The Cook Islands
A Voyage To Statehood
THE COOK ISLANDS:
A VOYAGE TO STATEHOOD

MINISTRY OF FOREIGN AFFAIRS AND IMMIGRATION RAROTONGA, COOKISLANDS
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In 1965, the Cook Islands exercised its right of self-determination and entered into a relationship of free association with New Zealand. That relationship has remained an evolving one of partnership, freely entered into and freely maintained, with both countries respecting the right and freedom of the other to pursue their own national policies and interests.

Under successive governments and in co-operation and with the assistance of New Zealand, the Cook Islands has developed in many different ways over the years. Consonant with its growing experience and expertise in foreign affairs matters, the Cook Islands has increasingly assumed direct responsibility for its own international relations, bilateral and multilateral, regional and global. In so doing, it has itself become a party to multifarious treaties and a full member of a wide range of regional and multilateral organisations. Its history, in this regard, is similar to that of other, older members of the Commonwealth.

To date, very little has been written in relation to the Cook Islands' conduct of its own international affairs and, as a result, the above developments are not widely known. Many of our friends have requested information on the Cook Islands' Constitution, its relationship of free association with New Zealand and its expanding international relations. This publication, therefore, has been prepared to address that lack of information and is, as of this date, a full response to those requests.

I am confident that the record set out in the following pages will demonstrate clearly both the strong desire and the ability of the Cook Islands to participate constructively in international affairs, to work together with other nations in search of co-operative solutions to the problems facing humankind today and to strengthen its relations with other members of the international community. It looks forward to continuing to do so in the future.

Honourable Sir Geoffrey Henry, KBE
Prime Minister
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INTRODUCTION

Geography
The Cook Islands comprises 15 widely-dispersed islands in the South Pacific Ocean between French Polynesia and Fiji (see Maps I and 2). The total land area of the country is 240 square kilometres, while the Cook Islands’ exclusive economic zone covers a maritime area of nearly 2 million square kilometres.

The country is broadly divided into Southern and Northern Groups. The Southern Group, comprising Rarotonga (the main island), Aitutaki, Atiu, Mangaia, Manuae, Mauke, Mitikoro, Palmerston and Takutea, are all (except the small atolls of Manuae and Palmerston, and Takutea, a sandy key) of high volcanic formation (up to 652 metres on Rarotonga) with fertile soils and lush tropical vegetation. The Southern Group possesses about 90% of the total land area of the Cook Islands, Rarotonga being the largest island (6,719 hectares) and Takutea, the smallest (122 hectares).

The Northern Group comprises Manihiki, Nassau, Penrhyn, Pukapuka, Rakahanga and Suwarrow, all except Nassau (a sandy key) being low-lying coral atolls with sparse vegetation (coconut and pandanus trees etc) and large lagoons. Penrhyn is the largest island (984 hectares) and Suwarrow, the smallest (40 hectares).

The closest Outer Island to Rarotonga is Mangaia (204 kilometres distant) while the farthest is Penrhyn (1,365 kilometres away). The two most widely-separate islands of the country are Pukapuka, in the Northern Group, and Mangaia in the Southern Group (1,470 kilometres apart).

Rarotonga is approximately 3,010 kilometres northeast of Auckland, 1,140 kilometres southwest of Tahiti, 2,300 kilometres east of Fiji and 4,730 kilometres south of Hawaii.

Climate
The Cook Islands is situated between 9 degrees and 22 degrees south longitude and possesses a tropical oceanic climate with two seasons. The drier months, from April to November, have an average maximum temperature of about 26 degrees centigrade and an average minimum temperature of about 20 degrees centigrade. The wetter, more humid months, from December to March, have an average maximum temperature of 28 degrees centigrade and an average minimum of 22 degrees centigrade. During the latter season, the Cook Islands is subject to occasionally severe tropical storms and even hurricanes.

Population
The indigenous population of the Cook Islands is the Cook Islands Maori Polynesians closely-related ethnically to the indigenous populations of Tahiti and nearby islands and to the New Zealand Maori (see below). In 1996, according to preliminary census figures, the total population of the Cook Islands was 18,904, comprising 9,786 males and 9,118 females. Of that total, there were about 1,000 non-Cook Islands Maori. Some 59% of the population resided on Rarotonga, the remainder scattered throughout the Outer Islands.

In addition to the above, a large number of Cook Islanders have migrated to New Zealand, Australia and elsewhere over the years, primarily to seek better employment opportunities. In 1996, approximately 47,000 Cook Islanders resided in New Zealand, with another approximately 5-10,000 in Australia.

Non-Polynesians, particularly those of Western cultural backgrounds (e.g. Australia, Canada, European countries, New Zealand, the United States etc) are commonly referred to generically as 'Europeans' and that usage will be followed throughout this paper. Most Europeans live on Rarotonga and are employed in the private sector.

Culture
The Cook Islands Maori culture predominates throughout the country, although there is more of a mixture of Maori European culture on Rarotonga. The Cook Islands Maori language is spoken throughout the country. English is also widely spoken, particularly on the main island, and is also the principal medium of instruction in the schools beyond the second year of primary education.

Cook Islands social organization and culture being firmly rooted in the land, it was decided in the 1800s that permanent alienation of land would be prohibited in order to maintain social and cultural stability. However, land is very commonly leased for up to 60 years, particularly on Rarotonga, for both house sites and commercial purposes.

Since the second half of the 19th Century the overwhelming majority of the population has been Christian. Recent statistics (1996 provisional) on adherents are as follows: Cook Islands Christian Church, 10,490; Roman Catholic, 3,066; Seventh Day Adventist, 1,363; Latter Day Saints, 643; Assembly of God, 354; Apostolic Church, 314; Jehovah Witness, 280; Bahai, 64; and other faiths, 603.

Sustainable Development
The long-term sustainable development of the Cook Islands is based on the following fundamental and inter-related policies:

1. a striving for self-reliance, rather than permanent dependence on overseas assistance;
2. a national commitment to living within its means;
3. private-sector driven economic growth;
MAP 1: THE COOK ISLANDS
(Courtesy of the Survey Department, Rarotonga)
The four leading economic sectors in the Cook Islands are tourism, agriculture, marine resources and financial services.

In recent years, tourism has become the leading economic sector. From a few hundred visitors in 1971, visitor arrivals have grown to over 57,000 by 1994. Although the industry is very much concentrated on Rarotonga, the island of Aitutaki has developed into an important secondary centre. According to recent estimates, tourism and services industries (many related to tourism) have generated on average about 80% of gross domestic product in recent years.

Commercial agriculture is concentrated on the more fertile islands of the Southern Group which produce fruits and vegetables, taro (a tuber crop and a staple in the local diet) and bananas, both for the local market and for export.

Living marine resources are also of great importance, both for subsistence and commercial purposes. Commercial fisheries have three main components: (i) a small artisanal fishery; (ii) a growing lagoon fishery; and (iii) a largely undeveloped industrial fishery. The commercial lagoon fishery comprises primarily the culture of black pearls on the Northern Group islands of Manihiki and Penrhyn and trochus shell in the Aitutaki lagoon. Exports of pearl products in 1991 were estimated at NZ$6.6 million.

Non-living marine resources (polymetallic nodules) have been found in great abundance on the sea floor of the Cook Islands' exclusive economic zone. Studies on various aspects of recovery and processing of the resources are currently underway.

The Cook Islands' off-shore financial services sector developed in the early 1980s and has grown to occupy an important niche in the highly competitive international market based on a strategy of offering high quality, very specialised products rather than seeking to benefit from high volume services. The industry's contribution to the local economy in terms of revenue earned, employment opportunities etc is considerable, and has great potential to increase significantly.

Official development assistance (ODA) extended by bilateral and multilateral aid partners constitute a significant component of national public expenditure. The principal bilateral sources of ODA are New Zealand, Australia, Canada and the People's Republic of China, while multilateral partners include South Pacific regional organisations, the UNDP and specialised United Nations agencies, the Asian Development Bank and the Commonwealth Fund for Technical Cooperation.

Transport and Communications

Transportation

Regularly-scheduled international air services are provided by Air New Zealand, which offers flights between Rarotonga and Auckland, New Zealand, Honolulu, Hawaii, Suva, Fiji, and Tahiti, French Polynesia.

Air Rarotonga operates, on average, eight flights per day, six days per week, between Rarotonga and many of the Outer Islands.

There are three international shipping services connecting Rarotonga with Auckland, Apia, Nuku'alofa (Tonga) and Niue. There are also more or less regular shipping services between Rarotonga and the Outer Islands, depending upon demand.

Communications

International Direct Dialling telephone services are offered by Telecom Cook Islands (country code 682), as are fax/telex/telegram facilities. They may also be found on most of the Outer Islands.

There are two privately-owned local radio stations. Radio Aktiv (formerly State-owned Radio Cook Islands) operates 18 hours per day, seven days per week, its AM/short wave signals reaching all islands in the country. Kia Orana Country (KC FM) operates the same hours, its signal only receivable on Rarotonga.

4. a restructured public sector that is effective, efficient and affordable; and
5. social equity for all, including safety nets for the weak and defenceless members of society.

Economic Growth

In early 1996, the Cook Islands entered upon a vigorous programme to achieve sustainable development based on three key, inter-related economic strategies:

- promoting a stable financial and economic environment conducive to business development and the expansion of employment opportunities;
- removing of obstacles to business development and expansion; and
- withdrawing Government from commercial activities to concentrate on policy formulation and regulatory functions.

The above programme focuses on:

- privatization of Government-owned businesses;
- repayment of Government debt to improve liquidity in the economy;
- strategic development programmes in conjunction with the private sector to promote growth in the key export industries of tourism, agriculture, marine resources and offshore banking;
- tax reform to provide greater incentive for work, saving and investment; and
- creation of reserves to improve the capital base of the country.

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MAP 2: THE PACIFIC ISLANDS
(Courtesy of the Center for Pacific Islands Studies, University of Hawaii)
There is a single, recently-privatised television service (Cook Islands Television) operating 10-12 hours per day, seven days per week.

The Cook Islands News, formerly a Government-owned newspaper, was privatised in 1989 and publishes six days per week, with articles in both English and Maori. The Cook Islands Press, also a privately-owned paper, began publication in December 1994 and appears each Sunday.
PART I. THE PRE-1965 PERIOD*

A. Settlement and First European Contact

It is widely accepted that the islands now comprising the Cook Islands received settlers both from nearby islands now part of French Polynesia and from Samoa in the 13th century.

According to oral traditions of both the Cook Islands and New Zealand Maori peoples, New Zealand was settled about 1350 AD. from Rarotonga. From that era, the indigenous peoples of both countries have been able to trace their genealogical relationships.

The Cook Islands was named after Captain James Cook of the Royal Navy who, between 1773 and 1777, was the first recorded European to land on and survey a number of the islands now bearing his name.

B. The Nineteenth Century

Representatives of the London Missionary Society (LMS) began arriving in the Cook Islands in 1821. With the early conversion of a number of important ariki (chiefs), support for Christianity increased rapidly throughout the Southern Group. Working through the ariki, the missionaries drew up draft legal codes which, together with abolition of violence as a means of dispute settlement, led to unprecedented political stability.

In 1881, however, it was decided by the Colonial Office that New Zealand interests in the area needed some form of protection against foreign powers and the British Government granted a petition by local European merchants and planters for the appointment of an unpaid British Consul for the Hervey Islands, as the Southern Group was then known.

In 1888, acting on a petition from the principal ariki seeking British protection, partly on the basis of kinship between the Cook Islands and New Zealand Maori, the British Government agreed to permit its then vice-consul in Rarotonga to declare a Protectorate over Southern Group islands in an effort to protect pro-British islanders and New Zealand trade. Protectorates were similarly declared over several islands in the Northern Group in the early 1890s. The Colonial Office also decided that certain other Northern Group islands should be annexed for possible future use as trans-Pacific cable stations.

According to the London Times, another factor also influenced the British decision, the vision of the French engineer, de Lessep, of linking the Pacific to the Atlantic:

"Of course, it may be said, and with some reason, that the Panama Canal is impossible...but suppose it is not. Between Sydney and Panama not a single British coaling station exists. Without Rarotonga, France on this route is supreme; with Rarotonga the balance of power is materially altered." (18 June 1888)

Although the above actions were taken on behalf of Great Britain, in October 1885, the Colonial Office accepted an offer by New Zealand, then a self-governing British colony, that the latter pay a British Consul for Rarotonga on condition that he be nominated by, and act as official agent of, New Zealand. ‘The Resident’ was also to act as advisor to the ariki in drafting and administering laws and he would sign all acts of the local legislatures in the name of the Governor of New Zealand, the latter also having the right of disallowance. At the same time Her Majesty's Government “reserved full liberty of action” in respect of the form of government to be established in the islands.

In 1890, the newly-appointed Resident persuaded the ariki of Rarotonga to form a provisional Rarotongan legislature or General Council, the first government for the entire island. Also as a result of his initiative, the following year saw representatives of the ariki from Rarotonga and the Southern Group islands agree to form the first federal legislature in the islands. British currency was officially adopted.

All did not proceed smoothly throughout the last decade of the 19th Century, however, and numerous changes were not to the liking of traditional leaders. In fact, two of the leading ariki said in a 1900 communication to the New Zealand Premier:

“It is our desire that we should form part of the British Empire and become one with the British people. We wish his lordship to understand that it is to Great Britain that we wish to be annexed, not to New Zealand.”

In a formal petition dated 6 September 1900 signed by leading ariki, the latter set out the terms on which their islands might enter the British Empire, including the following:

1. that the Federal Parliament should be abolished and a Council of Ariki, chaired by the Resident, should take its place, with Makea Ariki as ‘Chief of Government’, and New Zealand laws introduced only as required by the Council;
2. islands of the Northern Group should also be annexed at the same time; and
3. the Islands should be annexed to Great Britain and federated with New Zealand.

On 27 September 1900, the New Zealand Parliament approved the annexation of the islands to New Zealand and in October the British Governor in New Zealand landed at Rarotonga. Without discussion on its implications, a deed of cession was signed by ariki and other traditional leaders. On the question of who was doing the annexation, the Governor explained in Rarotonga that:

* Part I is based largely on the accounts of Gilson, Scott and Wilson referred to in the bibliography.
Captain James Cook, RN (courtesy of Alexander Turnbull Library, Wellington, New Zealand)
"It is necessary there should be no misunderstanding that would hereafter cause difficulty to what British annexation to the Empire means. Her Majesty can place the future rule where she likes, the extension of New Zealand’s boundaries being the course proposed."

From 11 June 1901, the boundaries of the Colony of New Zealand were extended to include the Cook Islands.

C. The Cook Islands as a New Zealand Territory

Although the ariki and the local government told a visiting New Zealand Parliamentary mission in 1903 of their strong preference to remain independent in legislative matters and that the Cook Islands were, under the terms of the annexation, “a self-governing community under the British Crown”, by 1909, the first New Zealand Resident Commissioner and the Minister of Island Territories had assumed almost complete responsibility for the administration of the Cook Islands. By 1915, enactments of the New Zealand Parliament had the effect of doing away with the Federal Council. The New Zealand Parliament would legislate for the Cook Islands, while the laws of England at the time New Zealand became a colony (14 January 1840) were also applied to the Cook Islands unless contravened by legislation.

The period 1901-1945 has been described by one New Zealand scholar as one

“marked by constitutional changes at the beginning...by a slow grappling on the part of New Zealand with the health and educational needs of the Islands, by confused attempts to improve economic conditions, and by a world war that brought some of the islands temporarily into intimate contact with a new way of life and thus left a stirring and dissatisfaction as a gift to the last and contemporary period” (Beaglehole 389-90).

In a major step that was to have an important, indirect effect on developments in the Cook Islands, New Zealand in 1945 joined with other members of the international community in founding the United Nations. In so doing, New Zealand, in fact, played a leading role in drafting that part of the United Nations Charter relating to non-self-governing territories (Chapter XI), Article 73 of the Charter setting out the responsibilities of States with dependent territories.

In that regard, the early post-war period witnessed the steady improvement of social and economic infrastructural facilities and attempts to promote economic development programmes. Steps were also taken to devolve a greater degree of political authority to the Territorial Government.

An important, further stimulus to Cook Islands constitutional development was the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples 1960 (United Nations General Assembly [UNGA] Resolution 1514 (XV)), supported by New Zealand. The resolution affirmed that “all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic social and cultural development”. It stated that immediate steps should be taken to transfer all powers to the peoples who have not yet attained independence, in accordance with their freely expressed will and desire. The Declaration emphasised “...inadequacy of political, economic or educational preparedness should never serve as a pretext for delaying independence”.

In an often overlooked but nevertheless important Resolution for the Cook Islands which was adopted the following day, the UNGA established a number of “Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 e of the Charter”. According to the Resolution (1541 (XV)), a Non-Self-Governing Territory:

“can be said to have reached a full measure of self-government by:
(a) emergence as a sovereign independent State;
(b) free association with an independent State; or
(c) integration with an independent State” (Principle VI).

While Resolution 1541 (XV) does not enter into detail on the content and parameters of the politico-judicial concept of free association as “a full measure of self government”, it does establish the Principle that:

“(a) Free association as an association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes. It should be one which respects the individuality and the cultural characteristics of the territory and its peoples, and retains for the peoples of the territory which is associated with an independent State the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes.

“(b) The associated territory should have the right to determine its internal constitution without outside interference, in accordance with due constitutional processes and the freely expressed wishes of the people. This does not preclude consultations as appropriate or necessary under the terms of the free association agreed upon.” (Principle VII).

Those Resolutions were adopted at the United Nations in New York at a time when, half way around the world increased efforts were being made by New Zealand to stimulate the Cook Islands’ economy, following on from the recommendations of a 1954 New Zealand-commissioned report on the Territory. Nevertheless, emigration to New Zealand, which had begun in earnest during World War II, continued throughout the 1960s particularly of young and ambitious Cook Islanders.
seeking better job opportunities and a brighter future for themselves and their families. By 1963, some 6,000 Cook Islanders were living and working in New Zealand, while regularly remitting large amounts of money to relatives back home (an estimated 200,000 pounds per annum by 1965), increasing the annual per capita income by 10 pounds.

In 1962, Sir Leon Götz, the then New Zealand Minister of Island Territories addressed the Cook Islands Legislative Assembly on the future of the Territory, inviting the Assembly to consider four alternative courses:

* complete independence, whereby New Zealand would continue, as with Western Samoa, to assist and advise in the future development of the country; or
* full internal self-government, whereby the Cook Islands people would remain New Zealand citizens, with the right of free entry into New Zealand for both themselves and their produce, but the Cook Islands would be responsible for the management of its own territory; or
* integration with New Zealand, with direct representation in the New Zealand House of Representatives; or
* ultimate integration into a Polynesian Federation, if in future such a Federation seemed practicable.

In that same address, however, the Minister highlighted the disadvantages of three of the above alternatives:

* the Cook Islands was too small, scattered and poor for complete independence;
* full integration with New Zealand would bring with it the application of New Zealand laws ("not only some of which you like, but also a number of which you would probably not like"), while a single Cook Islands voice in the New Zealand Parliament would be lost; and
* membership of a possible ‘Federation of Oceania’ would leave the Cook Islands as a junior partner to Samoa, Fiji, et al in any such regional grouping.

Recalling the assessments, conclusions and recommendations of recent economic and constitutional reports, the overwhelming dependence of the Territory on New Zealand financial assistance to meet even basic services, the growing number of Cook Islanders in New Zealand and the sobering words of caution expressed by the New Zealand Minister, the Legislative Assembly the following day unanimously adopted a resolution choosing self-government while at the same time requesting New Zealand to “preserv[e] for the people their present status as New Zealand citizens”.

Following lengthy consultations and consideration of various constitutional matters by the Legislative Assembly, and in accordance with its wishes, the New Zealand Parliament passed the **Cook Islands Constitution Act** on 17 November 1964, to come into force on a date requested by the Cook Islands legislature following general elections to be held in the Territory. Those elections were held on 20 April 1965, the result being resounding support for the basic thrust of the proposed Constitution and self-government. On 10 May 1965, the new Legislative Assembly met to consider constitutional matters. Present for the deliberations were members of the United Nations Mission (from India, Japan, Spain, the Sudan, Togo and the United States) which had been invited by New Zealand to observe the elections (see UN document A/5880, dated 9 February 1965 and UNGA Resolution 2005 (XIX) of 18 February 1965). Invited to address the Assembly, the Mission’s Leader, His Excellency Mr Omar Adeel of the Sudan, said:

“By the vote of the 20th April 1965, your people have placed their future in your hands...For the Government of New Zealand I have a well-deserved word of praise, but no words can express the esteem with which news of this invitation to the United Nations was received in all quarters, and it was with pride that the Organisation agreed to be associated, even if only in a supervisory capacity, with this historic experiment in the exercise by a people of their right to self-determination”.

This, in fact, had been the first time that the United Nations had observed an act of self-determination in a non-self governing territory other than a trust territory.

On 7 June 1965, the New Zealand Parliament passed the **Cook Islands Constitution Amendment Act 1965** containing certain amendments requested by the Legislative Assembly following the election. On 26 July, the Assembly thereupon adopted a resolution:

“[resolving] that the Cook Islands shall be self-governing in free association with New Zealand;
“[requesting] New Zealand in consultation with the Government of the Cook Islands to discharge the responsibilities for the External Affairs and Defence of the Cook Islands;
“[approving] the Constitution of the Cook Islands as amended in accordance with the wishes of the Assembly;
“[requesting] that the Constitution be brought into force on the 4th day of August 1965.”

On the above date, the Cook Islands became a State in free association with New Zealand.

Perhaps the fundamental rationale behind the Cook Islands having chosen free association as opposed to the more traditional option of "emergence as a sovereign independent State" (to use the words enshrined in UNGA Resolution 1541 (XV) cited above) was best expressed by the independent observer of the self-determination process who was on the spot at the time, Ambassador Adeel. In his 1965 report to the UNGA, the head of the UN Observer Mission explained that,
Sir Frank Leon Aroha Gotz, New Zealand Minister of Island Territories, 1960-1962 (courtesy of Alexander Turnbull Library, New Zealand.)
His Excellency Ambassador Omar Abdel Hamid Adeel, Permanent Representative of the Sudan to the United Nations and Leader of the United Nations Observer Mission to the Cook Islands, 1965 (courtesy of the United Nations)
Albert Henry, the First Cook Islands Premier, points out the location of the Cook Islands during a press conference held at the United Nations on 26 August 1965. To the right is His Excellency Mr Frank Corner, New Zealand Permanent Representative to the United Nations. In the background is Dr. Manea Tamarua, Deputy Premier. (courtesy of the United Nations)
“[w]hile experience has long since proved in Africa and Asia that independence, far from endangering the chances of outside aid, rather increases their scope, in the Cook Islands, independence is genuinely regarded as economic suicide. Before independence, many African and Asian countries knew that political freedom, instead of jeopardising whatever assistance they received from a former colonial power in the economic, financial and social fields, rather offered greater avenues for such assistance from international organizations and friendly countries. In the Cook Islands, the people know of only one source of development assistance: New Zealand.

“It is no wonder that the benefits which they receive in cash subsidy and unrestricted emigration to that country are for them a matter of life or death” (UN document A/5962, dated 20 August 1965, paras 416 and 417).

On 16 December 1965, by a vote of 78 to 0 with 29 abstentions, the UNGA adopted Resolution 2064 (XV) on the "Question of the Cook Islands", in which it recognised the Cook Islands as having achieved a "full measure of self-government" by adopting one of the three modalities approved five years earlier by the UNGA in its Resolution 1541 XV). With the very best wishes and blessing of the United Nations, the Cook Islands entered a new era in its history.

Before moving to a consideration of developments in the post-1965 period, it is useful to review briefly a number of the key provisions of the Constitution that came into force on 4 August of that year.
PART II: THE CONSTITUTION

A. Introduction

The Cook Islands Constitution, like all other national, written constitutions, sets out the most important legal principles upon which the country and its government are based and operate. At the same time, as one noted constitutional law expert observes,

“(i) is not practicable for a written constitution to contain more than a selection of constitutional laws. It is invariably supplemented, with the limits prescribed in the constitution, by amendments passed in the prescribed manner; by organic laws, and other legislation passed in the ordinary way to fill in gaps; usually also by judicial decisions interpreting the written documents; and by customs and conventions regulating the working of the machinery of government.” (Hood Phillips 6)

Only the Cook Islands Parliament has power to enact, amend and repeal laws in the Cook Islands, including the Constitution itself, in respect of which the Cook Islands Parliament must follow special procedures set out in the Constitution. From Constitution Day (4 August 1965); the New Zealand Parliament ceased to have power to make laws of any kind in respect of the Cook Islands, unless the Cook Islands Parliament requested and consented to such legislation. Since the enactment by the Cook Islands Parliament of the Constitution Amendment (No.9) Act, passed on 5 June 1981, the New Zealand Parliament is absolutely precluded from legislating in respect of the Cook Islands, even with the ‘request and consent’ of the Cook Islands Parliament.

It follows from this disability that even if the New Zealand Parliament were to repeal the Cook Islands Constitution Act 1964 (see below), that Act, and the Constitution itself, would remain the law of the Cook Islands, whatever its status at New Zealand law.

The Constitution has been amended by the Cook Islands Parliament 21 times between 4 August 1965 and 31 March 1997. Of the various amendments, Constitution Amendment (No.9) Act 1980-81, inter alia, substituted “Prime Minister” for “Premier” and “Parliament” for “Legislative Assembly” and “Assembly”; while Constitution Amendment (No 10) Act 1981-82 passed on 6 April 1982, inter alia, substituted “Queen’s Representative” for “High Commissioner”. Unless otherwise required for purposes of explaining significant, substantive constitutional developments, the current terminology will be used herein, rather than the terms used in 1965 (e.g. Parliament instead of Legislative Assembly).

As with other constitutions and as observed above, the Cook Islands Constitution has also been supplemented by other legislation, while assuming great importance over the years have been constitutional conventions, i.e. "rules of political practice which are regarded as binding by those to whom they apply, but which are not laws as they are not enforced by the courts or by the Houses of Parliament” (Hood Phillips 113). It is useful for present purposes to observe that conventions function in relation to both unwritten and written constitutions, including those of Australia and Canada, and are an adaptable means of effecting constitutional development without formal changes in the law. In the latter respect, as the expert referred to above has explained,

“constitutional conventions are subject to the processes of growth and transformation. As (British parliamentarian Stanley) Baldwin said in the House of Commons...in 1932: ‘The historian can probably tell you perfectly clearly what the constitutional practice of the country was at any given period in the past, but it would be very difficult for a living writer to tell you at any given period in his lifetime what the constitution of the country is in all respects, and for this reason, that at almost any given moment of our lifetime, there may be one practice called "Constitutional" which is falling into desuetude and there may be another practice which is creeping into use but which is not yet called "Constitutional"."' (Hood Phillips 118-119)

As will be indicated in Part III of this paper, conventions have played a major role in the development of the Cook Islands Constitution not least of all with respect to responsibilities for foreign affairs and defence.

Following is a brief summary of key provisions of both the Cook Islands Constitution Act 1964 and the Constitution itself.

B. The Cook Islands Constitution Act 1964

Like national constitutions of numerous other countries which had been former colonies of an administering power, the Cook Islands Constitution is contained in legislation passed by the New Zealand Parliament. In this case, the Constitution is attached as the Second Schedule to the Cook Islands Constitution Amendment Act passed by the New Zealand Parliament on 7 June 1965 which, in accordance with the wishes of the then Cook Islands Legislative Assembly, amended the Cook Islands Constitution Act passed on 17 November 1964 by that same Parliament (see Part I above). As indicated above, that Act is itself part of Cook Islands law and contains a number of key provisions covering the legal competence of the Cook Islands, the status of the Constitution, external affairs and defence, and British nationality and New Zealand citizenship. Those matters will be discussed briefly below, together with reference to related legislation.

1. Legal Competence of the Cook Islands

In accordance with the expressed wishes of the Legislative Assembly (see Part I above), the legal competence of the Cook Islands is set out clearly and
unreservedly in Section 3 of the Act which states simply: “The Cook Islands shall be self-governing”. While enshrining the basic principle into law, the brief wording of Section 3 has afforded the flexibility for that self-government to be exercised in accordance with the growth of constitutional conventions and in response to evolving needs, desires and available human and other resources.

2. Status of the Constitution

A companion principle to that of self-government above and equally fundamental is to be found in Section 4 of the Act which provides that the Constitution set out as the Schedule to the Act “shall be the Constitution of the Cook Islands, and shall be the supreme law of the Cook Islands” (emphasis added). This Section clearly recognises the primacy of the Constitution in relation to the Cook Islands over legislation passed by other Parliaments, including that of New Zealand. This is reinforced by Articles 27 and 39 of the Constitution itself (see below).

3. External Affairs and Defence

Section 5 of the Act states:

“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 [Prime Minister] of the Cook Islands”.

Because the, word “Premier” was changed to “Prime Minister” by Section 5 of the Constitution Amendment (No 9) Act 1980-81 (see above), the Constitution Act 1964 as part of the law of the Cook Islands differs consequentially from the same Act as part of the law of New Zealand, which remains unamended.

In considering the legal import of Section 5 above with respect to the Cook Islands’ external affairs powers, it is important to note that in terms of British Constitutional law,

“the authority to make treaties is vested absolutely in the Crown as the unquestioned prerogative of sovereignty. In practice, the King exercises the prerogative and acts in the sphere of treaty making only upon the advice of his responsible ministers” (Stewart 228).

Just as convention regulated the British treaty-making power, so it came to regulate treaty-making by the Dominions of the British Empire as they proceeded to autonomy. Following the Report of the Inter-Imperial Relations Committee of the Imperial Conference of 1926 (Cmd. 2768, 1926) and the embodiment of the ‘Balfour Declaration’ therein (see Part III below), it came to be accepted that the practice, the convention, was that the Crown was advised in respect of treaty-making concerning each Dominion by the responsible Ministers of each Dominion, and not by British Ministers in London. These developments have been described in detail by many constitutional authorities, including Noel Baker and Wheare whose works are cited in the Bibliography hereto.

Section 5 above does not state which Ministers advise Her Majesty in matters relating to the external affairs and defence of the Cook Islands, although Article 5(1) of the Constitution itself does refer explicitly to the Queen’s Representative acting on the advice of Her Cook Islands Ministers (see below). Important supporting conventions have also developed in this regard over the years (see Part III below).

4. British Nationality and New Zealand Citizenship

Section 6 of the Act provides that nothing in either the Act itself 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”. The latter Act was repealed and replaced by the Citizenship Act 1977 passed by the New Zealand Parliament and applied to the Cook Islands pursuant to Article 46 of the Cook Islands Constitution in accordance with the request and consent procedure operational at that time (see below).

The 1977 Act above-cited defines “New Zealand” specifically for purposes of that Act as including the Cook Islands (Sec. 2) and provides for Cook Islanders to be New Zealand citizens, a fundamental principle of the free association relationship. As New Zealand citizens, Cook Islanders have the same free right of access to New Zealand for residence, work, schooling and other purposes as do any other New Zealand citizens. However, they are not entitled to vote in New Zealand elections nor to benefit from New Zealand welfare payments etc. unless they are actually resident in New Zealand.

While to date, the Cook Islands has not enacted its own citizenship legislation per se, rights commonly possessed by a country’s nationals are set out in various Acts of the Cook Islands Parliament. Freedom of movement into and out of the country, for example, is governed by the Entry, Residence and Departure Act 1971-72 passed by the Cook Islands Parliament on 20 March 1972. The following are exempted from the Act’s provisions regarding entry into and residence in the Cook Islands:

(a) any Cook Islander, defined in the Act as “a person belonging to the part of the Polynesian race indigenous to the Cook Islands; and includes a person descended from a Cook Islander” (Section 2));
(b) any permanent resident (see immediately below, as well as the discussion below of Part VIA of the Constitution itself); and
(c) any child (born in or out of lawful wedlock) of a permanent resident (Section 4).
Section 5(1) of the Act allows the Cook Islands Minister responsible for immigration to grant to any person, upon application, permanent residency status if that person:

“(a) Is of or over the age of 18 years;
“(b) Has made his home in the Cook Islands;
“(c) Is of good character and standing; and
“(d)(i) Being a New Zealand citizen, has resided continuously in the Cook Islands for a period of three years, or such shorter period (being not less than one year), as the Minister may accept, immediately preceding the date of his application (which period shall be deemed not to have been interrupted by a reasonable period or periods of absence from the Cook Islands for holiday or business purposes);
"(ii) Not being a New Zealand citizen, has resided continuously in the Cook Islands for a period of ten years, or such shorter period (being not less than five years) as the Minister accept, immediately preceding the date of his application (which period shall be deemed not to have been interrupted by a reasonable period or periods of absence from the Cook Islands for holiday or business purposes)...”.

Upon being granted permanent residency, every grantee shall take and subscribe before the Queen's Representative the following Declaration:

"I...................., do solemnly and sincerely declare, that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II as the Head of State of the Cook Islands, Her Heirs and Successors, according to law; that I will faithfully observe the Constitution .and other laws of the Cook Islands; that I will always respect the customs, traditions, usages and values of the people of the Cook Islands; that I .will conscientiously fulfil my duties as a national of the Cook Islands, and that I take this obligation freely without any mental reservation or purpose of evasion. So help me God."

The Minister may cancel an individual’s certificate of permanent residence if that individual "is absent from the Cook Islands continuously for a period exceeding three years in circumstances indicating that the person has ceased to make his home in the Cook Islands” (Section 5(2)).

Other than the above or classes specifically exempted (e.g. diplomats and their families); any persons, including New Zealand citizens, who intend to enter the Cook Islands for the purposes of employment or residence are required to be in possession of valid permits (Parts III and IV of the Act). Thus, although New Zealand citizens have some preference with respect to being accorded the status of permanent resident, the right of Cook Islanders as New Zealand citizens to enter, reside and work in New Zealand is non-reciprocal. The rationale for this arrangement was well-explained to the Fourth Committee of the United Nations in 1965 by New Zealand's Permanent Representative:

“Cook Islanders may enter New Zealand without question; but New Zealanders cannot enter the Cook Islands without the permission of the Cook Islands authorities. This seeming inequality is reasonable enough; the Cook Islands wish to protect and preserve their individuality and cultural characteristics, and New Zealand respects their desire. [See Principle VII(a) of UNGA Resolution 1541 (XV) above] To allow New Zealanders free entry and other privileges in the Cook Islands would be to expose the 20,000 Cook Islanders to the danger of being swamped; that danger was one of the chief reasons why the Cook Islanders chose free association in preference to integration.”

At the same time, however, he continued,

“[b]eing a New Zealand citizen does not put a Cook Islander under the authority of the New Zealand Government when he is present in the Cook Islands - for the writ of New Zealand no longer runs in the Cook Islands; there the Cook Islands Government is supreme; but when he comes to New Zealand he is treated like any other New Zealander.”

C. The Constitution

1. Definitions

Article 1 of the Constitution contains a number of key definitions, including the following:

“‘Cabinet’ means the Cabinet of Ministers of the Cook Islands”;
“‘Executive Council’ means the Executive Council of the Cook Islands established under this Constitution”;
“‘High Court’ means the High Court of the Cook Islands established under this Constitution”;
“‘ Legislative Assembly’ or ‘Assembly’ where it appears in this Constitution or any other enactment means [Parliament] of the Cook Islands established under this Constitution”;
“[‘Minister’ means a Minister of the Government of the Cook Islands; and includes the Prime Minister]”;
“‘New Zealand’ means New Zealand exclusive of the Cook Islands”;
“[‘Parliament’ means the [Parliament] of the Cook Islands established under this Constitution, and the term ‘Legislative Assembly or Assembly, where it appears in this Constitution or in any other enactment shall have the same meaning’;”
“[‘Prime Minister’ means the Prime Minister of the Cook Islands]”; and
“[‘Queen’s Representative’ means the representative of Her Majesty the Queen in the Cook Islands appointed under Article 3 hereof]”.

Article 1 also defines the Cook Islands as comprising

"all islands in the South Pacific Ocean lying between the 8th and 23rd degrees of south latitude and the 156th and 167th degrees of longitude west of
Greenwich; and each island of the Cook Islands shall be deemed to include all smaller islands lying within 10 miles of the coasts thereof".

2. Part I- The Government of the Cook Islands

a) The Head of State/the Realm of New Zealand

Article 2 of the Constitution states that "Her Majesty the Queen in right of New Zealand shall be the Head of State of the Cook Islands".

The above expression, "in right of New Zealand", refers directly to the constitutional concept of 'realm of New Zealand' as described in the 1983 Letters Patent Constituting the Office of Governor-General of New Zealand (SR 1983/225). In those Letters Patent, Her Majesty Queen Elizabeth II declares, inter alia,

“Our will and pleasure as follows:
"1. We do hereby constitute, order and declare that there shall be, in and over 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,- "a Governor-General and Commander-in-Chief who shall be Our representative in Our Realm of New Zealand, and shall have and may exercise the powers and authorities conferred on him by these Our Letters Patent, but 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.” (emphasis added)

b) The Queen's Representative in the Cook Islands

As indicated above, Her Majesty Queen Elizabeth II, by virtue of being Head of State of Her entire Realm of New Zealand as described in the Letters Patent, is also Head of State of that part of Her Realm of New Zealand referred to in the Letters Patent as "the self-governing state of the Cook Islands".

The ‘without prejudice’ qualification referred to in the 1983 Letters Patent above is of central importance for, as indicated above, when the Constitution entered into force on "Constitution Day" (i.e. 4 August 1965), Her Majesty the Queen was represented in the Cook Islands’ part of the Realm of New Zealand by the "High Commissioner of the Cook Islands" (Article 3). The High Commissioner was both representative of the Head of State and representative of the New Zealand Government in the Cook Islands.

The latter arrangement ended with the passage of the Constitution Amendment (No 10) Act 1981-82, which provided that "[t]here shall be a representative of Her Majesty the Queen in the Cook Islands, to be known as the Queen's Representative". In contrast to the High Commissioner who was appointed by the Governor-General of New Zealand (see below), the Queen's Representative is to be appointed directly "by Her Majesty the Queen and shall hold office for a period of three years, and may from time to time be reappointed"(Article 3).

By previous agreement between the Governments of the Cook Islands and New Zealand reached at the time when the terms of the Constitution were being worked out, the appointment of a High Commissioner of the Cook Islands was made by the New Zealand Governor-General after consultation with the Government of the Cook Islands in keeping with the then quasi-diplomatic role of the High Commissioner. Through the development of a new convention, the appointment of the Queen's Representative is today made by Her Majesty upon the recommendation of the Prime Minister of the Cook Islands.

Upon assuming office, the Queen's Representative takes the following Oath pursuant to Article 4 of the Constitution:

“I,......, swear by Almighty God that I will be faithful and bear true allegiance to Her [or His] Majesty [Specify the name of the reigning Sovereign as thus: Queen Elizabeth the Second] as the Head of State of the Cook Islands, heirs and successors, according to law, and that I will uphold the dignity of the office of Queen’s Representative, and will justly and faithfully carry out my duties in the administration of the Cook Islands in accordance with the Constitution and the law. So help me God.”

Article 5(1) of the Constitution states clearly that the Queen's Representative is to act on the advice of Her Majesty's Cook Islands Ministers:

“[e]xcept as otherwise provided in this Constitution, the [Queen's Representative] in the performance of his functions as the representative of Her Majesty the Queen shall act on the advice of Cabinet, the [Prime Minister], or the appropriate Minister as the case may be”.

c) House of Ariki

The Constitution provides for a House of Ariki comprising up to 14 ariki appointed by the Queen's Representative. The function of the House is to ‘consider such matters relative to the welfare of the people of the Cook Islands as may be submitted to it by [Parliament] for its consideration, and it shall express its opinion and make recommendations thereon to [Parliament]” (Articles 8 and 9).
3. **Part II - The Executive Government of the Cook Islands**

The Constitution vests the executive authority of the Cook Islands in Her Majesty the Queen in right of New Zealand. Subject to the Constitution, that authority may be exercised on behalf of Her Majesty in the Cook Islands either directly by the Queen's Representative or through officers subordinate to the latter (Article 12).

The Constitution provides for a Cabinet of Ministers comprising the Prime Minister and not fewer than six nor more than eight other Ministers (up from no fewer than three nor more than five other Ministers in 1965), “which shall have the general direction and control of the executive government of the Cook Islands, and shall be collectively responsible to Parliament” (Article 13(1)).

The Queen's Representative appoints from among the members of the Parliament as Prime Minister the person who commands, or, if Parliament is not in session, who, in his discretion, he considers would likely command, the confidence of the majority of the members of Parliament (Article 13(2)). Other Ministers are appointed by the Queen’s Representative on the recommendation of the Prime Minister (Article 13(3)).

The Constitution establishes an Executive Council, comprising the Queen's Representative and the members of Cabinet, to consider such Cabinet decisions as may be required (Articles 22-25).

4. **Part III- Parliament of the Cook Islands**

Article 27 of the Constitution establishes “a sovereign Parliament for the Cook Islands, to be called the Parliament of the Cook Islands”, consisting of 25 members (up from 22 in 1965) elected by secret ballot under a system of universal suffrage. Subject to the Constitution, Parliament “may make laws (to be known as Acts) for the peace, order, and good government of the Cook Islands” (Article 39(1)), including “laws having extra-territorial operation” (Article 39(2)). Bills passed by Parliament become law only when they have been assented to by the Queen's Representative (Article 44(1)).

Subject to the provisions of the Constitution, Parliament's law-making power includes "the repeal or revocation of any Act, or be deemed to extend to the Cook Islands as part of the law of the Cook Islands". As originally enacted, Article 46 of the Constitution enabled the New Zealand Parliament to pass laws for, and with the advice and consent of, the Cook Islands. This allowed the Cook Islands, with insufficient legal resources in the early post-1965 period, to benefit from New Zealand legislation in often complicated areas (see, e.g. the Extradition Act 1965 (NZ), which was applied, mutatis mutandis, to the Cook Islands under Section 18 of the Act by virtue of Article 46 of the Constitution). By 1980, however, it was considered by the Cook Islands Parliament that local resources and conditions had developed to such an extent that the above arrangement was no longer required. In accordance with Constitution Amendment (No 9) Act 1980-81, therefore, Article 46 now reads as follows:

"[e]xcept as provided by Act of Parliament of the Cook Islands, no Act, and no provision of any Act, of the Parliament of New Zealand passed after the commencement of this Article [5 June 1981] shall extend or be deemed to extend to the Cook Islands as part of the law of the Cook Islands".

5. **Part IV- The Judiciary**

The Constitution establishes a "Court of record, to be called the High Court of the Cook Islands, for the administration of justice throughout those islands" (Article 47(1)). The High Court has Civil, Criminal and Land Divisions (Article 47(3)), with jurisdiction to

"hear and determine...[s]uch proceedings as are, under or by virtue of any enactment, to be heard and determined by that Division [and s]uch other proceedings as may from time to time be determined by the Chief Justice, either generally or in any particular proceedings or classes of proceedings" (Article 48(1)).

The Chief Justice of the High Court is appointed by the Queen's Representative, "acting on the advice of the Executive Council tendered by the Prime Minister"; other Judges, "by the Queen's Representative, acting on the advice of the Executive Council tendered by the Chief Justice of the High Court and the Minister of Justice" (Article 52).
Because of the costs involved and the shortage of requisite human and other resources in the Cook Islands at the time, the Constitution in 1965 recognised a right of appeal from the High Court of the Cook Islands to the Court of Appeal of New Zealand. By the early 1980s, however, the domestic resource situation had improved and Constitution Amendment (No 9) Act 1980-81 did away with the initial arrangement. Established was a Court of Appeal of the Cook Islands as "a superior Court of record" (Article 56(1)). Article 59 provides that

"the determination of the Court of Appeal shall be final, and there shall be no appeal to the High Court of New Zealand or to the Court of Appeal of New Zealand from any judgment of the Court of Appeal of the Cook Islands. [However, there shall be a right of appeal to Her Majesty the Queen in Council, with the leave of the Court of Appeal, or, if such leave is refused, with the leave of Her Majesty the Queen in Council, from judgments of the Court of Appeal in such cases and subject to such conditions as are prescribed by Act]."

6. Part IV A - Fundamental Human Rights and Freedoms

Part IVA was inserted by Constitution Amendment (No 9) Act 1980-81, Article 64, inter alia, recognises "without discrimination by reason of race, national origin, colour, religion, opinion, belief, or sex" the following fundamental human rights and freedoms:

- "The right of the individual to life, liberty, and security of the person, and the right not to be deprived thereof except in accordance with law";
- "The right of the individual to equality before the law and to the protection of the law";
- "The right of the individual to own property and the right not to be deprived thereof except in accordance with law";
- "Freedom of thought, conscience, and religion";
- "Freedom of speech and expression"; and
- "Freedom of peaceful assembly and association".

The Constitution also contains provisions relating to the construction of law aimed at supplementing and supporting Article 64 above, including, for example, prohibiting the imposition on any person of cruel and unusual treatment or punishment or depriving any person of the right to a fair hearing (Article 65).

7. Part IV B - Custom

Also added to the Constitution, pursuant to Constitution Amendment (No 17) Act 1994-95 was a provision which, inter alia, enabled Parliament to make laws "recognising or giving effect to custom and usage" (Article 66A(1)). In so doing, Parliament "shall have particular regard to the customs, traditions, usages and values of the indigenous people of the Cook Islands" (Article 66A (2)). Until an enactment otherwise provides, "custom and usage shall have effect as part of the law of the Cook Islands, provided that this sub-clause shall not apply in respect of any custom, tradition, usage or value that is, and to the extent that it is, inconsistent with a provision of this Constitution or of any enactment" (Article 66A(3)).

8. Part V - The Public Revenues of the Cook Islands

The Constitution contains basic provisions establishing a Cook Islands Government Account and allowing for the establishment of such other public funds or accounts as may be necessary (Article 67), prohibiting the imposition of taxation except by law (Article 68) and setting out fundamental principles concerning revenue and expenditure of the above Account (Articles 69 and 70).

When the Legislative Assembly was considering constitutional aspects of public revenue in the early 1960s, it was very much aware both that the Territory had very limited local auditing expertise and that much of the Territory's revenue came from New Zealand Government grants and subsidies (see Part I above). It was agreed, therefore, that the Audit Office of New Zealand would be the auditor of the Cook Islands Government Account and such other funds and accounts as may be established. That Office reported annually to the Speaker of the Cook Islands Parliament (Article 71). Over succeeding years, however, local auditing expertise developed and New Zealand Government financial assistance became a much reduced proportion of Government's overall budget revenue (approximately 17% in 1991/92; down to 0% in 1996/97). As a consequence, therefore, it was decided in 1991 after consultations between the Governments of the Cook Islands and New Zealand that the Audit Office of the Cook Islands would assume the functions previously performed by the Audit Office of New Zealand and the Constitution was amended accordingly (Constitution Amendment (No 14) Act 1991).

Pursuant to Constitution Amendment (No.18) Act 1995-96, a Public Expenditure Review Committee has been established to ensure the achievement of adequate public accountability in the use of public funds.

9. Part VI - The Cook Islands Public Service

The Constitution establishes a "Cook Islands Public Service, which shall comprise such persons in the service of the Government of the Cook Islands as may from time to time be prescribed by law" (Article 72). The Public Service Commissioner is appointed by the Queen's Representative on the advice of the Prime Minister (Article 73).


This Part was inserted into the Constitution Amendment (No 9) Act 1980-81.

a) Persons entitled to permanent residence

The Constitution contains provisions setting out qualifications for the status of a permanent resident of the Cook Islands; for example,
"A person shall have the status of a permanent resident of the Cook Islands if he was born in the Cook Islands, and -
"(a) Either or both of his parents had the status of a permanent resident of the Cook Islands at the date of his birth...." (Article 76A (1)).

The Constitution also provides for other legislation to regulate the granting of permanent resident status to others, qualifications to be held by a permanent resident, and conditions under which that status may be withdrawn (Article 76A(2)-(4)). See also in this regard the above discussion of Section 6 of the Cook Islands Constitution Act 1964.

b) The Prerogative of Mercy and Pardon

Pursuant to Article 76B of the Constitution,

"[t]he Prerogative of Mercy and Pardon shall be exercised by the [Queen's Representative], acting pursuant to a resolution of Parliament, provided that any such resolution must receive the support of not less than two-thirds of the total membership (including vacancies) of Parliament".

c) The Cook Islands Ensign

The Constitution declares the Cook Islands Ensign described below to be the recognised flag of the Cook Islands (Article 76C):

"The Cook Islands Ensign shall be a Royal blue ensign. The Union Jack shall occupy the upper staff quarter, having on the fly 15 stars in a symmetrical ring, all of equal size and equal spacing, and the colour of the stars shall be white. The flag proportion of length to breadth shall be two to one."

"And it shall mean -
"Blue - is the colour most expressive of our Nation, it is representative of the vast area of the Pacific Ocean in which the islands of the Cook Islands are scattered. Blue also depicts the peaceful nature of the inhabitants of our islands.
"Union Jack - indicates our historical association with and membership of the British Commonwealth.
"The 15 white stars - represent the 15 islands of the group." (Third Schedule to the Constitution)

d) National Anthem of the Cook Islands

The Constitution declares the anthem 'Te Atua Mou E' to be the national anthem of the Cook Islands (Article 76 (D)).
PART III. INTERNATIONAL RELATIONS

A. The First Decade: 1965-1974

1. Government’s basic approach

For much of the first decade of free association, the Government's attention and efforts focused largely on domestic affairs and the implementation of basic social and economic programmes with a view to promoting national development and reducing the Cook Islands' dependence on New Zealand aid.

2. Treaties and other international agreements

Given its domestic focus of attention and relatively limited access to information about and involvement in broader international developments in the early period of free association, the Cook Islands generally relied on New Zealand to monitor treaty matters and international affairs on its behalf and to seek the Cook Islands' involvement whenever necessary. Consistent with the nature of the relationship of free association, for example, commencing on 4 August 1965, New Zealand approached the Cook Islands each time that the former proposed to take any treaty action.

In May 1971, for example, New Zealand approached the Cook Islands with respect to the latter’s possible association with New Zealand in becoming a party to the 1970 Hague Convention for Suppression of Unlawful Seizure of Aircraft. This matter was duly considered by the Cook Islands Cabinet and a decision was made that the Cook Islands would indeed welcome being associated with New Zealand's action in this instance. New Zealand was informed accordingly and the latter proceeded to deposit the required Instrument of Ratification on 12 February 1974. In order to give domestic effect to the Convention, the Cook Islands Parliament on 17 January 1974 passed enabling legislation, the Aviation Offences Act 1973.

3. International Organisations

Attention during the period focused primarily on the activities of the then only two major South Pacific regional organisations.

a) South Pacific Commission (SPC)

Established in 1947 by the Governments of Australia, France, New Zealand, The Netherlands (which withdrew in 1962), the United Kingdom and the United States as a consultative body to those Governments “in matters affecting the economic and social development of the territories [of the South Pacific] and the welfare and advancement of their peoples” (Canberra Agreement, para IV), the SPC has added to its membership over the years the governments of newly-independent countries of the region (e.g. Western Samoa [now Samoa*] was admitted to membership in 1965). SPC decision-making was the responsibility of representatives of the above governments, meeting in annual 'Sessions of Commissioners', those governments also responsible for the costs of SPC administration and programmes.

The South Pacific Conference, which first met in 1950 and which began meeting annually in 1967 was attended by delegates from both SPC member governments as well as all other island countries and territories in the South Pacific in which the SPC had programmes (including the Cook Islands).

b) South Pacific Forum

By the early 1960s the decolonisation process had begun in the South Pacific. With it came increasing frustration on the part of regional political Leaders with the prohibition within the SPC on discussions of political aspects of development. In response to what they perceived as an increasingly critical need, the President of Nauru, the Prime Ministers of Fiji, New Zealand, Tonga and Western Samoa, the Premier of the Cook Islands and the Australian Minister for External Territories met in Wellington, New Zealand, in August 1971, to establish an alternative forum in which meaningful discussions could take place on political and other issues impacting on the development of the countries of the region. This, as it turned out, was the first meeting of the institution which has come to be known as the South Pacific Forum, the annual gathering of South Pacific political Leaders for discussions on multifarious international issues of concern to the region.

The Forum met for the second time in Canberra, Australia, in early 1972, discussing such matters as trade, shipping, civil aviation, immigration, telecommunications, education and regional cooperation. At this meeting, proposals emerged for the creation of a 'bureau' to service their collective needs, proposals which culminated in the establishment by treaty of the South Pacific Bureau for Economic Cooperation (SPEC).

The 'SPEC Agreement', signed by Australia, the Cook Islands, Fiji, Nauru, New Zealand, Tonga and Western Samoa in April 1973, was the first treaty in which the Cook Islands and New Zealand both participated as separate, equal parties. The seven Governments were subsequently joined by the Federated States of Micronesia, Kiribati, the Republic of the Marshall Islands, Niue, Papua New Guinea, Solomon Islands, Tuvalu and Vanuatu. The purpose of the Bureau was to "facilitate, develop and maintain cooperation between members of economic development, trade, transport, tourism, energy, telecommunications or such other matters as the Forum or member Governments collectively may direct" (Article III).

*‘Western’ was deleted by Constitutional amendment in 1997.
Albert Henry (Left), first Premier of the Cook Islands, 1965-1978 (courtesy of the Henry family) and Norman Kirk (right), Prime Minister of New Zealand 1972-1974 (courtesy of the Turnbull Library).
In 1991, the above Forum member governments concluded the Agreement Establishing the South Pacific Forum Secretariat, the latter succeeding SPEC. The Secretariat's purpose is to "facilitate, develop and maintain cooperation and consultation between member governments on economic development, trade, transport, tourism, energy, telecommunications, legal, political, security and such other matters as the Forum may direct" (Article 3). The Republic of Palau has subsequently also become a party to the Agreement. The Cook Islands deposited its Instrument of Ratification of the Agreement on 3 September 1991.

Within the Forum context, regional Heads of State and Heads of Government meet face-to-face at least annually for both formal and informal discussions on global and regional matters of importance within the broad areas covered by Article 3 of the 1991 Agreement above-cited. They also often take the opportunity to hold bilateral discussions with their regional counterparts on issues of importance to their respective governments and countries. From the above Forum discussions have emanated important initiatives including the establishment of specialised regional organizations, the conclusion of treaties to address regional concerns and the adoption of common positions on pressing international issues of the day. Since the Forum was established in 1971, the Cook Islands has played a full and active role in these developments.

4. 1973 Exchange of Letters

With its continued active participation in the now annual South Pacific Conferences and its major contribution to the founding of the South Pacific Forum in 1971, the Cook Islands began its first active, direct involvement in international affairs, albeit exclusively in its own backyard, the South Pacific, and in relation to basic issues relating to social and economic development. With these first steps by the Cook Islands on to at least a wing of the world stage, the Leaders of both the Cook Islands and New Zealand Governments agreed that there would be value in 'putting on record' the current understanding of the two Governments on the nature of their relationship and where the latter might head in the years to come.

On 4 and 9 May 1973, less than a month after the Cook Islands and New Zealand had each signed and become parties to the SPEC Agreement (see above), the Prime Minister of New Zealand, Norman Kirk, and the Premier of the Cook Islands, Albert Henry, undertook an Exchange of Letters in which they set out their shared understanding of the relationship existing between New Zealand and the Cook Islands (see Attachment A). In his letter, Prime Minister Kirk made the following points:

(a) "in the view of New Zealand, there are no legal fetters of any kind upon the freedom of the Cook Islands, which make their own Laws and control their own Constitution";

(b) "the dependent status of the Cook Islands" ended with the act of self-determination approving the present Constitution;

(c) the relationship between the two "countries" was one of "partnership, freely entered into and freely maintained";

(d) the Cook Islands "can continue to rely on New Zealand's help and protection";

(e) the New Zealand Government has a "statutory responsibility for the external affairs and defence of the Cook Islands. It is, however also intended that the Cook Islands be free to pursue their own policies and interests - as they are doing, for example, through separate membership of the South Pacific Forum and other regional bodies";

(f) as with other New Zealand citizens, Cook Islanders "owe allegiance to Her Majesty the Queen in right of New Zealand, and they acknowledge the Queen in Her New Zealand capacity as their Head of State. In this way, the Cook Islands people retain the right to regard New Zealand as their own country, even while they enjoy self-government within the Cook Islands";

(g) "the bond of citizenship does entail a degree of involvement of New Zealand in Cook Islands affairs. This is reflected in the scale of New Zealand's response to the Cook Islands' material needs; but it also creates an expectation that the Cook Islands will uphold, in their Laws and policies, a standard of values generally acceptable to New Zealanders"; and

(h) the above is "the heart of the matter. The special relationship between the Cook Islands and New Zealand is on both sides a voluntary arrangement which depends on shared interests and shared sympathies. In particular, it calls for understanding on New Zealand's part of the Cook Islands' natural desire to lead a life of their own, and for equal understanding on the Cook Islands' part of New Zealand's determination to safeguard the values on which its citizenship is based".

Premier Henry responded by confirming that the views expressed in the Prime Minister's letter were shared by the Cook Islands Government.

The Exchange of Letters was subsequently tabled in both the Cook Islands Legislative Assembly (Legislative Assembly Paper No. 23) and the New Zealand House of Representatives (AJHR A.10).

The above Exchange of Letters between the two Governments constitutes an important milestone in the historical evolution of the relationship of free association between the Cook Islands and New Zealand in that it both reiterated certain fundamental principles already clearly governing the relationship as well as placed on record certain basic, shared understandings underpinning the association. It was on the basis of the above that the relationship was to evolve and, in particular, the Cook Islands was to play a greater, more direct role in the conduct of its own international relations in the years to follow.
5. **Government administration**

Indicative of the increasing importance to the Cook Islands Government of its international relations, the following May saw the establishment within the Premier's Department of an External Affairs Division, headed by a Director of External Affairs. The function of the Division was to "assist the Premier in any external matter affecting the Cook Islands" (Premier's Department Act 1973-74, Sec. 8).

**B. The Middle Years: 1975-1988**

1. **The Major Developments**

The next dozen or so years witnessed a major expansion of Cook Islands involvement in international affairs, including broader participation in international organisations and treaties in its own right. As well, Government's first diplomatic and consular posts were established abroad, while New Zealand upgraded its mission in Rarotonga. These multifarious developments necessitated an expansion and enhancing of Government's own administrative capabilities to cater for the increased foreign affairs responsibilities.

2. **International Organisations**

a) **Regional**

(1) **South Pacific Commission (SPC)**

In 1980, the Canberra Agreement establishing the SPC was amended to provide for membership in the Commission of any government the territory of which is within the region "and which is either fully independent or in free association with a fully independent Government...".

The Cook Islands deposited its Instrument of Accession to the Agreement on 14 October 1980 and became a member of the SPC from that date. This marked the first explicit, international recognition of the legal capacity of a government "in free association with a fully independent Government" to enter into a treaty and assume international responsibility in its own right.

(2) **Forum Fisheries Agency (FFA)**

From its inception, the South Pacific Forum focused considerable attention on the region's living marine resources and the important benefits to be derived there from by Forum countries. In order to promote and facilitate regional cooperation in the conservation and management of those resources, the Cook Islands joined with the other Forum member governments in signing the Convention establishing the FFA on 10 July 1979, becoming an active member of the Agency as from that date. Over the years, the FFA has played a crucial coordinating and advisory role in the conservation and management of the region's living marine resources including the region's relations with Distant Fishing Nations whose fleets have been active in the Pacific.

b) **Global**

As its human and other resources expanded and strengthened, the Cook Islands pursued a policy of seeking membership in those international organisations beyond the South Pacific region that could contribute most directly to the achievement of its national development objectives.

(1) **World Health Organisation (WHO)**

Open to membership by "all States" (Article 3 of the WHO Constitution) the Cook Islands' application for full membership was approved unanimously by the Health Assembly on 8 May 1984. The following day, the Cook Islands deposited its Instrument of Acceptance of the WHO Constitution with the Secretary General of the United Nations.

In October 1984, the Cook Islands and the WHO concluded a Basic Agreement governing the Organisation's technical cooperation programme with the Cook Islands, including administrative and financial obligations of both the WHO and the Government and the facilities, privileges and immunities of the WHO in the Cook Islands.

In 1997, the Cook Islands was elected to the Executive Board of the WHO at the 50th World Health Assembly.

(2) **Food and Agriculture Organisation (FAO)**

The Cook Islands’ economy has traditionally been based on the development of its agricultural and fisheries resources. In order to promote its agricultural development, the Cook Islands' application for full membership of the Organisation received the overwhelming approval of the FAO Conference on 11 November 1985.

In support of the Cook Islands' application, New Zealand provided the following "commentary" to the FAO, clearly stating that in terms of the relationship of free association, the Cook Islands was responsible for the conduct of its international relations. That point, and the nature of New Zealand's responsibility under Section 5 of the Cook Islands Constitution Act 1964 (see above), were described as follows:

"We consider that the Cook Islands is eligible to be admitted as a full member of the FAO.

"...

"Associate membership is not appropriate for the Cook Islands as it is not a territory which is not responsible for the conduct of its international relations. New Zealand's responsibility, under the relationship of free association between the Cook..."
Islands and New Zealand is to assist the Cook Islands in the conduct of its international relations on request. The Cook Islands should therefore apply for full membership as a nation.

"...

"We consider that the Cook Islands has the capacity to accept the obligations of the FAO Constitution.... "The other matter which may impinge on our attitude to the Cook Islands' application is the Cook Islands' status as a state in free association with New Zealand. However, the application is not inconsistent with the special relationship. We have no problems, therefore, with supporting the application on legal grounds. Indeed, on all relevant grounds, New Zealand would support the Cook Islands' application."

(3) International Civil Aviation Organisation (ICAO)

As a result of discussions between the Governments of the Cook Islands and New Zealand in the mid-1980s, it was agreed that the Cook Islands would assume full responsibility for its international air services (see below). As part of the package of initiatives undertaken by the Cook Islands Government in relation thereto, it applied for membership in ICAO in 1986.

Pursuant to Article 92(1) of the 1944 Convention on International Civil Aviation, which established ICAO, the Convention is open to adherence by, \textit{inter alia}, "members of the United Nations and States associated with them". Article 92(2) provides that

"[a]dherence shall be effected by a notification addressed to the Government of the United States of America and shall take effect as from the thirtieth day from the receipt of the notification by the Government of the United States of America, which shall notify all the contracting States".

The Cook Islands deposited its Instrument of Adherence with the depositary, the United States of America, on 20 August 1986. In a Note dated 11 August 1986 to the United States, New Zealand set out the latter's position on the Cook Islands' application:

"the Cook Islands has the competence to enter into bilateral treaties with States prepared to recognize it for this purpose. Similarly, it has the competence to adhere to multilateral conventions subject of course to the terms of the convention in question and the views of other parties".

On 16 October, the United States Secretary of State wrote to all governments concerned with the ICAO Convention, forwarding copies of the Cook Islands' Instrument and New Zealand's Note, asking for any reply within two months. On 28 January 1987, the United States informed the ICAO Secretary General that since no objection had been received by the United States as depositary, the Cook Islands' Instrument of Adherence was considered to have been deposited on 20 August 1986, effective 19 September 1986.

3. Treaties and other international agreements

a) Bilateral

(1) New Zealand

(a) Civil Aviation Agreements

By the late 1960s, the Cook Islands had realised that if it was to realise true national development, it would be necessary both to upgrade its unsealed airstrip on Rarotonga to cater for modern jet aircraft as well as have in place other, up-to-date aviation infrastructure, including a legal regime to govern international civil aviation. Having neither the financial nor human resources to accomplish either task at that time, the Cook Islands requested the assistance of New Zealand. In accordance with the terms of an initial Agreement between the two Governments in 1968-69 (see Schedule to the Civil Aviation Agreement Act 1968-69, passed by the Cook Islands Parliament on 25 March 1969), New Zealand funded the construction of the Rarotonga International Airport under its aid programme to the Cook Islands. Also at the request of the Cook Islands, New Zealand agreed to operate the airport until such time as the Government of the Cook Islands felt itself in a position to do so. To facilitate the development of international air services at that time, and as a matter of convenience, it was further agreed that the air service agreements (ASAs) that New Zealand had had in place prior to 4 August 1965 with respect to the Cook Islands would continue and that New Zealand would have both ownership of the airport and sole control of air traffic rights into and out of the Cook Islands during the continuance of the Agreement. The airport was officially opened by Her Majesty Queen Elizabeth II on 29 January 1974. By the 1980s, the Cook Islands had strengthened its own administration to such an extent that it was itself capable of assuming direct control of both the airport and international civil aviation matters generally. As a result, and following bilateral discussions on technical and other matters, the Governments of the Cook Islands and New Zealand, "having regard to the constitutional relationship existing between their two countries and the wish of the Government of the Cook Islands to assume full autonomy in civil aviation matters" concluded an Agreement on Civil Aviation (citation from the Preamble) on 6 August 1985, pursuant to which it was agreed that, \textit{inter alia}:

i) the Cook Islands:

- "shall have sole control of all international air traffic rights into and out of the Cook Islands" (Article 1(1));
- would establish an Office of the Director of Civil Aviation "with full statutory powers" (Article 2(2)(a)) and an Airport Authority which would own and operate the airport (Article 3(1)); and

ii) New Zealand would:
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- act "in an advisory capacity to the Cook Islands Government in matters related to the safety of civil aviation in the Cook Islands..." (Article 2(2)(b)); and
- transfer to the Airport Authority "to hold, on behalf of the Cook Islands Government title to all land comprising Rarotonga International Airport, the buildings and installations thereon and all plant and equipment owned and employed in the airport operation including associated housing" (Article 3(2)).

On 21 June 1986, the two Governments also concluded an Agreement concerning Air Services. Following the general format and content of hundreds of ASAs concluded between other countries, the 1986 Cook Islands - New Zealand ASA, inter alia, granted aviation rights to the designated carriers of each country in the territory of the other.

(2) United States

(a) The Peace Corps Agreement

As a result of bilateral discussions between representatives of the Cook Islands and United States, it was agreed that, subject to an appropriate legal agreement being signed, the United States would respond to requests for Peace Corps volunteers to serve in the Cook Islands. Before negotiating such an agreement with the Cook Islands, however, the United States sought the advice of New Zealand as to the legal competence of the Cook Islands to sign the Peace Corps Agreement on its own behalf. In November 1976, New Zealand responded that the Cook Islands had the legal capacity to sign such an agreement in accordance with the terms of the Cook Islands Constitution Act 1964 under which it became self-governing in free association with New Zealand. Even further, the latter added,

"...In accordance with this constitutional status the Government of the Cook Islands has exercised and continues to exercise in the field of foreign relations attributes recognized in international law as attributes of a sovereign State.

...The Cook Islands Government is not restrained from initiating international negotiations or concluding agreements and there is no constitutional requirement for prior authority or approval from the Government of New Zealand."

The Exchange of Letters constituting the above Agreement was concluded on 28 April 1981 (T.I.A.S. 10093).

(b) The Maritime Boundary Treaty

On 18 August 1856, the United States Congress enacted legislation "to authorise Protection to be given to citizens of the United States who may discover Deposits of Guano Act". The so-called 'Guano Act' (Revised Statutes, Sections 5570-5578) provides that "[w]henever any citizen of the United States discovers a deposit of guano on any island, rock, or key, not within the lawful jurisdiction of any other Government, and not occupied by the citizens of any other Government, and takes peaceable possession thereof, and occupies the same, such island, rock or key may, at the discretion of the President, be considered as appertaining to the United States" (Section 5570).

By the beginning of the 20th Century, the islands of Pukapuka, Nassau, Manihiki, Rakahanga and Penrhyn were all claimed by the United States, although by 1939 no further claim had been made to Nassau.

In 1979 and 1980, recognizing its claims to the above and other 'guano islands' to be, in the words of the then Chairman of the United States Senate Committee on Foreign Affairs, "extremely tenuous", and wishing to protect American interests in the light of the extensive political changes that had taken place in the Pacific in recent years, the United States set about negotiating treaties to settle the status of those islands, establish maritime boundaries and facilitate access to fishing grounds.

The United States again sought the advice of New Zealand whether in terms of the relationship of free association the Cook Islands had the competence to conclude the agreement. New Zealand "confirm[ed] the competence of the Cook Islands Government to undertake the obligations and exercise the rights under the draft treaty". New Zealand had

"no objections to the conclusion of the proposed treaty directly between the Government of the United States and the Government of the Cook Islands. The Embassy also wish[ed] to advise that the New Zealand Government would not propose to have any role in the ratification of the treaty..."

On 11 June 1980, the Cook Islands and the United States signed at Rarotonga the Treaty of Friendship and Delimitation of Maritime Boundary. In his 25 August 1980 report to the President of the United States recommending transmittal of the Treaty to the Senate for its advice and consent to ratification, the then Acting Secretary of State Warren Christopher, explained inter alia:

"In connection with establishing the maritime boundary [between the Cook Islands and American Samoa] it was necessary to address and resolve the issue of the sovereignty over the islands of Pukapuka (Danger), Manihiki, Rakahanga and Penrhyn. The U.S. claim to these particular islands arises out of occasional 19th century visits to the islands by American whalers, and by execution of guano bonds under the Guano Islands Act of 1856. The U.S. claim has virtually no legal merit and is not supported by any other nation...These islands and these people have historically been an integral part of the Cook Islands..."
Islands and are represented in the Cook Islands Government. Continued assertion of these claims is inconsistent with the U.S. interest of maintaining friendly relations with the peoples of the South Pacific.

"After internal analysis, which included a review of the organic documents establishing the Cook Islands Government and of historical precedents, we concluded that the only limitation on the foreign affairs capacity of the Cook Islands Government existed in favour of New Zealand. We requested and received confirmation from the Government of New Zealand that the Cook Islands has the competence to enter into this treaty and that New Zealand has no objection to it doing so..."

Article V of the treaty provides that "[t]he United States of America recognizes the sovereignty of the Cook Islands over the islands of Penrhyn, Pukapuka (Danger), Manihiki and Rakahanga".

On 21 June 1983, by a vote of 94 years, 4 nays, with 2 Senators not voting, the Senate gave its advice and consent to the ratification of the above treaty. (T.I.A.S. 10774), which entered into force on 8 September 1983.

(c) The Overseas Private Investment Corporation (OPIC) Agreement

In 1983 as well, the Governments of the Cook Islands and the United States concluded an Exchange of Letters constituting an agreement (T.I.A.S. 10843) relating to economic activities in the Cook Islands and to investment insurance and guarantees backed in whole or in part by credit or public monies of the United States and administered by OPIC, an independent American Government corporation.

(3) Commonwealth Secretariat

Since the early 1970s, the Cook Islands has dealt directly with the Commonwealth Secretariat on various matters, including technical assistance. In order to facilitate the posting to and operation of Commonwealth experts in the Cook Islands, on 19 August 1980 the Cook Islands and the Commonwealth Secretariat signed a Memorandum of Understanding (MOU) with respect to the Commonwealth Fund for Technical Cooperation (CFTC). Of the form and content agreed to by Commonwealth Governments when the Fund was established in 1971, the MOU principally covers the responsibilities of receiving governments and of the Fund in respect of CFTC field experts assigned for periods of duty in Commonwealth countries receiving such assistance. Under the MOU, CFTC experts enjoy substantially the same privileges and immunities as those accorded to persons engaged by the United Nations as specialised agencies as technical assistance experts.

b) Multilateral

(1) South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA)

One of the original purposes of the South Pacific Forum being to promote trade, much attention was paid to the subject in the second half of the 1970s. A major step forward was taken on 14 July 1980 with the signature of SPARTECA by the Cook Islands and most other Forum member governments during the Eleventh Meeting of the South Pacific Forum, held in Tarawa, Kiribati. SPARTECA is a non-reciprocal trade agreement under which Australia and New Zealand offer duty free and unrestricted or concessional access for specified products originating from the developing member countries of the Forum. The Agreement includes provisions for general economic, commercial and technical cooperation, safeguard provisions relating to dumped and subsidised goods and suspension of obligations, and provisions for general exceptions and revenue duties. The Agreement entered into force on January 1981.


As a small Pacific island State with an exclusive economic zone (EEZ) of almost 2 million square miles in size, the Cook Islands followed closely the deliberations of the Third United Nations Conference on the Law of the Sea (UNCLOS III) from the very beginning. Having determined that the EEZ concept had become part of customary international law by 1977, the Cook Islands enacted domestic legislation (the Territorial Sea and Exclusive Economic Zone Act 1977) proclaiming its EEZ, an action which went unchallenged by the international community, many members of which were then doing likewise.

Although the Cook Islands had participated as an observer at the opening session of the Conference, costs and other constraints precluded its attendance throughout the entire nine years of Conference negotiations. Nevertheless, given the sovereignty it exercised with respect to law of the sea matters generally, and its newly- proclaimed EEZ in particular, the Cook Islands sought to become a party to the Law of the Sea Convention in its own right. This objective was fully supported by New Zealand, Fiji, Tonga, Samoa and others. On 5 May I 978, for example, the New Zealand Representative to UNCLOS III spoke in the Plenary session of the Conference concerning ratification of and accession to the future Convention. The Representative said, inter alia:

"...those island nations which were formerly administered by New Zealand, that is the Cook Islands and Niue, ...are constitutionally completely independent of New Zealand in their decision-making on all matters pertaining to the law of the sea, and they have full legislative competence in respect of all matters dealt with in the draft Convention..."
"...[T]he Cook Islands Government has adopted legislation establishing a two hundred mile exclusive economic zone entirely independently. This was the sovereign act of the Cook Islands Government which was, in no way, the concern of the New Zealand Government.

"The Convention on the Law of the Sea will confirm the sovereign rights of the contracting parties, and will protect them. The territories in question [i.e. the Cook Islands and Niue] are entitled to that protection."

At the same time, he added,

"the contracting parties will also incur extensive and important obligations to other contracting parties and to the international community. [As far as New Zealand was concerned, it had] no power to give effect to obligations in respect of any territory other than its own. Even if it had such power, it would not wish to do so."

His proposal that the relevant final clauses of the Convention be drafted so as to allow signature and ratification or accession by the Cook Islands and Niue was agreed to by the Conference, Article 305 (c) of the Convention providing that the latter shall be open for signature by:

"all self-governing associated States which have chosen that status in an act of self-determination supervised and approved by the United Nations in accordance with General Assembly resolution 1514 (XV) and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters".

On 10 December 1982, the Cook Islands joined with 117 other States in signing the above Convention at a special ceremony held in Montego Bay, Jamaica. It subsequently ratified the Convention on 15 February 1995.

This marked the first occasion in which a conference held under the auspices of the United Nations recognised the capacity of States which had chosen a full measure of self-government in the form of free association in terms of UNGA Resolution 1541 (XV) to become a party to and to exercise rights and assume obligations under a treaty.

(3) South Pacific Nuclear Free Zone Treaty (SPNFZ)

Member Governments of the South Pacific Forum, including the Cook Islands, have been concerned for many years with disarmament issues in general and nuclear testing in the region in particular. In an effort both to contribute to global disarmament and to protect the environment of the South Pacific, Heads of State or Government of Australia, the Cook Islands, Fiji, Kiribati, New Zealand, Niue, Tuvalu and Western Samoa at the 1985 annual meeting of the South Pacific Forum, held in Rarotonga, Cook Islands, signed the SPNFZ Treaty, commonly known today as the 'Treaty of Rarotonga'.

Since then, most other Forum member governments have also become Parties to the Treaty, pursuant to which Parties undertake not to, inter alia:

(a) "manufacture or otherwise acquire, possess or have control over any nuclear explosive device by any means anywhere inside or outside the South Pacific Nuclear Free Zone";
(b) "seek or receive any assistance in the manufacture or acquisition of any nuclear explosive device";
(c) "take any action to assist or encourage the manufacture or acquisition of any nuclear explosive device by any State" ( Article 3);
(d) permit the stationing of any nuclear explosive device in their territory (Article 4);
(e) allow their territory to be used for the testing of any nuclear explosive device (Article 6); or
(f) "dump radioactive wastes and other radioactive matter at sea anywhere within the South Pacific Nuclear Free Zone" (Article 7).

The Treaty has the following three Protocols:

• Protocol 1: Parties thereto undertake to apply in respect of their Pacific territories the prohibitions contained in (a), (d) and (e) above. This Protocol was signed by France, the United Kingdom and the United States in 1996;
• Protocol 2: Parties thereto undertake not to use or threaten to use any nuclear explosive device against the Parties to the Treaty or any territory within the South Pacific Nuclear Free Zone for which a State Party to Protocol 1 is internationally responsible. China and Russia became Parties to the Protocol in 1987 and 1986, respectively, while France, the United Kingdom and the United States and the United States signed the Protocol in 1996;
• Protocol 3: Parties thereto undertake not to test any nuclear explosive device anywhere within the South Pacific Nuclear Free Zone. China and Russia both became Parties to the Protocol in 1987; while France, the United Kingdom and the United States signed the Protocol in 1996.

(4) Convention for the Protection of the Natural Resources and the Environment of the South Pacific Region

Concern to ensure the protection of the region's environment led to the conclusion of the Convention for the Protection of the Natural Environment of the South Pacific Region, signed on 24 November 1986 in Noumea, New Caledonia, by the Cook Islands, France, Republic of Marshall Islands, New Zealand, the Republic of Palau, the United States and Western Samoa. Under the Convention, as the title indicates, Parties commit themselves to undertake various measures to protect the environment of the region, including honouring a general obligation to

"endeavour, either individually or jointly, to take all appropriate measures in conformity with international
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law and in accordance with this Convention and those Protocols in force to which they are a party [see below] to prevent, reduce and control pollution of the Convention Area, from any source, and to ensure sound environmental management and development of natural resources, using for this purpose the best practicable means at their disposal, and in accordance with their capabilities. In doing so the Parties shall endeavour to harmonise their policies at the regional level." (Article 5(1)).

Companion Protocols to the Convention concern Cooperation in Combating Pollution Emergencies in the South Pacific Region and the Prevention of Pollution in the South Pacific by Dumping.

Parties to the Convention and the Protocols include, beside the Cook Islands, Australia, the Federated States of Micronesia, Fiji, France, the Republic of the Marshall Islands, Nauru, New Zealand, Papua New Guinea, Solomon Islands, the United States, Vanuatu and Western Samoa.

(5) New Zealand’s United Nations statement on treaties and the Cook Islands

For various reasons, including the increasing participation by the Cook Islands in international agreements in its own right, by the mid-1980s the Cook Islands and New Zealand had mutually agreed that the process whereby New Zealand would consult the Cook Islands about becoming associated with New Zealand treaty action (see above) was no longer appropriate and that such association would only take place upon the request of the Cook Islands and with the concurrence of other treaty parties. To clarify the situation in relation to the international community as a whole, on 10 November 1988, New Zealand submitted to the Secretary General of the United Nations a Declaration (LE 222 New Zealand) which was subsequently circulated to all members of the United Nations and Specialized Agencies. It reads:

"WHEREAS the Cook Islands and Niue are self-governing states in voluntary free association with New Zealand resulting from an act of self-determination supervised and approved by the United Nations in accordance with General Assembly Resolution 1514 (XV); "AND WHEREAS the Governments of the Cook Islands and Niue have exclusive executive and legislative competence to implement treaties in the Cook Islands and Niue; "AND WHEREAS in accordance with the constitutional relationship which exists between New Zealand and the Cook Islands and New Zealand and Niue, there has been consultations between the Government of New Zealand and the Governments of the Cook Islands and Niue regarding New Zealand treaty actions; "AND WHEREAS the Government of the Cook Islands and the Government of Niue have requested that henceforth no treaties signed, ratified, accepted, approved or acceded to by the Government of New Zealand shall extend to the Cook Islands or Niue unless the Instrument of Ratification, Acceptance, Approval or Accession specifically so states; "NOW THEREFORE IT IS HEREBY DECLARED THAT:

"1 No treaty signed, ratified, accepted, approved or acceded to by New Zealand from the date of receipt of this Declaration by the Secretary General of the United Nations will extend to the Cook Islands or Niue unless the treaty is signed, ratified, accepted, approved or acceded to expressly on behalf of the Cook Islands or Niue;

"2 Existing treaties applicable to the Cook Islands or Niue will continue to be applicable in accordance with their terms and subject to the rules of international law;

"3 In the event that the Government of the Cook Islands or the Government of Niue desires that a treaty to which New Zealand is a party but which was not expressly extended to the Cook Islands or Niue, should subsequently be so extended, the right is reserved to withdraw the territorial limitation provided for in paragraph I of this Declaration, by notification to the appropriate Depositary.

"4 Nothing in this Declaration shall limit any right of the Cook Islands or Niue to become party to any treaty which is open to the Cook Islands or Niue in their own right."

The Declaration reaffirms two principles. First, the Cook Islands has competence to enter into international relations 'in its own right' and not simply through the agency of New Zealand. The reference to treaties which are 'open' merely indicates that some treaties are not open to all States. And secondly, the Cook Islands will only participate in New Zealand treaty action with the consent of the Cook Islands Government. These principles, solemnly declared before the international community in 1988 subsequently met with no objections. They have also been supported by unbroken practice accepted without demur by the community of States.

4. Government administration and diplomatic/consular representation

a) Ministry of Foreign Affairs

With the increased emphasis placed on its external affairs, particularly in the context of relations with international aid agencies, the Cook Islands established a Ministry of Planning and External Affairs in 1977 (Ministry of Planning and External Affairs Act 1977, Sec 12).

By 1984, however, the more traditional foreign affairs work had become of such importance that the Cook Islands established the current Ministry of Foreign Affairs, headed by the Secretary of Foreign Affairs (Ministry of Foreign Affairs Act 1984, Sec 4).
b) Diplomatic and consular representation

(1) Cook Islands representation abroad

Between 1975 and 1988, the Cook Islands began establishing offices and diplomatic and consular missions abroad, the number increasing over the years commensurate with the growing importance of the country’s international relations and available financial and human resources.

(a) New Zealand

The first Cook Islands overseas office was established in 1974 in Auckland, where approximately half of all Cook Islanders outside of the country reside. In the beginning, its responsibilities mainly concerned commercial affairs and, in particular, the purchasing of goods and services for government departments. With a diversification and increase in other activities, however, the office more and more assumed the character of a consulate and, as a consequence of an agreement reached between the Cook Islands and New Zealand, the facility was upgraded in status in 1980 to a Consular Affairs Office, headed by a Consular Affairs Officer. As part of the agreement the New Zealand Government granted the Office the range of consular privileges and immunities recognised in the 1968 Vienna Convention on Consular Relations. For its part and at the same time, the Cook Islands Government accorded diplomatic privileges and immunities to the Office of the New Zealand Representative in Rarotonga (see below) in accordance with the provisions of the 1961 Vienna Convention on Diplomatic Relations and the New Zealand Representative Act 1980 passed by the Cook Islands Parliament.

In 1985, the Cook Islands opened in Wellington, New Zealand, its first diplomatic office, headed by the Cook Islands Representative, the identical title to that of the head of the New Zealand diplomatic mission in Rarotonga (see below). Diplomatic privileges and immunities were accorded to the Office by the New Zealand Government from that time in accordance with the 1961 Vienna Convention on Diplomatic Relations and the Diplomatic Privileges and Immunities Amendment Act 1985 (NZ).

(b) United States

For some years, the Cook Islands Government had recognised the value in having some form of official representation in the United States.

Given human and financial constraints, and bearing in mind the transportation and cultural links between Hawaii and the Cook Islands and its propinquity relative to other United States cities, priority was accorded to representation in Honolulu in order to promote trade and cultural relations between the Cook Islands and Hawaii.

On 19 March 1985, the United States Government approved the appointment of a Cook Islands Honorary Consul in Honolulu, Hawaii. The latter's consular district was recognised as being the entire United States. In practice, as the Cook Islands only official representative in the United States for some years and today its senior representative, the Honorary Consul has had considerable dealings with both Hawaiian State and Federal representatives on a wide range of bilateral and regional issues.

(c) Norway

The Cook Islands Government also recognised the importance of establishing official links beyond the Pacific Basin, especially in Europe. With a view to promoting economic and other relations between the Cook Islands and Norway, the Government of Norway on 1 February 1987 agreed to a Cook Islands Government request to appoint a Cook Islands Honorary Consul General in Oslo.

(2) Foreign representation in the Cook Islands

(a) New Zealand

As indicated above, in the early post-1965 period, the High Commissioner of the Cook Islands was both representative of Her Majesty the Queen as Head of State and representative of the New Zealand Government. In 1975, both the Cook Islands and New Zealand Governments decided that it was no longer appropriate for a representative of the New Zealand Government in the Cook Islands to hold the two positions. For domestic political reasons not directly relating to the matter, however, it was impossible for the Cook Islands government of the day to secure the necessary Parliamentary support for any amendment to the Constitution, including to Part I of the Constitution (see above). By agreement between the Governments of the Cook Islands and New Zealand, therefore, when the term of the then High Commissioner expired in 1975, New Zealand appointed not a replacement High Commissioner but rather a Representative. Pursuant to Article 7(1) of the Constitution (Deputy of the Queen’s Representative), the Chief Justice of the Cook Islands performed the constitutional functions of the High Commissioner until 1982 when, following a general election, there resulted sufficient support in the Cook Islands Parliament for the Constitution to be amended, with all references to High Commissioner deleted to be replaced by Queen’s Representative as explained above.

In 1980, simultaneous with the extension by New Zealand of consular privileges and immunities to the Cook Islands Consular Office in Auckland (see above), the Cook Islands Government extended diplomatic privileges and immunities to the Office of the New Zealand Representative in Rarotonga as indicated above.

(b) Other countries

With the consent of the Cook Islands Government, the Government of Nauru appointed an Honorary Consul in
Rarotonga in 1982, the latter being accorded consular privileges and immunities by the Cook Islands as befitting his rank and as provided for in the 1968 Vienna Convention on Consular Relations.

C. Recent Developments: 1989-1997

1. The Major Developments

Recent years have witnessed a continuing expansion of Cook Islands activities in international affairs, including a broadening of its membership in both regional and global international organizations and participation in an increasingly wide range of bilateral and multilateral treaties. Developments relating to Cook Islands' membership in the Asian Development Bank included a further clear, joint exposition by the Governments of the Cook Islands and New Zealand of their shared understanding of the meaning of Section 5 of the Cook Islands Constitution Act 1964 on responsibilities for external affairs and defence (see above).

2. International Organisations

a) Regional

(1) CCOP/SOPAC

Established in 1972 by the United Nations' Economic and Social Commission for Asia and the Pacific (ESCAP), the Committee for Coordination of Joint Prospecting for Mineral Resources in South Pacific Offshore Areas (CCOP/SOPAC) had as its basic function to facilitate and promote the effective cooperation of member governments in the prospecting, research and development of non-living mineral resources in areas under their jurisdiction. Through its membership of ESCAP, the Cook Islands participated actively in the work of the Committee.

Recognising the valuable contribution played by the Committee over the years and the growing importance of non-living mineral resources to the region, and in order to provide the Committee with the requisite international legal standing to secure international financial and other support for its activities, member governments on 10 October 1990 concluded an Agreement Establishing the South Pacific Applied Geosciences Commission (SOPAC), transforming CCOP/SOPAC into a legally based international organization. Signing the Agreement on that date, the Cook Islands was among the fourteen founding members of SOPAC, which included both Australia and New Zealand.

(2) South Pacific Regional Environment Programme (SPREP)

Countries and peoples of the South Pacific region have long been aware of the need to protect their pristine oceanic environment. In order to deal more effectively with regional environment issues that had diversified and grown in importance over the years, as well as to facilitate the realization of external funding for regional environmental activities, it was decided in the early 1990s to establish an independent environmental organization. On 16 June 1993, an Agreement was signed in Apia, Western Samoa, establishing SPREP as a legally-constituted intergovernmental organisation, whose purposes are "to promote cooperation in the South Pacific region and to provide assistance in order to protect and improve its environment and to ensure sustainable development for present and future generations" (Article 2(1)). The Agreement entered into force on 31 August 1995. The Cook Islands played an active part in the negotiation of the Agreement and became a Party thereto and a member of the organisation on 30 August 1995. Beside Forum member countries, other States which had signed the Agreement include France and the United States.

(3) Tourism Council of the South Pacific (TCSP)

In March 1997, the Cook Islands joined with a number of other States in the South Pacific in founding by treaty the TCSP as an international organisation, its purpose being to promote, facilitate, undertake, coordinate, advise on and cooperate in tourism-related activities for the benefit of the region, comprising Melanesia, Micronesia and Polynesia.

b) Global

(1) United Nations Educational, Scientific and Cultural Organization (UNESCO)

Cognisant of UNESCO's lengthy achievements over many years in education, science, culture and other related fields and anxious to promote national development in those areas, the Cook Islands Government applied for and was admitted to full membership of the Organisation in October 1989 on the unanimous endorsement of the UNESCO General Conference. The Cook Islands formally became a full member of the Organisation on 25 October 1989 when it deposited its Instrument of Acceptance with the depositary, the Government of the United Kingdom.

(2) Asian Development Bank (ADB)

When the Cook Islands joined the ADB in 1976, it did so in order to secure access to concessional loan finance for relatively large infrastructural projects and to assist its national development bank. At that time, however, it had had little experience or expertise in the practices of multilateral finance institutions. As a result of discussions between the Governments of the Cook Islands and New Zealand, the latter agreed that, at least in the beginning, it would accept international responsibility for ADB loans to the Cook Islands. On that basis, the Cook Islands was admitted to membership of the Bank.

Over the succeeding decade and a half, the Cook Islands' experience in international financial matters increased greatly, as did the expertise available to Government in
such affairs. Consistent with its overall steady assumption of direct control and responsibility for its own international affairs as its capacity to do so increased, the Cook Islands was determined to assume direct responsibility for its loans from the ADB. As a result of discussions between the Cook Islands and New Zealand, on 1 May 1992 the Cook Islands Prime Minister and the New Zealand Minister of Finance, as their respective country's Governors of the ADB, wrote to the President of the ADB informing the latter that "in view of the responsibility assumed by the Cook Islands for the conduct of its international relations, there is no longer a need for the New Zealand Government to accept the responsibility" for Bank loans to the Cook Islands.

The Governors explained that

"The Cook Islands has had a special and evolving relationship with New Zealand. ...That arrangement of self-government in free association represented a unique and creative approach to the process of decolonisation which had been developed through consultation between New Zealand and the people of the Cook Islands to take into account the special circumstances and needs of the Cook Islands.

"The constitutional relationship existing between [the Cook Islands and New Zealand] provides for the exercise by New Zealand of certain responsibilities for the defence and external affairs of the Cook Islands. However, this does not confer upon the New Zealand Government any rights of control. All legislative and executive powers, whether in the fields of defence, external affairs or any other, are vested exclusively in the Government of the Cook Islands, and the exercise by the New Zealand Government of any responsibilities in external affairs or defence must be preceded by full consultation with the Cook Islands.

In carrying out these responsibilities, the New Zealand Government is acting on the delegated authority or as an agent or facilitator of the Cook Islands Government. These constitutional responsibilities are in the nature of obligations on New Zealand's part, rather than rights of supervision and control. In the relevant provision of the Cook Islands Constitution Act [Section 5] passed by the New Zealand Parliament, New Zealand has simply acknowledged a responsibility towards the Cook Islands which might otherwise have been doubted or misunderstood. In this regard, may we reiterate that, unlike the case of other associated States, the New Zealand Government has not retained any reserved legislative powers to assist the New Zealand Government in discharging its responsibilities for the foreign affairs and defence of the Cook Islands.

"It is important to stress not only that the Cook Islands has full constitutional capacity to conduct its own external affairs and to enter directly into international arrangements and agreements but, in fact, it does conduct directly its external affairs and does enter into international agreements engaging its international responsibility.

"...In light of developments over the years with respect to Cook Islands' membership in international organizations, participation in treaties etc...the 1976 undertaking by New Zealand to accept responsibility for all Bank obligations to be incurred by the Cook Islands is now no longer appropriate and it is inconsistent not only with the constitutional relationship between the two countries but also international recognition of the Cook Islands' international personality and its plenary competence with respect to the conduct of its own international relations." (See attachment B)

In response to technical queries from the Bank, the International Legal Advisor to the Cook Islands Government and the Director of the Legal Division of the New Zealand Ministry of External Relations and Trade on 10 December 1992 wrote to the Bank explaining the role of constitutional conventions in regard to the Cook Islands Constitution and the relationship of free association between the Cook Islands and New Zealand:

"[t]he modern understanding of the [Cook Islands and New Zealand] Governments is that the effective
source of advice to the Queen on Cook Islands' matters, including those referred to in Section 5 of the Cook Islands Constitution Act 1964 is that of the Cook Islands Ministers. This understanding has now attained the status of a constitutional convention of the kind which typified the constitutional development of the older members of the Commonwealth.

As for when the above convention developed, they made much the same point as Baldwin had made in 1932 (see Part II above):

"it is difficult to say at what precise moment particular conventions develop - there is rarely one 'magic moment' at which old understandings give way to new. Nor are such understandings invariably reduced to written form. Nevertheless, 'markers' can often be found which recognise the development - as with the 'Balfour Declaration' mentioned above. In the Cook Islands case, a significant marker is found in the New Zealand Declaration to the Secretary General of the United Nations of 10 November 1988 [see above]".

On 10 June 1993, the ADB President responded substantively to the Cook Islands and New Zealand Governors. Having completed a full review of all relevant materials and having also consulted with the United Nations on the approach that the latter took towards the responsibility of the Cook Islands for its international relations, the Bank was pleased to advise that it was "able to accept [the] position [of the Cook Islands and New Zealand] that in terms of the evolving relationship between the Cook Islands and New Zealand, the Cook Islands has now assumed responsibility for its own international relations within the meaning of Article 3.3 of the Charter of the Bank". Accordingly, he confirmed that New Zealand would no longer be required to provide a guarantee for loans made by the Bank to the Cook Islands.

The above joint letters from the Cook Islands and New Zealand to the ADB constitute a clear statement of the modern understanding of both Governments regarding their mutual responsibilities with respect to the foreign affairs of the Cook Islands in terms of Section 5 of the Cook Islands Constitution Act 1964 and the plenary competence of the Cook Islands to conduct its own external affairs and to assume international responsibility in its own right. Endorsement by both the Cook Islands and New Zealand as well as the international community as a whole of those understandings has been widely reflected in contemporary State practice as indicated herein.

(3) International Fund for Agricultural Development (IFAD)

With headquarters in Rome, Italy, IFAD was established as a specialised agency of the United Nations with its objective being "to mobilize additional resources to be made available on concessional terms for agricultural development in developing Member States" (Article 2 of the Agreement establishing the International Fund for Agricultural Development). Membership in the Fund is open to "any State member of the United Nations or any of its specialized agencies" (Article 3.).

In order to access IFAD resources for its own rural agricultural development, the Cook Islands applied for and was admitted as a member of the Fund on 22 January 1993 with the approval of IFAD's Governing Council. The Cook Islands' Instrument of Accession was deposited with the Secretary General of the United Nations on 25 March 1993, from which date its membership in the Fund took effect.

(4) World Meteorological Organisation (WMO)

At the request of the Cook Islands, New Zealand agreed to retain responsibility for the operation of the Cook Islands Meteorological Service following the attainment of self-government in 1965, primarily as an adjunct to the airport operations (see above). As a result of discussions between the two Governments, however, the Cook Islands assumed full control of and responsibility for the Service in 1993. In order to be able to draw on technical and other assistance in upgrading the Service, the Cook Islands applied for membership in the WMO.

The WMO Convention provides that membership is open to, inter alia, "[a]ny State fully responsible for the conduct of its international relations and having a Meteorological Service...and not a member of the United Nations" with the approval of two-thirds of WMO members (Article 3(c)).

The Cook Islands' application for WMO membership was unanimously approved by the WMO Congress on 2 June 1995 and the Cook Islands submitted its Instrument of Accession to the Convention on 14 August 1995.

3. Treaties and other international agreements

a) Bilateral

(1) France

(a) Maritime Boundary Delimitation

The Cook Islands shares maritime boundaries with Niue, the United States, New Zealand (with respect to Tokelau), Kiribati and France. Having declared its EEZ in 1977, the Cook Islands set out to delimit its precise maritime boundaries.

On 3 August 1990, the Agreement on Maritime Delimitation between the Government of the Cook Islands and the Government of the French Republic was concluded with a view to:

i)"strengthening the bonds of neighbourliness and friendship between the two States"; and
ii) "effect[ing] a precise and equitable delimitation of the respective maritime areas in which the two States exercise sovereign rights" (Preamble).

The Agreement delimits the maritime boundary between the Cook Islands and the French Overseas Territory of French Polynesia.

(b) Treaty of Friendship and Cooperation

The General Agreement of Friendship and Cooperation between the Government of the Cook Islands and the Government of the French Republic was signed in Paris on 15 October 1991 by the Prime Ministers of the Cook Islands and France. Concluded to "strengthen the ties of friendship existing between the Cook Islands and the French Republic, on a basis of equality, mutual respect for national sovereignty, non-interference in the internal affairs of each State and preservation of their national interests" (Preamble), the Agreement contains numerous provisions concerning the development of mutually peaceful and friendly relations and cooperation in various fields. It has formed the basis of relations between the Cook Islands and France since that time.

(2) Chile

During his official visit to Chile in June 1992, the Cook Islands Prime Minister held discussions with the President of Chile, and signed an ASA providing the legal basis for the establishment of air services between the two countries. The bilateral ASA followed the standard ASA form and content.

(3) Western Samoa

(a) Air Services Agreement

The Cook Islands and Western Samoa concluded an ASA on 23 June 1993 covering air services between and beyond their respective territories. It too followed the standard form and content of other ASAs. The Agreement was registered with ICAO on 31 August 1993.

(b) Agreement concerning convicted offenders

On 1 February 1995, the Cook Islands and Western Samoa entered into an Agreement for the Transfer of Convicted Offenders, the basic purpose being to enable "[a] person convicted and sentenced to a term of imprisonment in one country...for an offence [to] be transferred, in accordance with the provisions of [the] Agreement to the other country...in order that he may serve the remainder of that sentence in that other country". The first transfer was carried out that same year.

(4) New Zealand

As part of its on-going defence cooperation programme with the States of the South Pacific region, New Zealand has for years been conducting military exercises in the island countries with a view to enhancing its capacity to respond quickly and effectively to requests for assistance. Recognizing its responsibilities under Section 5 of the Cook Islands Constitution Act 1964 with respect to the defence of the Cook Islands, a number of such exercises had been carried out in the Cook Islands over the years. While New Zealand's assistance in this regard was appreciated by the Cook Islands, in each case the exercises have been carried out with the prior, written approval of the Cook Islands Government.

By the early 1990s, the Cook Islands and New Zealand had agreed that, given the evolution of their free association relationship since 1965, to one based on international law and conventional diplomatic practice it was appropriate, indeed necessary, to place such military exercises on a more formal basis, following precedents found in Status of Forces Agreements (SOFAs) negotiated throughout the international community. On 3 August 1993, the two Governments concluded an Exchange of Letters Constituting an Agreement Between the Government of the Cook Islands and the Government of New Zealand on Arrangements for Visits by Elements of the New Zealand Armed Forces. The substantive provisions of the Agreement followed those of other SOFAs, setting out arrangements and procedures governing each exercise. Paragraph 4 of the Agreement provides that

"[t]he New Zealand Government shall seek written permission in advance through the diplomatic channel from the Cook Islands Government for the presence in the Cook Islands of any New Zealand Service elements and civilian components. The nature, purpose, size and intended duration of any such presence shall be as agreed upon from time to time."

Both the earlier arrangements as well as the 1993 SOFA clearly reflect the fact that under Section 5 of the Cook Islands Constitution Act 1964, control over not only external affairs matters but also defence rests entirely with the Cook Islands Government.

(5) Papua New Guinea

On 15 September 1995, the Prime Ministers of the Cook Islands and Papua New Guinea signed an Agreement concerning Technical Cooperation between the two Governments. Pursuant to the Agreement, each Contracting Party shall endeavour to utilise the opportunities offered by its national development for the purpose of promoting technical cooperation for their mutual benefit.

b) Multilateral

(1) South Pacific Driftnet Convention

The mid-1980s witnessed growing international concern with the problem of driftnet fishing and the deleterious effects of such practices on the ocean’s fishery resources. Nowhere was the concern expressed greater than in the
South Pacific region. To address the problem, negotiations began on possible legal measures that could be taken to deter the use of such nets. On 24 November 1989, an international conference was held in Wellington, New Zealand, adopted the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific (commonly known as the 'Wellington Convention'). Under the Convention, each Party undertakes, inter alia, "to prohibit its nationals and vessels documented under its laws from engaging in driftnet fishing activities" in the region (Article 2) and to take a range of measures against driftnet fishing activities by non-Parties consistent with international law (Article 3).

The Convention is open for signature by any member of the FFA (see above), "any State in respect of any Territory situated within the Convention Area for which it is internationally responsible" and "any Territory situated within the Convention Area which has been authorised to sign the Convention and to assume the rights and obligations under it by the Government of the State which is internationally responsible for it" (Article 10(1)).

There are two Protocols to the Convention, the first requiring Parties to it to prohibit their nationals and fishing vessels documented under their laws from using driftnets within the Convention Area and to cooperate with Parties to the Convention in the development of conservation and management measures for South Pacific albacore within the Convention Area. Unlike the first Protocol, the second contains obligations identical to those contained in Article 3 of the Convention itself (see above).

Parties to the Convention include, besides FFA member governments, the United States. The Cook Islands ratified the Convention on 24 January 1990.

The United States is also a Party to Protocol I, while Canada and Chile are Parties to Protocol II.

(2) United Nations Framework Convention on Climate Change

The Convention, concluded at New York on 9 May 1992, was opened for signature by "States Members of the United Nations or of any of its specialized agencies" (Article 20) during the United Nations Conference on the Environment and Development (the 'Earth Summit') held in Rio de Janeiro, Brazil, in June 1992 (see below). The "ultimate objective" of the Convention is, inter alia, "to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system" (Article 2).

With many of its islands being low-lying, the Cook Islands has long been concerned with the possible effects of climate change on sea levels etc. The Convention was signed by the Cook Islands during the Earth Summit and its Instrument of Ratification deposited with the Secretary General of the United Nations on 20 April 1993. The Cook Islands has played an active role in activities carried out in relation to the Convention.

(3) United Nations Convention on Biological Diversity

The Convention was also opened for signature by "all States" (Article 33) on 5 June 1992, during the Earth Summit (see below). The objectives of the Convention include, "the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources" (Article 1).

The Cook Islands too signed this Convention during the Earth Summit and its Instrument of Ratification was deposited with the Secretary General of the United Nations on 20 April 1993. In accordance with the Convention, the Cook Islands has actively participated in international activities relating to the Convention as well as pursued its own programmes to preserve and promote biological diversity of its flora and fauna, including species unique to the country.

(4) Niue Treaty on Co-operation in Fisheries Surveillance and Law Enforcement Co-operation

In a further initiative aimed at protecting the living marine resources of the South Pacific region, the Niue Treaty was signed on 9 July 1992 by Heads of State and Government (including the Prime Minister of the Cook Islands) attending the Twenty-Third South Pacific Forum, held in Honiara, Solomon Islands. The objective of the Treaty is to provide a legal basis for regional cooperation in various aspects of fisheries surveillance and the enforcement of national fisheries laws. The Cook Islands ratified the Treaty on 15 February 1993.

(5) Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (the CWC)

Mindful of the obligation of all members of the international community to contribute each in their own way to meaningful global disarmament efforts, the Cook Islands joined with 128 other States in signing the above Convention in Paris in January 1993. The CWC is open for signature by "all States" (Article XVIII) and sets out a detailed regime governing the various activities referred to in the Convention's title. The Cook Islands ratified the CWC on 15 July 1994, one of the first signatories to do so.

(6) Regional Convention on the Ban on the Import into the South Pacific and the Control of Transboundary Movement and Management of Hazardous Wastes Within the Pacific Region (the 'Waigani' Convention)

On 16-17 September 1995, South Pacific Forum Heads of State and Government gathered in Waigani, Port Moresby, Papua New Guinea, for the official signing of
the above Convention (commonly called the 'Waigani Convention'), another environmental agreement negotiated under the auspices of the Forum and aimed at addressing a particular problem. The objectives of the Conventions are to prohibit:

(a) "the importation of hazardous wastes into Pacific Islands Developing Parties, and to regulate and facilitate the environmentally sound management of such wastes generated within the Convention Area"; and

(b) "the importation of all radioactive wastes into Pacific Island Developing Parties while at the same time recognising that the standards, procedures and the authorities responsible for the environmentally sound management of radioactive wastes will differ from those in respect of hazardous wastes" (Preamble).

The Convention being open for signature by the members of the South Pacific Forum (Article 21(1)), it was signed by the Cook Islands on 17 September 1995. Internal ratification procedures, including the preparation of national implementing legislation for presentation to the Cook Islands Parliament, are currently underway.

(7) Convention on the Rights of the Child (CRC)

The most widely-supported human rights instrument in history, the CRC sets out the basic human rights to which children are entitled. The Cook Islands became a party to the Convention in 1997. The CRC is the first human rights treaty of which the Cook Islands is a party in its own right, having been bound through New Zealand to earlier instruments (see above discussion concerning Cook Islands treaty participation in the 1965-1974 period).

4. Diplomatic/consular representation, conference participation, and Government administration

   a) Diplomatic relations

A common practice has developed over the years for many members of the South Pacific Forum, particularly the smaller members with few resident diplomatic missions abroad, to interact with other Forum members (including directly at Head of State and/or Head of Government levels) on the basis of a contemporary international practice appropriately described by one leading authority on the subject as "implied diplomatic relations" (James 359).

While this has largely been the case with respect to the Cook Islands, the latter has also established formal diplomatic relations with other States, especially those not members of the Forum, through the appointment of diplomatic representatives (see below) or by means of other specific action. For example:

♦ On 12 August 1995, the High Commissioner of the Cook Islands to Australia and the Ambassador of Portugal to Australia issued a Joint Communiqué in Canberra, Australia, announcing the decision of their two Governments to establish formal diplomatic relations effective as of that date “in accordance with the principles and purposes of the United Nations Charter and the relevant provisions of the Vienna Convention on Diplomatic Relations”.

♦ In December 1995 and February 1996, the Cook Islands and the Republic of South Africa exchanged notes establishing diplomatic relations between the two countries, those relations to be in accordance with the provisions of the 1961 Vienna Convention on Diplomatic Relations.

♦ In July 1997, a Joint Communiqué on the Establishment of Diplomatic Relations between the Cook Islands and the People’s Republic of China was signed by representatives of the two Governments.

b) Diplomatic and consular representation

In the appointment of diplomatic envoys at head of mission level the Cook Islands follows the practice below:

- In the case of Commonwealth countries where Her Majesty the Queen is Head of State of both the receiving and host countries, a Letter of Introduction is produced by the Prime Minister or Head of Government of the sending country to the Prime Minister or Head of Government of the host country;
- In the case of Commonwealth countries in which her Majesty is not Head of State of both the sending and host countries, a Letter of Commission, being the equivalent to Letters of Credence, is produced by the Head of accrediting State of his counterpart in the receiving State;
- In the case of non-Commonwealth countries, a Letter of Credence is produced by the Head of the accrediting State to his counterpart in the receiving state.

(1) Cook Islands Representation abroad

(a) New Zealand

In 1989, the status of the Cook Islands Consular Affairs Office in Auckland (see above) was upgrade to that of Consulate General and a Consul General was appointed.

In a development unique within the Commonwealth, the status of the Office of the Cook Islands Representative in Wellington was upgraded to that of High Commission 4 August 1993, the same day as the Office of the Zealand Representative in Farotonga was similarly upgraded. Never before had High Commissioners appointed between Commonwealth States in association. This step was considered by both the Cook Islands and New Zealand as appropriate recognition of the evolution of the relationship between the countries and a more accurate reflection of the fact their formal relations were based on principles enshrined in the 1961 Vienna Convention on Diplomatic Relations.

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Presentation of credentials to His Excellency, Sir Apenera Short, KBE, Queen’s Representative, by His Excellency Datuk Daniel Tajem, High Commissioners of Malaysia; Government House, Rarotonga, 24 January 1996 (courtesy of Mr. Dean Tremi).
His Excellency Sir Apenera Short, KBE, Queen’s Representative, and His Excellency Datuk Daniel Tajem accompanied by Lady Maui Short, to the left of the Queen’s Representative, and Datin Ivy Tajem, spouse of the High Commissioner, to the right of the High Commissioner, 24 January 1996 (courtesy of Mr. Dean Treml).
As noted in a press release issued by the Cook Islands High Commission in Wellington at the time,

"the redesignation of the respective Diplomatic Office in Rarotonga and Wellington is a natural development and properly reflects the gradual evolution of the relationship between the two countries as two sovereign states in free association".

This was endorsed in a separate press release, issued by the Office of the New Zealand Deputy Prime Minister and Minister of Foreign Affairs on 5 August 1993,

"New Zealand's relations with the Cook Islands and Niue have taken a further step forward....

"The term High Commissioner...is used throughout the Commonwealth for the exchange of diplomatic representatives between Commonwealth countries. After consultations with the Cook Islands and Niue Governments, we have decided that our respective diplomatic representatives should also be so designated, since they carry out the full range of diplomatic functions. This change will take effect from 4 August - Constitution Day - in respect of the Cook Islands.

"Our relations with the Cook Islands and Niue have matured over the years. The redesignation of our diplomatic representatives is a positive acknowledgment of that fact."

(b) **Australia**

As its human and other resources increased, the Cook Islands was committed to strengthening its ties with and presence in Australia, both because of Australia's active involvement in regional affairs, including an important aid programme to the South Pacific, as well as the large number of Cook Islanders living in Australia. In June 1989, Australia agreed to a Cook Islands' request for permission to establish a Cook Islands Consulate in Canberra, with jurisdiction throughout the Australian Capital Territory (ACT), and a Vice-Consulate in Sydney, with jurisdiction throughout Australia with the exception of the ACT. In August 1989, the first Honorary Consul was appointed in Canberra.

On 26 May 1992, Australia approved the establishment of a Consulate in Sydney, the consular district including all Australian States and Territories except the ACT. Discussions between the Cook Islands and Australia culminated in agreement by the latter in August 1993 for the Cook Islands to establish a resident diplomatic mission in Canberra. Australian approval followed on 3 December 1993 for the appointment of the Cook Islands' first High Commissioner to Australia. While the mission was opened shortly thereafter, national budgetary constraints unfortunately necessitated the closure of the mission in 1996.

(c) **United States**

In April 1990, the Cook Islands Prime Minister met with the President of the United States at the White House for discussions on bilateral and global issues of importance to both countries. In his capacity as the only Cook Islands official representative resident in the United States at that time, the Honorary Consul in Hawaii accompanied the Prime Minister to the White House for those discussions.

With greater tourism and other commercial links developing between the West Coast of the United States and the Cook Islands, a request for the appointment of a Cook Islands Honorary Consul in Los Angeles was approved by the United States Government on 22 February 1995. The Honorary Consul's district is the Los Angeles area, with the Cook Islands Honorary Consul in Hawaii responsible for the remainder of the United States.

(d) **Papua New Guinea**

In January 1995, Papua New Guinea approved the appointment of the Cook Islands High Commissioner to Australia as the Cook Islands High Commissioner to Papua New Guinea, resident in Canberra. The High Commissioner presented his Letter of introduction to the Prime Minister of Papua New Guinea during an official visit to Port Moresby in July of that year.

(2) **Foreign representatives to the Cook Islands**

(a) **France**

With the consent of the Cook Islands Government, the Government of France appointed an Honorary Consul in Rarotonga in 1989 that post also being accorded normal consul privileges and immunities.

(b) **Federal Republic of Germany**

The Federal Republic of Germany appointed its first Honorary Consul in the Cook Islands in 1997, he also being accorded normal consul privileges and immunities.

(c) **Cross-Accreditation**

Diplomatic envoys based in Wellington, New Zealand, have also been cross-accredited to the Cook Islands. For example, upon taking up their position, successive High Commissioners of Malaysia have presented Letters of Commission to the Queen's Representative in Rarotonga.

**c) Conference participation**

Since 1989, the Cook Islands has participated actively - often at Prime Ministerial or Ministerial level - in many major international conferences, including the following global conferences held under United Nations auspices:
• United Nations Conference on Environment and Development, the ‘Earth Summit’ (Rio de Janeiro, June 1992);
• International Conference on Population and Development (Cairo, September 1994);
• United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks (New York, 1994-95);
• World Summit for Social Development (Copenhagen, March, 1995);
• Global Conference on Sustainable Development of Small Island Developing States (Barbados, April-May 1995);
• Fourth World Conference on Women (Beijing, September, 1995); and
• World Food Summit (Rome, November 1996).

d) Government Administration

To facilitate the strengthening of Government's external relations activities, recent years have also seen the establishment of the Office of the International Legal Advisor within the Ministry of Foreign Affairs and work begin by that Office on numerous international legal matters, including up-dating the Cook Islands’ treaty records and publication of a treaty series.
PART IV. CONCLUSION

The fifteen small, scattered and isolated islands sprinkled over some 2 million square kilometres of the South Pacific Ocean that were at one time all but unknown one to the other came, over the years, to be unified under one government into a single nation-State today known as the Cook Islands.

Like many other members of the international community, the Cook Islands also emerged from a past as a dependency of a larger metropolitan power - in its case, a past some 65 years in length and after having previously been a self-governing community in its own right.

But even in the most isolated parts of the world, however, global events often have an impact, if sometimes only after some effluxion of time. In the case of the Cook Islands' own political evolution, among the main such events were the establishment of the United Nations in 1945 and the UNGA Resolutions of 1960. Their impact was felt almost immediately and, in fact, came at a period and were significantly enhanced by simultaneous, concerted efforts being made by New Zealand to plan and implement programmes for the economic, social and political development of its Territory.

By 1965, however, the inherent resource constraints faced by the Cook Islands; compounded by both its relative isolation from all but New Zealand and its dependence on the latter for financial support, an export market for its agricultural produce and employment opportunities for its people meant that, when offered various options on a future political status, the Cook Islands chose the only one which, in its view, afforded the only chance of a viable future.

Although constituting "a full measure of self-government" in terms of UNGA Resolution 1541 (XV), the concept of "free association with an independent State" was neither an international legal term of art nor substantively detailed and precise. The Cook Islands, however, clearly satisfied the principles and criteria established by the United Nations for determining that a territory had ceased to be non-self-governing and, with the blessing of the United Nations, it was left for the future to decide how that self-government would evolve in practice and in accordance with international law.

In fact, the special relationship of free association between the Cook Islands and New Zealand was unique and creative in both its approach to decolonisation and its response to a particular set of circumstances. This was reflected in the nature of the Cook Islands Constitution, which - like UNGA Resolution 1541 (XV) - established certain fundamental principles while leaving the exact nature of the relationship to be worked out and evolve in accordance with long-established principles of constitutional law and changing circumstances, needs, expectations and understandings. It was anticipated that it would be a developing relationship as the Cook Islands people and their governments assumed the responsibilities and realised the potentials of self-government.

One of the first developments in the relationship actually came with respect to a sphere of governmental activity which both the Cook Islands and New Zealand had initially expected would be of little early, direct interest to the Cook Islands, or in which it would be so early involved: external affairs. No doubt in large part reflecting improved communication links, the increasing tempo of modern international affairs and the growing interdependence of members of the world community and the concomitant need for concerted action at the international level if national objectives were to be achieved, it was not long before the Cook Islands began to play its own, direct role on the international stage - at first, as was natural, in the regional arena where matters of most immediate import were being discussed and activities undertaken.

That this independent initiative on the part of the Cook Islands was fully consistent with its relationship of free association with New Zealand and the principles set out in the Constitution was confirmed in the historic 1973 Exchange of Letters between the Prime Minister of New Zealand and the then Premier of the Cook Islands which constituted a clear statement of basic tenets of that relationship.

It was also reflected in and recognised by the international community in continuing State practice, including expanded participation by the Cook Islands in both bilateral and multilateral treaties as well as international organizations - the latter very often including, at the same time, New Zealand as a separate and equal member. Given its human and other resource constraints, the Cook Islands' immediate focus in the years immediately following the attainment of self-government, however, continued to be on activities in its own South Pacific region. Nevertheless, by the early 1980s in efforts to facilitate its own social and economic development and to participate directly in important decision-making at the global level on matters of both international and national concern, the Cook Islands became a full member of a number of specialised agencies of the United Nations, including the WHO, the FAO, ICAO, UNESCO and the WMO. Its applications for membership were fully supported by New Zealand, which indicated in numerous public statements that in terms of its relationship with the Cook Islands the latter possessed the requisite membership qualifications, including responsibility for its foreign affairs.

Whereas in the early post-1965 period the Cook Islands had participated in international agreements exclusively through New Zealand, over subsequent years the former increasingly became a party in its own right to treaties, itself exercising rights and assuming obligations thereunder. By 1980 came recognition within the South Pacific context of the capacity of self-governing States in free association to enter into multilateral treaties; that was
followed two years later by recognition at the global level with the Cook Islands joining most other members of the international community in signing the United Nations Convention on the Law of the Sea. By the mid-1980s the Cook Islands had also concluded bilateral agreements, including those with both the Republic of Korea regarding fishing in the Cook Islands' EEZ and the United States with respect to maritime boundary delimitation.

The 1980s similarly witnessed an evolution in the relationship between the Cook Islands and New Zealand themselves with the conclusion of the first bilateral treaties between them, dealing with civil aviation, and the establishment of diplomatic missions in each other's capital, those missions mutually accorded by the other the full diplomatic privileges and immunities enshrined in the 1961 Vienna Convention on Diplomatic Relations.

In 1988 came another historic development in the relationship. Following consultations between the Cook Islands and New Zealand, and taking into specific account the increasing participation by the Cook Islands in its own right in treaties, New Zealand submitted a Declaration to the Secretary General of the United Nations stating that henceforth, New Zealand treaty action would no longer extend to the Cook Islands unless expressly stated accordingly. At the same time, the Declaration recognised the competence of the Cook Islands to enter into treaty relations in its own right; not simply through the agency of New Zealand. The Declaration was circulated by the Secretary General to the entire international community, where it has since encountered no objections.

The years following the above Declaration have been marked by a further, steady expansion in the Cook Islands' international relations, with participation in an increasingly wide range of treaties covering such multifarious matters as maritime boundary delimitation, air rights, the transfer of convicted offenders, driftnet fishing, climate change, biological diversity, chemical weapons and hazardous wastes, many of which were expressly stated as being open only to States;

The Cook Islands has also expanded its formal diplomat relations, establishing a High Commission in Australia and accrediting its High Commissioner resident in Australia to Papua New Guinea. Diplomatic relations have also been established with other States, including Malaysia, the People's Republic of China, Portugal and the Republic of South Africa.

In 1993, in joint letters to the ADB marking another stage in the evolution of their relationship, the Cook Islands and New Zealand explained that in New Zealand carrying out responsibilities for the Cook Islands external affairs; the former was acting on the delegate authority or as an agent or facilitator of the Cook Islands. The latter had full constitutional capacity to conduct its own external affairs and to enter into treaties engaging its international responsibility, which it had in fact been doing for some years.

That same year, the Cook Islands and New Zealand upgraded their bilateral relations by redesignating as 'High Commissioners' (equivalent to ambassadors in non-Commonwealth countries) their senior diplomatic representatives in each other's capitals, the first time such a practice has occurred in the Commonwealth. They also concluded a bilateral SOFA to govern New Zealand military exercises in the Cook Islands, recognising the Cook Islands' plenary competence under the Constitution not only in matters of external affairs but also defence.

Recent years have also witnessed the Cook Islands taking its place in the international community's family of States in many of the great global conferences convened to address the critical problems affecting mankind today. It has participated actively in those deliberations and in follow-up activities and is committed to playing its full role as a member of that community. The Cook Islands looks forward to working closely with other members of the international community in the various matters concerning global development in the years to come.
EXCHANGE OF LETTERS BETWEEN THE
GOVERNMENT OF NEW ZEALAND AND THE
GOVERNMENT OF THE COOK ISLANDS ON
THE CONSTITUTIONAL RELATIONSHIP
BETWEEN THE TWO COUNTRIES

No. 1

The Right Honourable N.E. KIRK,
Prime Minister of New Zealand

to

The Honourable A.R. HENRY
Premier of the Cook Islands

Prime Minister,
Wellington,
New Zealand
4 May 1973

My dear Premier,

When you visited Wellington earlier this year, we discussed the nature of the special relationship between the Cook Islands and New Zealand and we then agreed to exchange letters clarifying aspects of this relationship.

You explained to me your 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. I was glad to assure you that, in the view of the New Zealand Government, there are no legal fetters of any kind upon the freedom of the Cook Islands which make their own laws and control their own Constitution.

That also is the view of the United Nations. The General Assembly accepted the referendum approving the present Constitution as an act of self-determination, which had ended the dependant status of the Cook Islands.

Thenceforward, the relationship between our two countries has been simply one of partnership, freely entered into and freely maintained. The Cook Islands Constitution Act, and the Constitution itself, provide
guarantees and guidelines for the conduct of this partnership; but, in the final analysis, everything turns on the will of each of our countries to make the arrangement work.

It is, of course, an integral part of that arrangement that the Cook Islands can continue to rely on New Zealand's help and protection. To that end, the New Zealand Government has a statutory responsibility for the external affairs and defence of the Cook Islands. It is, however, also intended that the Cook Islands be free to pursue their own policies and interest - as they are doing, for example, through separate membership of the South Pacific Forum and other regional bodies.

I need hardly assure you, Mr Premier, that the New Zealand Government welcomes the role which your country is now playing, and looks forward to continued cooperation with your Government in the wide range of matters which are our common concern. At the same time, I would like especially to draw your attention to the central feature of the constitutional relationship between our two countries.

By their own express wish, the people of the Cook Islands remain New Zealand citizens, like other New Zealand citizens, they owe allegiance to Her Majesty the Queen in right of New Zealand, and they acknowledge the Queen in her New Zealand capacity as their Head of State. In this way the Cook Islands people retain the right to regard New Zealand as their own country, even while they enjoy self-government within the Cook Islands.

The very survival of the state may depend upon the belief of its citizens in common ideals and their sense of loyalty toward each other. It is therefore unusual for a state to extend its citizenship to people living in areas beyond the reach of its own laws. That New Zealand has taken this step in relation to the Cook Islands is the strongest proof of its regard for, and confidence in, the people of your country.

For the reasons I have already indicated, the bond of citizenship does entail a degree of New Zealand involvement in Cook Islands affairs. The is reflected in the scale of New Zealand’s response to your country’s material needs but it also creates an expectation that the Cook Islands will uphold in their law and policies a standard
of values generally acceptable to New Zealanders.

It seems to my Government that this is the heart of the matter. The special relationship between the Cook Islands and New Zealand is on both sides a voluntary arrangement which depends upon shared interests and shared sympathies. In particular, it calls for understanding on New Zealand’s part of the Cook Islands’ natural desire to lead a life of their own, and for equal understanding on the Cooks Islands’ part of New Zealand’s determination to safeguard the values on which its citizenship is based.

I shall be grateful for your reply confirming that the Cook Islands Government shares the views expressed in this letter, and wishes to maintain the special relationship of free association between the Cook Islands and New Zealand. I would, moreover, suggest that my letter and your reply be tabled by our respective Governments in the Cook Islands Legislative Assembly and in the New Zealand Parliament, as an indication to all who are interested of the true nature of the ties between our two countries.

Yours Sincerely,

(Sgd) NORMAN KIRK.
My dear Prime Minister,

Thank you for your letter of 4 May about the special relationship between the Cook Islands and New Zealand.

I confirm that the Cook Islands Government shares the views expressed in your letter and wishes to maintain the special relationship of free association between the Cook Islands and New Zealand.

I agree that your letter and this reply be tabled by our respective governments in the Cook Islands Legislative Assembly and in the New Zealand Parliament.

Yours Sincerely,

(Sgd) A.R. HENRY.
Mr Kimimasa Tarumizu  
President  
Asian Development Bank  
Manilla  
PHILIPPINES

Dear President,

As foreshadowed by the New Zealand Deputy Prime Minister, Mr McKinnon, during your recent visit to New Zealand in February, we are writing to you formally regarding the undertaking given by New Zealand with respect to blications of the Cook Islands to the Asian Development Bank.

You will be aware that when the Cook Islands Government became a member of the Bank in 1976, the New Zealand Government gave an undertaking pursuant to Article 3 (3) of the Agreement establishing the Bank to accept responsibility for all obligations that might be incurred by the Cook Islands by reason of the latter’s admission to membership in the ADB and the enjoyment of the benefits of such membership until such time as the Cook Islands itself assumed responsibility for its own international relations. We wish to inform you that in view of the responsibility assumed by the Cook Islands for the conduct of its International relations, there is no longer a need for the New Zealand Government to accept the responsibility referred to in Article 3(3) above. In this regard, may we briefly review, for the Bank’ information, developments that have taken place relating to the conduct by the Cook Islands of its own international relations.

The Cook Islands has had a special and evolving relationship with New Zealand. In 1065, by an act of self-determination conducted under United Nations auspices, the Cook Islands adopted a Constitution that provided for self-government in free association represented a unique and creative approach to the process of decolonisation which has been developed through consultation between New Zealand and the people of the Cook Islands to take into account the special circumstances and needs of the Cook Islands. The constitutional relationship existing between our two countries provides for the exercise by New Zealand of certain responsibilities for the defence and external affairs of the Cook Islands. However, this does not confer upon the New Zealand Government any rights of control. All legislative and executive power, whether in the fields of deference,
in external affairs or defence must be preceded by full consultation with the Cook Islands. In carrying out these responsibilities, the New Zealand Governments is acting on the delegated authority or as an agent or facilitator of the Cook Islands Government. These constitutional responsibilities are in the nature of obligations on New Zealand’s part, rather than rights of supervision and control. In the relevant provision of the Cook Islands Constitution Act passed by the New Zealand Parliament, New Zealand has simply acknowledged a responsibility toward the Cook Islands which might otherwise have been doubted or misunderstood. In this regard, may we reiterate that, unlike the case of other associated States, the New Zealand Parliament has not retained any served legislative powers to assist the New Zealand Government in discharging its responsibilities for the external affairs and defence of the Cook Islands.

It is important to stress not only that the Cook Islands has full constitutional capacity to conduct its own external affairs and to enter directly into international arrangements and agreements but, in fact, it does conduct directly its external affairs and does enter into international agreements engaging its international responsibility.

Since 1976, for example, the Cook Islands has become a full member of four specialized United Nations agencies: the Food and Agriculture Organization (FAO), in 1984; the International Civil Aviation Organization (ICAO), in 1986; the United Nations Education, Scientific and Cultural Organization (UNESCO), in 1989; and the World Health Organization (WHO), in 1984.

Within the South Pacific region, the Cook Islands, together with New Zealand, Australia and other Pacific Island members of the Bank, is a full member and participates on an equal basis in the activities of the major regional organisations; that is, the South Pacific Forum (the supreme political body in the region, which hold annual meetings at heads of Government/State level), the South Pacific Commission (SPC), the Forum Fisheries Agency (FFA), the South Pacific Applied Geosciences Commission (SOPAC) and the South Pacific Regional Environment Programme (SPREP).

The Cook Islands has also become a party in its own right to multifarious multilateral and regional agreements as well as bilateral treaty and other arrangements with States and organizations both within and beyond the Pacific region, including Australia, France, New Zealand, the Republic of Korea, the United States, the United Nations and the World Health Organization. In 1982, it signed the United Nations Convention on the Law of the Sea.

In light of the above developments, therefore, the 1976 undertaking by New Zealand to accept responsibility for all Bank obligations to be incurred by the Cook Islands is now no longer appropriate and it is inconsistent not only with the constitutional relationship between the two countries but also international recognition of the Cook Islands’ international personality and its plenary competence with respect to the conduct of its
The New Zealand Government recognizes and accepts the full competence of the Cook Islands Government to conduct its own international affairs. Given that competence and the willingness of the Cook Islands to assume responsibility in its own right for future obligations to the Bank, we would be grateful to receive your confirmation that it will no longer be necessary for New Zealand to provide the Bank with undertaking referred to in Article 3 (3) of the Agreement.

Yours Sincerely,

Geoffrey A Henry
Prime Minister
Cook Islands

Ruth Richardson
Minister of Finance
New Zealand
COOK ISLANDS BILATERAL TREATIES AND OTHER AGREEMENTS

1980  Memorandum of Understanding between the Commonwealth Secretariat and the Government of the Cook Islands with respect to the Commonwealth Fund for Technical Co-operation.

  Agreement on Fisheries between the Government of the Cook Islands and the Government of the Republic of Korea.

  Treaty between the United States of America and the Cook Islands on Friendship and Delimitation of the Maritime Boundary between the United States of America and the Cook Islands. (1983)


1985  Agreement on Civil Aviation between the Government of New Zealand and the Government of the Cook Islands.


1988  Memorandum of Understanding between the South Pacific commission and the Government of the Cook Islands for the establishment and implementation of the Mitiaro Integrated Rural Development Project.


  Project Grant Agreement between the Cook Islands and the United States of America for Pearl Oyster Cuitore Component of the Pacific Islands Marine Resources Project.


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1991 Agreement between the Government of Niue and the Government of the Cook Islands for Air Services Between and Beyond Their Respective Territories.

Agreement between the Government of the Independent State of Western Samoa and the Government of the Cook Islands for Air Services Between and Beyond Their Respective Territories.


Exchange of Letters between the United Nations and the Government of the Cook Islands constituting an Agreement governing terms and conditions for the holding of INSTRAW Subregional Workshop on Statistics and Indicators on Women in the South Pacific.

1993 Exchange of Letters constituting an Agreement between the Government of the Cook Islands and the Government of New Zealand on Arrangements for Visits by Elements of the New Zealand Armed Forces.

1995 Agreement between the Cook Islands and Western Samoa for the Transfer of Convicted Offenders.


Grant Agreement between the Government of the United States of America and the Government of the Cook Islands with respect to a Feasibility Study on Manganese Nodule Mining.


1997 Agreement between the Government of the Cook Islands and the Food and Agriculture Organization of the United Nations concerning the use of experts for technical cooperation among developing countries.

**COOK ISLANDS MULTILATERAL TREATIES**

1943 Constitution of the Food and Agriculture Organization.(1985)

1944 Convention on International Civil Aviation.(1986)


1973 Agreement establishing the South Pacific Bureau for Economic Co-operation.


1979 South Pacific Forum Fisheries Agency Convention.

1979 Agreement on the Establishment of the South Pacific Board for Educational Assessment.

1980 South Pacific Regional Trade and Economic Co-operation Agreement. (SPARTECA)


1985 Charter of the Asian and Pacific Development Centre.


1986 Agreement Establishing the South Pacific Applied Geo-science Commission. (SOPAC)


1987 Asia Pacific Telecommunity.

1990 Agreement Establishing the South Pacific Forum Secretariat.

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1995 Regional Convention on the Ban on the Import into the South Pacific and the Control of Transboundary Movement of Hazardous Wastes Within the Pacific Region. (signed 17 September 1995; not yet ratified; treaty not yet in force)


Constitution of Tourism Council of the South Pacific.

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Antipersonnel Mines and on their Destruction. (signed; not yet ratified)

Comprehensive Nuclear Test-Ban Treaty (signed; not yet ratified)
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## ACRONYMS

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<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tr>
<td>ADB</td>
<td>Asian Development Bank</td>
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<td>ASA</td>
<td>Air Service Agreement</td>
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<tr>
<td>CCOP/SOPAC</td>
<td>Committee for Coordination of Joint Prospecting for Mineral Resources in South Pacific Offshore Areas</td>
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<td>CFTC</td>
<td>Commonwealth Fund for Technical Cooperation</td>
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<td>CICC</td>
<td>Cook Islands Christian Church</td>
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<td>CIP</td>
<td>Cook Islands Party</td>
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<td>CIPA</td>
<td>Cook Islands Progressive Association</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>CWC</td>
<td>Chemical Weapons Convention</td>
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<td>EEZ</td>
<td>Exclusive Economic Zone</td>
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<td>ESCAP</td>
<td>Economic and Social Commission for Asia and the Pacific</td>
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<td>International Civil Aviation Organisation</td>
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<td>IFAD</td>
<td>International Fund for Agricultural Development</td>
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<td>LMS</td>
<td>London Missionary Society</td>
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<td>OPIC</td>
<td>Overseas Private Investment Corporation (US)</td>
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<td>Status of Forces Agreement</td>
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<td>Tourism Council of the South Pacific</td>
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