DECOLONISATION AND FREE ASSOCIATION:
THE RELATIONSHIPS OF THE COOK ISLANDS AND NIUE
WITH NEW ZEALAND

BY

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ABSTRACT

The Cook Islands and Niue are self-governing states in free association with New Zealand. The free association arrangements met United Nations decolonisation requirements. They reflected the needs and wishes of the Cook Islands and Niue, and the interests of New Zealand.

Views are divided on what influenced the emergence of the arrangements for free association, whose interests they represented, and whether they have fulfilled the expectations of the Governments involved.

The purpose of this thesis is to determine the formative influences shaping self-government in free association of these two states, and to reach a conclusion on how effective the free association arrangements have been in fulfilling initial expectations.

The first half of this thesis draws on primary and secondary sources to establish what influenced the offer of self-determination, the options available, the choice made, the free association arrangements that emerged and whose interests these represented.

The second half of this thesis turns to fulfilment of those expectations. It explores the flexibility of free association – the ability of the Cook Islands and Niue to make constitutional change. It examines each of the major elements of free association: holding New Zealand citizenship, New Zealand provision of necessary economic and administrative assistance and New Zealand responsibility for external affairs and defence.

The conclusion is that the free association arrangements have been of mixed effectiveness in meeting the Governments' initial expectations.

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CHAPTER 1: A DECOLONISATION EXPERIMENT 50 YEARS ON

There needs to be an acknowledgement that the way the decolonisation experiment has been applied to the Cook Islands and Niue ... has largely fallen short of the expectations of all parties, despite considerable effort and very substantial development assistance.¹

The report ... is playing to New Zealand taxpayers and to a string of musical interludes anchored in colonialist ideology and philosophy. It treats the Cook Islands as an experiment and an ongoing inconvenience rather than an entity entrenched in its Constitutional and cultural framework and its legislative process.²

One of the issues that the partnership has faced is the differing interpretation of officials on 'necessary economic and administrative assistance' ... In any relationship like any partnership there are both positive and negative aspects. But importantly, we work together as partners and not adversaries and this has been an ongoing issue during the relationship.³

The feasibility of these recommendations requires further analysis and close consultation with our Realm partners given the potential budgetary and constitutional implications.⁴

I INTRODUCTION

The Cook Islands and Niue became self-governing in free association with New Zealand in 1965 and 1974 respectively, ending their non-self-governing status.⁵ The constitutional arrangements of free association were novel. They were designed to meet the self-determination wishes of these two small Pacific island states. They fulfilled New Zealand's United Nations decolonisation obligations, despite not representing

¹ New Zealand Foreign Affairs, Defence and Trade Committee, "Inquiry into New Zealand's Relationships with South Pacific Countries," December 2010, I 4A.

² Response to the Inquiry report by the Cook Islands Opposition MP and Democratic Party Deputy Leader Wilkie Rasmussen reported by Nerys Case, "'Hayes Report Plays to New Zealand Taxpayers'," *Cook Islands News*, 20 January 2011.

³ Niue Government response to the Inquiry report; see Secretary to Government, Government of Niue to New Zealand High Commissioner, Niue, "Inquiry into New Zealand's Relationships with South Pacific Countries," 15 March 2011.

⁴ "Government Response to the Foreign Affairs, Defence and Trade Committee Report: Inquiry into New Zealand's Relationships with South Pacific Countries, presented to the House of Representatives in Accordance with Standing Order 248," 2009, J1.

⁵ United Nations definitions of non-self-governing and self-governing territories are discussed in chapter 3. In simple terms the Cook Islands and Niue were no longer deemed by the United Nations to be colonies of New Zealand.

independence. Yet there were, and are, differing views about why these arrangements emerged and whose interests they served.

Fifty years on the Cook Islands and Niue remain in free association with New Zealand. The arrangements specify that Cook Islanders and Niueans continue to be New Zealand citizens. Niue has a guarantee of necessary economic and administrative assistance, and the Cook Islands had a decolonisation promise of this. New Zealand has a responsibility for external affairs and defence. Free association means the Cook Islands and Niue can change their Constitutions without reference to New Zealand, and changes have been made. All three have the Queen in right of New Zealand as Head of State.⁶

Yet contemporary Governments' views of the free association arrangements vary, as the New Zealand Foreign Affairs, Defence and Trade Committee conclusions and responses above show. Verdicts reached by scholars are similarly diverse. It is timely to determine how effective the free association arrangements have been in fulfilling Governments' initial expectations.

A Decolonisation

The transformation of colonial relationships, which took place in the second half of the twentieth century, was a process which changed the international political landscape and relationships between states. It has been described as a revolution in the norms of sovereignty.⁷ Outcomes were influenced by administering powers and their territories. The United Nations Charter spelt out administering power obligations, including the development of self-government.⁸ Change took place under the purview of the United Nations membership. From 1960, following the United Nations Declaration on Decolonisation,⁹ this membership was increasingly committed to ending colonialism and having a role in approving acts of self-determination. Agreed by the United Nations in 1960 were three acceptable self-determination outcomes, representing

⁶ "New Zealand" here is the Realm of New Zealand, not the state of New Zealand.

⁷ Daniel Philpott, "Sovereignty: An Introduction and Brief History," *Journal of International Affairs* 48, no. 2 (1995): 353-368.

⁸ United Nations, *Charter of the United Nations*, Chapter XI Declaration Regarding Non-Self-Governing Territories, Articles 73 and 74, and Chapter XII International Trusteeship System.

⁹ United Nations General Assembly resolution 1514 (XV), *Declaration on the granting of independence to colonial countries and peoples* (14 December 1960).

achievement of a “full measure of self-government”: independence, free association with an independent state and integration with an independent state.¹⁰ Free association required a free and democratic choice by the people of the territory, there should be freedom to modify the status of the territory and ability to determine its constitution without outside interference.

Unlike Asia and Africa, the Pacific is made up of comparatively small, remote islands with limited resources and populations. There was uncertainty among Pacific administering powers, New Zealand, Australia, Great Britain, and the United States,¹¹ about whether independence was wanted, was possible, sensible, or even desirable, for their various different Pacific territories. These included both United Nations trust territories and non-self-governing territories listed with the United Nations.¹² New Zealand shared this ambivalence. Despite this, by 1962 the New Zealand administered United Nations trust territory of Western Samoa (now Samoa) was independent. It was the first Pacific territory to be granted this status. New Zealand saw its next challenge as to find an appropriate decolonisation solution for its non-self-governing territories of the Cook Islands and Niue that would meet with United Nations approval. The strategy was to get ahead of any United Nations pressure for independence by presenting the United Nations with a more suitable arrangement. Accordingly, in 1962, New Zealand raised with the Cook Islands and Niue legislatures the question of their future political status.

The Cook Islands is a group of fifteen widely dispersed small atolls and volcanic islands, with a total land area of 240 square kilometres and a population of 18,378 in 1961.

¹⁰ General Assembly Resolution 1541 (XV), *Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter* (15 December 1960).

¹¹ In 1960 France and Britain jointly administered the New Hebrides (now Vanuatu). The status of France’s other Pacific territories, initially listed with the United Nations, had changed and France had removed them unilaterally from United Nations purview.

¹² United Nations trust territories were former League of Nations mandates; territories transferred following the First World War from Germany and the Ottoman Empire, and from Japan following the Second World War, to Allied powers to administer. The Pacific trust territories were Western Samoa (now Samoa), New Guinea (now joined with Papua as Papua New Guinea), Nauru, the Pacific Islands Trust Territory (now Federated States of Micronesia, Marshall Islands, Palau and Northern Mariana Islands). Non-self-governing territories were what would commonly be called colonies, and were listed with the United Nations, and reported on, by their administering powers.

Niue is an isolated single uplifted coral island, of 260 square kilometres, with 4,868 people in 1961.

The Cook Islands and Niue had been annexed. The boundaries of New Zealand had been extended to encompass them. They were administered as colonies of New Zealand from 1901.

Cook Islanders and Niueans held New Zealand citizenship. They had access to services and employment in New Zealand, and had the rights of New Zealanders once there. Social security benefits, and the right to vote in New Zealand elections, were not extended to the Cook Islands and Niue.

Following the Second World War, New Zealand had instituted programmes of economic and social development in the Cook Islands and Niue, along with limited political devolution. In 1962 each was administered by a New Zealand Resident Commissioner who presided over the Legislative Assembly, was responsible to a New Zealand Minister, and had broad powers. The Cook Islands and Niue were heavily reliant on New Zealand supplied subsidies and services, and the senior levels of the administration were dominated by New Zealand personnel.

Given these circumstances, neither the Cook Islands nor Niue seemed to New Zealand to be candidates for independence. Integration with New Zealand did not appear desirable either. Self-government in free association with New Zealand offered the best option to meet the interests of New Zealand, the Cook Islands and Niue.

When consulted, the Cook Islands Legislative Assembly agreed, and affirmed a desire for self-government along with retention of New Zealand citizenship, continued New Zealand assistance and certain other elements of the status quo.

The self-government in free association arrangements that emerged are in the Cook Islands Constitution Act and its attached Constitution.¹³ The Act states that the Cook Islands is self-governing, that its Constitution is the supreme law, New Zealand citizenship is retained, and Her Majesty the Queen in right of New Zealand (who remains Head of State) is responsible for external affairs and defence after consultation

¹³ Cook Islands Constitution Act 1964; Cook Islands Constitution Amendment Act (No.2) 1965.

between New Zealand and the Cook Islands. The Constitution also allowed various opportunities for use of New Zealand institutions.

The Cook Islands became the test case for United Nations approval of self-government in free association. The new arrangements were confirmed by a general election in the Cook Islands. In 1965, with reluctance, as independence was preferred by the United Nations, the United Nations agreed the process and arrangements were acceptable, and the Cook Islands was no longer a non-self-governing territory.¹⁴

The Niue Island Assembly responded more cautiously to the New Zealand offer. United Nations pressure weighed less heavily on New Zealand. In New Zealand, Niue's self-determination proved less contentious.

By 1972 the Niue Island Assembly confirmed it wished to proceed to self-government in free association with New Zealand. The constitutional arrangements reached were similar, but not identical to those of the Cook Islands. In addition to the Cook Islands provisions, the Niue Constitution Act 1974¹⁵ sets out the continuing responsibility of New Zealand to provide necessary economic and administrative assistance. This was accompanied by a Niuean understanding of New Zealand responsibility for the material needs of its citizens in Niue. The arrangements included greater use of New Zealand institutions.

The arrangements were put to a referendum in Niue, and agreed by sixty-four per cent of votes cast.¹⁶ The precedent had been set, the United Nations was satisfied, and by 1974 Niue too was out of United Nations' purview and no longer a non-self-governing territory.¹⁷

Self-government in free association with New Zealand was heralded as an innovative, unorthodox, but pragmatic experiment in self-determination. It was described as transforming the relationships from colonial ones to a relationship of equals. It was

¹⁴ General Assembly Resolution 2064 (XX), *Question of the Cook Islands* (16 December 1965). The Cook Islands Government refers to the relationship with New Zealand as a "special relationship," not "free association."

¹⁵ Niue Constitution Act 1974.

¹⁶ Question no. 7 for Written Answer due on Wednesday 16 October 1974, reference ACGA 8280 IT1W2439/52, record 85/1/37, part 10, Archives New Zealand (Archives).

¹⁷ General Assembly Resolution 3285 (XXIX), *Question of Niue* (13 December 1974).

perhaps not a clear legal solution, but an arrangement meeting the needs and wishes of the Cook Islands, and subsequently, of Niue.¹⁸ At the same time there was criticism that New Zealand had pushed the Cook Islands, in particular, into self-government, against the wishes of Cook Islanders and their best interests.

Close examination of the decolonisation record debunks some common assumptions. First, instead of a longstanding New Zealand commitment to decolonisation stretching back to New Zealand Prime Minister Fraser's role in the drafting of relevant chapters of the United Nations Charter, in fact Prime Minister Fraser was opposed to the listing of the Cook Islands and Niue as non-self-governing territories with the United Nations in 1946. In the period to 1960, New Zealand was not engaged in work to clarify the definition of non-self-governing territories that led to the option of self-government in free association. New Zealand support for the 1960 Declaration on Decolonisation, breaking ranks with other like-minded administering powers, reflected an assessment of New Zealand's immediate and future interests in the United Nations.

Second, New Zealand was not prompted by a desire to rid itself of the Cook Islands and Niue when self-determination was offered in 1962. Instead the impetus was New Zealand's desire to meet United Nations obligations and remove the relationships from United Nations purview. Interest of the Cook Islands and Niue in continued links was pushing on an open door. Existing ties appeared to cause New Zealand no concern.

Third, in the Cook Islands case, New Zealand parliamentarians sought to reinforce the ties. New Zealand concerns focussed on the implications of self-government for loss of New Zealand influence over foreign affairs, loss of control of substantial New Zealand funding, and potential for change to the relationship by the Cook Islands leadership in particular. New Zealand responsibility for foreign affairs and defence was introduced. It was made more difficult for the Cook Islands to change the Cook Islands Constitution and the relationship with New Zealand in the Cook Islands Constitution Act. It was

¹⁸ Since 1960 other states deemed self-governing in free association by the United Nations are the former strategic trust territories, the Federated States of Micronesia, Marshall Islands and Palau, each in a Compact of Free Association with the United States. Despite bearing the same label, the political context in which they emerged, the process of United Nations approval and the arrangements themselves differ markedly from those between New Zealand and the Cook Islands and Niue.

United Nations requirements, and the support of constitutional advisers, that ensured that the Cook Islands and Niue had unfettered self-government.

Fourth, while bearing the same name, free association with Niue differed from that with the Cook Islands. It emerged in a different historical context, incorporated lessons from the Cook Islands example and was based on different initial understandings of the implications of free association.

B The Free Association Relationships Today

Fifty years on, the key features of free association with New Zealand remain intact. Yet whether initial expectations have been met is not clear. The Cook Islands Government did not formally respond to the Foreign Affairs, Defence and Trade Committee inquiry report, but Wilkie Rasmussen's comment suggests evaluation needs to take account of the Cook Islands' self-governing status.¹⁹ On the other hand, the Niue Government draws attention to the interpretation and conduct of free association, in particular delivery of necessary economic and administrative assistance, and New Zealand's shortcomings in this respect. New Zealand Government views are opaque. More critical private New Zealand Government opinion is likely to see the relationships today as marked by depopulation, dependency, ambiguous rules of the game, hostile relationships and difficult unequal power dynamics. "Solutions" can tend towards those in the Foreign Affairs, Defence and Trade Committee report, accurately described as denying the right to self-government, ignoring the autonomy of the Cook Islands and Niue, and presuming a constitutional authority of New Zealand.²⁰

The free association arrangements allow the Cook Islands and Niue to make changes to their Constitutions, and to the relationship with New Zealand if desired. This was viewed by New Zealand initially as a risk. The Cook Islands and Niue too were seeking to secure the links of free association. By the end of 2009, the Cook Islands had changed its Constitution twenty-nine times, with the most significant changes in the early 1980s. Niue's Constitution has been changed once, in 1992. Use of New Zealand institutions by the Cook Islands and Niue has diminished. Statements

¹⁹ See page 1 for comments.

²⁰ Tony Angelo and Elisabeth Perham, "The Report of the Foreign Affairs, Defence and Trade Committee on New Zealand's Relationships with South Pacific Countries," in *New Zealand Yearbook of International Law* 8, ed. Karen Scott (Christchurch: University of Canterbury, 2010), 187.

clarifying the Cook Islands' and Niue's autonomy have been issued by New Zealand to other governments and organisations. Principles, rights and obligations of free association are set out in negotiated restatements of the relationships by the Cook Islands and New Zealand. They can be assumed by New Zealand to also apply to Niue. The ability of the Cook Islands and Niue to change their Constitutions without reference to New Zealand is a positive feature. Changes made show a preference for autonomy over links of association involving use of New Zealand institutions. Changes also throw into relief the relationship between self-government and free association. Concepts have emerged to capture views on the rights and obligations stemming from free association.

While there have been changes in New Zealand citizenship legislation, in New Zealand law the Cook Islands and Niue continue to be defined as "New Zealand" for the purpose of citizenship. Citizenship provides access to New Zealand and associated opportunities. Access is not reciprocal. Citizenship is the most significant content of free association and has implications for other links. On the other hand, migration and the demographic circumstances of Niue, and, more recently, the Cook Islands, have raised concerns. The resident population of the Cook Islands in 2011 was 14,974, and that of Niue, 1,607. In 2013 there were almost 62,000 Cook Islanders in New Zealand and almost 24,000 Niueans. A question this poses is whether New Zealand citizenship and access to New Zealand is an advantage, or whether it facilitates migration and means the viability of Niue and possibly the Cook Islands as states is now in question.

The expectation of continued holding of New Zealand citizenship has been met. Emigration from the Cook Islands and Niue is a problem, but would perhaps not have been significantly different had other arrangements been entered into or not. More broadly, citizenship has normative implications for the provision of economic assistance and for external relations. While desire for New Zealand citizenship can be depicted as a check against action counter to New Zealand's interests by the Cook Islands and Niue, New Zealand citizenship may be more secure than assumed.

Today the Cook Islands has a well performing economy based on a thriving tourism industry, with over 146,000 visitors in 2016. Niue has had more mixed economic fortunes but it too has experienced recent tourism growth to around 10,000 in 2016.

Both are deemed upper middle income countries. While New Zealand promised to continue assistance, all three Governments hoped for increased self-sufficiency and reduced reliance on New Zealand support. The Cook Islands and Niue have different levels of dependence on New Zealand funds, and ability to access other sources of help. Nevertheless there is a perception that the Cook Islands and Niue remain a significant cost to New Zealand. There is an assumption that free association assures aid. There is also criticism that the mode of delivery and nature of assistance provided to Niue in particular has fallen short. How to determine what is “necessary” remains an open question.

This research shows that provision of necessary economic and administrative support has been uncertain, variable and subject to changing New Zealand economic and aid policies. This has significant impact on small states initially heavily reliant on New Zealand assistance, to whom continued assistance was promised. The Niue Government’s criticism of fulfilment of this aspect of the relationship is justified. It has not met Niue’s expectations. Despite perceptions of largesse and dependency, both the Cook Islands and Niue cost New Zealand less in real terms than prior to self-determination. Both states are now less reliant on New Zealand funding than at the establishment of self-government, and the Cook Islands has become one of the least aid dependent Pacific states.

New Zealand responsibility for external affairs and defence reflects an early New Zealand desire for control and is a greatly misunderstood part of free association. It has been clarified as a responsibility to assist, if asked.

Responsibility for defence is represented by New Zealand Defence Force activity which forms part of New Zealand’s regional responsibility. The link to constitutional obligations is not evident but other considerations ensure delivery meets expectations.

Today both the Cook Islands and Niue have diplomatic relations with other states (including New Zealand), sign treaties and join international organisations in their own right. However expansion of their external personalities has been impeded by free association and halted short of United Nations membership. Free association means they remain identified with New Zealand, and independence of action can be viewed by

New Zealand as a risk. The Cook Islands', and particularly Niue's, status separate from New Zealand is not acknowledged by all. While they would be unlikely to secure Security Council approval, the New Zealand Government has stated that desired United Nations membership by the Cook Islands, and Niue, falls outside what is possible while in a relationship of free association. While the Cook Islands and Niue are engaged in international activity well beyond what might have been originally envisaged, there is a cost to free association. The relationship is not equal.

II PROPOSITION

This thesis argues that the free association arrangements have been of mixed effectiveness in meeting Governments' initial expectations. The free association arrangements have not failed; but nor have they delivered all that was expected. Constitutional links do not deliver as much, or as assured, benefit as might have been expected by the Governments involved. Other considerations have in some cases been more important. For the Governments concerned, some initial expectations have been exceeded, others have been met, yet others have fallen short of expectations.

III RELEVANCE OF THE RESEARCH

The research fills a gap in literature on the Pacific and on the Cook Islands' and Niue's relationships with New Zealand in particular. There is excellent legal scholarship but other analysis is sparse. Research on free association has produced varied views. Some are critical of the genesis of the arrangements. Others focus on fulfilment of undertakings. Yet others identify adverse outcomes, attributed to free association.

The research contributes to scholarship on the choice, and benefits, of relationships of constitutional association by testing the fit of the Cook Islands and Niue. Self-government in free association can be seen as an opportunity to "be independent, or at least self-governing, yet continue to enjoy the economic and strategic security of an on-going relationship with the former colonial power;"²¹ the "best of both worlds" for the associated entity.

The research provides background to inform policy on the status and future of the free association arrangements.

²¹ John Henderson, "Pacific Freely Associated States: Seeking the Best of Both Worlds," *New Zealand International Review* 27, no. 3 (2002): 7.

IV RESEARCH DESIGN

The specific research question is: what were the formative influences shaping self-government in free association and how effective have the free association arrangements been in meeting initial expectations?

A What Prompted the Question

This enquiry was prompted by the assertion of the Foreign Affairs, Defence and Trade Committee that the decolonisation experiment as applied to the Cook Islands and Niue had fallen short of expectations of all parties.²² The verdict seemingly emerged from a view that self-government in free association had not ensured that the standard of services received by New Zealand citizens in the Cook Islands and Niue was commensurate with that available to New Zealand citizens in similar sized population centres in New Zealand. Solutions included direct provision of services by New Zealand government departments to ensure all New Zealand citizens, whether in the Cook Islands, Niue (or non-self-governing Tokelau), received a comparable standard of service delivery.

The assertion by the Foreign Affairs, Defence and Trade Committee piqued curiosity about what, in fact, had been expected of self-government in free association by the Governments concerned, and whether what free association had set out to do had fallen short of those expectations.

B The Object of Study: Free Association

The Foreign Affairs, Defence and Trade Committee's conclusions could be seen as criticism of self-government: that substantial development assistance had been provided, but small size and isolation was a constraint, and governance structures were excessive. However the recommended solution rested on the implications of holding New Zealand citizenship, the prime component of free association. Rather than examining the structures and fortunes of self-government, this research takes up the more interesting challenge of reaching a verdict on free association; the government-to-government relationships the Cook Islands and Niue have with New Zealand. The distinctive feature of the decolonisation of the Cook Islands and Niue was the free association with New Zealand.

²² See page 1.

The first question was how to define the object of study. An institution can be defined as “a set of rules, norms, practices and decision-making procedures that shape expectations.”²³ Consistent with this, Alison Quentin-Baxter has pointed out that free association is not referred to as such in the arrangements: “The existence of the relationship, its nature, and its terms must be deduced from the provisions of the Act and the Constitution, the background to the enactment, and the dealings between the two Governments.”²⁴

This thesis examines the United Nations resolutions and the sources Quentin-Baxter identifies, namely the Acts, the relevant sections of the Constitutions, the context and background to these, and subsequent negotiated refinements and clarifications.

In this thesis, the various elements making up the content of “free association” are described as “links.” The significant links are in the Cook Islands Constitution Act and the Niue Constitution Act. It is the existence of these links that meant that the Cook Islands and Niue were defined by the United Nations in 1965 and 1974 respectively, as being in free association with New Zealand.

The links dealt with in this thesis in the Acts are: New Zealand citizenship, discussed in chapter 7; necessary economic and administrative assistance (in the Niue Constitution Act, and the Cook Islands Legislative Assembly received political assurances from the New Zealand Government and Opposition), discussed in chapter 8; and New Zealand responsibility for external affairs and defence, discussed in chapter 9.

There are, and were, links set out in the respective Constitutions. These are discussed in chapter 6. They comprise the Queen in right of New Zealand as Head of State; and provisions for use of New Zealand institutions.

In addition, United Nations requirements meant that self-government was legally unfettered self-government. The Cook Islands and Niue had to be able to change their Constitutions and free association with New Zealand unilaterally if desired. So this

²³ Anne-Marie Slaughter and Thomas Hale, “International Relations, Principal Theories,” in *Max Planck Encyclopaedia of Public International Law*, ed. Rudiger Wolfrum (Oxford: Oxford University Press, 2011), paragraph 10.

²⁴ Alison Quentin-Baxter, “Pacific States and Territories: Cook Islands,” in *The Laws of New Zealand*, ed. Robert Smellie (Wellington: LexisNexis, 2014), paragraph 8.

thesis also looks at any such expectation and the direction of change. Change emerges from the dealings between the Governments. Written statements provide evidence of subsequent interpretation and clarification to supplement the Acts and Constitutions. Refinements and clarifications reveal how the relationship between self-government and free association - the implications of free association for self-government, and vice versa - are understood.

C The Evaluative Criteria: Expectations

The second question was how to establish the evaluative criteria. The evaluative criteria in this thesis are the respective Governments' initial expectations of the government-to-government arrangements of free association. The thesis uses the Oxford English Dictionary definition of expectation as "belief that something will happen or be the case."²⁵ This is not an unambiguous definition. Initial expectations of the free association arrangements reflected different interests. They were not always consistent. Value judgements on the provisions differed. Expectations of the arrangements did not necessarily match anticipated action by the Cook Islands and Niue. Some allowance for leeway in interpretation is required if expectations are used to assess the effectiveness of the arrangements.

At its most straightforward, free association is comprised of a number of New Zealand Government assurances that aspects of the status quo relationship would be retained and not be affected by the choice by Cook Islanders and Niueans of self-government. For the purposes of this thesis, an expectation can be defined as the belief held by the respective Governments about what the free association arrangements secured and, if there was no move to change these, would remain in place. It applies to government undertakings. That definition is useful for assessing citizenship, continued "necessary economic and administrative assistance" and defence.

Not all initial expectations emerged in the development process. Larmour points out: "People may bring quite different ideas and expectations to similarly titled institutions. Differences in expectations may not become clear until there is a crisis."²⁶ Differences

²⁵ Catherine Soanes, ed., *The Paperback Oxford Dictionary* (Oxford: Oxford University Press, 2001), 287.

²⁶ Peter Larmour, "Pacific Institutions," in *Tides of History: the Pacific Islands in the Twentieth Century*, ed. K. R. Howe et al. (New South Wales: Allen and Unwin, 1994), 385.

emerged in the first few years after self-government in the Cook Islands, and after a similar period with respect to Niue. Documentation on these disputes reveals further information on initial expectations of the constitutional provisions.

However the arrangements also allowed for change. Change needs to be accounted for in this definition. Where the arrangements have changed, or interpretation of the arrangements has changed and been clarified, Governments' expectations of what will happen or be the case change too. To assess the effectiveness of the arrangements in these cases the thesis explores the ability to accommodate change within a relationship of free association, and how the relationship between self-government and free association is depicted. This approach is drawn on to assess the flexibility of the arrangements, and the New Zealand responsibility for external affairs.

D Explanation of Expectations

The question arises of how to explain expectations reflected in the arrangements of free association beyond what can be derived from the wording in the Acts and Constitutions, formal statements, speeches, explanations, discussion of implications, and other written records on free association. Drawing on this material, the background to the enactments is explored in chapters 3 to 5, and set out at the beginning of chapters 6 to 9.

Rather than assuming free association is simply a pragmatic solution reflecting the, undoubted, economic interests of the Cook Islands and Niue, this thesis demonstrates the importance of the historical context, existing institutions and sequence of events, asymmetric power relationships and differing interests. It illustrates the importance of not attributing great foresight to decisions made. Immediate problems were addressed without much thought being given to what lay ahead. It places emphasis on the contribution of ideas and beliefs to what emerged.²⁷

Exploration of world views, beliefs, preferences and choices requires an interpretive approach. An interpretive approach can be seen as one that "concentrates on the beliefs of various policy actors, the meanings of their actions, and crucially, explains the

²⁷ Peter A. Hall, and Rosemary C. R. Taylor, "Political Science and the Three New Institutionalisms," *Political Studies* 44 (1996): 938-942.

beliefs by locating them in historical traditions and as responses to dilemmas.”²⁸ The impact of world views can be seen in this thesis; the preference for what is known and familiar, the significance of how the situation is interpreted, and not just the information available but also the context which shapes the “identities, self-images and preferences of the actors.”²⁹ Ideas and beliefs can include cultural elements; shared attitudes and values.³⁰ Cultural differences between the Cook Islands, Niue and New Zealand, are reflected in their world views and government positions. Culture is part of understanding these, but this thesis has not attempted an interpretation of free association which includes cultural considerations.

E What Lies Outside the Study

Care has been taken not to stray too deeply into areas not part of the arrangements of free association. There were various aspirations and hopes that accompanied self-determination. The problem of migration from the Cook Islands and Niue and hopes of diminishing cost to New Zealand and greater financial independence of the Cook Islands and Niue are discussed. Change in migration and cost was seen as a possible outcome of self-government. Free association was a guarantee of the status quo access to New Zealand and continued necessary economic support. Neither migration nor cost is a measure of the effectiveness of the arrangements. However they will be discussed as they can shape verdicts. These self-government aspirations will be referred to as “hopes,” to clearly distinguish them from government-to-government expectations.

When the arrangements were developed, the policy and legislative process revealed differing views in the Cook Islands, Niue and New Zealand on the best way forward and implications of the arrangements. Some of this discussion is recorded, some is not. Where relevant and available, different opinions are discussed in this thesis. In two cases different views seemed to hold equal sway. Initially there were different views in New Zealand on the Cook Islands’ and Niue’s status, and the way they were listed with the United Nations reflected this. The views that New Zealand parliamentarians held about New Zealand responsibility for external affairs and defence did not match what

²⁸ Mark Bevir, Oliver Daddow and Ian Hill, “Introduction: Interpreting British Foreign Policy,” *The British Journal of Politics and International Relations* 15, no. 2 (2013):163.

²⁹ Hall and Taylor, “Political Science,” 939.

³⁰ Hall and Taylor, “Political Science,” 947-950.

the United Nations was told by the New Zealand Government. That said, these are exceptions, and each was eventually resolved into one government position. Whatever different views officials or politicians or the population at large bring to an issue, generally speaking at any point in time only one government position can be asserted and acted upon. It is that government position that is used in this study. Government-to-government expectations formally set out in the free association arrangements represent a government position.

F Sources of Data

Establishing the expectations of self-government in free association drew on archival material at Archives New Zealand, files at the New Zealand Ministry of Foreign Affairs and Trade, parliamentary records, official documents and reports, research contemporaneous with self-determination, and interviews. A degree of interpretation was involved, sometimes of material already conveying interpretations. There is documentation on most, although not all, links. Documentation includes official records held in Archives such as records of meetings and correspondence, legislative debates, documents prepared by the constitutional advisers, the Cook Islands electoral material, speeches and statements and legal scholarship.

Assessing the effectiveness of the arrangements was based on an empirical examination of whether expectations had been met, what the arrangements deliver and why. This drew on official documents, statistics, reports by governments and multilateral organisations, and ministry files. Respective Government views were derived from interviews, media reports and policy statements of various kinds.

Logistical constraints meant access was not sought to the Cook Islands or Niue Government records. Counter-intuitively, the views of the Cook Islands, and to an even greater extent Niue, on self-determination are better documented than New Zealand consideration of the pros and cons of the arrangements. That said, the Cook Islands and Niue views were often laid out by New Zealand advisers, not the Cook Islanders or Niueans themselves.

Document analysis methods were followed.³¹ Having worked in Foreign Affairs, I was familiar with New Zealand Government and United Nations processes, and knew most of the individuals who had produced the material. My understanding of the Cook Islands and Niue views and statements was far more limited, and my reliance on interviews greater.

As some of the material is sensitive, permission to access restricted material in Archives and Foreign Affairs files was contingent on this thesis being reviewed for any material Foreign Affairs wished to withhold under the Official Information Act, Privacy Act, or which was obtained from material with a security classification. None has been withheld.

G Interviews

Before undertaking formal interviews Victoria University of Wellington Human Ethics Committee approval was obtained (reference 21179). The study followed the university guidelines on ethical practice. Approval to undertake research in the Cook Islands was granted by the National Research Committee (research permit number 13/14). In Niue approval was granted by Tāoga Niue (Memorandum of Understanding between Department of Tāoga Niue and Caroline McDonald, 15 October 2014).

This research was informed in a variety of ways. There was initial informal consultation with people familiar with the relationships to check impressions and determine what was useful and interesting to discover. They are listed in the acknowledgements.

As my research is of wide interest, opinions have been shared with me on a casual unsolicited basis by people too numerous to mention. This has been helpful in identifying views and beliefs to be tested.

Assistance from the Victoria University of Wellington Faculty Research Committee Fund allowed me to undertake two visits to each of the Cook Islands and Niue, the first to undertake interviews and the second to discuss conclusions.

³¹ Zina O’Leary, *The Essential Guide to Doing Research* (London: Sage, 2004), 179.

Determining who to approach for interviews differed in each country. A process of self-selection was involved. Some preferred to provide views by email. Suggestions for people to talk to emerged once in country. Those interviewed are listed in the bibliography.

For New Zealand Government views the focus was on officials and constitutional lawyers who were, or had been, involved in the relationships.

In the Cook Islands the relationship with New Zealand is managed through the Ministry of Foreign Affairs and Immigration, however interviews included people beyond that. I interviewed the Queen's Representative, ministers, Leader of the Opposition, department heads, the New Zealand High Commissioner and staff, representatives of the church and of the ariki, others who had held prominent roles over the years in managing the Cook Islands side of the relationship, academics, business representatives, media, and those who were suggested to me as having insights into early self-government.

In Niue a broader range of government agencies deal with New Zealand. I interviewed the Premier, ministers and members of the Assembly, department heads, the New Zealand High Commissioner and staff, private sector representatives, academics, and people who had been involved in the relationship over the years.

A representative range of people was interviewed. Those interviewed could mostly draw on experience in a number of different political, government and other positions, and spoke from perspectives beyond their current roles.

The purpose of the interviews was to understand how free association was interpreted, to identify important issues, to understand viewpoints, pinpoint matters which were clear or where views diverged, and to ensure I was aware of key events.

The interviews were semi-structured, formal and done one-on-one.³² A talanoa methodology was adopted.³³ Participant advice on how to conduct interviews was heeded. I was guided by a list of topics to be covered, focussed on the views of the

³² O'Leary, *The Essential Guide*, 164-165.

³³ Timote Masima Vaioloti, "Talanoa Research Methodology: A Developing Position on Pacific Research," *Waikato Journal of Education* 12 (2006).

past, current status and future of the relationships, but answers ranged well beyond this. Notes were taken, the interviews were recorded if agreed, and the interviews took place in a variety of contexts, depending on what suited the interviewee best.

With a few exceptions, requirements of the discipline mean that interviews have been drawn on for background only.

Comments on other governments and positions on issues currently under negotiation needed to be handled in confidence. Care was taken to deal with the political and ethical issues that surrounded the research.

H Limits to the Research

In referring to New Zealand, the Cook Islands, Niue and United Nations views, what is meant is government (and United Nations members') views. This research does not attempt to determine how the population at large might view the arrangements.

The political, economic or social aspects of self-government may enter the research in a peripheral way, but this thesis is not concerned with reaching a verdict on the structures or success of self-government.

The research looks at the links of free association and whether they deliver what was expected of them. It does not expand the enquiry to other links, nor does it seek to determine consequences of association beyond the constitutional links.

While concerned with decolonisation, the research is not extended to New Zealand's other former responsibility, Samoa, or current responsibility, the non-self-governing territory of Tokelau. Similarly, this research does not compare the Cook Islands and Niue with other states in free association, or with other similar forms of political association. Both the Cook Islands and Niue are associated with New Zealand, so there is no comparison with other metropolitan states.

Finally, there was the challenge of cross-cultural understanding. I am New Zealand Pakeha. I am not familiar with Cook Islands or Niuean culture and do not speak Niuean or Cook Islands Maori. Many interviewees introduced, and were helpful in explaining, cultural perspectives. I was not attempting a cultural interpretation but its omission and my own circumstances were nevertheless a limitation.

V THESIS STRUCTURE

The thesis is in two parts. The first part explores the historic record to determine the formative influences on self-government in free association. It explores the influence of the United Nations, New Zealand, the Cook Islands and Niue on the free association arrangements. It reaches a view on what generated the offer of self-determination, explains the options available to the Cook Islands and Niue and the reasons for the choice of free association. It shows whose interests the arrangements represented and examines the free association arrangements that emerged.

The second half of the thesis tests the key elements of free association against expectations. It explores the ability of the Cook Islands and Niue to change their Constitutions while remaining in free association with New Zealand - what is called the flexibility of the free association - and explains agreements reached clarifying expectations. It looks at the content - delivery of the key links of continued extension of New Zealand citizenship, New Zealand provision of necessary economic and administrative assistance and responsibility for external affairs and defence. This thesis explores empirical outcomes to determine if they have been fulfilled, and if so, why and how. This produces a varied picture.

Chapter 2 discusses scholarship on the free association relationships the Cook Islands and Niue have with New Zealand, and identifies disagreements and gaps. It discusses some of the broader assumptions about association of which the Cook Islands and Niue are seen as examples.

In the first part of the thesis, to form a view on how self-government in free association came about, as a basis for the evaluative measures, chapter 3 starts with the historical background. It commences by focussing on New Zealand's deliberations prior to the engagement of the Cook Islands and Niue. The purpose is to draw on primary material to reach a position on differing scholarly and government views on what motivated New Zealand's offer of self-determination. Chapter 3 challenges the widely held view of the significance of a New Zealand commitment to decolonisation, and emphasises the influence of the United Nations on New Zealand's decision to list the Cook Islands and Niue as non-self-governing territories, the shaping of the self-determination options, and their availability to the Cook Islands and Niue.

Chapters 4 and 5 explore influences from 1962, when the Cook Islands and Niue were invited to determine their future. The focus is on the historical context, and influence of the players involved: the United Nations, New Zealand, the Cook Islands and Niue, and their constitutional advisers. The objective is to identify whose interests this process represented and which elements in the arrangements reached reflected these interests. The purpose is to understand expectations of the arrangements held by the Governments concerned and what determined the choice.

Chapter 4 explores the Cook Islands' input into what emerged, the test case of self-government in free association. In contrast to the conventional focus on the Cook Islands' desire for association, this chapter draws attention to New Zealand's comfort with a continued close relationship and steps taken to secure this. It attributes to the United Nations the achievement of a greater degree of self-government than might otherwise have been the case. It illustrates this by explaining what elements of the status quo the Cook Islands and New Zealand sought to retain and what changed, and why.

Chapter 5 examines Niue's input into, and influence on, its arrangements with New Zealand. Similarities with the Cook Islands' constitutional arrangements reflect the precedent, but they should not be conflated. The arrangements with Niue were informed by their views of the Cook Islands' experience of free association and development in thinking about the implications of citizenship for New Zealand's interest in Niueans' material needs.

In the second part of the thesis, each chapter sets out the expectations of a principal element of the relationship of free association, and reaches conclusions on the effectiveness of the free association arrangements in meeting initial expectations of the respective Governments.

Chapter 6 explores scope for the arrangements to be changed. This was a requirement of the United Nations. Anticipated change was limited. It explains the current arrangements and agreements reached between the Cook Islands and New Zealand and the interests these represent. It shows that while the Cook Islands and Niue are both

self-governing, and significant change has taken place, the rights and obligations of free association and significance for self-government are work in progress.

Chapter 7 is about New Zealand citizenship. It explores whether holding New Zealand citizenship is secure, what it delivers, and what issues arise from holding this citizenship. The chapter discusses the demographic situation and the suggestion that this is a failure of the arrangements and a threat to viability. The chapter concludes that a different arrangement may not have made a significant demographic difference. It queries the link that has been drawn between population size and the political viability of Niue and the Cook Islands. It argues that citizenship is secure.

Chapter 8 explores the assurance of continued necessary economic and administrative assistance. It draws attention to New Zealand's hope that the cost would stabilise or decrease and the Cook Islands' and Niue's hope to become more financially independent. The Cook Islands and Niue both cost New Zealand less than prior to self-determination, and both are less reliant on New Zealand funding, the Cook Islands significantly so. It explores aid delivery over the last fifty years and concludes that free association has not ensured continued and assured financial assistance. Provision has been uncertain and variable. Delivery reflects historical patterns, the type of assistance provided, and New Zealand's political, economic and aid policies, rather than the constitutional links as assumed. Niue's expectations in particular have been disappointed.

Chapter 9 focusses on New Zealand responsibility for external affairs and defence. It explains the original New Zealand intent, and clarification prior to Niue achieving self-government. Today defence assistance forms part of New Zealand's broader Pacific interests rather than being a function of constitutional obligations. The arrangements have allowed the Cook Islands and Niue to expand their international relationships and activity independently of New Zealand beyond what was originally anticipated. However free association has constrained international recognition. Currently a line is drawn by New Zealand at United Nations membership while in free association.

Chapter 10 concludes by summarising the findings of the research. It demonstrates that in terms of effectiveness in meeting Governments' expectations, the free association

arrangements have not failed; but nor have they delivered all that was expected. Other considerations have in some cases been more important. Some expectations have been met. Some have been exceeded. Others have fallen short. It comments on implications of the conclusions for assumptions about the choice and benefits of association. It explains why, despite uneven outcomes, the arrangements remain in place.

CHAPTER 2: LITERATURE

I INTRODUCTION

Chapter 1 provided background for this thesis, and introduced issues to be explored. This chapter examines relevant literature.

Following this introduction, part II of the chapter sets out scholarship available on the self-determination of the Cook Islands and Niue, and on the free association relationships with New Zealand. It describes the different conclusions reached, from historical, economic, political and legal perspectives. In chapter 1 it was suggested that this thesis could contribute to scholarship on the choice and benefits of continued association with a former administering power. Part III sets out views on the choice and benefits of association, of which the Cook Islands and Niue appear as examples. Establishing the formative influences on self-government in free association allows comment on the choice of association by the Cook Islands and Niue and the reason this choice was made. Research into whether expectations have been met allows comment on the link between constitutional association and anticipated benefits. Part IV concludes by explaining the use that will be made of this material.

II SCHOLARSHIP ABOUT THE COOK ISLANDS AND NIUE

Scholarship on the decolonisation of the Cook Islands and Niue draws differing conclusions on the relative weight of New Zealand's commitment to decolonisation, United Nations imperatives and New Zealand's foreign policy interests, New Zealand domestic interests and the Cook Islands' and Niue's wishes. As historian Mary Boyd explains, "How far these initiatives grew out of evolving islands policies and how far they were dictated by the imperatives of foreign policy and the 1960 Declaration on Colonialism is still a matter of opinion."³⁴ Constitutional lawyer, Alison Quentin-Baxter, comments:

Opinions differ on whether the pace of the processes that led to the self-government of the Cook Islands had remained within their people's own control or whether they had been propelled towards self-government by the New Zealand Government's desire to

³⁴ Mary Boyd, *New Zealand and Decolonisation in the South Pacific* (Wellington: New Zealand Institute of International Affairs, 1987), 24.

conform with the wishes of United Nations organs and perhaps rid itself of its own responsibilities.³⁵

To untangle these questions, there are two valuable contemporaneous works on the emergence of self-government in free association. The first, on the Cook Islands, is by David Stone, a New Zealander who lived in the Cook Islands from 1963 to 1967, working as a teacher and later in the post-self-government Premier's Department.³⁶ The second is by Terry Chapman, who was closely involved in development of the Niue arrangements as a Niue Government representative.³⁷

Others who bring a New Zealand participant viewpoint to bear include constitutional adviser Colin Aikman,³⁸ two New Zealand officials at the New Zealand Mission to the United Nations, Gerald Hensley³⁹ and John Scott,⁴⁰ and a Resident Commissioner to Niue, Selwyn Wilson.⁴¹

Scholarly critics of self-determination include academic Jack Northey. He claimed that the Cook Islands had been cast away to curry favour in the United Nations, despite, unlike Western Samoa, being as much part of New Zealand as Stewart Island. Moreover, Cook Islanders, as Polynesians, had strong ties with New Zealand and the Cook Islands had no prospect of being economically viable. Finally, he was concerned at the leadership now having the power to be able to declare itself independent. This was seen as a bad thing, as evidenced by the Congo.⁴² In contrast, Niue's self-

³⁵ Alison Quentin-Baxter, "Pacific States and Territories: Cook Islands," paragraph 7.

³⁶ D. J. Stone, "Political Resurgence in the Cook Islands: The Path to Self-government" (MA diss., Victoria University of Wellington, 1967).

³⁷ Terry M. Chapman, *The Decolonisation of Niue* (Wellington: Victoria University Press and New Zealand Institute of International Affairs, 1976).

³⁸ Department of Statistics, "Chapter 50: Recent Constitutional Changes in the South-west Pacific: Contributed by Professor C. C. Aikman," in *New Zealand Official Yearbook 1968* (Wellington: Department of Statistics, 1968); C. C. Aikman, "Constitutional Development in New Zealand's Island Territories and in Western Samoa," in *New Zealand's Record in the Pacific Islands in the Twentieth Century*, ed. Angus Ross (Auckland: Longman Paul, 1969), 308-341.

³⁹ Gerald Hensley, *Final Approaches* (Auckland: Auckland University Press, 2006).

⁴⁰ John Scott, "Getting off the Colonial Hook: New Zealand's Record of Decolonisation at the United Nations," in *New Zealand in World Affairs Volume II 1957 – 1972*, ed. Malcolm McKinnon (Wellington: New Zealand Institute of International Affairs, 1991).

⁴¹ S. D. Wilson, "Cook Islands Development 1946-65," and "Economic Plans 1968," in *New Zealand's Record in the Pacific Islands in the Twentieth Century*, ed. Angus Ross (Auckland: Longman Paul, 1969), 60-114 and 300-307.

⁴² J. F. Northey, "Self-determination in the Cook Islands," *The Journal of the Polynesian Society* 74, no.1 (1965).

determination did not attract the same scholarly opposition. It was considered that New Zealand and Niue had the process under better control.⁴³

Criticism of New Zealand decolonisation policy with respect to the Cook Islands and Niue emerged anew in 1984.⁴⁴ Economist Geoff Bertram and geographer Ray Watters were unhappy that federal-style integration with New Zealand had not been on offer, and suggested that this might well have been acceptable if available. They explained that from the point of view of Cook Islanders, in 1964 the material benefits of integration were uncertain and might take time to emerge, while the disadvantages of integration as set out by New Zealand were clear. Bertram and Watters acknowledged that the passage of time and different historical context meant the acceptability of integration was less clear by 1984. However if the balance of costs to benefits changed for Cook Islanders there would not be any major political obstacle to a move back towards New Zealand.⁴⁵ An argument for a preference for integration seems out of kilter with the historical record and recollections of the time.⁴⁶

Commenting on the approach of historians more generally, historian Damon Salesa has argued for greater attention to New Zealand's Pacific empire, and a new perspective on the way it is depicted. He is critical of "narratives of improving colonial relations, consensual decolonisation and postcolonial harmony ... framed within descriptions of state beneficence and good intentions."⁴⁷ Among exceptions cited are Dick Scott's work on the Cook Islands⁴⁸ and Niue.⁴⁹ Salesa sees decolonisation as transforming rather than ending New Zealand power. He also takes issue with the depiction of decolonisation as New Zealand led; as paying insufficient attention to the role of Pacific

⁴³ Roger Parsons, "Self-determination and Political Development in Niue," *The Journal of the Polynesian Society* 77, no.3 (1968).

⁴⁴ I. G. Bertram and R. F. Watters, *New Zealand and Its Small Island Neighbours: A Review of New Zealand Policy toward the Cook Islands, Niue, Tokelau, Kiribati and Tuvalu* (Wellington: Victoria University of Wellington, 1984), 31-74; see also Geoffrey Bertram, "The Political Economy of Decolonisation and Nationhood in Small Pacific Countries," in *Class and Culture in the South Pacific*, ed. Antony Hooper et al. (Auckland: University of Auckland; Suva: University of the South Pacific, 1987), 16-29.

⁴⁵ Bertram and Watters, *New Zealand and Its Small Island Neighbours*, 40-48.

⁴⁶ Ian Johnstone and Michael Powles, eds., *New Flags Flying: Pacific Leadership* (Wellington: Huia Publishers, 2012), 35-51.

⁴⁷ Damon Salesa, "New Zealand's Pacific," in *The New Oxford History of New Zealand*, ed. Giselle Byrnes (Melbourne: Oxford University Press, 2009), 150.

⁴⁸ Dick Scott, *Years of the Pooh-Bah: A Cook Islands History* (Auckland: Hodder and Stoughton, 1991).

⁴⁹ Dick Scott, *Would a Good Man Die? Niue Island, New Zealand and the Late Mr Larsen* (Auckland: Southern Cross Books and Hodder and Stoughton, 1993).

islanders. He draws attention to disquiet with colonial administration in the Cook Islands and Niue, and notes that “how and when to decolonise ... resided with Islanders.”⁵⁰ Interestingly, in the case of the Cook Islands and Niue, while decolonisation is depicted as described by Salesa, the debate has been whether New Zealand’s intentions respected the wishes of the people of the Cook Islands and Niue, drawing on different assertions about what those wishes were (and what was in their best interests).

There is a limited amount of research on the decolonisation of the Cook Islands and Niue. There is diversity in scholarly interpretation of events and differing judgments on preferable options. These views and verdicts are picked up in other scholars’ work drawing on these sources.⁵¹ This means it has been particularly important to draw on formal and less formal records, and other primary material. Where archival material is accurately represented in published sources, more easily accessible published sources are cited.

Turning to conclusions on free association, Iaveta Short provides an upbeat Cook Islands perspective, concluding, twenty years in, that the constitutional experiment had worked.⁵² His measures are evident in his title – achievement of autonomy, self-government and independence, at times in face of New Zealand opposition. Hima Douglas has written a more ambivalent assessment from a Niuean perspective, dominated by concern at Niue’s loss of population and urging a new approach to economic support by New Zealand.⁵³ Jon Jonassen explores the Cook Islands’ management of foreign affairs and possible future directions for free association.⁵⁴ Maru Talagi’s more recent political history of Niue includes observations on free

⁵⁰ Salesa, “New Zealand’s Pacific,” 167.

⁵¹ For example, Terence Wesley-Smith, “Australia and New Zealand,” in *Tides of History: the Pacific Islands in the Twentieth Century*, ed. K. R. Howe et al. (New South Wales: Allen and Unwin, 1994).

⁵² Iaveta Short, “The Cook Islands: Autonomy, Self-government and Independence,” in *Class and Culture in the South Pacific*, ed. Antony Hooper et al. (Auckland: University of Auckland; Suva: University of the South Pacific, 1987), 183.

⁵³ Hima Douglas, “Niue: The Silent Village Green,” in *Class and Culture in the South Pacific*, ed. Antony Hooper et al. (Auckland: University of Auckland; Suva: University of the South Pacific, 1987), 186-193.

⁵⁴ Jon Tikivanotau Michael Jonassen, “Disappearing Islands? Management of Microstate Foreign Affairs and the Potential Impact of Alternative General Futures: the Case of the Cook Islands” (PhD diss., University of Hawai’i, 1996).

association, central to which is Niue's continued lack of control over its budget.⁵⁵ Ron Crocombe looks more broadly at New Zealand's relationships in the region, including the Cook Islands and Niue.⁵⁶ In his dissertation on the trajectory of the Cook Islands political relationship with New Zealand from annexation to 2002, Justin Fepulea'i concluded that the arrangements represented the best of both worlds for the Cook Islands, on the grounds the Cook Islands is to all intents and purposes a sovereign independent state while retaining New Zealand citizenship.⁵⁷ John Henderson, assessing both the Cook Islands and Niue, disagreed, because greater economic reliance on New Zealand reduced their ability to exercise political independence, and the demographic impact showed the policy failure of continued holding of New Zealand citizenship.⁵⁸ Alison Quentin-Baxter has criticised the New Zealand Government for lack of fulfilment of its undertakings to provide necessary economic and administrative assistance.⁵⁹ Other scholarship on the Cook Islands and Niue draws on others' research, focuses on self-government or forms part of an assessment of other issues.

Henderson, and Bertram and Watters, also raise a broader question; whether self-government in free association represents a sensible choice to retain a protector by an entity that could not sustain independence itself, or whether it is a mask for what Henderson describes as "continued domination and dependency."⁶⁰ Bertram and Watters conclude both viewpoints have some truth, and neither describes free association as a whole, but they appear to prefer a depiction of self-government in free association as the metropolitan power giving up formal control and responsibility while keeping real control over areas of importance.⁶¹ This suggests that it might be the worst

⁵⁵ Maru Talagi, *Politics, Propositions and Perspectives: Niue and Nationhood* (Niue: Solomua Press, 2013).

⁵⁶ Ron Crocombe, "New Zealand and the Other Pacific Islands: Changing Economic, Social and Political Relations," in *Pacific History: Papers from the 8th Pacific History Association Conference*, ed. Donald H. Rubinstein (Guam: University of Guam Press, 1992), 293-321.

⁵⁷ Justin Peter Fepulea'i, "Neither Fish nor Fowl": the Cook Islands, New Zealand and the Politics of Free Association" (PhD diss., University of Auckland, 2002), 237.

⁵⁸ Henderson, "Pacific Freely Associated States," 10; John Henderson, "The Politics of Association: A Comparative Analysis of New Zealand and the United States Approaches to Free Association with Pacific Island States," *Review Juridique Polynésienne* Hors Serie 2 (2002): 86.

⁵⁹ Alison Quentin-Baxter, "The New Zealand Model of Free Association: What Does it Mean for New Zealand?," *Victoria University of Wellington Law Review* 39, no. 4 (2008): 616.

⁶⁰ Henderson, "Pacific Freely Associated States," 7.

⁶¹ Bertram and Watters, *New Zealand and Its Small Island Neighbours*, 39.

of both worlds, with the advantages of association falling short of expectations and the exercise of self-government constrained.

In contrast to the limited historical, political, social and economic analysis, there is a solid body of legal literature on the constitutional framework of self-government in free association in the Cook Islands and Niue cases, albeit from a small number of authors.⁶² This work explains the constitutional arrangements and conventions, provides legal interpretations of their meaning, makes normative judgments and provides policy advice on respective rights and obligations and how the Governments should behave. The authors draw on close familiarity with the relationships and issues. Alison Quentin-Baxter, Tony Angelo and Alex Frame have provided advice to the Governments involved. Alison Quentin-Baxter, in particular, comments on matters beyond the constitutional aspects. Her work focusses on the rights and obligations of free association, and is influenced by her Niue experience. Angelo by contrast puts greater emphasis on the self-government of the Cook Islands and Niue. There is also useful legal scholarship on self-government in free association more broadly, which includes the Cook Islands and Niue.⁶³ The legal literature is an extremely helpful base on which to build a political interpretation.

⁶² Tony Angelo, "To Be or Not To Be ... Integrated, That is the Problem of Islands," *Revue Juridique Polynésienne*, Hors Serie 2 (2002): 87-108; Tony Angelo, "A Few Comparative Remarks on the Concept of Free Association in the South Pacific," *Revue Juridique Polynésienne*, Hors Serie 4 (2004): 329-338; Tony Angelo, "*The Cook Islands / New Zealand*," Kredha Autonomy Mapping Project (2007), accessed 12 December 2013, http://www.kredha.org/mapping/downloads/080207_Cook_Islands.pdf; Tony Angelo, "Pacific Constitutions – Overview: The Niue Constitution," *Revue Juridique Polynésienne* 15 (2009): 157-180; Angelo and Perham, "The Report of the Foreign Affairs, Defence and Trade Committee," 181-194; Alex Frame, "The External Affairs and Defence of the Cook Islands – the 'Riddiford Clause' Considered," *Victoria University of Wellington Law Review* 17 (1987): 141-151; Elisabeth Rose Perham, "Citizenship Laws in the Realm of New Zealand," in *New Zealand Yearbook of International Law* 9, ed. Karen Scott (2011): 219-240; Alison Quentin-Baxter, "Sustained Autonomy - An Alternative Political Status for Small Islands," *Victoria University of Wellington Law Review* 24, no.1 (1994): 1-18; Alison Quentin-Baxter, "Niue's Relationship of Free Association with New Zealand," *Victoria University of Wellington Law Review* 30, nos. 1-2 (1999): 589-598; Alison Quentin-Baxter, "The Problems of Islands," *Victoria University of Wellington Law Review* 31, no. 2 (2000): 427-437; Alison Quentin-Baxter, "Pacific States and Territories"; Alison Quentin-Baxter, "The New Zealand Model of Free Association," 607-634; Stephen Eliot Smith, "Uncharted Waters: Has the Cook Islands Become Eligible for United Nations Membership?," *New Zealand Journal of Public and International Law*, 8, no. 2 (2010): 169-215; Andrew Townend, "The Strange Death of the Realm of New Zealand: the Implications of a New Zealand Republic for the Cook Islands and Niue," *Victoria University of Wellington Law Review* 34 (2003): 571-607.

⁶³ Roger S. Clark, "Self-determination and Free Association - Should the United Nations Terminate the Pacific Islands Trust?," *Harvard International Law Journal* 21, no. 1 (1980): 1-86; Masahiro Igarashi, *Associated Statehood in International Law* (The Hague: Kluwer Law International, 2002).

Further material on Pacific issues of relevance to free association and specific aspects of the relationships will be drawn on in the chapters exploring each link.

III CHOICE OF ASSOCIATION

A preference by many small island territories for continued colonial relationships rather than independence has attracted scholarly attention. As Baldacchino explains, the “active and dogged pursuit of extended colonial relationships requires a more adequate conceptual assimilation.”⁶⁴ Explanations draw on comparative studies of economic wellbeing of associated and non-associated islands, which show the former are better off.⁶⁵ This has led to general conclusions about the reasons for preference for colonial status by so-called “subnational island jurisdictions,” reflection on their mode of governance, and discussion of the, primarily economic, but also other benefits continued association secures. The Cook Islands and Niue are, of course, not colonies. However they are cited as examples of subnational island jurisdictions as they are in free association with New Zealand rather than fully independent.⁶⁶

Subnational island jurisdictions are defined as non-sovereign states with a strong degree of internal autonomy. They continue to be associated with a larger sovereign state. They have a distinct society and culture and are islands often remote from their metropolitan powers. Their inhabitants support politicians who are neither seeking

⁶⁴ Godfrey Baldacchino, *Island Enclaves*, 46.

⁶⁵ For example Jerome L. McElroy and Courtney E. Parry, “The Long Term Propensity for Political Affiliation in Island Microstates,” *Commonwealth and Comparative Politics* 50, no.4 (2012): 403-421, compared twenty-five what they call “dependent” islands or “affiliated territories,” with thirty independent islands, and found, for the period 1990 and 2010, that the “dependent” islands had islands. Geoffrey Bertram, “On the Convergence of Small Island Economies with their Metropolitan Patrons,” *World Development* 32, no. 2 (2004): 343-364, sets out Pacific comparisons by various scholars all showing greater per capita income enjoyed by associated entities. A useful listing of key research is in Geoffrey Bertram, “Is Independence Good or Bad for Development in Small Island Economies? A Long Run Analysis,” *Region et Developpement* 42 (2015): 32.

⁶⁶ Most prolific and theoretical is Godfrey Baldacchino. See Godfrey Baldacchino, *Island Enclaves: Offshoring Strategies, Creative Governance, and Subnational Island Jurisdictions* (Montreal: McGill-Queen’s University Press, 2010), which draws together earlier published material, not cited here separately. A similarly broad study is Robert Aldrich and John Connell, *The Last Colonies* (Cambridge: Cambridge University Press, 1998). See too Godfrey Baldacchino and Eve Hepburn, “Introduction,” *Commonwealth & Comparative Politics* 50, no. 4 (2012): 395-402, and other articles in this publication devoted to island independence movements in the twenty-first century, in particular Godfrey Baldacchino and Eve Hepburn, “A Different Appetite for Sovereignty? Independence Movements in Subnational Island Jurisdictions,” *Commonwealth & Comparative Politics* 50, no. 4 (2012): 555-568. Also relevant are two edited volumes, Godfrey Baldacchino and David Milne, eds., *The Case for Non-sovereignty: Lessons from Sub-national Island Jurisdictions* (Abingdon and New York: Routledge, 2009), and Godfrey Baldacchino, ed., *A World of Islands: An Island Studies Reader* (Prince Edward Island: University of Prince Edward Island, 2007).

integration nor sovereignty, and use their jurisdiction as an economic and political resource.⁶⁷ The argument is that the associated entity rejects sovereign independence, as colonial status (and freely associated status) enables them to have “the best of both worlds.” The status is preferred because it delivers economic, fiscal and security benefits, provided by the metropolitan power, while also providing sufficient autonomy to allow the associated entity to pursue its interests. The case is made for this arrangement to be seen as a viable status in its own right, sitting somewhere on a continuum between self-rule and shared rule.⁶⁸

The general argument is expressed as follows by Baldacchino:

The vast majority of these jurisdictions are *not* seeking sovereign status, nor do they wish to lose their autonomous powers; and the metropolitan power responsible for them is often all too willing to accede to their political agenda. For the islands themselves, this behaviour emerges as an increasingly rational and strategically appropriate one, resulting in net material gains for the jurisdiction, particularly at a time when security concerns are real and when sovereignty has largely *not* delivered relatively high levels of economic prosperity. Being a subnational island jurisdiction typically bestows a solid safety net supported by a metropolitan power, while granting enough discretion to safeguard national identity, local culture, and the general exercise of local power. The metropolitan player can meanwhile exercise a “soft imperialism” ... and can target its smaller island beneficiaries with its munificence.⁶⁹

This argument depicts choice of colonial status (extrapolated to freely associated status) as the “rational” and “strategically appropriate” preference of the subnational island jurisdiction. It is a choice to which the metropolitan power “accedes.” The choice is economically sensible. It delivers “net material gains,” as the metropolitan power extends its “munificence” and ensures security. Autonomy is desired, but not sovereignty. The assumption is that the “munificence” does in fact eventuate and delivers relatively high levels of prosperity. The question is whether this depiction describes the Cook Islands and Niue and the relationship each has with New Zealand.

⁶⁷ “Jurisdiction Project Outline,” accessed 25 September 2017, <http://projects.upei.ca/iis/jurisdiction-project/>.

⁶⁸ Ronald L. Watts, “Island Jurisdictions in Comparative Constitutional Perspective,” in *The Case for Non-Sovereignty*, eds. Baldacchino and Milne, 21-39.

⁶⁹ Godfrey Baldacchino, *Island Enclaves*, 19-20.

The key points of this argument will be tested in this thesis; first, the explanatory emphasis on the choice of the subnational island jurisdiction; second, the conclusions about the reasons for the choice; third, the assumptions about the nature of the arrangement of free association; and fourth the conclusion that anticipated benefit ensues.

This thesis starts with the formative influences on the status of the Cook Islands and Niue. Some explanations of decolonisation have emphasised anti-colonial nationalist pressures, others have explored changes in the international context and others attribute change to domestic metropolitan influences.⁷⁰ As the quotation above illustrates, Baldacchino and others focus primarily on the influence and interests of the “subnational island jurisdiction.”

This raises the question of the adequacy of a portrayal of self-government in free association that the Cook Islands and Niue have with New Zealand starting with the choice of “subnational island jurisdiction.” Too important to omit are the historical decolonisation context, the processes that led to the availability of self-determination, and what options were available. As shown in chapter 3, the United Nations requirements and pressures, and New Zealand Government interests, significantly influenced whether there was an offer, and what was on offer. The choice made involved not just the Cook Islands and Niue but also New Zealand and the United Nations. Instead of starting with the choice of the Cook Islands and Niue, this thesis explores more broadly in chapter 3 what determined options from which each could choose its future.

Consideration of the role of the United Nations and New Zealand is not to suggest that the Cook Islands and Niue were passive recipients of free association. Baldacchino and others are right not to overlook the interests and role of the smaller entity. However their emphasis is on the degree of autonomy colonial relationships provide, and the way subnational island jurisdictions operate and achieve their objectives within a colonial

⁷⁰ John Springhall, *Decolonization Since 1945: The Collapse of European Overseas Empires* (Basingstoke: Palgrave, 2001).

relationship.⁷¹ That is not the focus of this thesis. Self-government in free association was a constructed relationship, influenced by United Nations requirements, thinking of the time, the nature of the relationships already in place and the interests of all three Governments. This thesis explores in chapters 4 and 5 how the Cook Islands' and Niue's interests, and New Zealand's interests, were reflected in the free association structures developed. Chapter 6 explores the direction of changes made since by the Cook Islands and Niue, reasons for these and the preferences these represent.

Emphasis on explaining rejection of sovereign status (that is, a preference for continued colonial status) leads to exploration of reasons for continued colonialism and its benefits. That the Cook Islands and Niue rejected continued colonial status gives rise to somewhat different questions. This thesis discusses the perceived benefits of association, but it also includes, in chapters 3, 4 and 5, views on the advantages and disadvantages of the status quo and other options, from the point of view of each of the three Governments involved.

That said, neither Cook Islanders nor Niueans sought full independence. This raises the intriguing question of how the Cook Islands and Niue, and the New Zealand Government, viewed the implications of free association for self-government, and vice versa. Unlike colonies, the Cook Islands and Niue have legally unfettered self-government. For other governments and organisations the relationships were new and ambiguous. Chapters 3 to 5 explore what is known of the views of the respective Governments on implications of the decision to enter into a relationship of self-government in free association.

When cited as examples, the autonomy of the Cook Islands and Niue can be viewed in a positive light. Bartmann says, "The islanders are able to enjoy *all* the prerogatives of sovereignty with the most permissive and generous arrangements for international relations available to any dependent territory in the world."⁷² As the terminology

⁷¹ For discussion of the PROFIT model which incorporates choices and behaviour (called "strategy games") of political leaders in subnational island jurisdictions, see Baldacchino, *Island Enclaves*, 42-88 and Godfrey Baldacchino and Geoffrey Bertram, "The Beak of the Finch: Insights into the Economic Development of Small Economies," *The Round Table* 98, no. 401 (2009): 151.

⁷² Barry Bartmann, "In or Out: Sub-national Island Jurisdictions and the Antechamber of Para-diplomacy," in *The Case for Non-Sovereignty*, eds. Godfrey Baldacchino and David Milne (Abingdon and New York: Routledge, 2009), 68.

emphasising generosity and permissiveness demonstrates, this status is seen through a colonial lens. Baldacchino flags tensions arising from arrangements of association, but downplays these as tussles over “who does what.”⁷³ A more negative view is taken by Corbin, who is critical of the democratic deficit colonial arrangements represent.⁷⁴ A more complex picture of issues arises in the case of the Cook Islands and Niue, both self-governing states. The implications of free association for self-government are political rather than legal. How the rights and obligations of free association have been renegotiated is in chapters 6, 7, 8 and 9.

As is clear from discussion to this point, New Zealand was, and is, a significant player. Baldacchino depicts metropolitan powers as reluctant colonialists and their colonies as clinging to the status quo.⁷⁵ Possible metropolitan power interests in association are not ruled out,⁷⁶ but why the metropolitan power might want to exercise “soft imperialism” or extend “munificence” or indeed grant greater autonomy,⁷⁷ needs to be explained. This thesis explores New Zealand’s role and interests both in decolonisation, and in the contemporary relationships with the Cook Islands and Niue.

Turning to explanations of the choice of association, Baldacchino suggests that a decision to remain associated by the subnational island jurisdiction is a “rational” and “strategically appropriate” choice because it delivers “net material gains.” McElroy and Parry ask: “Given the significant and long-lasting material advantage of non-sovereign over sovereign islands, why would so many of the latter have opted for independence?”⁷⁸ The importance of economic considerations is supported by citing economic research comparing per capita income and the standard of living of associated and independent small islands which shows that those associated are on the whole better off. If maximum net material gain was the objective, on the face of it, integration might have delivered greater gains for the Cook Islands and Niue, and would have been

⁷³ Baldacchino, *Island Enclaves*, 76.

⁷⁴ Carlyle Corbin, “Self-governance Deficits in Caribbean Non-independent Countries,” in *The Non-Independent Territories of the Caribbean and Pacific: Continuity or Change?*, eds. Peter Clegg and David Killingray (London: Institute of Commonwealth Studies, University of London, 2012), 163-193.

⁷⁵ Baldacchino, *Island Enclaves*, 42-64.

⁷⁶ McElroy and Parry, “The Long Term Propensity,” 404; Baldacchino, *Island Enclaves*, 110-141; Geoff Bertram, “The MIRAB Model Twelve Years On,” *The Contemporary Pacific* 11, no.1 (1999): 125.

⁷⁷ Baldacchino, *Island Enclaves*, 100.

⁷⁸ McElroy and Parry, “The Long Term Propensity,” 418.

the “rational” preference if goals were strictly economic. Or, as Baldacchino and others seek to explain, the colonial status quo might have been retained. Instead both were rejected. McElroy and Perry also draw attention to studies indicating non-economic dimensions can shape the choice.⁷⁹ The choice of self-government reflected the desire of Cook Islanders and Niueans to have control over their own affairs, and to retain their own identity and their way of life.

That said, economic prosperity and security were significant considerations in the decolonisation calculations of the Cook Islands and Niue. These considerations are reflected in the arrangements. There is clearly a need to determine the way and whether economic factors influenced the Cook Islanders’, Niueans’, and New Zealand’s, choice. This is discussed in chapters 3 to 5.

More specifically, one of the economic benefits of association can be seen as being able to delegate functions to a larger state. Independent state structures and services on the other hand are seen as an economic burden.⁸⁰ The post-decolonisation preferences of the Cook Islands Government and the Niue Government are explored in chapter 6, and show a clear preference for autonomy over material benefits that might ensue from delegation. Some changes made were to address the fact that the links of free association were a constraint on developing relationships of economic advantage to the Cook Islands.

Turning from influences on self-government in free association, to whether expectations have been met, the link between net material gains and association suggests that whether expected gains are in fact secured is worthy of study.

Correlation is not causality, and determining causality is more difficult. McElroy and Parry have summarised possible economic benefits of association including free trade, free capital and labour market access to the metropolitan power, social welfare, disaster

⁷⁹ McElroy and Parry, “The Long Term Propensity,” 404-405, based on a review of literature, suggest that substantial material benefits are the primary reason, but association might also be preferred because of inter-island rivalry for resources and lack of agreement among local elites, a focus on preservation of local culture and identity at the expense of political concerns, voter disinterest or confusion, and the political conservatism that comes with “dependency.” Paul Sutton, “*The Best of Both Worlds’: Autonomy and Decolonisation in the Caribbean*” (Caribbean Studies Working Paper No 2 (London: London Metropolitan University, 2008): 14, found in Caribbean islands, culture and identity was important to some, and economic support to others.

⁸⁰ Bertram, “Is Independence Good or Bad,” 32.

relief, aid supported transport infrastructure, communications infrastructure, subsidized external defence and security, access to health, education and environmental standards, tax concessions, regulatory and oversight legitimacy for establishing off-shore financial centres, ease of tourist access from the metropolis, hotel and resort investment.⁸¹ Economic models have been developed that suggest reasons for observed economic differences.⁸² On the other hand, one study suggests gains from “dependence” do not accrue to freely associated states with the exception of aid.⁸³

Examples show there is not always a distinction between what is attributable to a colonial relationship (or free association), what may be a function of a close relationship but does not require association and subnational jurisdiction status, and what is quite incidental to any association relationship.⁸⁴ For example, migration access to another state can be secured without requiring subnational island jurisdiction status – as the European Union and Trans-Tasman Travel Arrangement between New Zealand and Australia demonstrate. Aid provision does not require an association link. Scholars have identified diverse reasons for delivery of aid (or not) to subnational island jurisdictions.⁸⁵

In the case of the Cook Islands and Niue the free association links are set out in the constitutional arrangements. Chapters 6 to 9 of this thesis will explore the causal link: whether expectations of free association are delivered and whether this is a function of the constitutional undertakings, or if there is a better explanation. As this thesis shows, benefits sought are not guaranteed by constitutional status and a number of other considerations can come into play.

⁸¹ McElroy and Parry, “The Long Term Propensity,” 407.

⁸² In the MIRAB model ability to migrate (and remit funds) and receive aid is integral and the implication is these are better secured by association; see Bertram and Watters, *New Zealand and Its Small Island Neighbours*; subsequent refinements are for example Geoffrey Bertram, “Introduction: The MIRAB Model in the Twenty-First Century,” *Asia Pacific Viewpoint* 47, no. 1 (2006); and Baldacchino and Bertram, “The Beak of the Finch,” 150. The SITE model emphasises tourism in the island economy, and found political affiliation was advantageous to this; see McElroy and Parry, “The Long Term Propensity,” 407, which discusses ease of travel, no passport, same currency and legal/customs systems, metropolitan tourism investment and aid financed transport.

⁸³ Leslie Dunn, “The Impact of Political Dependence on Small Island Jurisdictions,” *World Development* 39, no. 12 (2011): 2132-2146.

⁸⁴ A wider range of ideas, including favourable geographic location, is in Jerome L. McElroy and Kara B. Pearce, “The Advantages of Political Affiliation: Dependent and Independent Small Island Profiles,” in *The Case for Non-Sovereignty*, eds. Godfrey Baldacchino and David Milne (Abingdon and New York: Routledge, 2009), 42.

⁸⁵ See Aldrich and Connell, *The Last Colonies*, 93-99.

IV CONCLUSION

Literature on the relationships discussed here, and other material relevant to specific subject areas, indicate areas of uncertainty and disagreement to be resolved in this thesis by recourse to primary sources. Some sources will be drawn on to clarify the historical record. Scholarship from a legal perspective is used to explain the relationships. Legal analysis of what might be expected of necessary economic and administrative assistance will be drawn on as a measure. This chapter has surveyed assumptions and conclusions about free association. Attention will now be paid to the reason for choice of free association, the nature of the choice made and the conclusion that benefit ensues from these in order to comment on these views.

CHAPTER 3: NEW ZEALAND AND THE UNITED NATIONS

I INTRODUCTION

Chapter 2 drew attention to the different judgments of scholars on New Zealand motivation and action, the influence of the United Nations on New Zealand, and the degree self-determination took the Cook Islands' and Niue's interests into account. Accounts from the Cook Islands and Niue perspectives provide insights into their views of, and role in, the process.

This chapter looks at New Zealand, and the United Nations role in decolonisation up to 1962 when self-determination was offered to the Cook Islands and Niue by New Zealand.

The chapter starts in 1945. Part II discusses the United Nations Charter, the listing of the Cook Islands and Niue as non-self-governing territories, and New Zealand's role in the United Nations to 1960. It challenges the explanation of the self-determination of the Cook Islands and Niue as reflecting a New Zealand commitment to decolonisation stretching back to the drafting of the Charter and the role of New Zealand Prime Minister Fraser. It explores the influence of developments in the United Nations on New Zealand from 1960, including New Zealand's positions on the significant decolonisation resolutions of that year. Part III sets out the relationship New Zealand had with the Cook Islands and Niue in 1962. Part IV explains the self-determination options offered, and shows how they reflected not just what was understood to be the Cook Islands' and Niue's wishes, but New Zealand's beliefs about what was possible and desirable too. Part V concludes that the United Nations had a significant impact on the offer of self-determination for the Cook Islands and Niue.

II INFLUENCE OF THE UNITED NATIONS

A New Zealand in the United Nations 1945-1960

1 *The United Nations Charter*

A common starting point in looking at New Zealand's decolonisation history is 1945, and New Zealand's part in the meeting in San Francisco at which the United Nations Charter was drafted. Some go further back to New Zealand's own experience of decolonisation, or the League of Nations, or the Australia-New Zealand Agreement of

1944 (the Canberra Pact), but the United Nations Charter is a commonly cited beginning.

Consistent with this emphasis on New Zealand's role in drafting the United Nations Charter, historian Boyd wrote:

English Fabian ideas, practical experience of the benefits of international supervision for a small, inexperienced, colonial power, a firm belief in the peaceful, British parliamentary way of achieving self-government, sympathy and respect for Maori and Samoan political aspirations and concern that small powers should count in international affairs were the invisible baggage the New Zealand delegation took to San Francisco.⁸⁶

Legal scholars have drawn attention to:

the move towards self-government and self-determination, strongly supported among others by Prime Minister Peter Fraser at the San Francisco Conference setting up the United Nations and not only for trust territories but for all non-self-governing territories.⁸⁷

Typical of New Zealand official statements is one made in 1961 to the United Nations General Assembly:

under the impulse of its Prime Minister, Mr Peter Fraser, who was chairman of the Commission which drafted the chapters of the Charter on trust and dependent territories, the New Zealand delegation played a leading part in the early movement towards decolonisation.⁸⁸

It forms part of the New Zealand Government's contemporary view of its major foreign policy achievements. In support of a Security Council seat for 2015-2016, the New Zealand Foreign Ministry stated on its website: "New Zealand always strongly supports self-determination, even as a member of the League of Nations. At San Francisco in 1945 New Zealand championed the self-determination sections of the UN Charter," and

⁸⁶ Boyd, *New Zealand and Decolonisation*, 14.

⁸⁷ Kenneth Keith, "Reflections on Some Pacific Constitutions," *New Zealand Association for Comparative Law Yearbook* 18 (2012): 136.

⁸⁸ Department of External Affairs, "Declaration on Colonialism: Statement Made in the General Assembly on 22 November by the New Zealand Representative, Mr. F. H. Corner," *External Affairs Review* 11, no. 11 (1961): 31.

“Since 1945 New Zealand has been consistently recognised by the UN Committee on Self Determination as an exemplary leader on decolonisation.”⁸⁹

As can be seen, New Zealand’s strong commitment to the United Nations and its Charter, and reputation as a leader and advocate for decolonisation, is attributed to New Zealand’s own colonial experience, its ideology and the role of Prime Minister Peter Fraser. Prime Minister Fraser chaired the committee that produced the 1945 United Nations Charter chapters that established guidelines for administering powers with respect to their United Nations trust territories and non-self-governing territories. New Zealand’s commitment to decolonisation is seen as influencing New Zealand’s actions with respect to the United Nations trust territory of Western Samoa, and by extension (as this is less researched), New Zealand’s approach to the non-self-governing Cook Islands and Niue.

Chapter XI of the United Nations Charter, “Declaration Regarding Non-Self-Governing Territories,” in Articles 73 and 74,⁹⁰ sets out the obligations of those who administer non-self-governing territories “whose peoples have not yet attained a full measure of self-government.”

Obligations include recognising that “the interests of the inhabitants of these territories are paramount,” and promoting “the well-being of the inhabitants of these territories.” This meant, among other things, ensuring “political, economic, social, and educational advancement,” developing “self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions,” and transmitting to the United Nations information on economic, social and educational conditions in their territories. Unlike Chapter XIII on trust territories,⁹¹ Chapter XI referred only to self-government not independence.

The difficulty with attributing self-determination of the Cook Islands and Niue to the influence of Prime Minister Fraser is that closer examination shows he did not believe

⁸⁹ Ministry of Foreign Affairs and Trade, “New Zealand and the UN Security Council 2015-16,” accessed 16 December 2016, <https://www.mfat.govt.nz/en/peace-rights-and-security/work-with-the-un-and-other-partners/new-zealand-and-the-un-security-council-2015-16/>.

⁹⁰ *Charter of the United Nations*, Chapter XI Declaration Regarding Non-Self-Governing Territories, Articles 73 and 74.

⁹¹ *Charter of the United Nations*, Chapter XII International Trusteeship System.

the Charter Chapter XI on non-self-governing territories did, or should, apply to the Cook Islands and Niue.

2 *Definition of the Cook Islands and Niue as non-self-governing territories*

Following the drafting of the United Nations Charter, in 1946, United Nations member states were approached by the United Nations Secretary-General to declare their non-self-governing territories on which they would report to the United Nations.

When the United Nations Secretary-General's request was received by New Zealand, legal advice was sought. The advice of the New Zealand Crown Solicitor was that the Cook Islands and Niue did indeed appear to meet the definition of non-self-governing territory.⁹²

The Crown Solicitor focussed on the meaning of "territories whose peoples have not yet attained a full measure of self-government," and the Chapter XI distinction between "territories to which this Chapter applies" and "metropolitan areas." The Crown Solicitor defined "self-governing" as the ability of people to elect their representatives, while commenting on the possible anomalies that might arise. However turning to New Zealand's situation, he concluded that while Western Samoa had a partially elected assembly, it was non self-governing because it was a United Nations trust territory (presumably meaning it fell under a different Charter provision). Tokelau had no government. The Chatham Islands was in a New Zealand electorate and was a county, so was self-governing. On the Cook Islands, including Niue, he concluded that "Probably, despite the legislative system of island councils, their "measure of self-government" is not a "full" one within the fair meaning of the charter." He commented that the question was more political than legal, and it would be useful to see how the British classified their colonies.⁹³

Fraser disagreed with these conclusions, and made it clear that the Cook Islands and Niue should be excluded from New Zealand's declaration of non-self-governing

⁹² Discussion of this, and listing, spoke of the Cook Islands only which was taken to include Niue.

⁹³ A. S. Currie, Crown Solicitor, Crown Law Office, to Permanent Head, Prime Minister's Department, "Charter of the United Nations Chapter XI, Arts. 73, 74, Meaning of 'Non-self-governing territory'" 28 August 1946, reference ACIE 8798 EAW2619/101, record 113/4/11, part 1, Archives.

territories.⁹⁴ Officials were asked to marshal arguments to support this. It seems his decision was justified by the argument that the Cook Islands and Niue were “an integral part of New Zealand.”

The marshalled reasons, which may or may not reflect his views, were interesting in revealing perspectives of the time. First, the Cook Islands was an integral part of and within the boundaries of New Zealand, demonstrated by close trading links, application of the New Zealand customs tariff (with a few modifications) and financial support of New Zealand. Second was that: “The inhabitants are a proud and independent people who would regard the transmission of reports upon them to an international body as a slur upon their character and an indication that New Zealand and the outside world regarded them as inferior.” Moreover they were related to the Maori of New Zealand.⁹⁵ Third, in San Francisco many saw the reference to “the progressive development of their free political institutions” in the Charter Chapter XI as meaning independence, and this had been reinforced since in the General Assembly. However “it is certain that the Cook Islands could never attain independence [sic] statehood even if the inhabitants so desired (which is not the case).” Indeed it was New Zealand’s intention to provide representation for them in the New Zealand Parliament.⁹⁶

In other words, these relationships were not colonial, the United Nations should not become involved, and any prospect of such an involvement leading to independence was unsuitable and unwelcome.

Prime Minister Fraser’s view that the Charter provisions did not and should not apply to the Cook Islands and Niue might have prevailed, despite his own Government’s legal advice. However, representations by the delegation in New York drawing attention to the response of other administering powers secured a change of approach.⁹⁷ The Charter description of non-self-governing territory was brief. The interpretation of this

⁹⁴ Historian Frederick Wood says this was a Cabinet view. See F. L. W. Wood, *The New Zealand People at War: Political and External Affairs* (Wellington: Department of Internal Affairs, 1958), 342-343.

⁹⁵ This applies to Cook Islanders, not Niueans.

⁹⁶ Undated unattributed note probably by Charles Crow, “The Question of the Non-self-governing Territories Referred to in Chapter XI of the Charter,” reference ACIE 8798 EAW2619/101, record 113/4/11, part 1, Archives.

⁹⁷ The matter was handled in a phone call between New York and Wellington, so information on the context in New York is not available. See telegram New York to Wellington, “Non-self-governing Territories,” 1 November 1946, reference EAW2619 101, record 113/4/11, part 1, Archives.

by others set a precedent and had influence. Of course citing others also provided a face-saving way to counter the Prime Minister's views. New Zealand officials saw the Cook Islands and Niue as analogous to Hawai'i. The United States listed Hawai'i and Alaska, along with five other territories. Furthermore, the French volunteered various territories despite the intention to soon change their status.⁹⁸ The British listed forty-one territories. Australia, Belgium and the Netherlands added their territories to the list.⁹⁹ Given how others had responded, New Zealand realised it would be anomalous not to declare the Cook Islands and Niue.¹⁰⁰

In New Zealand's case, to take account of Prime Minister Fraser's views, New Zealand's revised response to the United Nations said that the Cook Islands was "an integral portion of New Zealand" and said reports would be supplied without prejudice to any interpretation that may be placed on the expression "non-self-governing territories."¹⁰¹

This qualification on the status of the Cook Islands and Niue continued to be applied by New Zealand. Periodically, when the matter arose, New Zealand legal advice remained that being "an integral portion of New Zealand" could not be used to suggest that New Zealand considered that the Cook Islands and Niue were not non-self-governing territories. For example, in 1957, reflecting on the initial listing of the Cook Islands and Niue, R. Q. Quentin-Baxter reiterated the legal view of their status that:

⁹⁸ The initial list (not including New Zealand) with comment by France, United Kingdom and the United States on determining status, is in United Nations General Assembly, Fourth Committee: Non-self-governing Territories: Territories within the Scope of Chapter XI of the United Nations Charter, A/C.4/52 of 8 November 1946.

⁹⁹ The United States, United Kingdom, France, Belgium, Australia and the Netherlands had sixty-eight territories in the initial list.

¹⁰⁰ Denmark also found the matter difficult. Denmark's legal advice was that Greenland was not a non-self-governing territory primarily because it was not subject to economic exploitation. The majority of Denmark's delegation in New York did not see this as sustainable given the response of major colonial powers such as the United States, Australia and France. Listing of Greenland is ascribed to pressure from the United States and France. See Erik Beukel, Frede P. Jensen and Jens Elo Rytter, *Phasing out the Colonial Status of Greenland 1845-54* (Copenhagen: Museum Tusculanum Press, 2010), 167-173.

¹⁰¹ C. A. Berendsen to United Nations Secretary-General, 16 November 1946, reference ACIE 8798 EAW2619/101, record 113/4/11, part 1, Archives.

there is ... no shred of legal justification for arguing or implying that the New Zealand Government might have elected not to regard these islands as “non self-governing territories,” upon the ground that they form an integral part of New Zealand.¹⁰²

Illustrating what he was up against, his note is annotated with remarks such as “This is news to me,” and “The so called old heresy has been Government policy even since 1946.”¹⁰³

By 1960 the inclusion of a New Zealand reference to the Cook Islands and Niue being listed without prejudice to any definition of non-self-governing territory was removed because it risked implying that New Zealand supported the position of Portugal and Spain. Both had recently joined the United Nations and argued they were not required to list and report on their non-self-governing territories because they were part of the metropolitan territory. This was clearly unsustainable. When Portugal held out on the matter, the exasperated United Nations General Assembly, bolstered by newly decolonised members, passed a resolution simply declaring Portugal’s territories as non-self-governing.¹⁰⁴

So it was because of the United Nations Charter that the Cook Islands and Niue were classified as non-self-governing territories, and it was despite Prime Minister Fraser’s views that the Cook Islands and Niue became listed with the United Nations. While, in 1945, the end point of the process was not yet identified, the listing of the Cook Islands and Niue as non-self-governing territories started them on a path to self-determination.

3 *Engagement with the United Nations decolonisation agenda*

Following the listing of the Cook Islands and Niue, New Zealand provided the United Nations with copies of the Department of Island Territories’ annual reports to the New

¹⁰² R. Q. Quentin-Baxter to Mr Scott and others, “Non Self Governing Territories – Constitutional and International Position of the Cook and Tokelau Islands,” 4 February 1957, reference ACIE 8798 EAW2619/101, record 113/4/2/1, part 4, Archives.

¹⁰³ For a contemporary legal view see Alison Quentin-Baxter and Janet McLean, *This Realm of New Zealand* (Auckland: Auckland University Press, forthcoming), chapter 6. They say that although the relevant enactments are still in place, they do not signify the extent of New Zealand’s territorial jurisdiction but straight lines of latitude and longitude for the purposes of identification. G. Marston and P. D. G. Skegg, “The Boundaries of New Zealand in Constitutional Law,” *New Zealand Universities Law Review* 13 (1988-89): 16-23, conclude that the constitutional form does not reflect constitutional reality, although their focus is on the implications of self-government.

¹⁰⁴ General Assembly resolution 1542 (XV), *Transmission of information under Article 73e of the Charter* (15 December 1960) lists the nine Portuguese territories.

Zealand Parliament. These contained political information (provision of this was not required, and some administering powers resisted on principle) as well as the United Nations' required information on economic, social and educational changes. (Interestingly, Prime Minister Fraser was not keen on this either, and rejected it in terms similar to the reasons marshalled not to list the Cook Islands and Niue with the United Nations.)¹⁰⁵ A United Nations committee, made up of an equal number of administering and non-administering powers, considered these reports and New Zealand's reporting appears to have been well received.

A major decolonisation debate in the United Nations from 1946 to 1960 was who had the authority – the administering power or General Assembly – to decide whether a territory was, or was not, non-self-governing. In the face of unilateral halting of reporting by some administering powers, other United Nations members pressed for clarification of what factors should be taken into account in determining whether a non-self-governing territory should be listed under the Charter, and whether it should be removed.

New Zealand aligned itself with other administering powers, whose strong position was that it was for the administering power, not the United Nations, to determine this question in any specific case. The New Zealand Government stood aside from successive committees to establish factors to be taken into account in determining this. New Zealand saw the process as divisive, and unhelpful, and in any case it was an administering power decision. Moreover clarification of factors could also strengthen the ability of the United Nations to pass judgment and insist on reporting with implications for New Zealand if at some future stage “the Government decides that the

¹⁰⁵ The Secretary of External Affairs wrote in 1949 of Prime Minister Fraser: “He saw no reason at all why the Committee should be permitted to discuss the information transmitted, and was astounded to hear that any country was so foolish as to submit information on political topics, even on an optional basis. He was even more surprised to learn that New Zealand was one of those countries, and came right out of his sleep to announce in vehement terms that we would not have any interference or accountability when it came to the Cook Islands. After all they are an integral part of our territories and not an African dependency.” See Ian McGibbon, ed., *Unofficial Channels: Letters Between Alister McIntosh and Foss Shanahan, George Laking and Frank Corner, 1946-1966* (Wellington: Victoria University Press, 1999), 70.

Cooks shall have the same status as parts of New Zealand proper and elect their own member (or members) of Parliament etc.”¹⁰⁶

While New Zealand was not involved, work to clarify the definition of non-self-governing territory was to be significant. There had been a precedent,¹⁰⁷ but it was the committee on factors set up in 1959 that developed the option of self-government in free association, approved by the United Nations General Assembly in 1960, and drawn on by New Zealand for the Cook Islands and Niue.

B The Influence of the United Nations on New Zealand from 1960: A Foreign Policy Imperative

The arrival of newly independent states intensified United Nations action on decolonisation. This was reflected in the 1960 Declaration on Decolonisation. Following this, attention also began to turn to self-determination in the Pacific. Following Western Samoa’s independence in 1962, thought began to be given by New Zealand to the future of the Cook Islands and Niue.

1 The resolutions

In 1960, General Assembly Resolution 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples, was passed by 89 votes in favour (including New Zealand), none against, and 9 abstentions.¹⁰⁸

This resolution represented a significant shift in United Nations expectations, “amplifying and extending the Charter’s original historical imperatives.”¹⁰⁹ The resolution contained a clear statement on colonialism; that “the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights.” It added that “all peoples have the right of self-determination; by virtue

¹⁰⁶ NZ Brief for Sixth Session of General Assembly, “Non-self-governing Territories Special Committee: Item 11 of Agenda,” 1 October 1951, reference ACIE 8798 EAW2619/101, record 113/4/11, part 1, Archives.

¹⁰⁷ General Assembly resolution 742 (VIII), *Factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of self-government* (27 November 1953).

¹⁰⁸ General Assembly resolution 1514 (XV), *Declaration on the granting of independence to colonial countries and peoples* (14 December 1960).

¹⁰⁹ Edward McWhinney, “Declaration on the Granting of Independence to Colonial Countries and Peoples,” *United Nations Audiovisual Library of International Law*, accessed 29 June 2017, <http://legal.un.org/avl/ha/dicc/dicc.html>.

of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

Moreover, “inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.” “Immediate steps” should be taken to transfer powers to the people of non-self-governing and other territories, “in accordance with their freely expressed will and desire.” The Declaration on Decolonisation referred throughout to independence, not self-government, as the goal.

New Zealand’s vote for this resolution is an oft-recalled signal of its support for decolonisation. New Zealand has been described as the only administering power to do so.¹¹⁰

In fact, New Zealand’s vote was to have been with fellow administering power friends, the Netherlands¹¹¹ and the United States. After being lobbied by the British who had concerns, the United States abstained. New Zealand decided to proceed in company with the Netherlands, and other non-administering countries such as Canada, Ireland, former administering power Denmark (a change in Greenland’s status had been endorsed by the United Nations in 1954) and other Nordics. Those who joined Britain and the United States in abstaining were the other administering powers - Portugal, Spain, South Africa, Australia, Belgium, France - and the Dominican Republic.

It helped that the resolution was sponsored by forty-three African and Asian states. This removed the taint of Cold War association. Perception of Soviet double standards had hung over an earlier Soviet version, and had coloured the history of debates over colonialism in the United Nations. It was also in New Zealand’s immediate interests because New Zealand needed United Nations endorsement for the next steps in the termination of trusteeship over Samoa. It also reflected longer term considerations. As the New Zealand Permanent Representative in New York, Foss Shanahan, explained subsequently to the Prime Minister, New Zealand’s split from other administering powers, and support for the resolution, reflected a change in the balance of power in the United Nations. The ability of the administering powers to set the agenda was now

¹¹⁰ Shanahan quoted in Scott, “Getting off the Colonial Hook,” 126.

¹¹¹ Responsible for the Netherlands New Guinea (now West Papua).

diminished with the number of Asian and African countries that decolonisation had introduced into the United Nations. Pursuit of New Zealand's longer term interests in the United Nations would depend on influence with that new group. This included the future of the Cook Islands and Niue, "assuming we do regard them as colonies."¹¹² There was a United Nations expectation they would proceed to independence, but New Zealand did not consider this a realistic outcome.

A solution was to be provided by the 1960 General Assembly resolution 1541 (XV) Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter.¹¹³

This resolution, passed the day after the Declaration on Decolonisation, emerged from a more conservative committee on factors set up in 1959 comprising Britain, India, Mexico, Morocco, the Netherlands and the United States. It offered alternatives to independence as representing achievement of self-determination. Ensuring its application was clear, the resolution states: "The authors of the Charter of the United Nations had in mind that Chapter XI should be applicable to territories which were then known to be of the colonial type."

The three, still applicable, self-determination options were: (a) emergence as a sovereign independent state; (b) free association with an independent state; or (c) integration with an independent state.¹¹⁴

Free association had to be a free and voluntary choice by the peoples of the territory concerned, expressed through informed and democratic processes; it should respect the individuality and cultural characteristics of the territory and its peoples; it should allow for the peoples of the associated territory the freedom to modify its status; and the associated territory should have the right to determine its internal constitution without

¹¹² Scott, "Getting off the Colonial Hook," 126-127.

¹¹³ General Assembly resolution 1541 (XV), *Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter* (15 December 1960).

¹¹⁴ A subsequent resolution added the self-determination option of "the emergence into any other political status freely determined by a people," General Assembly resolution 2625 (XXV) *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations* (24 October 1970).

outside interference, although this did not preclude consultation under the terms of the free association entered into.

The vote on General Assembly resolution 1541 (XV) was 69 in favour, 2 against and 21 abstentions. New Zealand abstained because of the introduction of an amendment which said that the United Nations could supervise the process in a case of integration, cutting across the long standing administering power position that the decision on status rested with the administering power.

Nevertheless, this resolution opened the door to a self-determination outcome that was not independence, but would in due course be acceptable to the United Nations.

2 *An impending Pacific focus*

Listed with the United Nations in 1960 were: the British territories of Gilbert and Ellice Islands, Solomon Islands, Fiji, and Pitcairn; the Australian trust territories of New Guinea and Nauru,¹¹⁵ and the non-self-governing Papua, and Cocos (Keeling) Islands; New Zealand's trust territory of Western Samoa, and non-self-governing territories of the Cook Islands, Niue and Tokelau; the United States' strategic Pacific Islands Trust Territory, and non-self-governing Guam and American Samoa; and the French-listed New Hebrides (in a condominium with Britain).¹¹⁶

United Nations attention was now to be directed their way. The Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence of Colonial Countries and Peoples (the Committee of Twenty-four) was set up to ensure implementation of the Declaration on Decolonisation. Unlike earlier committees to review information it did not represent a balance of administering and non-administering members, and a sub-committee was established to focus on the Pacific.

With United Nations attention turning to the Pacific, the question for New Zealand was how to approach self-determination of the Cook Islands and Niue. This prompted New

¹¹⁵ Nauru was a trust territory of Australia, New Zealand and Britain, administered by Australia.

¹¹⁶ In 1947 the French had unilaterally stopped reporting on New Caledonia and French Polynesia on the ground they had changed status to an overseas territory of France. They have since been relisted.

Zealand, in 1962, to seek the Cook Islands' and Niue's views on the question. Before looking at this, we explain the context and relationships in 1962.

III NEW ZEALAND, THE COOK ISLANDS AND NIUE IN 1962

Political development had occurred in the Cook Islands and Niue prior to 1962. This raises the question of whether self-government might have evolved without any United Nations involvement.

On first taking over administration of the Cook Islands and Niue, New Zealand placed executive, administrative and judicial control in the hands of the respective Resident Commissioner, who was responsible to the New Zealand Minister responsible for the Cook Islands and Niue. Initially Niue did not have its own Resident Commissioner, and a New Zealand tendency to treat Niue as part of (or at best an addition to) the Cook Islands in legislation and other respects, became a longstanding irritant to Niueans.

There were periodic challenges to New Zealand's administration, particularly in the Cook Islands. Boyd concluded that the Cook Islands political aspirations were not always recognised as such by New Zealand, but they did encourage New Zealand to institute political changes.¹¹⁷

Agitation by the Cook Islands Progressive Association, led by Albert Henry, future Premier of the Cook Islands, led to the Cook Islands Amendment Act 1946.¹¹⁸ This established the Cook Islands Legislative Council, made up of equal numbers of officials and members elected by the Island Councils, plus the Resident Commissioner, and meeting once a year. Seemingly a step forward, Stone points out it was based on the ineffective Legislative Council of Western Samoa, set up under the Samoa Act 1921, and replaced in 1947.¹¹⁹

Further political tensions arose in 1954, stimulated by the proposed enforcement of New Zealand income tax obligations in the Cook Islands, without New Zealand having

¹¹⁷ Boyd, *New Zealand and Decolonisation*, 7.

¹¹⁸ Cook Islands Amendment Act 1946.

¹¹⁹ Stone, "Political Resurgence," 157.

consulted the Cook Islands Legislative Council. This unrest is credited with bringing home to New Zealand that greater attention needed to be paid to the Cook Islands.¹²⁰

The 1953 murder of the Resident Commissioner in Niue shocked New Zealand, and the subsequent appointment of Jock McEwen¹²¹ to the position was evidence of New Zealand's recognition that change in approach to Niue was also required.¹²²

New Zealand responded with a 1955 economic survey of the Cook Islands carried out by economists Horace Belshaw and Vernon Stace.¹²³ Its recommendations to the Minister of Island Territories were the basis for subsequent New Zealand policy.

The survey concluded that the problems of the Cook Islands were not solely economic. Change was required in political and administrative approaches and conditions. The argument was that if Cook Islanders had greater responsibility for running their own affairs it would stimulate greater economic activity, greater commitment to self-help, diminish migration to New Zealand, enable more responsive administration and reduce political unrest. Not to do this risked growth in the New Zealand grant required, a decline in self-reliance, responsibility and social cohesion, and create a "fruitful field for dissentients."¹²⁴ These views were long lasting, and as shall be shown, influenced future self-determination options available to the Cook Islands and Niue.

On the question of New Zealand responsibilities and the standard of living this represented, Belshaw and Stace were less certain:

The notion of Trusteeship ... must be interpreted as embodying certain minimum welfare standards, and certain conceptions of law, order and social relationships. But equally, within the broad context of the differences in social, economic and political conditions ... the standards and concepts cannot be identical with those in New Zealand.¹²⁵

As shall also be shown, in chapter 8, this uncertainty too has been long lasting.

¹²⁰ Wilson, "Cook Islands Development," 70-74.

¹²¹ McEwen later headed the Department of Island Territories.

¹²² Margaret Pointer, *Niue 1774-1974: 200 Years of Contact and Change* (Dunedin: Otago University Press, 2015), 277-279.

¹²³ H. Belshaw and V. D. Stace, *A Programme for Economic Development in the Cook Islands* (Wellington, 1955).

¹²⁴ Belshaw and Stace, *Programme for Economic Development*, 6.

¹²⁵ Belshaw and Stace, *Programme for Economic Development*, 9.

As recommended, the report was followed by a constitutional survey in the Cook Islands by Colin Aikman, who later became one of the constitutional advisers to the Cook Islands Legislative Assembly and provided advice on Niue.¹²⁶ Interestingly, Aikman made no mention of United Nations obligations to develop self-government, reinforcing a view that these did not feature significantly until 1960. Aikman's report led to the Cook Islands Amendment Act 1957,¹²⁷ which set up the Cook Islands Legislative Assembly, to replace the Legislative Council. The Cook Islands Legislative Assembly had control over locally raised revenue. In 1962, with conditions attached, this was extended to New Zealand grants (however the bulk of this grant was salaries controlled by the New Zealand State Services Commission), and an Executive Committee of up to four elected members shared decision making on expenditure with the Resident Commissioner.

The Cook Islands Amendment Act 1957 also allowed for the establishment of a Niue Island Assembly, to succeed the Island Council. The Niue Island Assembly was established in 1960, and comprised fourteen elected members representing Niue's fourteen villages plus the Resident Commissioner as president. It too was able to appropriate revenue raised in Niue. In 1962, as in the Cook Islands, New Zealand's grants were included in the appropriation, and an Executive Committee was set up chaired by the Resident Commissioner and with three members elected by the Assembly.

As can be seen, development of political institutions and devolution of responsibility proceeded, stimulated by the Belshaw and Stace report. There was some pressure to do so, from the Cook Islands, at least. And it is difficult to see how this devolution could be reversed, once in place, even if New Zealand was still uncertain about the Cook Islands' and Niue's political future.

At the same time, as the recommendations of Belshaw and Stace suggest, changes were consistent with New Zealand's interests. In 1962, the Cook Islands Legislative Assembly and Niue Island Assembly remained under New Zealand control. These steps moved in the direction of greater self-government, but it is hard to conclude that

¹²⁶ C. C. Aikman, *First Report on Constitutional Survey of the Cook Islands* (Wellington, 1956).

¹²⁷ Cook Islands Amendment Act 1957.

self-government in free association was “a culminating point in the process of planned political advancement which began as long ago as 1946, when the first Cook Islands Legislative Council was established.”¹²⁸ Instead, as the following section will demonstrate, many in New Zealand remained reluctant to change the status quo.

What existing political structures did provide, however, was a basis for self-government arrangements. Free association was influenced by what was in place already.

Cook Islanders and Niueans held New Zealand citizenship. In 1961 around a fifth of Cook Islanders lived in New Zealand, and over a third of Niueans. Subject to the approval of the Resident Commissioner, Cook Islanders and Niueans could travel to New Zealand and had access to jobs, education, medical services and family there. Views on the implications of this for the Cook Islands and Niue were mixed. In 1962 there was concern over the Cook Islands population growth and population pressure, along with concern at the departure for New Zealand of the young and able bodied. Niue’s population was small. After decline following European contact the previous century, from 1928 numbers had slowly recovered.

New Zealand provided substantial financial support to bridge the gap between locally raised revenue and expenditure. The Department of Island Territories’ annual report for the year ended 31 March 1963 suggested that in 1962/1963 New Zealand subsidies and grants were sixty-eight per cent of expenditure.¹²⁹ When examined more closely, the New Zealand contribution was in fact far higher. In 1966, Stace estimated the New Zealand contribution between 1964 and 1966 as about seventy-five per cent of total net administrative and development costs.¹³⁰ Stone calculated New Zealand’s contribution in 1964/65 as seventy-nine per cent of total net revenue.¹³¹ In Niue, the Department of Island Territories’ figure indicated that grants and subsidies made up sixty-four per cent

¹²⁸ Department of External Affairs, “Self-government for the Cook Islands,” *External Affairs Review* 15, no. 4 (1965): 3.

¹²⁹ Department of Island Territories, “Reports on the Cook, Niue, and Tokelau Islands,” *AJHR*, 1963, A3, 25.

¹³⁰ Wilson, “Economic Plans,” 304.

¹³¹ David J. Stone, “Self-rule in the Cook Islands: The Government and Politics of a New Micro-state” (PhD diss., Australian National University, 1971): 347.

of expenditure.¹³² This too was well below the actual amount of New Zealand support. Chapman gave a more accurate figure for 1974/1977 as eighty-eight per cent.¹³³

Other indirect forms of assistance were also provided. New Zealand subsidised a monthly shipping service to the Cook Islands. An air service to the Cook Islands had ceased in 1960, but plans were in train to re-establish this which facilitated growth of a tourism industry. A wide range of assistance was provided by various New Zealand Government departments. In the annual report eight departments were listed in addition to Island Territories as involved in the Cook Islands.¹³⁴ Seven per cent of the Cook Islands Public Service and five per cent of the Niue Public Service were seconded from New Zealand with most departments headed by New Zealand secondees.¹³⁵

The Cook Islands had established agricultural and manufacturing export industries.¹³⁶ Niue's exports were a more limited range of agricultural products. In both cases the major destination of exports and source of imports was New Zealand. Official figures for 1962 have the value of the Cook Islands' exports at seventy-five per cent of imports, and Niue's exports at sixteen per cent of imports.¹³⁷ The gap was in fact considerably wider.¹³⁸

Education and health services were limited. For example Tereora College in the Cook Islands was reopened in 1954 but had limited places and provided education to New Zealand school certificate level only (as did Niue High School), while two years of post-primary education had only just become available on Aitutaki in the Cook Islands. New Zealand funded further education in New Zealand or the Pacific region.

¹³² Department of Island Territories, "Reports on the Cook, Niue, and Tokelau Islands," *AJHR*, 1963, A3, 78.

¹³³ Chapman, *Decolonisation of Niue*, 104.

¹³⁴ Department of Island Territories, "Reports on the Cook, Niue, and Tokelau Islands," *AJHR*, 1963, A3, 15.

¹³⁵ "Notes on Proposals Relating to Internal Self-government in the N.Z. Island Territories, for the N.Z. Delegation to the 4th Committee of the United Nations, October 1962," reference ABHS 6958/9 W4628, record number NYP 2/6/8, part 4, Archives.

¹³⁶ Wilson, "Cook Islands Development 1946-65."

¹³⁷ Department of Island Territories, "Reports on the Cook, Niue, and Tokelau Islands," *AJHR*, 1963, A3, 59, 91.

¹³⁸ Stone, "Political Resurgence," 306-308, explains that Kolff showed imports were not valued at landed cost, and doing so raised the value of imports from New Zealand by ten to fifteen per cent and from elsewhere by around twenty per cent, increasing the trade deficit substantially. Bertram and Watters, *New Zealand and Its Small Island Neighbours*, 148, said government imports were often not recorded.

So in 1962 both the Cook Islands and Niue had significant and longstanding political, administrative, financial and economic links with New Zealand. The ability to access opportunities in New Zealand meant that Cook Islanders and Niueans were spread between the two locations.

We now turn to what prompted the offer of self-government by New Zealand and how the status quo influenced the choices available.

IV NEW ZEALAND'S SELF-DETERMINATION OFFER

To meet United Nations requirements and achieve a self-determination outcome other than independence for the Cook Islands and Niue, a plan was agreed by the New Zealand Cabinet.¹³⁹ The strategy was to pre-empt any United Nations prescription, and to:

present the United Nations with a Constitutional development plan which we feel would be acceptable and workable in our own territories, rather than to be expected at a later date to implement a policy which could prove disastrous to everybody concerned.¹⁴⁰

The question was what New Zealand saw as acceptable and workable and in the interests of all concerned.

Constitutional options were presented to the Cook Islands Legislative Assembly by the New Zealand Minister of Island Territories Leon Götz in July 1962.¹⁴¹ The Niue Island Assembly listened to a poor radio transmission.

Minister Götz explained that the New Zealand Cabinet view was that the aim should be to establish what he described as “full internal self-government” in the Cook Islands. While this was a logical culmination of New Zealand policies, New Zealand also wished “to cooperate with the United Nations in seeing that the Cook Islands people are governed in accordance with their own freely expressed wishes.”¹⁴² The other options

¹³⁹ F. L. A. Götz, Cabinet paper CP (62) 506 “Future Policy in the New Zealand Island Territories,” 14 June 1962, reference AAFD 807 W3738/27, record CM(62)25, Archives.

¹⁴⁰ J. M. McEwen, Secretary of Island Territories to Resident Commissioner Niue, “Future Policy in New Zealand’s Island Territories,” 22 June 1962, reference ABHS 6978 W4637/4, record M85/1/19, part 1A, Archives.

¹⁴¹ F. L. A. Götz, *The Proceedings of the Legislative Assembly of the Cook Islands* (Rarotonga, 1962), 101-122.

¹⁴² Götz, *The Proceedings of the Legislative Assembly of the Cook Islands*, 1962, 104.

flagged, with disadvantages pointed out, were independence, integration with New Zealand and a federation of Polynesia.

The options are well known to scholars. That integration was ruled out has been criticised.¹⁴³ No attention has been paid to independence. The offer of a federation of Polynesia has puzzled.¹⁴⁴ Closer examination of the thinking is revealing.

A Independence

Independence was barely mentioned, not seriously offered, nor indeed sought. The Cabinet paper dismissed independence as “farcical,”¹⁴⁵ because of the Cook Islands’ and Niue’s small size, the geographic dispersal of the Cook Islands, and the desire of both to keep links with New Zealand. There was a brief reference to the greater export income of the independent Western Samoa in Götz’s presentation to the Assembly, but otherwise possible financial implications did not feature.

B Integration

Integration of the Cook Islands and Niue into New Zealand was presented by Götz in a way unlikely to appeal. It would involve full application of New Zealand laws, wanted or not, representation in the New Zealand Parliament (shared with Niue and Tokelau) instead of a Cook Islands Legislative Assembly, and all major decisions made in New Zealand.

Before 1962, New Zealand ministers had rejected the Cook Islands representation in the New Zealand Parliament when the question arose from time to time. As the Cabinet paper made clear, New Zealand’s concern was the financial impact of integration given the sizeable economic and social gap between New Zealand and the Cook Islands and Niue. Belshaw and Stace had warned against integration. Echoing their thinking, the Cabinet paper argued that integration would mean that, “Salaries and social security benefits would increase, incentives for economic production would disappear and the

¹⁴³ Bertram and Watters, *New Zealand and Its Small Island Neighbours*, 40-48.

¹⁴⁴ Alison Quentin-Baxter “Pacific States and Territories,” paragraph 6, footnote 21.

¹⁴⁵ F. L. A. Götz, Cabinet paper CP (62) 506 “Future Policy in the New Zealand Island Territories,” 14 June 1962, reference AAFD 807 W3738/27, record CM(62)25, Archives.

combination of these factors would mean that New Zealand subsidies would likely treble.”¹⁴⁶

C Federation of Polynesia

In the early 1960s, the ability of relatively small territories to survive independence was seen as an issue by administering powers in the Pacific. Consideration was given to options for forming larger units with their territories.¹⁴⁷ The Cabinet paper said that social and economic differences, physical distances and economic limitations ruled out a federation of Polynesia. This was a sensible conclusion, but the fact the idea was under discussion among Pacific administering powers probably prompted its inclusion. Moreover New Zealand dismissal of a federation of Polynesia did not rule out the proposal in the Cabinet paper that Tokelau be incorporated in the Cook Islands, as Western Samoa had just turned down the offer.¹⁴⁸

D Full Internal Self-government

Götz emphasised that it was in the best interest of the Cook Islands to keep the present link with New Zealand but have what was called at this point “full internal self-government.” This would not affect citizenship and access to New Zealand, the Cook Islands would manage its own affairs and New Zealand would manage external affairs, defence and constitutional matters. The plan involved only a few more steps in a process well progressed, and the Resident Commissioner would become constitutional head and a member of the Executive Council. The arrangements could be confirmed in due course with a United Nations plebiscite.

Reflecting guidance from External Affairs, the Minister did not criticise the United Nations and its prescriptions in his speech. Instead he represented the changes as an extension of existing New Zealand policy. However as the Cabinet paper made clear, this offer was to pre-empt any unhelpful United Nations intervention.

To sum up, in 1962 it was New Zealand that decided what was best for the Cook Islands and Niue. What was considered best was continuation of the status quo with

¹⁴⁶ F. L. A. Götz, Cabinet paper CP (62) 506 “Future Policy in the New Zealand Island Territories,” 14 June 1962, reference AAFD 807 W3738/27, record CM(62)25, Archives.

¹⁴⁷ “Pacific Study Group Experts Meeting, Washington D.C., 26-29 November 1962,” reference ABHS 6978 W4637/4, record M85/1/19, part 1A, Archives.

¹⁴⁸ Tokelau is around 1800 kilometres from the capital of the Cook Islands on Rarotonga.

tweaks to satisfy the United Nations. While couched in terms of the Cook Islands' and Niue's wishes, there is no indication that this status did not suit New Zealand too.

V INFLUENCES ON THE OPTIONS

This chapter suggests rethinking is required on Prime Minister Fraser and New Zealand's commitment to decolonisation. It shows how changes in the United Nations altered the context of New Zealand's interests, and influenced New Zealand's offer of self-determination. It explains why New Zealand made the offer it did.

First, this chapter has demonstrated whatever broader influence Prime Minister Fraser had on the United Nations and New Zealand attitudes to self-determination, and symbolic value attached to this, we cannot attribute the Cook Islands and Niue being designated non-self-governing territories and coming under United Nations oversight to him.

More significantly, and longer term, Prime Minister Fraser exemplifies the less than wholehearted commitment that was more broadly reflected in New Zealand's approach to self-determination.

Aikman put the positive approach:

the path along which New Zealand as a far-sighted and liberal colonial power had to move was clear. The grant of political autonomy to a dependent people is an issue of belief and of faith - belief in the right of that people to determine its own destiny, and a faith in its ability to respond to new responsibilities.¹⁴⁹

However the belief in the right to self-determination is hard to discern, and was not widespread.

Those involved shared this conclusion. Frank Corner¹⁵⁰ commented with respect to Western Samoa's attainment of independence in 1962:

The trusteeship system has been criticised as leading to excessive vulnerability to criticism, over-anxiousness to please, and hasty window dressing to win international praise. ... But the Samoans themselves have been sceptical of the effectiveness of New

¹⁴⁹ Department of Statistics, "Recent Constitutional Changes in the South-west Pacific: Contributed by Professor C. C. Aikman."

¹⁵⁰ Corner was New Zealand's Permanent Representative to the United Nations from 1961 to 1967.

Zealand's good intentions when not prodded by an international body. It is usually said in Samoa today, with a certain amount of truth if not of legal accuracy, that 'the United Nations is giving us independence.'¹⁵¹

Summing up New Zealand's decolonisation record years later Scott¹⁵² also reached an ambivalent conclusion about New Zealand commitment:

it was impossible to judge whether ... [New Zealand's progressive approach to decolonisation in the Pacific] reflected a commitment to the principle of decolonisation or the fact that no fundamental New Zealand interests were threatened by decolonisation.¹⁵³

The Cook Islands and Niue had a different, longer and closer association with New Zealand than the trust territory of Western Samoa. R. Q. Quentin-Baxter pointed out in 1973 that New Zealand was reluctant to admit the Cook Islands and Niue were colonies,¹⁵⁴ and, it could be added, that New Zealand was a colonial power.

Attention is drawn to these views as they continue to shape more contemporary verdicts on self-determination. For example, Bertram has stated, in terms reminiscent of Prime Minister Fraser's, that legally the Cook Islands and Niue lay within New Zealand's borders, they were a part of New Zealand, not colonies, and their people held a position akin to the New Zealand Maori with the major difference being that voting rights had not been extended to them.¹⁵⁵

Second, the United Nations and its approach to decolonisation influenced New Zealand. New Zealand supported the United Nations and respected its Charter obligations. It listed the Cook Islands and Niue, consistent with its own legal advice and the practice of other administering powers, including those with similar colonies. New Zealand was cooperative in reporting, like other moderate administering powers. In the United Nations it took a pragmatic approach and focussed on issues of principle rather than

¹⁵¹ F. H. Corner "New Zealand and the South Pacific," in *New Zealand's External Relations*, ed. T. C. Larkin (Wellington: New Zealand Institute of Public Administration, 1962), 138-139.

¹⁵² Scott was New Zealand's Permanent Representative to the United Nations from 1969 to 1973.

¹⁵³ Scott, "Getting off the Colonial Hook," 144.

¹⁵⁴ R. Q. Quentin-Baxter to the Secretary of Maori and Island Affairs, "The Cook Islands and the Colonial Boundaries Act," 18 January 1973, reference ABHS 6978 W4637/5, record M85/1/37, part 5, Archives.

¹⁵⁵ Bertram, "The Political Economy," 23-24.

engaging on divisive detail. On the other hand, along with other administering powers it opposed extension of United Nations intervention in the decolonisation of non-self-governing territories as of right. While New Zealand supported the principle of decolonisation, it spoke up for colonialism and colonial friends, when their record was seen as unreasonably under attack from the Soviet bloc and other United Nations members. New Zealand was not actively involved, after 1945, in work in the United Nations that moved forward the self-determination agenda for non-self-governing territories.

From 1960 the context changed with implications for New Zealand action. There was a clear shift in New Zealand statements to the United Nations reflecting the change in United Nations expectations. In 1960 New Zealand said colonialism should not be equated with “the evils of racial discrimination ... and all forms of discrimination and oppression,” and “should not be used as a term of disparagement.”¹⁵⁶ In 1961 the United Nations was told, “no matter how enlightened they may be ... [colonial systems] can hardly hope to give complete scope to the fulfilment of individual and national potentialities.”¹⁵⁷ By 1962 New Zealand’s view was that, “Colonialism, as a system of alien rule by one people or race over another, cannot and should not survive under modern conditions.”¹⁵⁸

With a shift in the balance of power in the United Nations and New Zealand national interests directly engaged, New Zealand supported the Declaration on Decolonisation, breaking ranks with most fellow administering powers. Pursuit of its interests, and the Cook Islands’ and Niue’s wishes, would mean that from this point New Zealand was more accommodating of the United Nations; putting itself ahead of other friendly Pacific administering powers, and having to stand up to their opprobrium. Resisting the agendas of the more radical members of the United Nations and securing their support

¹⁵⁶ Department of External Affairs, “The Granting of Independence to Colonial Countries and Peoples: Statement Made in the United Nations General Assembly on 2 December 1960 by the New Zealand Representative, Mr. Foss Shanahan,” *External Affairs Review* 10, no. 12 (1960): 22-24.

¹⁵⁷ Department of External Affairs, “Declaration on Colonialism: Statement made in the General Assembly on 22 November by the New Zealand Representative, Mr F. H. Corner,” *External Affairs Review* 11, no. 11 (1961): 31-36.

¹⁵⁸ Department of External Affairs, “Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples: Statement made by the Chairman of the New Zealand Delegation, Mr F. H. Corner, in Plenary on 26 November 1962,” *External Affairs Review* 12, no. 11 (1962): 36-40.

also required adroit diplomacy.¹⁵⁹ The timing has been criticised, but the offer of self-determination to the Cook Islands and Niue was part of a strategy to meet the interests of the Cook Islands, Niue and New Zealand.

Third, political devolution undertaken by New Zealand in the Cook Islands and Niue to 1962 was limited. Overall control remained in New Zealand hands; formally, and informally by New Zealand secondees filling senior roles. The self-determination options reflected New Zealand ideas of what was in the realm of the possible, desirable and meeting its immediate interests. Integration was ruled out on the grounds of cost to New Zealand. Independence was inconceivable. A federation of Polynesia made no sense. The optimal arrangement was “internal self-government,” similar to what was already in place. This option was presented as reflecting the Cook Islands’ and Niue’s wishes. Neither was pressing for self-determination. However the inescapable conclusion is that New Zealand too had no difficulty with a modestly modified status quo.

Without the United Nations, other influences might have led to greater autonomy in time. Minister Götz referred to the “sense of frustration” among the Cook Islands members of the Legislative Council at their lack of authority, prior to the changes introduced by Aikman. This would have been likely to grow. New Zealand was showing strong interest in the Cook Islands and Niue raising more revenue themselves. Cost may have become more significant. Decolonisation was proceeding elsewhere in the Pacific. What was deemed possible was changing. But at this point in history, there was a level of comfort with the status quo and change envisaged by New Zealand was still very limited.

To this point New Zealand has been the major player. There was a New Zealand desire to get the United Nations out of the picture. There was anticipation of limited change that matched New Zealand understanding of the desires and needs of the Cook Islands and Niue, while retaining much of the status quo including New Zealand oversight. In chapter 4 the response of the Cook Islands Legislative Assembly will be explored.

¹⁵⁹ As the British found in 1967 with the West Indies, refusal to involve the United Nations contributed to the United Nations not agreeing theirs was an act of self-determination; see Clark, “Self-Determination and Free Association, 60-64.

Chapter 5 will explain the response of the Niue Island Assembly to the offer. Both opted for self-government and a status emerged far closer to full independence than New Zealand, and probably the Cook Islands and Niue, had ever envisaged.

CHAPTER 4: THE COOK ISLANDS' STEPS TO SELF-DETERMINATION

I INTRODUCTION

New Zealand's commitment to decolonisation has been discussed in chapter 3. Attention was drawn to the effect on New Zealand of changes in the United Nations: the normative shift demonstrated by the 1960 Declaration on Decolonisation; the changing composition of the organisation; and attention turning to the Pacific. It explained the thinking behind options offered by New Zealand, including New Zealand's comfort with the existing relationship and desire to get ahead of a United Nations demand for independence.

This chapter turns to the self-determination choice of the Cook Islands and analyses the influence of the United Nations, New Zealand and the Cook Islands on the free association links that emerged. Starting with part II, the chapter explains the Cook Islands Legislative Assembly response to Minister Götz's offer and the outcome of the Legislative Assembly's consultations with its constitutional advisers. It draws attention to the significant shift, attributed to the United Nations, to full self-government rather than the offered internal self-government, while retaining free association links. Part III highlights continued New Zealand ambivalence and concerns about change, as an introduction to part IV which sets out the Cook Islands Constitution Act with its annexed Constitution and discusses changes made in the New Zealand parliamentary process. Part V explains New Zealand parliamentary reception of the legislation and influence of Cook Islanders in New Zealand. Part VI explains the Cook Islands act of self-determination and the United Nations response. Part VII sums up the influences on the arrangements.

II THE COOK ISLANDS RESPONSE

The day following Götz's departure from Rarotonga, the Cook Islands Legislative Assembly¹⁶⁰ passed a motion:

¹⁶⁰ The Cook Islands Legislative Assembly comprised fourteen members elected by universal suffrage, seven members elected by Island Councils, one European member elected by Europeans, up to four appointed officials and the Resident Commissioner who presided over the Assembly. The motion was produced by the Resident Commissioner. Interview John Scott, 12 November 2014, Rarotonga, the Cook Islands.

That this Assembly -

- (1) Records its appreciation of the Minister's speech and of the New Zealand Government's proposal as outlined for the future political development of the Cook Islands;
- (2) Declares that full independence as recently granted to Western Samoa is not the goal of the Cook Islands;
- (3) Requests that the New Zealand Government proceeds with its plan for giving the Cook Islands the fullest possible internal self-government while at the same time preserving for the Cook Islands people their present status as New Zealand citizens;
- (4) Reaffirms its loyalty to the Crown and its faith in New Zealand's willingness to continue giving aid and assistance to the Cook Islands without thought of any gain other than the friendship and goodwill of the people.¹⁶¹

As explained in the previous chapter, the options were pre-determined by New Zealand. It could be suggested that the choice was really no choice, and the outcome was thrust on the Cook Islanders. It is true that Götz showed so little interest in the Cook Islands Legislative Assembly views that one member commented pointedly that it would be a pity if he left without hearing them.¹⁶² But the Cook Islands Legislative Assembly could have rejected change. Instead it grasped "internal self-government." In this case, Stone has concluded, Götz got the Cook Islands' wishes right: "despite this pressure, it must also be said that the policy he outlined came closer to the aspirations of the Cook Islands than any since New Zealand annexed the territory over sixty years before."¹⁶³

The Cook Islands was not faced with a decision between a colonial status quo and independence. In theory there were four options; five including the status quo. Given the choice, the Cook Islands Legislative Assembly accepted the offer of the "fullest possible internal self-government" although the full meaning of this had yet to emerge.

Independence was rejected. Although not realistically on offer, the Legislative Assembly did not seek integration with New Zealand, despite potential greater monetary benefit. As the Cook Islands Premier Albert Henry explained to the United Nations in 1965, "The third alternative [i.e. integration] would have brought the Cook

¹⁶¹ Vaine Rere, *The Proceedings of the Legislative Assembly of the Cook Islands*, 1962, 119-120.

¹⁶² Poko Morgan, *The Proceedings of the Legislative Assembly of the Cook Islands*, 1962, 117-118.

¹⁶³ Stone, "Political Resurgence," 452.

Islands many social benefits but the islanders were a proud people and wished to retain their national identity.”¹⁶⁴

Niue was less enthusiastic, and its steps to self-government did not resume until 1965. The Cook Islands became the test case, and will be explored in this chapter.

The first step in the process involved New Zealand proposals and consideration of these by the Cook Islands Legislative Assembly with its constitutional advisers. From this process, “internal self-government,” retaining New Zealand oversight, became “self-government,” free from New Zealand executive or legislative control. This change reflected United Nations requirements and the input of the constitutional advisers

The New Zealand Government submitted to the Cook Islands Legislative Assembly in June 1963, a year after the visit by Götz, proposals and timetable for a move to “internal self-government” by 1965.¹⁶⁵ This indicated New Zealand’s interests and level of ambition. The plan involved progressively withdrawing official members from the Legislative Assembly (with the suggestion that the Secretary to the Government might remain). A Cabinet would be set up to replace the Executive Committee, continuing to hold collective rather than individual responsibility for departments. No time frame was indicated, but the Legislative Assembly would increasingly be allowed to pass Ordinances on matters which were the subject of New Zealand legislation. The finishing touch was the withdrawal of the Resident Commissioner from the Legislative Assembly and his appointment as a “head of state” (described as “the New Zealand Government’s representative in the Cook Islands,” with functions similar to that of the Governor-General in New Zealand). He would preside over an Executive Council, made up of members of Cabinet, and have the power to review and refer back to Cabinet any decision on which he had doubts as to its correctness (attention was drawn to the Western Samoan model).

¹⁶⁴ Statement by Premier of the Cook Islands to the Special Committee, Agenda Item 23, Chapter VIII Cook Islands, *United Nations General Assembly, Twentieth Session – Annexes* (New York: United Nations), 385.

¹⁶⁵ C. C. Aikman, J. W. Davidson and J. B. Wright, “Report to the Members of the Legislative Assembly of the Cook Islands on Constitutional Development,” *Victoria University of Wellington Law Review* 30 (1999): 557-561.

On receipt of these proposals, the Legislative Assembly sought constitutional advice. The advisers were New Zealanders, Aikman,¹⁶⁶ Jim Davidson¹⁶⁷ and Jack Wright.¹⁶⁸

In fulfilling their role, they drew on the parliamentary system which they knew and built on what was already in place, some on Aikman's earlier advice. The advisers' report cited New Zealand (and Western Samoan) precedent. They were familiar with New Zealand policy concerns and interests. That said, they were responsible to the Cook Islands Legislative Assembly, and the record shows they had no terms of reference from the New Zealand Government whose officials were themselves not entirely clear on the way forward.

When the advisers arrived, the initial New Zealand plan and timetable for "internal self-government" by 1965 was set aside. As Wright commented privately, in the context of criticism of New Zealand officials' lack of appreciation of the change envisaged, "New Zealand cannot have it both ways. A pseudo Ministerial system in which a New Zealand appointed Governor and seconded New Zealand officials still play the most prominent role will not fool anybody for long."¹⁶⁹

The advisers sought first to confirm the preferred option. However the Cook Islands Legislative Assembly appeared to consider this settled, and was keen to get on with their self-government arrangements. The advisers' report has little to say on why self-government was desired. Emphasis on the dictates of geography and other reasons reflect familiar New Zealand perspectives, but it does identify the Cook Islands Legislative Assembly interests in association, and how these would be addressed.¹⁷⁰

The preference for association was explained as a function of the Cook Islands' geography, economy and social situation: the small size and wide dispersal of the islands, limited natural resources and limited opportunities for economic development,

¹⁶⁶ C. C. Aikman was Professor of Constitutional Law at Victoria University. He had advised on the Western Samoa Constitution and had advised New Zealand on the Cook Islands earlier.

¹⁶⁷ J. W. Davidson was Professor of Pacific History at the Australian National University. He too had worked on the Western Samoa Constitution.

¹⁶⁸ J. B. Wright was the New Zealand High Commissioner to Western Samoa. He had worked in the Cook Islands and been Secretary of Island Territories.

¹⁶⁹ J. B. Wright, New Zealand High Commissioner to Western Samoa, to the Secretary of External Affairs, 5 July 1963, Visit to Cook Islands, reference ABHS 6958/9 W4628, record NYP 2/6/8, part 5, Archives.

¹⁷⁰ Aikman, Davidson and Wright, "Report to the Members of the Legislative Assembly," 519-557.

the “inevitable”¹⁷¹ looking elsewhere for economic and educational advancement, and “natural”¹⁷² choice of New Zealand. A high proportion of the Cook Islands budget came from grants from New Zealand. Large numbers of people and nearly all exports went to New Zealand. The advisers concluded that this made maintaining an association with New Zealand, and in particular holding New Zealand citizenship, a high priority for the Cook Islands.¹⁷³

At the same time the advisers saw it as “reasonable and understandable”¹⁷⁴ that the Cook Islands wanted to run its own affairs. It was distinct geographically, historically, economically and socially. New Zealand forms and practices were not necessarily suitable. Taking on greater responsibility for matters in the Cook Islands would counter (“in some degree”)¹⁷⁵ the attraction of broader opportunities in New Zealand. For these reasons a complete merger with New Zealand was not seen as desirable. Issues needed to be dealt with separately and in the Cook Islands by its elected representatives.¹⁷⁶

Recommendations went significantly further than New Zealand’s initial proposals for “internal self-government.” Drawing attention to the United Nations principle of self-determination that the proposals should not restrict the Cook Islands’ ability to develop along different lines in future if wished, the advisers recommended that the Constitution provide for full self-government. Full self-government meant the Cook Islands would have a full cabinet government with full executive and administrative control, responsible to a Legislative Assembly with full legislative autonomy, including being able to amend all New Zealand legislation applicable to the Cook Islands including the Constitution.¹⁷⁷ “Self-government” meant unfettered self-government, as the advisers had to remind New Zealand officials from time to time as the process progressed.

The degree to which this was pressed by the Cook Islands Legislative Assembly is unclear. According to Davidson, “spokesmen for the Cook Islands were as concerned for the maintenance of the link with New Zealand as with the acquisition of internal

¹⁷¹ Aikman, Davidson and Wright, “Report to the Members of the Legislative Assembly,” 521.

¹⁷² Aikman, Davidson and Wright, “Report to the Members of the Legislative Assembly,” 521.

¹⁷³ Aikman, Davidson and Wright, “Report to the Members of the Legislative Assembly,” 521.

¹⁷⁴ Aikman, Davidson and Wright, “Report to the Members of the Legislative Assembly,” 521.

¹⁷⁵ Aikman, Davidson and Wright, “Report to the Members of the Legislative Assembly,” 521.

¹⁷⁶ Aikman, Davidson and Wright, “Report to the Members of the Legislative Assembly,” 521-522.

¹⁷⁷ Aikman, Davidson and Wright, “Report to the Members of the Legislative Assembly,” 522.

autonomy.”¹⁷⁸ However the advisers are likely to have recognised desires. The Cook Islands Legislative Assembly indicated, for example, that it did not want collective ministerial responsibility but individual responsibility, as in Western Samoa.¹⁷⁹

Elements of continued association with New Zealand were strongly influenced by what was in place, what was seen as helpful or required, and the Cook Islands’ preferences. As the advisers explained, “continued association”¹⁸⁰ would comprise a common Head of State (the Queen), and a common citizenship, that of the state of New Zealand. Other examples of “likely close connection”¹⁸¹ with New Zealand were New Zealand acting for the Cook Islands in external affairs, reliance on New Zealand financial assistance and New Zealand continuing as the Cook Islands’ major market. “If wished,”¹⁸² the New Zealand Supreme Court would hear appeals from the Cook Islands High Court, and the New Zealand Auditor-General audit the Cook Islands accounts. Finally there was a Cook Islands Legislative Assembly preference for a New Zealand official to represent the Queen and possible means of association with the New Zealand Parliament.¹⁸³

The implications of these continued links do not emerge from the report or record of discussions with the advisers. The record is silent on any implications of shared citizenship. Attention was drawn to the potential conflict involved and hence inadvisability of combining the roles of representative of the Queen and of New Zealand. New Zealand responsibilities for external affairs and defence were seen as a legal and practical necessity. There was awareness of differences that might arise over finance under self-government and these were flagged. Discussion of implications of the use of New Zealand institutions for the Cook Islands’ status appears to have been

¹⁷⁸ J. W. Davidson, *The Decolonisation of Oceania: a Survey 1945-70* (Wellington: New Zealand Institute of International Affairs, 1971), 8.

¹⁷⁹ William Estall, *The Proceedings of the Legislative Assembly of the Cook Islands* (Rarotonga, 1963), 508-509. It was not lost on the Department of External Affairs that this ran counter to the Department of Island Territories’ insistence that the Cook Islanders were reluctant to take more political responsibility, see McIntosh to F. H. Corner, 14 May 1963, reference ABHS 6958/9 W4628, record NYP 2/6/8, part 4, Archives.

¹⁸⁰ Aikman, Davidson and Wright, “Report to the Members of the Legislative Assembly,” 522.

¹⁸¹ Aikman, Davidson and Wright, “Report to the Members of the Legislative Assembly,” 522.

¹⁸² Aikman, Davidson and Wright, “Report to the Members of the Legislative Assembly,” 522.

¹⁸³ Aikman, Davidson and Wright, “Report to the Members of the Legislative Assembly,” 522.

restricted to appeals to New Zealand courts, rather than an appeal court drawn from Pacific judges.

The question remained how the United Nations would view these links. Rather confusingly, given the self-government that emerged, the advisers were reluctant to refer to “free association” in their report because this might prejudice the desired links with New Zealand. They thought free association implied separate citizenship and a separate Head of State, and that what was being proposed was more like integration.¹⁸⁴ However as New Zealand’s Permanent Representative to the United Nations, Corner, said, independence had been ruled out by the Cook Islands. New Zealand was not contemplating genuine integration, and integration would be a “dubious proposition” at the United Nations. The view from New York was that the only United Nations option was free association, which “covered the whole Constitutional spectrum between the other two.”¹⁸⁵

The United Nations interpretation of this had still to be tested, but as explained by Hensley (also at the New Zealand Mission to the United Nations):

A common head of state or other links did not matter as long as there was a clear act of self-determination verified by the UN – and the Government had already accepted these requirements. Free association meant ‘continuous self-determination,’ that the Cooks should retain sole control of their future, rather than concerns with specifics like citizenship or immigration.¹⁸⁶

This was the approach, coupled with an emphasis on there being no reserved powers retained by New Zealand, that New Zealand in due course took to the United Nations.

III NEW ZEALAND AMBIVALENCE AND CONCERNS

The Cook Islands Legislative Assembly pressed ahead with its advisers. New Zealand officials in New York cogitated on what might prove acceptable to the United Nations. In New Zealand longstanding ambivalence about the Cook Islands’ colonial status, discussed in chapter 3, expanded to ambivalence about self-determination. Doubts

¹⁸⁴ Charles Craw to F. H. Corner, New Zealand Permanent Representative to the United Nations, 5 November 1963, reference ABHS 6958/9 W4628, record NYP 2/6/8, part 5, Archives.

¹⁸⁵ F. H. Corner to Secretary of External Affairs, 16 October 1963, reference ABHS 6958/9 W4628, record NYP 2/6/8, part 5, Archives.

¹⁸⁶ Hensley, *Final Approaches*, 55.

focussed on the Cook Islands' interests: the appropriateness of self-government, the Cook Islands' readiness, whether it was in conformity with their wishes, and who should have a say in the matter.

There was division at officials' level. The Department of Island Territories was responsible for the administration of the Cook Islands and Niue. The department had long experience of the Pacific and was the channel of communication with the Cook Islands and Niue. Its staff saw the Department of External Affairs, and the United Nations, as out of touch with local wishes. There was a concern that further autonomy (and the grant of self-government) was unwanted, unwise, foisted on the Cook Islands and Niue at the behest of the United Nations and risked a slide into independence.

The Ministry of External Affairs had key personnel with less (or no) familiarity with the Pacific. They were conscious of New Zealand's United Nations obligations and interests, but also needed to contain United Nations pressure for independence. They were aware of the international move towards self-determination and decolonisation. They held the belief that, even if not wanted immediately, the desire for self-government might grow. They were less alarmed by arrangements to accommodate this. Contacts they had with the Cook Islands reassured them that self-government was possible, and reinforced a view that the Department of Island Territories was slowing progress. This was a concern shared by constitutional advisers involved in the evolution of local government in the Cook Islands and later Niue.

This difference of view was reflected at ministerial level. Prime Minister Keith Holyoake (also Minister of External Affairs) had oversight of the Cook Islands' move to self-government. Götz was succeeded as Minister of Island Territories in 1964 by Ralph Hanan. Hanan had reservations about the process, seeing it as both "too far and too fast" and going beyond what was in the interests of the Cook Islands people.¹⁸⁷

Given the modest changes proposed in the original New Zealand plan, when the constitutional advisers' recommendation that the Cook Islands Legislative Assembly have complete legislative autonomy reached the New Zealand Cabinet, it caused

¹⁸⁷ Minister of Island Territories to Prime Minister, undated, "Constitutional Development in the Island Territories," reference ABHS 6978 W4637 /4, record M85/1/19, part 4, Archives.

disquiet. Even Götz was described as having “second thoughts.”¹⁸⁸ Ministers were concerned at the ability of the Legislative Assembly to amend the Constitution. They thought it was premature to give the Legislative Assembly full legislative competence. Ministers were told the questions could be addressed when the legislation was drafted.¹⁸⁹

Legislation was drafted, and the next major step was the introduction of the Cook Islands Constitution Bill with its attached Constitution into the New Zealand House of Representatives and the Cook Islands Legislative Assembly in August 1964. In New Zealand it was referred to the Island Territories Select Committee. The Select Committee raised further concerns, now directed at protecting New Zealand’s interests. Concerns were whether further devolution of control to the Cook Islanders was in New Zealand’s interests, what degree of influence New Zealand should continue to exert and how, and what safeguards were in place. When it returned to the House, the Opposition, influenced by Cook Islanders in New Zealand, focussed on who could participate in the Cook Islands elections and the need for a referendum.

We now turn to the changes this process introduced, and explain why.

IV COOK ISLANDS CONSTITUTION ACT 1964

The Cook Islands Constitution Act 1964,¹⁹⁰ to which is attached the Constitution, states that:

- 3. Cook Islands to be self-governing** - The Cook Islands shall be self-governing.
- 4. Constitution of the Cook Islands** - The Constitution set out in the Schedule to this Act shall be the Constitution of the Cook Islands, and shall be the supreme law of the Cook Islands.
- 5. External Affairs and Defence** - Nothing in this Act or in the Constitution shall affect the responsibilities of Her Majesty the Queen in right of New Zealand for the external affairs and defence of the Cook Islands, those responsibilities to be discharged after consultation by the Prime Minister of New Zealand with the Premier of the Cook Islands.

¹⁸⁸ McIntosh (Wellington) to Corner (New York), 18 November 1963, “Cooks,” reference ABHS 6958/9 W4628, record NYP 2/6/8, part 5, Archives.

¹⁸⁹ L. J. Davis to Prof J. W. Davidson, 12 November 1963, reference ABHS 6978 W4637/4, record M85/1/19, part 3, Archives.

¹⁹⁰ Cook Islands Constitution Act 1964.

6. British Nationality and New Zealand Citizenship - Nothing in this Act or in the Constitution shall affect the status of any person as a British subject or New Zealand citizen by virtue of the British Nationality and New Zealand Citizenship Act 1948.

A Self-government and the Constitution

New Zealand Cabinet concern about the ability of the Cook Islands to change its Constitution was clearly not sufficiently addressed in the legislative drafting. The Island Territories Select Committee further restricted the ability of the Legislative Assembly to repeal or amend the Constitution, including introducing the need for a referendum.

The advisers had suggested that amendment of the Constitution might require a two-thirds majority at the second and third readings and ninety days between the second and third readings. The Bill reflected this. The Committee added with respect to the Cook Islands Constitution Act and Articles 2 and 41 of the Constitution (i.e. that stating the Queen in right of New Zealand shall be Head of State, and that setting out under what conditions the Constitution could be changed), the requirement of a two-thirds majority in a referendum.¹⁹¹

While scholars have not drawn attention to the significance of this, New Zealand members of Parliament, it seems, did not want the Cook Islands to change its relationship with New Zealand, in particular New Zealand responsibility for external affairs and defence.¹⁹² Sir Leslie Munro commented with respect to the need for a referendum for any change to external affairs and defence and the Queen as Head of State that, even if there was a referendum to repeal these provisions, “it is probably legally true that we could refuse to give effect to those resolutions.” He was not confident the Cook Islanders understood this: “I think the Cook Islanders have not sufficiently studied the implications of these provisions for revision of the constitution in respect of the entrenched measures.”¹⁹³ In fact, the Cook Islands retained the ability to modify its status unilaterally, as required by the United Nations. However changes

¹⁹¹ Cook Islands Constitution Bill 1964 (38–2).

¹⁹² J. R. Hanan, *New Zealand Parliamentary Debates (NZPD)*, 21 October 1964, Vol. 340, 2832, and Leslie Munro, *NZPD*, 21 October 1964, Vol. 340, 2848–2849.

¹⁹³ Leslie Munro, *NZPD*, 21 October 1964, Vol. 340, 2849.

introduced by the Island Territories Select Committee made it more difficult for Cook Islands politicians to do so.

B External Affairs and Defence

Constitutional advice to the Cook Islands Legislative Assembly was that “conduct of the external relations of the Cook Islands will, of course, remain a responsibility of the New Zealand Government. This is a consequence of your choice of self-government rather than independence.” Moreover, the constitutional advisers stated that “New Zealand might delegate power to the Cook Islands to act on its own behalf; sometimes the Cook Islands would be consulted and sometimes informed.”¹⁹⁴ This suggests power remained with New Zealand.

Whether this reflected the Cook Islands’ capacity, or anticipated New Zealand reserved powers, or expected absence of recognition of the Cook Islands status by others, or a combination of factors, is not spelt out. Nor is what aspect of the relationship distinguished self-government from independence. It illustrates the degree to which the advisers were still feeling their way.

Examples by the advisers provided some clarification. On matters primarily of concern to the Cook Islands, New Zealand might delegate power, and on international commitments New Zealand would need to ask the Cook Islands if it wished to be associated with any action. The Cook Islands might act on its own behalf on regional Pacific initiatives and, as was being considered at the time by the South Pacific Commission, join it in its own right. Membership of some international organisations was available to non-independent states, but the advisers thought that the cost would rule this out, and New Zealand’s membership would still allow assistance from United Nations technical agencies to be made available to the Cook Islands.

Suggestion of continuation of New Zealand powers, or at a minimum, action on the Cook Islands’ behalf, may explain why external affairs did not raise early concerns with the New Zealand Cabinet. But when the Cook Islands Constitution Bill reached Select Committee consideration, a desire by members of Parliament to retain New Zealand

¹⁹⁴ Aikman, Davidson and Wright, “Report to the Members of the Legislative Assembly,” 541.

control emerged.¹⁹⁵ The prevailing Cold War environment and other malign influences from outside the region suggested a risk the Cook Islands might be influenced in a way contrary to New Zealand interests.¹⁹⁶

Aikman, and the Secretary of External Affairs, did not see the need for a provision on this in the Constitution. They argued that the Cook Islands' desire for New Zealand citizenship and its economic dependence on New Zealand would deter any action that might not be in New Zealand's interests.¹⁹⁷ The politicians were less sanguine. Reflecting this, the section on external affairs and defence was inserted in the Act. Frame has explained the erroneous belief of New Zealand parliamentarians that this reserved legislative power to them. It is clear from statements made (and subsequent events) that this reserved power was seen as extending to the New Zealand Government.

The Cook Islands Legislative Assembly appeared to have no objection to the New Zealand responsibility. The delegation that appeared before the Select Committee to support passage of the legislation, and, subsequently, the Cook Islands Legislative Assembly itself, agreed to its inclusion. The Cook Islands Party policy for the 1965 election said it supported "the provision for supervision of the Territory's external affairs and defence, by the New Zealand Government, in consultation with the Government of the Cook Islands."¹⁹⁸ The 1965 Cook Islands Legislative Assembly resolution asking New Zealand to bring the Constitution Act into force reminded New Zealand of the responsibility.¹⁹⁹

Other than these statements, the role New Zealand might take in external affairs remained opaque, and defence appears not to have been discussed at all.

In contrast to New Zealand parliamentary views, the New Zealand Government was careful to ensure the United Nations understood New Zealand had no legislative

¹⁹⁵ For a legal analysis see Frame, "The 'Riddiford Clause' Considered."

¹⁹⁶ Leslie Munro, *NZPD*, 21 October 1964, Vol. 340, 2848-2850, and D. Riddiford, *NZPD*, 21 October 1964, Vol. 340, 2837-2838.

¹⁹⁷ Fepulea'i, "Neither Fish nor Fowl," 134-135.

¹⁹⁸ David J. Stone, "Self Rule in the Cook Islands: The Government and Politics of a New Micro-State" (PhD diss., Australian National University, 1971), Appendix C, C2.

¹⁹⁹ Howard Henry, *'Rise and Rise of the Cook Islands Party': Cook Islands Politics and the Road to Self-Government on 4 August 1965* (Auckland: Sovereign Pacific Publishing Company, 2002), 115.

unilateral power in external affairs and defence in the Cook Islands, and its responsibilities could only be undertaken if the Cook Islanders wished this. It was explained that:

external affairs and defence are not subjects which New Zealand has ‘reserved’ for itself and withheld from the Cook Islanders. For so long as the Cook Islands chooses to be associated with New Zealand (rather than to become a sovereign state or to be associated with some other sovereign state) New Zealand cannot repudiate an ultimate responsibility for questions of external affairs and defence. ... the Cook Islands can do as it chooses but as long as it chooses not to be internationally responsible for its own affairs it thereby recognises New Zealand’s continuing responsibility for the matters mentioned in Section 5.²⁰⁰

The clarification was important, as an anticipated condition of United Nations approval of the arrangements.

That said, in 1969, there was a dispute between New Zealand and the Cook Islands over the meaning of the section in the context of the Cook Islands’ air rights. New Zealand maintained it held control, and secured this. But since then, Frame says, the suggestion of reserved powers has no longer been seriously asserted. It has also been clarified that advice to the Crown on these matters lies with Cook Islands Ministers.²⁰¹ Nevertheless the section has led to frequent misinterpretation of the relationship.

C New Zealand Citizenship

Continued retention of New Zealand citizenship was required from the Cook Islands point of view, and this appears to have raised no issues in New Zealand Government or parliamentary minds. As mentioned earlier, initial thinking was that a common citizenship ruled out the United Nations’ defined free association, and it would be interesting to know what New Zealand might have done had that proved to be the case.

New Zealand comfort with continued extension of citizenship was part of a more general comfort with the status quo. Citizenship was a matter over which New Zealand retained control, and it was assumed the Cook Islands would not want to jeopardise this.

²⁰⁰ Department of External Affairs, “The Cook Islands: Statement Made in the Committee of Twenty-Four by the Permanent Representative of New Zealand, Mr F. H. Corner, on 23 August,” *External Affairs Review* 15, no. 8 (1965): 33-36.

²⁰¹ Frame, “The ‘Riddiford Clause’ Considered,” 149-151.

As shall be discussed in chapter 6, it was not until 1973, after these reassuring assumptions were tested, that there was the first formal consideration of the implications of the extension of New Zealand citizenship to inhabitants of another state, and rights and obligations this might involve.

D The Queen as Head of State

To turn to the Cook Islands Constitution, the advisers saw the retention of the Queen as Head of State as consistent with self-government. Contrary to their advice, the Cook Islands Legislative Assembly preferred a New Zealand official representing both the Queen and the New Zealand Government in the Cook Islands, appointed by the Governor-General on the recommendation of the New Zealand Government after consultation with the Cook Islands Government.

Aikman explains that for the Cook Islands, this avoided the difficulty of having to appoint a Cook Islander, the expense, and it “provided some guarantee of a continuing New Zealand commitment to the Cook Islands.”²⁰² Certainly the Legislative Assembly discussion suggests it was a means of securing the link with New Zealand.²⁰³

This was also consistent with the 1963 New Zealand proposal. It retained two of the existing roles of the Resident Commissioner. It went some way to meet New Zealand ministers’ concerns, particularly with respect to expenditure of New Zealand grants, as Executive Council procedures meant the appointee could “require the Cook Islands Government ‘to think again’ in regard to decisions that appeared to be intrinsically unwise or which might prejudice New Zealand interests.”²⁰⁴

E Practical Links

Arrangements were made for continued practical association, helpful to a small state and providing reassurance to New Zealand. To the degree that can be ascertained, suggestions emanated from the advisers who were conscious of the cost of provision of separate structures in the Cook Islands and suggested New Zealand assistance could

²⁰² Department of Statistics, “Recent Constitutional Changes in the South-west Pacific: Contributed by Professor C. C. Aikman.”

²⁰³ *The Proceedings of the Legislative Assembly of the Cook Islands*, 1963, 632-648.

²⁰⁴ Department of Statistics, “Recent Constitutional Changes in the South-west Pacific: Contributed by Professor C. C. Aikman.”

continue.²⁰⁵ This comprised use of the New Zealand Auditor-General, on-going advice and help of the New Zealand State Services Commission, and the ability of the New Zealand Parliament to legislate for the Cook Islands if requested or agreed by the Cook Islands Government. Appeals from the High Court would continue to go to the Supreme Court of New Zealand, and other jurisdiction exercised by the Supreme Court would continue for the time being.²⁰⁶

F Finance

There is no formal reference to finance in the constitutional arrangements, but the advisers confirmed that:

The Government of New Zealand, like yourselves, recognises that substantial financial assistance will continue to be necessary to the Cook Islands for a long time to come; and it has been made clear that this assistance will be provided in the future, as at present.²⁰⁷

The Cook Islands received political assurances from the New Zealand Prime Minister,²⁰⁸ Minister of Island Territories²⁰⁹ and Deputy Leader of the Opposition²¹⁰ that this would continue.

V NEW ZEALAND DOMESTIC DEBATE

As explained, New Zealand officials and ministers had ambivalent views, initially, on what was thought to be in the Cook Islands best interests. The arrangements diminished New Zealand control over the Constitution and future of the relationship, foreign relations and defence, and funding, and in response New Zealand sought to secure its interests. When the legislation returned to the House of Representatives a third angle on the question emerged.

Cook Islanders in New Zealand who made representations to the Select Committee focussed on concerns about the implications of self-government for their interests in the Cook Islands: the traditional way of life, their dependents and landholdings. They wanted all Cook Islanders to be able to have a say on the future of the Cook Islands.

²⁰⁵ For example, *The Proceedings of the Legislative Assembly of the Cook Islands*, 1963, 622-631.

²⁰⁶ Aikman, Davidson and Wright, "Report to the Members of the Legislative Assembly."

²⁰⁷ Aikman, Davidson and Wright, "Report to the Members of the Legislative Assembly," 543.

²⁰⁸ Keith Holyoake, *NZPD*, 1964, Vol 341, 3271.

²⁰⁹ J. R. Hanan, *NZPD*, 1964, Vol 341, 3260.

²¹⁰ H. Watt, *NZPD*, 1964, Vol 341, 3260.

Opposition parliamentarians frequently cited the views of Cook Islanders in New Zealand. Consistent with this, two issues dominated the parliamentary debates; who was eligible to vote in the Cook Islands elections and whether a referendum was required to test Cook Islanders' views. The debate illustrated the influence of Cook Islander constituents' opposition to self-government.²¹¹ Prime Minister Holyoake is recalled as commenting ruefully, "every one of them ... in a swinging seat."²¹²

The Cook Islands Legislative Assembly wished to prevent Cook Islanders resident in New Zealand from flying in and standing for election. This was seen as directed at future Premier Albert Henry,²¹³ who had been living in New Zealand, although the members denied this. Despite a request by the New Zealand Prime Minister to bring the provision in line with New Zealand's, and lobbying in the Cook Islands by Albert Henry's Cook Islands Party, the Legislative Assembly kept the residence qualification period for candidates at three years.

A referendum had been part of the original New Zealand plan. The most likely explanation for this being dropped was a desire by the New Zealand Government to minimise the potential for United Nations involvement and not further extend a process facing political opposition in New Zealand. Instead it was determined that the Cook Islands general election with the Constitution as the chief issue could be the test.

VI ACT OF SELF DETERMINATION

The Cook Islands Constitution Act was passed in New Zealand in November 1964. The question remained whether the arrangements met the approval of Cook Islanders.

Crucial to United Nations approval was that the choice should be free and voluntary, and expressed through informed and democratic processes. Hence the Cook Islands Constitution Act was not to come into force until elections had been held in the Cook Islands as if under the new Constitution. Following the election the newly elected Legislative Assembly would need to ask New Zealand for it to be brought into effect.

²¹¹ See *NZPD*, 1964, Vol 341, 3262-3289.

²¹² Hensley, *Final Approaches*, 62.

²¹³ Albert Henry was a known and, for some, a controversial figure. He had been politically active in New Zealand and in the Cook Islands, set up the Auckland branch of the Cook Islands Progressive Association, and had been involved with an unsuccessful ship purchase in which his supporters lost money. See Kathleen Hancock, *Sir Albert Henry: His Life and Times* (Auckland: Methuen, 1979).

Consistent with this, a general election was held in the Cook Islands in April 1965, which a United Nations team observed.

The Cook Islands Party which supported self-government, received fifty-two per cent of the total vote and won fourteen of the twenty-two seats. Four were elected from the United Political Party and four ran as a group of independents. The election brought in a new group of politicians. Only seven members of the old Legislative Assembly were returned.²¹⁴

The newly elected Legislative Assembly made further changes to the Constitution. These included changing the electoral provisions to allow Albert Henry to run. The changes were passed in New Zealand in June 1965.²¹⁵ Following the resignation of his sister, and a by-election, Henry entered the Legislative Assembly on 26 July 1965. The Constitution was approved²¹⁶ and the Legislative Assembly asked that it be brought into force on 4 August 1965, which accordingly happened.²¹⁷

The final step was securing United Nations agreement to enable New Zealand to cease reporting on the Cook Islands. This was the culmination of New Zealand efforts to have free association accepted as a self-determination outcome. The United Nations team produced a report described as “erratic and egocentric”²¹⁸ but it did agree the election was fair, there had been freedom of choice and the outcome reflected the majority’s wishes. The Committee of Twenty-four was not prepared to recommend United Nations endorsement, despite Premier Henry supporting New Zealand before the Committee. After much anxiety, New Zealand secured Fourth Committee approval. The General Assembly agreed in December 1965 by seventy-eight votes with twenty-nine abstentions, that New Zealand could end reporting on the Cook Islands to the United Nations.²¹⁹

²¹⁴ Stone, “Political Resurgence,” 581.

²¹⁵ Cook Islands Constitution Amendment Act (No. 2) 1965.

²¹⁶ The vote was 20 to 2, with the islands of Penryn and Rakahanga opposed.

²¹⁷ Cook Islands Constitution Act Commencement Order 1965.

²¹⁸ Hensley, *Final Approaches*, 69.

²¹⁹ General Assembly resolution 2064 (XX), *Question of the Cook Islands* (16 December 1965). Other Pacific administering powers, Australia, France, United Kingdom and United States, abstained.

VII INFLUENCES ON FREE ASSOCIATION

The purpose of this chapter was to determine the formative influences on the free association arrangements that emerged.

A United Nations

The record shows the significance of the United Nations guidelines, delivered through the constitutional advisers and of interest to Department of External Affairs officials. The key point is that these ensured a move from the initial New Zealand proposal of “internal self-government” to full self-government. New Zealand retained no reserved powers, and the Cook Islands had the ability to change its Constitution and the relationship unilaterally.

There is no sign that the Cook Islands Legislative Assembly pressed for legislative autonomy, including over the Constitution. This degree of autonomy created anxiety among many in New Zealand and steps were taken to limit this. It has not been possible to determine the contribution made by the advisers’ understanding of United Nations requirements and the advisers’ own views. Even if details are uncertain, full self-government reflected the change in international norms attributable to the United Nations.

United Nations Resolution 1541 also required the outcome to represent a free and voluntary choice by the peoples of the territory concerned, expressed through informed and democratic processes. Rather than the outcome reflecting one of many New Zealand views on the question, self-government had to be put to the test of an election in the Cook Islands.

Curious aspects to the United Nations endorsement reflected the newness of the arrangement and uncertainty about its nature. The United Nations resolution refers to “internal self-government.” But its preference was clear. Looking forward, the United Nations sought to ensure the door was left open to full independence, should the Cook Islands wish this.

B New Zealand

This chapter has demonstrated how New Zealand moved to secure its interests in free association. New Zealand's interests can be considered in terms of a long term perspective, specific current interests and immediate objectives.

It is doubtful whether the New Zealand Government explicitly considered self-determination in terms of its longer term Pacific interests, although in the early 1960s thought was turning to New Zealand's role in a post-colonial Pacific. As Corner argued, New Zealand was a major power in the Pacific. Developments in the region would have implications for New Zealand. In Corner's view, New Zealand's geographic position, historic links and Maori population meant it should see itself as a natural centre of the Pacific world. Pacific peoples lived in New Zealand and he expected emerging Pacific states would look to New Zealand. He suggested that New Zealand would be expected by others outside the region to have influence.²²⁰

Consistent with this, New Zealand looked forward to continuation of the status quo: a close, harmonious relationship with the Cook Islands, on a basis of partnership rather than dependency.²²¹ However the arrangements themselves appear to reflect more current interests.

New Zealand policy can be assumed to involve considerations of responsibility, reputation, and a desire to exert political influence while keeping costs down. It has not been possible to locate any analysis of post-decolonisation interests with respect to the Cook Islands, but those with Western Samoa were set out in a 1962 Cabinet paper on the Treaty of Friendship with Western Samoa that followed its independence. There was seen to be a moral obligation to continue to assist Western Samoa and consciousness that New Zealand's reputation as an enlightened administering power rested on a successful post-independence state. There was also a desire to keep Western Samoa in New Zealand's sphere of interest, with "communist or Asian influence" seen as a threat. Continued provision of New Zealand administrative and technical assistance (with care to be taken not to extend this to financial support), and

²²⁰ F. H. Corner, "New Zealand and the South Pacific," in *New Zealand's External Relations*, ed. T. C. Larkin (Wellington, New Zealand Institute of Public Administration, 1962), 130-152. Corner was by this point Deputy Secretary of External Affairs.

²²¹ Department of External Affairs, "Self-government for the Cook Islands – II," *External Affairs Review* 15, no. 8 (1965): 6.

the offer to act as Western Samoa's agent in external affairs, was a means to achieve this and continue to exercise influence.²²² It can be assumed that New Zealand would have been interested in keeping the Cook Islands (and Niue) similarly close.

That said, this is context rather than strategy. The New Zealand Government's immediate objective was to get the United Nations off its back, with a solution acceptable to the Cook Islands and New Zealand, which met United Nations requirements. This meant New Zealand could cease reporting on the Cook Islands to the United Nations. This was achieved.

The United Nations was the imperative. The record does not suggest the road to self-government was motivated by New Zealand desire to change the status quo. It proceeded in the face of widespread reservations and domestic political opposition, including from the Cook Islands community in New Zealand.

Different views existed on whether economic development should be a prerequisite for self-determination, or whether, as Belshaw and Stace had suggested, greater self-government would lead to improved economic and social outcomes.²²³ The New Zealand Government took the latter view. There was certainly a hope the requirement to provide funding would lessen, but it was assumed that New Zealand assistance would continue to be provided, and this was guaranteed. New Zealand did not seek to cut ties with the Cook Islands, despite this possibly being a lower cost option.

As this chapter shows, New Zealand interests focussed on control of finances given the scale and anticipated continuation of New Zealand funding; intervention in the case of adverse external influences on the Cook Islands in the strategic environment of the time; and concern at the possibility the Cook Islands might change its Constitution, and relationship with New Zealand, in a way unacceptable to New Zealand. These interests are reflected in the Cook Islands Constitution Act and Constitution. On the other hand, continued extension of New Zealand citizenship and other links did not appear to cause

²²² Keith Holyoake, Cabinet Paper CP (62) 487, "Treaty of Friendship Between New Zealand and Western Samoa," 13 June 1962, reference AAFD 807 W3738/27, record CM(62)25, Archives.

²²³ Frank Corner speech in *Cook Islands News*, 14 January 1964, reference ABHS 6958/9 W4628, record NYP2/6/8, part 5, Archives.

any concern. New Zealand politicians sought to keep the Cook Islands close, and New Zealand's interests protected.

Self-government did indeed usher in potential for change. Prime Minister Holyoake welcomed self-government in free association with a statement that the Cook Islands now controlled its own affairs, and the close historic relationship was now a "partnership of common interest. Cook Islanders will continue to have New Zealand citizenship and they can count on the sympathetic support of New Zealand as unfailingly in the future as in the past."²²⁴

Yet no more than a month after Holyoake's statement, he was refuting press reports that he was unhappy with Premier Henry raising funding difficulties in his speech at the Constitution celebrations. Henry had also said that there was no wish "to become a permanent charge on the charity of another country," Holyoake pointed out.²²⁵ Despite expectation of a harmonious continuation of the status quo, this suggested "common interest" might not prove to be as common as hoped.

C The Cook Islands

The Legislative Assembly indicated early it was seeking the fullest possible self-government. Close attention was paid to the arrangements for this. Less attention was devoted to extant arrangements of association, or foreign affairs matters still relatively new to the leadership.

The Cook Islands' interests in free association drew on existing arrangements and the options available to them. The degree of self-government achieved was probably beyond the Cook Islands expectations. A shared Head of State, with her representative also representing New Zealand, was an assurance that New Zealand would continue to take the Cook Islands' interests into account. New Zealand citizenship provided access to family, services and employment in New Zealand. Financial and administrative help, although not in the constitutional arrangements, formed a significant part of the Cook Islands budget and services. The offer of continued New Zealand responsibility for

²²⁴ Department of External Affairs, "Proclamation of the Cook Islands Constitution: Statement by the Prime Minister, 9 August," *External Affairs Review* 15, no. 8 (1965): 13.

²²⁵ Department of External Affairs, "Cook Islands Constitution Day Celebrations: Statement by the Prime Minister, 26 August," *External Affairs Review* 15, no. 8 (1965): 19.

external affairs and defence was agreed. Continuation of other links was endorsed; additional requests received a less forthcoming reception.

Independence was not pursued. It appears to have been assumed this would jeopardise citizenship and funding. While Western Samoa received no budgetary assistance, it seems unlikely that assistance to the Cook Islands would have ceased with independence. Other arrangements, for example dual citizenship, could have been considered for access to New Zealand. However, like New Zealand, the Cook Islands had no desire to change valued ties. There was reassurance in the status quo. Integration was also rejected, although it was seen as delivering greater potential financial benefit.

Self-government was preferred to the status quo. Economic considerations were part of the reason for choice of free association. However, along with its other attractions, self-government was expected to deliver better economic outcomes than colonial status. The Cook Islands Party manifesto for the 1965 general election promised that self-government would facilitate economic development, deliver improved social services and protect and promote the traditional social structure and culture.²²⁶ The Cook Islands Party saw the transfer of power to the Legislative Assembly as facilitating better planning and marketing. It was hoped migration might slow. Longstanding criticism of the New Zealand administration's economic management had led to periodic unrest. Cook Islanders (like New Zealand, albeit for different reasons) looked to an improved economic future.

Some choices became less helpful over time. The representative of the Head of State coupled with that of New Zealand did not work. In theory, securing access to New Zealand by means other than holding New Zealand citizenship would have avoided future implications for the Cook Islands' status, but would have been seen as less secure. The section on external affairs and defence has befuddled observers. Other links have been amended to facilitate changing interests.

While New Zealand politicians were alert to the possible threat to New Zealand interests posed by self-government, less attention appears to have been paid by the

²²⁶ Stone, "Self Rule in the Cook Islands," Appendix C, C1.

Cook Islands to the implications of free association for self-government. The Cook Islands' advisers suggested that free association would constrain the Cook Islands exercise of foreign affairs. There was awareness of potential difficulty with New Zealand over who controlled funding, but this was not part of the free association arrangements. Premier Henry clearly saw economic reliance on New Zealand as a constraint. Ignoring the question of citizenship, he told the United Nations, "When the Islands became economically more independent they might consider sovereign independence."²²⁷ Otherwise, views on the nature of any possible compromise from the Cook Islands perspective remain unclear.

If there was Cook Islands caution in 1962, this did not last. Henry's views soon became clear: no compromise was implied. On the relationship with New Zealand, by 1971, as recorded by two officials, "There is no doubt in the Premier's mind that he looks upon the Cook Islands as an Independent self-governing country, regardless of what Constitutional Lawyers may term the status, having traditional and special ties with New Zealand in respect of financial aid and citizenship."²²⁸ In similar vein, with respect to recognition by others, R. Q. Quentin-Baxter observed in 1973, "In the classic sense, the Cook Islands are not a subject of international law Yet even if this is theoretically true, there is little point in telling the Premier that, in the eyes of international lawyers, the Cook Islands does not exist."²²⁹ These views mirror those expressed in the Cook Islands today.

D Conclusion

To sum up, self-government was strongly influenced by the United Nations requirements, leading to greater autonomy than initially envisaged. The fact and nature of free association was influenced by the status quo and New Zealand offered options. The Cook Islands was interested in self-government while ensuring maintenance of desired links. New Zealand sought continued control and influence to maintain the

²²⁷ Statement by Premier of the Cook Islands to the Special Committee, Agenda Item 23, Chapter VIII Cook Islands, *United Nations General Assembly, Twentieth Session – Annexes* (New York: United Nations), 385.

²²⁸ "Notes on Discussion with the Premier on 2/2/71," reference ABHS W4637 6978 Box 4, record M85/1/19, part 10, Archives.

²²⁹ R. Q. Quentin-Baxter to Secretary of Maori and Island Affairs, "The Cook Islands and the Colonial Boundaries Act," 18 January 1973, reference ABHS 6978 W4637/5, record M85/1/37, part 5, Archives.

relationship and protect its interests in the continued status quo. With the benefit of the Cook Islands experience before it, chapter 5 explains what determined the arrangements reached in Niue's case and expectations of free association.

CHAPTER 5: NIUE'S COURSE TO SELF-DETERMINATION

I INTRODUCTION

In contrast to the Cook Islands Legislative Assembly, the Niue Island Assembly had the offer of self-government conveyed in 1962 by poor radio reception from Rarotonga followed three months later by a copy of Minister Götz's address. Not surprisingly, the mode and message were received with little enthusiasm.

Given the inauspicious start, this chapter looks at why, and how, Niue moved from non-self-governing status to become self-governing in free association with New Zealand in 1974. As with chapter 4, this chapter explores what influence was brought to bear by the players involved, how this is represented in the free association arrangements that emerged, what they were expected to deliver and how the relationship between self-government and free association was conceived.

In part II the chapter explains the Niue Island Assembly's response and desire to be differentiated from the Cook Islands. Part III discusses New Zealand's review of options. Part IV identifies the Niueans' wishes in discussion with Niue's constitutional adviser and New Zealand's assurances. Niue's constitutional arrangements, expectations of these and differences from those of the Cook Islands are explained in part V. Most significant was the undertaking to provide continued necessary economic and administrative assistance and the understanding that citizenship brought with it a New Zealand responsibility for the material welfare of its citizens in Niue. Part VI explains Niue's act of self-determination and the United Nations reception. In part VII the chapter concludes with a discussion of the influences on the arrangements.

II NIUE RESPONSE

The Niue Island Assembly's reaction to New Zealand's 1962 offer was unenthusiastic. Independence, integration, and joining in a federation of Polynesia were rejected. The Niue Island Assembly response, conveyed to the Resident Commissioner (who was not in attendance for discussion of the question), speaks for itself:

The members firmly and unanimously reject the first three alternatives and have decided Niue should move gradually towards internal self-government. Part of an old pre-biblical

song about an unsavoury event illustrates our feelings towards the alternatives. It says:
“Dig, dig, dig a deep hole, throw it (the first three alternatives) in and bury it forever.”²³⁰

It was not surprising that the Niue Island Assembly responded less than wholeheartedly to New Zealand’s offer of self-government. Chapman has commented on Niuean resentment at New Zealand’s assumption since annexation that ““what’s good for the Cook Islands is good also for Niue. If something works in the Cooks it’ll work in Niue also.””²³¹ The Niue Island Assembly’s first objective was to control the timetable, and to distinguish its circumstances from those of the Cook Islands.

The Niue Island Assembly’s lukewarm agreement to “internal self-government” was followed by amendment and then rejection of the mid-1963 New Zealand plan (which the Cook Islands Legislative Assembly and advisers had also set aside). The Assembly suggested it might be useful to take a ballot of Niueans on the pace. It refused to consider the matter further without expert advice.

Occupied with the Cook Islands, and not wishing to hurry the Niueans, New Zealand let matters rest until 1965, with the arrival of Aikman and Jock McEwen,²³² tasked to report to the Minister of Island Territories on Niue’s constitutional development.²³³

Chapman explains that Aikman and McEwen found in their discussions with the Niue Island Assembly, and in a public meeting held in an open Assembly sitting, there was no strong feeling against self-government, but a desire to have time to consider the issue.²³⁴ Accordingly, Aikman and McEwen recommended that the programme be set aside until the Niue Island Assembly had gained more experience. Various recommendations, endorsed by the Niue Island Assembly, were incorporated in the

²³⁰ Resident Commissioner, Niue, to Secretary, Island Territories, “Future Policy Concerning Constitution – Niue,” 17 September 1962, reference ABHS 6978 W4637/4, record M85/1/19, part 1A, Archives.

²³¹ Chapman, *Decolonisation of Niue*, 12.

²³² McEwen was a former Resident Commissioner for Niue and by now Secretary of Island Territories.

²³³ C. C. Aikman and J. M. McEwen, *A Report to the Minister of Island Territories on the Constitutional Development of Niue*, 19 August 1965.

²³⁴ Chapman, *Decolonisation of Niue*, 22.

Niue Act 1966,²³⁵ and gradually implemented. The end point, however, remained undefined.

III NEW ZEALAND REVIEW OF OPTIONS

The Cook Islands had achieved self-government in free association, so it could be assumed Niue simply followed suit, albeit in slower time.²³⁶ Instead, at the end of 1966, New Zealand officials from the Department of Island Territories and Ministry of External Affairs (including Niue's future constitutional adviser R. Q. Quentin-Baxter), and Aikman, turned their minds to Niue's future.

The status quo posed less of a problem for New Zealand. With a precedent set there was no longer a need to get ahead of the United Nations. Officials agreed New Zealand could continue reporting and the end point and pace was for Niue to decide. Prime Minister Holyoake told the United Nations in 1967 that "the New Zealand Government is not going to force on these people a pace of political development which runs counter to their freely expressed wishes."²³⁷

Neither independence nor a federation of Polynesia was revisited. The Chatham Islands model did not offer the answer.²³⁸ McEwen recalled the Chatham Islanders had lobbied for a status like Niue's; internally self-governing, and with the taxes they paid controlled and spent locally. Nor was the solution by then being explored for Tokelau, integration and resettlement, thought appropriate.

There was however also no assumption Niue would proceed to self-government in free association. Reservations remained about the Cook Islands model as the optimal solution, including because, as McEwen said, the Cook Islands experience was that "once they became self-governing they could not expect the same measure of help from

²³⁵ Niue Act 1966 replaced the principal Act under which Niue had been administered, the Cook Islands Act 1915, and was required by the Cook Islands achieving self-government.

²³⁶ New Zealand too moved slowly. The time the Niue Island Assembly spent on the matter was very similar to the time the Cook Islands Legislative Assembly devoted to the question.

²³⁷ Department of External Affairs, "Niue and the Tokelaus: Report of the United Nations Committee of Twenty-Four: Statement by the Prime Minister, 29 September" *External Affairs Review* 17, no. 9 (1967): 34.

²³⁸ The Chatham Islands are 800 kilometres east of Christchurch, with a population of 510 in 1965, and have been suggested over the years as a possible model for Niue.

the New Zealand Government which they had received in the past, and the Niueans were obviously fearful of this.”²³⁹

While meetings in New Zealand revealed no clear answer, in 1970, in what Chapman identifies as the point of “transfer of initiative from Wellington to Niue and from the Resident Commissioner’s office to the Assembly,”²⁴⁰ a motion was introduced by Executive Committee member Young Vivian that the Niue Island Assembly should discuss future constitutional development in Niue. R. Q. Quentin-Baxter, then at Victoria University, was proposed by New Zealand as Niue’s constitutional adviser.

In preparation for his assignment, clarification was sought from Minister of Island Affairs Duncan MacIntyre, of New Zealand’s views on extending the franchise to Niue, and this was considered by Cabinet. Bertram and Watters assert that integration was not offered or discussed in any depth, and New Zealand would not countenance a closer relationship.²⁴¹ It merits setting out New Zealand’s consideration of the matter, which had developed since 1962.

The proposal put to Minister MacIntyre was based on consultation with Quentin-Baxter. It responded to Niuean concerns that constitutional development risked prejudging the ultimate outcome. Advice was that the present status could continue but putting aside the matter of Niue’s future year to year risked instability. The paper proposed that the New Zealand franchise be extended to Niue (should Niue ask for this). The intent “would be to keep Niue’s options open; so that, when the time came for final decisions, Niue would be equally ready for self-government or for integration.” It would guarantee that increasing local autonomy need not lead to separation from New Zealand, nor back to earlier style New Zealand rule. Separate representation in the New Zealand Parliament was not recommended as it risked undermining local government, seen as best placed to represent Niue views to New Zealand. It was suggested that extension of the franchise to Niue would be likely to lead to a reduction in the differences between conditions in Niue and in New Zealand, but not automatically so. Local control could continue over permanent residence in Niue, land ownership and use

²³⁹ “Niue: Constitutional Development: Notes on a Meeting held on 14 December 1966,” reference ABHS 6978 W4637/5, record M85/1/37, part 1, Archives.

²⁴⁰ Chapman, *Decolonisation of Niue*, 41.

²⁴¹ Bertram and Watters, *New Zealand and its Small Island Neighbours*, 47.

of island resources. Conditions would not have to be identical, for example with respect to New Zealand taxation and social security.²⁴²

MacIntyre's views on this are unclear, although he may have been less sanguine about different, lesser, conditions for newly enfranchised Niueans. When MacIntyre sought Cabinet views he focussed on New Zealand electoral considerations.

Cabinet was told that to end the colonial relationship, either Niue had to become self-governing or the franchise must be extended to Niue. Niue could be included in the bounds of a New Zealand electorate. Support from both sides of the House would be required, and a general balance of electoral advantage preserved. These conditions could be met.²⁴³

When Cabinet considered this on 16 November 1970, the views of the Ministry of Foreign Affairs were sought. It advised that foreign policy considerations meant the development of Niue should be governed primarily by the needs and wishes of the people themselves as well as by New Zealand's own interests. The end point must correspond with the wishes of Niue, but New Zealand would like to ensure it had the best possible chance of acceptance by the United Nations. United Nations doctrine was full independence, but alternatives were recognised. Complete independence was the least likely. Niue had already progressed along the path to self-government. The other alternative was integration – which would need to give Niueans the ability to fully exercise their rights as New Zealand citizens, in particular enfranchisement.²⁴⁴

With these views before it, the Cabinet decision of 23 November 1970 was that the suggestion that the New Zealand franchise be extended to Niue should not be adopted.²⁴⁵

²⁴² Secretary of Maori and Island Affairs to Minister of Island Affairs, "Niue – Constitutional Development," 13 November 1970, reference ABHS 6978 W4637/5, record M85/1/37, part 3, Archives.

²⁴³ Minister of Island Territories to Cabinet, "Constitutional Developments in Niue – The Question of Representation in the New Zealand Parliament," undated, reference ABHS 6978 W4637/5, record M85/1/37, part 3, Archives.

²⁴⁴ Ministry of Foreign Affairs, "Constitutional Developments in Niue" undated and unsigned, referred to Secretary of Maori and Island Affairs 23 November 1970, reference ABHS 6978 W4637/5, record M85/1/37, part 3, Archives.

²⁴⁵ Secretary of the Cabinet to Minister of Island Territories, "Constitutional Developments in Niue," undated, reference ABHS 6978 W4637/5, record M85/1/37, part 3, Archives.

Cabinet considered the matter again in 1972, prior to the arrival of a United Nations mission in Niue, in case Niue raised integration with the United Nations. Extraordinarily, given New Zealand policy to this point, and revealing the ongoing divergence of views in New Zealand thinking (and presumably a lack of Quentin-Baxter and Foreign Affairs input into the Department of Maori and Island Affairs' thinking) the paper warned that "the Cook Islands solution must not be adopted in the case of Niue." Problems identified with the Cook Islands were management of New Zealand funding and the ability to change the Constitution whatever New Zealand's views. The alternatives suggested were the status quo or reconsideration of the earlier Cabinet decision and integration, with the New Zealand franchise extended to Niue.²⁴⁶

Cabinet was non-committal on the extension of the franchise, and at its meeting in May 1972 simply noted the information.²⁴⁷ Again the Cabinet minute does not reveal why.

IV NIUEAN VIEWS

Following discussions with the Niue Island Assembly in 1970, and other meetings on Niue, R. Q. Quentin-Baxter set out the Niueans' views. The question they faced was whether self-government would jeopardise New Zealand citizenship and continued New Zealand assistance.

As Quentin-Baxter explained, Niueans wished, first, to "retain their New Zealand citizenship; for this signifies a guaranteed right of access to New Zealand, where many of their closest relatives already work and live."²⁴⁸

Second was to have "absolute assurance that New Zealand will keep up its financial and administrative aid to the island; for that alone makes possible an acceptable standard of living."²⁴⁹

Third was to "keep their own identity, their own patterns of living, and substantial control over their own affairs: they know that isolated communities must come to terms

²⁴⁶ Secretary of Maori and Island Affairs to Minister of Island Affairs, "United Nations Mission to Niue," 24 May 1972, reference ABHS 950 W4627/4165, record 296/4/1, part 5, Archives.

²⁴⁷ Secretary of the Cabinet to Minister of Island Affairs, "United Nations Mission to Niue," undated, reference ABHS 950 W4627/4165, record 296/4/1, part 5, Archives.

²⁴⁸ R. Q. Quentin-Baxter, "Report to the Niue Island Assembly on the Constitutional Development of Niue," *AJHR*, 1971, A4, 5.

²⁴⁹ Quentin-Baxter, "Report to the Niue Island Assembly," 5.

with conditions of life in the outside world, but they want the terms they make to be their own terms.”²⁵⁰

Despite New Zealand Cabinet views, Quentin-Baxter raised integration. He explained that extension of the franchise to Niue would raise a question of principle, and if chosen the United Nations and New Zealand Government would need to be sure this was what was desired by the people of Niue. But integration was not incompatible with Niue keeping its own political institutions.²⁵¹

Following these discussions, Quentin-Baxter proposed changes to the Niue Act 1966 which were adopted in the Niue Amendment Act 1971 and represented further transfer of power to Niue.²⁵² Longer term options to meet all three Niuean requirements still remained open.

The 1972 United Nations mission to Niue found differences of view among Niueans, but concluded that the predominant opinion was that constitutional development was “progressing at the proper pace and that measures should be taken steadily and cautiously towards self-government.”²⁵³ The range of views reported did not include a Niue interest in integration with New Zealand. The mission did however comment on the challenge to Niue’s political future posed by migration to New Zealand, and Niue’s poor natural resources, requiring assistance from New Zealand and the international community.²⁵⁴

²⁵⁰ Quentin-Baxter, “Report to the Niue Island Assembly,” 5.

²⁵¹ Quentin-Baxter, “Report to the Niue Island Assembly,” 8. This runs counter to the assertion in Bertram and Watters, *New Zealand and Its Small Island Neighbours*, 47, that integration had never been presented or discussed in depth.

²⁵² Niue Amendment Act 1971. This gave the Executive Committee powers formerly delegated from the Resident Commissioner, and removed from the Resident Commissioner the casting vote or the power of veto. The ability to give and withhold assent on legislation was now on the advice of Niue’s Leader of Government. The Leader of Government Business became responsible for selecting his Executive Committee. Administration of the Niue Public Service and provision of education (both resting with New Zealand institutions) was to be undertaken under the policies of the Niue Island Assembly. Chapman said the resulting New Zealand legislative changes “were made at the specific request of the Assembly, not on recommendations made by the New Zealand Government to the Assembly.” See Chapman, *Decolonisation of Niue*, 44.

²⁵³ United Nations, General Assembly, *Report of the United Nations Visiting Mission to Niue, 1972*, A/AC.109/L.810/Rev.1 (4 August 1972), 47-48, reference ACGA 8280 IT1W2439/52, record 85/1/37, part 6, Archives.

²⁵⁴ United Nations, *Report of the United Nations Visiting Mission*, 52-54.

The visit had an unexpected result. It generated interest among Niueans in discussing their future.²⁵⁵ It encouraged the Niue Select Committee on Constitutional Development to explore public reaction to the achievement of self-government before the end of 1974, and develop proposals to put to Quentin-Baxter when he returned to Niue in October 1972.²⁵⁶

Following discussions with Quentin-Baxter, in November 1972 the Niue Island Assembly passed a resolution by twelve votes to one (with one absence) that full self-government in free association with New Zealand should be achieved in 1974.²⁵⁷

The Niue Island Assembly continued to seek to ensure Niuean interests were protected in a change of status. Following a December 1972 change of government in New Zealand to Labour, led by Prime Minister Norman Kirk, in February/March 1973 a Niue Island Assembly delegation visited New Zealand to seek assurance that the new Government also endorsed their wishes. Matters agreed were New Zealand citizenship, maintenance of financial assistance, New Zealand responsibility for external affairs and defence, and New Zealand representation in Niue.²⁵⁸ These were set out in a joint communiqué in March 1973 by Prime Minister Kirk and the Niue Leader of Government Robert Rex.²⁵⁹

There was a subsequent quest for greater support. In November 1973, Rex sought confirmation from Kirk that New Zealand “was determined to achieve the announced goal, and would grant the people of Niue their wish.”²⁶⁰ Foreign Affairs officials had briefed the Prime Minister that Rex had been modest in his requests of New Zealand. They suggested an injection of aid funds, perhaps directed at improvement of housing, provision of electricity to more villages and encouraging tourism, and joint statements

²⁵⁵ Chapman, *Decolonisation of Niue*, 46.

²⁵⁶ R. R. Rex, Leader of Government, to the Resident Commissioner, Niue, “Select Committee Report on Constitutional Development,” 10 November 1972, reference ABHS 6978 W4637/5, record M85/1/37, part 5, Archives.

²⁵⁷ “Constitutional Development, Resolution of the Niue Island Assembly, 21 November 1972,” reference ABHS 6978 W4637/5, record M85/1/37, part 5, Archives.

²⁵⁸ Obtaining reassurance on various preferential trade arrangements was more difficult. “Niue: Constitutional Talks: Trade Meeting,” 27 February 1973, reference ABHS 6978 W4637/5, record M85/1/37, part 5, Archives.

²⁵⁹ P. A. Amos, Minister of Island Affairs, Memorandum for Cabinet, “Niue: Constitutional Development,” undated, reference ABHS 6978 W4637/5, record M85/1/37, part 5, Archives.

²⁶⁰ Ministry of Foreign Affairs, “Niue,” 26 November 1973, reference ACGA 8280 IT1W2439/52, record 85/1/37, part 6, Archives.

to bolster confidence.²⁶¹ It is not clear what became of this. Kirk and New Zealand ministers were less engaged with self-government than the previous Government with the Cook Islands. Various requests, including that New Zealand old age pensions be paid in Niue, were brushed off as being Niue's responsibility.

In March 1974 Kirk visited Niue and was formally requested by the Niue Assembly to draft a Constitution and get other agreed arrangements underway.²⁶² Kirk again issued assurances that the constitutional provisions sought would be fulfilled.²⁶³

The task from this point was to develop arrangements that met United Nations guidelines and that assured all three of Niue's key objectives. The process was the same as with the Cook Islands. The Niue Constitution Bill and Constitution was drafted in consultation with the Niue Assembly and New Zealand officials. Quentin-Baxter argued against New Zealand officials' drafting ideas that indicated a lack of appreciation of arrangements already in place, and the requirements of self-government. Legislation was introduced into the New Zealand House of Representatives and Niue Island Assembly. In New Zealand this was referred to the Island Affairs Select Committee. A delegation from the Select Committee visited Niue and Niue Island Assembly representatives appeared before the Select Committee. The Bill was then returned to the House.

The process was not politically contentious, as had been the Cook Islands case. Niueans in New Zealand provided low key opposition to self-government, but had greater influence on the Niue leadership than New Zealand politicians. The Select Committee delegation that went to Niue concluded it was "completely satisfied that the Niuean people are very much more aware of the nature of the proposals than their relatives in New Zealand have tried to make out."²⁶⁴

²⁶¹ Frank Corner, Secretary of Foreign Affairs, to the Prime Minister, "Niue," 16 November 1973, reference ACGA 8280 IT1W2439/52, record 85/1/37, part 6, Archives.

²⁶² R. R. Rex, Leader of Government, to Prime Minister, 25 March 1974, reference ACGA 8280 IT1W2439/52, record 85/1/37, part 6, Archives.

²⁶³ Statement by the Prime Minister, Right Hon. Norman Kirk in the Niue Legislative Assembly on 25 March 1974, reference ACGA 8280 IT1W2439/52, record 85/1/37, part 6, Archives.

²⁶⁴ K. T. Wetere, "Report on Visit of Island Affairs Select Committee to Niue," 14 August 1974, reference ACGA 8280 IT1W2439/52, record 85/1/37, part 10, Archives.

A precedent having been set, there was no need to determine what would meet the United Nations standards. Arrangements and the process reflected the same general principles set by the United Nations; that self-government should be a free and voluntary choice, reached through an informed and democratic process, with Niue having the freedom to modify its status and without external interference in its Constitution.

Within this framework, the content primarily reflects the Cook Islands precedent, and Niuean input, rather than New Zealand interventions. The next section looks at what emerged from this process.

V NIUE CONSTITUTION ACT 1974

The Niue Constitution Act 1974,²⁶⁵ to which the Niue Constitution is attached, states that:

3. Niue to be self-governing - Niue shall be self-governing.

4. Constitution of Niue – (1) The Constitution set out in its Niuean language version in the First Schedule to this Act and in its English language version on the Second Schedule to this Act shall be the Constitution of Niue (in this Act called the Constitution), and shall be the supreme law of Niue.

(2) Where the Constitution provides that any New Zealand Court or Department of Government or statutory authority shall perform any function or exercise any power in relation to Niue, that Court, or, as the case may be, the officers of that Department or the members and staff of that authority are by this Act authorised and required to perform that function or exercise that power in accordance with the Constitution.

5. British nationality and New Zealand citizenship - Nothing in this Act or in the Constitution shall affect the status of any person as a British subject or New Zealand citizen by virtue of the British Nationality and New Zealand Citizenship Act 1948.

6. External affairs and defence - Nothing in this Act or in the Constitution shall affect the responsibilities of Her Majesty the Queen in right of New Zealand for the external affairs and defence of Niue.

²⁶⁵ Niue Constitution Act 1974.

7. Economic and administrative assistance - It shall be a continuing responsibility of the Government of New Zealand to provide necessary economic and administrative assistance to Niue.

8. Co-operation between New Zealand and Niue - Effect shall be given to the provisions of sections 6 and 7 of this Act, and to any other aspect of the relationship between New Zealand and Niue which may from time to time call for positive co-operation between New Zealand and Niue, after consultation between the Prime Minister of New Zealand and the Premier of Niue, and in accordance with the policies of their respective Governments; and, if it appears desirable that any provision be made in the law of Niue to carry out these policies, that provision may be made in the manner prescribed in the Constitution, but not otherwise.

9. New Zealand Representative - There shall be appointed under the State Services Act 1962, a New Zealand Representative in Niue.

(2) The New Zealand representative shall be stationed in Niue, and shall be the representative of the Government of New Zealand in Niue.

There were also links with New Zealand in the Constitution, discussed below.

A Self-government and the Constitution

The Niue Constitution Act 1974 and Niue Constitution are more entrenched than the Cook Islands Constitution. As with the Cook Islands, the support of no less than two-thirds of the membership of the Assembly and a referendum with two-thirds support is required to secure change to the Niue Constitution Article 1 concerning the Queen as Head of State and Article 35 setting out how the Constitution can be repealed or amended. In addition, Article 69 on appointments to the Niue Public Service is similarly entrenched. Moreover changes to any other articles in the Constitution would also require a referendum and the support of the majority of votes cast.

For the Cook Islands entrenchment was extended at the instigation of the New Zealand Select Committee. Chapman said in Niue's case that entrenchment "was the means by which something that was genuinely Niuean in origin was incorporated into a Constitution which otherwise reflected a transplanted system."²⁶⁶ He explained it reflected Niue's egalitarian and individualistic society. It also drew on Niuean views of

²⁶⁶ Chapman, *Decolonisation of Niue*, 72.

the Cook Islands record, where, Chapman said, the Cook Islands Constitution had been “manipulated for political purposes.”²⁶⁷ Entrenchment was a means for Niue’s leadership to reassure its people, including Niue public servants and Niueans in New Zealand.

Some in New Zealand wished to further limit the ability of Niueans to change the Constitution, particularly “in a direction which would adversely affect the rights of New Zealand citizens or would have the effect with regard to a group of New Zealand citizens, i.e. the people of Niue, of approving a standard of conduct which was not generally acceptable to the majority of New Zealand citizens.”²⁶⁸ Quentin-Baxter successfully advised against this, as not representing true self-government, and suggested there were other ways New Zealand could let its views be known.

B New Zealand Citizenship

The previous chapter drew attention to the surprising absence of consideration of the implications of continued extension of New Zealand citizenship to the Cook Islands. By May 1973, events had given rise to an Exchange of Letters on the question between New Zealand Prime Minister Kirk and Cook Islands Premier Henry. The exchange, based on advice from Quentin-Baxter, clarified contested points. It will be discussed more fully in the following chapter. Important in the Niue context was the meaning of shared citizenship for the conduct of the relationship; namely “the responsibility of New Zealand towards the inhabitants of a territory not subject to New Zealand laws: ... [and] a corresponding responsibility [for the territory] to maintain acceptable legal and administrative standards.”²⁶⁹

²⁶⁷ Chapman, *Decolonisation of Niue*, 72.

²⁶⁸ Note for file, “Niue Constitutional Development,” 29 November 1972, reference ABHS 950 W4627/4165, record 296/4/1, part 7, Archives.

²⁶⁹ R. Q. Quentin-Baxter to the Secretary of Maori and Island Affairs, “The Cook Islands and the Colonial Boundaries Act,” 18 January 1973, reference ABHS 6978 W4637/5, record M85/1/37, part 5, Archives.

New Zealand Prime Minister Kirk's letter states that "the bond of citizenship does entail a degree of New Zealand involvement in Cook Islands affairs ... [which] ... is reflected in the scale of New Zealand's response to your country's material needs ..."²⁷⁰

Similar points were included in Quentin-Baxter's 1974 report to the Niue Island Assembly. He stated "The deeper meaning of this provision [of citizenship] is that the people of Niue would be choosing freely to uphold the same basic values as other New Zealanders – a belief in democracy, in the rights of the individual, and in government under law."²⁷¹ Moreover, "New Zealand has an investment in the welfare of her own citizens, wherever they live."²⁷² Chapman discusses the implications of free association and draws attention to New Zealand's "legal obligation to take an active interest in the moral and material well-being of New Zealand citizens over whom she has no legal jurisdiction."²⁷³ These points formed an integral part of Niuean understanding of the free association arrangements.

C External Affairs and Defence

Quentin-Baxter explained responsibility for defence and external relations of Niue as a directive of care that would only be exercised in accordance with the laws of Niue and policies of its Government.²⁷⁴ This ambiguous provision from the Cook Islands Constitution Act was thus clarified and carried over to the Niue Constitution Act. Chapman does not discuss the significance of external affairs and defence. It appears this was to be a part of New Zealand's continuing assistance to Niue.

D Economic and Administrative Assistance

Continued necessary economic and administrative assistance was a key provision, included to meet Niuean concerns. Quentin-Baxter emphasised that "Niue's future depends on the vitality of its own political institutions *and* on very substantial New Zealand support".²⁷⁵ The 1972 United Nations Visiting Mission urged New Zealand to

²⁷⁰ "Exchange of Letters between the Prime Minister of New Zealand and the Premier of the Cook Islands Concerning the Nature of the Special Relationship between the Cook Islands and New Zealand," *AJHR*, 1973, A10.

²⁷¹ R. Q. Quentin-Baxter, "Second Report to the Niue Island Assembly on the Constitutional Development of Niue," *Victoria University Law Review*, 30 (1999): 581.

²⁷² R. Q. Quentin-Baxter, "Second Report to the Niue Island Assembly," 587.

²⁷³ Chapman, *Decolonisation of Niue*, 62.

²⁷⁴ R. Q. Quentin-Baxter, "Second Report to the Niue Island Assembly," 581.

²⁷⁵ R. Q. Quentin-Baxter, "Report to the Niue Island Assembly," 11.

reassure Niue that future political development would not affect New Zealand's financial assistance.

Given its significance, it is a concern, and perhaps a signal of things to come, that New Zealand officials in 1972 were unable to locate earlier assurances of financial assistance by Island Territories Ministers Götz and Hanan.²⁷⁶ Ministers seemed cautious, probably with the repeated need to find more money for the Cook Islands in mind. Various drafts over almost six months were required before Minister of Island Affairs MacIntyre finally despatched a letter to Niue in November 1972. It said that New Zealand recognised its responsibility and would continue to discharge this. What types of assistance would continue was put off to talks the following year. The letter concluded with the lukewarm: "you may rest assured that if Niue becomes internally self-governing she will not be expected to struggle on unaided."²⁷⁷

In contrast, New Zealand Treasury advice in preparation for the February/March 1973 Niue Island Assembly delegation visit was clear:

financial assistance to Niue, the Cook Islands and the Tokelau Islands is a top priority for New Zealand's overall development assistance programme and ... the reasonable needs of these self-governing and dependent territories should be a first charge against the overall allocation for official development assistance. Thus we envisage no changes in New Zealand's attitude to financial assistance to Niue in the event of its becoming fully self-governing. This would include the continuation of other forms of assistance at present given to Niue such as the provision of qualified staff, the availability of expert advice, the training of Niuean staff and links with New Zealand services such as the Post Office, the Government Superannuation Scheme, the State Services Commission and civil aviation facilities.²⁷⁸

Greater reassurance did, eventually, emerge. Prime Minister Kirk's March 1974 statement in Niue reaffirmed that: "You have the New Zealand Government's solemn assurances that the people of Niue will continue to be New Zealand citizens and that

²⁷⁶ Minister of Island Affairs to Cabinet, "United Nations Mission to Niue," undated draft, reference ABHS 950 W4627/4165, record 296/4/1, part 5, Archives.

²⁷⁷ Duncan MacIntyre, Minister of Island Affairs to Mr Rex, Niue, 14 November 1972, reference ABHS 6978 W4637/5, record M85/1/37, part 5, Archives.

²⁷⁸ Secretary to the Treasury to the Minister of Finance, "Niue: Financial Assistance," 28 February 1973, reference ABHS 950 W4627/4165, record 296/4/1, part 7, Archives.

New Zealand will continue to provide necessary economic and administrative assistance to Niue.”²⁷⁹

E New Zealand Representative in Niue

Reflecting Niue’s suspicion it was at risk of being abandoned by New Zealand was the undertaking that a representative of the Government of New Zealand would be stationed in Niue.

F The Queen as Head of State

Turning to the Constitution, while the Cook Islands still had its awkward arrangement combining the representative of the Head of State with New Zealand representative, the Niue Constitution vests the executive authority of Niue in Her Majesty the Queen in right of New Zealand, and the Governor-General of New Zealand is her representative in relation to Niue.²⁸⁰

G Niue Public Service

The Niue Government was the major employer on Niue and its staff included the best educated. In 1974 the Niue Public Service comprised 344 locally appointed staff and 48 expatriate staff, plus 312 casual employees.²⁸¹ Retention of public servants was seen as crucial to Niue’s future.

Niue embarked on self-government in the face of an alarming outflow of people. Between 1971 and 1976 the population dropped by around 1000 to 3843, the lowest ever. Quentin-Baxter identified an economic gap that needed to be addressed, and New Zealand’s failure to do so. He was particularly critical of the New Zealand State Services Commission not raising salaries in Niue to keep pace with rising costs and the rising salaries of New Zealand officers seconded to Niue.²⁸²

Reflecting their importance, Niue public servants had considerable influence as they sought to avoid the “political patronage and nepotism ... rife in the Cook Islands Public

²⁷⁹ Statement by the Prime Minister, Right Hon. Norman Kirk in the Niue Legislative Assembly on 25 March 1974, reference ACGA 8280 IT1W2439/52, record 85/1/37, part 6, Archives.

²⁸⁰ Article 1 of the Niue Constitution.

²⁸¹ Department of Maori and Island Affairs, “Reports on Niue and the Tokelau Islands,” *AJHR*, 1974, E13, 11.

²⁸² R. Q. Quentin-Baxter, “Second Report to the Niue Island Assembly,” 586.

Service.”²⁸³ The issue was how to provide reassurance while also ensuring the Public Service was responsible to authorities in Niue and responsive to Niuean needs.²⁸⁴

What emerged was a Niue Public Service Commission based in Wellington, made up of the Chair of the New Zealand State Services Commission, another member of the State Services Commission, and someone with special knowledge of Niue appointed by the State Services Commission with the concurrence of the Niue Cabinet. To guide the Niue Public Service Commission, the Constitution states that factors to be taken into account in establishing and revising terms and conditions of employment shall include “the need to afford reasonable opportunities of employment in Niue for the people of Niue, and in so doing to have regard to the employment opportunities and levels of remuneration available in New Zealand.”²⁸⁵

H Links with New Zealand

The Niue Constitution contained other areas of linkage with New Zealand. As with the Cook Islands, the New Zealand Audit Office remained Niue’s auditor,²⁸⁶ appeals from the High Court of Niue could be taken to the New Zealand Supreme Court,²⁸⁷ and the New Zealand Parliament could legislate for Niue if requested by and consented to by the Niue Assembly.²⁸⁸

To sum up, while the Cook Islands Legislative Assembly had been primarily focussed on self-government and its new political structures, the Niue Island Assembly paid particular attention to its relationship with New Zealand. Reflecting Niuean interests the arrangements included more links, more assurances, most notably with respect to necessary economic and administrative assistance, the Constitution is more entrenched, and there was an understanding, on the part of Niue and its constitutional adviser at least, that New Zealand citizenship brought with it a responsibility of New Zealand towards its citizens in Niue.

²⁸³ Chapman, *Decolonisation of Niue*, 78.

²⁸⁴ R. Q. Quentin-Baxter, “Second Report to the Niue Island Assembly,” 585.

²⁸⁵ Article 69 (3) (b) of the Niue Constitution.

²⁸⁶ Article 60 of the Niue Constitution.

²⁸⁷ Article 51 of the Niue Constitution.

²⁸⁸ Article 36 of the Niue Constitution.

VI ACT OF SELF DETERMINATION

With Niueans spread between Niue and New Zealand, the question arose, as with the Cook Islands, of who could have a say Niue's future.

Niueans in New Zealand who had been out of Niue for less than three years and intended to return to live in Niue were entitled to vote in a general election in Niue. The Niue Assembly decided that those registered for, or eligible to vote in, a general election outside Niue could not participate in the referendum. They pointed out there had been no absentee voting in Niue's general elections. The United Nations election observation mission saw the decision as affecting a very few people. The Niue Assembly's decision was supported by the New Zealand Prime Minister, and officials. While Quentin-Baxter preferred a more inclusive approach, there was a strong view in Niue that the referendum should be restricted to those "people who live in Niue and who are prepared to work for their island and their people."²⁸⁹

In New Zealand, the passage of the Niue Constitution Act through the New Zealand Parliament was straightforward and supported by the Opposition, which had been in government during the debates on the Cook Islands legislation. A precedent had been set. Self-government was less novel than nine years earlier. It seems too that better things were expected of the Niueans. Former Prime Minister Holyoake, now in the Opposition, recalling the domestic political resistance he had faced, commented: "I am sure we will not go through the trauma we experienced on a similar Bill that gave self-government to the Cook Islands."²⁹⁰ He added, "The people of Niue, and particularly the leaders, are a splendid people. I am not making a distinction between them and others, but they have acted very understandingly and responsibly over the years."²⁹¹

A referendum was held on the Niue Constitution on 3 September 1974, observed by the United Nations. The question asked was: "Do you vote for self-government for Niue, in association with New Zealand, on the basis of the Constitution and the Niue Constitution Act, 1974?" Ninety-six per cent of registered voters participated and of

²⁸⁹ K. T. Wetere, "Report on Visit of Island Affairs Select Committee to Niue," 14 August 1974, reference ACGA 8280 IT1W2439/52, record 85/1/37, part 10, Archives.

²⁹⁰ Keith Holyoake, *NZPD*, 1974, Vol 391, 2672.

²⁹¹ Keith Holyoake, *NZPD*, 1974, Vol 391, 2672.

1,384 votes cast, sixty-four per cent of valid votes were in favour and thirty-three per cent against.²⁹²

Following the referendum, the Niue Island Assembly asked New Zealand to bring the Constitution into force.²⁹³ Constitution Day was 19 October 1974, “annexation day” - the date Niue was proclaimed a New Zealand territory in 1901. Unlike the Cook Islands, there was continuity of leadership of Niue through the process and into the period of self-government.

United Nations approval was then secured without fuss, with Premier Rex appearing before the Fourth Committee. It was unanimously agreed on 13 December 1974 that the people of Niue had exercised their right to self-determination.²⁹⁴

VII INFLUENCES ON FREE ASSOCIATION

This chapter set out to determine the influences on Niue’s achievement of self-government in free association with New Zealand.

This chapter calls into question two assumptions. First, that the imperatives were the same as for the Cook Islands – the pace was driven by the United Nations, decolonisation followed a pre-ordained path and integration was not considered. Second, it shows that while there are similarities, the arrangements entered into by Niue are not the same as those reached with the Cook Islands. Reflecting Niuean interests, most significantly they include an assurance of necessary economic and administrative assistance, and rest on an understanding of the significance of citizenship to this.

A United Nations

United Nations pressure had reduced, or at least pressed less on New Zealand. By 1965, when New Zealand attention turned to Niue’s future, the Cook Islands had held its election. By the end of that year a precedent for self-government in free association was established.

²⁹² Question no. 7 for Written Answer due on Wednesday 16 October 1974, reference ACGA 8280 IT1W2439/52, record 85/1/37, part 10, Archives. It has not been possible to find a statement of what majority was required; presumably over fifty per cent.

²⁹³ Niue Constitution Act Commencement Order 1974.

²⁹⁴ General Assembly resolution 3285 (XXIX), *Question of Niue* (13 December 1974).

There remained a need to keep the United Nations on side and ensure Niue's circumstances and wishes were understood, as the invitation to two United Nations missions demonstrated. New Zealand accommodation of the United Nations put it ahead of other administering powers in the Pacific and incurred their displeasure. However it resulted in a more understanding response. United Nations approval was more readily achieved and did not refer to independence as an ultimate goal.

B New Zealand

Options were considered anew by New Zealand. The status quo of continued reporting was a possibility. Reflecting changes since 1962, other options were a more sophisticated version of integration and self-government in free association (rather than "internal self-government"). Discussion revealed similar doubts among Department of Island Territories officials as prior to the Cook Islands self-determination. A question hung over whether self-determination reflected Niuean wishes. There was concern about the potential impact on continuing New Zealand support (although this was within New Zealand's control). There were reservations about the Cook Islands freedom of action and new relationship with New Zealand.

Integration did not become available for Niue from this process, but it was discussed, and not ruled out by the Niueans' constitutional adviser. Bertram and Watters attribute New Zealand's longstanding reluctance to extend voting rights to the Cook Islands and Niue to New Zealand's own political arrangements and inability to imagine self-government within the state of New Zealand.²⁹⁵ That is consistent with how the choice was presented in 1962. It is likely however that New Zealand Ministers were more concerned with electoral considerations and the anticipated greater costs for New Zealand associated with integration given the disparity in living standards, than with the protection of Niue's autonomy. Officials were conscious too that the Chatham Islands, part of New Zealand, was pressing for a status like Niue's.

Unlike the pioneering and politicised case of the Cook Islands, New Zealand influence on the arrangements is less evident. United Nations approval required self-government to be unfettered by legal controls. The legislative drafting process revealed lingering concern among New Zealand officials at the prospect of devolving powers. Quentin-

²⁹⁵ Bertram and Watters, *New Zealand and its Small Island Neighbours*, 43-44.

Baxter successfully took issue with proposals floated that reflected officials' failure to accept that self-government meant removal of New Zealand control of Niue's funding, exercised by the Resident Commissioner and the New Zealand State Services Commission, and transfer of this power to the Niue Assembly. The new provision introduced by the Niueans to ensure continued provision of economic and administrative assistance was accepted as providing reassurance, but was considered unnecessary.²⁹⁶

The record suggests less New Zealand interest and engagement in Niue's future than in the case of the Cook Islands. A change of government had not altered New Zealand's view of itself as in, and of the Pacific; indeed it had been further emphasised.²⁹⁷ So waning interest may reflect the passage of time. Decolonisation was less novel. Nauru, Tonga, Fiji and Papua New Guinea were independent by 1975. It may reflect the lack of familiarity of New Zealand ministers and politicians with Niue. Niue's small size and isolation meant it was less visited than the Cook Islands. Niueans in New Zealand were opposed to self-government, but their numbers were fewer than Cook Islanders. Niue's self-determination did not raise the same domestic political heat as did the Cook Islands'. A harmonious new relationship remained the goal. While some in the New Zealand Government may have been uncomfortable with the changes self-government brought to the relationship with the Cook Islands, Premier Henry was blamed. In contrast there was greater trust in the Niue leadership's "responsibility."²⁹⁸

C Niue

In contrast to the Cook Islands Legislative Assembly, the Niue Island Assembly was careful to work out a relationship with New Zealand that allowed self-government and retained New Zealand citizenship but also secured continued New Zealand assistance. The Assembly did not seek integration. The status quo was rejected.

Opinions vary on what lay behind Niue's initial caution. Aikman and McEwen saw Niuean views through New Zealand eyes: shaped by Niue's "isolation; small size and population; the absence of any traditional leaders; exiguous economic circumstances;

²⁹⁶ Keith Holyoake, *NZPD*, 1974, Vol 391, 2673.

²⁹⁷ John Henderson, "New Zealand and Oceania," in *New Zealand in World Affairs III 1972 – 1990*, ed. Bruce Brown (Wellington: Victoria University Press, 1999), 267.

²⁹⁸ Keith Holyoake, *NZPD*, 1974, Vol 391, 2672.

and financial and emotional dependence on New Zealand.”²⁹⁹ Premier Rex referred to Niueans’ practical and pragmatic nature, but also the effects of New Zealand colonial rule on raising Niueans’ aspirations while not emphasising the economic development required to support these.³⁰⁰ Chapman draws attention to concern about the affordability of self-government if New Zealand assistance was reduced or withdrawn, concerns about the education levels and ability to take on the tasks required, and desire to wait until more qualified young people had returned to Niue.³⁰¹ Others have pointed to a distrust of a few Niuean leaders asserting leadership over the majority, in a culture where family and village loyalty is stronger than national loyalty, and a belief in the impartiality of outsiders.³⁰² There was a view that economic development should be a prerequisite for, rather than being a consequence of self-government.³⁰³ Uncertainty over New Zealand commitment to Niue and a desire to ensure security of citizenship and continued assistance along with self-government was clearly a factor.

The free association that emerged reflected the status quo and the United Nations framework. It drew on Niue’s observations of the Cook Islands experience. It demonstrates Niue’s desire to introduce and secure links necessary to Niue’s future: strong entrenchment, the same free association links as the Cook Islands, the stationing of a New Zealand Representative in Niue, a New Zealand based Niue Public Service with guidance in the Constitution, and a guarantee of continued necessary economic and administrative assistance.

New Zealand assistance was required to maintain living standards on Niue. Population loss was a major challenge facing the new state. It was hoped that self-government would mitigate the desire to migrate, and that greater financial support by New Zealand and attention to relative standards of living would reduce economic factors involved. Niue’s limited resources and reliance on New Zealand financial support were not seen as an impediment to self-government, but safeguards needed to be put in place to ensure

²⁹⁹ Aikman and McEwen, *A Report to the Minister of Island Territories*,” 1-2.

³⁰⁰ R. R. Rex, “Niue Steps Forward, Address by Hon R. R. Rex Leader of Government of Niue to the Wellington Branch of the New Zealand Institute of International Affairs, February 1973,” reference ABHS 6978 W4637/5, record M85/1/37, part 5, Archives.

³⁰¹ Chapman, *Decolonisation of Niue*, 23-24

³⁰² Douglas “Niue: the Silent Village Green,” 187.

³⁰³ Douglas “Niue: the Silent Village Green,” 188.

this would work. Economic considerations were certainly part of Niueans' calculations, but did not lead to a choice of the status quo or request for integration.

Niue's expectations of the guarantee of continued provision of necessary economic and administrative assistance were clearly articulated in Premier Rex's speech at the Constitution Day celebrations: "our constitution places the New Zealand Government under a legal obligation to continue to provide Niue with economic and administrative support for as long as we in Niue want it that way."³⁰⁴ This signalled both the legal obligation and it being in perpetuity, should Niue so wish. New Zealand Prime Minister Rowling referred to "New Zealand's assurance ... that economic assistance will be continued."³⁰⁵ However this was followed by comments about "a brighter prospect than for a long time past of a strengthened economy."³⁰⁶ In addition to this provision, there was an explicit understanding in Niue's case, drawn from the 1973 Exchange of Letters with the Cook Islands, that New Zealand citizenship brought with it an ongoing responsibility of New Zealand for its citizens including those in Niue. The application of New Zealand's assurances was left to be determined, to be discussed in chapter 8.

The new constitutional arrangements were presented as continuity rather than change. Quentin-Baxter was clear that "no-one need regard self-government as a break with the past."³⁰⁷ However a focus on continuity and links with New Zealand should not be interpreted as absence of change. There was no mistaking that this was an act of self-determination. Niue Minister Young Vivian recalled the strong emotive effect of self-government: "People were excited. They had hope and faith that their lives would change and they would be in control of their country."³⁰⁸ As Premier Rex explained to the United Nations, the status was one that:

can be regarded as independence, qualified only by a special relationship with New Zealand. ... although Niue may not in broader international terms, be recognised as an

³⁰⁴ Ministry of Foreign Affairs, "Niue Attains Self-government," *New Zealand Foreign Affairs Review* (October 1974): 22.

³⁰⁵ Ministry of Foreign Affairs, "Niue Attains Self-government," 24.

³⁰⁶ Ministry of Foreign Affairs, "Niue Attains Self-government," 24.

³⁰⁷ From Quentin-Baxter to Leader of Government and Secretary of Maori and Island Affairs, "Niue Report," 4 March 1974, reference ACGA 8280 IT1W2439/52, record 85/1/37, part 6, Archives.

³⁰⁸ Johnstone and Powles, *New Flags Flying*, 114.

independent state, ... the future government of an autonomous Niue will not be under the legal restraints of any other government in any respect.³⁰⁹

Chapman too was clear that Niue had complete constitutional freedom from New Zealand, but concluded that “Niue will not, in reality, be as politically free as she is constitutionally.”³¹⁰ New Zealand citizenship would constrain Niue’s recognition internationally as an independent state,³¹¹ and so New Zealand would need to have a role. Moreover, financial reliance on New Zealand meant there were boundaries set by New Zealand political thinking.³¹² New Zealand citizenship meant on one hand there was an interest by New Zealand in the ideals and standards adopted in Niue, and an obligation on Niue to operate within these if the relationship was to be harmonious.³¹³ On the other hand New Zealand had a responsibility for the “protection and general wellbeing of all its citizens, including ... those ... in Niue.”³¹⁴

Following self-determination there was continuity of leadership of Niue. Assurances were in place. New Zealand expected continuation of a harmonious relationship of partners. There was New Zealand and Niuean confidence that they had learnt from the Cook Islands’ mistakes. Migration was a concern, but the relationship was seen as off to a much better start than had proved the case with Premier Henry. However a mere five years on, as shall be discussed in chapter 8, Premier Rex was telling the New Zealand Government it had failed to fulfil its legal obligations. Like the Cook Islands, the “understanding”³¹⁵ and “responsible”³¹⁶ Niue also ran into problems.

D Conclusion

Self-government in free association was looked at afresh by New Zealand, but unlike the Cook Islands case, New Zealand ministers and parliamentarians were less engaged. Free association was given careful consideration by the Niueans, including in light of the Cook Islands’ experience. Self-government that emerged was consistent with

³⁰⁹ Ministry of Foreign Affairs, “Statement made by the Hon Robert R. Rex, O.B.E., Leader of Government of Niue,” *New Zealand Foreign Affairs Review* (November 1973): 60.

³¹⁰ Chapman, *Decolonisation of Niue*, 61.

³¹¹ Chapman, *Decolonisation of Niue*, 60.

³¹² Chapman, *Decolonisation of Niue*, 64.

³¹³ Chapman, *Decolonisation of Niue*, 64.

³¹⁴ Chapman, *Decolonisation of Niue*, 64.

³¹⁵ Keith Holyoake, *NZPD*, 1974, Vol 391, 2672.

³¹⁶ Keith Holyoake, *NZPD*, 1974, Vol 391, 2672.

United Nations requirements. Free association differed from that with the Cook Islands. Consistent with Niue wishes, it built on the status quo and comprised more links, greater assurances, increased entrenchment, and an explicit understanding of New Zealand's responsibility for its citizens in Niue.

This thesis turns now to its second part. It examines the effectiveness of the arrangements in meeting initial expectations by looking in turn at each element of free association. Chapter 6 starts with the expectation (or not) of constitutional change.

CHAPTER 6: CHANGE: CONSTITUTIONS AND RELATIONSHIPS

I INTRODUCTION

Self-determination completed, and self-government established, the question arises of where the free association relationships might head. The United Nations had ensured that the Cook Islands and Niue Constitutions were under their sole control. In the case of the Cook Islands there was mention of eventual achievement of full independence, if wished. However as the previous chapters show, all three Governments were keen to minimise disruption of the status quo. This chapter discusses the changes made, the current status of the free association arrangements, and how the relationship between self-government and free association has been understood, negotiated and explained. It reaches a conclusion on the effectiveness of the arrangements in meeting initial expectations of change.

Part II explains that while the arrangements allowed this, there was not strong anticipation of change. The implications of free association for self-government, and vice versa, were not clearly articulated. Part III discusses the constitutional change that has occurred, removing use of New Zealand institutions and thereby increasing the exercise of self-government while the key links remain. Part IV discusses the “principles” of free association negotiated between New Zealand and the Cook Islands, and applied to Niue. These reflect the Cook Islands’ drive to clarify its status in support of international recognition, and New Zealand’s desire to justify interest in the Cook Islands’ (and Niue’s) affairs and agree guidelines for the conduct of the relationship, in the absence of formal control. “Shared values” have become a core concept. The use of the term “Realm of New Zealand” has neo-colonial overtones, but also implications of New Zealand obligations. It is increasingly deployed by New Zealand and Niue to capture New Zealand’s relationship with the Cook Islands, Niue and non-self-governing Tokelau. The chapter discusses in part V the effectiveness of the free association arrangements in meeting initial expectations in terms of functional links and the broader free association ties. It concludes that the ability to make constitutional change while retaining the broader links with New Zealand can be deemed a success, allowing evolution to accommodate changing interests. However this is only true up to a point. The broader links in the Constitution Acts raise more complicated issues discussed in

the following chapters. New Zealand has set limits to what is possible currently while holding New Zealand citizenship. What assistance represents New Zealand's obligations to its citizens is still undefined.

II INITIAL EXPECTATIONS

The United Nations preference was clear. As discussed in chapter 3, a freely associated state had to be able to "determine its internal constitution without outside interference," and free association "retains for the peoples of the territory which is associated with an independent State the freedom to modify the status of that territory."³¹⁷ The expectation was that this would be to full independence, with an offer of United Nations help.³¹⁸ In contrast the United Nations resolution on Niue was silent on future change.³¹⁹

Commenting on this aspect of the arrangements, Roger Clark has said the arrangements were deliberately left vague and "open to pragmatic evolutionary interpretations."³²⁰ In 1982 Aikman recalled his work on the Cook Islands Constitution, and commented: "The exact nature of the relationship had yet to be worked out; and it was to be expected that it would be a developing relationship as the CI peoples and their Governments assumed the responsibilities and realised the potentialities of self-government."³²¹

Alison Quentin-Baxter has said with respect to the Cook Islands that there was a "shadowy expectation the relationship would be an evolving one, like with the United Kingdom."³²² Others too have drawn a parallel between New Zealand's own decolonisation experience and approach to decolonisation in the Pacific.³²³

Views may have benefitted from hindsight. In 1969 Aikman's vision was rather different to that of 1982. He explained that change in the Cook Islands was not

³¹⁷ General Assembly resolution 1541 (XV), *Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter* (15 December 1960).

³¹⁸ General Assembly resolution 2064 (XX), *Question of the Cook Islands* (16 December 1965).

³¹⁹ General Assembly resolution 3285 (XXIX), *Question of Niue* (13 December 1974).

³²⁰ Clark, "Self-determination and Free Association," 74.

³²¹ C. C. Aikman, "Constitutional Developments in the Cook Islands," in *Pacific Constitutions*, ed. Peter Sack (Canberra: Australian National University, 1982), 91.

³²² Alison Quentin-Baxter, "The New Zealand Model of Free Association," 611-612.

³²³ Andrew Ladley and Elinor Chisholm, "Who Cut the Apron Strings and When? Adopting the Statute of Westminster in New Zealand in 1947," *Political Science* 60, no. 2 (2008): 37; Boyd, *New Zealand and Decolonisation*, 5.

necessarily the end of the constitutional process, but he anticipated the future as the Cook Islands being free to enter into other sorts of relationships with New Zealand and others, which “may not immediately involve federation or integration ... but we can expect an increase in functional collaboration.”³²⁴ He likened political development in the Cook Islands and Niue to British colonial patterns, but he was talking about the changes prior to self-government.³²⁵ He stated that independence or self-government is not an end in itself, but the next steps he identified were economic and social, not constitutional, progress.³²⁶

As discussed in chapters 4 and 5, the Cook Islands, Niue and New Zealand sought to ensure self-government did not jeopardise aspects of the status quo in their respective interests. This suggests awareness of the potential for change. New Zealand made clear to the United Nations the continuing right of the Cook Islands to self-determination, as required. Corner said the Cook Islands “may at any time in the future, if they so desire, move to full independence (or any other status that may become practicable) by a unilateral act.”³²⁷ That said, it is not evident that either Governments or constitutional advisers, initially at least, anticipated that the Cook Islands, or Niue, would become as independent of New Zealand as has been the case. Any such expectation was shadowy indeed.

While expectations of change may have been limited initially, led by the Cook Islands, use of New Zealand institutions has been gradually divested. At the same time neither the Cook Islands nor Niue has proceeded to full independence. The overarching links of free association remain in place, most significantly, the holding of New Zealand citizenship. This has stimulated negotiations on the rights and obligations of free association as expectations have evolved.

³²⁴ C. C. Aikman “Constitutional Development in New Zealand’s Island Territories and in Western Samoa,” in *New Zealand’s Record in the Pacific Islands in the Twentieth Century*, ed. Angus Ross (Auckland: Longman Paul, 1969), 341.

³²⁵ Aikman “Constitutional Development in New Zealand’s Island Territories,” 340-341.

³²⁶ Aikman “Constitutional Development in New Zealand’s Island Territories,” 311-313.

³²⁷ Department of External Affairs, “The Cook Islands: Statement Made in the Committee of Twenty-Four,” 35.

III CURRENT CONSTITUTIONS

The ability to use or draw on New Zealand institutions was included in the Cook Islands and Niue Constitutions. This was designed to assist with resource constraints: to save money, provide expertise not otherwise available, and to help with the legislative programme. Some provided a degree of reassurance to New Zealand. It was also thought that recourse to external institutions would meet concerns among Cook Islanders and Niueans about the impartiality of local institutions in a small society.

By 2013, the Cook Islands Constitution had been amended in Cook Islands law twenty-nine times, with the most significant changes in the early 1980s.³²⁸ The more entrenched Niue Constitution has been changed too in Niue law, although only once, in 1992.³²⁹ Matching changes have not been made by New Zealand to the Constitutions in the New Zealand legislation.

Changes made to formal links with New Zealand have been in one direction only; an increasing independence from use of New Zealand institutions. The question arises of why these assumed benefits of association have been cast aside.

A The Cook Islands Constitution

As anticipated by the constitutional advisers, the combination of representative of the Head of State and representative of New Zealand proved problematic.³³⁰ The roles had been separated in practice since 1975 when New Zealand appointed a New Zealand Representative to the Cook Islands³³¹ and the Cook Islands had its Chief Justice represent the Head of State. In 1982 the Cook Islands formally ended the arrangements and established the office of the Queen's Representative in the Cook Islands.³³² The original appointment had been made by the Governor-General of New Zealand on the recommendation of a New Zealand minister after consultation with the Cook Islands Premier. The Queen's Representative is now appointed by the Queen on the advice of the Cook Islands ministers. However this and other advice to Her Majesty is through an

³²⁸ A. H. Angelo and Nicola Stephens, *The Cook Islands Legislation: a Finding List as at 1 July 2013* (Wellington: Victoria University of Wellington, 2013).

³²⁹ Constitution Amendment (No 1) Act 1992 (Niue).

³³⁰ Stone, "Self Rule in the Cook Islands," 323-327.

³³¹ This role is now termed High Commissioner.

³³² Constitution Amendment (No 10) Act 1981-82 (CI).

agreed but intrusive and cumbersome six step procedure to ensure the New Zealand Prime Minister and the Governor-General are involved in the process.³³³

Other change was motivated by a desire to remove impediments to recognition of the Cook Islands' status.³³⁴ The Cook Islands application to join the Lomé Convention³³⁵ was rejected in 1981, on the ground the Cook Islands was not independent. The Cook Islands Minister of Justice explained that "States having doubts about the status of the Cook Islands have pointed to what they have termed vestiges of the Colonial System which they consider are still present in the Constitution."³³⁶ This led to the removal of the power of the New Zealand Parliament to make laws which extended to the Cook Islands, if requested and consented to by the Cook Islands Government. From 1981 any New Zealand Act would only become the Cook Islands law if passed by the Cook Islands Parliament.³³⁷ The Cook Islands also removed the right of appeal to the New Zealand High Court,³³⁸ and established its own High Court (with a civil, criminal and land division), and a Court of Appeal. With certain exceptions, appeals can be taken to the Privy Council.³³⁹ The Cook Islands Court of Appeal includes a current or former judge of the Court of Appeal of New Zealand, and there remains a bias towards the use of New Zealand judges in the Cook Islands High Court. At the same time there was a change of nomenclature from Premier to Prime Minister, and Legislative Assembly to Parliament.³⁴⁰

In a later change, the Cook Islands set up its own Audit Office in 1991.³⁴¹

Other changes to the Cook Islands Constitution relate to domestic issues. In some cases

³³³ Fepulea'i, "Neither Fish nor Fowl," 202-203.

³³⁴ Aikman, "Constitutional Developments in the Cook Islands," 89.

³³⁵ The Lomé Convention was a trade and aid agreement between what was the European Economic Community and African, Caribbean and Pacific countries.

³³⁶ Aikman, "Constitutional Developments in the Cook Islands," 89.

³³⁷ Constitution Amendment (No 9) Act 1980-81 (CI).

³³⁸ The New Zealand Supreme Court became High Court in 1980.

³³⁹ Constitution Amendment (No 9) Act 1980-81 (CI). On access to the Privy Council see Alex Frame, "The Cook Islands and the Privy Council," *Victoria University of Wellington Law Review* 14 (1984): 311-316.

³⁴⁰ Constitution Amendment (No 9) Act 1980-81 (CI); "sovereign" was inserted before "Parliament."

³⁴¹ Constitution Amendment (No 14) Act 1991 (CI).

these tackle matters difficult to resolve when the Constitution was first drafted.³⁴²

While a desire to clarify the Cook Islands' status provided impetus for constitutional change, the Cook Islands Government describes its growing independence of action as simply reflecting developing capacity in the Cook Islands. It is explained as a "response to evolving needs, desires and available human and other resources."³⁴³

The formal links with New Zealand still extant in the Cook Islands Constitution are that both the Cook Islands and New Zealand have as Head of State the Queen in right of New Zealand, the Cook Islands has a bias towards New Zealand judges in its court, and there is preferential treatment for New Zealanders over other non-Cook Islanders in terms of eligibility as an elector or candidate.

B The Niue Constitution

While the Cook Islands has made more changes to its Constitution than Niue, Niue has kept the Niue Constitution Act 1974 and Niue Constitution under more active review. Successive Constitution Review Committees have sought solutions to challenges facing Niue, including in the relationship with New Zealand. The Niue Assembly has considered, and in some cases rejected, changes introduced by the Cook Islands. For the Cook Islands, establishing an international personality was assisted by delinking from New Zealand. Niue's focus has been on the relationship with New Zealand.

The first Constitution Review Committee of the Niue Assembly was established in 1984. The Committee deliberations were dominated by migration to New Zealand, economic difficulties, and the adequacy of assistance from New Zealand. The

³⁴² The number of ministers has increased to seven, including the Prime Minister. The number of members of Parliament has been increased and decreased; it is currently 24; see Constitution Amendment (No 26) Act 2003 (CI). Constituencies have been changed; see Constitution Amendment (No 14) Act 1991(CI). The term of Parliament was extended and reduced; it is now four years. A preamble has been added to the Constitution, see Constitution Amendment (No 20) Act 1997 (CI); and a section on fundamental human rights and freedoms added, see Constitution Amendment (No 9) Act 1980-81 (CI); and another section on the power of Parliament to make laws recognising or giving effect to Cook Islands custom, see Constitution Amendment (No 17) Act 1994-95 (CI). Representation of members of the House of Arikis has been amended, see Constitution Amendment (No 25) Act 2002 (CI), and the role of the House of Arikis has continued to be debated.

³⁴³ Ministry of Foreign Affairs and Immigration, *The Cook Islands: A Voyage to Statehood*, Occasional Paper No. 1 (Rarotonga: Ministry of Foreign Affairs and Immigration, 1998), 23.

Committee considered but recommended against copying the constitutional changes made by the Cook Islands.³⁴⁴

A further review in 1988 to 1989 took a different approach to Niue's problems. It proposed independence as a longer term goal, with provision being made for Niuean citizenship, development of Niue's own civil defence capability, more effort put into external affairs, encouragement of economic development, conclusion of a memorandum of understanding to put New Zealand assistance on a proper footing, localisation of the Governor-General, and a message was issued that the New Zealand Representative should not be involved in domestic matters as this undermined self-government. A range of other issues considered included the localisation of the Court of Appeal, greater use of Pacific judges, and localisation of the Public Service Commission.³⁴⁵

Recommendations were not adopted, and the 1990 Constitution Review Committee took what it called a fresh start, although problems addressed were those considered by previous committees. The Committee chair explained that its proposals represented a desire to reflect Niue's "greater experience of government and a desire to have our own institutions and to make our own decisions in Niue."³⁴⁶

Resulting changes were made to the Niue Constitution in 1992.³⁴⁷ Now the Niue Cabinet would appoint all members of the Niue Public Service Commission. The Constitution Review Committee which reported in 1991 was conscious of the need to protect the integrity and independence of the Public Service Commission, but thought it was important that all appointments be made by the Government of Niue rather than the Government of New Zealand.³⁴⁸

³⁴⁴ Constitution Review Committee, *Report of the Constitution Review Committee: 21 May 1984 – 18 March 1985*.

³⁴⁵ Constitutional Review Committee 1988 - 1989, *Report on the Review of the Niue Constitution*; Constitutional Review Committee 1988 - 1989, *Supplementary Report: Constitutional Review Committee Niue 1988-89*.

³⁴⁶ Constitution Review Committee, *Review of Niue Constitution: Report on Proceedings of the Constitution Review Committee and of the Niue Assembly*, 1991, 22.

³⁴⁷ Constitution Amendment (No. 1) Act 1992 (Niue).

³⁴⁸ Constitution Review Committee, *Review of Niue Constitution*, 11-12.

Matching similar changes in the Cook Islands,³⁴⁹ the Niue High Court and Niue Land Court were combined into one court, the Niue High Court. A Niue Court of Appeal was established, rather than appeals being heard by New Zealand courts. The Privy Council remained Niue's highest court of appeal.

As with the Cook Islands, other domestic issues were considered and some changes made.

Several free association links still remain in the Niue Constitution. The Queen in right of New Zealand remains Niue's Head of State, and the Governor-General of New Zealand is her representative in relation to Niue. New Zealand legislation can be extended to Niue if requested and consented to by the Niue Assembly. The Audit Office of New Zealand continues to audit the Niue Government account. There remains a provision for the Niue Public Service Commission in establishing and revising the terms and conditions of employment of the Niue Public Service to take into account the "the employment opportunities and levels of remuneration available in New Zealand."³⁵⁰

Constitutional changes have been made to delink from New Zealand institutions, primarily by the Cook Islands but also by Niue. This reflects their interest in greater exercise of self-government and, in the Cook Islands case, clarification of its status in support of diversification of relationships beyond New Zealand. While these changes have taken place, it has not been at the cost of New Zealand citizenship and other free association links in the respective Constitution Acts. The chapter now turns to these.

IV PRINCIPLES OF FREE ASSOCIATION

The Cook Islands Constitution Act (No 2) 1965 and the Niue Constitution Act 1974 contain the same association provisions as when first enacted, (including in the Cook Islands and Niue law), although references to legislation are out of date, and nomenclature has changed.³⁵¹

³⁴⁹ Niue's constitutional adviser on this was Frame, who also advised the Cook Islands.

³⁵⁰ Article 69 (3) (b) of the Niue Constitution.

³⁵¹ The British Nationality and New Zealand Citizenship Act 1948 is now repealed and replaced with the 1977 Citizenship Act, and subsequent amendments. Reference to the "Premier" and "Legislative Assembly" of the Cook Islands and appointment under the State Service Act 1962 of a New Zealand Representative in Niue, updated in 1988, are also now out of date.

While looking essentially unaltered, the relationships the Cook Islands and Niue have with New Zealand have been subject to agreed understandings on the status, principles, and conduct of the states involved, negotiated by New Zealand and the Cook Islands in particular, and applied, or assumed to apply, to the New Zealand relationship with Niue. These understandings clarify expectations of the conduct of the states involved towards each other. They clarify the nature of the relationship for third parties.

The “principles” of free association negotiated between the Cook Islands and New Zealand are in the 1973 Exchange of Letters³⁵² and the 2001 Joint Centenary Declaration.³⁵³

A 1973 Exchange of Letters between the Prime Minister of New Zealand and the Premier of the Cook Islands Concerning the Nature of the Special Relationship between the Cook Islands and New Zealand

The 1973 Exchange of Letters was discussed briefly in Chapter 5. It addressed the desire of the Cook Islands Government to formally clarify that it was free to pursue its own policies in external affairs. It reflected the New Zealand Government interest in setting expectations of the Cook Islands Government’s conduct towards its citizens. It also, more obliquely, included New Zealand responsibilities by linking citizenship to the scale of New Zealand’s aid to the Cook Islands.

The letters noted the Cook Islands Government’s “desire that the free association between the Cook Islands and New Zealand should not be regarded as restricting the Cook Islands’ powers of self-government.” While New Zealand had responsibility for the external affairs and defence of the Cook Islands, it is “also intended that the Cook Islands be free to pursue their own policies and interests.”

For the Cook Islands this clarification provided a basis on which the relationship would continue to evolve, and the Cook Islands could take on a greater and more direct role in the conduct of its external affairs.³⁵⁴

New Zealand’s expectations with respect to the extension of New Zealand citizenship to the Cook Islands emerged from concerns about Premier Henry’s leadership. Ron and

³⁵² “Exchange of Letters,” *AJHR*, 1973, A10.

³⁵³ “Joint Centenary Declaration of the Principles of the Relationship Between New Zealand and the Cook Islands, 11 June 2001.”

³⁵⁴ Ministry of Foreign Affairs and Immigration, *Voyage to Statehood*, 31.

Majorie Crocombe attribute this to events following the 1972 election in the Cook Islands; sackings of public servants who supported the Opposition, threats that others would lose their jobs and concerns about misallocation of aid for political ends.³⁵⁵ Alison Quentin-Baxter says the trigger was legislation proposed by the Cook Islands Government in 1973 that would cut across the human rights of New Zealand citizens in the Cook Islands.³⁵⁶

The legal opinion that formed the basis of the Exchange of Letters was produced by R. Q. Quentin-Baxter for the New Zealand Government. It appears to be the first time implications of extension of New Zealand citizenship to the people of another state had been formally considered. Quentin-Baxter argued:

The inhabitants of the Cook Islands are no longer within the reach of New Zealand laws; but the laws which they make for themselves concern New Zealand because they are New Zealand citizens. When New Zealand citizens are in a foreign country, they remain under New Zealand protection; and the New Zealand Government will, if necessary, make representations on their behalf. The New Zealand Government's interest is obviously much larger in relation to an area for which New Zealand itself is internationally responsible.³⁵⁷

Drawing on these views, the initiating letter notes "New Zealand's determination to safeguard the values on which its citizenship is based" and this involves "a degree of New Zealand involvement in Cook Islands affairs ... reflected in the scale of New Zealand's response to [the Cook Islands'] material needs ... but also an expectation that the Cook Islands will uphold, in their laws and policies a standard of values generally accepted by New Zealanders."

From this Exchange of Letters, the link between citizenship and assistance was part of the Niueans' understanding of the free association arrangements. The element which has enjoyed longevity for New Zealand is the concept of "shared values." This remains cited as integral to the relationship.

³⁵⁵ Ron and Marjorie Crocombe, "The Saga of Tension," in *Cook Islands Politics: The Inside Story*, ed. Ron Crocombe (Auckland: Polynesian Press, 1979), 249.

³⁵⁶ Alison Quentin-Baxter, "The New Zealand Model of Free Association," 616-617.

³⁵⁷ R. Q. Quentin-Baxter to the Secretary of Maori and Island Affairs, "The Cook Islands and the Colonial Boundaries Act," 18 January 1973, reference ABHS 6978 W4637/5, record M85/1/37, part 5, Archives.

B 2001 Joint Centenary Declaration of the Principles of the Relationship between New Zealand and the Cook Islands

The Joint Centenary Declaration was signed by the Prime Ministers of New Zealand and the Cook Islands in 2001 on the centenary of the formal association (i.e. annexation) of the Cook Islands by New Zealand. The declaration was instigated by the Cook Islands, which sought a statement of the Cook Islands status signed by both Prime Ministers to support continued pursuit of its international ambitions.

The declaration probably went further than New Zealand ministers felt comfortable with. It prompted New Zealand Prime Minister Helen Clark to publicly state a limit to the Cook Islands action in a relationship of free association. In her response to a media question about the Cook Islands interest in United Nations and Commonwealth membership following the signing, she said she had “pointed out New Zealand citizenship implications for Cook Islanders if the Cooks sought sovereignty, enabling them to be a member in their own right.”³⁵⁸

The declaration itself recalls self-determination and the 1973 Exchange of Letters, restates that the Cook Islands has “full and exclusive powers to make its own laws and adopt its own policies,” and describes the relationship as one between “equal States independent in the conduct of their own affairs.”

The principles of the relationship reflect the Cook Islands desire to define its autonomy and status, and New Zealand’s desire to justify its interest in the activities of the Cook Islands Government in so far as they impact on New Zealand interests, particularly in foreign policy.

The first principle is partnership: that “all issues affecting the two countries should be resolved on a cooperative and consultative basis,” both international and bilateral matters. Consultation was an interest of New Zealand in particular.

The second is citizenship: that the people of the Cook Islands retain New Zealand citizenship, “respecting and upholding the fundamental values on which that citizenship

³⁵⁸ John Andrews, “PM warns Cook Islands Over Sovereignty,” *New Zealand Herald*, 15 June 2001; John Andrews, “Cook Islands put NZ Citizenship First,” *New Zealand Herald*, 14 June 2001; John Andrews, “NZ Won’t Stand in Way of Cook Islands’ Independence,” *New Zealand Herald*, 13 June 2001.

is based.” In the 1973 Exchange of Letters, the implication is that these values are New Zealand ones applying to New Zealand citizenship and the expectation they will be adhered to is that of New Zealand. In the declaration these become “a mutually acceptable standard of values in their laws and policies, founded on a respect for human rights, for the purpose and principles of the United Nations Charter and for the rule of law.”³⁵⁹ There is also a Cook Islands assurance that New Zealand citizens will be given preferential consideration in respect of entry into and residence in the Cook Islands.³⁶⁰

The third principle confirms that the Head of State is advised exclusively by Her Cook Islands Ministers on matters related to the Cook Islands. More mysteriously, it says that on all matters affecting the Realm of New Zealand, there should be close consultation between the Cook Islands and New Zealand. The reference may be to communications with the Palace, or changes to the Letters Patent or constitutional change in New Zealand. Or it may be intended to reinforce a New Zealand (or Cook Islands view) that being part of Realm of New Zealand (as a way of expressing being in free association) brings with it a need to consult.

The fourth principle concerns foreign affairs and contains the statement, of key importance to the Cook Islands, that “In the conduct of its foreign affairs, the Cook Islands interacts with the international community as a sovereign and independent state.”

This statement is seen as significant, but it was not new. In 1976 New Zealand advised the United States, on the question of whether the Cook Islands could enter into an agreement with the United States, that: “the Government of the Cook Islands has exercised and continues to exercise in the field of foreign relations attributes recognised in international law as attributes of a sovereign state.”³⁶¹

The question of whether the Cook Islands and Niue are independent and sovereign is subject to different legal interpretations. Confirmation of New Zealand Government

³⁵⁹ A. Quentin-Baxter, “Pacific States and Territories,” paragraph 32 says that shared values do not relate only to questions of fundamental human rights. A far more wide ranging commitment is intended and reflected in practice. They can be appealed to by the Cook Islands too in respect of New Zealand’s role in the relationship.

³⁶⁰ According to Ministry of Foreign Affairs and Immigration, “*Voyage to Statehood*,” 38, preferential treatment had been in place since the early 1970s.

³⁶¹ Frame, “The Riddiford Clause,” 150.

discomfort with this description is a subsequent New Zealand statement of what the Cook Islands was not:

The maturity of the Cook Islands' international personality does not mean that the Cook Islands is, in constitutional terms, an independent sovereign state. In New Zealand's view, a constitutional change of that significance would have implications in terms of Cook Islanders' eligibility for New Zealand citizenship, and would require formal constitutional acts including a referendum and changes to the Cook Islands Constitution.³⁶²

The fourth principle makes clear that responsibility at international law rested with the Cook Islands in terms of its actions and the exercise of its international rights and fulfilment of its international obligations. The responsibility of Her Majesty the Queen in right of New Zealand for external affairs and defence was a responsibility of the state of New Zealand to assist the Cook Islands. Action by New Zealand was at the request of, and as an agent of, the Cook Islands.

The fifth principle reiterates the Cook Islands' capacity to enter into treaties and international agreements in its own right.³⁶³ This too built on earlier statements by New Zealand.

The declaration included agreement to consult and cooperate on common foreign affairs objectives and defence and security issues, and an undertaking to "advise each other when a proposed foreign policy initiative may affect the rights, obligations and interests of the other."

This declaration stands as the current formal statement of the Cook Islands and New Zealand understanding of the free association relationship and its conduct, and by implication, New Zealand views of its relationship with Niue too.

C The Realm of New Zealand

The significance of the Queen in right of New Zealand being Head of State of the Cook Islands and Niue arose in a review of the Letters Patent which set out the powers and

³⁶² Ministry of Foreign Affairs and Trade, *Cook Islands: Constitutional Status and International Personality* (Wellington: Ministry of Foreign Affairs and Trade, May 2005).

³⁶³ In 1988 the New Zealand Government declared to the United Nations that thenceforth particular New Zealand treaty actions would not extend to the Cook Islands or Niue unless expressly done on their behalf; see Ministry of Foreign Affairs and Immigration, *Voyage to Statehood*, 37.

authorities of the New Zealand Governor-General. This review has led in recent years to the relationship between New Zealand, the Cook Islands, Niue, the non-self-governing territory of Tokelau and Ross Dependency in Antarctica³⁶⁴ being described as the “Realm of New Zealand.” This is a legal constitutional arrangement, although views on its significance vary. It has also become a claim about something that underpins the relationship.

The use of the term “Realm” to refer to New Zealand emerged in 1952, when Queen Elizabeth the Second was described as “Queen of this Realm and of all Her other Realms and Territories,” rather than her predecessor’s “Britain, Ireland and the British Dominions beyond the Seas.” The change was designed to better reflect the constitutional relationships the former colonies now had with the Crown.³⁶⁵ Since 1974 her title in New Zealand has been “Queen of New Zealand and Her other Realms and Territories...”³⁶⁶ This applied to Niue (and Tokelau), both then non-self-governing territories, and the Government of the Cook Islands requested and assented to this becoming part of the law of the Cook Islands.

Use of “Realm of New Zealand” beyond this limited context stemmed from the 1983 updating of the 1917 Letters Patent³⁶⁷ following their review by Alison Quentin-Baxter.³⁶⁸

The 1917 Letters Patent referred to the “Governor-General in and over the Dominion of New Zealand.” This was updated to “Governor-General of New Zealand.”

In the 1917 Letters Patent “New Zealand” comprised the “Territories, Islands and Countries forming the colony of New Zealand.” Alison Quentin-Baxter recommended that the Cook Islands and Niue should continue to be included, despite their self-governing status. She also concluded that Tokelau should remain and the Ross Dependency be added.

³⁶⁴ Since 1923 New Zealand has maintained a right of sovereignty over the Ross Dependency in Antarctica, and activities in Antarctica are governed by the 1959 Antarctic Treaty.

³⁶⁵ Townend, “The Realm of New Zealand,” 575-577.

³⁶⁶ Royal Titles Act 1974.

³⁶⁷ Townend, “The Realm of New Zealand,” 580.

³⁶⁸ Alison Quentin-Baxter, *Review of the Letters Patent 1917 Constituting the Office of Governor-General of New Zealand* (Issued by the Cabinet Office, Wellington, 1980).

Quentin-Baxter based her argument on the Cook Islands Constitution; the Head of State of the Cook Islands is Her Majesty the Queen in right of New Zealand. She went on to describe the “free association” of the Cook Islands and New Zealand as “a constitutional link, namely, the recognition of a common sovereign whose legal personality is indivisible.”³⁶⁹ While her legal personality may have been seen as indivisible at that point, as Quentin-Baxter herself states, now Her Majesty the Queen in right of New Zealand “does not reflect a notion that, as between New Zealand and the Cook Islands, the Crown is indivisible.”³⁷⁰

Quentin-Baxter noted the scope for confusion arising from the title “Governor-General of New Zealand” as “New Zealand” had two meanings: the state of New Zealand, and the Realm of New Zealand.³⁷¹

To ensure no perception of hierarchy or assumption that the Realm of New Zealand was the state of New Zealand, according to one of the Cook Islands officials involved, at the Cook Islands’ instigation the description of the Realm of New Zealand became “Our Realm of New Zealand, which comprises – (a) New Zealand; and (b) the self-governing state of the Cook Islands; and (c) the self-governing state of Niue; and (d) Tokelau; and (e) the Ross Dependency” (ordered, he added, by population size).³⁷²

Also to accommodate the Cook Islands and Niue cases was reference in the Letters Patent to the exercise of the Governor-General’s powers and authorities being “without prejudice to the office, powers, or authorities of any other person who has been or may be appointed to represent Us in any part of Our Realm of New Zealand and to exercise powers and authorities on Our behalf.”³⁷³

The “Realm of New Zealand” appears in the 2001 Joint Centenary Declaration, in the context of reference to consultation on matters affecting the Realm. It reappears, with an implication it represented a caveat on the Cook Islands status, in the 2005 New Zealand Government statement that while the Cook Islands could make its own laws and had full executive powers, “on the other hand,” the Cook Islands remained part of

³⁶⁹ A. Quentin-Baxter, *Review of the Letters Patent 1917*, 134.

³⁷⁰ A. Quentin-Baxter, “Pacific States and Territories,” paragraph 10.

³⁷¹ A. Quentin-Baxter, *Review of the Letters Patent 1917*, 162.

³⁷² Interview Mike Mitchell, 11 November 2014, Rarotonga.

³⁷³ Letters Patent Constituting the Office of Governor-General of New Zealand, 1983.

the Realm of New Zealand and the Queen in Right of New Zealand remained the Head of State of the Cook Islands.³⁷⁴ Beyond that its significance, if any, to the conduct of the respective relationships is unclear.

The terminology might have rested in legal circles if it was not for Governor-General Anand Satyanand, who, unlike his predecessors, adopted the terminology following his appointment in 2006. Satyanand commenced speeches by using the languages of the Realm, and drew on the terminology of the Realm in explaining his role as Governor-General of the Realm.³⁷⁵

Since then the term has slipped into common discourse. The “Realm of New Zealand” crops up in a myriad of contexts and ways. So, for example, information supplied as part of consultation on a New Zealand Constitution, included the confused statement that:

There is more to New Zealand than meets the eye. While New Zealand is an independent sovereign nation, we are also part of the Realm of New Zealand. Our Realm includes Tokelau, the Cook Islands, Niue and the Ross Dependency in Antarctica. The Cook Islands and Niue are self-governing states which have a free association with New Zealand. New Zealand represents these Pacific Island nations in matters of foreign affairs and defence. New Zealand has a more “hands-on” role in Tokelau and the Ross Dependency – administering the public affairs of these two territories.³⁷⁶

Its use emphasises the link between New Zealand, the Cook Islands and Niue, rather than separate statehood. It can be taken to signal a New Zealand responsibility, as in the Foreign Affairs, Defence and Trade Committee report. On the other hand, despite New Zealand being an equal state with the Cook Islands and Niue in the Realm of New Zealand, it can be assumed New Zealand has supremacy.³⁷⁷ The distinction between New Zealand the Realm and New Zealand the state can be lost, introducing a sense of hierarchy. The inclusion of the Cook Islands and Niue along with non-self-governing

³⁷⁴ Ministry of Foreign Affairs and Trade, *Cook Islands: Constitutional Status and International Personality*.

³⁷⁵ Anand Satyanand, “Speech to the State Farewell Luncheon, Parliament Buildings, Wellington,” 17 August 2011.

³⁷⁶ For example, Constitutional Advisory Panel, *New Zealand’s Constitution* (2013).

³⁷⁷ The dominance of New Zealand is reflected in the Letters Patent, for example the Executive Council is composed of New Zealand Ministers.

Tokelau blurs the difference in their status. Unlike shared values, the intent of use of his term is unclear. It is terminology that has emerged in recent years, not one that formed part of the self-determination discussions.

To sum up, with the passage of time there have been constitutional changes to use of New Zealand institutions. The provisions in the Constitution Acts are unchanged. Clarifying principles have been agreed reflecting the interests of each state. Concepts of shared values and the Realm of New Zealand have emerged. We now turn to an assessment of the effectiveness of the arrangements in meeting initial expectations.

V EFFECTIVENESS OF FREE ASSOCIATION IN MEETING INITIAL EXPECTATIONS

A Functional Links

Cost and access to New Zealand expertise were the major reasons access to New Zealand institutions was retained in the Cook Islands and Niue Constitutions. As discussed in chapter 2, association can be seen as of greater economic benefit than independence as it relieves the subnational island jurisdiction from having to provide functions itself. Divesting these links runs counter to this. So the question arises of why this has been the course followed.

Use of New Zealand institutions and functions formally set out were to be performed in terms of the Cook Islands or Niue Constitution and laws, but the preference has been to patriate them. This has helped clarify the status of the Cook Islands. Economic advantage could be seen as a motivation, allowing membership of organisations and recognition by other countries with consequential financial benefit. The Cook Islands Prime Minister Tom Davis saw it thus.³⁷⁸ Further research would be required to compare the cost of divesting these links with specific material advantage that has accrued. However this may not be the point. The changes also reflect a preference by the Cook Islands and Niue to have, and be seen to have, control and responsibility. Changes reflect a desire to fulfil the functions of a state themselves. Once possible, this was the direction to take.

³⁷⁸ Tom Davis, *Island Boy: An Autobiography* (Suva: Institute of Pacific Studies and Christchurch: University of Canterbury and Auckland: University of Auckland, 1992), 279-280.

Changes do not preclude collaboration. Services were provided by New Zealand prior to self-government, and continued for some time after. In 2003 it was decided New Zealand assistance should be provided by all government agencies if required by Tokelau and Niue. There are current proposals to extend cooperation and make more use of the relationships, including at the instigation of the Cook Islands and Niue. The Foreign Affairs, Defence and Trade Committee proposed this be taken even further. But there is a clear difference between the formal constitutional links considered here – representative of the Head of State, parliament, courts, public service – and more ready access to New Zealand services and expertise, for example in education or health.

When reference is made to the flexibility of free association, these constitutional changes are what is meant. There was initial New Zealand concern about constitutional change, and desire to constrain this. The Cook Islands and Niue also sought retention of desired links. But the ability to change the Constitutions was required by the United Nations. Whatever views on the outcomes, it would be difficult to depict negatively the ability of the Cook Islands and Niue to do this if desired. Being able to do so, without negotiation with New Zealand and without affecting the free association links in the Constitution Acts, is a positive attribute. To the extent this was anticipated, it has met expectations of the arrangements and evolving interests of the Cook Islands and Niue.

B Self-government and Free Association

At the same time, free association represented by the links in the Constitution Acts remains in place. This raises the question of the implications of free association for the growing exercise of self-government, and vice versa. This is explicitly represented in the Exchange of Letters and Joint Centenary Declaration, and implicitly in the idea of shared values and the Realm of New Zealand.

Turning to constitutional scholars for clarification reveals different emphases, but both identify citizenship as central to the relationships. Alison Quentin-Baxter focuses on the implications of free association in a conceptual fashion. So, for Quentin-Baxter, the Letters Patent constituting the Realm of New Zealand have more than symbolic effect, and mean that for certain purposes New Zealand and the associated states continue to be part of a single constitutional entity. These purposes are citizenship, financial and other support and shared values. She argues, while externally it is now established that the

Cook Islands and Niue have the same attributes as states that are constitutionally independent, inwardly New Zealand citizens form a single polity. The difference between self-government in free association and independence is that New Zealand has a responsibility for its citizens in associated states and a mutual commitment to shared values. Without shared values the relationship would not exist. Suggesting that free association is a contractual arrangement like the Treaty of Friendship with Samoa is an oversimplification.³⁷⁹

Angelo, on the other hand, has focussed on the meaning of self-government in a relationship of free association in practice. Angelo describes the constitutional structure of the Realm as an entity with no formal international status and probably no existence beyond the Letters Patent.³⁸⁰ The relationships within the Realm are each with New Zealand, and Angelo suggests, could just as well be achieved by a treaty of friendship covering economic support, defence and diplomatic relations, and access to New Zealand citizenship.³⁸¹ Shared values are the only constraint on international relations, and in effect represent a New Zealand expectation of a common policy approach on significant issues.³⁸² Angelo describes Niue as a sovereign state, on the grounds it has undertaken an act of self-determination to become a self-governing state in free association, is described as such in the Letters Patent and is party in its own right to treaties with other states.³⁸³ This reasoning also applies to the Cook Islands. He draws attention to the unanimous view of the New Zealand Court of Appeal that the Cook Islands has independent status.³⁸⁴ Angelo states the key aspect of free association is the extension by New Zealand of its citizenship to the Cook Islands and Niue, because should either become independent, that would likely end.³⁸⁵

As discussed, the principles agreed emerged from a desire by the Cook Islands to assert its international identity and status and pursue its interests separate from New Zealand.

³⁷⁹ A. Quentin-Baxter, "The New Zealand Model of Free Association," 612-618.

³⁸⁰ Angelo, "The Niue Constitution," 160.

³⁸¹ Angelo, "The Cook Islands/New Zealand," 9.

³⁸² W. K. Hastings, "Controller and Auditor-General v Davidson: Three Comments," *Victoria University of Wellington Law Review* 26 (1996): 464-467; Angelo, "The Cook Islands/New Zealand," 8.

³⁸³ Angelo, "The Niue Constitution," 159.

³⁸⁴ A. Quentin-Baxter, "Pacific States and Territories," paragraph 33, footnote 15 notes the New Zealand Court of Appeal decided that the Cook Islands was a "fully sovereign independent state" and this was not affected by the special relationship.

³⁸⁵ Angelo, "The Cook Islands/New Zealand," 10.

They also reflect a New Zealand wish to justify interest in standards and policies being followed by the Cook Islands Government, and consultation on matters of New Zealand concern, particularly foreign affairs and defence. Principles have not been similarly agreed by Niue, but are taken as applying to Niue. The link between New Zealand material support and citizenship, of interest to Niue, appears to have disappeared from New Zealand view at some point between the 1973 Exchange of Letters and 2001 Joint Centenary Declaration.

The agreed principles of the conduct of the government-to-government relationship are relatively straight forward. More ambiguous are the meaning of shared values and the implications of the Realm of New Zealand, in which respective state interests can also be discerned.

The Cook Islands and Niue Governments might well ask what constitute “values generally acceptable to New Zealanders.”³⁸⁶ New Zealand citizenship legislation is not illuminating.³⁸⁷ The implication that they must be held to this might be considered insulting, even if the Cook Islands and Niue can also draw on the principle. The premise of free association was to allow “the individuality and cultural characteristics of the territory and its peoples.”³⁸⁸ Cultural identity was one reason the Cook Islands and Niue sought self-government and found integration with New Zealand unappealing. So it is not surprising to find a more neutral expression of values in the Joint Centenary Declaration: respect for human rights, the United Nations Charter, despite the Cook Islands and Niue not being members of the United Nations, and the rule of law.³⁸⁹

However from a New Zealand perspective, absent formal control, shared values stemming from citizenship represent a justification for interest in international or domestic activities of the Cook Islands and Niue Governments that have implications for New Zealand. This applies to foreign policy with impact on New Zealand because

³⁸⁶ “Exchange of Letters,” *AJHR*, 1973, A10.

³⁸⁷ The British Nationality and New Zealand Citizenship Act 1948, s 14, sch 1; and New Zealand Citizenship Act 1977, s 11, sch 1. The Department of Internal Affairs website is silent on the question: “Apply for NZ Citizenship,” accessed 8 February 2017, <https://www.dia.govt.nz/Services-Citizenship-Become-a-New-Zealand-citizen-Part-9?OpenDocument>.

³⁸⁸ General Assembly resolution 1541 (XV), *Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter* (15 December 1960).

³⁸⁹ This is also consistent with R. Q. Quentin-Baxter, “Second Report to the Niue Island Assembly,” 581.

of the linkage in external personality. It also applies to actions with New Zealand domestic political implications stemming from a perception of New Zealand responsibility for its citizens.

It is difficult to envisage what, in the real world, would represent lack of commitment to shared values sufficient to negate the relationships. Alison Quentin-Baxter herself says differing interests do not necessarily call into question a commitment to shared values³⁹⁰ but it is over differing policies that the terminology is deployed, as Angelo points out.

Trying to define when those policies impact on shared values is also difficult. Fepulea'i suggests shared values are invoked in the case of policies that have serious financial implications for New Zealand or cut across a key element of New Zealand foreign policy.³⁹¹ These are sensitive areas. However domestic or international political embarrassment for the New Zealand Government is likely to be the most significant factor. Although undoubtedly deployed more freely than the Cook Islands and Niue would wish, shared values can cut both ways. Anticipated New Zealand concern about its reputation internationally can be a means by which the Cook Islands and Niue leadership exercise leverage.

The negotiated principles are less articulate on the obligations of New Zealand. These emerge in the concept of the Realm of New Zealand.

As discussed in chapter 2, implications of the Realm emerged in the Foreign Affairs, Defence and Trade Committee recommendation that "Realm entities," defined as the Cook Islands, Niue and Tokelau, had special status by dint of having the Queen as Head of State, holding New Zealand citizenship, and being part of the Realm of New Zealand. The report recommended harmonised service standards in the Realm with funding provided to New Zealand departments to deliver services.³⁹² This meaning (although not necessarily the recommended policy solutions) would be akin to Niue's understanding of free association and the 1973 Exchange of Letters linking New

³⁹⁰ A. Quentin-Baxter, "Pacific States and Territories," paragraph 32.

³⁹¹ Fepulea'i, "Neither Fish nor Fowl," 235.

³⁹² Foreign Affairs, Defence and Trade Committee, "Inquiry into New Zealand's Relationships with South Pacific Countries," 21, 54.

Zealand citizenship and New Zealand's response to the Cook Islands material needs. It also suggests, when taken with statements in the report about bloated political and government structures, that the quid pro quo for any such arrangement would be a diminution of self-government.

The Cook Islands Government has not deployed the expression in explaining the relationship. On the other hand the Niue Government has expressed a keen interest in its meaning, to the extent it reflects Niue's special status and recognition by New Zealand of obligations towards New Zealanders in Niue. Rejected, however, is any associated diminution of self-government and cultural autonomy. As Premier Talagi said at the 2013 Niue Constitution celebrations, "we need to be certain that any changes to the underlying principles do not compromise our own independence and self-governing status and management of our population and Tāoga."³⁹³

The New Zealand Government has also deployed the term; with ambiguous meaning. It might simply be shorthand. Or it could serve to signal obligations unique to the Cook Islands and Niue (and Tokelau). It risks conveying a message of hierarchy. The inclusion of the Cook Islands and Niue along with non-self-governing Tokelau, and lack of distinction between the state of New Zealand and Realm of New Zealand, as in the use of "our Realm," has a distinctly neo-colonial air.

C Conclusion

The ability of the Cook Islands and Niue to change their Constitutions fulfils the United Nations requirements. Even if not initially expected to happen by the Cook Islands and Niue, and of potential concern for New Zealand, the free association arrangements do not limit this ability. This process has moved the Cook Islands and Niue to greater autonomy, and away from the assumed benefits of the use of New Zealand institutions. There is likely to be other economic benefit from doing so, but changes are depicted as a function of the ability to do this, and desire to make institutions more accountable locally. While it was understood the arrangements allowed change, use made of this provision has exceeded expectations.

³⁹³ Toke Talagi, "Governor-General and Commander-in-Chief in and over the Realm of New Zealand: Visit to Niue for the 39th Constitution Celebrations: Speech by Hon. Toke Talagi, Premier," 19 October 2013." Tāoga encompasses culture, language and tradition.

The broader links of free association set out in the Constitution Acts are a different matter. Relationships have changed. As the principles and concepts of free association illustrate, the respective interests of the states involved remain very similar to those at self-determination. There is the interest of the Cook Islands and Niue in self-government along with continued holding of New Zealand citizenship. There is the interest of Niue in fulfilment of promises of necessary assistance, while not eroding self-government. There is the interest of New Zealand in a continued close and consultative relationship, and desire to exert influence and ensure its interests are protected, in particular with respect to foreign policy and finances.

Various labels can be put on the free association links - free association, special relationship, the Realm. Various assertions can be made and agreements reached on what this means for the states involved. The link of New Zealand citizenship is at the heart of the matter. The question is what this means with respect to New Zealand obligations and whether further devolution is possible without jeopardising citizenship. We turn to citizenship in chapter 7. Chapter 8 will discuss New Zealand's obligation to provide necessary economic and administrative assistance and citizenship implications. Chapter 9 discusses the implications of citizenship for external affairs and defence.

CHAPTER 7: NEW ZEALAND CITIZENSHIP

I INTRODUCTION

At the heart of the government-to-government relationship of free association is the continued extension of New Zealand citizenship to the Cook Islands and Niue. This provides access to New Zealand, and Australia, and opportunities available there. It is not inconsistent with New Zealand's interests. But migration to New Zealand poses a problem for the Cook Islands, and Niue in particular. Since self-determination the population of the Cook Islands has declined to around 14,974 and Niue to 1,607. It has been suggested this represents a failure of the arrangements and brings into question the continued viability of Niue and the Cook Islands as states.

This chapter is the first of three looking at whether the links of free association have met initial expectations. This chapter looks at New Zealand citizenship. Chapter 8 explores necessary economic and administrative assistance, and chapter 9 considers external affairs and defence.

Part II of this chapter sets out the initial expectations of the extension of New Zealand citizenship to the Cook Islands and Niue. Part III explains its value in providing opportunities for individuals. It concludes that citizenship remains desired, secure and meets initial expectations. Part IV explores the consequences of migration for the state. It concludes that while there are likely to be development benefits, remittances to the Cook Islands and Niue are not significant. It discusses the negative demographic impact for the Cook Islands and Niue. Part V explores the implications of other possible arrangements. This does not suggest they would have delivered a vastly different outcome. Outward migration has led to concern about small and declining populations, to the point where it has been suggested it brings the viability of the Cook Islands and Niue as states into question. Part VI points out that free association was a means by which small states, viewed as non-viable on their own, could also enjoy self-government. The chapter concludes in part VII that the free association arrangements have been effective in meeting initial expectations of secure continued holding of New Zealand citizenship.

II INITIAL EXPECTATIONS

The free association arrangements made clear that self-government would not affect citizenship. As discussed in previous chapters, this was a key element sought by the Cook Islanders and Niueans. It would remain secure, and allow continued free access to family, services and employment in New Zealand. Beyond this it was given remarkably little thought in the case of the Cook Islands, and in the case of Niue came with a Niue expectation of New Zealand responsibility for its citizens.

The status quo appears to have raised no concerns with New Zealand. New Zealand prided itself on being a Pacific nation with a Polynesian population.³⁹⁴ In 1966, following self-determination in the Cook Islands, there were 8,663 Cook Islanders and 2,846 Niueans in New Zealand.³⁹⁵ By 1976, following Niue's act of self-determination, there were 18,610 Cook Islanders in New Zealand and 5,688 Niueans.³⁹⁶ There was active recruitment and need for workers in New Zealand until the economic downturn of the mid-1970s.³⁹⁷ One of the functions of the Department of Island Territories was oversight of their welfare in New Zealand. Moreover the citizenship link was consistent with a New Zealand expectation of a continued close relationship and the desire to exercise influence.

Emigration pre-dated self-government in the Cook Islands. Birth rates were high, and in the Cook Islands at least, it was seen as helping deal with population pressure.³⁹⁸ At the same time there was concern about the departure of the educated and those of working age. Belshaw and Stace saw the attraction of New Zealand as a consequence of the debilitating impact of colonialism. So it was thought that self-government might mitigate the institutional and aspirational factors driving emigration.³⁹⁹ The Cook Islands Party had as part of its platform for the 1965 election "to plan facilities for the

³⁹⁴ Department of External Affairs, "Political Developments Affecting New Zealand in the Pacific," *External Affairs Review* 14, no. 5 (1969): 3-5.

³⁹⁵ Department of Statistics, "Chapter 4: Section 3: Population: Racial Origins," in *New Zealand Official Yearbook 1968* (Wellington: Department of Statistics, 1968).

³⁹⁶ Department of Statistics, "Chapter 5 Section 3: Population: Ethnic Groups," in *New Zealand Official Yearbook 1979* (Wellington: Department of Statistics, 1979).

³⁹⁷ Jon Fraenkel, "Pacific Islands and New Zealand - Immigration and aid," *Te Ara - the Encyclopedia of New Zealand*, accessed 5 April 2017, <http://www.TeAra.govt.nz/en/pacific-islands-and-new-zealand/page-2>.

³⁹⁸ Norma McArthur, "Contemporary Polynesian Emigration from Samoa and the Cook Islands," *The Journal of the Polynesian Society* 73, no. 3 (1964).

³⁹⁹ Belshaw and Stace, *Programme for Economic Development*, 6.

encouragement of our young people to remain in the Islands.”⁴⁰⁰ In 1966 the total population was 19,247. It had been increasing since 1902. The maximum total population of 21,322 was reached in 1971.⁴⁰¹

Niue’s population had historically been around 4,000. The maximum recorded population of 5,194 was reached in 1966. Numbers declined sharply from 4,990 in 1971 to 3,843 in 1976.⁴⁰² The need to address this was reflected in the constitutional arrangements. R. Q. Quentin-Baxter was concerned that Niueans were not earning enough to keep pace with the rising cost of living in Niue. He urged improvement in economic conditions and social services if self-government was to satisfy the people of Niue.⁴⁰³ Chapman also identified disparity in the standard of living between Niue and New Zealand. He saw benchmarking an acceptable standard of living in Niue to other Pacific states such as Tonga or Samoa as risking the demise of Niuean society.⁴⁰⁴ An aim of the Niue Government in the lead up to and following self-government was to encourage Niueans to stay and return.

III SECURITY AND OPPORTUNITIES OF CITIZENSHIP

A The Retention of the Right to New Zealand Citizenship and Non-reciprocal Access

It was expected the free association arrangements would secure New Zealand citizenship. The British Nationality and New Zealand Citizenship Act 1948, referred to in the Cook Islands Constitution Act 1965 and Niue Constitution Act 1974, was repealed and replaced in New Zealand with the Citizenship Act 1977.⁴⁰⁵ Subsequent New Zealand citizenship legislation has made changes to the eligibility for New Zealand citizenship by birth or descent. As lawyer Elisabeth Perham has pointed out, there are now differences between the provisions of the Act referred to in the Cook Islands Constitution Act and Niue Constitution Act, and the New Zealand legislation. This may lead to future legal challenge.⁴⁰⁶ However the Cook Islands, Niue (and the

⁴⁰⁰ Stone, “Self Rule in the Cook Islands,” Appendix C1.

⁴⁰¹ Ministry of Finance and Economic Management, *Cook Islands Census 2011*, Table 1.1 (Rarotonga: Government of the Cook Islands, 2012).

⁴⁰² Department of Justice, *1976 Census of Population and Housing* (Niue: Government of Niue, 1978).

⁴⁰³ R. Q. Quentin-Baxter, “Second Report to the Niue Island Assembly,” 580.

⁴⁰⁴ Chapman, *The Decolonisation of Niue*, 96.

⁴⁰⁵ Citizenship Act 1977.

⁴⁰⁶ Perham, “Citizenship Laws in the Realm of New Zealand,” 219.

non-self-governing territory of Tokelau) continue to be defined as part of New Zealand for the purpose of citizenship.⁴⁰⁷ While not part of the constitutional arrangements, the free access remains non-reciprocal, and this remains an attraction of self-government for the Cook Islands and Niue.

New Zealand citizenship can be attained by birth, descent or by grant. For determining certain cases of citizenship by birth (including adoption) where the parent is not a New Zealand citizen, and for the grant of New Zealand citizenship, the right to reside permanently in New Zealand is one of the criteria. This gives rise to jurisdictional overlap. The Cook Islands and Niue Governments, not New Zealand, determine who is a Cook Islander and who is a Niuean with the right to residence in the Cook Islands or Niue. Each Government controls its own borders and determines the length of time required for migrants to qualify for permanent residence in the Cook Islands and Niue.⁴⁰⁸ This has potential to cause problems. However despite occasional New Zealand concern about issues such as the robustness of record keeping, possible use of the Cook Islands and Niue by third country nationals for access to New Zealand contrary to New Zealand interests, and whether New Zealanders in New Zealand should enjoy preferential access to the Cook Islands and Niue, the right to New Zealand citizenship remains in place.⁴⁰⁹

Bertram sees citizenship as having a role in the exercise of power:

For the political elite of the self-governing state, an informal balancing act is required, since they are not subject to the direct authority of the nation with which they are ‘associated,’ yet they cannot afford to act in ways which would render the association null and void.⁴¹⁰

This suggests that the Cook Islands and Niue are the demandeurs and threat of withdrawal of citizenship is real.

⁴⁰⁷ Citizenship Act 1977, s 2(1).

⁴⁰⁸ In New Zealand twenty-four months, in Niue and the Cook Islands ten years, although this can be reduced in the Cook Islands to five years or three for New Zealand citizens.

⁴⁰⁹ The Citizenship Amendment Bill introduced in 2010 proposed that “the basis on which the applicant received the entitlement to reside indefinitely in the Cook Islands, Niue or Tokelau was not contrary to the interests of New Zealand”; see Citizenship Amendment Bill (226-1).

⁴¹⁰ Bertram, “The Political Economy,” 20.

Citizenship is secure. There is little threat that New Zealand might withdraw this unilaterally. Alison Quentin-Baxter has said unilateral amendment of citizenship “would be a breach of New Zealand’s obligations under the terms of free association, unless it signified the irretrievable breakdown of the relationship.”⁴¹¹ New Zealand is unable to withdraw citizenship and leave someone stateless.⁴¹²

This is not simply a legal issue. New Zealand took legislative action when the Privy Council ruled in 1982 that Western Samoans born between 1924 and 1948 were New Zealand citizens from 1949.⁴¹³ The circumstances were different. The Government of Western Samoa agreed. Nevertheless the decision to remove the right remains contentious, and it is unlikely that New Zealand would wish to repeat this.

Other options are possible, but less attractive. In 1986, New Zealand Prime Minister Lange assured the Cook Islands Premier Davis that New Zealand would not unilaterally deprive any Cook Islander holding New Zealand citizenship of that status, and that other arrangements could be looked at to secure continued relatively unrestricted access to New Zealand.⁴¹⁴ Further research would be required to determine how far this was taken. New Zealand is likely to assume the issue will never arise. The Cook Islands and Niue are likely to see alternative arrangements – dual citizenship, a treaty guaranteeing access – as less secure, offering less advantage, and relieving New Zealand of responsibility.

Less considered are the implications for New Zealand should Cook Islanders or Niueans vote to reject New Zealand citizenship. This could be problematic for New Zealand. Continued extension of New Zealand citizenship can be presented as solely to the Cook Islands’ and Niue’s advantage. However, it is not incompatible with New Zealand’s broader political and security interests in the Pacific. More importantly, change would generate strong opposition from Cook Islanders and Niueans in New Zealand. It should not affect those already holding citizenship. It should not affect their access to New Zealand. Nor would it have impact on their access to the Cook Islands and Niue under current legislation. But as with self-government, there might be

⁴¹¹ A. Quentin-Baxter, “Pacific States and Territories,” paragraph 26.

⁴¹² Citizenship Act 1977, s 17(3).

⁴¹³ Citizenship (Western Samoa) Act 1982.

⁴¹⁴ Fepulea’i, “‘Neither Fish nor Fowl’,” 206.

concern about the implications of independence for future access, their land and other interests in the Cook Islands and Niue. It is suggested that implementing this would be an unwelcome and difficult domestic problem for New Zealand.

B The Opportunities Citizenship Offers in New Zealand

1 Advantages

Advantages of New Zealand citizenship are ease of travel and the rights of New Zealand citizens once in New Zealand.

Travel opportunities have expanded. Cook Islanders and Niueans no longer require permission from a Resident Commissioner to depart. Transport is easier. Cook Islanders and Niueans can take advantage of the trans-Tasman travel arrangements, established in 1973, giving access to Australia by New Zealand citizens. New Zealand passports allow visa free temporary entry to a range of countries not all available to other Pacific nations.

Cook Islanders and Niueans have all the rights of New Zealanders when in New Zealand. It is important to understand however that these rights, including the right to vote, are not restricted to New Zealand citizens. They are also available to people granted permanent residence in New Zealand. Advantages include access to work in New Zealand with its higher salaries and more diverse or specialised career options. There are greater education options, including at tertiary level. Cook Islanders and Niueans enrol as domestic students, so pay reduced fees, and can apply for New Zealand student allowances and student loans. They have access to specialised, or general, health care, at the same free or subsidised rates as other New Zealanders. They can also access social security benefits, and have exemptions from meeting residence requirements where these apply.⁴¹⁵ These are the advantages. They can be enjoyed periodically or permanently. They are available in cases where services are not available in the Cook Islands and Niue,⁴¹⁶ or where there is a desire for greater choice.

⁴¹⁵ Andrew Smith, *New Zealand's Social Security Conventions: Merely Double Taxation Agreements in Reverse?* (Wellington: Victoria University of Wellington, 2009), 10.

⁴¹⁶ Factors affecting the location of Niue births from 2004 to 2011 are in Niue Economics, Planning, Development and Statistics Unit and the Secretariat of the Pacific Community, *Niue Vital Statistics Report: 1987 – 2011* (Niue: Government of Niue), section 1.5.

Cook Islanders and Niueans have called for more than this. Protection in New Zealand of Cook Islands Maori and Niue languages is sought. The New Zealand Government has responded that this is a matter for which it has no constitutional responsibility.⁴¹⁷ However the New Zealand Human Rights Commission and Royal Society of New Zealand have also raised New Zealand responsibility for these languages based on the constitutional relationship.⁴¹⁸ The issue is unlikely to go away.

If defined as secure and relatively trouble free continuation of citizenship and access to New Zealand, it can be concluded that the arrangements have been effective in meeting initial expectations of the Cook Islands, Niue and New Zealand.

2 *Disadvantages*

However citizenship has been described as a two-edged sword. Population decline as a result of emigration of Cook Islanders and Niueans is a concern. The chapter now turns to the impact of migration for the state rather than the individual; in particular whether this has contributed to development, whether the hoped for mitigation of migration has occurred, and the demographic consequences for the Cook Islands and Niue.

IV IMPACT OF MIGRATION

Baldacchino comments that “one key reason why island territories prefer to maintain subnational status rather than ‘graduate’ to full sovereignty today ... would probably be the guarantee of the option to migrate to, and freely settle in, metropolitan labour markets.”⁴¹⁹ However the assumption is that choice of continued association is based on economic benefit observed in comparisons of the standard of living of subnational island jurisdictions and those that are independent. So the question is what benefit accrues to the sending state from constitutional arrangements allowing migration to the metropole.

To answer this, we turn to the development implications followed by the demographic impact.

⁴¹⁷ Education Minister Tolley quoted in “Niuean, Cook Island Maori Languages ‘May Die Out’,” *Stuff*, 23 August 2010; Crown Law to Ministry of Pacific Island Affairs, “Crown Legal Obligations Towards Pacific Languages,” 2 February 2012.

⁴¹⁸ The Royal Society of New Zealand, “Languages in Aotearoa New Zealand,” March 2013.

⁴¹⁹ Baldacchino, *Island Enclaves*, 63.

A The Development Impact

As demographer Geoffrey Hayes explains in his overview of research and policies on migration in the Pacific, from a development viewpoint, and while this remains contested among scholars of the Pacific, there is now a global consensus that migration does potentially make a positive contribution to economic development for both the sending and receiving state.⁴²⁰

While there are a number of ways benefit might ensue, greatest attention has been paid to remittances to those on the home island. Whether remittances are of development benefit has divided Pacific scholars.⁴²¹ However the significance of remittances in the Pacific is well accepted.⁴²² Migration and remittances are integral to the MIRAB model which was based on research in the Cook Islands and Niue among others.⁴²³

Both the Cook Islands and Niue use New Zealand currency. The World Bank collects remittance data but neither is a member of the World Bank. These factors mean data on remittances is not readily available. Remittances can also be in the form of cash and other gifts or payments. Nevertheless it is interesting that Bertram and Watters found in 1984 that invisible flows ran from Niue to New Zealand, based on the finding that more money orders were issued than cashed in Niue.⁴²⁴ While remittances to the Cook Islands were once a feature, by 2012, according to Bertram, remittances from New Zealand to the Cook Islands had fallen from around NZ\$5 million a year in the 1980s to around NZ\$1.5 million a year.⁴²⁵

⁴²⁰ Geoffrey Hayes, “*Strengthening National Capacities to Deal with International Migration: Maximising Development Benefits and Minimising Negative Impact in the Pacific Islands Sub-region*” (background paper for the ESCAP Workshop on Strengthening National Capacities to Deal with International Migration, Bangkok, 22-23 April 2010): 66.

⁴²¹ Hayes, *International Migration*, 52.

⁴²² Francis Hezel, *Pacific Island Nations: How Viable are their Economies?* Pacific Islands Policy 7 (Hawaii: East-West Center, 2012), 17-20.

⁴²³ The MIRAB model, developed by Bertram and Watters, explains the role in economic development of current account transfer payments (including aid and remittances from relatives overseas) and non-tradeable production (generally government employment). The argument is that MIRAB economies are sustainable. The model was developed to counter the view that development required export-led growth and investment.

⁴²⁴ Bertram and Watters, *New Zealand and its Small Island Neighbours*, 200.

⁴²⁵ Geoff Bertram, “South Pacific Economic Relations – Aid, Remittances and Tourism,” *Te Ara – the Encyclopaedia of New Zealand*, accessed 29 April 2015, <http://TeAra.govt.nz/en/south-pacific-economic-relations-page-4>.

Even taking into account gaps in data, estimates required, and the fact that formal transfers are thought to under count the amount involved, it appears that remittances are not significant in any link between New Zealand citizenship, free movement and economic benefit to the Cook Islands and Niue.

B The Demographic Impact

The populations of the Cook Islands and Niue were small at the time of decolonisation, and are less now. Emigration was a concern before and at self-government. There is disappointment that the hope that self-government would halt or reverse the flow has not occurred. It is seen today in the Cook Islands and Niue as the downside of holding New Zealand citizenship.

As the Cook Islands Prime Minister explained in the Cook Islands Parliament in 2015:

the Cook Islands has held firm to its unique relationship with New Zealand, and all that the political status of Free Association established formally, in 1965. New Zealand Citizenship was retained – even at the expense of establishing our own. And our free right of access to New Zealand was retained on a non-reciprocal basis – even at the expense of losing our own people.⁴²⁶

The demographic circumstances of the Cook Islands and Niue have led to the criticism that New Zealand citizenship is a failure of the arrangements, and demographic impact is overlooked when assessing the value of association.⁴²⁷ Some have gone so far as to suggest that demographic change raises a question over the future of self-government.

1 The Cook Islands

At the most recent 2011 census the Cook Islands resident population was 14,974.⁴²⁸ The Cook Islands Government estimated this had declined to 11,700 at September 2016.⁴²⁹ As the resident population has been stable since 2001, this trend would be of concern. Confirmation will need to await the outcome of the December 2016 census.

⁴²⁶ Henry Puna statement of 10 June 2015, accessed 20 July 2015, <https://www.facebook.com/cookislandsparty/posts/781744068591139:0>.

⁴²⁷ Henderson, “Pacific Freely Associated States,” 10.

⁴²⁸ Ministry of Finance and Economic Management, *Cook Islands Census 2011*, 4.

⁴²⁹ Ministry of Finance and Economic Management, *Statistical Bulletin: Vital Statistics and Population Estimates September Quarter 2016*.

The Cook Islands population change is primarily a function of net migration.⁴³⁰ In contrast to the high birth rate and relatively low death rate of 1966, both are now low.⁴³¹ While some have seen migration as part of an inexorable decline, such as geographer John Connell,⁴³² or as a steady state, such as in the MIRAB model,⁴³³ in fact there have been two significant periods of population change, attributable to specific circumstances.

In the three years from 1972 to 1974 net migration shot up to 4,004 (the normal annual figure was 246). The total Cook Islands population dropped from 21,322 in 1971, to 18,126 in the 1976 census.⁴³⁴ Explanations point to the Cook Islands population growth through natural increase and labour surplus coupled with New Zealand demand for labour through the 1960s and early 1970s,⁴³⁵ the employment impact of the completion of several major development projects including the Rarotonga international airport in 1974,⁴³⁶ and the opportunity provided by greater transport options.⁴³⁷ Significantly, the resident population had recovered that loss by 1996.

The second sharp decline was between the 1996 and 2001 censuses when net migration was estimated as 4,284, and the resident population declined from 18,071 to 15,017.⁴³⁸ This was in response to a period of economic crisis and contraction in the Cook Islands. The resulting 1996 Cook Islands economic reform programme led to large public sector job losses, significant migration and associated decline in the number of births.⁴³⁹ Since 2001 the population has not recovered, but to 2011 at least has remained fairly stable.

⁴³⁰ In highly mobile populations like those of the Cook Islands and Niue, where women may choose to give birth in New Zealand and the elderly may die offshore, birth and death data can be unreliable.

⁴³¹ United Nations Population Fund, *Population and Development Profiles: Pacific Island Countries* (Suva: UNFPA, 2014), 10.

⁴³² John Connell, "A Nation in Decline? Migration and Emigration from the Cook Islands," *Asian and Pacific Migration Journal* 14, no.3 (2005).

⁴³³ Geoffrey Bertram, "'Sustainable Development' in Pacific Micro-economies," *World Development* 14, no.7 (1986): 817.

⁴³⁴ Ministry of Finance and Economic Management, *Cook Islands Census 2011*, Table 1.1.

⁴³⁵ Bertram and Watters, *New Zealand and its Small Island Neighbours*, 137-139.

⁴³⁶ Statistics Office, *Census of Population and Housing 1976* (Rarotonga: Government of the Cook Islands, 1977).

⁴³⁷ Statistics Office, *Census of Population and Housing 1976*, 18.

⁴³⁸ Secretariat of the Pacific Community, *Demographic Profile of the Cook Islands 1996 – 2002* (Noumea: Secretariat of the Pacific Community, 2005).

⁴³⁹ Secretariat of the Pacific Community, *Demographic Profile of the Cook Islands*, 13.

The Cook Islands Government has identified population decline as a major concern for the Government, private sector and the general public. Three major issues arise.

First, migration of those of working age has left the Cook Islands economy with skill and labour shortages, as those departing have been in the fifteen and forty year age group leaving for education and economic opportunities.⁴⁴⁰

Second, the solution, employment of foreign labour, coupled with the departure of Cook Islanders, has raised concerns about cultural identity and Cook Islanders' control of the economy.⁴⁴¹ Since 1996 the non-Cook Islander portion of the resident population has grown from five per cent⁴⁴² to twelve per cent⁴⁴³ and makes up around sixteen per cent of the labour force.⁴⁴⁴ The main groups represented, in order of population size, are New Zealanders, Fijians, Filipinos, other Pacific islanders, and Australians. As discussed in the previous chapter, the Cook Islands has agreed to give New Zealand citizens preferential consideration, but control of the border remains important.

Third, population has continued to decline in the already sparsely populated and far-flung outer islands, through migration to Rarotonga and overseas. This makes the maintenance of services more difficult. The Cook Islands Government is concerned at potential “collapse of local communities and an imminent loss of culture.”⁴⁴⁵

Suggestions that people are “voting with their feet” makes this sensitive, and policy solutions are not obvious. There can be resentment at those who have left, and difficulty in attracting people back, but there is no indication the Government sees its nationhood under threat.

⁴⁴⁰ Cook Islands Government and United Nations Population Fund, *Economic Activity and Labour Force: Analysis of the 2011 Population and Housing Census* (Suva: UNFPA, 2015), 11.

⁴⁴¹ Office of the Prime Minister, *Te Kaveinga Nui: National Sustainable Development Plan 2016 – 2010* (Rarotonga: Government of the Cook Islands, 2016), 49.

⁴⁴² Secretariat of the Pacific Community, *Cook Islands Population Profile Based on 1996 Census* (Noumea: Secretariat of the Pacific Community, 1999), 15.

⁴⁴³ Ministry of Finance and Economic Management, *Cook Islands Census 2011*, 12.

⁴⁴⁴ Cook Islands Government and United Nations Population Fund, *Economic Activity and Labour Force*, 8.

⁴⁴⁵ United Nations Population Fund, *Population and Development Profiles*, 11.

2 Niue

By 2011 Niue's resident population was 1,607, including 147 people temporarily absent overseas.⁴⁴⁶ This is only forty-one per cent of its self-government population level. The population was estimated at 1,758 at June 2015, including 132 residents temporarily off the island.⁴⁴⁷

Like the Cook Islands, Niue has a low birth rate and low death rate. Population change mostly reflects migration. Reasons for migration are complex and in Niue's case have been subject to differing views.

Niue's population declined sharply from 4,990 to 3,843 between 1971 and 1976.⁴⁴⁸ The particularly sharp downward movement in the 1970s has been attributed to uncertainty about Niue's future in the period leading up to self-government, and increased transport options with the opening of Niue's airport in 1971.⁴⁴⁹ It also of course coincides with high departures from the Cook Islands, and demand in New Zealand. A demographic study by A. C. Walsh and A. D. Trlin pointed to economic reasons for departures and links with kin in New Zealand.⁴⁵⁰ Similarly, Connell more recently discusses the desire for employment, education, health and a desire for a more varied lifestyle, along with the pull of kin in New Zealand.⁴⁵¹ Finally, the effect of Niue's frequent natural disasters has been identified as having an impact on migration.⁴⁵²

Phased reductions in New Zealand financial support from the early 1990s and reductions in Niue public service employment may also be significant, but the population impact awaits careful scrutiny. Between 1991 and 1997 the number of people formally employed decreased from 870 to 690.⁴⁵³ The net migration figure however has slowly declined. It averaged fifty-one people a year between 1991 and

⁴⁴⁶ Niue Government, *Niue Census 2011*, 9.

⁴⁴⁷ Ministry of Finance and Planning, *Niue Population Estimate June 2015*.

⁴⁴⁸ Department of Justice, *1976 Census of Population and Housing* (Niue: Government of Niue, 1978).

⁴⁴⁹ Bertram and Watters, *New Zealand and its Small Island Neighbours*, 197-198.

⁴⁵⁰ A. C. Walsh and A. D. Trlin, "Niuean Migration: Niuean Socio-Economic Background, Characteristics of Migrants, and Settlement in Auckland," *The Journal of the Polynesian Society* 82, no. 1 (1973).

⁴⁵¹ John Connell, "Niue: Embracing a Culture of Migration," *Journal of Ethnic and Migration Studies*, 34, no. 6 (2008).

⁴⁵² Judith C. Barker, "Hurricanes and Socio-economic Development on Niue Island," *Asia Pacific Viewpoint* 41, no. 2 (2000).

⁴⁵³ Secretariat of the Pacific Community, *Niue Population Profile Based on 1997 Census*, (Noumea: Secretariat of the Pacific Community, 1999), 24.

1997,⁴⁵⁴ fifty a year between 2001 and 2006,⁴⁵⁵ and forty-two people per year between 2006 and 2011.⁴⁵⁶

Judgements about Niue can be coloured by Niue being seen as well off in Pacific terms, and migration thus simply a matter of choice. Connell for example ascribes to Niueans a “culture of migration.”⁴⁵⁷ Those who have committed to life on Niue can also view negatively those who leave, although they also urge a new approach to New Zealand economic support.⁴⁵⁸ Vivian⁴⁵⁹ wonders if independence would have engendered a greater commitment to Niue.⁴⁶⁰

To explain the lack of consistency with his MIRAB model of sustainable population movement, Bertram condemns Niue as a:

traditionally fractionalized and divided society [which] has shown signs of cultural disintegration in the last decade, the continuing depopulation ... has followed from abandonment of the attempt to continue the reproduction of the village mode ... Indeed events in Niue since 1970 could be said to have consisted of the departure of everyone except the civil service and their families.⁴⁶¹

Examination of census data belies this conclusion. In 1997, the date closest to Bertram’s 1986 article for which this information appears to be available, fifty-one per cent of those formally employed were in government employment, and twenty-two per cent of the population over fifteen were involved in subsistence work.⁴⁶²

Although Niue has a pattern of steady decline in population, it is certainly not clear that Niue departures can be explained as an inevitable process fuelled by a “culture of

⁴⁵⁴ Secretariat of the Pacific Community, *Niue Population Profile Based on 1997 Census*, 25.

⁴⁵⁵ Niue Economics, Planning, Development and Statistics Unit and the Secretariat of the Pacific Community, *Niue Population Profile Based on 2006 Census of Population and Housing*, 26.

⁴⁵⁶ Department of Finance, Planning and Statistics, *Niue Census of Population and Households 2011* (Niue: Government of Niue, 2012), 28.

⁴⁵⁷ Connell, “Niue: Embracing a Culture of Migration,” 1031-1036.

⁴⁵⁸ Douglas, “Niue: The Silent Village Green,” 192.

⁴⁵⁹ Young Vivian was involved in the decolonisation process as an Executive Committee member, was a Minister in the post-self-government Niue, Premier from 1992/93, and until 2017, a member of the Legislative Assembly.

⁴⁶⁰ Johnstone and Powles, *New Flags Flying*, 116.

⁴⁶¹ Geoff Bertram, “‘Sustainable Development’ in Pacific Micro-economies,” 817.

⁴⁶² Secretariat of the Pacific Community, *Niue Population Profile Based on 1997 Census*, 22, 24.

migration.”⁴⁶³ Recent tourism growth and increases in associated economic activity is credited with assisting a reversal of the trend.⁴⁶⁴ Figures await the outcome of the 2016 census, but the Niue Government is hopeful its decline has been reversed, with a population estimate of 1758 at June 2015.⁴⁶⁵

On Niue there has been an active focus by successive Governments on population numbers. The paucity of people of working age leaves the nation short of skills and labour. Maintenance of language and culture is an issue. Niue has sought to attract people back to Niue, although without great success. In 2011 eighty per cent of the population was Niuean. In order of numbers, other ethnic groups in Niue in 2011 were Pacific islanders (Tongans, Fijians, Tuvaluans, Samoans, others), followed by Europeans and Asians.⁴⁶⁶ There have been one-off schemes to bring Tongans and Tuvaluans to Niue, but attracting more migrants is not necessarily seen as a solution. In the 2011 Niue census, on the preferred nationality of new residents, of the two thirds who had a preference, forty-two per cent said returning Niueans, fifteen per cent said Pacific islanders and only three per cent said Europeans including New Zealanders and Australians.⁴⁶⁷

The risk of continued decline is seen as a threat to Niue’s existence as a cultural and national entity. Niue Premier Toke Talagi said in 2013: “We believe that the greatest need we have is to retain our people in a sustainable manner because without people we are just a rock in the middle of the Pacific.”⁴⁶⁸

3 *New Zealand*

Stewart Firth argues that the continued holding of New Zealand citizenship in the decolonisation arrangements reflected a “tolerance towards Pacific Islander migration.”⁴⁶⁹ Recollection of the “dawn raids” of 1974 and 1975, when following a downturn in the New Zealand economy Pacific islanders who had overstayed their

⁴⁶³ Connell, “Niue: Embracing a Culture of Migration.”

⁴⁶⁴ Sally Round, “Island Life Attracts More Niueans Home,” *Radio New Zealand International*, 13 April 2017.

⁴⁶⁵ Ministry of Finance and Planning, *Niue Population Estimate June 2015*, 3.

⁴⁶⁶ Department of Finance, Planning and Statistics, *Niue Census of Population and Households 2011*, 45.

⁴⁶⁷ Department of Finance, Planning and Statistics, *Niue Census of Population and Households 2011*, 43-44.

⁴⁶⁸ Toke Talagi, Speech at 39th Constitution Celebrations, 19 October 2013.

⁴⁶⁹ Stewart Firth, “Sovereignty and Independence in the Contemporary Pacific,” *The Contemporary Pacific* 1, no.1/2 (1989): 89.

permits were deported, might suggest a different view. However Niue proceeded to self-government in the midst of action against Pacific overstayers with this having no discernible impact, suggesting that Firth is right.

New Zealand's immigration policy reflects its close relationship with Pacific states, and is described as supporting aid and development objectives.⁴⁷⁰ Migration of people from the Cook Islands and Niue is not unwelcome and can serve New Zealand's interests. For example, while carrying out fieldwork in the Cook Islands in 2014, the New Zealand Air Force was in Rarotonga recruiting.

Pacific migration has implications for New Zealand's identity and population today. In 2013, Pacific islanders made up over seven per cent of New Zealand population. Of these, 61,839 were Cook Islanders and 23,883 Niueans. These are established populations. Seventy-seven per cent of Cook Islanders, and seventy-nine per cent of Niueans in New Zealand, were born in New Zealand.⁴⁷¹ In the Australian 2011 census, 16,193 people identified themselves as having Cook Islands ancestry.⁴⁷²

Perhaps partially influenced by this, although undoubtedly also driven by financial considerations, New Zealand's domestic policy response to supporting the Cook Islands and Niue Government efforts to limit migration has been disappointing.

The major test is the longstanding and vexed question of portability to the Pacific of New Zealand superannuation and veteran's pension. New Zealand superannuation is a state pension available from the age of sixty-five, subject to certain residence conditions. In response to lobbying, general portability (the ability to draw the pension outside New Zealand) was introduced in 1990 to allow partial payment of New Zealand superannuation overseas. Different and special portability arrangements were made in 1993 for payment in the Cook Islands, Niue and Tokelau. In 1999 the arrangements were changed again, and extended to all Pacific islands and territories. The most

⁴⁷⁰ Ministry of Business, Innovation and Employment, *Vote Immigration: Briefing for the Incoming Minister*, paragraph 56.

⁴⁷¹ Statistics New Zealand, "2013 Census QuickStats about culture and identity," accessed 30 April 2017, <http://www.stats.govt.nz/Census/2013-census/profile-and-summary-reports/quickstats-culture-identity/pacific-peoples.aspx>.

⁴⁷² Australian Government, Department of Social Services, "The Cook Islands-born Community," accessed 21 September 2017, <https://www.dss.gov.au/our-responsibilities/settlement-and-multicultural-affairs/programs-policy/a-multicultural-australia/programs-and-publications/community-information-summaries/the-cook-islands-born-community>.

recent change, in 2015, was restricted to the Cook Islands, Niue and Tokelau. The Prime Minister of the Cook Islands and Premier of Niue appeared before the New Zealand Parliamentary Social Services Committee to make their case.

This latest change allows application for the pension from these islands, but the proposal to do away with the requirement to spend five years over the age of fifty in New Zealand was not agreed.⁴⁷³ This partially positive response was linked by New Zealand to the particular problems migration posed, and the constitutional arrangements. It is likely constitutional links were cited to head off lobbying by Samoans and others for the same exemptions, rather than any belief this was an entitlement of New Zealand citizens. While limited, it remains the major area where special arrangements to address the impact of migration have been introduced, and are linked to citizenship and the constitutional relationship.⁴⁷⁴

Migration, and population decline, makes self-government more difficult, but stemming migration was a hope attached to self-government, not an expectation of free association. Nevertheless the demographic outcome has raised questions, in some quarters, about the effectiveness of the arrangements and wisdom of the retention of New Zealand citizenship.

V FAILURE OF THE ARRANGEMENTS?

Migration to New Zealand (and Australia) is facilitated by holding New Zealand citizenship. However, as Hayes points out, “actual migration patterns of Pacific Islanders cannot be explained as a simple function of the legal *right* to move.”⁴⁷⁵ Nevertheless, the question arises of whether other decolonisation choices would have made a difference. It is difficult to know without better information on reasons for migration, but it is possible to hazard a guess about the demographic consequences of the alternatives: retaining non-self-governing status, integration, or independence.

⁴⁷³ New Zealand Prime Minister English made looking at this a post-election promise on his visit to the Cook Islands, see Richard Moore, “NZ Leader Comes Bearing Gifts,” *Cook Islands News*, 14 June 2017.

⁴⁷⁴ The only other example discovered is the exemption on paying interest on New Zealand student loans if in the Cook Islands or Niue.

⁴⁷⁵ Hayes, *Strengthening National Capacities*, 1.

A The Status Quo: a Non-Self-Governing Territory

If retention of citizenship is seen as the factor determining migration levels, this would be unchanged with continued non-self-governing status. Any difference in emigration would reflect factors introduced by self-government. Further research would be required to determine if these were beneficial or detrimental. Population movement might have been greater without the sense of nationalism, economic engagement, and improvement in the standard of living achieved under self-government. Or it could have occurred at similar levels had the status quo remained. Or it might have been less, if departures are attributed to shortcomings of self-government.

By way of comparison, Tokelau is New Zealand's only non-self-governing territory. Tokelauans are New Zealand citizens. New Zealand salaries and benefits do not extend to Tokelau, and nor does the franchise. Government has been devolved from New Zealand to Tokelau meaning that Tokelau is in most respects self-governing. Tokelau's population has declined from 1,901 in 1966,⁴⁷⁶ to 1,411 in 2011.⁴⁷⁷ 7,176 Tokelauans live in New Zealand.⁴⁷⁸ It is difficult to draw conclusions from this. The differences between Tokelau - three small atolls around 500 kilometres north of Samoa and accessible only by ship - and the Cook Islands and Niue, are far greater than just political status.

B Integration

Integration would also entail retention of citizenship and migration rights. The impact of integration on demographic stabilisation is presumably based on the expectation that it would narrow economic differentials with New Zealand that encourage departures. For example, Angelo has suggested with respect to Niue, that with integration, public service pay may have been at New Zealand rates and New Zealand social welfare

⁴⁷⁶ Department of Statistics, "Chapter 38: New Zealand Territory Overseas: Tokelau Islands: Population," in *New Zealand Official Yearbook 1967* (Wellington: Department of Statistics, 1967).

⁴⁷⁷ Statistics New Zealand, "2011 Tokelau Census of Population and Dwellings: Final Count for 2011 Census of Tokelau Population and Dwellings," accessed 26 July 2017, http://www.stats.govt.nz/browse_for_stats/people_and_communities/pacific_peoples/2011-tokelau-census-landing-page/final-count-2011-tokelau-census.aspx.

⁴⁷⁸ Statistics New Zealand, "2013 Census Ethnic Group Profiles: Tokelauan," accessed 30 April 2017, http://www.stats.govt.nz/Census/2013-census/profile-and-summary-reports/ethnic-profiles.aspx?request_value=24713&parent_id=24706&tabname=.

benefits would apply.⁴⁷⁹ Certainly, as discussed, R. Q. Quentin-Baxter saw the economic gap as key. The Premier of Niue has committed to raising salaries, wages and pensions to eighty per cent of New Zealand rates, action consistent with the Niue Constitution.⁴⁸⁰ On the other hand, implications for other motivations for migration are unknown. Presumably family, a wider range of work opportunities, tertiary education and advanced medical services would still remain New Zealand based, and interest in a different lifestyle would remain a draw for some.

To make a comparison with the Chatham Islands, remote from, but part of, New Zealand, retention of population is a concern not eliminated by integration. The population was around 600 in the 2013 census. A fifth of the dwellings on the Chatham Islands are unoccupied.⁴⁸¹

Some question whether integration would secure improved economic circumstances. The New Zealand Foreign Affairs, Defence and Trade Committee suggested that conditions in Niue and the Cook Islands should be analogous to those pertaining in a similar sized population centre in New Zealand.⁴⁸² This is not necessarily an attractive prospect. From a Niuean perspective, “Informed Niueans also fear the island may become neglected in similar ways to many small rural communities throughout New Zealand.”⁴⁸³ The risk is identified in a comment by consultants Martin Jenkins on the Chatham Islands:

size and distance are perceived to hinder any viable, sustainable [economic] solution.

To many people, the Chatham Islands is considered an imposition on the public purse. A similar “tyranny of distance” argument has been applied to New Zealand. However, there has never been a policy response that we should simply give up and move to Australia.⁴⁸⁴

⁴⁷⁹ Tony Angelo, “To Be or Not to Be ... Integrated, That is the Problem of Islands,” *Revue Juridique Polynésienne* (2002): 103.

⁴⁸⁰ Toke Talagi, “2014/2015 Budget Statement, 26 June 2014.”

⁴⁸¹ Statistics New Zealand, “2013 Census QuickStats about a Place: Chatham Islands Territory,” accessed 30 April 2013, http://www.stats.govt.nz/Census/2013-census/profile-and-summary-reports/quickstats-about-a-place.aspx?request_value=15197&tabname=.

⁴⁸² Foreign Affairs, Defence and Trade Committee, “Inquiry into New Zealand’s Relationships with South Pacific Countries,” 7.

⁴⁸³ Colin Tukuitonga, “Resilient Niuean People Weather the Storm,” *New Zealand Herald*, 18 January 2004.

⁴⁸⁴ Martin Jenkins, *Chatham Islands: Final Report: Economic Profile 2014* (December 2014), 45.

Finally, like Cook Islanders and Niueans, New Zealanders also migrate. They move from rural areas to cities, and in 2011 almost half a million New Zealand-born people lived in Australia.⁴⁸⁵ There is no reason to assume that Cook Islanders and Niueans would (or should) behave any differently.

C Independence

Independence would have made Cook Islanders and Niueans subject to New Zealand immigration laws and impeded access to some degree.

If independent, a preferential arrangement for residence in New Zealand would likely to have been put in place, such as the annual quota of 1100 people from Samoa. Even without special arrangements, established family links to New Zealand provide an avenue for migration. Advantage could also have been taken of other special arrangements for the Pacific, such as the Recognised Seasonal Employer Scheme. Skilled migrants would qualify for the skilled migrant category, with departures to the detriment of the Cook Islands and Niue.

A comparison of the Cook Islands and Niue with Samoa and Tonga, two independent states with close links with New Zealand, is interesting. United Nations Population Fund estimates for 2014 suggest net migration for the Cook Islands was -1.0 per cent⁴⁸⁶ and for Niue was -0.3 per cent.⁴⁸⁷ These figures do not identify the contribution of outward and inward flows. Nevertheless the figures for the Cook Islands and for Niue are less than Samoa's estimated 2014 net migration rate of -1.7 per cent,⁴⁸⁸ and Tonga's net migration rate of -1.6 per cent.⁴⁸⁹ This suggests independence may not be as great an impediment to outward migration as often envisaged. Indeed lack of temporary access to family, health and education services and work in New Zealand, as desired, may encourage more permanent moves, as the departures prior to self-government in Niue suggest.

⁴⁸⁵ Statistics New Zealand, "At Least 1 Million New Zealanders Live Overseas," accessed 30 April 2017, http://www.stats.govt.nz/browse_for_stats/population/mythbusters/1million-kiwis-live-overseas.aspx.

⁴⁸⁶ United Nations Population Fund, *Population and Development Profiles*, 12.

⁴⁸⁷ United Nations Population Fund, *Population and Development Profiles*, 48.

⁴⁸⁸ United Nations Population Fund, *Population and Development Profiles*, 66.

⁴⁸⁹ United Nations Population Fund, *Population and Development Profiles*, 84.

VI IS VIABILITY IN QUESTION?

Gerard Ward has argued that the consequence of outward migration from Micronesia and Polynesia means that hopes of post-decolonisation viable economic, social and political futures for Pacific states generally, “were, in fact, dreams with no lasting reality.”⁴⁹⁰

This question has arisen, with respect to Niue, over the implications of population loss for self-government. The focus is on the political (rather than economic or security implications) of demographic change. That is, whether Niue is politically “viable,” as a state. Henderson concluded there is “a better than even chance that the people left on Niue will choose to integrate with New Zealand. If this happens a precedent will have been set and the Cook Islands may choose to follow suit.”⁴⁹¹ On this question, conclusions about the much smaller Niue have been extrapolated to the Cook Islands.

The Pacific Cooperation Foundation, set up to improve New Zealanders’ understanding of the region, made the argument thus:

With a population of less than 2,000 Niue has fewer people than a large New Zealand high school and is seriously at risk of not being able to operate as a country. Unless ways can be found of attracting a substantial number of Niueans to return and others to migrate there it is possible the population will continue to drop to the point that Niue will simply become non-viable as an independent state. ... the time may come when Niueans decide that they have no option other than to seek an alternative solution to their governance and New Zealand ought to be prepared to consider the possibility of re-integrating Niue back into New Zealand.⁴⁹²

The prediction for the Cook Islands was more positive, but not confident long term: “it is not in the same predicament as Niue and should be able to function effectively – with a little bit of help from New Zealand – for the foreseeable future.”⁴⁹³

⁴⁹⁰ R. Gerard Ward, “Earth’s Empty Quarter? The Pacific Islands in a Pacific Century,” *The Geographical Journal* 155, no. 2 (1989): 240.

⁴⁹¹ Henderson, “Pacific Freely Associated States,” 10.

⁴⁹² Pacific Cooperation Foundation, “Submission to Parliamentary Inquiry into New Zealand’s Relationships with South Pacific Countries” (August 2007), 12.

⁴⁹³ Pacific Cooperation Foundation, “Submission to Parliamentary Inquiry into New Zealand’s Relationships with South Pacific Countries” (August 2007), 12.

Without dismissing the problem, predicting the demise of self-government seems premature. The Cook Islands and Niue are not alone in being small. Independent Nauru and Tuvalu each have populations of around 11,000. The population of Palau, in free association with the United States, is 17,500.

Moreover, population size did not rule out the offer of self-determination to the Cook Islands or Niue. In 1965, New Zealand explained the choice of Cook Islanders for free association as a reflection of their interests and circumstances – described as a “tiny territory” of 20,000 people on fifteen remote islands.⁴⁹⁴ The Cook Islands’, and Niue’s, geographic and demographic circumstances and economic prospects were exactly what free association was designed to address.

Nor has population size prevented the offer of self-determination to Tokelau, with a population around the same size as Niue’s and far more difficult geographic circumstances: three small atolls and a public service located in Samoa.

Moreover according to the 1986 Niue Review Group report:

Because its preservation was implicit in the compact of self-government, and because of the importance of preserving its unique language and culture, the future of Niue as a predominantly, but not exclusively Niuean society needs to be assured. The fact of Niue confers on Niueans everywhere – in Niue, New Zealand, Australia or elsewhere – a strong sense of individual identity. In approving the Constitution for self-government the people of Niue saw it as a way of keeping Niue as a distinctive identity. For Niueans, Niue is the land from which they draw spiritual and cultural strength, to which they remain attached and to which they can, if they so want, return.⁴⁹⁵

So it is somewhat curious that New Zealand observers should be so ready to see self-government reversed, with integration with New Zealand the solution.

These views are not shared by the Cook Islands and Niue Governments. As discussed in Chapter 6, formal adjustments to the relationship with New Zealand have moved away from, not towards integration.

⁴⁹⁴ Department of External Affairs, “The Cook Islands: Statement Made in the Committee of Twenty-four,” 36.

⁴⁹⁵ Niue Review Group, *Report of the Niue Review Group* (Wellington and Niue: August 1986), 9.

Nor is there serious contemplation by the New Zealand Government of a change in the constitutional status quo. Following Cyclone Heta in 2004, Foreign Minister Phil Goff commented on Australian radio that if people responded by leaving the country this might make Niue unviable.⁴⁹⁶ However he soon shifted emphasis to New Zealand support to rebuild Niue. Whatever views are held privately, and these will be discussed in chapter 8, official New Zealand statements focus on how to ensure Niue in particular can continue to operate as a state.

VII EFFECTIVENESS OF FREE ASSOCIATION IN MEETING INITIAL EXPECTATIONS

The objective of this chapter was to determine how effective the arrangements of free association have been in meeting Governments' initial expectations; in this case, secure retention of New Zealand citizenship.

A The Right to New Zealand Citizenship

This chapter has shown that retention of New Zealand citizenship remains a significant, secure, and still valued element of free association. It meets initial expectations of all three Governments. There is some legal untidiness. New Zealand citizenship legislation is no longer that cited in the Constitution Acts, and subsequent citizenship legislation has been further modified. However the definition of "New Zealand" for the purposes of citizenship continues to include the Cook Islands and Niue. None of the Cook Islands, Niue or New Zealand is seeking to change this. Indeed, change, if requested, could prove politically difficult for New Zealand, because of opposition from its Cook Islander and Niuean populations. The arrangements allow continued access to New Zealand. Access to Australia and ease of travel elsewhere are an added bonus. Freedom of movement is not reciprocal. Self-government means that the Cook Islands and Niue determine who are Cook Islanders and Niueans and control their own borders.

B The Demographic Impact

Decolonisation hopes of slowing, halting or reversing migration have been disappointed. There may be development benefit, although the Cook Islands receives relatively little in remittances and in Niue the flow may be the other way. The demographic circumstances of the Cook Islands and Niue have been attributed to free

⁴⁹⁶ "Cyclone May Render Niue 'Unviable'," *Australian Broadcasting Corporation*, 13 January 2004.

association and led to criticism of the arrangements. It has been suggested that Niue (and possibly the Cook Islands) are becoming unviable, if they are not already. In the case of the Cook Islands and Niue what is of advantage to the individual has proved to be less beneficial to the state.

Both Niue and the Cook Islands have experienced population loss. Reasons for migration are complex. Migration pre-dated self-determination. It was thought that self-government would mitigate migration, but migration has not halted, or proved sustainable. Opinions differ on why this occurs and what to do about it. New Zealand's superannuation policies have not been helpful.

As this chapter shows, it is not clear that migration patterns are solely attributable to the citizenship element of free association. In the Cook Islands there were high departures in the 1970s and 1990s related to specific events rather than representing an inexorable and sustained demographic collapse. Niue has experienced steady decline, but the specific causes are less clear. The positive demographic impact of recent economic improvement shows this is not inevitable.

Nor would other arrangements necessarily produce a different result. Remaining a non-self-governing territory or being integrated with New Zealand would still involve holding New Zealand citizenship. The effect on migration of economic and other possible consequences is unclear. Independence would mean Cook Islanders and Niueans would be subject to New Zealand immigration policies. However these policies include opportunities for Pacific migrants. While not broken into inward and outward migration, independent Samoa and Tonga have higher rates of net migration than the Cook Islands and Niue. Removal of citizenship could encourage departures, as generated by uncertainty in Niue before self-government.

The Cook Islands and Niue have experienced loss of the young, educated and able-bodied. Inward migration has led to concern about cultural integrity and ownership of economic resources. Decline in numbers makes maintaining services increasingly difficult, especially in the outer islands of the Cook Islands and on Niue. Migration on top of the Cook Islands' and Niue's already small populations and low birth rates had led to the focus on issues of national sustainability.

This has led to suggestion of integration with New Zealand. Leaving aside the significant point that neither the Cook Islands nor Niue seem keen, this is a curious turn. Clearly population loss makes governance, economic development and social and cultural integrity more difficult. However free association was a means by which small states viewed as non-viable on their own, could also enjoy self-government.

C Conclusion

The continued secure retention of New Zealand citizenship has met expectations. It has probably delivered greater opportunities than originally envisaged with travel now easier and access to Australia available for New Zealanders. There was a hope that self-government might slow or halt migration. What its impact has been is unknown, and whether any other arrangements would have made a difference is unclear, but population decline through migration remains a problem for the Cook Islands and Niue Governments.

However the extension of New Zealand citizenship also has normative implications, and these emerge in the next two chapters on necessary economic and administrative assistance and external affairs and defence. Chapter 8 turns to the provision of assistance by New Zealand.

CHAPTER 8: “AID AND ASSISTANCE” AND “NECESSARY ECONOMIC AND ADMINISTRATIVE ASSISTANCE”

I INTRODUCTION

This chapter turns to the second of the three links of free association, integral to the decision by the Cook Islands and Niue to proceed with self-government: the promise of continued New Zealand financial and other assistance.⁴⁹⁷ New Zealand statements provided assurance to the Cook Islands and Niue. The assurance forms part of the constitutional arrangements with Niue.

At the same time all three Governments had varying degrees of hope that self-government would lead to greater economic self-sufficiency and a lessening of financial reliance on New Zealand. The United Nations saw decolonisation as enabling diversification of sources of support.

Scholars draw attention to the Cook Islands’ and Niue’s high standard of living, high per capita aid and the substantial portion of New Zealand’s official development assistance received.⁴⁹⁸ It can be assumed that this is a function of their constitutional relationships.⁴⁹⁹ A high standard of living and high per capita aid suggests that the arrangements have been effective in ensuring continued assistance, but the hope that self-government would lessen reliance on New Zealand has not been realised.

However there is an argument that New Zealand’s assistance does not fulfil the free association assurances, obligations of New Zealand and expectations of the Cook Islands and Niue. How to measure this is unclear, despite legal scholarship to clarify

⁴⁹⁷ Whether New Zealand assistance to Niue should be called and treated as “aid” is subject to debate. Use of the term here simply reflects that it is a charge to the official development assistance vote in the New Zealand budget.

⁴⁹⁸ John Overton, “Reshaping Development Aid: Implications for Political and Economic Relationships,” *Policy Quarterly* 5, no. 3 (2009); Glenn Banks, Warwick E. Murray, John Overton and Regina Scheyvens, “Padding on One Side of the Canoe?: The Changing Nature of New Zealand’s Development Assistance Programme,” NZADDs Working Paper, May 2011.

⁴⁹⁹ Jon Fraenkel, “Pacific Islands and New Zealand - New Zealand and the Pacific,” *Te Ara - the Encyclopedia of New Zealand*, accessed 18 January 2017, <http://www.TeAra.govt.nz/en/pacific-islands-and-new-zealand/page-1>; John Overton, Gerard Prinsen, Warwick E. Murray and Nicki Wrighton, “Reversing the Tide of Aid: Investigating Development Policy Sovereignty in the Pacific,” *Le Journal de la Société des Océanistes* 135, no. 2 (2012); John Overton and Warwick E. Murray, “Sovereignty for Sale? Coping with Marginality in the South Pacific – the Example of Niue,” *Hrvatski Geografski Glasnik* 76, no. 1 (2014).

matters. This suggests that the arrangements have not been successful in ensuring promised continued support, despite relatively high per capita aid.

Part II of this chapter explains the initial expectations of the respective Governments. Attention is drawn to the difference in Niue and the Cook Islands Government approach. Part III turns to quantitative measures of self-government “hopes.” It shows that the Cook Islands is significantly less reliant on New Zealand aid, while Niue, although more self-sufficient than at self-determination, is less independent of New Zealand support. Part IV explores qualitative measures of what the arrangements should deliver. It explains New Zealand policy changes since self-government and impact on assistance to the Cook Islands and Niue. Part V assesses this against legal interpretations and discusses Governments’ views. It concludes that delivery on the constitutional arrangements has fallen well short of the Niue Government’s expectations. The Cook Islands Government does not depict assistance as a part of free association. Responsibility for the Cook Islands and Niue does not match New Zealand’s hopes. Assistance has been influenced by New Zealand interests, policies and aid practices, rather than what might reasonably be seen as reflecting its constitutional obligation. In recent times, a constitutional obligation has been identified by New Zealand, but what this constitutes remains unarticulated.

II INITIAL EXPECTATIONS

Establishing what constitutes continuing to give “aid and assistance” and “necessary economic and administrative assistance” is very difficult. Assurances were provided, but respective Government expectations of the volume, nature, mode of delivery, and by what yardstick “necessary” could be measured were not discussed. It remains unclear whether its measure is determined by the nature of the inputs, or the outcomes achieved, and who makes the final call. A complication is that all concerned hoped that financial reliance on New Zealand would diminish.⁵⁰⁰ There have been periodic agreements or statements about the objectives of the aid component of each relationship, and regular negotiation of aid provided, as with other recipients of New

⁵⁰⁰ Depiction of a desire for greater economic autonomy as primarily driven by New Zealand and its aid ideology underplays the aspirations and efforts of the Cook Islands and Niue. See for example A. Quentin-Baxter, “Sustained Autonomy,” 4, and Bertram and Watters, *New Zealand and its Small Island Neighbours*.

Zealand official development assistance, but there is no agreed understanding about the principles guiding this beyond the brief reference in the 1973 Exchange of Letters between New Zealand and the Cook Islands discussed in chapter 6.

Scholars have expressed opinions on what was intended, and what should be delivered. The rights, and New Zealand's obligations, are seen as applying equally to the Cook Islands and Niue. However the Cook Islands and Niue embarked on self-government with different arrangements with respect to this provision, and have different relationships with New Zealand now in this respect. Scholarly views are similar to the Niue, rather than the Cook Islands, Government emphasis.

A The Cook Islands

As discussed in chapter 4, in 1962 the Cook Islands Legislative Assembly, in agreeing to the New Zealand proposal for self-government, "reaffirm[ed] its faith in New Zealand's willingness to continue giving aid and assistance to the Cook Islands."⁵⁰¹ Assurances were given by the New Zealand Government and Opposition that this would continue.

With prescience, the Cook Islands' constitutional advisers anticipated issues, and identified a need for goodwill and restraint, a well-informed process to discuss finances, Audit reports to reassure New Zealand of appropriate and prudent management, but, reflecting the new status of the Cook Islands, not extending to the New Zealand Government doubting the responsibility or political wisdom of the Cook Islands Government.⁵⁰² Chapter 3 set out the Cook Islands economic circumstances and degree of reliance on New Zealand. Retention of New Zealand support was in the Cook Islands' interests.

The amount required was unclear. Expert advice in 1966 predicted more, not less, would be needed to maintain living standards in the Cook Islands.⁵⁰³ The Cook Islands Government wanted to lift these living standards further.

⁵⁰¹ Rere, *Proceedings of the Legislative Assembly of the Cook Islands*, 1962, 120.

⁵⁰² Aikman, Davidson and Wright, "Report to the Members of the Legislative Assembly of the Cook Islands," 543-544.

⁵⁰³ Wilson, "Economic Plans, 1968," 304.

The 1962 Legislative Assembly resolution is taken as the condition under which the Cook Islands embarked on self-determination.⁵⁰⁴ However the Cook Islands Party 1965 election manifesto did not refer to assistance from New Zealand, other than pointing out (correctly) that the level of subsidy would give little room for manoeuvre.⁵⁰⁵ The Cook Islands Legislative Assembly resolution of 1965 requesting the Cook Islands Constitution be brought into force made no mention of aid and assistance.⁵⁰⁶

It can be claimed that the primary interest of associated states is in continuing economic assistance.⁵⁰⁷ However as the Cook Islands Commission of Political Review summed up in 1998: “For 33 years our catch-cries has [sic] been ‘self-reliance,’ ‘independence,’ ‘development from within,’ ‘be governed by Cook Islanders’.”⁵⁰⁸

B Niue

Niue had a constitutional guarantee of the continued responsibility of the Government of New Zealand to provide necessary economic and administrative assistance;⁵⁰⁹ understood to be a legal obligation of the New Zealand Government.⁵¹⁰ The Niue Government (and its constitutional adviser) explained this obligation as not just reflecting Niue’s need for New Zealand support, but also New Zealand’s responsibility for its citizens. At the same time (with the Cook Islands precedent in mind) there was consciousness of the need to work within the New Zealand political context and financial circumstances, and behave with financial prudence.⁵¹¹ The Niue Constitution Act said this aspect of the relationship should be given effect after consultation between Prime Minister and Premier and in accordance with the policies of their respective Governments.⁵¹²

The Niue Government sought to develop economic independence from New Zealand, and improve standards of living, but had more modest expectations of what could be achieved by itself.

⁵⁰⁴ A. Quentin-Baxter, “Pacific States and Territories,” paragraph 31.

⁵⁰⁵ Stone, “Self Rule in the Cook Islands,” appendix C, C3.

⁵⁰⁶ Henry, *Rise and Rise of the Cook Islands Party*, 115.

⁵⁰⁷ A. Quentin-Baxter, “Sustained Autonomy,” 4.

⁵⁰⁸ Commission of Political Review, *Reforming the Political System of the Cook Islands: Preparing for the Changes of the 21st Century* (Rarotonga: Office of the Prime Minister, 1998), 72.

⁵⁰⁹ Niue Constitution Act 1974, s 5.

⁵¹⁰ Ministry of Foreign Affairs, “Niue Attains Self-government,” 22.

⁵¹¹ Chapman, *Decolonisation of Niue*, 64-69.

⁵¹² Niue Constitution Act 1974, s 8.

Niue was very dependent on New Zealand assistance. Subsidies were significant – in 1976/1977 at least eighty-eight per cent of the budget. Agricultural exports were limited. In 1973 their value was only nineteen per cent of imports.⁵¹³ Nearly all paid employment was with the Government.⁵¹⁴ Air transport was restricted to a once a week Polynesian Airlines flight, from Tonga via Niue to Samoa.⁵¹⁵ Services and technical assistance were available from New Zealand government departments. Niue was regularly subject to devastating cyclones.⁵¹⁶

Thought had turned to what might constitute necessary economic and administrative support.⁵¹⁷ However, there was no agreement with New Zealand on what was necessary and how to measure it; namely what standard of living Niueans were entitled to, what was required to support this, and what New Zealand was prepared to provide. Guidance was provided in the Niue Constitution for the Niue Public Service. As discussed in chapter 5, terms and conditions of employment should take account of New Zealand opportunities and remuneration.⁵¹⁸ Comparability in living standards was seen as important in other areas too. Examples flagged by R. Q. Quentin-Baxter were modern air services, education standards approaching those of New Zealand, and electricity in homes.⁵¹⁹

That was where matters rested. Since self-government, the Niue Government has focussed on keeping New Zealand's undertakings and obligations before the New Zealand Government. Suggestions have been made of what this should constitute, and the gap between this and delivery remains a source of tension.

⁵¹³ Department of Maori and Island Affairs, "Reports on Niue and the Tokelau Islands," *AJHR*, 1974, Vol.3, E.14, 32-33.

⁵¹⁴ Ernest K. Fisk, *The Island of Niue: Development or Dependence for a Very Small Nation* (Canberra: Australian National University, 1978), 3.

⁵¹⁵ Department of Maori and Island Affairs, "Reports on Niue and the Tokelau Islands," *AJHR*, 1974, Vol.3, E.14, 18.

⁵¹⁶ Barker, "Hurricanes and Socio-economic Development on Niue Island."

⁵¹⁷ Discussed in Chapman, *Decolonisation of Niue*, 91-105.

⁵¹⁸ The Niue Constitution, s.69 (3) (b).

⁵¹⁹ R. Q. Quentin-Baxter, "Second Report to the Niue Island Assembly," 579.

C New Zealand

An argument for decolonisation was the New Zealand belief that social and economic development required devolution of responsibility to the people themselves.⁵²⁰ Beyond that no analysis appears to have been undertaken of any changed post-decolonisation requirements. As discussed in chapter 5, the New Zealand Treasury envisaged no change and advised assistance to the Cook Islands and Niue should be a first charge on official development assistance.⁵²¹

The Cook Islands and Niue received a substantial portion of New Zealand assistance. In 1962 New Zealand's annual aid expenditure was around £1.65 million per year. The focus was Asia, delivered through the Colombo Plan, which received around £1 million.⁵²² In 1962/1963 the newly independent Western Samoa was allocated education and other assistance of £167,000, but received no budgetary support.⁵²³ There was education and other training provided in New Zealand for the Pacific. The balance was directed outside the Pacific region.⁵²⁴

In contrast, in 1962/1963, the Cook Islands received grants alone of £736,900⁵²⁵ and Niue £272,000.⁵²⁶ Subsidies to the Cook Islands and Niue had roughly doubled over the five years prior to that.

Many New Zealand ministers "thought naively that the grant of autonomy would relieve New Zealand of financial responsibilities for the territory concerned."⁵²⁷ In handing over responsibility for the New Zealand grant to the Cook Islands Legislative Assembly and Niue Island Assembly in 1962, both were reminded by Minister Götz that New Zealand readiness to assist depended on the Cook Islands' and Niue's raising

⁵²⁰ Department of External Affairs, "The Cook Islands. Statement Made in the Committee of Twenty-Four," 33.

⁵²¹ Secretary to the Treasury to Minister of Finance, "Niue: Financial Assistance," 28 February 1973, reference ABHS 950 W4627/4165, record 296/4/1, part 7, Archives.

⁵²² R. H. Wade, "New Zealand's External Aid Programmes," in *New Zealand's External Relations*, ed. T. C. Larkin (Wellington: New Zealand Institute of Public Administration, 196), 89.

⁵²³ Department of Statistics, "New Zealand's International Activities: New Zealand and the South Pacific," in *New Zealand Official Yearbook 1963* (Wellington: Department of Statistics, 1963).

⁵²⁴ Wade, "External Aid Programmes," 89-90.

⁵²⁵ Department of Island Territories, "Reports on the Cook, Niue, and Tokelau Islands," *AJHR*, 1963, A3, 25.

⁵²⁶ Department of Island Territories, "Reports on the Cook, Niue, and Tokelau Islands," *AJHR*, 1963, A3, 78.

⁵²⁷ Aikman, "Recent Constitutional Changes."

revenue themselves.⁵²⁸ While the New Zealand Government stated that assistance would continue, there was a clear hope that the requirement for New Zealand subsidies might stabilise, or better still, diminish, as the local contribution grew.

III QUANTITATIVE MEASURES

To assess the decolonisation hopes, the chapter looks first at quantitative measures. Following a brief summary of the Cook Islands and Niue economies, this section explores the hope that a greater percentage of the Cook Islands and Niue budget revenue would be raised locally, the cost to New Zealand might decrease, and as expected by the United Nations, other avenues of support would open up. It challenges conclusions, based on quantitative measures, of New Zealand largesse, continued dependency of the Cook Islands, and that assistance is a function of the constitutional link.

A The Cook Islands Economy

Today the Cook Islands has one of the best performing economies in the Pacific. Its small open economy is based on a successful tourism industry which contributes around sixty per cent of gross domestic product (GDP). There were over 125,000 visitors in 2015.⁵²⁹ Other sources of income are financial services, marine resources and agriculture.⁵³⁰ Risks remain. There is a lack of diversity in the economy, difficulties of achieving economies of scale, vulnerability to economic change in New Zealand (as New Zealand is the major source of tourists, the major goods trade partner, and the Cook Islands uses the New Zealand dollar), and labour market constraints because of a shortage of labour and skills.⁵³¹ There is also the challenge of narrowing the gap in the standard of living and services provided between Rarotonga and the outer islands. GDP per capita is high by Pacific standards, even taking account of inconsistency in figures. In 2014 the Asian Development Bank said GDP per capita was NZ\$20,312, described as the highest in the region.⁵³² The World Bank figure for GDP per capita in 2014 was NZ\$18,085, using total population. Bertram has recalculated this using resident

⁵²⁸ Götz, *The Proceedings of the Legislative Assembly of the Cook Islands*, 1962, 103.

⁵²⁹ Kumar, Rashneel, "Record Year for Visitors," *Cook Islands News*, 22 January 2016.

⁵³⁰ Asian Development Bank, *Cook Islands Country Operations Business Plan 2016-2018 Strategic Analysis*, September 2015, 2.

⁵³¹ Minister of Finance, *Cook Islands Government: 2015/16 Half-year Economic and Fiscal Update*, December 2015.

⁵³² ADB, *Cook Islands Country Operations Business Plan 2016-2018 Strategic Analysis*, 1.

population; the Cook Islands total population is greatly increased by tourism. This arrived at NZ\$27,559 per capita.⁵³³

Bertram has also questioned the impending consideration of the Cook Islands' graduation to high income from upper middle income status, a World Bank classification based on gross national income (GNI) per capita. Interest in this stems from the fact that assistance to high income status is not reportable to the OECD Development Assistance Committee as aid. GNI figures are not available for the Cook Islands. Bertram argues that using GDP as a proxy is not appropriate because large outward flows of income from the Cook Islands mean GNI is significantly lower than GDP.⁵³⁴

The UNDP human development index is not developed for the Cook Islands, but the Cook Islands Government calculates it has an index of 0.78,⁵³⁵ putting it just below Palau, the highest ranked Pacific island rated.⁵³⁶

B Niue Economy

The most recent estimate of Niue's GDP per capita is NZ\$20,950 in 2014.⁵³⁷ (The same report gives undated GDP per capita for the Cook Islands as NZ\$19,357, puzzlingly described, given the Niue figure, as the highest in the region outside New Zealand and Australia.)

The Niue economy remains constrained by the small population, shortage of labour, limited and costly transport, poor quality land, cyclones and droughts. Long term success for various economic ventures over the years has been difficult to secure. The current focus is on tourism, which has doubled since 2009 to almost 10,000 visitors a year,⁵³⁸ and associated private sector development. Tourism is reliant on a reliable regular air service, something Niue has struggled to secure over the years. The

⁵³³ Geoff Bertram, *Implications of the Cook Islands' Graduation from Development Assistance Committee (DAC) Eligibility* (Wellington, December 2016), 4.

⁵³⁴ Bertram, *Implications of the Cook Islands' Graduation*, 9.

⁵³⁵ International Monetary Fund, *Cook Islands: Public Financial Management - Performance Report* (August 2015), 29.

⁵³⁶ United Nations Development Programme, *Overview: Human Development Report 2016* (New York: UNDP, 2016), 23.

⁵³⁷ Adam Smith International, *Evaluation of New Zealand's Aid Programme in the Cook Islands, Niue, Samoa and Tokelau* (December 2015), 9.

⁵³⁸ Claire Trevett, "Bill English Knows a Lot About Sheep but not Niuean Culture," *New Zealand Herald*, 15 June 2017.

announcement of a year round twice a week service to New Zealand was welcome.⁵³⁹ The public sector is the major employer, with, in 2011, around 430 employees⁵⁴⁰ of a labour force of 740.⁵⁴¹

C Percentage of Revenue from New Zealand

The hope that the Cook Islands and Niue would become less reliant on New Zealand has been achieved, although the Cook Islands has had more success than Niue.

New Zealand is the Cook Islands' major development partner. The Cook Islands receives core funding (conditional budget support) and other assistance. As explained in chapter 3, in 1964/1965 New Zealand provided at least three quarters of the Cook Islands budget revenue, plus a range of other services.

Of the Cook Islands' total operating revenue for 2015/16 (NZ\$146.5 million)⁵⁴² sixty-three per cent derived from taxation, twenty-two per cent from grants from other governments, and trading revenue, interest and dividends made up fifteen per cent.⁵⁴³ New Zealand provided NZ\$7.6 million in core funding (conditional budget support) as part of estimated total support of \$9.5 million.⁵⁴⁴ The Cook Islands estimate of donor contributions for 2016 to 2020 has New Zealand at thirty per cent.⁵⁴⁵

New Zealand is also Niue's major funding partner. Unlike the Cook Islands, Niue continues to receive budget support as an unconditional subsidy. New Zealand also provides sector support and project funding. A New Zealand Treasury analysis of the Niue budget for 1974/75 showed that recurrent expenditure was NZ\$1.74 million. New Zealand contributed budget support of NZ\$1.52 million and Niue raised NZ\$0.26 million. New Zealand aid (called capital revenue) was \$0.85 million.⁵⁴⁶ As with the Cook Islands, other services were provided beyond this.

⁵³⁹ Wright Communications, "More Flights to Niue," *Scoop*, 5 May 2017, accessed 27 July 2017, <http://business.scoop.co.nz/2017/05/05/more-flights-to-niue/>.

⁵⁴⁰ *Niue: Public Financial Management – Performance report*, August 2011, v.

⁵⁴¹ Department of Finance, Planning and Statistics, *Niue Census of Population and Households 2011*, 76.

⁵⁴² Minister of Finance, *Cook Islands Government: Budget Estimates 2016/17: Book 1*, June 2016, 21.

⁵⁴³ Minister of Finance, *Cook Islands Government: Budget Estimates 2016/17: Book 1*, June 2016, 17.

⁵⁴⁴ Minister of Finance, *Cook Islands Government: Budget Estimates 2016/17: Book 1*, June 2016, 160.

⁵⁴⁵ Minister of Finance, *Cook Islands Government: Budget Estimates 2016/17: Book 1*, June 2016, 161.

⁵⁴⁶ Secretary of Foreign Affairs to the Minister of Foreign Affairs, "Aid to Niue," 12 April 1978, file 118/13/107/12, part 7, MFAT.

In 2015/16, New Zealand budget assistance was \$7 million of recurrent operational revenue of \$24 million. In addition Niue received approximately the same amount from New Zealand for sector support and project support. New Zealand funds around a third of Niue's recurrent expenditure and around a half of Niue's total expenditure.⁵⁴⁷

D Decrease in the Amount Spent

There was also hope that the amount spent by New Zealand would decrease. Comparing like with like is difficult, but inflation adjusted, the amount provided to the Cook Islands has declined significantly, and less so to Niue.

The Cook Islands was allocated subsidies in 1965/66 of £810,000. This is equivalent to around NZ\$31 million in 2017, significantly more than bilateral funding of \$NZ13.4 million allocated by New Zealand in 2015/16.⁵⁴⁸

Using the Treasury figures above, in 1975/76 Niue received NZ\$2.4 million in bilateral aid. That is equivalent to approximately NZ\$22.5 million in 2017, more than the NZ\$12.9 million bilateral allocation in 2015/16.⁵⁴⁹

E Diversification of Aid

The United Nations expected self-government to lead to diversification of aid donors. This has occurred. There are twenty-six donors listed in the 2016/17 Cook Islands budget.⁵⁵⁰ Major lenders to the Cook Islands are the Asian Development Bank, China and France.⁵⁵¹

Niue has had occasional assistance from others,⁵⁵² but has been unable to join the Asian Development Bank. Niue has no loans. Perceptions of the relationship with New Zealand have limited sources of funding and meant greater reliance on New Zealand.

⁵⁴⁷ Financial Secretary, e-mail message to author, 14 June 2017, clarifying Appropriation (Annual) Act 2016. For earlier figures see, *Niue: Public Financial Management – Performance report*, August 2011, 5.

⁵⁴⁸ Ministry of Foreign Affairs and Trade, "Aid Partnership with Cook Islands," accessed 26 July 2017, <https://www.mfat.govt.nz/en/aid-and-development/our-work-in-the-pacific/cook-islands/>.

⁵⁴⁹ Ministry of Foreign Affairs and Trade, "Aid Partnership with Niue," accessed 29 September 2017, <https://www.mfat.govt.nz/en/aid-and-development/our-work-in-the-pacific/aid-partnership-with-niue/>.

⁵⁵⁰ Cook Islands Government *Budget Estimates 2016-2017 Book 1*, 16.14 Schedule 10, 200.

⁵⁵¹ Cook Islands Government *Budget Estimates 2016-2017 Book 1*, 10.3 Gross Debt By Lenders, 119.

⁵⁵² Talagi, 2014/2105 Budget Statement," 8.

F Other Measures

The following graph draws on OECD Development Assistance Committee data.⁵⁵³ It can be seen that assistance to the Cook Islands and Niue is a small portion of New Zealand aid expenditure overall, and of New Zealand aid to the Pacific.⁵⁵⁴ Despite this, perceptions of New Zealand largesse, dependency and a link between aid volumes and constitutional status persist. These perceptions are supported by drawing attention to the percentage of New Zealand assistance directed to the Cook Islands and Niue, aid per capita, and aid dependency measures.

⁵⁵³ This data captures a range of transfers reportable by New Zealand as official development assistance, not just annual funding allocated to countries and organisations.

⁵⁵⁴ Explanation of the abnormal increase in expenditure to the Cook Islands in 1986 is unknown, but may represent transfer of Rarotonga Airport to the Cook Islands.

Source OECD/DAC at <https://stats.oecd.org/qwids/>. Graph design: Andrew McDonald

1 *Percentage of New Zealand aid*

The percentage of New Zealand aid going to the Cook Islands and Niue might be seen as demonstrating a link between aid and constitutional status. For a long period bilateral assistance to the Cook Islands and Niue was significant - around thirty per cent of New Zealand Pacific aid. Overton calls it colonial patterns of aid.⁵⁵⁵ This is more accurate, reflecting the importance of the starting point.

However that changed from 1997/98, following the Cook Islands economic crisis, and has changed more since. In the 2015/16 to 2017/18 New Zealand indicative programme allocations the Cook Islands is allocated five per cent of Pacific aid, and Niue four per cent.⁵⁵⁶

2 *Aid per capita*

Cited in support of a possible causal link is aid per capita. For example, Overton and his co-authors suggest with respect to high per capita aid to the French territory of Wallis and Futuna, New Zealand's non-self-governing territory of Tokelau, and Niue, and citing work by Bertram, that "they are favoured because they are *not* independent sovereign states but rather, variously constituted dependencies and semi-independent states whose close relationships to the metropolitan patron secures them very high levels of support together with a very high level of dependence on a single donor."⁵⁵⁷

This disregards that in general, small countries receive more development assistance per capita.⁵⁵⁸ Hence the Pacific region receives comparatively high per capita aid.⁵⁵⁹ Among the Pacific states discussed by Overton, a roughly inverse relationship can be seen between per capita aid and population size.⁵⁶⁰

The Cook Islands and Niue are two of the least populated states. Niue indeed has high per capita assistance. Overton's own figures show the Cook Islands per capita aid sits in the middle of independent, associated and non-self-governing Pacific island states

⁵⁵⁵ Overton, "Reshaping Development Aid," 4.

⁵⁵⁶ Ministry of Foreign Affairs and Trade, "Our Planned Aid Expenditure," accessed 8 May 2017, <https://www.mfat.govt.nz/en/aid-and-development/our-approach-to-aid/where-our-funding-goes/our-planned-aid-expenditure/>.

⁵⁵⁷ Overton et al., "Reversing the Tide of Aid," 232-233.

⁵⁵⁸ Bruce Knapman, "Aid and Dependent Development of Pacific Island States," *The Journal of Pacific History* 21, no. 3 (1986): 139-140.

⁵⁵⁹ United Nations Development Programme, *Towards Human Resilience: Sustaining MDG Progress in an Age of Economic Uncertainty* (New York: UNDP, 2011): 158.

⁵⁶⁰ Overton et al., "Reversing the Tide of Aid," 233.

and territories cited. Independent states with similar populations, Tuvalu and Nauru, receive around three and five times as much per capita respectively.⁵⁶¹

3 Aid dependency

Aid dependency is commonly determined by the ratio of official development assistance to GDP.

A 2013 comparison of aid dependency of thirteen Pacific states (not including Niue) showed the Cook Islands in twelfth place, above only Fiji. With net official flows of 5.30 per cent of GDP, the Cook Islands was a fraction of the top ranked Tuvalu at 69.65 per cent, and well below the other associated states listed: the Marshall Islands at 49.12 per cent, Federated States of Micronesia at 45.45 per cent and Palau at 15.45 per cent.⁵⁶² Niue is in a different situation. According to a 2015 report, Niue's official development assistance to GDP ratio is around eighty per cent.⁵⁶³

The next section turns to qualitative measures. While statistics show the circumstances of the Cook Islands and Niue differ, and perceptions of largesse and continued dependency are overstated, the question remains of whether Governments' initial expectations have been met.

IV QUALITATIVE MEASURES: POLICY AND PRACTICE

A Introduction

Challenges facing Pacific island states are well known: small size, isolation, limited natural and human resources, narrowly based economies and vulnerability to exogenous shocks, natural disasters and climate change.⁵⁶⁴ Free association, including continued assistance, was designed to address these constraints: "reconciling the geography of the South Pacific with the historical movement towards self-determination."⁵⁶⁵

⁵⁶¹ Overton et al., "Reversing the Tide of Aid," 233.

⁵⁶² Asian Development Bank, *Key Indicators for Asia and the Pacific 2015* (Manila: Asian Development Bank, 2015), 277.

⁵⁶³ Adam Smith International, *Evaluation of the Niue Country Programme* (December 2015), 12.

⁵⁶⁴ The World Bank, "The World Bank in Pacific Islands: Overview," updated 10 April 2017, accessed 1 May 2017, <http://www.worldbank.org/en/country/pacificislands/overview>.

⁵⁶⁵ Department of External Affairs, "Self-government for the Cook Islands – II," 4-5.

New Zealand's assistance has been described as "generous,"⁵⁶⁶ while others have noted that when budget support is inflation adjusted, this is less so.⁵⁶⁷ However volume itself is not seen as fulfilling the New Zealand undertakings. Instead there is a strong view that New Zealand's policies and delivery have fallen short.

In interpreting what represents fulfilment of the constitutional undertakings, legal scholars Alison Quentin-Baxter and Angelo have explored the issue. Bertram and Watters have commented from an economic perspective. The conclusion is that the continuing provision of economic and administrative support is an obligation on New Zealand, constitutional in the case of Niue and moral or political in the case of the Cook Islands,⁵⁶⁸ and a right of both the Cook Islands and Niue.⁵⁶⁹ It is not discretionary. "Continuing" means so long as people live in the self-governing state and it is in free association with New Zealand.⁵⁷⁰ This is represented by continuation of the self-determination status quo; budget grants under the control of the Cook Islands and Niue, and availability of New Zealand expertise.⁵⁷¹ The amount needs to be sufficient to maintain government functions⁵⁷² and living standards comparable with New Zealand.⁵⁷³ Scholars have argued that it is inappropriate to describe this as "aid"⁵⁷⁴ and providing assistance as aid has led to policies and practices that undermine the nature of the undertakings.⁵⁷⁵ While subsidies imply an open-ended commitment to maintain or sustain an activity, development aid by contrast is voluntary and designed to be finite and self-limiting, resulting in self-sustaining change.⁵⁷⁶ The Governments concerned should consult on issues that might arise, and there is an obligation to assist even if agreement is not reached.⁵⁷⁷ The Cook

⁵⁶⁶ A. Quentin-Baxter, "New Zealand Model of Free Association," 618.

⁵⁶⁷ Bertram and Watters, *New Zealand and its Small Island Neighbours*, 172.

⁵⁶⁸ Angelo and Perham, "Report of the Foreign Affairs, Defence and Trade Committee," 188-189.

⁵⁶⁹ A. Quentin-Baxter, "Sustained Autonomy," 4.

⁵⁷⁰ A. Quentin-Baxter, "Niue's Relationship of Free Association," 598.

⁵⁷¹ A. Quentin-Baxter, "New Zealand Model of Free Association," 620-624; A. Quentin-Baxter "Pacific States and Territories," paragraph 31; and the slightly less prescriptive Angelo, "Niue Constitution," 165.

⁵⁷² Angelo, "Niue Constitution," 164.

⁵⁷³ A. Quentin-Baxter, "New Zealand Model of Free Association," 619.

⁵⁷⁴ Angelo and Perham, "Report of the Foreign Affairs, Defence and Trade Committee," 188.

⁵⁷⁵ A. Quentin-Baxter, "Niue's Relationship of Free Association," 592; A. Quentin-Baxter, "Pacific States and Territories," paragraph 31.

⁵⁷⁶ Bertram and Watters, *New Zealand and its Small Island Neighbours*, 55.

⁵⁷⁷ A. Quentin-Baxter, "Niue's Relationship of Free Association," 596-597.

Islands and Niue should meet undertakings, account for expenditure and not misuse funds.⁵⁷⁸

To test whether these expectations have been met we explore the history of New Zealand assistance. The following graph sets out New Zealand official development assistance to the Cook Islands and Niue. The 1986 figure for the Cook Islands is unexplained, but may represent transfer of Rarotonga airport to Cook Islands ownership.

⁵⁷⁸ A. Quentin-Baxter, "The New Zealand Model of Free Association," 621-622.

Source OECD/DAC at <https://stats.oecd.org/qwids/>. Graph design: Andrew McDonald

Turning to the historic pattern, incoming New Zealand Governments have made early contact with the Cook Islands and Niue, followed by thinking anew about how New Zealand should approach the volume and nature of assistance to each.⁵⁷⁹ Six periods mark these changes.

B 1965 to 1974: Impact of Self-government and New Zealand Seeking to Hold Costs

New Zealand's contemporary aid engagement in the Pacific region began in the 1960s. In 1962, it was argued that New Zealand had paid little attention to development needs of the region and had a "responsibility for leadership."⁵⁸⁰ The British thought it made sense for New Zealand and Australia to pick up its commitments as decolonisation progressed; indeed they should be encouraged to do so.⁵⁸¹ New Zealand's interests, resources, and relationships, began to expand beyond New Zealand's former (and current) trust and non-self-governing territories to newly independent Pacific states. Regional institutions and regional programmes also required funding.

In 1973 New Zealand joined the OECD Development Assistance Committee and began to report expenditure. This introduced the fit of New Zealand assistance to the Cook Islands and Niue to international development assistance guidelines.⁵⁸² In 1973 the Government announced it would seek to reach the OECD target of a 0.7 per cent ratio of official development assistance to gross national product (GNP), over the next three years.⁵⁸³

By 1975/1976 New Zealand's official development assistance reached NZ\$59.7 million, 0.57 per cent of GNP. Economic circumstances meant this subsequently declined. Of the 1975/1976 figure, NZ\$21 million went to eleven Pacific countries

⁵⁷⁹ Cook Islands and Niue interviewees drew attention to the impact of change in New Zealand personnel handling the relationship; a matter not explored in this thesis.

⁵⁸⁰ Wade, "External Aid Programmes," 88.

⁵⁸¹ W. David McIntyre, *Winding Up the British Empire in the Pacific Islands* (Oxford: Oxford University Press, 2014), 179.

⁵⁸² Ministry of Foreign Affairs, "The Distribution of Foreign Aid: Comments made by the New Zealand Representative, Mr. D. K. McDowell, in the OECD Development Assistance Committee on the Agenda Item Relating to Geographical Allocations – 23 October 1974," *New Zealand Foreign Affairs Review* (December 1974): 17-19.

⁵⁸³ Department of Statistics, "Chapter 2 Section 2: History, Government, and International Relations: New Zealand's International Relations: New Zealand Aid," in *New Zealand Official Yearbook 1975* (Wellington: Department of Statistics, 1975).

and regional programmes. The Cook Islands received NZ\$7 million and Niue NZ\$2.6 million.⁵⁸⁴

1 *The Cook Islands*

Scholars have emphasised the self-determination status quo as establishing expectations of continued economic and administrative assistance. This section sets out what was in place and what impact this had.

Under the system established in 1962, the Cook Islands and Niue each received an ordinary grant, primarily for salaries and wages, and a capital grant, both appropriated by the respective Assembly. Grants were set three yearly, aiding forward planning. Supplementary funds were provided for wage increases approved by the New Zealand State Services Commission, and added to the following year's baseline. Extra funding could be provided for disasters or an especially large project. The Cook Islands achieved self-government in the second triennium (1965/66 – 1967/68), and the system ended with the fourth triennium (1971/72 – 1973/74). The provision of budgetary support grants was unique to the Cook Islands and Niue. In 1965/66, the Cook Islands was allocated subsidies of £810,000.⁵⁸⁵

It was recognised that self-government meant spending priorities were developed by the Cook Islands, not New Zealand.⁵⁸⁶ New Zealand felt a need to justify its interest in continued close examination of the Cook Islands' expenditure proposals.⁵⁸⁷ This interest was seen by Premier Albert Henry as inconsistent with the Cook Islands' status and making him answerable to Wellington for his own spending decisions. Concerns began to develop about the Cook Islands' financial management.

Scholars have pointed to the transfer of responsibility for the relationship with the Cook Islands and Niue to Foreign Affairs, New Zealand treating the Cook Islands and Niue as if they were independent, and application of aid principles from 1974, as marking the point of New Zealand "unilateral abrogation of ... assurances ... that the relationship ...

⁵⁸⁴ Department of Statistics, "Chapter 4 Section 2: History, Government, and International Relations: New Zealand's Aid and other Resource Flows to Developing Countries: Bilateral ODA 1975-76," in *New Zealand Official Yearbook 1977* (Wellington: Department of Statistics, 1977).

⁵⁸⁵ "Report of the Controller and Auditor-General," *AJHR*, 1966, Vol. 1, B.1 [Pt II], 64.

⁵⁸⁶ "Report of the Department of Island Territories," *AJHR*, 1967, Vol.1, A.5, 6.

⁵⁸⁷ J. R. Marshall, "Draft Speech Notes: Address Eleventh Session of the Cook Islands Legislative Assembly, 1967," reference ABHS 6978 W4637/4, record M85/1/19, part 9, Archives.

was to remain special in clearly-defined ways.”⁵⁸⁸ This underplays two key points predating the transfer, the Cook Islands leadership’s view of the relationship, and New Zealand’s desire to reduce funding.

Growth in New Zealand expenditure on the Cook Islands that occurred following self-government would suggest security and continuity of support. That was not the New Zealand policy intent. New Zealand took steps designed to contain funding, encourage a greater local contribution, and have a greater portion of resources spent on economic development. Most significant was the decision not to fund New Zealand State Services Commission approved public sector salary increases effective after self-government. This had a major impact on the Cook Islands’ finances, although it later received partial compensation. Annual allocations from 1968 were set at the same level for the three years (NZ\$2,000,000 per year) on the grounds that increasing grants did not encourage the Cook Islands to make economies and increase local revenue.⁵⁸⁹ By 1972 there was already reference to subsidies eventually ending.⁵⁹⁰

On the other hand, New Zealand did respond to the Cook Islands’ requests. There were substantial grants, loans and advances additional to annual allocations to weather financial crises, pay debts to New Zealand, take on additional costs, and for special projects to support greater economic independence. A significant project was the building of the international airport on Rarotonga, albeit also in New Zealand’s interests.⁵⁹¹ In 1971, following three years of supplying additional grants and loans (NZ\$50,000 in 1968/69, NZ\$259,000 in 1969/70, and NZ\$375,000 in 1970/71),⁵⁹² and with the Cook Islands cutting its financial year by three months but planning to spend its full twelve month grant, a former New Zealand Auditor-General was tasked to discover why and what the Cook Islands owed.

He confirmed that the Cook Islands Government had insufficient resources to meet its commitments, had depleted its reserves and was in debt to various New Zealand

⁵⁸⁸ Bertram and Watters, *New Zealand and Its Small Island Neighbours*, 53.

⁵⁸⁹ R. A. Law and C. C. Kilpatrick, *Report on Financial Aid to Cook Islands for 1971 –1974* (Wellington, September 1970), 4.

⁵⁹⁰ “First Report of the Controller and Auditor-General,” *AJHR*, 1972, Vol.1, B.1 [Pt. II], 37.

⁵⁹¹ Stone, “Self Rule in the Cook Islands,” 335- 342.

⁵⁹² Law and Kilpatrick, *Financial Aid to Cook Islands*, 1-2.

Government agencies.⁵⁹³ Problems had arisen because of insufficient account of inflation, additional costs related to airport construction, and impact on the local economy (a temporarily increased tax take, but diversion of employment led to decline in citrus production), deficiencies in local financial control and the cost of expatriate salary increases and superannuation subsidies. Substantial additional grants and loans continued to be provided. In 1971/72 the allocation of NZ\$2,300,000 was supplemented by a further NZ\$942,000,⁵⁹⁴ in 1972/73 additional funding was NZ\$1,739,000,⁵⁹⁵ and in 1973/74, NZ\$1,219,000.⁵⁹⁶ However conditionality also increased and controls were introduced.⁵⁹⁷

Whether the pattern of support was a result of underfunding by New Zealand, or over expenditure by the Cook Islands, whether it reflected the pragmatism of the relationship or the failure of planning and foresight, resolution was achieved. The focus was on establishing the Cook Islands' needs, preferably independently verified.

On the other hand, New Zealand trust diminished as accountability for funds became an issue. By the time the Cook Islands 1974/75 budget was considered, New Zealand concerns of the 1960s about the adequacy of funding were long gone. Nor was there any reference to New Zealand's responsibility for the Cook Islands' material needs. New Zealand parliamentarians expressed dismay at the cost of the Cook Islands, the Cook Islands' financial management, the sufficiency of New Zealand control of aid funds and the accountability to New Zealand taxpayers.⁵⁹⁸

As for Premier Albert Henry's success in securing additional funding, his Cook Islands critics saw his performance as representing a failure to reduce the Cook Islands' dependency, despite his rhetoric.⁵⁹⁹

⁵⁹³ "Report of the Maori and Island Affairs Department and Maori Trust Office and the Board of Maori Affairs" *AJHR*, 1972, Vol.2, G 9, 19.

⁵⁹⁴ "First Report of the Controller and Auditor-General," *AJHR*, 1972, Vol.1, B.1 [Pt. II], 35.

⁵⁹⁵ "First Report of the Controller and Auditor-General," *AJHR*, 1973, Vol.1, B.1 [Pt. II], 43.

⁵⁹⁶ "First Report of the Controller and Auditor-General," *AJHR* 1974, Vol.1, B.1 [Pt. II], 41.

⁵⁹⁷ Stone, "Self Rule in the Cook Islands," 350.

⁵⁹⁸ *NZPD*, 1974, Vol. 394, 4596-4603.

⁵⁹⁹ Ron Crocombe, "Forces Shaping the Arena," and Mana Strickland, "Self-government and the New Colonialism," in *Cook Islands Politics*, ed. Ron Crocombe.

2 Niue

New Zealand hopes of reduced subsidies also applied to the non-self-governing Niue. From the 1968 triennium, allocations were flat lined (at NZ\$900,000).⁶⁰⁰ In the triennium from 1971/72 approved aid was reduced through the period (from \$1,140,000 to \$1,097,000).⁶⁰¹ However significantly, unlike the Cook Islands, Niue continued to receive adjustments for salary and wage increases. There were also grants for modest additional projects.

C 1975 to 1984: Introduction of New Zealand Aid Policies and Practices

The combination of oil shocks and Britain's entry into the European Economic Community in 1973 pushed the New Zealand economy into recession, and inflation soared. From its peak in 1975/1976, New Zealand official development assistance declined sharply in the second half of the 1970s, and continued to decline in real terms to the mid-1980s.⁶⁰² Reflecting its priority, aid to the Pacific grew from forty-four per cent of bilateral aid in 1975, to eighty-four per cent in 1984,⁶⁰³ and remained relatively constant in real terms.

By 1984/1985 New Zealand's official development assistance was NZ\$85.6 million. NZ\$51.3 million was for eleven Pacific countries and regional programmes. The Cook Islands was the major recipient with NZ\$12.5 million followed by Western Samoa (NZ\$6.3 million), Fiji (NZ\$6.2 million) and Niue (NZ\$6.1 million).⁶⁰⁴

When in 1975 the Ministry of Foreign Affairs took over responsibility for New Zealand's relationship with the Cook Islands and Niue (and Tokelau),⁶⁰⁵ this was welcomed by Premier Henry, but viewed more cautiously by Premier Rex. Writing to New Zealand Prime Minister Rowling, Rex listed services he expected would continue to be provided: "acting as Niue's agent for practically everything associated with Niue Government activities and pursuits" including shipping, stores, purchasing, banking,

⁶⁰⁰ "Reports on Niue and the Tokelau Islands," Department of Maori and Island Affairs, *AJHR*, 1968, Vol. 1, A.3, 16.

⁶⁰¹ "Reports on Niue and the Tokelau Islands," Maori and Island Affairs Department, *AJHR*, 1972, Vol. 1, A.3, 19.

⁶⁰² P. M. Caughley, *Ministerial Review of the New Zealand Official Development Assistance Programme*, May 1986, 2.

⁶⁰³ Caughley, *New Zealand Official Development Assistance Programme*, 37.

⁶⁰⁴ Department of Statistics, "Chapter 4.4: International Relations and Defence: 4.1 Assistance to Developing Countries: Bilateral ODA in 1984-85," in *New Zealand Official Yearbook 1986/1987* (Wellington: Department of Statistics, 1987).

⁶⁰⁵ "Report of the Ministry of Foreign Affairs," *AJHR*, 1975, Vol.1, A.1, 14.

financial and technical advice, training and education of Niuean students and career trainees, the drafting of legislation, matters relating to civil aviation and “a host of other things.”⁶⁰⁶

The transfer meant a New Zealand hope of reduced cost and greater self-sufficiency was now accompanied by a changed attitude to budget subsidies, and a strong belief that other forms of assistance, also allowing greater oversight, were better designed to improve economic performance.

1 *The Cook Islands*

In 1975 Premier Henry reluctantly agreed to progressive reduction in the percentage of budget support in the Cook Islands’ Government expenditure, formalised in an exchange of letters with the New Zealand Prime Minister.⁶⁰⁷ Between 1976/77 and 1979/80 New Zealand budget support reduced from forty-eight per cent of government expenditure to twenty-eight per cent.⁶⁰⁸

Concerns about Henry’s probity intensified. His premiership ended in 1978 when his party lost power in a court case related to the use of public funds to fly in overseas voters. He was succeeded by Premier Tom Davis.

In 1980/81 budget support rose to forty-two per cent of the Cook Islands Government expenditure with a series of ad-hoc grants to cover increased oil prices. In 1981, Davis sought a halt to cuts in budget support as the Cook Islands GDP was declining and inflation was high. Given the economic circumstances, New Zealand agreed to increase the percentage of budget support in the aid programme and inflation adjust this, while not foregoing the principle.⁶⁰⁹ By 1983/84 this represented thirty-nine per cent of expenditure.

Bertram and Watters are critical of the change in 1975 and impact on budget support. Leaving aside questions of principle and sufficiency, their own data suggests the efficacy of the Cook Islands representations. While budget support did decline in real

⁶⁰⁶ Cable 34 from Niue to Wellington 17 December 1974, reference ACGA 8280 IT1W2439/53, record 85/1/37, part 11, Archives.

⁶⁰⁷ Ministry of Foreign Affairs, “Budget Support,” March 1986, file 118/31/104/1, part 24, Ministry of Foreign Affairs and Trade, Wellington (MFAT).

⁶⁰⁸ Richard Rawnsley to Dr. T. Loomis, “Cook Islands Research Project,” 18 October 1985, file 118/13/104/1, part 23, MFAT.

⁶⁰⁹ Ministry of Foreign Affairs, “Budget Support,” March 1986, file 118/31/104/1, part 24, MFAT.

terms to 1980, the amount in real terms was slightly greater in 1983/84 than in 1974/75.⁶¹⁰

2 Niue

The Niue Government saw itself as better prepared for self-government than the Cook Islands. Then Niue experienced the triple impact of financial adjustment to self-government, new personnel handling the relationship, and introduction of aid policies and systems.

Aid policies and procedures were applied from 1976/77. At this point New Zealand was meeting around eighty-eight per cent of Niue's budget. The Niue Government was not required to reduce budget support. However control of capital grants was transferred to Foreign Affairs, despite Niue Government concern at the reduction of the role of the Niue Assembly and impact on cash flow. New Zealand considered that "budget support ... should be contained so that it did not become unacceptably large in contrast to the assistance received by other aid partners, and in order to allow the maximum amount possible to be spent on development."⁶¹¹ Problems soon arose.

In 1976/77 the initial aid allocation (\$2.6 million) was around two thirds what the Niue Government had budgeted for. Salary and wage increases were limited to two and a half per cent although inflation was between twelve and fifteen per cent. Premier Rex expressed concern at the migration risk posed by a growing disparity between Niue and New Zealand conditions. Working capital was short. A supplementary grant of NZ\$196,000 was paid although New Zealand made clear it did not support this in principle.

The 1977 New Zealand aid mission proposed that the proportion of assistance going to budget support should begin to decline by 1980. The Niue Government disagreed and the matter was deferred. Niue was allocated NZ\$2.8 million for 1977/78.

In March 1978 Premier Rex drew the New Zealand Government's attention to Niue's financial difficulties. The 1978 New Zealand aid mission confirmed local revenue had increased but high inflation meant real income had declined. Financial systems,

⁶¹⁰ Bertram and Watters, *New Zealand and Its Small Island Neighbours*, 173.

⁶¹¹ Ministry of Foreign Affairs, "Aid to Niue: Background Paper," 12 July 1983, file 118/13/107/1A, part 2, MFAT.

inherited from the New Zealand administration, were inadequate to monitor expenditure and take account of inflation. Payment of budget support monthly rather than in one grant, project inputs provided as goods and services, and the discontinuation of supplementary grants, had led to a liquidity problem. Niue was around NZ\$900,000 in debt, and had resorted to moving funds between accounts, and drawing on Post Office funds due to be remitted to New Zealand. The Niue Government was concerned that further tightening risked out-migration. The report was clear that no blame attached to the Niue authorities, and the Premier was anxious that Niue not attract the same adverse comment as the Cook Islands.⁶¹² Niue was allocated NZ\$3 million for 1978/79, and it was proposed the debt be converted to a loan.

The mission noted the limited scope for Niue to overcome its problems. It was heavily dependent on imports. The Government employed ninety per cent of the workforce and the availability of jobs and salary levels were relevant to migration. Locally raised revenue could only have limited effect.

Little was done and in early 1979 Premier Rex formally advised the New Zealand Government that it was not meeting its obligations with respect to provision of necessary economic and administrative assistance. Consistent with Niue's understanding of the arrangements discussed in chapter 5, Premier Rex argued Niue's expectation of substantial economic help from New Zealand was not because it was a developing country, but because "it is a developing country where New Zealand citizens live."⁶¹³ He said for its part, Niue had acted responsibly and considered it could be trusted. Niue should not be treated on the same basis as other aid recipients, longer term assurances of assistance were required, needs were likely to increase, and Niue should have first call on the aid programme. With inflation in Niue now calculated as running at fifteen to twenty per cent, Niue would like the real value of funding preserved.

New Zealand's response was to propose increased dialogue. NZ\$1.2 million was provided in 1978/79 to meet the debt and for working capital. It was explained that

⁶¹² J. V. Scott to Minister of Foreign Affairs, "Aid to Niue," 12 April 1978, reference ABHS 950 W4627/1056, record 31/20/2, part 1, Archives.

⁶¹³ M. J. C. Templeton to Minister of Foreign Affairs, "Statement by Premier Rex," 21 February 1979, reference ABHS 950 W4627/1651, record 59/296/3, part 1, Archives.

New Zealand too was going through difficult times.⁶¹⁴ Niue was allocated NZ\$3.19 million for 1979/80.

The Niue Government produced a five year development plan for 1980 to 1985, along with a funding formula. New Zealand only agreed to meet the first two years' funding requirements; NZ\$3.28 million in 1980/81 and NZ\$3.38 million in 1981/82, consistent with already anticipated expenditure.⁶¹⁵ Following years would be considered annually.

In 1981 the New Zealand aid mission found Niue likely to face a deficit of NZ\$1.9 million by the end of 1981/82. Niue had tried to live within its resources. This was a result of overoptimistic revenue predictions and underestimated inflation.

This stimulated New Zealand reflection on the wider issues. Ministers were told Niue should not be expected to sustain its current standard of living itself, adequate provision had to be made for inflation, and Niue would need substantially more than estimated in the next three years. New Zealand interests were invoked. It was presumed that New Zealand for "political, social and strategic reasons (and of course its constitutional obligation), does not wish the economy of Niue to decline significantly."⁶¹⁶

Ministers remained reluctant to commit more than yearly. An overdraft with the Reserve Bank was arranged so Niue could pay its bills, and a grant of \$1.5 million was later made to cover this.

In 1982/83 Niue was allocated NZ\$4.69 million, and the aid mission noted that by the end of the year Niue could again be NZ\$1 million in debt.

Clearly the change to aid policies and practices had a substantial impact on Niue, problems emerged early, resources were insufficient for Niue's needs, and New Zealand was reluctant to commit to longer term assurances or funding formula. Nevertheless, albeit minimal, assistance was provided and action taken to keep Niue afloat.

⁶¹⁴ "Notes of Discussion between the Honourable R. R. Rex, Premier of Niue and Mr Talboys on 23 February 1979," reference ABHS 950 W4627/1651, record 59/296/3, part 1, Archives.

⁶¹⁵ Secretary of Foreign Affairs to Minister of Foreign Affairs, "Bilateral Aid: Niue: Visit of Premier," 4 September 1979, reference ABHS 950 W4627/1651, record 59/296/3, part 1, Archives.

⁶¹⁶ E. R. Woods to Minister of Foreign Affairs, "Report on Aid Visit to Niue," 21 October 1981, file 118/13/107/12A part 1, MFAT.

D 1984 to 1990: The Impact of Economic Reforms in New Zealand

Faced by New Zealand's worsening economic problems, the Labour Government elected in mid-1984 introduced a programme of radical economic change, deregulating the New Zealand economy and cutting the public sector. The New Zealand economy went into recession and did not recover until 1992.

New Zealand's economic approach and financial circumstances were reflected in views of aid, in particular the risk of constraining development by resources being drawn to the government rather than private sector.⁶¹⁷ Funding was tight. The Pacific remained a priority but New Zealand aid to the region declined in real terms from 1986/87. Introduction of commercial rates for government services, such as airport calibration and meteorological assistance, had an impact on Pacific access to New Zealand public sector expertise previously provided at low or no cost.⁶¹⁸

In 1985/1986, the Cook Islands and Niue had been allocated thirty-five per cent of Pacific aid.⁶¹⁹ By 1990/1991, New Zealand's total aid was NZ\$149 million. Aid to the Pacific was NZ\$74 million. The Cook Islands allocation was NZ\$14 million and Niue's NZ\$10 million; together thirty-two per cent of Pacific aid.⁶²⁰

1 The Cook Islands

This period was marked by the first major test of how two governments in free association would deal with divergent views on a major component of New Zealand assistance. With the Cook Islands economy improving, New Zealand returned to the reduction of budget support, at this point around thirty-five per cent of the Cook Islands Government expenditure.⁶²¹ In 1986 New Zealand Prime Minister David Lange told the Cook Islands Prime Minister Davis, that what he described as New Zealand's disproportionate support for the Cook Islands was a political problem, and budget

⁶¹⁷ Ministry of External Affairs, "Value of Aid Underestimated: Article by Fran Wilde, Associate Minister of External Relations and Trade," *New Zealand External Relations Review* 39, no. 4 (1989), 9-12.

⁶¹⁸ "Ministry of Foreign Affairs Report," *AJHR*, 1986/87, Vol.1, A.1, 41.

⁶¹⁹ Department of Statistics, "Chapter 4: International Relations and Defence, 4.1 Relations with Other Countries: Assistance to Developing Countries: Bilateral Assistance in 1985-86," in *New Zealand Official Yearbook 1987/88* (Wellington: Department of Statistics, 1988).

⁶²⁰ Department of Statistics, "Chapter 3: International Relations and Defence, 3.1 Relations with Other Countries: Assistance to Developing Countries," in *New Zealand Official Yearbook 1992* (Wellington: Department of Statistics, 1992).

⁶²¹ Richard Rawnsley to Dr. T. Loomis, "Cook Islands Research Project," 18 October 1985, file 118/13/104/1, part 23, MFAT.

support was an unhealthy handout.⁶²² Budget support was capped at NZ\$10 million for 1986/87 and Prime Minister Davis was subsequently consulted on, but did not agree to, cuts in budget support. He was reluctant to lose New Zealand funding and was concerned that the Cook Islands' associated status limited readiness of others to provide assistance. Change was instituted over his objection. When a timeline could not be agreed, twenty years was introduced unilaterally by New Zealand in 1988, despite expert warnings about the need to approach this cautiously and flexibly, given the potential economic impact on the Cook Islands.⁶²³

Prime Minister Davis saw aid as a component of the relationship of association,⁶²⁴ but in contrast to Premier Rex, he did not refer to constitutional undertakings, or indeed political or moral obligations, to provide aid and/or to retain the status quo. The issue was whether change was timely and the Cook Islands' economic improvement sustainable.

2 Niue

In 1985 a Niue Review Group was set up with representation from New Zealand and Niue. With population decline to the fore, maintenance of a living community on Niue was the objective for both Governments. The recommendation was that differences in living standards between New Zealand and Niue be "contained." Other recommendations were that New Zealand's commitment to provide necessary economic and administrative support should be restated. Support should be supplied in a way that reflected the status of Niueans as New Zealand citizens. The Niue Government should make changes on Niue, including promotion of economic development. Improving the standard of living, not economic self-reliance, should be the main purpose of New Zealand's assistance, aid should not be reduced by the amount of local revenue raised, the New Zealand grant should be established for a three year period, the amount should not be determined in the context of other Pacific allocations, functional arrangements should be established with New Zealand Government agencies, and air services should be reviewed and shipping should be secured. An earlier review of the Niue public

⁶²² "Record of Discussion between Rt. Hon. David Lange and Sir Thomas Davis on the Relationship between New Zealand and the Cook Islands: 16 April 1986," file 118/13/104/1, part 24, MFAT.

⁶²³ C. V. Bell to Associate Minister of Foreign Affairs, "ODA: Cook Islands Development Cooperation Discussions," 23 August 1988, file 118/13/104/1 part 31, MFAT.

⁶²⁴ Tom Davis, *Island Boy: An Autobiography* (Suva: University of the South Pacific; Christchurch: University of Canterbury; Auckland: University of Auckland, 1988), 309.

service had concluded it was too large for the population, but that review and the Review Group were in agreement that a sudden reduction would lead to outward migration. Instead this should be achieved by attrition.⁶²⁵ The report was endorsed by both Governments.

Drawing on this, the Niue Government drew up a three year Niue Concerted Action Plan for 1988/89 to 1990/91. The purpose was to address migration, and ensure Niue's survival as a cultural entity. The plan sought to support village based activities and cultural integrity, to encourage economic development, and to transfer public service functions to the private sector while avoiding inducing migration. Niue likened itself to a MIRAB economy, discussed in chapter 7.⁶²⁶

Niue's allocation in 1987/88 was NZ\$8.5 million. Funding allocated for the Niue Concerted Action Plan was \$10 million in 1988/89, \$11 million in 1989/90 and \$12 million in 1990/91.

The plan got off to a bad start with the initial allocation reduced by NZ\$750,000 in the face of New Zealand budget cuts. Subsequent expenditure also fell short. In light of this, funding available for various projects was carried over to 1991/92. Other circumstances acted against success. Scheduled air services ceased from April 1988 to July 1990, followed by various other temporary arrangements to the end of the decade, making ambitions to develop tourism exceedingly difficult. The shipping service was also suspended temporarily. Cyclone Ofa in February 1990 had serious impact.

Rather different from the Niue Review Group intent, the Niue Concerted Action Plan was described by the Pacific Policy Review Group as Niue's "last chance."⁶²⁷ Likely to reflect private New Zealand Government views, falling population and high per capita New Zealand assistance, meant "Niue's future as a political entity in its present form, and New Zealand's constitutional obligations, will be on the line."⁶²⁸ It is not evident that the Niueans saw the future thus. It will be recalled from chapter 6 that the Niue Constitution Review Committee reports of 1988/89 and 1991 were directed at removing use of New Zealand institutions, not closer association.

⁶²⁵ Niue Review Group, *Report of the Niue Review Group*.

⁶²⁶ See footnote 424.

⁶²⁷ South Pacific Policy Review Group, *Towards a Pacific Island Community* (Wellington, 1990), 57.

⁶²⁸ South Pacific Policy Review Group, *Towards a Pacific Island Community*, 57.

Also rather different from the Niue Review Group intent, the New Zealand Government took a tougher approach. Niueans still recall New Zealand Foreign Minister Russell Marshall announcing in early 1989 that there was “no free lunch.” New Zealand’s hard times and public opinion increasingly critical of government expenditure were reflected in an unsympathetic New Zealand Cabinet.⁶²⁹ Minister Marshall stated that “the willingness of the New Zealand government to keep on putting that money in to sustain a public service which is vastly over-blown in its size, that willingness is fast disappearing.”⁶³⁰ Niue was told that it must reduce the public sector. To encourage cuts, budget support was reduced from \$7.1 million in 1988/89 to NZ\$7 million in 1989/90 and held at that level in 1990/91.⁶³¹ Although population was integral to a “living community” and the Niueans were concerned at the migration implications of public sector redundancies,⁶³² the Minister commented that there was a “steady drain” of Niueans anyway.⁶³³

E 1990 to 1999: Financial Crisis in the Cook Islands; a New Approach in Niue

The 1990 election brought a change in New Zealand to a National Government. The New Zealand economy began to recover from 1992, but the same economic approach continued.

New Zealand Minister of External Relations and Trade, Don McKinnon, expressed disappointment with Niue’s progress, despite the Niue Concerted Action Plan boost in New Zealand funding, and Niue’s agreement to increase emphasis on the private sector and reduce its public sector. His message was that “levels of future assistance will depend on results. Here, in New Zealand, the Government is saying that we can’t afford a subsidised cradle-to-grave approach any more. The same philosophy and financial discipline must be applied to those we underwrite in the region.”⁶³⁴ He was more encouraged by the Cook Islands, noting that the relationship while constitutionally

⁶²⁹ “Talking Points Prepared for Minister’s Meeting with Niue Cabinet: Bilateral Issues,” file 118/13/107/1, part 25, MFAT.

⁶³⁰ *TV One Frontline*, 21 May 1989, file 118/13/107/1, part 25, MFAT.

⁶³¹ “Hon Fran Wilde Associate Minister of Foreign Affairs and Trade to Hon Sir Robert Rex Premier of Niue,” 9 July 1990, file 118/13/107/12, MFAT.

⁶³² Hima Douglas interview, *TV One Frontline*, 21 May 1989, file 118/13/107/1, part 25, MFAT.

⁶³³ Russell Marshall interview, *TV One Frontline*, 21 May 1989, file 118/13/107/1, part 25, MFAT.

⁶³⁴ Ministry of External Relations and Trade, “Our Home Region: The South Pacific: Address by Don McKinnon to the New Zealand Institute of International Affairs on 26 March,” *New Zealand External Relations Review* 41, no. 2 (1991), 21.

similar reflected the Cook Islands' greater self-reliance, with New Zealand's contribution under twenty percent of the Cook Islands overall budget.

In 1991/92 official development assistance totalled NZ\$147 million, of which NZ\$72 million was for Pacific bilateral programmes, including NZ\$14.6 for the Cook Islands (its highest level reached) and NZ\$9.5 for Niue, together around a third of Pacific aid.⁶³⁵ But by 1999/2000, the Cook Islands was allocated NZ\$6.2 million, and Niue NZ\$6.5 million, sixteen per cent of Pacific assistance.⁶³⁶

1 *The Cook Islands*

In the mid-1990s the Cook Islands economy went into recession. A major decline in tourism was accompanied by a financial crisis, brought about by external borrowing (representing a debt to GDP ratio of 139 per cent in 1997/98)⁶³⁷ to fund salaries, welfare and capital expenditure.⁶³⁸

Around the same time, in early 1995, New Zealand learnt that Prime Minister Geoffrey Henry, elected in early 1989, had signed letters of guarantee worth around US\$1 billion. Minister McKinnon quickly made it clear New Zealand had "no responsibility or liability for any debts the Cooks may have incurred as a result of the alleged deals."⁶³⁹ However New Zealand provided assistance to try to ascertain the scale of the problem.

This came on the heel of allegations that the Cook Islands was aiding New Zealand businesses to avoid paying tax in New Zealand which had been raised in the New Zealand parliament in 1993 (the "Winebox" affair). The Cook Islands lack of cooperation with the inquiry into this, on the grounds of Cook Islands offshore banking secrecy laws, became a New Zealand domestic political issue.

⁶³⁵ Statistics New Zealand, "Chapter 3: International Relations and Defence, 3.1 Relations with Other Countries: Assistance to Developing Countries," in *New Zealand Official Yearbook 1993* (Wellington: Statistics New Zealand, 1993).

⁶³⁶ Statistics New Zealand, "Chapter 4: International Relations and Defence, 4.1 Relations with Other Countries: Assistance to Developing Countries," in *New Zealand Official Yearbook 2000* (Wellington: Statistics New Zealand, 2000).

⁶³⁷ Asian Development Bank, *Program Performance Audit Report on the Economic Restructuring Program in the Cook Islands, December 2002*, 6.

⁶³⁸ Asian Development Bank, *Program Performance Audit Report on the Economic Restructuring Program in the Cook Islands*, iii.

⁶³⁹ Ministry of Foreign Affairs and Trade, "New Zealand Seeks Answers on Cooks Financial Woes: Statement on 21 February by the Minister of Foreign Affairs and Trade," *New Zealand Foreign Affairs and Trade Record*, February 1995, 34.

With parliamentarians and others calling for New Zealand to cut aid, in early 1996 Minister McKinnon announced “tough love” for the Cook Islands. Aid would be withheld until a restructuring plan to deal with the economic problems was in place. The Minister explained:

We will not throw good money after bad. We feel for Cook Islanders as they deal with the consequences but we also have a duty to New Zealand taxpayers many of whom have had to face restructuring at home with all that implies for income, employment and long-term security.⁶⁴⁰

In July 1996, aid was resumed, and directed to the Cook Islands restructuring programme developed with Asian Development Bank assistance, but budget support ended. In 1996/97 New Zealand had allocated NZ\$11.8 million to the Cook Islands.⁶⁴¹ In 1997/98 the allocation was NZ\$6 million.⁶⁴² The scale of outflow of people from the Cook Islands, especially from the outer islands, following major public sector cuts (from 3,205 in 1996 to 1,319 in 1999; the Cook Islands has no unemployment benefit) appears to have been an unanticipated consequence.⁶⁴³

2 Niue

The New Zealand Government concluded the Niue Concerted Action Plan had made little progress with achieving greater self-sufficiency. Eighty per cent of the workforce was in public service employment, the private sector remained “stifled” and high expectations of New Zealand assistance remained.⁶⁴⁴ New Zealand pointed to its economic difficulties, close scrutiny of government expenditure and cut backs, including in social welfare and aid. The Niueans pointed to the constraints they faced on Niue and risks to Niuean society through migration.⁶⁴⁵ To encourage action,

⁶⁴⁰ Ministry of Foreign Affairs and Trade, “‘Tough Love’ for the Cook Islands: Statement on 29 February by the Minister of Foreign Affairs and Trade,” *New Zealand Foreign Affairs and Trade Record*, February 1996, 14.

⁶⁴¹ Statistics New Zealand, “Chapter 4: International Relations and Defence, 4.1 Relations with Other Countries: Assistance to Developing Countries,” in *New Zealand Official Yearbook 1997* (Wellington: Statistics New Zealand, 1997).

⁶⁴² Statistics New Zealand, “Chapter 4: International Relations and Defence, 4.1 Relations with Other Countries: Assistance to Developing Countries,” in *New Zealand Official Yearbook 1998* (Wellington: Statistics New Zealand, 1998).

⁶⁴³ Asian Development Bank, *Economic Restructuring Program in the Cook Islands* 16.

⁶⁴⁴ Don McKinnon Minister of External Relations and Trade to Cabinet, “Aid to Niue,” undated, file 118/13/107/12A, part 2, MFAT.

⁶⁴⁵ “Notes on Meeting with Niue Cabinet on 15 January 1991,” file 118/13/107/1, part 29, MFAT.

Premier Rex was told funding was to be reduced.⁶⁴⁶ Premier Rex expressed concern at the level and timing of the reductions, and pointed to examples of Niue's will to develop self-sufficiency. He also drew attention to New Zealand undertakings in the Niue Constitution Act, the 1986 Niue Review Group report, and the importance of consultation.⁶⁴⁷

Adjustments were made but the allocation reduced from NZ\$10 million in 1990/91 to NZ\$9.5 million in 1991/92, and the budget support component reduced from NZ\$7 million to NZ\$6.3 million. In 1992/93 total funding would be \$7 million, including NZ\$5 million in budget support.

Premier Rex announced in April 1991 that 120 public servants would lose their jobs by July 1991. Figures on job losses over the following years vary, from two-thirds to around a half of the six hundred plus employed, although some may have been subsequently re-employed. In New Zealand, it seems, the 1986 Niue Review Group report and Niue Concerted Action Plan were consigned to history.

Pressure on Niue continued. In 1995, to secure additional funding to extend the airport runway and build the Matavai resort, and despite subsequent attempts by Niue Premier Frank Lui (elected in 1993) to revisit this, the Niue Government agreed to a phased reduction in budget support from \$5 million in 1994/95 to \$3.5 million in 2000/01, bringing total assistance from \$7 million down to \$6 million.⁶⁴⁸

In response to Premier Lui's concerns, a review of assistance was commissioned. It advised the solution to population loss was to address structural problems with the economy through accelerated cuts to budget support, increased project aid and setting up a trust fund.⁶⁴⁹ By this stage New Zealand officials had doubts that public sector cuts led to private sector growth, and were more conscious of the migration

⁶⁴⁶ Don McKinnon Minister of External Relations and Trade to Hon Sir Robert Rex Premier Niue, 1 March 1991, file 118/13/107/12, MFAT.

⁶⁴⁷ Sir Robert Rex Premier to J. B. Bolger Prime Minister, 3 May 1991, file 118/13/107/12, MFAT.

⁶⁴⁸ F. F. Lui Premier to Warren Searell High Commissioner, 3 April 1995, file 118/13/107/1, part 34, MFAT.

⁶⁴⁹ Gordon Shroff to Minister of Foreign Affairs and Trade, "NZODA: Niue: Review and Economic Reform," 9 September 1998, file 118/13/107/1, part 43, MFAT.

consequences.⁶⁵⁰ With a change of government in New Zealand and in Niue in 1999, the relationship was again revisited.

F 1999 to 2008: NZAID and Poverty Elimination

In 2001 the New Zealand Labour/Alliance Government, elected in 1999, decided development assistance should be directed at poverty elimination, with a continued Pacific focus. The question arose of the fit of the relatively wealthy Cook Islands and Niue. The decision was that the official development assistance vote would remain the source of funding, with the explanation that it supported New Zealand's special relationships, and delivered economic assistance to fulfil constitutional obligations to Niue. In particular, "NZAID policy and practice, including in relation to allocation of resources and forms of economic assistance, respects these commitments."⁶⁵¹ New Zealand references to constitutional relationships emerged. It remained unclear what this would mean in practice.

Statistics are difficult to locate for this period. Multi-year appropriations from 2004 and rolling over of unspent funds means often sizeable gaps between allocations and expenditure. In 2001/02 the Cook Islands and Niue were each allocated NZ\$6.2 million of a total aid programme of NZ\$226.5 million including NZ\$78 million for the Pacific. These allocations were relatively unchanged since 1999/2000.⁶⁵² By 2008/09 total aid had reached NZ\$461.2 million, of which NZ\$236.6 million was in the Pacific, with a focus on the poorer nations.⁶⁵³ The Ministry of Foreign Affairs Annual Report figures for allocations are NZ\$5.9 million for the Cook Islands and NZ\$16.9 million for Niue.⁶⁵⁴ While some interesting aid initiatives were introduced, the relationship with the Cook Islands was conducted as with other bilateral partners. So for this period the focus is on Niue.

⁶⁵⁰ "Inaugural Niue/New Zealand Joint Consultative Group Meeting, 29 March – 2 April 2000," file NIU/NZ/2/3, part 1, MFAT.

⁶⁵¹ NZAID, "Policy Statement: Towards a Safe and Just World Free of Poverty," Wellington, July 2002.

⁶⁵² Statistics New Zealand, "Chapter 4: International Relations and Defence: Assistance to Developing Countries," in *New Zealand Official Yearbook 2002* (Auckland: David Bateman, 2002).

⁶⁵³ Statistics New Zealand, "Chapter 4: International Relations and Defence: Assistance to Developing Countries," in *New Zealand Official Yearbook 2010* (Auckland: David Bateman, 2010), 65.

⁶⁵⁴ Ministry of Foreign Affairs and Trade, *Annual Report 2009/10* (Wellington: Ministry of Foreign Affairs and Trade, 2010), 28.

1 Niue

Niue remained a “problem.” A meeting in early 2000 between Premier Sani Lakatani and Minister of Foreign Affairs Goff led to the establishment of a Niue/New Zealand Joint Consultative Group of officials to improve dialogue.⁶⁵⁵ Total aid was held at the 1999/2000 level (\$6.25 million, of which \$3.75 was budget support), with no increase proposed in the following two years. New Zealand responsiveness, including to the trust fund proposal in the 1998 review mentioned earlier, was constrained by the absence of information on Niue’s finances and concerns over how money was being spent. Concerns included the adequacy of supervision of Niue’s offshore banking centre, and various other money earning proposals including efforts to secure a direct air service with New Zealand.

Maintenance of a living community re-emerged as the objective. A commissioned study of Niueans’ aspirations identified the need for an air link, economic development and employment.⁶⁵⁶ By late 2002, New Zealand assistance to Niue for 2002/03 was still held at \$6.25 million including \$3.75 million of budget support. The Niue Government had only the New Zealand Government and company registrations as major sources of funding, revenue fell short of recurrent expenditure, and Niue needed an “urgent additional source of funds.”⁶⁵⁷

New Zealand Prime Minister Helen Clark became alarmed at Niue’s circumstances and the consequences of the reductions in funding. Population was in decline. The Niue Government was having to resort to risky ventures to support itself. Her view was that continuing to cut funding meant there was a possibility Niue would not survive. She was concerned that Niue’s culture and language was under threat. Budget support rose, to NZ\$5.75 million in 2003/04, of total funding of NZ\$8.25 million. However part was compensation for estimated revenue forgone by Niue closing its offshore finance centre, at New Zealand urging. To add to Niue’s problems, Cyclone Heta devastated Niue in early 2004.

⁶⁵⁵ “Niue: Report of Meeting Between Premier Lakatani and the Minister of Foreign Affairs and Trade 1 February 2000,” file NIU/NZ/2/1, part 1, MFAT.

⁶⁵⁶ Lincoln International, *Final Report: Niue Study on the Maintenance of a “Living Community”* March 2002.

⁶⁵⁷ Niue Government, *Halavaka ke he Monuina: Niue Integrated Strategic Plan 2003 – 2008*, 6.

A new strategy was announced in October 2004: the NZ\$20 million five year Halavaka ke he Monuina Arrangement, with a focus on sustainable economic development, language and culture retention and population growth.⁶⁵⁸ It consisted of budget support, better links between New Zealand and Niue Government agencies, and other support to address economic development, language and culture, infrastructure and environmental projects.⁶⁵⁹ A trust fund was established with a balance of NZ\$23.5 million, with contributions by New Zealand Australia and Niue.⁶⁶⁰ In 2005 a once weekly Air New Zealand service commenced. After several years of fiscal deficits in 2006 a loan was made by New Zealand of NZ\$1.4 million.⁶⁶¹

G 2008 Onwards: Economic Development

In early 2009 the newly elected New Zealand National Government announced a fresh aid mandate; sustainable economic growth. Aid was to be better aligned with foreign policy, involving an increased focus on the Pacific. A priority was strengthening economic development in Niue, the Cook Islands, Tokelau, Tonga, Tuvalu, and Samoa;⁶⁶² places not only politically significant for New Zealand, but also where it was considered New Zealand could make a difference.⁶⁶³

In 2010 the New Zealand Foreign Affairs, Defence and Trade Committee reported on its view of the implications of common citizenship for standards to be supported by New Zealand aid, and how this is to be achieved. It recommended aid priority be accorded the Cook Islands, Niue and non-self-governing Tokelau; described as “Realm entities.” As flagged in chapter 7, services should be harmonised with those of similar sized population centres in New Zealand, with variations appropriate to local culture, delivered by the relevant New Zealand agency. Under whose control is not specified. The implication is New Zealand’s, although the report states that joint consideration of reciprocal obligations and abilities to contribute was required. Criticism of the size and cost of governance structures, especially in Niue, suggests a diminution of self-

⁶⁵⁸ NZAID, *Currents*, 3, 2007, 29.

⁶⁵⁹ Helen Clark, “NZ and Niue Sign New Partnership Agreement,” 31 October 2004. The text of the agreement appears to be unavailable on line.

⁶⁶⁰ Helen Clark “Niue Trust Fund Deed Signed,” 25 October 2006.

⁶⁶¹ Government of Niue, *Niue: Public Financial Management – Performance report: Final Report*, August 2011, 11.

⁶⁶² Organisation for Economic Co-operation and Development, *New Zealand: Development Assistance Committee (DAC) Peer Review 2010*, 40.

⁶⁶³ Murray McCully, “Aid Increases as NZAID Changes Focus,” 1 May 2009.

government (parliament and public sector) and greater control devolved to New Zealand.⁶⁶⁴ This impression is supported by the New Zealand Government response flagging budgetary and constitutional considerations.⁶⁶⁵

Angelo and Perham point out practical issues; that whether a standard of public services comparable to New Zealand is best achieved by localised or centralised delivery of services is an open question. More significantly, they draw attention to the persistent denial of self-determination through the report, and presumption of “the constitutional authority of New Zealand within the Realm.” While particularly harsh in its approach to Niue, the report does not distinguish between the Cook Islands, Niue and non-self-governing Tokelau, each with its own legal basis for New Zealand’s aid obligations.⁶⁶⁶

The report is flawed. There are divergent political party views expressed by members of the Foreign Affairs, Defence and Trade Committee, which take issue with the report’s criticism of Niue among other things. Nevertheless, it does present a New Zealand perspective on what might represent fulfilment of the New Zealand obligation to provide assistance to the Cook Islands and Niue. It is argued in terms of the obligations of New Zealand to its citizens.

1 *The Cook Islands*

Today the aid relationship is not cited by the Cook Islands Government as an integral part of free association. It is not mentioned in the 2001 Joint Centenary Declaration. The New Zealand Foreign Affairs, Defence and Trade Committee was presented with ideas in the Cook Islands about how aid delivery could be better improved, but aid undertakings were not raised.⁶⁶⁷ That the Cook Islands sees itself as a “Realm entity” encouraged to cede functions to New Zealand is unlikely, if Rasmussen’s comments quoted in chapter 1 are any indication. Prime Minister Puna is reported to have said of the report, “there were some good things in there and there were some bad things which needed direction.”⁶⁶⁸ This does not mean that there is not an expectation that New

⁶⁶⁴ Foreign Affairs, Defence and Trade Committee, “Inquiry into New Zealand’s Relationships,” December 2010.

⁶⁶⁵ “Government Response to the Foreign Affairs, Defence and Trade Committee Report.”

⁶⁶⁶ Angelo and Perham, “The Report of the Foreign Affairs, Defence and Trade Committee,” 187, 72.

⁶⁶⁷ Office of the Clerk of the House of Representatives, *Inquiry into New Zealand’s Relationships with South Pacific Countries – Issues Raised at Meetings Held in the Cook Islands*, reference INQ/PAC/CC/16, 21 July 2009.

⁶⁶⁸ F.S.B., “PM Discusses Controversial NZ Report,” *Cook Islands News*, 24 February 2011.

Zealand will be a reliable friend in need. There is interest in making more use of the connection, for example in banking regulation, health and education. However the Cook Islands Government emphasis is on its independence from New Zealand as a means of expanding its international personality and diversifying sources of assistance.

2 Niue

For the Niue Government, the nature of New Zealand necessary economic and administrative assistance remains a live question. In 2009, Premier Toke Talagi raised with New Zealand Prime Minister John Key his concern that Halavaka funding managed by New Zealand for tourism had not been spent, and New Zealand's micromanagement of accountability requirements made progress difficult.⁶⁶⁹ Further difficulty arose when less than four weeks before the presentation of the 2010/2011 estimates, the Premier learnt the original forecast of NZ\$7.8 million of budget support was to be cut to NZ\$7 million.⁶⁷⁰

In Niue, fulfilment of the constitutional relationship was raised with the Foreign Affairs, Defence and Trade Committee.⁶⁷¹ In its formal response the Niue Government agreed the special relationship needed to be recognised, and drew attention to citizenship and the Realm of New Zealand. Harmonisation of standards with New Zealand was supported. Attention was drawn to differing New Zealand interpretations of New Zealand's obligations to provide necessary economic and administrative assistance. Comparing Niue with a similar sized town in New Zealand took no account of Niue's remote location and need for certain basic services. Moreover, suggestions of cutting the public sector had a potential negative impact on Niue's population and culture.⁶⁷²

Hammering the point home, at the 2013 Niue Constitution celebrations, Premier Toke Talagi queried the implications of Niue being part of the Realm of New Zealand. He criticised the provision of assistance as not reflecting what was envisaged by the New

⁶⁶⁹ Claire Trevett, "Dispute over \$2m of NZ Aid Overshadows Visit to Niue," *The New Zealand Herald*, 9 July 2009.

⁶⁷⁰ Government of Niue, *Niue: Public Financial Management – Performance Report*, August 2011, 33.

⁶⁷¹ Office of the Clerk of the House of Representatives, *Inquiry into New Zealand's Relationships with South Pacific Countries – Issues Raised at Meetings Held in Niue*, reference INQ/PAC/CC/13, 21 July 2009.

⁶⁷² Secretary to Government, Government of Niue to New Zealand High Commissioner, Niue, "Inquiry into New Zealand's Relationships with South Pacific Countries," 15 March 2011.

Zealand and Niue parliaments under the Constitution, instead being delivered as aid as to any other country. At the same time, the Premier was clear the objective was to build a sustainable economy and community, and any change to the relationship should not compromise Niue's independence and self-governing status, and Niue's population and culture.

V EFFECTIVENESS OF FREE ASSOCIATION IN MEETING INITIAL EXPECTATIONS

Alison Quentin-Baxter states:

the constitutional status of small islands does not in itself determine the extent, if any, to which they should receive economic support from the country with which they are linked. A lot will depend on the relative wealth of the island and the mainland, taking account of the resources under the control of each, and the extent to which there is a widely-held perception that the wealth of the richer partner should be shared with the poorer.⁶⁷³

More compelling considerations than constitutional links, on the few occasions New Zealand has had these in mind, have determined that sharing of wealth. As this chapter has shown, some are helpful to the Cook Islands and Niue, but most less so.

A Legal Measures

Earlier, this chapter drew attention to the opinion of legal scholars Alison Quentin-Baxter and Angelo, and comment of Bertram and Watters, on the meaning of continued necessary economic and administrative assistance. Quentin-Baxter's and Bertram and Watters' focus on continuation of assistance based on the self-determination status quo as a measure of the constitutional arrangements gives insufficient emphasis to New Zealand interest in encouraging greater self-sufficiency and containing or reducing the volume of assistance. This interest predated self-determination. It was an anticipated benefit of self-government. It was reflected in allocations for both the Cook Islands and non-self-governing Niue.

The historic starting point explains a great deal about ongoing assistance. Neither the self-determination level nor mode of assistance was easily changed. These were not relationships New Zealand could readily abandon, even if it so wished. The Cook

⁶⁷³ A. Quentin-Baxter, "The Problems of Islands," 434.

Islands and Niue were, and remain, in the region of New Zealand foreign policy, security and aid focus. It was in New Zealand's interests to ensure self-government had a good chance of success. Working out requirements took some time, and when the Cook Islands ran into problems, additional funding was provided.

Self-government changed the relationship to a state to state relationship. Emphasis on the transfer to Foreign Affairs in 1975 and taking issue with New Zealand "treating self-governing states in free association as though they were independent"⁶⁷⁴ downplays the change as understood by all three Governments. Arrangements reached did not maintain New Zealand financial oversight, as envisaged in 1962. Conflicts reflected the scale and nature of assistance now provided in the context of a new relationship, with a self-governing state.

Aid policy changes from 1975 were designed to increase economic development, reduce and ultimately eliminate budget support, and align assistance with that to others. Scholars are right to emphasise the impact of changing attitudes to the nature of assistance. Not only should the Cook Islands and Niue become more financially independent, but subsidies came into question. Efforts were made to reduce grant assistance, and provide project and training assistance not appropriated by the Cook Islands or Niue. This was a clear break with any assumption of "continuing" assistance being the same nature and level as in the past. The Cook Islands and Niue, along with non-self-governing Tokelau, were the only recipients of budget support. It was a major component of their budgets. Policies and practices had an impact not faced by other New Zealand aid recipients. Rather than assurance of continued assistance, they introduced lack of certainty and consistency. That said, while the Cook Islands Government reluctantly agreed to reduce budget support, when problems arose, New Zealand agreed to inflation-adjust grants.

Rather than having change spread over almost ten years, Niue experienced simultaneously the financial adjustment to self-government, a new department and new officials managing the relationship, and change to aid policies and systems. It was reasonable for Niue to expect continued New Zealand subsidies along with other New Zealand support. Nevertheless by 1979, faced by insufficient funding and changed

⁶⁷⁴ Bertram and Watters, *New Zealand and its Small Island Neighbours*, 51.

procedures, Premier Rex was telling New Zealand that it had not fulfilled its Niue Constitution Act assurances of continued necessary economic and administrative assistance.

In response, New Zealand was reluctant to agree to any open-ended long term commitment. Various possible long term solutions for Niue were rejected (and ad hoc responses were less generous than to the Cook Islands). New Zealand was likely to have been influenced by its own financial circumstances. Cuts to the aid programme discouraged being tied to large scale ongoing costs. Annual negotiation allowed flexibility. There was difficulty in estimating Niue's requirements. Competition for funding had increased, but New Zealand Treasury advice prior to self-government that the Cook Islands and Niue should have the first call seems to have been forgotten.

Despite these considerations, it is curious that the New Zealand Government did not seriously engage on what might be required to ensure Niue's post-decolonisation success. The National Government of 1960 to 1972 had expended political capital on self-determination for the Cook Islands. As discussed in chapter 5, the Labour Government elected in 1972 seemed more hands off. A change back to National in 1975 appeared to make little difference. Premier Henry's difficult relationship with New Zealand was not something Premier Rex wanted to emulate. It damaged trust. On the other hand behaving "understandingly and sensibly"⁶⁷⁵ also failed to produce a very forthcoming result. New Zealand Ministers sought to reassure their counterparts that Niue remained special, but a divide emerged early between New Zealand and Niue on what this meant in practice. This divide remains today.

From 1984 to 1999, radical economic reforms in New Zealand affected views of not just the volume and nature of assistance, but also its use. The constitutional advisers to the Cook Islands had identified as a potential issue New Zealand support making up a large part of the budget, and self-government meaning policies were no longer set by New Zealand. Subsidies were seen as supporting a lifestyle no longer tenable in New Zealand, and risking adverse New Zealand domestic perceptions. Cost recovery for New Zealand Government services also affected the cost and availability of those provided in the Pacific.

⁶⁷⁵ See page 103.

The circumstances of New Zealanders in New Zealand emerged as a New Zealand measure of what should be supported. Whether this meant the Cook Islands and Niue should trim their sails, as New Zealand proposed, or as Niue's representations suggested, New Zealand should be providing more, was unclear. As the Foreign Affairs, Defence and Trade Committee report illustrates, comparability can be a two edged sword, deployed to justify cuts as well as greater resources. What was lost in the debate was the significant difference in economic circumstances between all three states.

Legal scholars agree the amount provided should be sufficient to maintain government functions and living standards reasonably comparable to New Zealand's that reflect the status of Cook Islanders and Niueans as New Zealand citizens. Recurrent need for top up funding and loans suggest there was a problem. Reductions in funding to encourage private sector growth or a greater Cook Islands or Niue contribution or to force public sector cuts in the face of warnings that this will lead to migration, fall short on this measure.

Consistent with legal views, the 1990 Report of the South Pacific Review Group said New Zealand's constitutional links "impose obligations and responsibilities which New Zealand can neither ignore nor change unless as part of a mutual agreement with the countries concerned."⁶⁷⁶ But cuts in budget support to the Cook Islands and Niue were imposed, with a fig leaf of "agreement." A timetable for reductions in budget support was unilaterally introduced by New Zealand over the Cook Islands Prime Minister's objections in 1988, and over Niue Government objections in 1991 and again in 1995.

The Cook Islands and Niue have not always acted wisely, fulfilled undertakings, and adequately accounted for expenditure. Unilateral cutting of budget support to the Cook Islands in 1996 followed action taken by the Cook Islands contrary to New Zealand's interests. Exacerbating New Zealand concern was that this became politicised in New Zealand. There was also concern about use of aid funds and action that posed financial risk to the Cook Islands with possible implications for New Zealand. Whatever the

⁶⁷⁶ South Pacific Policy Review Group, *Towards a Pacific Island Community*, 54.

cause, and whether justified or not, reduced trust has periodically constrained provision of support by New Zealand.

Quentin-Baxter has argued that there should be continued provision of assistance so long as people live in the Cook Islands and Niue. Raising a question over this was depiction of the Niue Concerted Action Plan by the South Pacific Review Group as Niue's "last chance."⁶⁷⁷ The Review Group commented the objective was to sustain a living community on Niue, but reducing numbers meant Niue was among the largest per capita aid recipient in the world. The implication was that Niue's viability as a state was in question.⁶⁷⁸

This shows the record falls short of measures of constitutional delivery of assistance consistent with the constitutional guarantees: as an obligation and a right, resulting in security and continuity of assistance, with a bench mark of the type and scale of pre-decolonisation support, distinguished from the purposes and processes of aid funding, with respect for difference in policy priorities and disagreements resolved through consultation, and on the Cook Islands' and Niue's part, reassuring stewardship of these funds.

Instead the provision of assistance has been marked by uncertainty and variability. Changes sizeable for the Cook Islands and Niue, but relatively small in the context of New Zealand's aid budget, are contested. There is fluctuation between periods of enforced austerity and greater generosity. Whether provision is sufficient to sustain government functions and living standards reasonably comparable to New Zealand's, rests on the unresolved question of how to determine this and what those standards are. The definition of "necessary" is unresolved.

B Governments' Views

1 Niue

For the Niue Government, provision of necessary economic and administrative assistance is a key part of the decolonisation undertakings and a measure of the free association relationship, consistently raised over the years. There is resentment at lack

⁶⁷⁷ South Pacific Policy Review Group, *Towards a Pacific Island Community*, 57.

⁶⁷⁸ South Pacific Policy Review Group, *Towards a Pacific Island Community*, 56-57.

of New Zealand recognition of an obligation; “giving assistance but begrudgingly,”⁶⁷⁹ and at varying interpretations of this. The basis of the obligation can be expressed in various ways: the undertaking in the Niue Constitution Act 1975, being part of the Realm of New Zealand and holding New Zealand citizenship. Successive Governments have suggested what this might constitute, as part of the Niue Review Group, and through representations to the New Zealand Government. Points are similar to those of legal scholars. The Niue Government has called for greater clarification around what is considered “necessary” and who decides this.⁶⁸⁰

A particular irritant is being treated as any other aid recipient. This includes competition for resources with others. There is objection to assistance being delivered as aid, rather than a financial subsidy not subject to a range of aid administration, reporting and other accountability requirements.⁶⁸¹ Increased links with New Zealand Government agencies are seen as desirable, if under Niue Government control. A cooperative non-adversarial relationship is important, and similar policy approach between New Zealand and Niue helps, but cannot be guaranteed.

Niue’s hope of much greater financial independence from New Zealand has been disappointed, but remains an objective. New Zealand assistance is vital to maintain provision of services and standard of living.⁶⁸² This means New Zealand’s performance has a substantial impact. Niue has struggled to develop relationships with other aid donors, not helped by its associated status with New Zealand. However the Niue Government’s expectations are not simply a function of economic vulnerability, but of longstanding understanding of the nature of free association. For Niue, initial expectations of continued New Zealand economic and administrative assistance have not been met. However inclusion of this provision in the free association arrangements is valuable. In a relationship of unequal power, the Niue Government can point to New Zealand’s legal undertakings.

⁶⁷⁹ Secretary to Government, Government of Niue to New Zealand High Commissioner, Niue, “Inquiry into New Zealand’s Relationships with South Pacific Countries,” 15 March 2011.

⁶⁸⁰ High Commissioner O’Love Jacobsen quoted in “Call for Rethink of Niue’s Constitutional Relationship with New Zealand,” *Radio New Zealand International*, 21 February 2017.

⁶⁸¹ The Niue Government position and expectations are discussed in Adam Smith, *Evaluation of the Niue Country Programme*, 40-42.

⁶⁸² Adam Smith, *Evaluation of the Niue Country Programme*, 72.

2 *The Cook Islands*

In contrast, the Cook Islands Government does not depict its constitutional relationship with New Zealand as including aid. Constitutional obligations do not appear to have been drawn on to argue its case. New Zealand aid may have contributed positively to the Cook Islands' achievements, although further investigation is needed.⁶⁸³ The Cook Islands has a successful economy, has broadened its sources of development assistance, is comparatively non aid dependent, and so is relatively insulated from the vagaries of New Zealand aid policy.

3 *New Zealand*

New Zealand Government views on its constitutional obligations and necessary assistance are not explicitly stated. The record is one of bringing the Cook Islands and Niue into line with other aid recipients in the Pacific. For a considerable period, the "constitutional relationship" barely featured. Anecdotal evidence suggests New Zealand officials have often been unaware of this. It became more explicit when required to explain the Cook Islands' and Niue's inclusion in an aid programme focussed on poverty elimination. There is now acknowledgment of the undertaking, and a greater interest in defining this obligation, rather than stating it is fulfilled.⁶⁸⁴

Despite this, and although the mode of delivery fails to meet the measures of constitutional undertakings as explained by legal scholars, there remains a perception that assistance stems from the constitutional links.

Former Premier Young Vivian of Niue has commented, "With full independence ... I am sure that ... a good country like New Zealand wouldn't let us float away."⁶⁸⁵ He has a point.

Like other developed countries, New Zealand is an aid donor. New Zealand has valued relationships with states in the Pacific region. New Zealand's aid focus on the Pacific is for practical, foreign policy, economic, security and domestic reasons. Within the

⁶⁸³ Adam Smith International, *Evaluation of the Cook Islands Country Programme*, December 2015, 59.

⁶⁸⁴ For example, Ministry of Foreign Affairs and Trade, "Aid Partnership with Niue," accessed 9 May 2017, <https://www.mfat.govt.nz/en/aid-and-development/our-work-in-the-pacific/aid-partnership-with-niue/>, says "Under the Constitution, New Zealand provides necessary economic and administrative assistance," and "New Zealand Aid Programme Strategic Plan 2015- 2016," 14, says "New Zealand's constitutional bond with the Cook Islands, Niue and Tokelau will continue as the basis of our support in these countries."

⁶⁸⁵ Johnstone and Powles, *New Flags Flying*, 116.

region major recipients have traditionally been Polynesian states with which New Zealand has historic and close contemporary relationships, although from 2001 poverty measures increased the focus on Melanesia. Current major recipients of New Zealand aid in the region are Papua New Guinea, Solomon Islands, Vanuatu, the Cook Islands, Tokelau, Niue, Tonga, Samoa, Kiribati and Fiji.⁶⁸⁶ There are factors independent of free association to explain provision of New Zealand assistance to the Cook Islands and Niue.

This is not to suggest free association has no effect. Those identified with New Zealand through historic and contemporary links - the Cook Islands, Niue and non-self-governing Tokelau - are the only places in the Pacific for whom New Zealand is the major donor. Free association can create a perception of New Zealand responsibility and can constrain the involvement of others. Identification with New Zealand means it is not in New Zealand's interests for either the Cook Islands or Niue to experience economic or social decline, or any other malaise, although whether this translates into sufficient assistance is debateable. Any such decline would also have implications for New Zealand domestically. In short, free association enhances the relationships and might encourage greater New Zealand attention. However as this thesis has shown, whether New Zealand assistance can be attributed solely or even primarily, to free association is debateable.

A possible test of the significance of constitutional links is looming. Should the Cook Islands graduate to high income status, but New Zealand assistance continue, it could be suggested this reflected constitutional obligations. New Zealand's decision is unknown. However Bertram has argued that over half the assistance to the Cook Islands comes from sources not sensitive to OECD Development Assistance Committee graduation.⁶⁸⁷ He has also argued that the Cook Islands is unlikely in fact to be a high income country. It seems unlikely that New Zealand would see it as in its interests to leave provision of assistance entirely to others. It is even less likely that New Zealand would ignore the Cook Islands' needs. The idea that independence might have meant

⁶⁸⁶ Ministry of Foreign Affairs and Trade, "Our planned aid expenditure."

⁶⁸⁷ Bertram, *Implications of the Cook Islands' Graduation*, 9. Those that will or may not be affected include the climate change agencies and China.

the Cook Islands or Niue would have been abandoned financially by New Zealand is difficult to sustain.

The New Zealand Government struggles with the volume and nature of assistance to Niue in particular. While development thinking now endorses multi-year conditional sector budget support, Niue still receives an unconditional subsidy of around NZ\$7 million a year. Just as in 1962, there is a New Zealand hope for greater economic self-sufficiency, control over accountability for funds, and less cost to New Zealand.

Solutions are not obvious. Thoughts may turn to integration, but this would be likely to cost more than the current arrangements. A 2013 assessment of New Zealand expenditure on central government services provided by region was over NZ\$21,000 per capita in the more remote, less populated regions with low incomes.⁶⁸⁸ Using population figures from chapter 7, that is equivalent to around NZ\$34 million per year for Niue and NZ\$314 million for the Cook Islands.

Should arrangements analogous to the Chatham Islands be considered, it is instructive to recall that eighty-three per cent of the Chatham Islands budget in 2015/16 was from grants and subsidies from central government; significantly more than for the Cook Islands and Niue.⁶⁸⁹

Given that provision of assistance is part of New Zealand's broader responsibilities and interests, it is puzzling that Niue and the Cook Islands are seen by New Zealand as such a problem. This chapter shows reasons why: reluctance to acknowledge an open ended commitment, perceptions of disproportionate funding accompanied by views on where aid would be better directed, lack of New Zealand control over subsidies, New Zealand domestic economic policies, a preference to see funding decrease and self-sufficiency grow, failed ideology on what might produce this outcome, mistrust of solutions offered by Niue, and the Cook Islands, and concerns about risky expenditure. In short, a reluctance to secede control over policy and practice.

⁶⁸⁸ New Zealand Institute of Economic Research, *Regional Government Expenditure: Estimates of Core Crown Spending by Region* (NZIER, 2013), i. Major services include social security and welfare, health, education, law and order, transport and communications.

⁶⁸⁹ Chatham Islands Council, *Chatham Islands Annual Report Summary 2015/16* (Chatham Islands Council: 2016).

C Conclusion

This review of New Zealand assistance shows mixed outcomes. Scholarly judgements are that New Zealand's performance has fallen short on a host of legal measures, and this empirical research supports that conclusion. Niue's expectations have not been met. The Cook Islands does not appear uncomfortable with this. New Zealand's hopes are disappointed, and expectations opaque. Other considerations than the constitutional arrangements have determined how this link has been met.

The next chapter turns to the final link of free association, external affairs and defence.

CHAPTER 9: EXTERNAL AFFAIRS AND DEFENCE

I INTRODUCTION

New Zealand responsibility for external affairs and defence is the third and final link of free association to be explored.⁶⁹⁰ As discussed in chapter 4, it was included in the formal arrangements at New Zealand parliamentarians' instigation. The intent was to retain control. It was made clear to the United Nations that the arrangements did not secure this. It was anticipated that capacity, cost and constraints on recognition of the Cook Islands and Niue would require an ongoing New Zealand role. The Cook Islands and Niue appeared to find this offer helpful. Since then the Cook Islands and Niue have increasingly conducted external affairs in their own right. Their status separate from New Zealand is recognised by others. This chapter addresses the effectiveness of the arrangements of free association in meeting evolving expectations. Given the expansion in the conduct of external relations by the Cook Islands and Niue, and change in ambition, it looks at whether free association, rather than a help, is now a hindrance.

Part II of this chapter recalls the initial expectations held by New Zealand, the Cook Islands and Niue of New Zealand responsibility for external affairs and defence and the international implications of free association. Part III explains how the Cook Islands and Niue have joined organisations, acceded to treaties and established diplomatic relations while in free association with New Zealand. It examines the Cook Islands' interest in United Nations membership, an interest shared by Niue. It discusses the obstacles this encounters and what might explain New Zealand's reservations about its compatibility with New Zealand citizenship. Part IV explains assistance provided by the New Zealand Defence Force. The chapter concludes in part V that defence assistance is provided as part of New Zealand's regional interests and responsibilities, rather than fulfilment of constitutional obligations. With respect to external affairs, free association, rather than being an advantage, constrains the Cook Islands' and Niue's exercise of foreign relations. The constraint reflects political considerations more than

⁶⁹⁰ The Cook Islands Constitution Act 1965 s 7 and Niue Constitution Act 1974 s 6 refer to "the responsibilities of Her Majesty the Queen in right of New Zealand."

strict legal limits. Historically the constraint has primarily been a question of recognition by others. New Zealand has traditionally been generally supportive. However support stops short of United Nations membership while holding New Zealand citizenship.

II INITIAL EXPECTATIONS

As explained in chapters 4 and 5, self-government in free association was novel. The implications for the exercise of foreign relations by the Cook Islands and Niue were unclear. The Cook Islands and Niue were expected to need help. Exercise of external relations required other states and organisations to be willing to deal with the Cook Islands and Niue. Internationally, views on this question have evolved over time.

The United Nations was told:

the Cook Islands can do as it chooses, but as long as it chooses not to be internationally responsible for its own affairs it thereby recognises New Zealand's continuing responsibility for the matters mentioned in Section 5.⁶⁹¹

The provision in the formal arrangements emanated from New Zealand parliamentarians' desire to retain control. They were under an erroneous perception it did secure this. Nevertheless, the Cook Islands and Niue legislatures did not demur on New Zealand responsibility for external affairs and defence. They probably saw this as helpful. At self-determination, each had a limited role in external affairs, limited resources and focussed on domestic issues initially.⁶⁹² As Alison Quentin-Baxter points out, the future Cook Islands role in treaty making and establishment of diplomatic relations, and the recognition of this in international law, was not anticipated in 1964, or indeed for many years thereafter.⁶⁹³

From these modest beginnings, and supported by New Zealand, the Cook Islands and Niue have chosen to be internationally responsible for their own affairs. Premier Henry early made clear his wish to pursue his own policies, and confirmation of this is in the 1973 Exchange of Letters. Ambitions and activity have well exceeded what was

⁶⁹¹ Department of External Affairs, "The Cook Islands: Statement Made in the Committee of Twenty-Four," 35.

⁶⁹² For the Cook Islands, see Ministry of Foreign Affairs and Immigration, *Voyage to Statehood*, 29.

⁶⁹³ A. Quentin-Baxter, "Pacific States and Territories," paragraph 29.

anticipated initially. Expectations have grown and are reflected in explanations of the arrangements.

Expectations of defence appear to have been that New Zealand would fulfil this function in the absence of a Cook Islands and Niue capacity.

III CONDUCT OF EXTERNAL AFFAIRS

Since self-government, the Cook Islands, and Niue in slower time and a more limited degree, have developed an international personality separate from that of New Zealand.⁶⁹⁴ Both are members of regional and multilateral organisations in their own right. They sign bilateral and multilateral treaties. They have established diplomatic relations with other states, including with New Zealand. Working through New Zealand, or restricting engagement to the Pacific region as perhaps originally envisaged by New Zealand, has not been the course of action adopted by the Cook Islands and Niue, nor New Zealand.

In this process the Cook Islands has generally taken the lead. Niue has mostly followed suit, although some steps have involved both. New Zealand has had a significant role in supporting this. Its clarifications of the implications of free association have tended to encompass both the Cook Islands and Niue. Steps taken by the Cook Islands and Niue can also be at the initiative of other states. Evolution over time in the international view of the status of associated states is reflected in recognition of the Cook Islands and Niue. As Igarashi points out, “the status of Associated Statehood has progressed far beyond what was originally imagined by the founders of the first Associated State.”⁶⁹⁵

A Regional and Multilateral Organisations

Today the Cook Islands and Niue have secured full membership in specialised United Nations agencies such as: the World Health Organisation (1984, 1994), Food and Agriculture Organisation (1985, 1999), United Nations Educational, Scientific and Cultural Organisation (1989, 1993), the International Fund for Agricultural Development (1993, 2006), World Meteorological Organisation (1995, 1996) and the World Intellectual Property Organisation (2015, 2015).⁶⁹⁶ Both are members of the

⁶⁹⁴ Steps taken by the Cook Islands and New Zealand statements in support, explaining the relationship, are in Ministry of Foreign Affairs and Immigration, *Voyage to Statehood*.

⁶⁹⁵ Igarashi, *Associated Statehood*, 300.

⁶⁹⁶ The initial date is when the Cook Islands joined, the second is Niue.

Comprehensive Nuclear Test Ban Treaty Organisation Preparatory Commission and the Organisation for the Prohibition of Chemical Weapons. The Cook Islands is a member of the International Civil Aviation Organisation (1986), International Maritime Organisation (2008) and International Labour Organisation (2015). The pattern of membership of United Nations specialised agencies is very similar to that of other Pacific states.

The Cook Islands was involved in 1971, with New Zealand, Australia and other independent Pacific states, in the establishment of the South Pacific Forum (now the Pacific Islands Forum). It was set up to address political and other issues facing the region, not discussed in the South Pacific Commission⁶⁹⁷ dominated by the Pacific administering powers. An early indication of the politics of the Cook Islands' constitutional status is suggested by Short who attributes the 1973 Exchange of Letters to pressure on New Zealand from other South Pacific Forum members to clarify that New Zealand did not control the Cook Islands' external relations.⁶⁹⁸ Niue joined the South Pacific Forum following self-government in 1974. Since then both the Cook Islands and Niue, and New Zealand, participate in an expanding range of Pacific regional organisations in their own right.

The Cook Islands and Niue are also members of other regional and issue based organisations, for example the African, Caribbean and Pacific Group of States, the Intergovernmental Panel on Climate Change, International Seabed Authority and Global Environment Facility.

Associated status has been an impediment, and differentiated their conduct of external relations from that of others in the Pacific. First, it can rule out full membership. The Cook Islands and Niue are not full members of the United Nations Economic and Social Commission for Asia and the Pacific. This may reflect timing of their joining: 1972 and 1979, but a subsequent interest of the Cook Islands in upgrading this was unsuccessful. This was despite the other freely associated states, the Federated States of Micronesia, Marshall Islands and Palau, joining as full members in the early 1990s. Other associate members are the French and American Pacific territories, Hong Kong

⁶⁹⁷ Now called the Pacific Community.

⁶⁹⁸ Short, "The Cook Islands," 180-181.

and Macao. The Cook Islands and Niue are also only associate members of the Commonwealth, grouped somewhat curiously alongside British non-self-governing territories, Tokelau and Australian “external territories.”

Second, applications have hit obstacles. The initial application by the Cook Islands to join the Lomé Convention was rejected in 1981 by the African, Caribbean and Pacific and European Economic Community Council of Ministers, on the grounds the Cook Islands was not an independent state. While the decision was seen to be primarily political,⁶⁹⁹ as explained in chapter 6, this prompted the Cook Islands to make several changes to its links with New Zealand. Niue did not make similar changes, but both signed the Lomé Convention’s successor, the Cotonou Agreement, in 2000.

Third, renegotiation of the basis of membership has been required. The Cook Islands has been a member of the Asian Development Bank since 1976. Initially New Zealand took responsibility for the Cook Islands’ Asian Development Bank loans. In 1992 New Zealand argued that this was inconsistent with the constitutional relationship and international recognition of the Cook Islands’ international personality and competence. From 1993 the Asian Development Bank accepted that responsibility rested with the Cook Islands.⁷⁰⁰

Fourth, applications do not always meet with success. Despite New Zealand arguments and lobbying, and despite the Cook Islands already being a member, Niue’s application to join the Asian Development Bank was obstructed by the United States in 2001.⁷⁰¹ All other Pacific states, including the other freely associated states, are members.

Fifth, some memberships have not been formally tested. Unlike almost all other Pacific states, and the three other freely associated states, neither the Cook Islands nor Niue is a member of the World Bank or International Monetary Fund.⁷⁰² The Cook Islands has expressed an interest in the past, but an application has not been made.

⁶⁹⁹ Roger Clark cited in Fepulea’i, “‘Neither Fish nor Fowl’,” 201.

⁷⁰⁰ Ministry of Foreign Affairs and Immigration, *Voyage to Statehood*, 40-41.

⁷⁰¹ Taylor and Francis Group, *The Europa World Yearbook, Volume 2: Kazakhstan-Zimbabwe* (London: Europa Publications, 2004), 3146.

⁷⁰² Nauru joined in April 2016; see International Monetary Fund, “IMF Survey: Nauru Joins the IMF as 189th Member,” 12 April 2016.

Significantly, and unlike the other freely associated states, neither the Cook Islands nor Niue is a member of the United Nations. Not only is this desired for its own sake but it is a condition of membership of certain other organisations.

B Bilateral and Multilateral Treaties

The Cook Islands and Niue have entered into bilateral and significant multilateral treaties in their own right.

An important start was in 1974 when Premier Henry was included in the New Zealand delegation at the third United Nations Conference on the Law of Sea. Negotiations led to eventual agreement to the concepts of territorial sea and 200 mile exclusive economic zone. Premier Henry spoke (along with New Zealand, Samoa, Fiji and Tonga) for the interests of small island coastal states, explaining the importance of the fishery and sea bed to the economic future of the Cook Islands. It might be thought that New Zealand's ongoing interest in a close relationship with the Cook Islands reflected interest in its economic zone. In fact New Zealand argued for the sole vesting of the rights to the resources of economic zones and continental shelf in non-self-governing territories, not their administering powers.⁷⁰³ Both the Cook Islands and Niue are full parties to the United Nations Convention on the Law of the Sea, and both have now ratified.

Initially the Cook Islands and Niue had been consulted by New Zealand on whether they wished to be associated with New Zealand treaty action. In 1988 New Zealand notified the international community that no New Zealand treaty action extended to the Cook Islands or Niue unless expressly indicated, and its declaration placed no limit on the right of the Cook Islands and Niue to become party to any treaty open to them in their own right.⁷⁰⁴

C Diplomatic Relations

The Cook Islands and Niue have formal diplomatic relations with other states. In 1993 the New Zealand diplomatic offices in the Cook Islands and Niue were re-designated

⁷⁰³ Ministry of Foreign Affairs, "Month in the United Nations: Law of the Sea Conference," *New Zealand Foreign Affairs Review* (July 1974): 34-46.

⁷⁰⁴ Ministry of Foreign Affairs and Immigration, *A Voyage to Statehood*, 37.

High Commissions.⁷⁰⁵ The Cook Islands, as at October 2014, had established formal diplomatic relations with forty-one states and the European Union. Ten of these, most with other Pacific countries, were formalised in 2013 and 2014, presumably as part of the Cook Islands' strategy for United Nations membership.⁷⁰⁶ Niue has established diplomatic relations with fourteen countries, including Japan most recently, in August 2015.⁷⁰⁷ Significantly, neither the Cook Islands nor Niue has formal diplomatic ties with three of the five United Nations Security Council permanent members, the United States, Great Britain, and Russia.

D The Cook Islands and Niue Ambitions

International engagement of Pacific island states has been criticised by economist Helen Hughes as being irrelevant to their needs, costly, and driven by a desire by leaders to appear on the world stage, for officials to enjoy international travel, and for international bodies to fund their existence. She claims the principal beneficiaries of Pacific islands' engagement in international organisations are the organisations themselves. The solution she suggests is an arrangement like the free association of the Cook Islands and Niue, "to overcome the diseconomies of political independence."⁷⁰⁸ In other words, it makes economic sense for the Cook Islands and Niue to rely on New Zealand.

While some initiatives can be irrelevant, and reporting and compliance requirements onerous for very small states, Hughes' comment suggests that either Pacific island states lack interests to pursue internationally, or that other better resourced states can represent these interests on their behalf.

⁷⁰⁵ Ministry of Foreign Affairs and Trade, "Change of Diplomatic Designation: Cook Islands and Niue: Statement on 5 August by the Minister of Foreign Affairs and Trade," *Ministry of Foreign Affairs and Trade Record* (August 1993), 23.

⁷⁰⁶ Ministry of Foreign Affairs and Immigration, e-mail message to author, 7 November 2014.

⁷⁰⁷ Government of Niue, "Niue Establish [sic] Diplomatic Relations with Japan," 10 August 2015. Japan established diplomatic relations with the Cook Islands in 2011, but had difficulty with an aspect of the Niue Constitution.

⁷⁰⁸ Helen Hughes, "The Pacific is Viable!," *Issue Analysis*, no 53 (Sydney: The Centre for Independent Studies, 2004): 10.

The first is obviously untrue. As Graham Hassall recently argued, Pacific states can and do make a valuable contribution to world issues. The risk is the Pacific region, and its problems, being overlooked.⁷⁰⁹

The second is also problematic. Even a country like New Zealand that thinks its foreign policy “positions and perspectives should always show a keen sense of the interests and needs of our Pacific neighbourhood,”⁷¹⁰ and sees itself as “an acknowledged champion for the concerns of small island developing states,”⁷¹¹ would hardly suggest the interests of the Cook Islands and Niue were best served by New Zealand alone. For example, while undoubtedly driven by a desire to burnish its own credentials, in 2015 New Zealand arranged an open debate in the Security Council on the problems facing small island developing states, which included statements by the Cook Islands and Niue.⁷¹²

It can no longer be assumed that the interests of the Cook Islands and Niue are synonymous with those of New Zealand. Climate change is a significant area of policy difference.

Nor are interests pursued through the same organisations. Fry and Tarte have suggested a shift since 2009 in the way Pacific states have pursued their interests regionally and globally. They see a turning away from the Pacific Islands Forum, which they see as dominated by New Zealand and Australia, towards the Pacific Small Island Developing States Group at the United Nations as the main vehicle for Pacific global diplomatic representations.⁷¹³

The Cook Islands and Niue are small island developing states.⁷¹⁴ Both are members of the Alliance of Small Island States which lobbies and negotiates for small island developing states in the United Nations. They are listed on the letterhead of the Pacific

⁷⁰⁹ Graham Hassall, “‘Including the Excluded in Global Politics’: The Pacific Micro-States and Global Politics” (paper presented at the Building Global Democracy Workshop, Rio de Janeiro, 13-15 April 2011).

⁷¹⁰ Murray McCully, “Address to the New Zealand Institute of International Affairs,” (address to NZIIA, Wellington, 5 April 2017).

⁷¹¹ McCully, “Address to NZIIA.”

⁷¹² New Zealand Government, *Peace and Security Challenges Facing Small Island Developing States: United Nations Security Council Open Debate 30 July 2015* (Wellington, 2015).

⁷¹³ Greg Fry and Sandra Tarte, “The ‘New Pacific Diplomacy’: An Introduction,” in *The New Pacific Diplomacy*, eds. Greg Fry and Sandra Tarte (Canberra: ANU Press, 2015), 3.

⁷¹⁴ A group recognised as a special case at the 1992 United Nations Conference on Environment and Development (the Earth Summit) and acknowledged by the United Nations as having special development needs.

Small Island Developing States group at the United Nations, but not being United Nations members, statements by the group are not made on their behalf. Needless to say New Zealand is not in these groups.

Moreover, growth in the Cook Islands' and Niue's international personality is not a result of their ambitions, interests and abilities alone. It has also been in the interests of other governments to conclude agreements direct with the Cook Islands and Niue, for example on air services, or maritime boundaries.⁷¹⁵ There is a strong drive to achieve universal coverage of regional and multilateral treaties, and universal membership of organisations, and so to sign up the Cook Islands and Niue. Others may initiate the establishment of diplomatic relations.

Finally, foreign policy is not solely a matter of analysis of costs and benefits. In response to a journalist's question about what United Nations membership would mean for Niue, Premier Talagi captured the point: "What would it mean to Niue? What does it mean to anybody? What does it mean to New Zealand? What do you think?"⁷¹⁶ The Cook Islands and Niue are states. They have differing capacity to pursue their own interests internationally. The Cook Islands has significantly more personnel and resources than Niue. However while the degree of active participation in external affairs may be a matter of cost, no state wants to be denied the opportunity.

E New Zealand Response

As well as responding to initiatives by the Cook Islands and Niue, over the years New Zealand has been consulted by others on the Cook Islands' and Niue's status with respect to their application for membership of organisations, ability to sign bilateral and multilateral treaties and even establishment of diplomatic relations. The Cook Islands joining the International Labour Organisation is a recent example of this.⁷¹⁷

Consultation with New Zealand may reflect the fact of New Zealand's existing membership in an organisation, and responsibility for representing the Cook Islands and Niue in it. Or it may be considered desirable to ensure both partners to free association agree. Other states may wish to ensure they are not cutting across any New Zealand

⁷¹⁵ For example, in 1980, a maritime boundary demarcation treaty between the Cook Islands and United States, and in 1997 between Niue and the United States.

⁷¹⁶ "Niue to Seek UN Membership," *Radio New Zealand*, 27 October 2016.

⁷¹⁷ International Labour Organisation, *Cook Islands' Application for Membership: Background Paper* (Geneva: June 2015).

responsibilities or interests. Right or wrong, this means New Zealand can be a gateway for the Cook Islands and Niue internationally and can maintain an informal oversight of external affairs. In addition New Zealand can be required to champion the case for inclusion and recognition of the Cook Islands and Niue.

In supporting the Cook Islands and Niue, New Zealand has provided a consistent legal interpretation in explaining the implications of the free association arrangements to others that emphasises the statehood of the Cook Islands and Niue and unfettered ability to conduct foreign relations. First, New Zealand's responsibilities for external affairs and defence are in the nature of obligations, and these responsibilities would be undertaken under the authority of the Cook Islands or Niue Government as they carry no right of control. Second, the Cook Islands and Niue make their own laws and have full executive powers. Third, the Cook Islands and Niue have the competence to enter into treaties and sign international agreements in their own right, and responsibility rests with them to fulfil their international undertakings. Fourth, the Cook Islands and Niue can do this, along with establishing diplomatic relations and becoming a member of international organisations, without requiring New Zealand's approval.⁷¹⁸ While action has expanded, the principles are consistent with Corner's explanation of free association to the United Nations in 1965.

Short has recalled having to press New Zealand for change.⁷¹⁹ It has been suggested that occasionally New Zealand has questioned the rationale for others seeking to establish diplomatic relations or have Niue sign treaties, presumably on the grounds it was thought compliance would be a burden. However, even the Cook Islands Prime Minister Davis, who had a difficult relationship with his New Zealand counterpart, concluded in 1992 that "New Zealand Foreign Affairs, though showing signs of a reserved attitude, have always come to our assistance when we have needed it."⁷²⁰

Indeed New Zealand should, given that this represents a process of continued self-determination. New Zealand may harbour reservations about the wisdom of the steps being taken, on the grounds of cost and benefits. There is a desire for consultation and cooperation as discussed in chapter 6. New Zealand reservations about foreign policy

⁷¹⁸ Ministry of Foreign Affairs and Immigration, *A Voyage to Statehood*, 40-41.

⁷¹⁹ Short, "The Cook Islands," 178-183.

⁷²⁰ Davis, *Island Boy*, 309.

approaches at variance to New Zealand's own, or with implications for New Zealand, have been made known behind the scenes. Certain arrangements, such as recognition of Taiwan, would be problematic for New Zealand and this has been pointed out.⁷²¹

A wider range of relationships and membership of organisations dilutes New Zealand influence and leverage. Its attraction for New Zealand is that it also diminishes New Zealand financial and other responsibility. It is consistent for example, with New Zealand hopes, discussed in chapter 8, that the Cook Islands and Niue would become increasingly self-sufficient.

However membership in organisations, or recognition of the Cook Islands and Niue, is not solely a function of New Zealand's support. It can also depend on membership rules of organisations, recognition and interests of other states. That said, New Zealand, when consulted formally, had been seen as generally supportive of the expansion of the Cook Islands' and Niue's international personality, while possibly not reflecting closely on where this might lead. Where it has led is to the question of United Nations membership.

F United Nations Membership

As this chapter illustrates, there had been a history of general New Zealand support for the Cook Islands Government's and Niue Government's international aspirations. As discussed in chapter 6, the 2001 Joint Centenary Declaration described the Cook Islands interacting with the international community as a "sovereign and independent state." However at the signing of the Joint Centenary Declaration, New Zealand Prime Minister Clark made it clear that in New Zealand's view United Nations membership for the Cook Islands was not compatible with holding New Zealand citizenship. This was met with surprise and consternation still recalled today by those Cook Islanders present. The desire of the Cook Islands Government to pursue United Nations membership and New Zealand reservations were not new. But the significance of the public setting of a red line was registered. Subsequent New Zealand amplification stated that constitutional change to being an independent sovereign state would have implications for the eligibility of Cook Islanders for New Zealand citizenship, and

⁷²¹ In contrast, the Cook Islands, China and New Zealand have partnered to upgrade the Cook Islands water supply; the first time China has worked with another donor in the region.

would require a referendum and changes to the Cook Islands Constitution.⁷²² This has remained New Zealand policy since, restated by New Zealand Prime Minister Key in 2015. Niue received a similar message in 2016.⁷²³

Interest in United Nations membership has brought differences between New Zealand views and the Cook Islands' and Niue's ambitions into sharp relief.

With respect to international considerations, the Cook Islands appears to meet the legal criteria for United Nations membership. It is a peace-loving state, able and willing to carry out the obligations of the United Nations Charter. British colonial history, including the case of New Zealand, provides precedent as the same head of state and shared citizenship did not preclude membership of the United Nations.⁷²⁴ United Nations membership requires a Security Council recommendation and a two-thirds majority vote in the General Assembly. Political considerations mean this may not be straightforward.

Lawyer Stephen Smith has explored the Cook Islands' eligibility for United Nations membership and points to the precedent of membership of the three states in free association with the United States, which he says was achieved "without controversy" despite their having less control over external affairs than the Cook Islands.⁷²⁵

In fact the process was not straightforward and this example illustrates the significance of the political context over strict legal considerations. The United States' termination of its trusteeship in the case of the Federated States of Micronesia and the Marshall Islands in 1986 did not secure United Nations Security Council acceptance because of Soviet opposition. A post-Cold War deal between the United States and the Soviet Union resolved the impasse in 1990.⁷²⁶

With regard to United Nations membership which followed, legal questions arose because of the lack of independence over foreign affairs and defence in the

⁷²² Ministry of Foreign Affairs and Trade, *Cook Islands: Constitutional Status and International Personality*.

⁷²³ "Warning from New Zealand on Niue UN Push," *Radio New Zealand*, 2 November 2016.

⁷²⁴ Smith, "Has the Cook Islands Become Eligible for United Nations Membership?" 210-212.

⁷²⁵ Smith, "Has the Cook Islands Become Eligible for United Nations Membership?" 204. He could have added that their admission was strongly supported by New Zealand.

⁷²⁶ Ellen Boneparth and M. James Wilkinson, "Terminating Trusteeship for the Federated States and Micronesia and the Republic of the Marshall Islands: Independence and Self-Sufficiency on the Post-Cold War Environment," *Pacific Studies* 18, no 2 (June 1995): 62-65. Palau followed in 1994.

arrangements, and the small size of the Federated States of Micronesia⁷²⁷ and the Marshall Islands.⁷²⁸ Boneparth and Wilkinson explain that Washington's view was that while states such as Cuba, Libya, Iraq and Iran had full membership, the United States should "aggressively support the Federated States and the Marshalls for their voting power."⁷²⁹ The case was helped by the precedent of Liechtenstein, with its even smaller population and the Swiss carrying out some responsibilities.⁷³⁰ Queries about status, which came primarily from Western diplomats, disappeared in the face of widespread support from other Pacific states and former colonies. Boneparth and Wilkinson conclude, "With UN membership, legal questions about the sovereignty and independence of the two countries were essentially overcome. Politics resolved the issue for practical purposes."⁷³¹

Although untested, it seems unlikely at this point in time that politics would assist the Cook Islands and Niue, and the Security Council approve their applications despite acceptance of their status in other organisations. Smith discusses Security Council members vetoing membership bids on geopolitical grounds. He concludes, probably correctly, this would not apply to the Cook Islands. However the issue is less the Cook Islands than the precedent it sets.

Unnamed New Zealand politicians and officials have been reported as suggesting that the Cook Islands membership might set an unwelcome example for France, the United States and Britain and their "dependencies" in the Pacific and other places. It could strengthen Palestine's case for United Nations membership, currently unable to secure Security Council approval.⁷³² A signal of possible views can be seen in the lack of diplomatic recognition of the Cook Islands and Niue by the United States and Britain. The United States was opposed to Niue joining the Asian Development Bank. The United States was the only government to oppose the Cook Islands joining the

⁷²⁷ 1989 population 95,740; see Division of Statistics, Office of S.B.O.C., *Summary Analysis of Key Indicators from the FSM 2010 Census of Population and Housing* (Pohnpei: FSM Office of Statistics, Budget, Overseas Development Assistance and Compact Management, 2010), 1.

⁷²⁸ 1988 population 43,380; see Economic Policy Planning and Statistics Office and SPC, *Republic of the Marshall Islands 2011 Census Report* (Noumea: Secretariat of the Pacific Community, 2013), 13.

⁷²⁹ Boneparth and Wilkinson, "Terminating Trusteeship," 66.

⁷³⁰ Ambivalence about small states joining the United Nations has not gone away. The Cook Islands would not be the smallest member. Niue would be.

⁷³¹ Boneparth and Wilkinson, "Terminating Trusteeship," 66.

⁷³² Vernon Small and Simon Day, "Cook Islands Push for Independence from NZ," *Stuff*, 31 May 2015.

International Labour Organisation. The British Government was among the six governments who abstained.⁷³³

New Zealand support for Cook Islands' and Niue's acceding to treaties, joining organisations and establishing diplomatic relations has focussed on explaining the limit of New Zealand responsibility for external affairs and defence. In this case rejection would be likely to be justified by pointing to links with New Zealand which differ from those of the states in free association with the United States. The Head of State or common citizenship may be cited to deny United Nations membership.

While the international context is unpromising, the New Zealand Government view on United Nations membership is also significant. The Cook Islands Prime Minister Puna has commented, "Innovative thinking brought the special friendship deal into place fifty years ago and the same innovation could happen today."⁷³⁴ Unfortunately the same incentives for New Zealand do not exist today.

If United Nations Security Council approval was unlikely, this would be a rational explanation for New Zealand's lack of enthusiasm. An application by the Cook Islands supported by New Zealand (a state without the clout of the United States) would be a sizeable undertaking, use up diplomatic capital, and be unlikely to be achieved. However this is not the stated basis for New Zealand's position. New Zealand has currently drawn a line at United Nations membership while holding New Zealand citizenship.

Explanations of New Zealand's position appearing in the media have not been entirely coherent or consistent.⁷³⁵ It is unclear if New Zealand's position is that forfeiting New Zealand citizenship and being an "independent sovereign state" is a prerequisite for United Nations membership, and New Zealand's support for this. Or, whether the position is that United Nations membership would have implications for free association and Cook Islanders' eligibility for New Zealand citizenship. If the latter, the suggestion appears to be that it would be for the Cook Islands to make the constitutional change required. New Zealand assumes that this will not happen. It is

⁷³³ International Labour Organisation, *International Labour Conference – 104th Session, Geneva 2015: Record Vote on Admission of the Cook Islands to Membership of the ILO*.

⁷³⁴ "PMs Skirt Talks About Cook Islands UN Membership," *Radio New Zealand*, 5 August 2015.

⁷³⁵ "NZ PM Rules Out Discussion on Cooks UN Membership," *Radio New Zealand*, 19 June 2015.

also unlikely that a referendum of Cook Islanders would support rejection of New Zealand citizenship.

This raises the intriguing question of how New Zealand would react should the Cook Islands achieve United Nations membership while holding New Zealand citizenship. As discussed in chapter 7, unilateral removal of citizenship by New Zealand would be extremely problematic and most unlikely.

What New Zealand is saying is that New Zealand sees United Nations membership as outside the limit of international action possible (for the Cook Islands, and Niue) while in a relationship of free association. This is the puzzle to explain.

The Cook Islands Government perspective is that United Nations membership is a separate issue to the citizenship relationship with New Zealand. As the Cook Islands Prime Minister Puna explained in the Cook Islands Parliament, “Free Association has not and does not impinge on our right to self-determination ... [and] does allow us to pursue a long-standing goal – that of joining the United Nations.”⁷³⁶ At the same time he confirmed he was committed to continued association and citizenship. The Cook Islands Government points to inconsistency between New Zealand’s previous support for its membership in international organisations and the position on United Nations membership. New Zealand and the Cook Islands participate separately in organisations, and can take different policy positions.⁷³⁷

In response, the New Zealand Government has stated it would not stand in the way of the Cook Islands moving to independence if it so wished. This is consistent with free association and ensures New Zealand is not seen as blocking continued Cook Islands’ self-determination.

The New Zealand Government has also referred to the Cook Islands needing to hold a referendum on the question, while leaving vague who is to be included in such a referendum. This deflects political heat away from itself, and its sizeable and interested Cook Islands population. It is Prime Minister Puna who has had to deal with his

⁷³⁶ Henry Puna, “Ministerial Statement by the Prime Minister: 10 June 2015: Cook Islands Aspirations for UN Membership,” accessed 11 April 2016, <https://www.facebook.com/cookislandsparty/posts/781744068591139:0>.

⁷³⁷ “Cook’s Citizenship Shouldn’t be Part of UN Membership Discussion,” *Radio New Zealand*, 22 June 2015.

parliamentary Opposition, justify domestically the Cook Islands' interest in the United Nations, and defend himself from criticism he is jeopardising New Zealand citizenship.⁷³⁸

Political scientist Stephen Levine has commented: "Exactly why New Zealand should oppose the Cook Islands joining the UN – adding another member to the Pacific Islands 'caucus' at the UN - is unclear."⁷³⁹ However votes appear to pose a problem, whether with or against New Zealand. One ground for New Zealand reluctance is the perception New Zealand is trying to have two seats at the United Nations.⁷⁴⁰ The other is a concern that one group of New Zealanders could vote against another.⁷⁴¹ If the Cook Islands joined the United Nations, there could be advantages and risks for New Zealand. However the argument here is that at the heart of the matter is that this represents a fundamental shift in the relationship.

First, despite a long period of explaining the nature of the relationship between the Cook Islands and New Zealand (and Niue and New Zealand) there remains an international identification of the Cook Islands and Niue with New Zealand. Citizenship is the key link. The New Zealand Government sees potential risk in the Cook Islands', and Niue's, activity for New Zealand's reputation and interests because of that association. This means that, just as in 1965, New Zealand has an interest in an ability to intervene and influence.

Second, free association, in particular citizenship and associated shared values, are the rationale for New Zealand intervention and influence on the Cook Islands and Niue action, as discussed in chapter 6. It could be argued that a threat of removal of New Zealand citizenship remains as a potential sanction whether the Cook Islands (or Niue) hold United Nations membership or not. In fact it would be very problematic for New Zealand to remove the extension of citizenship unilaterally, with potential international and certainly domestic repercussions.

⁷³⁸ Matariki Wilson, "Cooks PM to File Media Complaint Over NZ 'Independence' Story," *Cook Islands News*, 11 June 2015; Phillipa Webb, "Cooks Opposition: PM Failing to Detail Benefits of UN Bid," *Cook Islands News*, 24 June 2015; Phillipa Webb, "Cooks PM Dismisses Critics, Defends Pursuit of UN Membership," *Cook Islands News*, 30 June 2015.

⁷³⁹ Phillipa Webb, "Strong Case for UN Seat," *Cook Islands News*, 9 September 2015.

⁷⁴⁰ Small and Day, "Cook Islands Push for Independence from NZ."

⁷⁴¹ "Cook Islands Bid for UN Seat 'Not a Touchy Subject' at 50-year Celebrations," *TVNZ One News*, 4 August 2015.

Third, United Nations membership is based on the “sovereign equality of all its members.” Membership of the United Nations would constitute international acceptance that the Cook Islands was independent and sovereign, and equal to other states, including New Zealand. United Nations membership with its greater equality would diminish the basis on which New Zealand has the “right” to exercise influence and seek to control.

Fourth, there is a domestic political reality. Chapter 3 discussed the influence of Cook Islanders in New Zealand on New Zealand politicians. Today those Cook Islanders constitute a larger and more influential group, opposed to change in the current arrangements, and with votes being chased by both major parties.

Adding this up, from a New Zealand perspective, unlike in 1965, and 1974, and the period since, there seems little or nothing to gain in terms of New Zealand’s domestic or international interests by supporting further devolution and United Nations membership for the Cook Islands or Niue. It would represent a shift in the balance of power, to New Zealand’s disadvantage.

It is unlikely that the New Zealand Government has fully thought this through. The expectation is that the Cook Islands would not wish to relinquish New Zealand citizenship. Comments suggest political instinct rather than policy consideration. What it does make clear is that despite the decolonisation emphasis by New Zealand Prime Ministers on self-government representing “a new period of partnership on the basis of equality”⁷⁴² and announcing “Now we are partners,”⁷⁴³ New Zealand does not see the Cook Islands and Niue as holding equal status with New Zealand. New Zealand’s current position, unlike the Cook Islands and Niue perspective, is that this is not the nature of the relationship. Citizenship comes at a cost to the Cook Islands and Niue, and currently that cost is United Nations membership.

IV PROVISION OF DEFENCE ASSISTANCE

While “constitutional obligations” and “legal obligations” appear in New Zealand Government documents on defence, unlike external affairs the nature of the responsibilities of Her Majesty the Queen in right of New Zealand for defence of the

⁷⁴² Ministry of Foreign Affairs, “Niue Attains Self-Government,” *New Zealand Foreign Affairs Review*, 24.

⁷⁴³ Department of External Affairs, “Self-Government for the Cook Islands – II,” 3.

Cook Islands and Niue, has not been further elaborated. Nor has the obligation been tested and its boundaries negotiated in a situation of external military threat.⁷⁴⁴

Alison Quentin-Baxter explains that under free association the New Zealand Government has assumed a general responsibility for the defence of the Cook Islands but, as with any other state, this does not extend to an authority within the Cook Islands. The Defence Act 1990 does not extend to the Cook Islands.⁷⁴⁵ Permission must be obtained in advance for visits by New Zealand armed forces to the Cook Islands and Niue and they are covered by Status of Forces Agreements.

The question arises how New Zealand constitutional responsibility for defence is reflected in New Zealand action, and why. This chapter argues that while the provision may be seen as an assurance of help, not much if anything distinguishes New Zealand's assistance to the Cook Islands and Niue from that to other Pacific states in New Zealand's area of responsibility. Assistance is consistent with New Zealand's interests in the security, stability and prosperity of the Pacific region.⁷⁴⁶ These interests also provide justification for the New Zealand Defence Force structure.⁷⁴⁷

New Zealand's interests are set out in the Defence White Paper 2010:

to play a leadership role in the South Pacific ... acting in concert with our South Pacific neighbours. A weak or unstable South Pacific region poses demographic, economic, criminal, and reputational risks to New Zealand. Active and stabilising involvement by New Zealand in the region, and our readiness to respond to natural disasters and humanitarian crises, is something which New Zealanders and the wider international community expect. It will remain in our interests for Pacific Island states to view New Zealand as a trusted member and friend of the Pacific community.⁷⁴⁸

⁷⁴⁴ Prime Minister Davis and Prime Minister Lange in 1985 disagreed on New Zealand's anti-nuclear ships visit policy. According to Norman George, MP, in response to a taunt from Davis about New Zealand's inability to defend the Cook Islands, New Zealand mounted a major military exercise in the Cook Islands which Davis tried to cancel, but was overruled by Cabinet colleagues. See Davis, *Island Boy*, 308 – 309, and Norman George, "Memories of My Fallen MP Friends," *Cook Islands Herald*, 19 February 2014, 15.

⁷⁴⁵ A. Quentin-Baxter, "Pacific States and Territories," paragraph 30

⁷⁴⁶ Ministry of Defence, *Defence White Paper 2016* (Wellington: Ministry of Defence, 2016).

⁷⁴⁷ Robert Ayson, "A Defence of New Zealand Strategy?" (paper for New Zealand Defence White Paper Symposium, Wellington, 4 July 2016), 2-3.

⁷⁴⁸ Ministry of Defence, *Defence White Paper 2010* (Wellington: Ministry of Defence, 2010), 19.

Assistance provided is described in the Defence Assessment 2014 as a function of New Zealand's connections with the region – people to people, historic, cultural and economic. Cited are “legal obligations” to the Cook Islands, Niue (and non-self-governing Tokelau), a “special relationship” with Samoa (although the Treaty of Friendship makes no mention of defence) and an expectation of New Zealand responsibility held by governments in the region and the international community.⁷⁴⁹

The Defence White Paper 2016 also refers to “New Zealand's historic links with, and constitutional obligations to, South Pacific countries, and an acknowledgment that instability could have an impact on New Zealand and the wider region.”⁷⁵⁰ Rather mysteriously, “New Zealand's sovereign territory” is said to include the Cook Islands, Niue and Tokelau.⁷⁵¹ The basis of this is unexplained, other than that they “all form part of the Realm of New Zealand.”⁷⁵²

New Zealand's involvement does not reflect expectation of external military threat. Nor are its interests presented as reflecting competition for influence in the Pacific. Attention is drawn to New Zealand's military cooperation with China.⁷⁵³ It is made clear New Zealand welcomes “constructive” international engagement in the region.⁷⁵⁴

Instead the Pacific is seen as facing economic, governance and environmental challenges, for which New Zealand Defence Force assistance will be required. Activities envisaged include deployment of military forces, maritime surveillance, humanitarian and disaster relief, resource protection, search and rescue, contribution to capacity building and development of Pacific forces.⁷⁵⁵ This is the range of activities available.

New Zealand's military involvements in Pacific states since the 1990s have been in response to problems in Timor-Leste, Bougainville, Solomon Islands and Tonga. New Zealand has military mutual assistance programmes in the Pacific, including personnel in Papua New Guinea, Vanuatu, Tonga, Timor-Leste and the Cook Islands.

⁷⁴⁹ New Zealand Defence Force and Ministry of Defence, *Defence Assessment 2014* (Wellington: Ministry of Defence, 2015), 34.

⁷⁵⁰ Ministry of Defence, *Defence White Paper 2016*, 39.

⁷⁵¹ Ministry of Defence, *Defence White Paper 2016*, 38.

⁷⁵² Ministry of Defence, *Defence White Paper 2016*, 33.

⁷⁵³ Ministry of Defence, *Defence White Paper 2016*, 33.

⁷⁵⁴ Ministry of Defence, *Defence White Paper 2016*, 34.

⁷⁵⁵ Ministry of Defence, *Defence White Paper 2016*, 52.

Exercises are carried out in the Pacific with others. For example, an annual exercise related to disaster preparedness and relief, Tropic Twilight, took place in the northern Cook Islands in 2015 and involved military engineers from China, the United States and Britain. Other recent Tropic Twilight exercises have been held in Niue, Tokelau, Tuvalu, Samoa, and Tonga.

Under the FRANZ Arrangement, disaster response and relief in the Pacific is coordinated by France, Australia and New Zealand. In major events in Samoa, Tonga, the Cook Islands and Niue, New Zealand is committed to an initial response within 24 hours of a request.⁷⁵⁶ Exercises and disaster relief are part of a regional pattern. Disaster recovery support is a charge to the aid programme.

Maritime surveillance focusses on illegal, unreported and fishing in Pacific states' exclusive economic zones. In carrying this out, New Zealand works with Australia, France and the United States, Pacific governments and the regional Forum Fisheries Agency.

While there are references to New Zealand support being provided to the Cook Islands and Niue "in particular,"⁷⁵⁷ and it being "a priority,"⁷⁵⁸ this is difficult to confirm. In 2014 the New Zealand Auditor-General noted that the National Maritime Coordination Centre and government agencies using maritime patrols and providing aircraft and vessels, lacked a framework to identify priorities and plan.⁷⁵⁹ It is not possible to distinguish between maritime surveillance activities which are a result of constitutional obligations to the Cook Islands and Niue, and general Pacific activities. Information available suggests there is no distinction.

New Zealand has a search and rescue region covering 30 million square kilometres from Antarctica to the Equator, including much of Polynesia and hence the Cook

⁷⁵⁶ Jenny Wells, "The New Zealand Government and the FRANZ Arrangement" (Ministry of Foreign Affairs and Trade presentation, 24 October 2014).

⁷⁵⁷ Ministry of Foreign Affairs and Trade, *Review of Maritime Patrol: MFAT Submission* (November 2000), 9.

⁷⁵⁸ Foreign Affairs, Defence and Trade Committee, "Inquiry Into New Zealand's Relationships with South Pacific Countries," 57.

⁷⁵⁹ Controller and Auditor-General, *Effectiveness of Arrangements for Co-ordinating Civilian Maritime Patrols: Progress in Responding to the Auditor-General's Recommendations* (Wellington: Controller and Auditor-General, 2014).

Islands and Niue. Search and rescue carried out around the Cook Islands and Niue appears to be part of this obligation.

The conclusion is that New Zealand operates regionally, albeit with a stated focus on countries with which New Zealand has a special relationship and concomitant expectations – the Cook Islands, Niue, Samoa and Tokelau. How constitutional considerations weigh into decisions about, and delivery of, resources and deployment is unclear. Instead they appear in the context of justifying resources and activities in a region not under military threat. New Zealand responsibility for defence may provide a sense of security to the Cook Islands and Niue, but defence assistance is part of the New Zealand Government's broader security interests and activities in the region. The Cook Islands and Niue are a sub-set of New Zealand's Pacific activities, carried out in association with, and divided up among, others with the required capability.

Whether the obligation will be ever tested further is unclear. It would raise both legal and budgetary issues. There seems no great disquiet with the arrangements. Indeed the range of activities carried out by the New Zealand Defence Force in the region is probably wider than what New Zealand parliamentarians had in mind in 1965.

V EFFECTIVENESS OF FREE ASSOCIATION IN MEETING INITIAL EXPECTATIONS

As successive clarifications make clear, New Zealand politicians did not secure legislative or executive control over external affairs and defence of the Cook Islands and Niue. The arrangements fall short of this intent. Absence of reserved powers was explained to the United Nations. As clarified subsequently, there is a New Zealand responsibility to assist.⁷⁶⁰ Initially, the Cook Islands and Niue needed assistance. Control and assistance were initial expectations. However the test of the effectiveness of the arrangements in meeting initial expectations of New Zealand responsibility for external affairs is their ability to accommodate the, less expected, growing independence of action by the Cook Islands and Niue. The measure with respect to defence is whether defence assistance is provided.

⁷⁶⁰ Tony Angelo, "A Few Comparative Remarks," 333.

A External Affairs

New Zealand retains a desire to influence action not in New Zealand's interests. This is amplified by free association, and is now represented in the agreements discussed in chapter 6. While this soon changed, initial expectations of the Cook Islands and Niue of New Zealand acting on their behalf were shaped by the status quo and their limited role in external affairs. Significant evolution in the external personality of the Cook Islands and of Niue is reflected in their accession to treaties, joining organisations, and establishment of diplomatic relations. The question is how effective the free association arrangements have been in accommodating change.

The free association arrangements have allowed this expansion. New Zealand has agreed to modifications of the bilateral relationships. New Zealand has supported change, when required, and to a point, despite possible lingering concerns about risk versus benefit. Where required, the nature of self-government in free association has been explained. New Zealand has lobbied, if required, for membership of the Cook Islands and Niue in international organisations. New Zealand has divested areas where it acted on behalf of, or took responsibility for, the Cook Islands and Niue. Change has been facilitated by growing international acceptance of the status of the Cook Islands and Niue independent of New Zealand. It has suited others to deal direct with the Cook Islands and Niue. Neither has fallen to a malign power, as feared in 1965. These changes are consistent with the choice of the Cook Islands and Niue of self-government and absence of powers reserved to New Zealand. Changes are also consistent with the Cook Islands' and Niue's foreign policy and economic interests. New Zealand responsibility has decreased, but so has New Zealand influence.

Despite this evolution, and New Zealand help, free association has been a constraint on the Cook Islands and Niue. The provision for New Zealand responsibility for external affairs and defence has created confusion. Whether for legal or political reasons, not all states have diplomatic relations with the Cook Islands and Niue. Membership of some organisations is closed to one or both of them. Security Council endorsement of United Nations membership is likely to be problematic. New Zealand is the more internationally significant state, so it has an informal role as gate keeper to the Cook Islands and Niue. Free association has meant a closer interest by New Zealand in the foreign policies of the Cook Islands and Niue than might otherwise have been the case.

Not surprisingly the pattern of international engagement is similar to that of other Pacific states. It has led inevitably to an interest by the Cook Islands and Niue in joining the United Nations.

Until 2001, the Cook Islands' and Niue's interests, New Zealand's response, the interests of others and advances in international recognition, generated the development of an increasingly independent role in external relations by the Cook Islands and Niue within the free association arrangements. Significantly, an explicit limit with respect to United Nations membership was set by New Zealand in 2001. It has been repeated more recently. At this point, United Nations membership by the Cook Islands and Niue has proved a step too far for New Zealand while holding New Zealand citizenship. Former Cook Islands diplomat and politician Short, recalling earlier interactions with New Zealand, said of free association: "We knew what the limit was, where we had to stop. We did not want to lose New Zealand citizenship, and all the benefits that came with it."⁷⁶¹ This is the situation today.

Whether membership could achieve United Nations Security Council approval, given current political considerations, is doubtful. What is interesting is New Zealand's position. There may be pragmatic reasons for this. This chapter has argued that at the heart of the matter is the shift in the relationship this would represent. Free association means a continued interest in influence to protect New Zealand's interests. The basis on which that influence is exercised would be diminished should United Nations membership be secured. It would represent an increase in risk, a shift in power and further diminution of influence.

New Zealand comfort with free association is predicated on a fundamentally unequal relationship. It can be articulated in various ways. The Cook Islands and Niue are part of the Realm of New Zealand, setting aside that the Cook Islands and Niue are equal partners with New Zealand. New Zealand retains responsibility for external affairs and defence, albeit that this is exercised on the authority of the Cook Islands and Niue. The Cook Islands (and Niue) "can't have their cake and eat it too." There is a price for New Zealand citizenship. It is in this context that New Zealand extends citizenship to the Cook Islands and Niue.

⁷⁶¹ Short, "The Cook Islands," 179.

At this point it is proving impossible to achieve the Cook Islands' and Niue's ambitions for United Nations membership. It is not clear that any other arrangement, short of independence with Cook Islands citizenship, would be palatable to New Zealand. The foreign policy considerations may change. Recognition of the status of associated states has evolved. Political considerations internationally may change. It may become more attractive in future for New Zealand to find a solution. The Cook Islands (and Niue) may contemplate a more flexible arrangement to secure access to New Zealand. However at present in New Zealand's view there remains a limit on United Nations membership within free association.

B Defence

Exactly what responsibility for defence was initially expected to constitute is unclear, but delivery of defence assistance is relatively straightforward.

The key point is that from a New Zealand perspective, as Ayson puts it, New Zealand is not in a "heavily contested area."⁷⁶² New Zealand defence strategy and the capability to conduct this need to be justified. The Pacific is the focus and within this "constitutional links" can be drawn on to further bolster the rationale for New Zealand's activities and resources. However the range of New Zealand Defence Force activity in the Pacific region including the Cook Islands and Niue is best explained as part of New Zealand's general involvement, interests and obligations in the region, acting in concert with other providers.⁷⁶³

Expectations of New Zealand Defence Force assistance held by the Cook Islands and Niue remain unarticulated, usually delivered and mostly met. New Zealand Defence Force assistance is analogous to the provision of necessary economic and administrative support, but benefits from greater New Zealand self-interest. Beyond this, the provision may supply comfort in the event of a hypothetical future need for military support, although this is highly unlikely. New Zealand cannot intervene militarily without invitation, and New Zealand military involvement elsewhere has not rested on a constitutional link.

⁷⁶² Ayson, "Defence of New Zealand Strategy?," 1

⁷⁶³ Australia for example provides the Cook Islands patrol boat, New Zealand supplies two advisers; the French provided substantial assistance to Niue following Cyclone Heta.

In short, defence assistance can be summed up as meeting rather opaque initial Governments' expectations but for reasons not attributable to the constitutional ties.

C Conclusion

To sum up the effectiveness of the arrangements in meeting initial expectations, the arrangements do not secure the formal control hoped for by New Zealand parliamentarians. Others in New Zealand understood this was not the nature of the arrangements. For the Cook Islands expectations were initially limited, but this soon changed and ambitions have grown significantly. Niue has followed a similar path constrained by more limited resources. Action has well exceeded what was originally anticipated.

This has required recognition of the Cook Islands and Niue by other states. Free association has been a constraint. To achieve recognition and membership of organisations there has been clarification of the nature of self-government in free association, some modification of the Cook Islands Constitution and change in some New Zealand responsibilities. Expectations of free association and the conduct of foreign relations have been restated in agreements between New Zealand and the Cook Islands. The arrangements have been able to accommodate initial and new expectations.

As the New Zealand response to United Nations membership shows, New Zealand has the ability, for now, to limit further expansion. As the Cook Islands and Niue responses suggest, this does not meet their expectation of the arrangements. So while the overall verdict is that initial expectations have been exceeded, for now current expectations of the Cook Islands and Niue are disappointed.

Defence assistance on the other hand appears to have met rather hazy initial expectations, thanks to it being part of New Zealand's regional obligations.

This examination of the external affairs and defence link concludes the exploration and analysis of the respective Government expectations of each of free association's major components. An evaluation of the overall effectiveness of free association arrangements in meeting initial expectations is provided in chapter 10.

CHAPTER 10: EXPECTATIONS FULFILLED?

I INTRODUCTION

The purpose of this thesis was to determine the formative influences on self-government in free association, in the case of the Cook Islands and Niue, and reach a verdict on how effective the free association arrangements have been in meeting initial expectations.

To do so this thesis explored reasons for the emergence of self-government in free association, whose interests this represented, and how these were reflected in the arrangements. It established what was expected of free association based on the formal arrangements.

The thesis then assessed the degree to which expectations had been met, and explored why. It showed mixed results, for each of the relationships. In some cases these are related to the constitutional arrangements, in other cases not. Some expectations have been met. Others have fallen short. Yet others have been exceeded.

Part II of this chapter reviews the formative influences on self-government in free association. Part III sets out the expectations and the mixed outcomes. Part IV discusses implications for assumptions and conclusions about association. Part V explores why the relationships are retained, despite mixed results. Part VI provides the conclusion.

II FORMATIVE INFLUENCES

A New Zealand and the United Nations

As discussed in chapter 2, decolonisation of the Cook Islands and Niue, and free association, can be attributed to New Zealand's belief in the right to self-determination, to New Zealand foreign policy imperatives in the United Nations taking precedence over the interests of the Cook Islands and Niue, to New Zealand domestic interests and to the preferences of the Cook Islands and Niue. These views were debated fifty years ago. Differences of view remain and influence contemporary verdicts.

This thesis has produced some unexpected results. Rather than a longstanding commitment to decolonisation stretching back to Prime Minister Fraser, it showed the significance of the influence of the United Nations on the self-determination of the

Cook Islands and Niue. This influence started with their being listed with the United Nations in 1946 as non-self-governing territories. This reflected the United Nations Charter provisions and interpretation of them by New Zealand and other like-minded administering powers. Listing occurred despite running counter to Prime Minister Fraser's wishes. New Zealand supported the United Nations, but New Zealand was not involved in developing United Nations decolonisation options. New Zealand's fundamental approach was aligned with other administering powers in a United Nations environment influenced by Cold War tensions. There was New Zealand ambivalence about the Cook Islands' and Niue's status and future and the United Nations being involved in this. The listing put the Cook Islands and Niue on the path to self-determination and the opportunity to decide their own future.

The United Nations again provided a push from 1960, with clear impact on timing. Intensified international interest in, and pressure for, decolonisation, was led by newly decolonised states. The changed composition of the United Nations altered the context for pursuit of New Zealand's interests within the United Nations. New Zealand supported the Declaration on Decolonisation, breaking ranks with other friendly administering powers. The tone of New Zealand statements on colonialism from 1960 reflected the normative shift. New Zealand's objective was to fulfil United Nations Charter obligations, get the Cook Islands and Niue off the United Nations list and out of United Nations' purview. When the United Nations' attention turned the Pacific's way, New Zealand offered self-determination options to the Cook Islands and Niue. The intent was to head off anticipated unwanted United Nations pressure for independence.

There was a limited devolution of responsibility to the Cook Islands and Niue underway, encouraged by dissatisfaction with the New Zealand administration in the Cook Islands. New Zealand believed that greater self-government would be an incentive to economic self-help, improve social and economic outcomes and thereby lessen the financial burden on New Zealand and dampen political unrest in the Cook Islands. Greater local responsibility was seen as a precondition of economic development. This did not suggest however that New Zealand was aiming for eventual self-government for the Cook Islands and Niue.

The conclusion is that international imperatives had greater impact on New Zealand's offer of self-determination than commitment to decolonisation, domestic interests, or demands of the Cook Islands or Niue. In some areas these interests coincided, but there was strong New Zealand domestic ambivalence and little perceived nationalist pressure.

B United Nations Options

The United Nations determined the decolonisation options available: independence, self-government in free association and integration.

Initially not entirely clear, self-government in free association required an act of self-determination and the ability of the associated state to make unilateral change to its constitution and to modify its status. New Zealand started with a minimalist interpretation. There was some initial New Zealand discomfort with the degree of autonomy required by the United Nations. The New Zealand Government did accept this, albeit reluctantly and with safeguards. Others since have not.⁷⁶⁴

The conclusion is that the United Nations enabled the self-governing status of the Cook Islands and Niue and relationship with New Zealand as between two states. It ensured arrangements that allowed the Cook Islands and Niue to develop greater independence from New Zealand in the years ahead.

C New Zealand's Offer

Options offered were shaped by the United Nations. The free association offer reflected New Zealand thinking of the time on the degree of independence possible for small states. It was based on what was in place already. It took account of what was understood to be desired by the Cook Islands and Niue. It was not inconsistent with New Zealand's interests in the relationships and comfort with the status quo. Integration was not attractive to New Zealand because of the cost, and detrimental impact on the Cook Islands and Niue. As discussed in chapter 3, in 1962 New Zealand described independence for the Cook Islands and Niue as "farcical."⁷⁶⁵

⁷⁶⁴ Since their West Indies experience, the British who have ten of the seventeen non-self-governing territories currently listed with the United Nations, reject self-government in free association as an option, as representing responsibility without the requisite control. See Peter Clegg, "The United Kingdom and its Caribbean Overseas Territories: Present Relations and Future Prospects," *Caribbean Journal of International Relations and Diplomacy*, 1, no. 2 (2013): 53-64.

⁷⁶⁵ F. L. A. Götz, Cabinet paper CP (62) 506 "Future Policy in the New Zealand Island Territories," 14 June 1962, reference AAFD 807 W3738/27, record CM(62)25, Archives.

The challenge was to work out arrangements that preserved that status quo and also met United Nations requirements. Key components of the status quo were New Zealand citizenship and New Zealand provision of significant financial and other assistance.

It could be argued that the options reflected a New Zealand judgment of what would be agreed to by the Cook Islands and Niue. In 1962 it also reflected what New Zealand thought best: it represented the status quo in an anticipated ongoing relationship.

D Influence of New Zealand

As the arrangements were developed, New Zealand had difficulty relinquishing control. It was not looking to cast away the Cook Islands and Niue.

The United Nations requirement of full self-government was reflected in advice by the New Zealand constitutional advisers responsible to the Cook Islands and Niue Assemblies. Proposals to restrict this concerned New Zealand Foreign Affairs officials, responsible for securing United Nations' acceptance. However carriage of the relationship was with the Department of Island Territories which took a more conservative approach. Politicians were also cautious. Passage of the Cook Islands Constitution Act through the New Zealand Parliament was difficult.

The arrangements that emerged reflected United Nations requirements. They were also influenced by New Zealand interests. Given the substantial support provided and the assumption this would continue, control of finance was in New Zealand's interests. Control of external affairs and defence reflected a desire to maintain New Zealand influence. Restriction on constitutional change was presumably to maintain the status quo and restrict independence of action by the Cook Islands and Niue. Reassurance was provided by a New Zealand expectation of a continued close relationship with the Cook Islands and subsequently Niue. Citizenship and financial dependence would mitigate any attempts to act against New Zealand interests.

E Influence of the Cook Islands

The Cook Islands sought self-government along with retention of citizenship, a link at Head of State level, and financial assistance. The motion passed in the Cook Islands to bring the Constitution into force included mention of New Zealand responsibility for external affairs and defence. Financial assistance does not appear in the arrangements

but the other desired content was secured, along with various links to allow the use of New Zealand institutions.

What this new status would mean for the future relationship with New Zealand and others was untested. Discussion of the implications of free association for self-government was limited. The focus of the Cook Islands Legislative Assembly was on domestic political arrangements. The election brought in new politicians, led by the Cook Islands' first Premier Albert Henry.

F Influence of Niue

Niue sought self-government, citizenship, assured assistance, more practical links than the Cook Islands, including staffing of the significant Niue Public Service Commission, linkage at Head of State level and stationing of a New Zealand representative on Niue.

Niue's links of free association reflected the same interests as the Cook Islands. There was concern that self-government might jeopardise citizenship. There was a suspicion that New Zealand was looking to rid itself of its financial responsibility. Care was taken to ensure that these risks were avoided. It also reflected the desire of public servants for impartiality.

Niue had the Cook Islands example and experience before it, including the 1973 Exchange of Letters. It had a longer period to consider self-government in free association and Niue's geography made consultation easier. There was an understanding that New Zealand citizenship carried with it a responsibility of New Zealand towards its citizens in Niue as well as in New Zealand, and that this would be reflected in the standard of living and level of material support provided. The Niue Island Assembly took control of the timeline, held a referendum and had continuity of leadership under Premier Robert Rex following self-determination.

G Difference between the Cook Islands and Niue

The Cook Islands and Niue rejected continued colonial status. Neither sought integration, despite its potential greater financial benefit. It could be argued that this reflected the way it was presented in 1962. However despite being more attractively presented in Niue's case, this was not the option adopted. Both sought to increase control over their own affairs, provided this did not jeopardise desired links with New Zealand. There were concerns, differences of opinion and endorsement of self-

government was not unanimous. However the Cook Islands election and Niue referendum indicated that the arrangements met majority wishes.

That said, the free association arrangements the Cook Islands and Niue have with New Zealand differ. They bear the same name. They can be discussed as if they are the same constitutional relationships (albeit with some different legal provisions). They have been ascribed the same legal meaning, including with respect to provision of assistance which is not in the formal arrangements with the Cook Islands.

The Cook Islands Government interest in its international personality and the Niue Government focus on the relationship with New Zealand can be attributed to different phases of evolution of the relationships, or seen as a function of their different size and economic circumstances.

The argument here is that the difference is not simply a function of interests, but reflects the different understandings and expectations of free association from the start.

Premier Henry approached this as independence plus links with New Zealand. The 1973 Exchange of Letters between New Zealand and the Cook Islands confirmed the freedom of the Cook Islands to pursue its own policies and interests.

The 1973 Exchange of Letters also spoke of New Zealand responsibility for its citizens. This was a fundamental aspect of Niuean understanding of free association: a legal obligation and New Zealand responsibility for its citizens extending to those in Niue. The measure of New Zealand's obligations was New Zealand provision of necessary economic and administrative assistance.

Not evident by looking at the Constitution Acts, or Constitutions, or even formal agreed understandings, these differences underpin contemporary views of whether the arrangements have met expectations.

III HAS FREE ASSOCIATION MET EXPECTATIONS?

A Flexibility and the Direction of Change

Anticipated future change was shadowy. The United Nations wanted the door left open to independence. New Zealand was careful to explain to the United Nations that this was possible by a unilateral act by the Cook Islands. The arrangements allowed

change. However the focus of the Cook Islands, Niue and New Zealand was on protection of the status quo.

Further modification of the relationship, at least with the Cook Islands, was considered undesirable by many in New Zealand, leading to greater entrenchment of the Cook Islands Constitution and Constitution Act. Entrenchment in Niue's case was described as reflecting Niuean concerns. Despite this, change has occurred.

The interests of the Cook Islands and Niue Governments and consequent changes made by the Cook Islands and Niue to their Constitutions have been in one direction only, towards greater autonomy. The ability of the arrangements to accommodate change and control of their Constitutions by the Cook Islands and Niue has met Governments' expectations of the arrangements, whether anticipated and considered desirable or not.

Increased exercise of autonomy has been accompanied by negotiated clarifications of the relationship between New Zealand and the Cook Islands. The 1973 Exchange of Letters established the idea of shared values, and both it and the 2001 Joint Centenary Declaration confirm the Cook Islands' freedom of action, and New Zealand's interest in remaining involved. Niue accepts the ideas represented in the Exchange of Letters, in particular the reference to the scale of response to the Cook Islands' material needs, but both are taken by New Zealand as applying to the relationship with Niue.

While the principles, in particular shared values, may be cited to justify New Zealand interest more often than the Cook Islands and Niue would wish, they are modest in ambition. Agreements encapsulate New Zealand's views on the conduct of the relationship in the absence of legal control. Shared values are vague. More recent deployment of the terminology "Realm of New Zealand" emphasises the constitutional links of free association and might imply New Zealand authority and responsibility. However there is no agreement on what would in fact reflect New Zealand responsibility for necessary economic and administrative assistance.

Constitutional changes by the Cook Islands and Niue have stopped short of the broader links of free association. The implications of free association for self-government are work in progress.

The expectation of self-government was that it would be legally unfettered. It was made clear to the United Nations that New Zealand had no reserved powers. The arrangements delivered this. As this thesis has shown this probably exceeded the expectations of the Cook Islands and Niue, and it was not New Zealand's first choice.

It appears that little thought was paid to the implications for self-government of free association, consistent with the newness of the arrangements and anticipated continuation of the status quo. From the information available, citizenship does not appear to have been considered before 1973. Premier Henry saw financial reliance on New Zealand as a constraint on full independence. The constitutional advisers envisaged lack of recognition and resources would be a constraint on external affairs. In Niue's case Chapman saw New Zealand views on funding providing a political context in which Niue would need to operate.

Complaints by Premier Henry about New Zealand constraining his freedom of action soon arose. It was not long before Premier Rex was pointing out that New Zealand had not met its obligation to provide necessary economic and administrative assistance. What free association means in terms of rights and obligations remains subject to negotiation.

As this thesis has shown, flexibility meets the expectations of all three Governments of the arrangements. The use made of this has exceeded what was anticipated. While flexibility is a positive feature, there were, and may still be, differing views on the desirability of change. Change has led to clarifications of the nature of rights and obligations.

B New Zealand Citizenship

New Zealand citizenship was to be unaffected by self-government. While New Zealand citizenship law has changed, the extension of citizenship to the Cook Islands and Niue remains in place. The constitutional arrangements have been effective in meeting initial free association expectations of all three Governments. New Zealand citizenship remains desired by the majority of Cook Islanders and Niueans. Despite depiction of its role as a curb on action by the Cook Islands and Niue, it is also secure. New Zealand is comfortable with this. It is not inconsistent with its broader interests in the Pacific: close relationships enhanced by people-to-people links, and the ability to exercise

influence. The arrangements are not reciprocal and, as desired, the Cook Islands and Niue retain control over their own borders.

The assumed downside is the demographic impact of out migration, but it is not clear that this can be solely attributed to retention of New Zealand citizenship.

Migration was seen as a problem prior to self-government. There was hope, particularly by the Cook Islands and Niue Governments, that self-government might change the institutional and aspirational factors encouraging migration. Continued migration disappoints all three Governments, less for New Zealand's sake than because of the impact on the Cook Islands and Niue. New Zealand citizenship facilitates access to opportunities, services and family in New Zealand, and Australia. While of benefit to the individual, migration is problematic for the self-governing state.

Migration has potential economic benefit for the sending state, but there is no evidence that remittances are significant in the Cook Islands or Niue. Instead migration has diminished already small populations, affecting Niue, and more recently, the outer islands of the Cook Islands in particular. There is detrimental impact on the economy, society and culture and delivery of state functions. Addressing this is a policy priority for the Niue and the Cook Islands Governments.

It is not clear that continued colonial status, or integration, even if acceptable to the Cook Islands and Niue, would have made an appreciable difference. Despite barriers to movement, independence might have accelerated migration.

Migration has raised questions over the future political "viability" of Niue, and by association, the Cook Islands. The overt concern is Niue's ability to maintain government functions. In the background is the cost per capita to New Zealand. There is no sign the Niue Government sees the solution as integration with New Zealand. It is unlikely New Zealand would take on the cost of integration. The promise of free association is that New Zealand will continue to maintain Niue.

The conclusion is that continued extension of citizenship meets the initial expectations of all three Governments, and is more secure than might be assumed. The hope that self-government might halt or reverse migration has not occurred.

C Necessary Economic and Administrative Assistance

The expectation was that necessary economic and administrative assistance would continue. This was a condition of acceptance of self-government. It was promised by New Zealand to both the Cook Islands and Niue. It is in the formal arrangements with Niue. Running counter to this was a hope by all three Governments that reliance on New Zealand would diminish. The Cook Islands and Niue sought greater economic independence concomitant with political independence. New Zealand hoped for a greater local contribution and hence less cost.

A verdict on the effectiveness of the arrangements in meeting initial expectations is complicated by lack of clarity on measures. Alison Quentin-Baxter and Angelo have provided legal interpretations of qualitative requirements. There were a contradictory set of objectives among the Governments concerned. However continued assistance could reasonably be expected to involve certainty and consistency of delivery, in a manner that took account of self-government, on a scale to maintain services, with disagreements discussed, and reassurance of prudent management provided.

New Zealand effort has gone into bringing assistance to Niue and the Cook Islands in line with that to other states. In the aid relationships, New Zealand has been the dominant partner. Delivery has been affected by changing New Zealand economic ideology and circumstances, aid volumes and policies on what would best encourage economic development, and the circumstances of the Cook Islands and Niue and practices of their Governments.

Volumes can be explained by factors other than constitutional requirements. It was most unlikely that the Cook Islands and Niue would have been abandoned by New Zealand. It was in New Zealand's interests to ensure decolonisation was a success. Integration would be a significantly more expensive option. Both are within New Zealand's area of aid priority and responsibility. The historical relationship would ensure continued New Zealand attention, regardless of current status.

Constitutional obligations became more evident in New Zealand statements from 2001 onwards. Unlike the conduct of external affairs, there is no statement of principles for New Zealand provision of assistance. New Zealand Government hopes for even greater self-sufficiency have proved more enduring than promises that assistance would

continue. New Zealand has not articulated its understanding of its commitment and remains disappointed that hopes have not been met.

Provision of necessary economic and administrative assistance is a significant measure of the free association relationship for Niue. It is in the Niue Constitution Act 1974. Expectations were linked to being New Zealand citizens. However fulfilment has fallen short, as the Niue Government has argued since at least 1979.

The Cook Islands Government presents its aid relationship with New Zealand as similar to that with any other donor. Whatever expectations were and are held of New Zealand, when setting out its constitutional relationship with New Zealand, the Cook Islands Government does not depict aid and assistance as a component of this.

As hoped, the Cook Islands and Niue are less reliant on New Zealand support than when each became self-governing. The percentage of New Zealand aid directed to them has diminished significantly. Per capita aid comparisons are misleading as they are a function of population size. As expected by the United Nations, the Cook Islands has been able to diversify its range of aid donors and access loans from multilateral institutions. Niue's greater reliance on New Zealand is correlated with less access to other sources of help.

To conclude, Niue's expectations have not been met. The Cook Islands presents its aid relationship with New Zealand as with any other donor. New Zealand's views on what is required are not articulated. New Zealand is disappointed that greater self-sufficiency has not been achieved.

D External Affairs and Defence

New Zealand's expectation of its responsibility for external affairs and defence was that it would retain oversight, if not control. At the same time the United Nations was told the arrangements did not reserve powers to New Zealand. The disparity between these two views of the meaning of New Zealand responsibility for external affairs and defence was resolved to the latter position by 1969, and formally stated in 1988. Both the Cook Islands and Niue were initially focussed on domestic issues rather than international ambitions. Neither had the resources or a recognised external personality independent of New Zealand, except in the Pacific initially. So it was anticipated help would be needed and New Zealand would act for both internationally. Neither had a

defence capability and New Zealand's was deployed for a range of tasks. Initial expectations of activity were limited. Led by the Cook Islands, expectations rapidly grew. Expectations of the arrangements have changed with clarifications, modifications and agreements between the Cook Islands and New Zealand. The question is the degree to which expansion of conduct of external relations is possible within free association.

Assistance by the New Zealand Defence Force has been provided for a variety of roles; such as maritime surveillance, disaster relief and search and rescue. No combat assistance has been required. The New Zealand Defence Force has a role in the Pacific depicted as fulfilling constitutional undertakings. It is best explained as a function of New Zealand's regional Pacific interests and responsibilities rather than a function of the constitutional relationships. Initial expectations of all three Governments appear to be met.

Opportunities, and the exercise of foreign relations by the Cook Islands and Niue have grown, at their and others' initiative. Free association has constrained recognition of the Cook Islands' and Niue's statehood and independent external personality. This can reflect political as well as legal considerations. In many, but not all cases, this has been overcome. New Zealand has had a role in facilitating this. However over the years, New Zealand involvement, and hence oversight, has declined. New Zealand remains interested in consultation and having the Cook Islands and Niue foreign policy positions on important issues not cut across New Zealand policy. For now, a line has been drawn by New Zealand on support for the Cook Islands' and Niue's ambitions for United Nations membership while in a relationship of free association. It is questionable whether at present the application would get Security Council endorsement. However United Nations membership would further diminish New Zealand's ability to exercise influence, in the absence of formal control.

Summing up, led by the Cook Islands, conduct of external affairs by the Cook Islands and Niue has well exceeded initial expectations of all three Governments involved, but now falls short of the ambitions of the Cook Islands and Niue. The arrangements have been an impediment, although not as much as originally envisaged. International acceptance of associated statehood has evolved, as has geopolitics. New Zealand has

devolved responsibility and statements have clarified self-government. United Nations membership is currently a step too far for New Zealand within a relationship of free association.

IV CHOICE OF ASSOCIATION

Chapter 2 drew attention to scholarship explaining why decolonisation has slowed. It suggested this status (called subnational island jurisdiction) is preferred as it delivers substantial autonomy and also material and security benefit. As discussed in chapter 2 comparative economic data demonstrates that associated states are better off than those independent. Various suggestions have been made about why this is the case. Though self-governing, the Cook Islands and Niue are included as subnational island jurisdictions. There are six areas where their circumstances and this research depart from this approach.

First, the argument was made in chapter 2 that in explaining decolonisation attention must be paid to the historical context, views of the administering power and options made available. This research shows the significant influence of the United Nations on New Zealand's approach to the self-determination of the Cook Islands and Niue. In the case of the Cook Islands New Zealand sought to forestall United Nations pressure. Arrangements had to be worked out that would meet United Nations requirements. In the case of Niue a precedent had been set and that imperative had lessened. It could be argued that the influence of the United Nations has become less significant since the 1960s.

Second, the interests and views of the administering power, New Zealand, were important. This thesis has explored why New Zealand responded as it did to the United Nations decolonisation agenda. It explained how New Zealand's views on what was in the Cook Islands', Niue's and its own interests determined the approach taken and options available. The existing relationship established the content and context in which interests were considered and secured. These views were of their time. Beliefs and considerations are likely to be different today.

Third, the Cook Islands and Niue had self-government in free association on offer. It was not a choice of independence or continued colonial status. There were assurances by New Zealand. Retention of desired benefits was secured by the Cook Islands and

Niue. These formed part of the free association arrangements. Without these assurances the choices were likely to have been different.

Fourth, motivation for free association did involve economic considerations. New Zealand citizenship provided access to New Zealand and benefits available there. Continued financial and other support was needed to maintain the standard of living. The Cook Islands and Niue had limited involvement in foreign affairs and so New Zealand help was required. In both cases there were links designed to secure continued New Zealand attention. Niue ensured even more links and assurances were in place.

However other considerations also came into play. New Zealand's preferred option was not the lowest cost, independence, nor the most expensive, integration. Both the Cook Islands and Niue rejected the possibly more financially advantageous integration and the possibly more secure status quo. There was a perceived economic advantage of self-government. All three Governments expected that the economy would do better under local administration than colonial control. Greater autonomy since has been motivated in part by a desire to diversify sources of economic assistance. This is despite the presumed economic benefit of use of New Zealand institutions (albeit paid for) rather than establishing their own. Other anticipated advantages of self-government were protection of culture and identity, particularly through continued local control of borders and land ownership, improved social conditions and slowing of migration.

Fifth, inclusion of the Cook Islands and Niue in a literature seeking to explain choice of continued colonial status is wrong. Continued colonial status was rejected. Yet they are depicted as having forsaken independence for free association. This suggests a misunderstanding of the nature of their self-government. Autonomy enjoyed by a colony is not the same as having constitutionally unfettered self-government and the ability to change status unilaterally if desired. The rights and obligations of free association are political rather than constitutional. They are subject to interpretation and negotiation.

Sixth, various possible causal links have been suggested to explain the observed pattern of economic and other benefit that subnational island jurisdictions enjoy. Access to the metropole for work is seen as a benefit. However in the case of the Cook Islands and

Niue migration means that what is of benefit to the individual is not seen as a benefit to the state. It is unclear whether there is development benefit to the state as a result of migration. It can be assumed that aid is a function of association, and contributes to higher standards of living. This research shows the link is more tenuous than assumed, and delivery is better explained by factors other than the strictly constitutional. Security afforded by provision of defence can be assumed to be another benefit of association. This research shows it can be provided for other reasons. Help with external relations could be an advantage for a small state, for cost reasons. This research shows that it may not be the most effective way of pursuing interests. Interests may differ. It may not suit others. The state with which one is associated may not be able to fulfil obligations. A wider range of external relationships is associated with greater sources of economic help.

It could be argued that these findings reflect a difference between colonial status and free association. Further work would be required to determine this. This thesis has looked at the choice of constitutional links and what they deliver. Another approach would be to look at various reasons cited for choice of subnational jurisdictional status, such as access to the metropole, aid, defence assistance and so on, and then explore whether, and why, colonial status (or indeed free association) is required to secure these.

V CURRENT INTERESTS AND EXPECTATIONS

This thesis has found that free association has a mixed record in meeting initial expectations. Whether they are met can be a function of other considerations. The question arises of why these relationships persist. It shows belief in the advantage of self-government, the desirability of free association links, and the trade-offs required, remain much as at self-determination.

A The Cook Islands

The 1998 Cook Islands Commission of Political Review, based on discussions with over a thousand people, estimated that about three quarters wanted to retain the status quo relationship with New Zealand, about one quarter wanted closer integration with New Zealand, and around two per cent wanted greater independence. There may be greater interest in independence today, but there is no reason to think the majority do not still support the status quo.

The Commission explained that the preference for the status quo over independence was for the access to New Zealand and Australia and services there. The report did not cite aid as a reason.

Integration was rejected. There was a view that integration might raise the standard of living and deliver services like those in French Polynesia. The perceived downside was loss of control over the Cook Islands' borders and ownership of land and property.⁷⁶⁶

As discussed in this thesis, the Cook Islands Government emphasis is on its statehood. For example the Cook Islands can be referred to as "independent," (in contrast to "full independence"). The term "special relationship" is used rather than "free association." The Cook Islands Prime Minister talks of the "the sovereign conduct" of the Cook Islands affairs.⁷⁶⁷

New Zealand citizenship is the key element defining the Cook Islands as in free association with New Zealand, and if Cook Islanders want to retain New Zealand citizenship the only option for now is the status quo.

The Cook Islands Government may argue that New Zealand citizenship is a bilateral matter that should not constrain or impact on the recognition of the Cook Islands' status as a sovereign state. As discussed in chapter 9, New Zealand has stated that the Cook Islands is not an independent sovereign state, and becoming one would have implications for eligibility for New Zealand citizenship. United Nations membership is not viewed as compatible with holding New Zealand citizenship. A limit to the Cook Islands exercise of sovereignty has been set for now.

B Niue

A survey on the constitutional relationship was carried out in 2000 in Niue. Based on a response rate of eighty-four per cent of those on the electoral roll, sixty-six per cent supported the status quo, twenty-two per cent full integration with New Zealand, and seven per cent full independence.

⁷⁶⁶ Commission of Political Review, *Reforming the Political System of the Cook Islands*, 71-73. Angelo has suggested that integration would not affect land tenure in Niue, and the same argument could be applied to the Cook Islands. See Angelo, "To Be or Not to Be," 103.

⁷⁶⁷ Ministry of Foreign Affairs and Trade, *Voyage to Statehood: 50 Years in the Cook Islands-New Zealand Relationship* (Wellington: Ministry of Foreign Affairs and Trade, 2015), 5.

The appeal of free association was New Zealand citizenship and freedom of movement to New Zealand. Free association was seen as delivering “a reasonable level of economic and social security guaranteed by New Zealand assistance,”⁷⁶⁸ a relatively high standard of social services, and security guaranteed by New Zealand defence. Self-government made it possible for Niue to “enhance its political and ethnic identity.”⁷⁶⁹ Free association with New Zealand was seen as a check against political instability, abuse of power and bad government.

While integration was seen as offering better pay scales, benefits and services like those in New Zealand, integration risked loss of autonomy and Niuean identity, opening up Niue to New Zealanders and the application of New Zealand land laws (with the suggestion that this implied land alienation). Integration was seen as a means of diminishing the role of government by those critical of its operation.

Full independence would deliver Niue its own sovereign identity. However New Zealand citizenship would be lost with independence. Independence was expected to diminish New Zealand support and lower the standard of living on Niue. Independence risked manipulation of Niue politicians by malign outside forces.

Significantly, the 2000 survey found a widespread concern among Niueans that New Zealand might be tired of looking after Niue. There was a belief that New Zealand would be ready to rid itself of its responsibility to provide assistance.⁷⁷⁰ Given Niueans’ suspicions, and greater expectations of the relationship than in the Cook Islands, it is not surprising that there is no move to reject the assurances that they have.

Yet along with this preference for the status quo, is a significant dissatisfaction with the delivery of necessary economic and administrative support, in particular the spirit in which it is provided, its inconsistency, lack of clear definition and variable interpretations. Nevertheless the obligation remains and Niue has the Niue Constitution Act to draw on in support of its arguments. What is unclear is whether fulfilment is

⁷⁶⁸ Constitutional Review Committee, *First Report of the Constitutional Review Committee: December 2000*, 12.

⁷⁶⁹ Constitutional Review Committee, *First Report of the Constitutional Review Committee: December 2000*, 12.

⁷⁷⁰ Constitutional Review Committee, *First Report of the Constitutional Review Committee: December 2000*.

possible without New Zealand erosion of self-government, as suggested by the Foreign Affairs, Defence and Trade Committee recommendations.

C New Zealand

The Cook Islands Government's emphasis on sovereignty and interest in United Nations membership is clear. The Niue Government's views on the significance of citizenship and delivery of necessary economic and administrative support are well documented. Free association is usually seen as being to the Cook Islands' and Niue's advantage, with benefits outweighing constraints. New Zealand's interests and views are less explicit and evident.

New Zealand's interests in the Pacific are described as sitting at the "crossroads of ... domestic and international interests."⁷⁷¹

New Zealand's Pacific credentials are seen as underpinning its international status. As New Zealand Minister of Foreign Affairs Murray McCully explained: "A leadership role in the Pacific is a key aspect of our international personality, and an essential element of our value proposition to our friends and peers."⁷⁷²

New Zealand has an interest in the prosperity and security of the Pacific region. New Zealand seeks to protect its interests and influence, with a focus on Polynesia. New Zealand's sizeable Pacific population forms part of New Zealand's national identity and influences New Zealand's Pacific policies. Protection of interests and influence entails responsibilities. The Cook Islands and Niue are part of these broader interests and responsibilities. What sets these states apart from others is their longstanding close association with New Zealand, their holding New Zealand citizenship, and the implications for both domestic and international interests.

It would be going too far to argue that free association with the Cook Islands and Niue is in New Zealand's interests. What can be said is that even if it could, there is no apparent sign of a New Zealand desire to weaken this tie. Despite the downsides, it is suggested that the ability to influence which flows from New Zealand citizenship and from the easy people movements which come with that, is something New Zealand

⁷⁷¹ Ministry of Foreign Affairs and Trade, *Briefing to the Incoming Minister of Foreign Affairs*, April 2017.

⁷⁷² Murray McCully, "Speech to the US/NZ Pacific Partnership Forum," 21 May 2013.

would not want to lose. Moreover change in citizenship would represent a difficult domestic issue for New Zealand. On balance, it seems the status quo suits New Zealand too.

D The Context

This thesis started with the influence of the United Nations and pressure for decolonisation. It appears, in some minds at least, that matters have come a full circle bringing self-government into question.

In New Zealand, rather than “good riddance,”⁷⁷³ the unofficial default solution to perceived problems is a closer relationship with New Zealand, with implications of greater control, as reflected in the Foreign Affairs, Defence and Trade Committee proposals.

This is not unique to New Zealand. Former Guam delegate to the United States Congress, Robert Underwood, has commented:

When one travels around the Pacific there are two themes that emerge in almost every discussion about politics. The themes centre on the viability of self-governance and the sustainability of the local economy. No island is immune from this discussion. It matters little whether they are independent or a territory or even if they receive significant financial subsidies from large countries. Nearly everywhere we go in the Pacific, questions arise about the capacity of Pacific Islanders to run their own governments.⁷⁷⁴

It seems that without a strong United Nations imperative, former and current administering powers’ doubts about self-determination arise again. This raises a question about the future of self-government in free association.

There is no evidence that, after many years of successfully running their own countries, the Cook Islands and Niue share these views. Each values their self-governing status and resists attempts by New Zealand to encroach on it. There is no desire to turn back the clock and relinquish control to New Zealand. With varying success, since self-government each has moved in the opposite direction and increased its political and

⁷⁷³ In 1992, political scientist Steve Hoadley concluded that the New Zealand unofficial view of the Cook Islands was closer to “good riddance.” See Steve Hoadley, *The South Pacific Foreign Affairs Handbook* (Sydney: Allen & Unwin, 1992), 83.

⁷⁷⁴ Robert Underwood, “A Return to Confidence: Recolonization is Not the Answer,” *Pacific Magazine*, June 2004.

economic independence. There is interest in access to New Zealand services and support, but only if under the Cook Islands or Niue control. The Cook Islands and Niue press for New Zealand to meet its responsibilities without taking charge. That is the promise of free association.

New Zealand officials on the other hand worry about the “problem” of the Cook Islands and Niue and cogitate, on their behalf, on “solutions.” The “problems” have longevity: the continued “cost” of the Cook Islands and Niue, and that this not being matched by control over expenditure. There is concern at the risk of errant foreign or domestic policy and the impact on New Zealand’s broader reputation and domestic constituencies. While New Zealand may see greater influence over the Cook Islands and Niue as attractive, the difficulty for New Zealand is that responsibility, and even greater cost, is less so. As New Zealand is well aware, ultimately self-government rules that out.

VI CONCLUSION

The ability to make changes within free association, the flexibility of the arrangements as required by the United Nations, has met initial expectations. Change has gone beyond what was originally anticipated. The ability to draw on New Zealand institutions has been divested by the Cook Islands and to a lesser extent, Niue. Self-government is preferred over possible benefits of these links of association. However constitutional change has proceeded only to a point. The Cook Islands and Niue have not opted to reject New Zealand citizenship and become fully independent.

New Zealand citizenship continues to be extended to the Cook Islands and Niue. It meets expectations. The hope that migration might halt or reverse has not been fulfilled.

Continued New Zealand economic and administrative assistance has fallen short of Niue’s expectations, and it has been argued, does not meet New Zealand’s constitutional undertakings. The Cook Islands does not represent aid as part of free association. New Zealand’s expectations are unarticulated. The degree of continued reliance on New Zealand falls short of hopes.

Exercise of foreign relations by the Cook Islands and Niue is far greater than what was originally thought possible. Initial expectations have been exceeded and the

arrangements modified and restated to facilitate this. The current expectation of the Cook Islands and Niue is that free association should allow New Zealand support for their joining the United Nations, but this view is not currently shared by New Zealand.

Expectations of provision of defence have been broadly met, although for reasons other than constitutional undertakings.

The expectations of free association in the formal arrangements were not always clear. They are of differing nature. They represent different Government interests. They have been subject to different interpretation by the Governments involved. Delivery has differed. Interests of others have had an impact. Some elements of free association have exceeded expectations; some met expectations; some have disappointed. Outcomes are mixed. Reasons for this lie beyond the purely constitutional ties.

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