the end of this chapter will be shaped by the experiences of Tuvalu, Western Samoa, Niue and the Cook Islands. It may be predicted with almost equal certainty that the future Tokelau will choose for itself will be different from that of any of these precedents. One can but await with interest the conferral of a national legislative power on the government of Tokelau and the developments that follow that important devolutionary step.