

The independence of Western Samoa — some conceptual issues

Alison Quentin-Baxter*

This article discusses aspects of Western Samoa's long journey to independent statehood and the attainment of a wider role in the world community. The purpose is to examine in this context the evolutionary change in normative principles about the relationship of a people to their own country and to other countries, and the way in which individual actors were able to affect the nature and the pace of change. A leading figure was Sir Guy Powles who served as New Zealand's High Commissioner in the Trust Territory from March 1949 until early 1960 — a period which saw the people of Western Samoa take giant steps towards their goal of self-government or independence.

I. INTRODUCTION

At midnight on 1 January 1962 the church bells of Western Samoa rang in the New Year and with it the entry into force of the Constitution of the Independent State of Western Samoa.¹ The moment ended New Zealand's responsibility for the administration of Western Samoa and marked the attainment of its people's aspirations once again to have effective control of their own affairs. As the country celebrates its 25th anniversary of independence, it is appropriate to look back to the significance of that event.

Since the turn of the century the Samoan islands had been under foreign rule and for as long again there had been substantial Western involvement in their affairs. The first contacts were with missionaries and traders. The countries from which most of them came — Germany, the United States and Great Britain — competed in trying to assert "protection". In 1899 the three powers agreed that the United States should annex the eastern island of Tutuila and Germany should lay claim to the remaining islands of the group. Great Britain withdrew, in return for the recognition of claims and interests elsewhere.²

* Director, New Zealand Law Commission.

1 Government Printer, Apia, 1960. Article 113 provided that the Constitution should come into force on the day approved by the General Assembly of the United Nations as the date of termination of the Trusteeship Agreement for Western Samoa. By Resolution 1626 (XVI) the General Assembly decided that the Trusteeship Agreement should cease to be in force upon the accession of Western Samoa to independence on 1 January 1962.

2 Convention between Germany, Great Britain and the United States of America for the adjustment of questions relating to Samoa, Washington, 2 December 1899: 91 British and Foreign State Papers, 75; 188 Consolidated Treaty Series, 181.

On the outbreak of war in August 1914 New Zealand troops occupied Western Samoa without opposition. It was a move ostensibly on behalf of Great Britain; but it reflected old territorial aspirations on New Zealand's part. After a wartime military occupation, the government of New Zealand continued to administer the islands under a League of Nations mandate³ and subsequently a United Nations trusteeship.⁴ From 1947 on, the people of Western Samoa were granted progressive instalments of governmental authority. When the country became independent it did so under a constitution which sought to reconcile important elements of the traditional chiefly society with a Westminster type democracy and a judicially enforceable Bill of Rights.⁵

This article deals with aspects of these events mainly from an international law perspective.⁶ In a treatment which is necessarily selective, the following concepts will be discussed in their application to Western Samoa: the welfare of dependent peoples as a sacred trust; progressive development towards self-government or independence; an act of self-determination; independent statehood; a treaty of friendship with New Zealand; citizenship; membership of the Commonwealth, and membership of the United Nations. The main purpose is to see how far normative principles about the relationship of a people to their own country and to other countries were a driving force in New Zealand's role as administering authority, in Western Samoa's constitutional development and its entry into the world community. Such a study has some implications for the future. The smaller countries of the Pacific region are still exploring the full meaning of their constitutional autonomy and international personality. And in those cases where peoples of the region have not yet had the opportunity to exercise the right of self-determination, some aspects of Western Samoa's experience may be relevant to choices still to be made.

II. THE SACRED TRUST

At the conclusion of the First World War, the allied powers judged it inexpedient to reinstate the former rulers of the occupied Turkish provinces and German colonies. But ideas about the rule of law, colonial freedom and self-government and the responsibilities of colonial powers had become too well-established to allow the ideal of the League of Nations to be sullied from the outset by the annexation of the conquered territories by the victor states. The compromise that emerged was recorded in article 22 of the League of Nations Covenant.⁷ To the colonies and territories concerned

³ The text of the Mandate was set out in the First Schedule to the Samoa Act 1921.

⁴ The text of the Trusteeship Agreement was set out in the First Schedule to the Samoa Amendment Act 1947.

⁵ For a commentary on these aspects of the Constitution, see for example C. G. Powles, "Fundamental Rights in the Constitution of Western Samoa" (Thesis, V.U.W., 1973), Yash Ghai, "The Westminster Model in the South Pacific: The case of Western Samoa" [1986] Public Law, 597. See also below under the heading **AN ACT OF SELF-DETERMINATION**.

⁶ Constitutional aspects are touched upon to the extent that they had international law implications.

⁷ Treaty of Peace between the British Empire, France, Italy, Japan and the United States of America etc. and Germany, Versailles, 28 June 1919: 112 British and Foreign State Papers, 1; 225 Consolidated Treaty Series, 188.

. . . which are not yet able to stand by themselves . . . there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and . . . that the tutelage of such peoples should be entrusted to advanced nations . . . and . . . exercised by them as Mandatories on behalf of the League.

The concept of the “sacred trust” and the phrase itself came from Burke’s famous opening speech for the House of Commons on 15 February 1788, indicting Warren Hastings.⁸

The origins of the mandate system lay as much in global politics as in idealistic concern for the welfare of native peoples. The system itself would leave the territories to which it was applied outside national sovereignty and create a regime of an essentially temporary character. The governments of South Africa, Australia and New Zealand saw the inherent legal and political uncertainties as giving insufficient protection to their strategic interests. At the Paris Peace Conference those dominions, exercising their new found international personality won on the field of battle, opposed the application of the mandate system to South-west Africa, New Guinea and Western Samoa.⁹

The opposition of the three dominions was due in part to the uncertainty about the identity of the states to be named as mandatories. The text of article 22 did, however, refer to

territories, such as South West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilisation, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can best be administered under the laws of the Mandatory as integral portions of its territory . . .

This, and other statements pointing to the eventual decision of the Allied Supreme Council to allocate C class mandates to the dominions which had occupied the German colonies closest to their borders, paved the way for agreement on the mandate system itself.¹⁰

New Zealand’s imperialistic interest in extending its reach into the Pacific was soon modified by the realisation that Western Samoa was of little economic or strategic importance. Although the terms of the Mandate authorised New Zealand to administer the country as an integral part of its own territory,¹¹ and parts of the law of New Zealand

8 Hall, *Mandates, dependencies and trusteeship* (Carnegie Endowment for International Peace, Washington 1948) 33.

9 The Prime Minister of New Zealand, Mr Massey, pointed out that Samoa lay on New Zealand’s main water route to the Panama Canal. He justified New Zealand’s stand by drawing an analogy with the refusal of the American colonists to contemplate anything but an unfettered right to take full possession of their own frontier regions: *ibid.*, 74, 97, 118-122.

10 *Ibid.*, 120.

11 *Supra* n.3, article 2.

were applied there,¹² the government of the two countries was never integrated,¹³ and their legal systems remained distinct.¹⁴ Nor did New Zealand have any inclination to depart from a recommendation of the Permanent Mandates Commission that the native inhabitants of “B” and “C” class mandated territories should be granted “a national status wholly distinct from that of the nationals of the mandatory Power”.¹⁵

The government of New Zealand was a conscientious mandatory motivated by a genuine concern for native peoples. As an enthusiastic member of the League of Nations, it had a strong desire to demonstrate its fulfilment of its international obligations. Its annual reports to the Permanent Mandates Commission were voluminous, though they did not always dwell on the less agreeable developments in Western Samoa. Foremost among these was the long and bitter opposition of the Mau — “a semi-modern nationalist movement”¹⁶ — to New Zealand’s administration. The leaders of the Mau aspired to self-government for Western Samoa under British protection and saw themselves as exercising governmental authority in place of New Zealand administrators¹⁷ — an outcome which came to have the ring of inevitability.¹⁸

The Mandates Commission lacked information on Samoa except from official and Mau sources, but, in time, it was able to call in question New Zealand’s view of the nature of the Mau and its methods of trying to suppress it. One commentator has concluded that when the Mau and its supporters appealed to a wider public by addressing petitions to the League of Nations, to the King and to the three powers who had signed the Berlin Act of 1889,¹⁹ it was the observations of the Commission which in

12 Samoa Act 1921, ss. 349-371 and Fourth Schedule. A number of subsequent Acts of the New Zealand Parliament were also declared to be in force in Western Samoa. For an example see *infra* under the heading **CITIZENSHIP**.

13 Cf. principle VIII of General Assembly Resolution 1541 (XV) which laid down as one of the criteria for “integration” the principle that the people of an integrated territory must have equal rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial organs of government in the state concerned.

14 The legal basis for the exercise of governmental powers in relation to Western Samoa was discussed in *Tagaloa v. Inspector of Police* [1927] N.Z.L.R. 883.

15 *National Status of the inhabitants of the territories under B and C Mandates*, LN Document C.546.1922.VI; and Official Journal, IV (1923), 604. See *supra* under the heading **CITIZENSHIP**.

16 Mary Boyd, “The Record in Western Samoa to 1945” in Ross (ed) *New Zealand’s Record in the Pacific Islands in the Twentieth Century* (Longman Paul Ltd., Wellington, 1969) 156-170. The writer is indebted to Mrs Boyd for her helpful comments on the manuscript of this article, though naturally the responsibility remains the writer’s own.

17 *Ibid.*

18 Tupua Tamasese Mea’ole who, on independence, became Head of State jointly with Malietoa Tanumafili II had been President of the Mau, as had his elder brother, and also the father of the first Prime Minister, Mata’afa Faumuina Fiaame Mulinu’u II. The wife of Tupua Tamasese Mea’ole was a daughter of O. F. Nelson, the Mau’s most influential leader.

19 Final Act of the Conference on the Affairs of Samoa between Germany, Great Britain and the United States of America, Berlin, 14 June 1889: 81 British and Foreign State Papers, 1058; 172 Consolidated Treaty Series, 133.

the long run proved most internationally embarrassing to New Zealand:²⁰

Although the Commission never became acquainted with fa'a Samoa — and, therefore, with some of New Zealand's basic difficulties — there was hardly a single weakness in her administration to which it did not eventually apply 'a sure if somewhat feline touch'.

In spite of this insight, international pressure was not the decisive factor in bringing about an improvement in the situation in Western Samoa. The concept of the "sacred trust" and the obligation²¹ "to promote to the utmost the material and moral well-being and the social progress of the inhabitants of the territory . . ." began to have a real influence on the approach to the practical problems of day to day administration only with the election in New Zealand, in November 1935, of a Labour government long committed to a similar philosophy. Even then it took more than a decade to turn a general sentiment of sympathy into a programme of positive action.²²

III. PROGRESSIVE DEVELOPMENT TOWARDS SELF-GOVERNMENT OR INDEPENDENCE

The breakthrough in resolving the political crisis in Western Samoa did not occur until 1947. It was brought about by "[a] dramatic change in New Zealand policy and the appointment to the territory of senior officers capable of working closely and sympathetically with the Samoans."²³ Three years earlier the New Zealand Prime Minister, Peter Fraser, had explicitly acknowledged that the Samoan demand for self-government was a legitimate goal, though not one which could be achieved immediately as the Samoan leaders had demanded. In his view self-government would have to be worked for in a partnership with New Zealand aimed at improving education, living standards and communications with the outside world.²⁴

Fraser's reaction to political aspirations in Western Samoa was a reflection of his broader objectives. Already the Australian and New Zealand governments had made known their concern about British and American plans to dispose of Pacific territories after the war without consulting their South Pacific allies.²⁵ They had also declared that

20 Boyd, *supra* n. 16, 168, quoting J. V. Wilson, "New Zealand's Participation in International Organisations" in Larkin (ed), *New Zealand's External Relations* (New Zealand Institute of Public Administration, Wellington, 1962), 64.

21 *Supra* n. 3, article 2.

22 A New Zealand official who spent a lifetime in or associated with Western Samoa, rising from a junior clerk in the local administration to head the New Zealand Department of Island Territories, made the comment that no New Zealand Government had any particular policy for Western Samoa until the closing stages of the Second World War: C. G. R. McKay, *Samoana* (A. H. & A. W. Reed, Wellington, 1968), 77.

23 Davidson, *Samoa mo Samoa* (Oxford University Press, Melbourne, 1967), 146.

24 Boyd, *supra* n. 16, 186-7.

25 Alister McIntosh, "The origins of the Department of External Affairs and the formulation of an independent foreign policy" in *New Zealand in World Affairs* (Price Milburn, Wellington, 1977) Vol. I, 21-22.

the doctrine of trusteeship was “applicable in broad principle to all colonial territories in the Pacific and elsewhere.”²⁶ Apart from a concern for the welfare of dependent peoples, the New Zealand view was that if the islands of the Pacific were better governed, their social welfare improved and charges of neglect and exploitation removed, the security of the region would be enhanced.²⁷

At the United Nations Conference at San Francisco Peter Fraser was chairman of the Trusteeship Committee. When the work was completed he regarded as the main achievement not so much the Charter provisions relating to trusteeship²⁸ but the preceding chapter,²⁹ declaring the responsibilities of all member states in relation to territories whose peoples had “not yet attained a full measure of self-government.”³⁰ All administering authorities had, for the first time, a specific obligation to promote progressive development towards this objective, or in the case of trust territories, towards “self-government or independence”.³¹

Fraser himself had reservations about the reality of independence as the goal, at least in the case of some territories. Speaking in the Trusteeship Committee at San Francisco, he drew on New Zealand’s own experience.³²

To us of the British Commonwealth it is very difficult to distinguish between self-government and independence, for to the self-governing sovereign States of the British Commonwealth, self-government is independence and independence is self-government.³³

At home, his reasons were made more explicit. “While nobody will, of course, resist any nation that wants independence, such a nation, when it has attained independence, finds that it is very much dependent upon other nations.”³⁴ For just these reasons, the

26 Australia - New Zealand Agreement, Canberra, 21 January 1944, article 28 (External Affairs publication No. 1, reproduced as Document 2 in Ministry of Foreign Affairs, *New Zealand Foreign Policy Statements and Documents 1943-1957* (Government Printer, Wellington, 1972) 52. (Hereinafter cited as *Statements and Documents 1943-1957*).

27 McIntosh, *supra* n. 25, 22-24. Both great powers reacted sharply to the perceived threat to their interests.

28 Chapters XII and XIII. Under article 77(2) the placing of particular territories under the trusteeship system had been left for subsequent agreement.

29 Chapter XI, article 73.

30 McIntosh, *supra* n. 25, 26.

31 Article 76, paragraph (b).

32 This was still tinged with the ambiguity that, until 1947, had prevented New Zealand from severing its formal subservience to the Imperial Parliament by ratifying the Statute of Westminster 1931.

33 Statement by the Right Honourable Peter Fraser, Chairman of the Trusteeship Committee of the San Francisco Conference, June 1945, External Affairs Publication No. 11, 70-71, reproduced as Document No. 9 in *Statements and Documents 1943-1957*, 93.

34 Statement by the Right Honourable Peter Fraser in the House of Representatives, 24 July 1945, reproduced as document No. 10 in *Statements and Documents 1943-1957*, 94.

choice between self-government and independence was later to become an issue for Western Samoa.³⁵

In spite of the New Zealand government's commitment to the Charter principles, the proposal to place Western Samoa under the trusteeship system started badly. The Samoan leaders were outraged that the draft agreement was tabled in the United Nations without prior consultation and saw the new international arrangements as no advance on those under the mandate. They petitioned the United Nations that Samoa should be granted immediate self-government. New Zealand should continue to give advice and protection as Britain did in the case of Tonga.³⁶

At New Zealand's invitation the Trusteeship Council agreed to send a high-powered visiting mission to investigate the substance of the petition.³⁷ At the same time the New Zealand authorities themselves worked out a new plan for the government of Western Samoa. This would give substantial powers to a legislature with an elected Samoan majority, and associate the three Fautua — holders of the highest traditional titles — with the exercise of the executive and other residual powers vested in the senior New Zealand official, now to be known as the High Commissioner.³⁸

The visiting mission concluded that Western Samoa was not ready for full self-government but urged fundamental changes which would convince the Samoans that they were on the path towards that goal.³⁹ With the benefit of this endorsement the new proposals were inaugurated by Colonel Voelcker, formerly the Administrator, now the High Commissioner. He carried out his brief conscientiously, but had little faith in the new policy. The willingness of the Samoans to cooperate owed much to the statesmanship of Peter Fraser and the Samoan leader, Tupua Tamasese.⁴⁰

35 See *infra*. The similarities and distinctions between self-government and independence remain important for the small Pacific countries which, in exercise of their right of self-determination, choose to become self-governing in free association with an independent state. Those which have so far assumed this status are the self-governing States of the Cook Islands and of Niue (each in a relationship of free association with New Zealand), and the Federated States of Micronesia and the Republic of the Marshall Islands (each in free association with the United States). In Palau the Compact of Free Association with the United States has been approved in a referendum, but adherence to the Compact has been found to be incompatible with provisions in the country's Constitution outlawing nuclear weapons: *Gibbons v. Salii*, Decision of the Supreme Court of Palau, Appellate Division, 17 September 1986. Proposals to amend the Constitution so as to permit effect to be given to the Compact have not attracted the support of the required majority. At the time of writing steps are in train to alter the provisions of the Constitution governing the processes necessary for its amendment.

36 Boyd, "The record in Western Samoa since 1945" in Ross (ed.) *supra* n. 16, 190-191. See *infra* for a discussion of the relationship between the United Kingdom and Tonga.

37 *Ibid.*

38 Statement of policy made by the Acting Prime Minister, Walter Nash, in the House of Representatives on 27 August 1947. N.Z.P.D. Vol 277, 618-620.

39 Report to the Trusteeship Council by the United Nations Mission to Western Samoa, published in mimeographed form as Document T/46/Add. 1, 25 September 1947. The report was republished in printed form as *Western Samoa 1947. Report to the Trusteeship Council by United Nations Mission to Western Samoa* (Department of External Affairs, Publication No. 39, Wellington, 1947).

40 Boyd, *supra* n. 36, 197.

Fifteen months later Voelcker's term of office came to an end. His successor, Guy Richardson Powles, and his wife Eileen took up residence at Robert Louis Stevenson's "Vailima". For the first time New Zealand's senior official in Western Samoa was a man who believed that the Samoan people had the ability to govern themselves. He was determined to overcome their suspicions of New Zealand intentions and lack of confidence in the attainability of their goal. "... [S]ince he saw the determination of the political future as the country's most pressing and important problem he devoted himself unsparingly to its solution."⁴¹ The preamble to the Samoa Amendment Act 1947 had recited the purposes of the new constitutional arrangements. These were "... in particular, to promote the political, economic, social and educational advancement of the inhabitants of Western Samoa, and their progressive development towards full self-government." Powles took this as his text. In his view, economic advancement would lag until there was real political responsibility.

Over the next ten years, he became the effective policy adviser. On visits to Wellington he prodded New Zealand officials and ministers to agree to further constitutional changes leading to the goal of self-government in accordance with a pre-determined timetable. At the Trusteeship Council in New York he presented the government's reports announcing a further instalment of responsibility. The preparation of the following year's report then became a ratchet by which he secured agreement to the next step. In Western Samoa itself he guided the Fautua and the elected members of the Assembly in making full use of new institutions of government and the accompanying increment to their powers.

The relationship between Powles and Tamasese, in particular, was one of those fruitful partnerships in which each gained from the ideas and experience of the other. It is beyond the scope of this paper to analyse in any detail the complex interplay of "elite communication" in Western Samoa during this period. The authors of a contemporary study⁴² at the time when the idea of self-government was "... serving to catch into a recognisable pattern the formerly tangled web of conflicting aspirations and purposes in the different ethnic elites ..."⁴³ describe some of the goals. Among the Samoan leaders there was a conscious desire to preserve the integrity of traditional Samoan values, while at the same time adapting them creatively to new needs when the generalised goal of self-government had to be realised by putting in place a modern structure for the exercise of governmental power.

The details of constitutional progress in Western Samoa are fully recorded elsewhere.⁴⁴ One or two aspects having international as well as internal consequences

41 Davidson, *supra* n. 23, 316.

42 F. M. and M. M. Keesing, *Elite Communication in Samoa — A Study of Leadership* (Oxford University Press, London, 1956). The authors on p.1 define "elite communication" as "messages to, from, and among persons who wield influence in negotiation, public-opinion formation, and decision-making."

43 *Ibid.*, 229.

44 In addition to the comprehensive writings of Mary Boyd and J. W. Davidson already cited, see also C. C. Aikman, *infra* n. 61 and G. R. Powles, "Constitution Making in Western Samoa" (1961) 22 *The Indian Journal of Political Science*, 179.

are discussed below.⁴⁵ The dynamics were provided by the drive of the Samoan leaders, with the energetic encouragement of Powles,⁴⁶ to take full control of their country's destiny. This force, allied to an underlying wish on New Zealand's part to be rid of Samoan responsibilities, overcame a certain reluctance to embarrass other administering authorities by taking the lead in encouraging political development.⁴⁷ The United Nations itself, specially when it acted through the Trusteeship Council and its visiting missions, played a generally constructive role in relation to Western Samoa. In spite of the tensions produced by the cold war and the overwhelming anti-colonial sentiment that drove a wedge between administering and non-administering powers, New Zealand policies won respect because it was obvious that the government was genuinely committed to the Charter goal of independence or self-government.

By the time a second Constitutional Convention in Western Samoa was about to be convened for the purpose of adopting a constitution, it was necessary to consider more fully Western Samoa's future international status and the nature of its relationship with New Zealand. For most of the nineteen-fifties the explicit goal had been internal self-government. The Samoan leaders had continued to base their ideas about the country's relationship with the outside world, including New Zealand, on the model of Tonga.

That neighbouring Pacific island state had been linked to Great Britain by treaty since 1879.⁴⁸ Under a further treaty entered into in 1900,⁴⁹ Tonga became, in international law, a protectorate. The constitutional monarchy continued to exercise a high degree of internal autonomy, but defence and external affairs were under the control of the British government.⁵⁰ Even under a new Treaty of Friendship made on 30 May 1968, the United Kingdom government remained primarily responsible for the conduct of Tonga's international relations.⁵¹ Tonga was still classed as a British

45 Under the headings **AN ACT OF SELF-DETERMINATION; CITIZENSHIP.**

46 In 1961 Sir Guy Powles was awarded the K.B.E. in recognition of his services to Western Samoa.

47 Boyd, *supra* n. 36, 223.

48 Treaty of Friendship between Great Britain and Tonga, Nukualofa, 29 November 1879: 70 British and Foreign State Papers, 9; 155 Consolidated Treaty Series, 439.

49 Treaty of Amity between Great Britain and Tonga, Nukualofa, 18 May 1900: 107 British and Foreign State Papers, 521; 188 Consolidated Treaty Series, 415. The treaties of 1879 and 1900 were replaced by the Treaty of Friendship between the United Kingdom and Tonga signed at Nukualofa on 26 August 1958: United Kingdom Treaty Series 67 (1959) Cmnd 848; 163 British and Foreign State Papers, 683. The 1958 treaty was itself replaced in 1968, *infra* n. 51.

50 In constitutional law the "Kingdom of Tonga" was a "Protected State". Her Majesty in right of the United Kingdom had only limited internal jurisdiction under a constitution whose "Declaration of Rights" anticipated by many years some of the more important principles of international human rights instruments: Roberts-Wray, *Commonwealth and Colonial Law*, (Stevens & Sons, London, 1966), 47—49,909.

51 Article II, Treaty of Friendship between the United Kingdom and the Kingdom of Tonga, Nukualofa, 30 May 1968: Cmnd 3921; 169 British and Foreign State Papers, 793. This provision, and others which were incompatible with Tonga's full sovereignty, were abrogated by an Exchange of Notes, Nukualofa, 19 May 1970: Cmnd 4490. On 4 June 1970 the United Kingdom Government ceased to have any responsibility for the external relations of the Kingdom of Tonga which then became an independent state.

dependent territory.⁵² Although, to the Western Samoans, Tonga was the symbol of Polynesian autonomy, its international law status at the time when Western Samoa was making decisions about the future was not a paradigm for the ultimate destiny of a United Nations Trust Territory.⁵³

Mary Boyd records that the first concrete proposal for “an independence approach” rather than a “Tongan approach” seems to have come from Powles after discussions with Dr C. C. Aikman who had been engaged by the New Zealand government as constitutional adviser on the formulation of policy towards Western Samoa.⁵⁴ The response of the New Zealand Prime Minister, the Rt. Hon. Walter Nash, was in line with traditional labour thinking. He informed the 1959 United Nations visiting mission about to go to Western Samoa that all dealings between the two countries “would be conducted on the basis of equality consistent with Western Samoa becoming an independent State at the end of 1961.”⁵⁵ By this time the Samoan leaders, too, had begun to perceive the limitations of the Tongan model. In discussions with the New Zealand authorities, the working committee on self-government also came to accept the objective of full independence. It was understood, however, that, without in any way detracting from this status, New Zealand would in the early years continue to give practical assistance in the conduct of external policies and the promotion of internal development.⁵⁶

This did not rule out a treaty relationship between Western Samoa and New Zealand; but, even when future independence was undoubted, the United Nations had always been wary of the idea that a treaty with the former administering authority entered into before independence could create a future contractual arrangement binding on the newly independent state.⁵⁷ The Trusteeship Council’s criticism of the proposal to include in a plebiscite on the termination of the trusteeship agreement a question

52 Roberts-Wray, *supra* n. 50, 895.

53 Boyd, *supra* n.36, 251-253. See also U.N. Trusteeship Council, 3 May-1 June 1960, T/PV 1068-1096.

54 Boyd, *ibid.* Throughout this period Dr Aikman worked closely with Dr J. W. Davidson who in 1958 had been appointed to act as an independent constitutional consultant on behalf of Western Samoa. Dr Davidson had first visited Western Samoa in 1947 at the request of the New Zealand government and was subsequently stationed there as “Trusteeship Officer” for 6 months in 1949.

55 Boyd, *ibid.*, 251-2, citing a statement quoted by a New Zealand representative to the U.N. General Assembly, 9 December 1960. The idea of self-government in free association with New Zealand, a status attained by the Cook Islands in 1964 and by Niue a decade later, in each case with the approval of the United Nations, was apparently never thought of as a possible outcome in relation to Western Samoa. See *infra* under the headings **INDEPENDENT STATEHOOD** and **A TREATY OF FRIENDSHIP WITH NEW ZEALAND**.

56 Boyd, *ibid.*, 253.

57 Apart from questions of validity that might arise from a lack of treaty-making capacity on the part of the then dependent territory, there was concern among United Nations members that such treaties might be the price paid for freedom. This concern extended even to “devolution agreements” between the former administering authority and a newly independent state in relation to the effect of pre-independence treaties; see Draft Articles on Succession of States in respect of Treaties adopted by the International Law Commission at its 26th session, Commentary to Article 8, paragraph 21: Yearbook of the International Law Commission, 1974, vol. II, Part One, 187.

seeking approval of a "treaty of friendship" went to the timing as well as the nature of the proposed treaty.⁵⁸ It was decided that a treaty with New Zealand should be negotiated only when Western Samoa had already become an independent state.⁵⁹

IV. AN ACT OF SELF-DETERMINATION

Article 1 of the Charter had listed among the purposes of the United Nations the development of friendly relations among nations based on respect for the principle of human rights and self-determination of peoples. From the very beginning of the United Nations, the fight against colonialism had been seen as a struggle for human rights. The formulation of the International Covenants on Human Rights was dominated for years by the insistence, in the face of Western opposition, that the right to self-determination should appear as Article 1 of both instruments. Before this goal had been achieved, the Declaration on the granting of independence to colonial countries and peoples adopted by the United Nations General Assembly on 14 December 1960 had proclaimed that, by virtue of the right to self-determination, all peoples must freely determine their political status and freely pursue their economic, social and cultural development. Immediate steps should be taken, in trust and non-self-governing territories, to transfer all powers to the peoples of those territories, in accordance with their freely expressed will and desire, without any distinction as to race creed or colour, in order to enable them to enjoy complete independence and freedom.⁶⁰

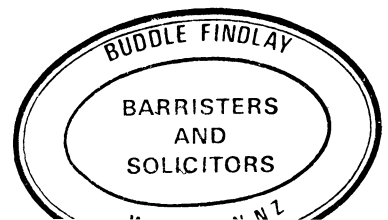
It was small wonder then that the Trusteeship Council should take a close interest in the way in which the right of self-determination was to be exercised in Western Samoa. Two aspects of Samoan social organisation and political history cut across the application of United Nations principles. The first concerned the right to vote. Traditionally, the individual households comprising a village community were headed by a *matai* elected to a recognised family title by the family as a whole. Decisions affecting the village were taken at a meeting or *fono* of the *matai*. The delegated authority of those involved in decision making at the local level was significant also at the district and national level. From the beginning the Samoans had insisted that representative institutions could not be based on universal suffrage, but only on a right to vote restricted to *matai*. A second related problem concerned the status of those members of the community, mostly living in and around Apia, who were wholly or partly of non-Samoan origin. These people had been classified on an overtly racial basis as "European". The New Zealand authorities were sympathetic to the United Nations insistence on the removal of distinctions in domestic status based on racial grounds.⁶¹

58 Various members, including the Soviet Union, considered that this would constitute an interference with the inhabitants' right of self-determination: Johnson, *Self-determination within the Community of Nations* (Sijthoff, Leyden, 1967), 86.

59 See *infra* under the headings **INDEPENDENT STATEHOOD** and **A TREATY OF FRIENDSHIP WITH NEW ZEALAND**.

60 Resolution 1514(XV), paragraphs 2 and 5. Eighty-nine countries including New Zealand voted in favour of the resolution, none voted against, and nine abstained.

61 Aikman, "Constitutional Development in New Zealand's Island Territories and in Western Samoa" in Ross (ed.) *supra* n. 16, 326.



The first step in solving this second problem was the establishment of a common citizenship.⁶² This paved the way for the creation of an “individual voters’ roll” on which Samoan citizens already on the European roll would be entitled to register and to vote for members of the Legislative Assembly on the basis of universal suffrage.⁶³ On the issue of the *matai* suffrage the Samoan leaders were adamant. They insisted that the principle of “one man — or one woman — one vote” was incompatible with traditional Samoan lines of authority and decision-making. As a concession, however, to the possibility of evolutionary change, the *matai* suffrage was not written into the Constitution itself. Universal suffrage may be introduced in any of the territorial constituencies by ordinary Act of Parliament, without the need for any of the special procedures required for a constitutional amendment.⁶⁴

The retention of the *matai* suffrage⁶⁵ raised the question whether the United Nations would agree to the termination of the trusteeship agreement even though it had become clear that on the entry into force of the Constitution Western Samoa would become independent and the question of a treaty relationship with New Zealand had been put aside for the time being. The 1959 visiting mission recommended a plebiscite on the basis of universal suffrage to “settle the wishes of the Samoan people beyond dispute.”⁶⁶ This proposal was accepted by the Fautua and the Legislative Assembly. One member recognised that “If this is the gateway to freedom, then we must pass through it.”⁶⁷ The plebiscite itself, held on the basis of universal adult suffrage, generated little real interest in Western Samoa. Considerable administrative effort was required to ensure a good voter turnout.⁶⁸ Approval both of the Constitution and of independence on 1 January 1962 on the basis of the Constitution was overwhelming.⁶⁹

The hope that the experience of taking part in the plebiscite on the basis of universal suffrage would prove a first step towards abandoning the *matai* suffrage for regular elections to the Legislative Assembly has not been realised. For a time at least there was a movement in the opposite direction. Part Samoans who would have been eligible to register on the individual voters’ roll tended to take Samoan titles and to vote as *matai*. On the other hand, the old practice of nominating — in accordance with the traditional

62 See *infra* under the heading **CITIZENSHIP**.

63 Constitution, Article 44 and Second Schedule. See also Resolutions adopted by the Constitutional Convention of Western Samoa 1960, (Apia, 1960) and Electoral Act 1963, Part IV (Individual Voters).

64 Aikman, *supra* n. 61, 326-8.

65 This had also been the basis for the election both of the Legislative Assembly which was to continue in office until elections could be held under the Constitution, and of the Constitutional Convention which had adopted the Constitution and requested the termination of the Trusteeship Agreement.

66 Report of the U.N. visiting mission to Western Samoa, T/1449, pp. 59-63.

67 Working Committee on Self-Government Paper 39, quoted in Boyd, *supra* n. 36.

68 When the roll closed about 6,000 of those eligible to vote had failed to register. The law was amended to permit everyone eligible to cast a vote whether enrolled or not. The result was that 87.5% of those eligible to vote took part in the plebiscite: McKay, *supra* n. 22, 159, 161.

69 32,426 or 83% of the total number taking part answered “yes” to the first question: Do you agree with the Constitution adopted by the Constitutional Convention on 28 October 1960?; 29,882 or 79% answered “yes” to the second question: Do you agree that on 1 January 1962 Western Samoa should become an independent state on the basis of that Constitution?

procedures for reaching consensus — a *matai* to stand unopposed for a territorial constituency has largely given way to majority voting. In some districts the desire to secure the election of a particular candidate led to the proliferation of new *matai* titles which were conferred on his supporters. This practice eventually led to the intervention of the legislature.⁷⁰

Recently there has been more of a disposition to question the continuation of the *matai* suffrage. In 1982 a judicial ruling was sought on its compatibility with the constitutional provisions protecting fundamental rights. In *Attorney-General v. Saipai'ia Olomalu and Others*⁷¹ the Western Samoa Court of Appeal⁷² overruled a decision of St John C.J. in the Supreme Court. The Chief Justice had held that the provisions of the Electoral Act 1963 providing for the registration of *matai* as voters and for a separate individual voters' roll were inconsistent with article 15 of the Constitution. Paragraph (1) of that article proclaimed the equality of all persons before the law and their entitlement to equal protection under the law. Paragraph (2) forbade discrimination on the grounds, inter alia, of descent, social origin or family status. The Court of Appeal, examining the provisions of the Constitution as a whole, and confirming its findings by reference to the circumstances of its adoption, held that article 15 did not have the effect of introducing and entrenching universal suffrage.

Like the Chief Justice, it felt unable to reach this conclusion by relying on article 15(4) which provided that nothing in article 15 should affect the operation of any existing law — that is the law in force immediately before Independence Day.⁷³ Although that law had made provision for separate Samoan and European electoral rolls it had related to the pre-independence constitutional arrangements. The Court of Appeal was not inclined to hold that the provisions of the Electoral Act 1963, enacted after Independence Day,⁷⁴ were entitled to the same protection.⁷⁵ A proviso to clause (4) of article 15 requires the state to direct its policy towards the progressive removal of any disability or restriction and any privilege or advantage which has been imposed by any existing law or practice on any of the grounds referred to in clause (2). The Court of Appeal did not answer directly the question posed by the Chief Justice whether the requirement laid upon the state by the proviso to article 15(4) can be monitored by the courts.

70 Boyd, "Independent Western Samoa" (1968) 9 Pacific Viewpoint, 159. See also Western Samoa Government, *Report on Matai Titles, Customary Land and the Land and Titles Court* (Committee on Matai Titles, Customary Land and the Land and Titles Court, Apia, 1975).

71 Reported in (1984) 14 V.U.W.L.R. 275.

72 Cooke P, Mills and Keith JJ.

73 See article 114, paragraph (a).

74 There is a strong suggestion that when the wording of article 15(4) was settled and adopted by the Constitutional Convention, it was contemplated that the new electoral law required to implement the provisions of the Constitution would be enacted before Independence Day. If this intention had been carried out then the voting system would undoubtedly have attracted the protection of article 15(4): see Davidson, *supra* n. 23, 408.

75 Clause (4) as a whole was thus a ratchet which permitted existing discriminatory law or executive and administrative practices to continue, but set as a goal full compliance with the constitutional standards.

Its attitude, however, may be gauged from two statements on related issues. The first concerned the relevance of the Convention debates as a guide to interpretation twenty years after the entry into force of the Constitution. The Court expressed the view that, if it was ever right to accept the general proposition that over time, the scope and significance of constitutional provisions may alter, that proposition could not be applied to such a short period in the life of a people and a state as twenty years, and to such a fundamental question as that under consideration. The Court's final words seem to exclude, at least for the time being, any judicial disposition to supervise the progressive attainment of the standards required by article 15:⁷⁶

It may be as well to add that the present judgment does not imply any view on the part of the Court about whether or not continuing to use the matai system as the main basis for elections to the Legislative Assembly is in the long-term interests of Western Samoa. We recognise the argument that in an indirect way the matai system is democratic. At the same time . . . there may be room for doubt whether all those adult citizens who are not qualified for the individual voter's roll do have a really effective voice in the territorial constituencies These, however, are questions not of law, but of social and political policy: questions which, on our interpretation of the Constitution are to be decided by Parliament, not by the courts.

As in other Pacific countries which have become independent or self-governing in the era of the United Nations, there is in Western Samoa a tension between democratic principles and traditional social organisation. In relation to the right to vote, the Constitution could do no more than set standards at which to aim. This was a tacit recognition that if the Samoan people were to adopt a Constitution to which they could not give their whole-hearted allegiance, it was unlikely to be an enduring blueprint for the years ahead. As the Prime Minister of Western Samoa observed nine years later: "Perhaps if Samoa had less confidence in itself it would have adopted the completely *palagi* [European] practices and, perhaps, suffered the consequences, as shown by the experiences of other emergent nations."⁷⁷

V. INDEPENDENT STATEHOOD

Western Samoa's accession to independence involved a minimum of formal action either by New Zealand or by the international community. The apron strings which had tied Western Samoa constitutionally to New Zealand had already been loosened. Although the existing law-making authority rested with or was derived from the New Zealand Parliament, great care was taken that the legal authority of the new state should derive only from its adoption by the constitutional convention and its subsequent endorsement in a popular referendum.⁷⁸ In contrast to the practice followed in granting

⁷⁶ Cf. B. H. Arthur, "The significance of twenty years" (1984) 14 V.U.W.L.R. 295.

⁷⁷ Hon. Tupua Tamasese Lealofi IV, *Western Samoa faces the modern world*, (New Zealand Institute of International Affairs, Wellington, 1970) 3.

⁷⁸ Davidson, "The transition to independence: the example of Western Samoa" (1961) 8 Australian Journal of Politics and History, 15; Sir Guy Powles, *supra* n. 44.

independence to United Kingdom territories, a New Zealand enactment recognized but did not confer the independence of Western Samoa.⁷⁹

A leading British authority has concluded that Western Samoa succeeded, to the maximum possible extent, in producing an autochthonous constitution, made by the people themselves, but possessing an unchallengeable validity and free of the dangers presented by the doctrine of autochthony in its most extreme form.⁸⁰ There is no logical answer to the paradox that a constitution resting only on the popular will expressed through a means not authorized by the existing law is intended to establish for the future guarantees that are not themselves susceptible to the same kind of extra-legal change. The reality is that constitutions, whether they are made in the exercise of powers conferred by the existing legal system or by processes involving a break with legal continuity, derive their real strength from the perception that they ought to be obeyed. Six years after independence an experienced observer concluded that respect for constitutional government had taken firm root in Western Samoa.⁸¹

Delivered into the waiting arms of the United Nations, the newly independent state found ready acceptance by other states, collectively and individually. With the agreement of the administering authority, the United Nations General Assembly unanimously resolved that the Trusteeship Agreement for Western Samoa would cease to be in force upon the accession of Western Samoa to independence on 1 January 1962.⁸² At the time of independence recognition was expressly accorded by a number of Commonwealth and foreign countries.⁸³ Appraisal of the qualifications of a state like Western Samoa to become independent came later, when other small states and territories were emerging from their colonial status and seeking an appropriate place in the world community.⁸⁴ Peter Fraser's doubts about the real meaning of independence were coming to be more widely shared. Even so, the fact of Western Samoa's independence has never been doubted, though analogies that are open to question have occasionally been drawn.⁸⁵

The government of Western Samoa had announced that the country did not propose in the foreseeable future to apply for United Nations membership. Nor did it, until much later, seek formal membership of the Commonwealth. It looked to New Zealand for assistance in the conduct of Western Samoa's foreign relations, and was unwilling initially to accept diplomatic representatives from any other foreign nation.⁸⁶ The proffered reason for confining attention largely to domestic and regional affairs was the

79 The Western Samoa Act 1961, s.3.

80 Roberts-Wray, *supra* n. 50, 293, 300.

81 Boyd, *supra* n. 70.

82 Resolution 1626 (XVI).

83 "Independence celebrations in Western Samoa" New Zealand External Affairs Review, January 1962.

84 See, for example, United Nations Institute for Training and Research, *Status and problems of very small states and territories*, UNITAR Series No. 3 (New York, 1969).

85 See *infra* under the heading **A TREATY OF FRIENDSHIP WITH NEW ZEALAND**.

86 See *infra* under the headings **A TREATY OF FRIENDSHIP WITH NEW ZEALAND; MEMBERSHIP OF THE COMMONWEALTH; MEMBERSHIP OF THE UNITED NATIONS**.

prohibitive cost of diplomatic relations and of the inevitable obligations resulting from an active participation in world politics.⁸⁷ The government of Western Samoa was, however, entirely free to take foreign policy initiatives which it judged to be in its interests, and the country soon became a separate member of the South Pacific Commission⁸⁸ and of the Asian Development Bank.⁸⁹

Many other small territories, following Western Samoa's example, set independence as their goal. The international community did not deny their right to independence,⁹⁰ but their emergence as independent states has led to a modification of the criteria regarding geographical size, population and above all economic viability which had traditionally been associated with the recognition of independent statehood.⁹¹ Independence, however, could not in itself solve problems of lack of natural resources and technical skills, foreign debt and unfavourable terms of trade. For reasons of self-interest as well as humanity it is still necessary for the richer nations to bring about a massive transfer of resources to the poorer independent states, many of them small, in order that conditions of life for their people may be improved and international economic and political stability strengthened.⁹²

VI. A TREATY OF FRIENDSHIP WITH NEW ZEALAND

The treaty relationship between Western Samoa and New Zealand has been described as an experiment in co-operation possibly unique in the relations of sovereign states. The Western Samoan leaders had no desire to qualify their independence, but they wanted a treaty with the former administering authority as an assurance that in time of need they could rely upon New Zealand's help.⁹³ The Treaty of Friendship signed at Apia on 1 August 1962⁹⁴ provides that relations between the two countries

87 O'Brien and Goebel, "United States recognition policy towards the new nations" in O'Brien (ed.), *The new nations in international law and diplomacy* (Praeger, New York, 1965), 144-145.

88 Instrument of accession to the agreement establishing the South Pacific Commission, Canberra, 6 February 1947, deposited on 17 July 1965.

89 Instrument of ratification of the agreement establishing the Asian Development Bank, Manila, 4 December 1965, deposited on 23 June 1966. In force 22 August 1966.

90 But cf. the attitude of some of the great powers to the exercise by small states of full voting rights as members of the United Nations, discussed infra under the heading **MEMBERSHIP OF THE UNITED NATIONS**.

91 O'Brien and Goebel, supra n. 87.

92 In 1979 the United Nations General Assembly endorsed a comprehensive new programme of action adopted by the fifth session of UNCTAD to assist the least developed among the developing countries: resolution 210 (XXXIV). The list of least developed countries included Western Samoa.

93 The interest of the Samoans in a treaty relationship can be seen as reflecting their perception not only of the Treaty of Friendship between Great Britain and Tonga (supra n.49) but also of the Berlin Treaty of 1889 (supra n.19). From that time on the Samoans had wanted the protection of foreign powers in the sphere of external affairs. Even so the Treaty of Friendship with New Zealand did not contain any specific obligation to assist in the defence of Western Samoa. The two governments considered that the newly independent state was not faced with any threat to its security calling for this type of guarantee.

94 New Zealand Treaty Series 1962, No. 5, Department of External Affairs Publication No. 256; Appendices to the Journals of the House of Representatives 1962 A12; 453 United Nations Treaty Series, 3. The treaty entered into force on the date of signature: article VII.

shall continue to be governed by a spirit of close friendship;⁹⁵ that where appropriate there shall be consultations between them on matters of mutual concern;⁹⁶ that in accordance with normal practice between friendly states, citizens of each country living in the territory of the other shall be given equitable treatment, full legal protection and access to the courts;⁹⁷ and that the government of New Zealand would consider sympathetically requests from the government of Western Samoa for technical, administrative and other assistance.⁹⁸ Article V provides that the government of New Zealand shall,⁹⁹

for as long as the Government of Western Samoa wishes, and in such manner as will in no way impair the right of the Government of Western Samoa to formulate its own foreign policies, afford assistance to the government of Western Samoa in the conduct of its international relations.

Under article VI, the Treaty is terminable by either party at any time.

Because a state's effective control of its foreign relations is often the most relevant test of its independent status,¹⁰⁰ international interest has concentrated on the provisions of article V. One writer has classified Western Samoa as both a "protected state" and an "associated state" on the ground that foreign affairs powers have been delegated to another state, though he is in each case careful to note that no derogation from independence is involved.¹⁰¹ Another, however, has contrasted Western Samoa's status with that of an associated state which, by definition, is not independent, and has speculated that, as international law has been slow to find a fully satisfactory place for associated states, independence and a treaty relationship with the former administering

95 Article I. The affirmation somewhat belied the lingering mistrust of New Zealand motives and the smouldering nationalist feelings on the part of Samoan leaders which were still apparent throughout the period from 1947 to 1962.

96 Article II.

97 Article III.

98 Article IV.

99 It was spelt out that the government of New Zealand would, when requested, supply the government of Western Samoa with information concerning international affairs and act as the channel for communication with other governments and international organisations. It would also "[w]hen requested, and where permissible and appropriate" undertake the representation of the government of Western Samoa at any international conference at which Western Samoa was entitled to be represented, and would undertake the diplomatic protection of nationals of Western Samoa in other countries and perform consular functions on their behalf. An exchange of letters, Apia, 8 March 1963, set out the practical steps which should be taken for the implementation of article V: New Zealand Treaty Series 1963, No. 11, Department of External Affairs Publication No. 272; Appendices to the Journals of the House of Representatives 1963 A20; 485 United Nations Treaty Series, 372.

100 See for example O'Connell, *International Law* (Stevens & Sons, London, 1965) Vol. I, 304: "The fully-sovereign State is one which is not subordinate in its capacity for international action to that of any other legal entity."

101 Crawford, *The Creation of States in International Law* (Clarendon Press, Oxford, 1979) 190, n.19 and 295.

power — the Western Samoan solution — may be a preferable outcome for small states which feel they cannot stand alone.¹⁰²

For their own part, the New Zealand and Samoan governments have always characterised the Treaty of Friendship simply as one between independent states. They have not attached to their relationship any label, which, contrary to the express words of article V, might imply that Western Samoa had conferred on New Zealand a power of agency inconsistent with its own continuing full and unfettered control over its own foreign relations. There was, for example, never any suggestion that the government of New Zealand would have international responsibility for acts of the government of Western Samoa effected through a New Zealand organ.¹⁰³ This is in marked contrast to the view expressed by the New Zealand government that the government of the Cook Islands has in international law attributes of a sovereign state, but “until the Cook Islands assumes sole responsibility for the conduct of its international relations, New Zealand will remain internationally responsible for the acts and obligations of the Cook Islands.”¹⁰⁴

Formally, Western Samoa’s position may have something in common with small European states like San Marino and Monaco and Andorra which are linked by treaty with Italy and France respectively, though acting autonomously in the conduct of their foreign affairs.¹⁰⁵ Conceptually, the cases are distinct. The Treaty of Friendship did not

102 Broderick, “Associated statehood — A New Form of Decolonization”, (1968) 17 I.C.L.Q. 368 at 402. While this conclusion may have been justified at the time, there is now reason to reconsider it in view of the subsequent success of the Cook Islands, whose example has been followed to some extent by Niue, in exercising an international treaty-making capacity. See, for example C. C. Aikman, “Constitutional Developments in the Cook Islands” and A. Quentin-Baxter, “The Constitutions of Niue and the Marshall Islands: Common Traits and Points of Difference” in Sack (ed.), *Pacific Constitutions: Proceedings of the Canberra Law Workshop VI* (Law Department, RSSS, ANU, Canberra, 1982) 87, 97; and Frame, “The external affairs and defence of the Cook Islands — the ‘Riddiford clause’ considered”, (1987) 17 V.U.W.L.R. 141.

103 See the draft of articles on State Responsibility (Part 1) adopted on first reading by the International Law Commission at its 32nd session. Article 9 reads as follows:

*Attribution to the State of the conduct of organs placed at its disposal
by another State or by an international organization*

The conduct of an organ which has been placed at the disposal of a State by another State or by an international organization shall be considered as an act of the former State under international law, if that organ was acting in the exercise of elements of the governmental authority of the State at whose disposal it has been placed: *Yearbook of the International Law Commission*, 1980, vol. II, Part Two, 31.

104 Note dated 1 November 1976 from the Ministry of Foreign Affairs. Extracts reproduced in McDowell (ed.), *Digest of United States Practice in International Law 1976*, (Department of State publication 8908, U.S. Government Printing Office, Washington, 1977) 217. While this conclusion is understandable in relation to acts or obligations undertaken by New Zealand on behalf of the Cook Islands, New Zealand’s responsibility may be open to question where the Cook Islands acts solely on its own authority and is not “subject to the power of direction or control of another State”. See draft articles on State Responsibility (Part 1) article 28(1), note 103, *Yearbook* *ibid.*, 33.

105 O’Connell, *supra* n. 100, 312.

bring Western Samoa into the world as “a little old man who would never enjoy the pleasures of growing up”¹⁰⁶ but as a young state which would come to take a full place in the international community. The expectation has been realised. By the mid nineteen-sixties it had become apparent that there would be occasions when, on account of a conflict of interest or other reasons, it might not be appropriate for a New Zealand delegation to an international meeting also to represent the government of Western Samoa. When such difficulties arose the Western Samoan authorities were understanding. If their interests warranted it they were prepared to face the expense of being separately represented. Before long their own negotiators became sufficiently experienced confidently to undertake even specialised negotiations on Western Samoa’s behalf.

The Treaty of Friendship is still in force although Western Samoa has now become a member of the United Nations. This is the final proof, if that were needed, of the nature of the treaty relationship. Admission to United Nations membership meant that “in the judgment of the Organization”, which “is based on the principle of the sovereign equality of all its members”, Western Samoa was “able and willing” to carry out the obligations contained in the Charter.¹⁰⁷ In recent times the main purpose of the Treaty has been to ensure the sympathetic consideration by each partner government of any matter affecting important interests of the other. The next section of this article will describe how it was invoked in just such circumstances.

VII. CITIZENSHIP

The best-known formulation of the basic criteria for statehood at international law prescribes as the first of four necessary qualifications the possession of a permanent population. This, together with a defined territory, a government and the capacity to enter into relations with other states are said to be the hallmarks of a state as an international person.¹⁰⁸ The idea of a permanent population and a defined territory means that there must be people who, as a coherent group, identify themselves with one particular geographical area rather than another. The evidence of such a link is normally provided by the domestic law identifying the persons whom the state will regard as its citizens.¹⁰⁹ In relation to the people of Western Samoa the nature of the link between a country and its citizens has proved unusually troublesome.

Under the mandate (and later under the trusteeship) New Zealand’s policy was to treat Western Samoans as British (and from 1949 New Zealand¹¹⁰) protected persons.¹¹¹

106 The remark was that of Professor R. Q. Quentin-Baxter.

107 Articles 2(1) and 4(1). See *infra* under the heading **MEMBERSHIP OF THE UNITED NATIONS**.

108 Article I of the Montevideo Convention 1933, 165 League of Nations Treaty Series, 19.

109 It is not proposed in this article to discuss the concept of nationality at international law or the way in which that concept relates to the domestic law concepts of nationality, allegiance or citizenship.

110 British Nationality and New Zealand Citizenship Act 1948, s.2(1): definition of “New Zealand protected person”; Western Samoa New Zealand Protected Persons Order 1950, SR1950/158.

111 O’Connell, *supra* n. 100, 370. See also *Frost v. Stevenson* (1937) 58 C.L.R. 528 per Evatt J at 581. This practice complied with the recommendation of the Permanent Mandates Commission that the national status of the inhabitants of “B” and “C” class mandated territories should not be assimilated to that of nationals of the mandatory power. See *supra* under the heading **THE SACRED TRUST**.

In 1959, the working committee on self government had tackled the task of drafting a citizenship law for Western Samoa.¹¹² As Aikman comments:¹¹³

[t]he main feature of the Ordinance was its requirement that citizens of Western Samoa were not to hold a second citizenship. This meant that the Europeans and part-Europeans resident in Samoa who had New Zealand or German citizenship were faced with a difficult decision. If they wished to become Samoan citizens, they had to renounce their other citizenship. This was probably a more severe requirement than was really necessary,¹¹⁴ but it did ensure that only those persons who were prepared to give their full support to the new State became Samoan citizens.

Against this background, it is easy to imagine the surprise and concern in both New Zealand and Western Samoa when, in 1982, the Privy Council held that by legislation enacted in 1928¹¹⁵ the Parliament of New Zealand had conferred on persons born in Western Samoa between 1928 and 1948 (when the legislation was repealed) the status of natural-born British subjects.¹¹⁶ The Privy Council regarded as pivotal section 7(1) of the 1928 Act which provided that

... this Act shall apply to the Cook Islands and to Western Samoa in the same manner in all respects as if those territories were for all purposes part of New Zealand; and the term "New Zealand" as used in this Act shall, both in New Zealand and in the said territories respectively, be construed as including the Cook Islands and Western Samoa.

In *Levave v. Immigration Department*¹¹⁷ the Court of Appeal had held that the same formula in the British Nationality and Status of Aliens (in New Zealand) Act 1923¹¹⁸ had the primary purpose of making the provisions of that Act part of the law of the Cook Islands and of Western Samoa and of adapting accordingly the "homegrown" provisions in that Act concerning the naturalization of aliens in New Zealand to permit also the naturalization of aliens in Western Samoa. The Privy Council considered that in determining the effect of section 7(1) of the 1928 Act it could not follow this decision.

It was common ground that one purpose of the 1928 Act was to establish a way for persons resident in Western Samoa to become British subjects by naturalisation under the British Nationality and Status of Aliens Act 1914 (Imperial).¹¹⁹ The members of the

112 The Citizenship of Western Samoa Ordinance 1959.

113 *Supra* n.61, 327.

114 O'Connell notes that international law is in principle indifferent to the problems raised by plural nationality arising when the operation of two or more municipal legal systems ascribes to a person the nationality of each: *supra* n.100, 743. He implies, however, that this will be a situation affecting individuals and will arise because they have some personal connection with each of the states concerned. If a state were to provide that the whole, or a substantial proportion of the population of another state was to be its citizens, then it might be argued that neither of the states concerned could be said to have a permanent population within a defined territory. See *infra* in relation to the effect of the the Privy Council's decision in the *Lesa* case.

115 The British Nationality and Status of Aliens (in New Zealand) Act 1928 (hereafter referred to as "the 1928 Act").

116 *Lesa v. Attorney-General of New Zealand* [1983] 2 A.C. 20.

117 [1979] 2 N.Z.L.R. 74.

118 S.14.

119 Hereafter referred to as "the Imperial Act".

Judicial Committee reasoned that unless the effect of section 7(1) was to require Western Samoa to be treated for the purposes of naturalization as part of His Majesty's dominions, past residence in Western Samoa would not enable a person to acquire the necessary residential qualifications under section 2(1)(a) and (2) of the Imperial Act.¹²⁰ They then concluded that if Western Samoa was to be regarded as part of His Majesty's dominions for this purpose then it must also be regarded as "within His Majesty's dominions and allegiance" for the purpose of section 1(1) of the Imperial Act prescribing the circumstances in which persons were to be regarded as natural-born British subjects.¹²¹ This is not the place for a detailed analysis of the decision, or of the wider considerations which, if properly weighed, might have taken the Privy Council beyond a mere textual analysis.¹²² Even at the level of literal interpretation, however, it is possible in the writer's submission, to take a different route through the interlocking provisions of the 1928 Act and the Imperial Act, and to reach the conclusion that they permitted the naturalisation of persons resident in Western Samoa without at the same time necessarily producing the startling and admittedly unwanted consequence that persons born in Western Samoa during the period when the Act was in force were to be regarded as natural-born British subjects.¹²³

The government of New Zealand was, of course, bound to regard the Privy Council's decision as declaring the law. It announced that early consultations had been arranged with the government of Western Samoa. In the meantime it undertook to issue New Zealand passports in accordance with the usual procedures (taking two to three weeks) to those residents of Western Samoa who could establish their New Zealand citizenship.¹²⁴ The best estimates of the two governments put the number at something of the order of 100,000 people — over three-fifths of the total population of Western Samoa which was then 160,000.¹²⁵ For New Zealand the implications were obvious if immigration from Western Samoa was no longer to be governed by the existing quota system which permitted the entry of 1,100 Samoans a year. In Western Samoa the immediate delight in the prospect that, if the law remained unchanged, large numbers of Western Samoan citizens would have an automatic right of entry into New Zealand by virtue of their dual citizenship was tempered by the realisation among political leaders that, if the outflow went unchecked, the country was likely to lose a significant

120 At 27.

121 At 31.

122 For an excellent analysis of the broader context within which the Privy Council might have conducted its interpretative exercise, see Heard, "Western Samoans as New Zealand Citizens" (1984) 14 V.U.W.L.R. 301.

123 The writer's reasoning is set out in the Appendix.

124 Press Statement by the Prime Minister, the Rt. Hon. R. D. Muldoon, 29 July 1982, reproduced in *New Zealand Citizenship and Western Samoans* (Ministry of Foreign Affairs, Wellington: Information Bulletin No. 4, March 1983), 10. (Hereinafter cited as *New Zealand Citizenship and Western Samoans*.)

125 446 NZPD, 2513, reprinted in *New Zealand Citizenship and Western Samoans*, 20.

proportion of its better-educated and experienced people. These practical considerations overshadowed the concern that might have been expected on grounds of principle about the conflict of allegiances and other anomalies likely to arise from the existence of dual citizenship on such a massive scale.

The solution agreed upon between the two governments was the subject of a Protocol to the Treaty of Friendship signed at Apia on 21 August 1982.¹²⁶ That document recorded the obligation of the government of New Zealand to grant the right to become New Zealand citizens immediately upon application to all citizens of Western Samoa who were then in New Zealand or who subsequently travelled to New Zealand and acquired permanent residence status.¹²⁷ This guarantee was the quid pro quo for a course of action not spelled out in the Protocol but made plain by the Citizenship (Western Samoa) Bill introduced in Parliament three days later. The Bill reversed the effect of the Privy Council's decision by declaring that the persons affected by it, their descendants and others in an analogous position were deemed never to have been New Zealand citizens.¹²⁸ The only exception would be the petitioner herself whose citizenship was reaffirmed.¹²⁹ The effect of the bargain was to restore the basic situation to that understood and acted upon by all concerned for sixty years. The rights to be accorded under the Protocol would apply to all Western Samoans who had emigrated to New Zealand (including those who at the time of the Protocol were illegal immigrants). They were thus of potential benefit to some who could not have been regarded as New Zealand citizens on the basis of the Privy Council decision. The new arrangements meant that in future Western Samoan citizens would acquire dual citizenship by operation of law only on application and in circumstances demonstrating the existence of a real connection with New Zealand.

Not surprisingly there was at first a sharp reaction in New Zealand to the proposal that the country's newly-discovered citizens of Samoan origin should be required to give up what some now saw as their "birthright". For example the Human Rights Commission¹³⁰ considered that the Citizenship (Western Samoa) Bill involved a denial of basic human rights in that it sought to deprive a particular group of New Zealanders of their citizenship on the basis that they were Polynesians of Samoan descent.¹³¹ The Foreign Affairs Select Committee, having taken also the advice of the Secretary of Foreign Affairs,¹³² concluded that the criticism failed to take account of the relevant background of international law to the Protocol and to the Bill. In his report to the House the Chairman said:¹³³

126 Appendices to the Journals of the House of Representatives 1982 A56, reprinted in *New Zealand Citizenship and Western Samoans*, 15.

127 Article II.

128 Enacted as the Citizenship (Western Samoa) Act 1982, s.6.

129 *Ibid.*, s.5.

130 Constituted under the Human Rights Commission Act 1977.

131 Statement issued on 2 September 1982, reprinted in *New Zealand Citizenship and Western Samoans*, 28.

132 Letter of 6 September 1982, reproduced in *New Zealand Citizenship and Western Samoans*, 29.

133 Hon. P. I. Wilkinson, speaking in the House of Representatives on 8 September 1982: 446 NZPD, 3055, reprinted in *New Zealand Citizenship and Western Samoans*, 31.

Had it been realised in 1961 that Western Samoans did have New Zealand citizenship, undoubtedly it would have been decided that, upon independence, the inhabitants of Western Samoa should cease to hold such citizenship, as was the case in 1948 when New Zealand citizenship was separated from that of the United Kingdom.

He might have added that, where the inhabitants of a colony possessed the citizenship of the administering power, a requirement that they should assume the citizenship of the newly independent state in lieu of their former status has been just as much a feature of the most recent phase of decolonization.¹³⁴

The situation of persons having no other connection with New Zealand than the fact of their birth in Western Samoa was quite different from that of a New Zealand citizen who, through place of birth, parentage, marriage or naturalization, has a real connection with more than one country and is therefore a dual citizen.¹³⁵ The declaration that Western Samoan citizens living in their own independent country and fully protected by its laws were deemed never to have been New Zealand citizens also had nothing in common with the practices which occurred in Europe both before and after the First World War. There, certain countries denied the enjoyment of civil rights to racial, religious and linguistic minorities living within their borders by purporting to deprive them of their citizenship.¹³⁶ Earlier the government had rejected the option of continuing to regard the large number of people in Western Samoa affected by the Privy Council's decision as New Zealand citizens but restricting their right of entry to New Zealand.¹³⁷ That would indeed have been contrary to human rights principles.¹³⁸

Some people also claimed that it was constitutionally improper for Parliament to "overturn" a decision of the country's highest court. But it is not uncommon for a legislature to amend the law for the future if the interpretation placed by the courts on an Act of Parliament does not accord with Parliament's original intentions. As in this case, however, it usually does so without depriving the litigant concerned of the fruits of

134 The law of New Zealand had earlier been amended to provide that persons becoming citizens of Western Samoa should cease to be New Zealand protected persons: Western Samoa Act 1961, s.9 and Second Schedule: Amendments to the British Nationality and New Zealand Citizenship Act 1948.

135 New Zealand law does not outlaw the exercise of dual citizenship arising in this way, and is much more liberal in this respect than the law of Western Samoa.

136 For a short account of the way in which the Treaties of Peace and the League of Nations sought to impose and implement international guarantees protecting minority rights against this and other infringements see C. A. Macartney, "League of Nations' Protection of Minority Rights" in Luard (ed.), *The International Protection of Human Rights* (Praeger, New York, 1967), 22.

137 446 NZPD, 2513.

138 See, for example article 12(4) of the International Covenant on Civil and Political Rights: "No one shall be arbitrarily deprived of the right to enter his own country". See also interim reply to the United Nations Human Rights Committee by the New Zealand representative, Mr C. D. Beeby, Geneva, 7 November 1983: *Human Rights in New Zealand. The presentation of New Zealand's report under the International Covenant on Civil and Political Rights* (Ministry of Foreign Affairs, Wellington, Information Bulletin No. 6, January 1984), 6.

victory in the courts.¹³⁹ That type of intervention does not involve the kind of retrospective change in the criminal law outlawed under the international instruments on human rights.¹⁴⁰ Nevertheless, it says much for the strength of the ties linking New Zealand and Western Samoa that the Privy Council's surprise decision, the steps taken to remedy the situation and the controversy to which they in turn gave rise were surmounted without harm to the relations between the two countries. There was a recognition on both sides that what was really at stake was the maintenance by the New Zealand government of a fair and reasonably generous immigration policy to govern the movement of Western Samoans to New Zealand.

VIII. MEMBERSHIP OF THE COMMONWEALTH

Another issue, also delicate at the time when it first arose but resolved harmoniously owing to the good sense of all concerned, was the position of an independent Western Samoa in relation to the Commonwealth. By the time independence was in the offing some guidelines had emerged. In 1950, India's adoption of a republican constitution led the "old" Commonwealth countries to agree that membership of the Commonwealth should not be confined to countries of which the Sovereign was Head of State¹⁴¹ so long as they were prepared to acknowledge her as "Head of the Commonwealth".¹⁴² Then, in 1961, the admission to the Commonwealth of an independent Tanganyika¹⁴³ set a precedent for the membership of a former United Nations Trust Territory which had never been within the Sovereign's dominions. But these were countries whose size and influence gave their heads of government a natural place at the conference table. In the same year, 1961, Cyprus, with a population in 1960 of 576,000, was waiting in the wings. Though not then admitted to Commonwealth membership, it was treated for the purposes of the domestic law of other Commonwealth countries as if it were a Commonwealth member — a status conceived originally for Ireland which in 1949 had refused to contemplate Commonwealth membership but was too closely linked with Britain and other Commonwealth countries simply to be cut adrift as a foreign country.¹⁴⁴ These arrangements suggested a path which Western Samoa could follow.

The Samoan leaders themselves were divided on the question of Commonwealth

139 See, for example, the remark of Lord Darling delivering the opinion of the Privy Council in *Abeysekera v. Jayatilake* [1932] A.C. 260 at 267: "... legislators have certainly the right to prevent, alter or reverse the consequences of their own decrees".

140 See, for example, article 15 of the International Covenant on Civil and Political Rights.

141 Cf. articles 17 and 18 of the Western Samoan Constitution under which the leaders of two "royal" Samoan lineages were jointly named Head of State for life. After the death of the survivor, the Head of State is to be elected by the Legislative Assembly from among those eligible to be elected to the legislature and filling any other prescribed qualifications.

142 In New Zealand any possible domestic law consequences of India's republican status were negated by the Republic of India Act 1950. See now the Commonwealth Countries Act 1977, s.3.

143 The country became Tanzania in 1964, upon union with Zanzibar.

144 See, in relation to New Zealand, the provision made by the Republic of Ireland Act 1950, now re-enacted as s.4 of the Commonwealth Countries Act 1977.

membership. There was some interest in the practical advantages which might flow,¹⁴⁵ but, in view of the fact that Western Samoa would then have been the smallest independent country in both area and population¹⁴⁶ to seek admission as a full member, there was also hesitancy about formalising Western Samoa's status when the outcome could not be predicted with certainty. At the Commonwealth Prime Ministers' Conference held in March 1961 the New Zealand Prime Minister, the Rt. Hon. Sir Keith Holyoake, explained that the government of Western Samoa wished to put off a decision until some time after independence. He proposed that in the meantime the country should be treated as if a member of the Commonwealth. There was general agreement to this course. Although India and Ghana had initially sought an early definitive decision on Western Samoa's status, they did not press the point. By the time Western Samoa decided in 1970 to apply for membership of the Commonwealth¹⁴⁷ eleven other small newly-independent states which had formerly been United Kingdom dependent territories, including both Fiji and Tonga, had already become full members.¹⁴⁸ Approval of Western Samoa's application was a foregone conclusion. Far from being an aberration, the inclusion of very small states¹⁴⁹ along with larger ones in a worldwide grouping, sharing a common institutional heritage and meeting regularly at the highest level of government on a basis of equality, has become a main reason for the Commonwealth's continuing significance.

IX. MEMBERSHIP OF THE UNITED NATIONS

Although the government of Western Samoa had announced that it had for the time being no intention of seeking to become a member of the United Nations¹⁵⁰ the General Assembly's resolution approving the termination of the Trusteeship Agreement contained a final paragraph expressing the hope that Western Samoa, on the attainment

145 These were seen as including eligibility to join Commonwealth technical organisations, the right to imperial preferences, membership of the sterling area, access to the London financial market and opportunities for reciprocal recognition of Western Samoan citizens as having the status of Commonwealth citizens in the law of other Commonwealth countries.

146 At the time of independence the population was about 110,000. The total land area is 2,842 square kilometres.

147 With behind-the-scenes encouragement from the country's old mentor, Sir Guy Powles.

148 They were, in addition to Fiji and Tonga, Cyprus, Trinidad and Tobago, Malta, The Gambia, Botswana, Lesotho, Barbados, Mauritius and Swaziland, all with populations of one million or less. Only the former Trust Territory of Nauru with a population of 6,000 and an area of 21 square kilometres had become a special member on terms which excluded representation at meetings of the Commonwealth Heads of Government.

149 Since 1970, 12 more small states have become members of the Commonwealth. They are Bahamas, Grenada, Seychelles, Solomon Islands, Dominica, Kiribati, St Lucia, St Vincent and the Grenadines, Vanuatu, Belize, Antigua and Barbuda, and the Maldives. Tuvalu became a special member in 1978 on the same basis as Nauru.

150 See *supra* under the heading **INDEPENDENT STATEHOOD**.

of independence, would be admitted to membership, should it so desire.¹⁵¹ New Zealand could only acquiesce in this expression of majority commitment to the principle of universality. Fifteen years later a newly elected government in Western Samoa was ready to change course and apply for United Nations membership as part of a general policy of strengthening the country's identity and relationships with the outside world. Like the governments of many other small states, it saw representation in New York not only as an exercise of multilateral diplomacy but also as the easiest way of establishing bilateral contacts leading perhaps to enhanced opportunities for both trade and aid.

In communicating the decision to apply for United Nations membership to the New Zealand government, the Western Samoan authorities asked whether there were any special conditions for the admission of small states. By that time the answer was a clear "No". Great power initiatives in the mid-sixties to create for very small states a limited form of membership without voting rights, or with only limited voting rights, had come to nothing in the face of majority opposition. Commenting on these developments, James Crawford concludes:¹⁵²

... it might have been thought that the United Nations, having swallowed the camel of a majority membership of small States, should not balk at the gnat of a relatively few very small States.

By the unanimous vote of both the Security Council and the General Assembly, Western Samoa was admitted as the 147th member of the United Nations on 15 December 1976. In the country's formal application for membership the Prime Minister, Tupuola Efi, had declared that Western Samoa accepted the obligations contained in the Charter and solemnly undertook to fulfil them. Admission to membership was, in effect, international certification of the capacity to do so,¹⁵³ whatever limits there might be in practice to Western Samoa's ability to "give the United Nations every assistance in any action it takes in accordance with the present Charter."¹⁵⁴

X. CONCLUSION

Recording now the significance of events stretching over nearly three quarters of a century, it is hard to recapture the sense of novelty and of battles fought and won which accompanied each new phase of Western Samoa's long journey to independence and the attainment of a wider role in the world community. Now that decolonisation has been largely accomplished in the Pacific and elsewhere, so many of the achievements seem by today's standards unremarkable and inevitable. If a generalised conclusion is to be drawn from the particular experience, it concerns the effect of evolutionary change

151 Resolution 1626 (XVI), paragraph 4.

152 Crawford, *supra* n. 101, 139-141.

153 *Ibid.*

154 Article 2(5).

upon legal concepts enshrining the values of an earlier day. Sooner or later they had to be transformed or replaced by other concepts giving effect to new ideas about the conditions necessary for human progress. The process owed much to the insights of leading figures who were in a position to influence the nature and the pace of change. Western Samoa was among the first of the dependent territories to set out on the road to self-government or independence by concentrating on accelerated political development. Powles's new and more radical approach to this policy forced New Zealand to seek middle ground in the United Nations between the demands of the anticolonialists on the one hand and, on the other, the entrenched attitudes of other administering powers. This was a contribution appreciated by India, in particular, as Sir Guy found when, in 1960, he took up his appointment as New Zealand's first High Commissioner in New Delhi.

From there he saluted Western Samoa's accession to independence. The *Wellington Evening Post* of 30 December 1961 reported that Sir Guy had sent the following verses by the celebrated Indian poet, Rabindranath Tagore, to the Prime Minister, Fiamē Mata'afa, on behalf of himself and his wife:

Our voyage is begun, we bow to Thee, our Captain,
Though the storm rages and the winds are wild
We sail on.

Undaunted by the dangers that await our pathway
'Fear Not' cries Thy voice in the heart of the tempest
We sail on.

Let us not in doubt look backward,
We have set our sails and picked up our oars.
For life and death are but Thy breath playing upon the Sea of life.
O Master Helmsman, we bow to Thee.

APPENDIX

Section 9 of the Imperial Act provides that Part II of the Act should not have effect in a self-governing dominion unless the legislature of that dominion adopted that Part. New Zealand did this by s.3 of the 1928 Act. The proviso to s.8(1) and also s.9(3) of the Imperial Act establish that references in that Act to a British Possession include an adopting dominion. Section 8(1) reads as follows:

The Government of any British Possession shall have the same power to grant a certificate of naturalization as the Secretary of State has under this Act, and the provisions of this Act as to the grant and revocation of such a certificate shall apply accordingly, with the substitution of the Government of the Possession for the Secretary of State, *and the Possession for the United Kingdom . . .* (emphasis added).

For the purposes of New Zealand law references in the Imperial Act to residence in the United Kingdom were therefore to be read as references to residence in New Zealand. It is submitted that this in turn required a reference to s.7(1) of the 1928 Act (quoted above). Although that subsection refers only to the construction of "the term 'New Zealand' as used in this Act", there is an inference that s.7(1) affects also the meaning of the term "New Zealand" where required to be substituted for the term "the United Kingdom" under s.8(1) of the Imperial Act set out in the First Schedule. Under the ordinary rules of construction, that Schedule must be regarded as part of "this Act".

Section 2(1) of the Imperial Act imposed upon an applicant for naturalization (unless in the service of the Crown) two types of residential qualification. Under paragraph (a), an applicant must have resided in His

Majesty's dominions for a period of not less than 5 years "in the manner required by this section". Section 2(2) provided as follows: "The residence required by this section is residence in the United Kingdom for not less than one year immediately preceding the application and previous residence, either in the United Kingdom or in some other part of his Majesty's dominions, for a period of four years within the last eight years before the application." When, under s.8(1) of the Imperial Act, "New Zealand" is substituted for the reference to "the United Kingdom", and then, as a second step, under s.7(1) of the 1928 Act, "Western Samoa" is substituted for "New Zealand" it is apparent that a minimum of five years' residence in Western Samoa will satisfy the requirements of s.2(1)(a) of the Imperial Act without any need to give an extended meaning to the term "His Majesty's dominions".

Unfortunately, there is not quite such a tidy way of satisfying the requirements of s.2(1)(c). Under this paragraph an applicant for naturalization must have a future intention of residing in His Majesty's dominions. Because s.2(2) of the Imperial Act begins with the words: "the residence required by *this section* is residence in the United Kingdom . . ." (emphasis added) it might be argued that this provision, *prima facie* applying to all other provisions of s.2, allows the expression "a future intention of residing in His Majesty's dominions" in s.2(1)(c) to be read as "a future intention of residing in the United Kingdom . . .", and therefore, by the process of adaptation already described, as "a future intention of residing in Western Samoa". But when s.2(2) is read as a whole it becomes apparent that it affects the meaning of residence in His Majesty's dominions only for the purpose of s.2(1)(a) prescribing the residence requirements prior to an application for naturalisation, and not for the purpose of s.2(1)(c) which refers to the applicant's place of intended residence after naturalization. Nevertheless, it is submitted, this is just the kind of "ambiguity or lack of clarity" which, as the Privy Council recognised, it might have been justified in resolving by reference to the resolutions of the Council of the League of Nations deprecating the automatic bestowal of the nationality of the mandatory power upon inhabitants of the mandated territory (at 33).

Their Lordships placed great emphasis upon the requirement imposed by s.7(1) of the 1928 Act that the Act should apply to the Cook Islands and to Western Samoa "in the same manner in all respects as if those territories were for all purposes part of New Zealand" (at 32). They did not, however, consider the meaning of s.6 declaring that the provisions of the Imperial Acts set forth in the Second Schedule (prescribing, *inter alia*, the persons who were deemed to be natural born British subjects) were to be part of the law of New Zealand "in so far as the said provisions are capable of application in New Zealand". Under s.7(1) the provisions of the Imperial Acts set forth in the Second Schedule became part of the law of Western Samoa "in so far as the said provisions are capable of application in Western Samoa". It does not follow that provisions which were capable of application in New Zealand were necessarily capable of application in Western Samoa.

On this reasoning Western Samoa should not have been regarded in any general way as within "His Majesty's dominions" for the purposes of the Imperial Act. For the limited purposes of s.2(1)(c), however, there is justification for regarding "His Majesty's dominions" as including, specifically, "the United Kingdom", and for reading that term as a reference to "Western Samoa" when the Imperial Act was applied to that country as part of its law.