Relationships between the the United Kingdom and the Channel Islands and the Isle of Man

Part XI of Volume 1 of the
Report of the Royal Commission
on the Constitution, 1969-1973
(together with relevant extract
from volume II)

FOREWORD

The Royal Commission on the Constitution was appointed by Warrant under Her Majesty's Royal Sign Manual in April 1969. The terms of reference and membership of the Commission are set out on the following page.

Volume I of the Commission's Report was signed by the Chairman and 10 members and Part XI of that volume, which deals with the Channel Islands and the Isle of Man, is reproduced in this separate publication for the convenience of the people of the Islands. (Relevant evidence is published in the Commission's Minutes of Evidence, Volume VI.)

An extract from the preface to the Memorandum of Dissent by Lord Crowther-Hunt and Professor A. T. Peacock (Volume II of the Report) is reproduced on the final page of this publication.

ROYAL COMMISSION ON THE CONSTITUTION

Terms of Reference

To examine the present functions of the central legislature and government in relation to the several countries, nations and regions of the United Kingdom;

to consider, having regard to developments in local government organisation and in the administrative and other relationships between the various parts of the United Kingdom, and to the interests of the prosperity and good government of Our people under the Crown, whether any changes are desirable in those functions or otherwise in present constitutional and economic relationships;

to consider also, whether any changes are desirable in the constitutional and economic relationships between the United Kingdom and the Channel Islands and the Isle of Man.

Membership

Chairman - The Lord Crowther*
The Rt. Hon. Lord Kilbrandon*
Dr Basnett, Esq†
A. Talfan Davies, Esq., QC
The Lord Foot
Sir Mark Henig
The Rt Hon. Douglas Houghton C H., MP‡
Dr N C Hunt§
The Very Rev J B Longmuir, CBE, TD, DD
Prof F H Newark, CBE, QC
Prof A T Peacock, DSC¦
The Rt Hon Sir David Renton, KBE, TD, QC, DL, MP¶
Sir James Steel, CBE, DL, JP
Prof H Street, Phd, FBA
Sir Ben Bowen Thomas
Mrs M S Trenaman

Secretary - R J Guppy Esq, CB

* The Rt Hon Lord Kilbrandon was appointed Chairman in March 1972 following the death of Lord Crowther.
† Resigned August 1971.
‡ Resigned March 1973.
§ Created a life peer in June 1973, with the title of Baron Crowther-Hunt of Eccleshill in the West Riding of the County of York.
¦ Appointed to the Commission on 19 November 1970 following the death of Prof D J Robertson.
¶ Appointed to the Commission on 29th April 1971 in place of The Rt Hon Selwyn Lloyd, CH, CBE, TD, QC, DL, MP who resigned on being elected Speaker of The House of Commons.

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THE BACKGROUND TO OUR ENQUIRY

1342. We were required by the last part of our terms of reference to consider whether any changes are desirable in the constitutional and economic relationships between the United Kingdom and the Channel Islands and the Isle of Man. The existing relationships had at the time of our appointment been giving rise to difficulties, particularly over the application to the Islands of international treaties, and suggestions for change had been made.

1343. We received evidence from the authorities in the Islands and from organisations and individuals who responded to an open invitation we issued through the local press. We visited each of the Islands - Jersey, Guernsey, Alderney, Sark and the Isle of Man - and took oral evidence in public there from official representatives and from other witnesses. These hearings, and the many informal discussions we had in the Islands, contributed greatly to our understanding of their problems. We received the fullest co-operation and assistance from the authorities and we should like to express our gratitude to them.

1344. The Home Office, which is the United Kingdom department mainly responsible for relations with the Islands, put forward no proposals of its own for any formal change in constitutional and economic relationships. Together with the Foreign and Commonwealth Office, it submitted a memorandum of evidence, which is being published along with other evidence, commenting on the proposals made by other witnesses and suggesting a modified procedure for consultation with the Islands on the application to them of international agreements. We were also much assisted by informal discussions with officials of the two departments. We should perhaps explain why we did not take evidence from them in public. As we have already noted, the principal and most difficult issues before us related to the application to the Islands of international treaties. At the time we were taking evidence, negotiations for the United Kingdom's entry into the European Economic Community were taking place and were causing much concern in the Islands. The departments were able to speak more freely on this and other international matters in private discussion with us than would have been possible at a public hearing, and we have no doubt that the best interest of the Islands were served by our proceeding in this way.

HOW THE ISLANDS ARE GOVERNED

General

1345. The memoranda of evidence submitted by the authorities in the Islands contain information about their constitutional history, the present arrangements for their government and their relationships with the United Kingdom. We note here those features which relate most closely to our task. Having regard to our terms of reference we have not been concerned with the internal arrangements for the government of the Islands or with relations between the Islands, except to the extent that this has been necessary for an understanding of their constitutional and economic relationships with the United Kingdom.

1346. The relationships which the Channel Islands on the one hand and the Isle of Man on the other have with the United Kingdom, and the problems which arise from those relationships, are similar, though the historical backgrounds are very different. It is convenient to consider all the Islands

together so far as their situations are comparable. Where there are significant differences we note them as we go along.

1347. The Islands are dependencies of the Crown; they are neither part of the United Kingdom nor colonies. They differ from other overseas dependencies in their proximity to Great Britain and in the antiquity of their connexion with the Crown. Their special position is acknowledged by a provision in the British Nationality Act 1948 permitting a citizen of the United Kingdom and Colonies, if on the ground of his connexion with the Channel Islands or the Isle of Man he so desires, to be known as a citizen of the United Kingdom, Islands and Colonies.

1348. The Islands have their own legislative assemblies, systems of local administration, fiscal and legal systems and courts of law. Appointments to some of the chief posts in the local administrations rest with the Crown; and, with some minor exceptions, legislative measures passed by the insular assemblies depend for their validity on Orders made by Your Majesty in Council. Subject to these prerogative powers, the Islands have general responsibility for the regulation of their own affairs. Most of the laws by which they are governed emanate from their representative assemblies, and most of their public services are administered by committees of those assemblies.

The Channel Islands

1349. The Channel Islands were part of the Duchy of Normandy before the Norman Conquest, but remained in allegiance to the King of England when continental Normandy was lost in the year 1204. According to the evidence of the States of Guernsey, when later the ducal title was surrendered "the King of England continued to rule the Islands as though he were Duke of Normandy, observing their laws and customs and liberties; and these were later confirmed by the charters of successive sovereigns which secured for them their own judiciaries and freedom from process of English courts and other important privileges of which the Islands were justly proud and which have always been respected. Although expressed in somewhat different terms in different ages, this has remained the essence of the relationship between the Islands and the Crown to the present day. After the separation of the Islands from Normandy and its administration the local institutions were gradually moulded from time to time very largely on local initiative to meet changing circumstances until their present constitutions evolved. The evolution, however, did not at any time involve amalgamation with, or subjection to, the government of the United Kingdom and even today the Islands' link with the United Kingdom and the remainder of the Commonwealth is through the Sovereign as latter-day successor of the Dukes of Normandy".

1350. The Channel Islands consist of two separate Bailiwicks, the Bailiwick of Jersey, which is the largest Island, with a population of about 70,000 and the Bailiwick of Guernsey, which comprises the islands of Guernsey (with Herm and Jethou), Alderney and Sark, with a total population of about 52,000. There are no formal links between the two Bailiwicks.

1351 In each Bailiwick the Lieutenant Governor is Your Majesty's personal representative and the official channel of communication between the Crown and the United Kingdom Government and the insular authorities. The most important of the other offices held under the Crown are those of Bailiff and Deputy Bailiff, who share the duties of presiding over the legislative assembly (the States) and the Royal Court, and Attorney General and Solicitor General (known in Guernsey as Procureur and Comptroller), who are the legal advisers both of the Crown and of the States.

1352. The States of Jersey have fifty-two elected members and five non-elected members. The elected members are twelve Senators, who are elected by the electorate of the whole Island for a period of six years, six of them retiring every third year; twelve Constables, who are members by virtue of being heads of their parish assemblies, to which office they are elected by the parish electors

for a period of three years; and twenty-eight Deputies, elected on a constituency basis for three years. The non-elected members are the Bailiff or Deputy Bailiff), the Lieutenant Governor, the Dean of Jersey, the Attorney General and the Solicitor General; they all have a right to speak but not to vote, except that the Bailiff or Deputy Bailiff as President has a casting vote.

1353. The States of Guernsey include, in addition to the Bailiff or Deputy Bailiff, twelve Conseillers elected by an electoral college known as the States of Election for a term of six years, six of them retiring every third year, thirty-three People's Deputies elected in ten electoral districts which correspond to the ten parishes, ten Douzaine Representatives elected annually by the Douzaines for Councils) of the parishes and two representatives of the people of Alderney appointed by the States of Alderney. The Attorney General and the solicitor General are also members of the States, with a right to speak but not to vote.

1354. In both Islands it has long been the practice of the States to delegate administration to committees of members of the States or to charge such committees with specific functions. Most of the Islands' public services are accordingly provided and administered by these committees of the States, in much the same way as local government services in the United Kingdom are provided and administered by committees of the local authorities. The chairmen of the committees constitute the nearest thing there is to a government, though they have no collective responsibility.

1355. Alderney and Sark both have a large measure of independence with the Bailiwick of Guernsey – see paragraphs 1448 to 1454 below – and legislative assemblies of their own, the States of Alderney and the Chief Pleas of Sark. Through the Lieutenant Governor of Guernsey each has an independent relationship with the United Kingdom.

The Isle of Man

1356. The Isle of Man has a population of about 56,000. It first came under the English Crown in the fourteenth century following periods under the suzerainty of the Kings of Norway and Scotland. In 1405 the Island, with its "regalities", was granted to Sir John Stanley and his heirs. From then up to 1765 it was ruled by the Earls of Derby, and later the Dukes of Atholl, as Kings or Lords of Man. By Acts of Parliament passed in that year and in 1825, the rights of the Lords of Man were revested in the Crown, and for a time the Island was very largely governed from London.

1357. The modern constitutional relationship dates from 1866, when an Act of Parliament was passed separating Manx revenues from those of the United Kingdom and giving the Island a limited measure of control over insular expenditure. Since then a series of measures, culminating in the Isle of Man Act 1958, has transferred control more and more into local hands.

1358. The Lieutenant Governor of the Isle of Man, in addition to being Your Majesty's personal representative and the channel of communication between the Crown and the Island Government, is the head of the executive, with ultimate control over the Island's finances and over services such as the police. Other offices held under the Crown include those of Deemster (Judge) and Attorney General; the latter, like the Law Officers in the Channel Islands, is the legal adviser of both the Crown and the Island authorities.

1359. The court of Tynwald, which has both legislative and executive functions, comprises the Lieutenant Governor, the Legislative Council and the House of Keys. The Legislative Council consists of the Bishop of Sodor and Man, the First Deemster and the Attorney General (who has no

)vote and seven members elected by the House of Keys; it is presided over by the Lieutenant Governor. The House of Keys has twenty-four members elected on a constituency basis for a period of five years; it elects its own Speaker. In the exercise of his executive functions the Lieutenant Governor is advised by an Executive Council, a standing body of members of Tynwald, most of whom are chairmen of the boards of Tynwald responsible for administering the various public services in much the same way as in the Channel Islands public services are administered by committees of the States.

RELATIONSHIPS WITH THE UNITED KINGDOM

Existing constitutional relationships

1360. The constitutional position of the Islands is thus unique. In some respects they are like miniature states with wide powers of self-government, while their method of functioning through committees is much more akin to that of United Kingdom local authorities.

1361. The main features of the existing constitutional relationships between the United Kingdom and the Islands, as set out in the evidence of the Home Office and the authorities in the Islands, are as follows. The Crown has ultimate responsibility for the good government of the Islands. The Crown acts through the Privy Council on the recommendations of Ministers of Your Majesty's government in the United Kingdom in their capacity as Privy Counsellors. It is the practice at the beginning of each reign to appoint Committees of the Privy Council to entertain petitions from the Channel Islands and the Isle of Man respectively. The Council's main business in connection with the Island is to deal with legislative measures submitted for ratification by Order in Council. The Home Secretary is the member of the Council primarily concerned with the affairs of the Islands and is the channel of communication between them and the Crown and the United Kingdom Government. He has the duty to see that the Islands' legislative measures are scrutinised and that there is consultation with any other Ministers who may be concerned, including, if necessary, the Law Officers of the Crown, before the measures receive the Royal Assent.

1362. The Islands are not represented in Parliament. Acts of Parliament do not extend to them automatically, but only if they expressly apply to the islands or to all your Majesty's dominions or do so by necessary implication. When it is intended that an Act of Parliament shall apply to the Islands the method that has become usual is not to apply the Act directly but to include in it a section providing for its extension to the islands by subsequent Order in Council, with such exceptions, modifications and adaptations, if any, as may be specified in the Order. This procedure permits changes to be made to meet the special needs of the Islands and to ensure that the provisions of the Act are applied in a manner consonant with the insular administrative systems and with the methods of dealing with offences in the insular courts. By convention Parliament does not legislate for the Islands without their consent in matters of taxation or other matters of purely domestic concern. The evidence of the authorities in the Islands gives examples for the matters in which Parliament does legislate for the Islands; they are described in the Tynwald evidence as maters which "transcend the frontiers of the Island".

1363. In international law the United Kingdom Government is responsible for the Islands' international relations. It is the practice for the insular authorities to be consulted before an international agreement is reached which would apply to them. This is particularly necessary in any case in which application of the agreement to the islands would require legislation of a kind which

would ordinarily be enacted in the Island legislatures. The United Kingdom Government is also responsible for the defence of the Islands.

Existing economic relationships

1364. Each Bailiwick of the Channel Islands is administered as a separate customs area levying its own customs and excise duties. Customs duty is not ordinarily charged on goods flowing in either direction which have been grown, produced or manufactured in the United Kingdom or the Islands. The customs examination to which the traveller from the islands is subjected on arrival in England is concerned with articles which may have attracted lower customs or excise duty in the Islands than would be payable in the United Kingdom. The Isle of Man, on the other hand, though entitled to levy its own customs duties, is by agreement treated as part of the customs area of the United Kingdom and the customs of the Island are administered by Your majesty's Commissioners of Customs and Excise, the receipts going into a common purse. Net customs revenue is shared between the United Kingdom and the Isle of Man in proportion to population, the population of the Island for this purpose being taken to include a variable "fiscal equivalent" in respect of tourists.

1365. Under another agreement, the Isle of man makes an annual contribution to the United Kingdom for defence and common services, including such matters as overseas representation, of an amount decided by Tynwald after consultation with the United Kingdom Government. In recent years this contribution has been of the order of £250,000[1]. The Channel islands make no contribution.

1366. In other respects the Islands are entirely self-financing (except that the breakwater in Alderney, built by the ?Admiralty in 1864 as part of a naval harbour that was never completed and enclosing the only harbour on the Island, is maintained b the United Kingdom at a cost to the Exchequer of approximately £599,000 a year). They neither receive grants from nor pay contributions to the United Kingdom, nor do their inhabitants pay United Kingdom taxes. They pay for their needs out of their own revenues, the rates of which are decided by the Island assemblies; and in general they pay for or reciprocate benefits in education and other social services received from the United Kingdom.

1367. The Island are all taxed at a much lower level than the United Kingdom. The standard rates of income tax, for example, are little more than half the United Kingdom rate, and there is no surtax or capital gains tax and no estate duty. The approximate *per capita* revenue for 1972 was £312 in Jersey, £183 in Guernsey, £201 in Alderney and £52 in Sark. *Per capita* revenue in the Isle of Man for the financial year 1972/73 was £213. By way of general comparison, current receipts of the United Kingdom central government in the year 1972 amounted to £357 *per capita*. Public expenditure in the Island is of course at a correspondingly lower level than in the United Kingdom.

1368. In recent years the Islands have gained a reputation as tax havens. United Kingdom residents have moved there with their assets, or without migrating have set up companies there to own their assets, or have resorted to other devices to reduce their tax liability. In addition, financial institutions have taken advantage of the lower taxation to establish so-called off-shore funds, whose clients include both residents and non residents of the United Kingdom.

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[1] This represents about £4.50 per head of the population. For defence and overseas representation the comparable figure for the United Kingdom is £57.

1369. For exchange control purposes the Islands are subject to the same regulations as the United Kingdom.

Areas of doubt in existing relationships

1370. This statement, in very broad terms, conceals a number of blurred edges to the constitutional relationships between the United Kingdom and the islands. These were brought out in the memoranda of evidence. That of the Home Office indicated that the department accepted as correct the statements of the existing relationships included in the evidence of the States of Guernsey and Tynwald. The evidence of Tynwald, however, indicated that certain matters were the subject of some doubt. The doubts related to the extent to which the exercise by the Crown of its power of control over legislation and executive authority in the island, and by Parliament of its power to legislate for the Island, was restricted by constitutional convention.

1371. The Home Office was unable to concur fully in the statement of the existing constitutional relationship in the evidence of the States of Jersey, and attached to its evidence a statement which in 1968 had been agreed with the insular authorities. The States' evidence departed from this earlier document in its references both to the prerogative power of the Crown to alter the law of jersey (presumed to have been derived from the supreme legislative powers possessed originally by the Dukes of Normandy) and to Parliamentary sovereignty. On the first point the earlier document had stated that, following the development of the English constitution, legislation by prerogative Order in Council had been almost entirely superseded by the application or extension to Jersey of Acts of Parliament; the evidence presented to us went further in stating that the power, other than by way of assenting by orders in Council to Acts of the States, had long fallen into disuse and appeared to have been superseded. As regards Parliamentary sovereignty, whereas the earlier document acknowledged that the right of Parliament to legislate for Jersey extended as a matter of strict law to every field of legislation, though that right was limited by constitutional usage in respect of taxation and other domestic matters, the evidence asserted that it would be unconstitutional for parliament, otherwise than with the concurrence of the States, to legislate for the Island on such matters.

1372. The Home Office stated that in general the principles of the relationship between Jersey and the United Kingdom were for historical and other reasons similar to those of the relationship between Guernsey and the United Kingdom, and that they were as described in the evidence submitted by the States of Guernsey. On the use of prerogative orders in Council to legislate for the Island, the States of Guernsey stated only that the last instance of such an Order was the Court of Appeal (Channel Islands) Order 1949, which was based on a scheme which had the prior approval of the States. On the powers of Parliament, they said that by constitutional convention Parliament did not legislate for Guernsey in matters of taxation and other matters which had long been accepted as the responsibility and concern of the insular authorities, and if that were not so the whole basis of independent government of the Islands, which had been built up over the centuries, would be destroyed. They drew attention also to an assurance given in 1968 by the Minister of State at the Home Office that the United Kingdom Government had no intention of seeking any alteration in the existing constitutional relationship or in that convention; though they added that the Minister's statement must be read in conjunction with what was said later on in their memorandum of evidence on the subject of international agreements.

The need for review

1373. the differences of opinion which existed between the United Kingdom and the Islands related not so much to anything that had happened in the past – though there had been difficulties in the Isle of Man, to which we refer later – as to whether there were restrictions on what the Crown or Parliament might do in circumstances that might arise in the future. The main reason for apprehension, and therefore the main need for a review of the constitutional relationships, arose out of two recent developments in the international field.

1374. The first is that in this field the division between matters that are purely domestic and those that a re not, which was once fairly clear, is no longer so. There is an increasing tendency for international agreements to deal with matters hitherto regarded as purely domestic and requiring domestic legislation for their implementation. The second development is that it is becoming increasingly difficult to secure the inclusion in international agreements of optional territorial application clauses; a party to a treaty without such a clause must sign on behalf of all the territories for whose international relations it is responsible. This means that if the United Kingdom Government is a party to such a treaty requiring for its implementation legislation on a "domestic" matter with which one of the Islands is not in agreement, then one of three things has to happen. Either the Island must pass legislation which it does not want and may consider not to be in its interests; or Parliament must legislate for the Island in breach of the convention that it does not legislate for the Islands on maters of domestic concern; or the United Kingdom Government will be in breach of its international understanding.

1375. The response of the Islands to these developments varies. Representatives of the States of jersey told us that difficulties arose solely out of this question of international agreements; and, except in relation to Crown appointments, the proposals for change in the constitutional relations which they put forward were directed to overcoming those difficulties.

1376. The proposals submitted by Tynwald were also directed primarily to this problem; but Tynwald wished also to see a clearer division between the domestic maters on which it legislated and the wider matters on which parliament legislated for the Isle of Man, since difficulties had arisen even in the absence of complications caused by the existence of international agreements. Tynwald described as its general objective the promotion and continuation of the evolution of the constitutional relationship between the Isle of Man and the United Kingdom towards more complete self-government, in accordance with the declared and accepted policy of the United Kingdom for the self-determination of the peoples of dependent territories. It saw this objective as including not only the right and the principle of self-determination but also, in their application; assured autonomy in respect of the Island's internal affairs.

1377. Aspects of the constitutional relationship between the Isle of Man and the United Kingdom Governments were considered by a Joint Working Party of Home Office and Isle of Man representatives set up in 1967. The Working Party reported in 1969[1]. Some of the recommendations made were accepted by the two Governments and it was agreed that others should be the subject of further consultation. Many references to this body, of which Lord Stonham, then Minister of State, Home Office, was Chairman, were made in the evidence we received. We refer to it in this Report as the Stonham Working Party.

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[1] Report of the Joint Working Party on the Constitutional Relationship between the Isle of Man and the United Kingdom. HMSO 1969.

1378. The States of Guernsey made no proposals for change. They recognised the difficulties that had arisen, and that might well arise in more acute form in future, over the application of international agreements to Guernsey; but they believed that the difficulties could as well be dealt with under the existing constitutional relationship as under any new relationship which might be established. The Chief Pleas of Sark took the same line. The States of Alderney, however, were not in agreement with them, thinking that some constitutional change was needed to safeguard Alderney's position in relation to international agreements.

1379. We found that there was no dispute between the United Kingdom and Island Governments on the main objective, which was the preservation of the Islands' present degree of autonomy. The Home Office and the Foreign and Commonwealth Office said that they were aware of the gravity of the real and continuing problems presented to the Islands by developments in the international field and were anxious to find mans of resolving them. In their view, however, the existing constitutional relationships were capable of surmounting even the most considerable obstacles, and modifications to those relationships could have the effect of making them less advantageous, in the long term, to the Islands.

CHAPTER 32

SUMMARY OF EVIDENCE

1380. We described in our last chapter how the Islands were governed and what their relationships are with the United Kingdom, and we indicated briefly the nature of the difficulties which had arisen or which were apprehended at the time of our appointment. In this chapter we summarise the evidence we received. This can conveniently be grouped under a number of headings. First comes evidence relating to the application to the Islands of international agreements. Next, as a consequence of the problems arising under this head, come suggestions for clarifying the respective responsibilities of the United Kingdom and Island authorities, particularly in the field of legislation. This is followed by the related matter of the machinery for there solution of differences and disputes. Then comes a quite separate group of proposals concerning the appointment of Crown Officers. Some account is given of the special problems of Alderney and Sark. Finally, we refer to some miscellaneous proposals on other matters.

INTERNATIONAL AGREEMENTS

The 1950 declaration

1381. In international law, as we have already noted, the United Kingdom Government is responsible for the external relations of the Islands. For the purposes of international agreements the Islands were regarded up to 1950 as part of the metropolitan territory of the United Kingdom. It was then recognised that this was inconsistent with their constitutional position, and all foreign governments and international organisations were informed that in future any treaty or international agreement to which the United Kingdom Government only of the fact that it applied to the United Kingdom, and that any signature, ratification, acceptance or accession on behalf of the United Kingdom would not extend to the Island unless they were expressly included. The Islands would, unless the contrary were expressly stated in each case, be included among the territories for whose international relations the United Kingdom Government was responsible. The Islands were told by the Home Office that the objects of this declaration were to secure that they would not be bound by treaties on which they had not been consulted or which, when they were consulted, they did not wish to have applied to the Islands; that adequate time for consultation would be available; and that the inability or reluctance of any of the islands to adhere to a particular agreement would not prevent the participation of the United Kingdom Government.

1382. In 1966, when difficulties had arisen over the application to the Islands of certain types of international agreement, the Home office sent a letter to Guernsey in which it was maintained that the effect of the 1950 declaration was as follows. It did not change, and could not have changed, the rule of international law under which the signature, ratification or accession of any state to an international agreement was presumed to be in respect not only of the state itself, but of all the territories for whose international relations it was responsible, unless this presumption was displaced by the wording of the agreement itself or by necessary implication. Such a presumption would be displaced, for example, by the inclusion of an article enabling contracting parties to apply to the agreement to dependent territories, which would show that in the absence of such application the initial acceptance was confined to the metropolitan territory of contracting parties. In the absence of any express or implied limitation of territorial extent, however, a state's acceptance of obligations in an agreement would be held to include acceptance on behalf of all its dependent territories. The position then was that the united Kingdom's acceptance of agreements containing no indication of limited territorial

application bound all its dependent territories, including the Channel islands and Isle of Man. The Home Office letter stated that, before concluding such agreements, the United Kingdom Government would always endeavour to discuss the implications as fully as possible with the insular authorities.

1383. The protection given to the Islands by the 1950 declaration was therefore not nearly so complete as its wording, and the Home Office statement of its objects, implied. Whereas the declaration appeared to reserve the position of the Islands in relation to all treaties to which the United Kingdom became a party, and it was not unreasonably so understood in the Islands, the letter of 1966 gave it a more restricted interpretation. In their discussions with us the Home Office and the Foreign and Commonwealth Office acknowledged that a good deal of misunderstanding would have been avoided if the subject had been dealt with at greater length in 1950 and if, in particular, it had been explained to the Islands in terms what would be the position in relation to treaties were a rarity in those days. It was customary for most treaties to contain either an express provision that they applied to the United Kingdom alone, or a clause permitting the United Kingdom by declaration to extend their provisions to territories for whose international relations it was responsible. Bt between 1950 and 1966 international practice changed. It became increasingly difficult for United Kingdom negotiators, when seeking to draft the text of general multilateral conventions, particularly those concluded under the auspices of the United Nations or its specialised agencies, to secure the insertion of an optional territorial application clause. This led to an increase in the number of general multilateral conventions that were either silent in respect of territorial application or, less frequently, contained a clause applying the treaty, without any option, to territories for whose international relations the contracting parties were responsible.

Sources of difficulty

1384. The departments, in their evidence to us, said that, of the vast corpus of treaties to which the United Kingdom was a party only a small minority presented problems for the Islands. There could be excluded from consideration, for example, all those treaties that contained clauses providing for optional extension to non-metropolitan territories. Such clauses could almost always be included in bilateral treaties between the United Kingdom and one foreign country, where the text was a matter for the two governments only. As for multilateral treaties it was still customary for such clauses to be included in treaties concluded within the framework of such European regional organisations as the Council of Europe; and it remained possible to secure the insertion of such clauses in multilateral treaties within the framework of certain other organisations of a technical nature such as the Hague Conference on Private International Law. The category of treaty was of major concern to the Islands comprised general multilateral treaties, particularly those dealing with humanitarian matters, which were negotiated within, or under the auspices of, the United Nations or its specialised agencies. Even within that limited category, there was only a proportion of such treaties that required for their implementation new or amending legislation in the islands and therefore presented serious difficulties of application. Difficulties arose where such a treaty contained no optional territorial application clause (because the United Kingdom delegation had been unable to secure the insertion of such a clause at the negotiating stage) but nevertheless required domestic legislation for its implementation.

1385. The departments said that the making of a unilateral reservation to exclude the Island would also not be permissible in the case of a restricted multilateral treaty which did not contain a territorial application clause. They explained that, in general terms, a restricted multilateral treaty was one with a limited number of contracting parties whose object was such that the application of the treaty in its entirety between all the parties was an essential condition of the consent of each one to be bound by the treaty. Article 20(2) of the Vienna Convention of 1969 on the Law of Treaties provided that a

reservation to such a treaty required acceptance by all the parties and so had to be negotiated[1]. But, according to the departments, instances of such treaties which did not contain specific provisions concerning territorial application would be rare; and normally when the United Kingdom Government participated in the negotiation of a treaty it would expect to be able to secure satisfactory territorial provisions.

1386. The Home Office told us that in 1970 the department was concerned with seventy-nine treaties, conventions and agreements, on all of which there was consultation with the Islands. It was acknowledged that there had been one or two cases in the past of failure to consult through oversight, but in the ordinary course there was as full consultation as time would permit. Where it was agreed that a treaty should be applied to the Islands, the Home Office discussed the legislative method with them, and either advised them if necessary on the drafting of the appropriate insular Bills or consulted them on the drafting of the Orders in Council applying the United Kingdom Act.

1387. From the evidence we received it appeared that no great difficulty had so far been experienced over the application of international agreements to the Islands or the arrangements for consultation. In 1967 the Isle of Man objected to the extension to the Island by Order in Council, without their consent, of the |Marine, etc., Broadcasting (Offences) Act 1967, which gave effect to a European agreement to ban private broadcasting ships, because they considered that the objective could be achieved by different means. But this was an isolated instance (which we examine more fully in paragraphs 1427-1429 below), and the Isle of Man and the Channel Islands were concerned rather with the difficulties that might be expected in the future.

1388. From what has been said above, it will be apparent that these difficulties are likely to arise with only two kinds of multilateral treaties – first, treaties or conventions in whose drafting the United Kingdom has been concerned without securing the inclusion of an optional application clause, and which the United Kingdom is desirous for its own reasons to sign and ratify; and secondly, treaties already in force between other countries and containing no optional application clause, in the drafting of which the United Kingdom has played no part, but to which it wishes for its own reasons to accede. Numerically, treaties of these two kinds are a small minority of the total and those that could be thought to impose unwelcome obligations on the Islands are even fewer. But unfortunately they may include some of the most important international instruments. The former class is increasingly exemplified by conventions originating from the United Nations and its organisations, where there is a positive and deliberate unwillingness on the part of many of the national delegations, on what may be generally described as "anti-colonialist" grounds, to allow optional application clauses whereby metropolitan countries can accept conventions for themselves but exclude their application to their dependencies. It is not the Channel Islands and the Isle of Man that the delegations are thinking of; but these dependencies of the United Kingdom are caught by the argument, and it cannot be assumed that no awkward cases will arise where the United Kingdom is willing to accept such a convention for itself, but one or more of the Islands are not. The second class – that of already existing treaties to which the United Kingdom may wish to accede – include a treaty whose possible application to the Islands was the Treaty of Rome, the constituent instrument of the European Economic Community.

The Treaty of Rome

1389. Article 227(4) specifically applies the Treaty to all European territories for whose external relations member states are responsible. The situation when we visited the Islands, therefore, was that

[1] The Convention has been ratified by the United Kingdom, but has not yet come into force.

if the United Kingdom went into the European Economic Community the Islands would automatically go in on the same terms unless either the Article were amended or some modification of its application to the Islands were negotiated. The Islands had been told by the Home Office in 1967 that the chances of securing such a modification must be considered remote, and that there were good grounds for thinking that if the United Kingdom acceded to the Treaty their best interests would be served by participation in the Community; it was, however, recognised that membership would involve special problems for them, differing in kind, in scale and in relative importance from those which would confront the United Kingdom.

1390. In their evidence to us all the Islands said that they had represented to the United Kingdom their desire to have special terms negotiated for them. If this were not done, and the United Kingdom were to join the Community without obtaining some dispensation for them, it would incur an international obligation to give effect to the terms of the Treaty of Rome in the laws of the Islands. This would require legislation on taxation and other domestic matters to implement policies which the Islands would have no part in determining and which would often be contrary to their interests, and which, if the constitutional conventions were observed, Parliament could not impose on them without their consent. The extensions of the necessary United Kingdom legislation to the Island without their consent would be a substantial encroachment on their domestic autonomy.

1391. Quite apart from these objections of principle, the Islands were concerned that entry into the Community would be likely to do grave harm to their economies. We discuss this part of their evidence later on, in dealing with economic relationships between the United Kingdom and the Islands.

1392. Our own concern was not of course with the merits of the adherence of the United Kingdom or of the Islands to the Treaty of Rome, but with the general constitutional problem which the Treaty presented in its most acute form.

The Islands' proposals for removing the difficulties

1393. The States of Jersey said that apprehensions would be allayed if the United Kingdom Government were in a position to give an assurance that it would not ratify, except with their concurrence, any international agreement requiring legislative implementation in Jersey. While they did not for a moment think that by any deliberate act of the United Kingdom they would be deprived of the degree of autonomy they had long enjoyed, they saw that pressure on the United Kingdom Government brought about by international conventions could, against the best intentions of the United Kingdom, lead to that result. The problem, they said, was one for the United Kingdom, lead to that result. The problem, they said, was one for the United Kingdom Government, which had an obligation to find a solution which preserved the Island's autonomy. It was the United Kingdom Government and not Jersey which incurred international obligations when it entered into international agreements covering the Island; and it ought not to enter into a relationship with another country which was contrary to its long-standing relationship with the Island. Tynwald also took the view that it was for the United Kingdom Government to find a way out of the dilemma. Nevertheless, both the States of Jersey and Tynwald put forward some suggestions for consideration.

A new declaration

1394. The first suggestion was that a new declaration would be made restoring to the Islands the full right to decide, after leisurely deliberation, whether or not to be bound by an international agreement

relating to domestic matters to which the United Kingdom became a party. The 1950 declaration still stood but was ineffective in relation to certain categories of treaties. They had been led to believe that the defect might be removed by a fresh declaration made when the Vienna Convention on the Law of Treaties came into effect. Article 29 of the Conventions, dealing with the territorial scope of treaties, had been drafted with the object of allowing some flexibility in the application of treaties to autonomous or semi-autonomous communities. It provided that a treaty was binding upon each party in respect of its entire territory unless a different intention appeared from the treaty or was otherwise established. The Islands hoped that a general declaration might be made which would, for the purposes of the Article, establish that ratification by the United Kingdom of a treaty containing no provisions regarding territorial application would not cover the Islands unless they were expressly named. They drew attention to a declaration made in 1967 in respect of the Associated States in the West Indies, which appeared to have the desired effect.

The West Indies Associated States

1395. There were many references in the evidence to the Associated States and their status in international law. At our request the Foreign and Commonwealth Office furnished a note on this matter. The essential points are as follows. The six Associated States (Antigua, Dominica, Grenada, St Kitts-Nevis, St Lucia and St Vincent), which were formerly colonies, were brought into existence in pursuance of the West Indies Act 1967. The Act defines the relationship between the United Kingdom and an Associated State in terms of the division of responsibility and power between the United Kingdom on the one hand and the Government and legislature of an Associated State on the other. The United Kingdom Government retains responsibility in respect of any matter which in its opinion relates to defence or external affairs and any matter relating to nationality or citizenship or to the Succession to the Throne or to the Royal Style and Titles. An Act of the United Kingdom Parliament does not extend to an Associated State unless it is expressly declared in the Act in question that the State has requested and consented to its being enacted; but this general rule is subject to certain exceptions corresponding to the responsibilities retained by the United Kingdom Government. Similar provisions relate to legislation by Your Majesty in Council. Where the United Kingdom has not retained responsibility, control of the affairs of an Associated State is vested exclusively in the legislative and executive organs of the State. Either the United Kingdom or the Associated State may be unilateral action terminate the association, in which case the State would become completely independent of the United Kingdom.

1396. The relationship between the United Kingdom and the Associated States, in so far as this is a matter of law, is defined by the Act. The relationship has, however, been elaborated and refined by agreements which the United Kingdom has made with each of the States. These agreements provide for consultation and collaboration in matters affecting United Kingdom responsibilities for defence and external affairs. In particular, the United Kingdom Government undertakes to consult the Government of an Associated State before entering into international obligations with respect to it. If it considers that legislation is required in the interests of its responsibilities for defence or external affairs, it will request the Government of the State either to signify agreement to its enactment in the United Kingdom (such an agreement is not necessary as a matter of law) or to take steps to secure its enactment in the State itself. If the State sees difficulty in acceding to such a request, there will be the fullest practicable consultation between the two Governments; and if this fails to produce agreement and the United Kingdom Government still requires the legislation, it will give the State Government as much notice as possible of its intention to secure enactment of the legislation in the United Kingdom.

1397. Under these arrangements, ratification of a treaty by the United Kingdom requiring for its implementation legislation applying to the Associated States could lead to a State opting out of its association with the United Kingdom as an alternative to the acceptance of legislation with which it was not in agreement. It was in order to minimise the possibilities of this situation arising, and to reflect the degree of independence implicit in the new status of the territories that the United Kingdom Government in 1967 made an international declaration which sought to restrict the application of treaties to them. The declaration stated that in future any treaty ratified by the United Kingdom without a particular Associated State being named would not apply to that State. The United Kingdom Government has also delegated to the States, under conditions, a limited and closely defined authority in external affairs.

1398. Neither Jersey nor the Isle of Man was seeking the status of the Associated States. But they represented to us that there was no reason in law whereby the United Kingdom Government should not make in relation to them an international declaration similar to that made in 1967 in relation to the Associated States. The Home Office and the Foreign and Commonwealth Office told us, however, that they had concluded that it would not be practicable to exclude the Islands from the application of international agreements in this way. It was true that for the purpose of Article 29 of the Vienna Convention a "different intention" had been established in relation to the Associated States by the 1967 declaration. But a declaration of this kind to be effective must have international acceptance and, having regard to the very different circumstances of the Channel Islands and the Isle of Man by comparison with the West Indies – their geographical position, history and relationships with the United Kingdom – the departments were of the opinion that a similar declaration in relation to them would not be accepted. It would be contrary to the spirit of Article 29. Unlike the Associated States the Island were not far-distant territories, with the continuing option of independence, and they were unlikely to be regarded internationally as sufficiently different from the United Kingdom to justify wholly separate treatment. Even if the Islands themselves were to become Associated States, with a right to terminate the association with the United Kingdom at any time, the departments considered that acceptance could not be relied upon. In any event, they said, a declaration, even if it were to be internationally accepted, would not provide a solution to the most crucial problem. It would have no effect in relation to a treaty, such as the Treaty of Rome, which contained specific provisions on territorial application.

Division of responsibility for external relations

1399. The Islands had recognised in earlier discussions with the Home Office that a general declaration would not help with the Treaty of Rome, since the Treaty applies in terms to all European territories for whose external relations member states are responsible. This had led Tynwald to consider the possibility of a different kind of association with the United Kingdom, in which there would be a division between the United Kingdom and Isle of Man Governments of responsibility for the Island's international relations. In certain fields the Isle of Man would have full responsibility as of right, and not merely by delegation from the United Kingdom, as would be the case if the patter of the Associated States in the West Indies were to be followed. The division of responsibility would, broadly speaking, follow the existing practice in relation to legislation, whereby Tynwald legislate on matters of purely domestic concern and Parliament on wider matters. If the division were made it would demonstrate in international circles the Isle of Man's autonomy in the matters for which it had been given international responsibility and the incapacity of the United Kingdom Government to negotiate for the Island and to accept commitments on its behalf without its consent on such matters.

1400 In discussions with the Home Office before our appointment, the Isle of Man had been told that the United Kingdom Government could not agree to an arrangement of this kind. The department believed that division or delegation of responsibility to the Treaty of Rome and was of doubtful feasibility in terms of international law and international acceptance; it would in any event be totally unacceptable to the United Kingdom Government. Tynwald accordingly did not include the proposal in its written evidence to us. In giving oral evidence, however, the representatives of Tynwald said that they would wish to have it considered if no other method regarded as more appropriate could be suggested for ensuring that international agreements were not imposed on the Isle of Man against its will. They recognised that a limited division of responsibility for international affairs might not suffice to exclude the Island from the operation of Article 227 (4) of the Treaty of Rome, but they would regard it as giving at least a promising start to negotiations for its exclusion.

Consultation on international agreements

1401. The Home Office and the Foreign and Commonwealth Office told us that, in an attempt to meet the difficulties of the Islands, they would be prepared to set up machinery to notify them, at a very early stage, of proposals likely to lead to the conclusion of any multilateral treaty raising problems in relation to the Islands' domestic legislation, so as to enable the Islands to have the opportunity at the negotiation stage to express any views they might have regarding the application of the treaty to them. They thought that the Island authorities would not wish to be consulted in every instance, since such a procedure could impose an extremely heavy burden on the Island administrations, but that it ought to be possible to devise arrangements whereby the United Kingdom Government would identify those international agreements on which the Islands would be likely to wish to be consulted. An essential prerequisite of such arrangements would be the establishment of machinery in the Islands to enable a prompt response to be given, since the Government would be unable to delay negotiations.

1402. The department's proposal represented a formal strengthening of procedures that they now try to follow. They recognised that it would not resolve all the difficulties. While the United Kingdom Government would naturally take the views of the Islands fully into account, those views would have to be weighed carefully with other considerations relevant to the Government's negotiating position. There would no doubt remain many instances where the United Kingdom delegation were unable within the negotiations to ensure that effect was given to the wishes expressed by the insular authorities either in terms of the insertion of an optional territorial application clause or in terms of a modification to the substance of the convention. The Islands would then be confronted with a convention silent on territorial application but containing provisions whose application presented serious difficulties for them. In such circumstances the Government would be prepared, in circumstances where it could be regard as being justified by international law, to consider the possibility of making a reservation so as to exclude the Islands from the territorial application of a part or the whole of the convention. The Island would no doubt appreciate that it would be undesirable to enter reservations on their behalf unless the reasons for so doing were compelling, and that it might not be practicable to meet their particular requirements in every instance, especially if they chanced to conflict with essential interests of the United Kingdom Government.

1403. The departments explained what was meant by "circumstances where it could be regarded as being justified by international law". Article 19 of the Vienna Convention on the Law of Treaties provides that a state may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless the reservation is prohibited by the treaty, or the treaty provides that

only specified reservations which do not include the reservation in question, may be made, or the reservation is incompatible with the object and purpose of the treaty. Thus, a reservation could not be made in respect of a general multilateral treaty of a humanitarian nature that was silent on territorial application if the treaty itself contained a clause prohibiting all reservations or permitting only specified reservations which did not include the reservation in question. Such instances were, however, said to be rare. Of the eight treaties silent on territorial applications that the United Kingdom had ratified in the past four years only one, the Tokyo Convention on Offences and certain other Acts committed on board Aircraft, had contained provisions prohibiting reservations relating to territorial application. In respect of general multilateral treaties of a humanitarian nature that are silent on territorial application, a reservation excluding the islands from the application of specific provisions or even from the whole treaty would not necessarily be incompatible with the object and purpose of the treaty; but there mighty be the rare instance (although it would not normally involve the passage of new or amending domestic legislation) where any reservation on territorial application could objectively be regarded as being incompatible with the object and purpose of the treaty, whether because of the nature of the treaty or otherwise. An example might be the Non-Proliferation Treaty; or the Vienna Convention on the Law of Treaties itself.

PROPOSED ACT OF PARLIAMENT

1404. The main proposal of both the States of Jersey and Tynwald for overcoming the difficulties arising out of international agreements was for the enactment at Westminster of legislation defining the responsibilities with respect to the Islands of Parliament and the United Kingdom Government.

The Jersey Bill

1405. The States of Jersey, in their written evidence, said that they were not seeking any fundamental change of substance in the constitutional relationship between Jersey and the United Kingdom, but wished to have aspects of that relationship asserted, crystallised and fortified by being firmly embodied in an Act of Parliament. The main purposes of the Act would be to give the constitutional convention (that Parliament does not legislate for Jersey on a domestic matter without the consent of the States) the overt effect of strict law, and so to ensure that, subject to certain exceptions, the implementation of international agreements entered into by the United Kingdom and extending to Jersey could be effected in jersey only by the States or by parliament acting at the request and with the consent of the States.

1406. An outline of the proposed statutory provisions was included in the written evidence and, when we visited Jersey to take oral evidence, representatives of the States submitted the draft of a Bill and an explanatory memorandum which they had prepared to indicate the kind of measure they had tin mind. They stressed that the draft was incomplete and that the States were not committed to its detailed provisions. While in large measure it reproduced what they considered to be the existing constitutional relationship, it went further in seeking to remove uncertainties by substituting strict rules of law for constitutional usages and in making changes needed to fortify the Island's domestic autonomy. At the same time it endeavoured to give reasonable weight to the interests of the United Kingdom. Although he draft had something in common with the West Indies Act 1967, which brought the Associated States into existence, it departed from it in a number of ways.

1407. Under the States' proposal the United Kingdom Government would have executive responsibility for the government of Jersey only in relation to matters on which uniformity of

legislation between the United Kingdom and Jersey was of paramount importance or matters in which the vital interests of the United Kingdom were likely to be affected, given the geographical proximity of the United Kingdom and Jersey. In relation to these matters the United Kingdom Government would not simply impose its will on Jersey, but would normally hold consultations in advance and act with the concurrence of the insular authorities.

1408. The matters for which the United Kingdom Government would have a continuing responsibility would be specified in the Act. In the draft Bill they are stated to be Commonwealth relations, relations with foreign countries (except such matters as may by agreement by transferred to Jersey), Succession to the Throne and the Royal Style and Titles, trading with the enemy, exchange control, extradition and fugitive offenders, copyright, wireless telegraphy, air safety, any matter which in the opinion of the United Kingdom Government relates to defence and any other matter in which powers are conferred on Your Majesty or on a Secretary of State under a law made by the States.

1409. The draft Bill provides that the United Kingdom Parliament would have a paramount power to legislate for Jersey on these matters, with the exception that if a matter fell only within the general category of relations with foreign countries the paramount power to legislate would not be exercisable save the respect to exclusively political matters or the conferment of diplomatic and similar immunities. On all other matters, including the imposition of taxation and the repeal or amendment of the proposed new Act, Parliament would be able to legislate for Jersey only at the request and with the consent of the States. The power to alter the law of Jersey by Order in Council, other than for the purpose of ratifying insular legislation, would be abolished. The States would acquire full legislative powers, including power to make laws with extra-territorial effect, subject to the provision that they would not be able to legislate inconsistently with United Kingdom legislation on the matters over which Parliament retained paramount power. Legislation of the States would continue to require the Royal Assent, which would as now be given or withheld on the advice of Your Majesty's Ministers in the United Kingdom following consultation with the insular authorities.

1410. Under these proposals the powers of the United Kingdom Parliament in external matters affecting Jersey would not be coextensive with those of the United Kingdom Government. The latter would have full powers, except in relation to any matters for which responsibility had by agreement been transferred to jersey; and it was not part of the case made by the States that any such powers would necessarily be transferred. But the powers of Parliament would be restricted; legislation needed to implement international agreements covering domestic matters would normally be enacted by the States of Jersey and only exceptionally by Parliament with the consent of the States. The representatives of the States pointed out that, though this situation might be unusual, it would be by no means unprecedented; in Canada, for example, the federal government had plenary powers to enter into international obligations, but the federal Parliament could not implement such obligations by legislation when the matter fell within the exclusive competence of the provinces. The proposals were not intended to impede the United Kingdom Government in the conduct of international relations, and might indeed help by enabling the Government to point to an authoritative text demonstrating its incapacity to implement certain types of obligations in the law of Jersey.

An agreement as an alternative to a Bill

1411. The Jersey Constitutional Association, a private body, said that it was making separate representations to us because of the difficult position of the Law Officers in advising the States of Jersey in the matter of the clarification of Jersey's constitutional position when, in the event of a dispute between Jersey and the Crown, the Law Officers would appear on behalf of the Crown. The

Association differed from the States in maintaining that it had not been established that the United Kingdom Parliament was entitled to legislate for Jersey on any matter without the consent of the States, and submitted evidence in support of this contention. Similarly it argued that the Island had a right to adopt or reject treaties and international agreements entered into by the United Kingdom. In the view of the Association, it would be inappropriate to set out Jersey's constitutional position in an Act of Parliament, as the States proposed, since that would imply that Parliament had power to legislate for jersey, and Parliament would then be entitled to alter or repeal the Act without the concurrent of the States. It was proposed instead that the Island's constitutional position should be defined in an agreement, to be negotiated between the United Kingdom and jersey Governments and ratified by an Act of Parliament at the request of the States and by an Act of the States. The agreement would provide that no Act of Parliament or Order in Council should have the force of law in Jersey without the consent of the States; it would also provide for the abolition of the prerogative power of the Crown to legislate for Jersey. Jersey would be given full legislative power, subject to the Royal Assent, which would be given by the Lieutenant Governor on the advice of a newly constituted Committee of the Privy Council, which would include a majority of members nominated by the States or be so composed as to be independent of the united Kingdom Government of the day. The United Kingdom Government would continue to be responsible for Jersey's international relations, but Jersey would retain the right to adopt or reject any treaty or international agreement entered into by the United Kingdom.

1412. In commenting on the Association's proposals, the States did not agree that if Jersey's constitutional position were to be defined in an Act of Parliament, Parliament would be able to repeal or amend the Act without their consent. Such action would be specifically precluded by the terms of the Act. They acknowledged, however, that there was disagreement among constitutional lawyers about the capacity of Parliament to bind its successors in a matter of this kind and that the Act would not indisputably have the effect they desired. While they considered that an Act would be more appropriate than an agreement, their sole objective was to create by one legal instrument or another a state of affairs in which it would be impossible, without the consent of the States for Parliament to legislate for Jersey on domestic matters and for the United Kingdom Government to make treaties having application to Jersey on such matters.

Opposition to constitutional change in Jersey

1413. Evidence was submitted by the Jersey Democratic Movement, the Transport and General Workers' Union in Jersey and the Jersey Trades Council, and representatives of these three bodies appeared before us together. They objected to the proposals of both the States of Jersey and the Jersey Constitutional Association, which they regarded as weakening the constitutional links with the United Kingdom. They placed great value on the maintenance of those links, particularly in so far as they enable the United Kingdom Government to exercise some restraint over Jersey's use of its independent powers of legislation. They argued that removal of the restraint would have an adverse effect on the members of the working class which they represented, in view of the unrepresentative nature of the States, and that its maintenance would be a safeguard against arbitrary action by a privileged group. Representatives of the States in their evidence stressed that it was in fact no part of their proposals to remove the power of the Crown to withhold Assent to insular legislation.

The views of Guernsey

1414. The States of Guernsey were opposed to an Act of Parliament or formal agreement giving statutory effect to the present constitutional conventions, saying that it was beyond question that the

inhabitants of the Island would not wish to replace centuries of mutual trust and respect by such an instrument. The Guernsey Labour Group supported this view. Representatives of the States, in their evidence, said that it would be difficult to draft an Act which placed the constitutional relationship beyond argument. There was not at present a clear-cut division of functions between the United Kingdom and Guernsey The unwritten relationship gave a flexibility which would be lost if it had to be put into statutory form, and this flexibility enabled adjustments and innovations to be made to meet new developments. The States were content to rest on the assurance they had received in 1968 that there was no question of the United Kingdom government seeking to legislate for the Island in any taxation matter or in any other matter which had long been accepted as the responsibility and concern of the insular authorities.

The Isle of Man Bill

1415. For the Isle of Man Tynwald wished to have an Act of Parliament making a formal division of legislative competence between Parliament and Tynwald. Parliament would legislate on matters which transcended the frontiers of the Island and Tynwald on domestic matters. It was suggested that matters transcending the frontiers of the Island could be divided into two categories. The first was made up of those matters which affect other states, which were defined as states other than the United Kingdom and the British Islands for whose international relations it is responsible. The second category consisted of those matters which are common to British people throughout the world. Tynwald recognised that there might be difficulty in reaching agreement with the United Kingdom Government on lists of subjects falling in one or other of these two categories; and although it would prefer to see lists embodied in the statute, it would regard an Act defining the legislative competence of Parliament and Tynwald respectively in general terms as being better than no Act at all.

1416. Tynwald, like the States of Jersey, embodied its proposals in a draft Bill. The two drafts had much in common, but there were differences in the lists of matters in which Parliament and the United Kingdom Government would retain paramount powers. The most significant of these concerned nationality and citizenship, which the Isle of Man included in their list but Jersey did not, and wireless telegraphy (broadcasting), which jersey included but the Isle of Man did not. The Isle of Man also omitted exchange control, extradition, fugitive offenders and copyright, which were on the Jersey list, saying that subjects such as these, on which uniformity of legislation as between the United Kingdom and the Isle of Man would continue to be necessary, or at least desirable, need not be listed since current practice was for Tynwald to request the extension of United Kingdom legislation on them.

1417. The Isle of Man Bill included a provision to the effect that no subsequent Act of Parliament could amend or repeal it without the consent of Tynwald. The representatives of Tynwald, however, unlike those of the States of Jersey, whose Bill contained a similar provision, acknowledged that Parliament could not bind its successors in this way and that enactment of the Bill in the terms suggested would not and could not deprive Parliament of its ultimate legislative sovereignty in respect of the Isle of Man as a dependency of the Crown. They maintained that its enactment would nevertheless have value in giving grater certainty to the constitutional conventions by conferring statutory recognition upon them. Parliamentary sovereignty would remain unimpaired in legal theory and be available for exercise in extraordinary circumstances, such as the need to intervene to ensure the preservation of public order in the Island; but it was almost impossible to contemplate such circumstances arising, and in practice the exercise of Parliamentary sovereignty would be restricted in the manner prescribed in the statute.

1418. An important difference between the two draft Bills was the inclusion in the Isle of Man Bill of a provision permitting Tynwald to amend or repeal in relation to the Isle of Man any existing Act of Parliament which had been extended to the Island at the request of Tynwald. The Stonham Working Party had agreed that revocation of extensions of Acts of Parliament to the Island should rest on the same basis as extensions; if it were ever to be accepted that Acts of Parliament could be extended to the Island only with the consent of Tynwald, then it would follow that Tynwald should be able to secure the repeal or amendment of the legislation so extended. There was no comparable provision in the Jersey Bill.

1419. Under Tynwald's proposals the procedure for legislation required in the interest of the United Kingdom's responsibility for defence or for the international relations of the Isle of Man, within the limits prescribed by statute, would be similar to that agreed with the Associated States of the West Indies. Tynwald would be invited either to take steps to secure its enactment in the Isle of Man or to consent to its enactment by Parliament. In the latter case, the legislation would contain a provision expressly declaring that it was required to extend to the Isle of Man as part of its law in the interest of the particular responsibility of the United Kingdom to which it related. If Tynwald saw difficulty in acceding to such a request made by the United Kingdom Government, there would be full consultation with a view to resolving the difficulty. In the event of failure to reach agreement, if the United Kindgom Government remained of the opinion that it was nevertheless necessary for the legislation to be enacted, it would give as much notice as possible to Tynwald of its insistence on the enactment of the legislation, which would again contain a provision expressly declaring that it was being enacted in the interests of the particular responsibility of the United Kingdom to which it related.

Royal Assent to insular legislation

1420. Tynwald in its evidence also proposed that the Royal Assent to Acts of Tynwald should be given by the Lieutenant Governor under delegated powers. The Lieutenant Governor would be able to reserve the Royal Assent to the Privy Council in any case in which he was doubtful about the validity of the exercise of his delegated powers. This proposal was largely prompted by experience in recent years in the field of broadcasting, where differences have arisen between the United Kingdom and Isle of Man Governments which are not wholly related to international agreements. These led Tynwald to seek a new procedure for signification of the Royal Assent to Manx legislation in order to ensure that the United Kingdom Government would not be in a position arbitrarily to set the dividing line between domestic affairs and those which transcend the frontiers of the Island by the mechanism of granting or withholding Assent. The States of Jersey did not see this as a problem, and had no proposals for changing the procedure for giving Royal Assent to their legislation.

Broadcasting in the Isle of Man

(i) Manx Radio

1406. The history of the disputes over broadcasting is recorded in Appendix B of the evidence submitted to us by Tynwald, and memoranda on the subject by the Isle of Man Government and by the General Post Office (as it then was) are included as appendices to the Report of the Stonham Working Party. Because of the important part which the broadcasting issue has played in discussions between the United Kingdom and Isle of Man Governments on constitutional matters, and the way in which it illustrates the working out in practice of the existing constitutional relationship, we summarise here the course of events and the arguments used by the two sides.

1407. Until the early 1960s it seems not to have been in dispute that the control of broadcasting in the Isle of Man was a matter for the United Kingdom Government and Parliament. The Wireless Telegraphy Act 1904, which first conferred power on the Postmaster General to license and control broadcasting, applied in terms to the Island, and the island by Order in Council with the agreement of Tynwald. The Television Act 1954 was similarly extended at Tynwald's express request.

1408. In 1961 Manx Radio, a company sponsored by the Isle of Man Government, applied to the Postmaster General for a sound-transmitting licence and for the allocation of a frequency. It was intended to establish a service, similar to that provided by Radio Luxembourg, for transmission to the whole of the United Kingdom and to parts of Europe. The application was refused. Tynwald then requested the revocation of the Order in Council extending the 1949 Act to the island, and enacted legislation conferring powers to license broadcasting in the Island on the Lieutenant Governor (who would have powers in parallel with those of the Postmaster General). The requests for revocation of the Order in Council and for Royal Assent to the Bill were both refused, on the grounds, first, that there had to be one final authority to control the use of scarce frequencies in the United Kingdom and the Islands in order that the United Kingdom Government could honour its international obligations, and, secondly, that under international agreement no station could be permitted to employ a power beyond that necessary to maintain economically an effective service of good quality within the frontiers of the country in which it was located.

1409. In 1962 the Isle of Man Government proposed that it should be given power to license a television and radio station to transmit to the British Islands only. It was told that, while the new proposal did not raise the same difficulty as regards international obligations, it conflicted with United Kingdom broadcasting policy It then submitted proposals for a radio station to broadcast to the Island alone. These were approved, and the Postmaster General offered to provide all the technical assistance he could for such a project; the power at which the station operated would have to be restricted so as to ensure that its programmes could not be received on a regular basis anywhere in the United Kingdom. A licence was issued in 1965 and a commercial broadcasting station was established in the Island. The station is still operating, but the Isle of Man Government has repeatedly represented that, with the restricted power permitted, satisfactory service cannot be given in some part of the Island.

1410. In their evidence to us the Tynwald representatives complained that the United Kingdom Government had used false arguments and shifted its ground to deny the Island's requests. It first rested its refusal on the international agreement, though its attention was drawn to the facts that Radio Luxembourg and other stations were not called upon to conform to it and the British Broadcasting Corporation itself operated extensive overseas services. The United Kingdom Government later sought to justify its refusal to license a service confined to the British Islands by reference to the agreement despite the fact that for purposes of international control the British Islands are regarded as a single country. A further ground of refusal was that, if a service were to be received on a regular footing in the United Kingdom, the United Kingdom Government would be bound to concern itself with its objectives and policies and the constitution of the body to which the day-to-day control of the service was entrusted. The Isle of Man Government had put forward proposals to meet this objection. If adopted they would have given the United Kingdom Government a close link with the body in day-to-day control of Manx broadcasting. The proposals were rejected on the ground that they involved a fundamental departure from the principle that the provision and conduct of broadcasting to the United Kingdom in consequence of a licence granted by the Postmaster General should rest in charge of public authorities answerable to Parliament. This ignored the proposal for the licence to be granted by the Lieutenant Governor, as would have been possible

under the 1962 Bill to which Royal Assent was refused. The Isle of Man Government had enquired whether the United Kingdom Government's attitude would be different if Manx Radio were to become non-commercial, but it received no favourable response. The attitude of the United Kingdom Government to broadcasting was contrasted with its attitude to postal services and other telecommunications services, which, by the Post Office Act 1969, could be transferred to the Island. The Isle of Man Government contended that the policy control and administration of broadcasting in the Island, and from it to any other part of the British Islands, should equally be regarded as being within the sole province of Tynwald, except for those aspects which concerned the fulfilment of the United Kingdom's international obligations, which the Isle of Man would agree to observe.

1411. The United Kingdom Government, for its part, contended that the Isle of Man had no right to demand better treatment from the United Kingdom under the Wireless Telegraphy Act 1949 than it would obtain if it were a sovereign state and a member of the International Telecommunications Union, when it would be less well served as regards the right to use medium frequencies than at present. If, by virtue of a licence granted by the Minister of Posts and Telecommunications, Isle of Man programmes were received normally and regularly in a part of the United Kingdom, Members of Parliament representing constituencies in which the programmes were received would have a right to raise questions about them, and the Minister would be bound to answer them. If, on the other hand, the Island were given its own licensing power the Minister would still be responsible for maintaining frequency discipline in the area, including the Isle of Man, covered by the United Kingdom's adherence to the International Telecommunications Union Convention; even if no breach were to occur it would be an impossible situation for him to have this responsibility without the power of ensuring that international conditions were met. Radio Luxembourg's international broadcasts were an anomaly, tolerated internationally for historical reasons; and the external services of the British Broadcasting Corporation existed, like the external broadcasts of other major powers, as a projection of foreign policy, and were thus differentiated in kind from a normal broadcasting service and irrelevant to a territory that does not conduct its own foreign policy. It had never been part of the United Kingdom case that the Isle of Man should not take steps to improve the service within the territorial limits of the Island, and it was believed that for a very small expenditure coverage on the Island could be improved without extending overspill.

(i) Pirate broadcasting

1406. Another dispute in the field of broadcasting arose over action to deal with pirate broadcasting stations at sea. The Council of Europe drew up an agreement in 1963 which provided a system of interlocking measures by national governments to suppress such stations. In 1967 Parliament enacted the Marine etc. Broadcasting (Offences) Act, making it an offence to supply certain goods and services to persons operating pirate stations. One of those stations, Radio Caroline North, anchored off the coast of the Isle of Man, had begun transmissions in July 1964. At first there was some hostility in the Isle of Man to the new station, which was seen as a rival to Manx Radio, possessing the unfair advantage of being able to operate with unrestricted power; but it came later to be regarded as a source of popular entertainment and of free publicity for the island's tourist industry.

1407. When the Marine etc Broadcasting (Offences) Bill was introduced into Parliament it contained a clause permitting it to be extended by Order in Council to the isle of Man. The Isle of Man Government indicated its preference for legislating in Tynwald for as much of the subject matter as was within its constitutional competence. A Bill was accordingly introduced in Tynwald; but, after being passed by the Legislative Council, it was defeated on Second Reading in the House of Keys. The United Kingdom Government thereupon indicated its intention to secure the extension of the

United Kingdom Act to the Isle of Man, and this was done after an appeal by Tynwald to Your Majesty in Council against the extension had been rejected. Tynwald complained that the Act, in being extended to the Island, effected a change in Manx criminal law, a branch of law in which Parliament had rarely legislated for the Isle of Man and then only with the acquiescence of Tynwald, that extension to the Isle of Man was unnecessary and that pirate broadcasting stations could have been dealt with by other means. The United Kingdom Government for its part argued that Tynwald's failure to legislate opened up a breach in the concerted front which the countries of Europe had agreed to present against a serious threat to broadcasting throughout the continent, and that to fill the breach it was bound to act as it did.

1408. In evidence to us Tynwald instanced the extension of the 1967 Act to the Isle of Man contrary to its wishes as an example of the difficulty that could arise if Parliament, in fulfilment of an international obligation of the United Kingdom, legislated for the island on matters such as the criminal law of the Island that were normally left to Tynwald.

The views of the United Kingdom government departments

1409. In their memorandum commenting generally on the evidence received from the Islands, the Home Office and the Foreign and Commonwealth Office mentioned four considerations having a particular bearing on any proposals for change in the constitutional relationships between the United Kingdom and the Islands – the ultimate responsibility of the Crown for the good government of the islands, their geographical proximity, the economic relationships and the need to avoid submerging such small communities under administrative burdens.

1410. The departments said that the ultimate responsibility of the Crown for the good government of the Islands was not unique to the Islands, but that their propinquity tot he United Kingdom and the antiquity of their association with the Crown placed the Islands in a category apart from all other British dependencies. The fact that the United Kingdom and the Islands were all parts of the British Islands, while certainly not making uniformity essential, made it nevertheless highly desirable that the institutions and the practices of the Islands should not differ beyond recognition from those of the United Kingdom. The Islands succeeded in maintaining a way of life that was distinctive from that of the United Kingdom and, in general, the United Kingdom Government fully endorsed the desirability of their being free to express their individuality. But the British Islands were an entity in the eyes of the world, and the United Kingdom Government would be held responsible internationally if practices in the Islands were to overstep the limits of acceptability. The present links with the Islands, while giving them a great deal of liberty to order their internal affairs, nevertheless enabled the Government to ensure that the British islands as a whole adhered in their policies to certain broad principles that enabled the international image of the group, however varied in its features, to be seen nevertheless to follow a coherent pattern.

1411. The departments made the further point that the economies of the Islands were closely interrelated with those of the United Kingdom and that without some measure of compatibility of legislation it would be easy for practices to develop in the Islands, particularly in the commercial field, that would be detrimental to the economic well-being of the British islands as a whole.

1412. In the view of the departments there could be only limited room for manoeuvre if the amount of autonomy enjoyed by the Islands were not to be diminished and if the United Kingdom Government were not to be placed in the impossible position of having responsibility without power, as would result from acceptance of the Jersey and Isle of Man proposals to allocate spheres of

legislative competence to the United Kingdom and the islands. In the international field, the proposals would produce a situation in which the United Kingdom would continue to be responsible for the external relations of the Islands but would have no legislative power to ensure that international obligations entered into on their behalf were implemented. That was a situation that the United Kingdom Government could not accept. So long as the Government retained executive responsibilities for the conduct of the Islands' relations with foreign countries, Parliament must retain a reserve power to legislate in the last resort to ensure that effect was given to any international obligations contracted on their behalf. Precisely similar considerations applied in relation to domestic matters. So long as the United Kingdom Government had a responsibility for the good government of the Islands, it was essential for the United Kingdom to retain its residual power to legislate, if need be, on matters that were domestic to the Islands.

1413. The Isle of Man's proposal that the Lieutenant Governor should be empowered to grant Royal Assent to certain categories of Bill passed by Tynwald was considered to be unacceptable for much the same reason. It would remove one of the means whereby institutions and practices in the Islands could be kept in reasonably close harmony with those in the United Kingdom. The Home Office said that before Royal Assent was given to an Island Bill there was extensive consultation between the Home Office and relevant government departments. Such consultation could and did take place at the drafting stage if the Bills were submitted in draft, but it seemed desirable that it should also be available when the Bill emerged from the legislative process. In the light of the general considerations expressed in the departmental evidence, the Home Office considered that the delegation advocated by Tynwald would be undesirable.

THE SETTLEMENT OF DISPUTES

Machinery for consultation

1414. We received proposals for changes in the machinery for consultation between the United Kingdom and Island Governments and for the settlement of disputes. At present there is day-to-day informal consultation between the Islands and the United Kingdom government departments on a wide variety of topics. The department principally concerned is the Home Office, and we were told that the department maintained a staff of fifteen engaged almost entirely on work relating to the Islands. Some of this work arises from the United Kingdom Government's responsibilities for the external relations of the Islands and some from the requirement that their legislation should be subject to the Royal Assent; but a good deal of it arises quite independently through the United Kingdom Government's concern for the well-being of the Islands. There was acknowledgement in the evidence of all the Islands of the advice and assistance readily given to them by the United Kingdom Government.

1415. In the case of the Isle of Man there has recently been established, on a recommendation of the Stonham Working Party, more formal machinery for consultation in the Standing Committee on the Common Interests of the Isle of Man and the United Kingdom. The States of Jersey proposed the establishment of a similar committee for Jersey. The Isle of Man Committee consists of three members elected by Tynwald to represent the Island and three representatives of the United Kingdom Government, with a joint Secretariat. The functions of the Committee are to consider any matter of mutual concern that may be referred to it by either Government; to keep under review the practical working of the relationship between the two Governments so that difficulties may be resolved either as they arise or, if possible, in advance; and to keep under review those areas of government where it may be desirable that the United Kingdom and the Isle of Man should pursue similar policies. The

meetings are not held in public. When the Committee was first set up it was intended that it should meet normally at half-yearly intervals, in London and Douglas alternately, with a representative from each side acting as chairman at alternate meetings. In practice meetings at half-yearly intervals have not been found necessary. The first three meetings were in April 1970, February 1971 and July 1972; the third meeting was adjourned and resumed in February 1973. For the convenience of the United Kingdom representatives the first two were held in London, but the third was held in Douglas.

Judicial Committee of the Privy Council

1416. As part of the new arrangements proposed for the division of legislative responsibilities between the United Kingdom and the Islands, the States of Jersey and Tynwald suggested that disputes about jurisdictional competence, if not resolved in the Standing Committees, should be referred to the Judicial Committee of the Privy Council for an advisory opinion on a question of law under the provisions of Section 4 of the Judicial Committee Act 1833. There could also be judicial review of legislative and administrative action in the course of ordinary legal proceedings. For example, it would be open to an Island court and, on appeal, the Judicial Committee of the Privy Council, or a United Kingdom court in a matter arising in the United Kingdom, to hold that legislation passed or administrative action taken in the Island was inoperative as being repugnant to United Kingdom legislation extending to the Island or was *ultra vires* on any other ground mentioned in the proposed new Act of Parliament. It would also be open to the courts to hold that legislation or administrative action by the United Kingdom was inoperative in relation to the Island because it fell within a class of matter on which the United Kingdom was empowered to act only with the express concurrence of the Island.

Other Privy Council Committees

1417. A further proposal was that petitions by Tynwald or the branches of Tynwald to Your Majesty in Council should be considered, not as now by the Committee of the Privy Council charged with Manx affairs, but by a separate Committee on which neither the Home Secretary nor any of the United Kingdom Ministers directly concerned with the subject matter of the petition would serve or be represented. In oral evidence representatives of Tynwald made it clear that they would prefer the Committee to include no representatives of the United Kingdom Government. The proposal was prompted by recent experience of the working of the existing procedure. In 1967, when Tynwald petitioned against the extension to the Isle of Man of the Marine, etc. Broadcasting (Offences) Act, the petition was considered and rejected by a Committee of Ministers – the Lord President of the Council, the Minister of State, Home Office, the Postmaster General and the Attorney General – some of whom had been principally concerned in taking the decision against which they were appealing.

1418. Another suggestion, put to us by the Jersey Constitutional Association, was that a majority of the members of the Committee of the Privy Council for the affairs of Jersey should be nominated by the States or that the Committee should be so composed as to be independent of the United Kingdom Government of the day.

1419. The Home Office, in its evidence, recognised that in putting forward its proposal for a differently constituted Committee of the Privy Council, Tynwald was expressing its disconnect with the situation whereby the same body may act both as court of initial judgement and court of appeal, as occurred in the broadcasting dispute. In the view of the department, however, to circumscribe the power of Your Majesty to appoint freely to Committees of the Privy Council would raise consultation issues of such gravity that they would probably require consultation with all independent

Commonwealth Countries. Apart from that consideration, it seemed unlikely that the device would achieve the objectives sought by Tynwald; it would be intolerable for differing advice to be tendered to Your Majesty on a single subject, and inevitable therefore both that the Privy Counsellors appointed to the Committee to hear a petition from the Island should be members of the United Kingdom Government and that they should seek guidance from the Home Secretary and the Ministers directly concerned with the matter. The proposal of the Jersey Constitutional Association was considered to be open to even greater objection.

CROWN APPOINTMENTS

Selection of persons for appointment

1420. We received proposals for changes in the method of selection of persons to be appointed as Lieutenant Governor and to other Crown offices. The States of Jersey, in their written evidence, stated that they believed that it would be consonant both with the present constitutional relationship and that which they proposed for the future that the Lieutenant Governor should be appointed after consultation with the insular authorities, and that the Bailiff, Deputy Bailiff, Attorney General and Solicitor General should be appointed on the advice of the appropriate insular authorities; these arrangements should be formally agreed, though not necessarily in the text of an Act of Parliament. Tynwald proposed that the advice of the Executive Council of the Isle of Man should be sought in confidence before appointments were made to the offices of Lieutenant Governor, Deemster, Attorney General and Judge of Appeal, and that the power to appoint the Attorney General should be delegated to the Lieutenant Governor.

1421. Representatives of the States of Jersey and Tynwald when they appeared before us explained more fully what they had in mind. Both made clear that the proposals were not prompted by any sense of grievance. It was already the practice for the Island authorities to be consulted before appointments were made, and it was not thought likely that under any new procedures different people would be appointed. The changes were suggested to ensure that consultation is not overlooked and to demonstrate to the world at large the Islands' degree of independence.

1422. Both Jersey and the Isle of Man would leave the final choice of the person to be recommended to Your Majesty for appointment as Lieutenant Governor to the Home Secretary, jersey after consultation with the insular authorities and no-one else, and the Isle of Man after consultation with the Executive Council and anyone else the Home Secretary chose. For other Crown offices Jersey would leave the final choice to be made by the insular authorities, by a majority vote if there were no agreement, with the Home Secretary under an obligation to act on their advice. The representatives of the States agreed that as the term "insular authorities", though frequently used, has at present no precise meaning, it would have to be defined for this purpose; they had in mind the Bailiff, Deputy Bailiff, Jurats of the Royal Court and the chairmen of the most important committees of the States. The Isle of Man would leave the final choice to the Lieutenant Governor after consultation with the Executive Council in the case of the Attorney General, and to the Home Secretary in the case of the other Crown offices.

1423. The Home Office representatives told us that it had been the practice for many years to consult the Island authorities in confidence before making appointments to any Crown office. They saw no objection to such consultation being on a wide basis provided that confidentiality could be guaranteed. They doubted the wisdom of prescribing formally the extent of consultation to be undertaken, since circumstances change and the Islands might wish at some subsequent date to vary

or widen the practice. The Department considered that it would not be consistent with the responsibility of the Crown for the good government of Jersey for the insular authorities to be able to dictate in the matter of appointment to Crown Offices. As the Bailiff, Deputy Bailiff, Attorney General and Solicitor General all had responsibility for good government, and the Law Officers in particular were frequently called upon to tender advice to the Crown, the holders of all these offices had to be acceptable to the Crown. The Home Office would, however, expect Island advice to continue in the future, as it had in the past, to weigh heavily in the selection of persons for appointment particularly to those offices which had administrative as well as judicial functions.

1424. The Home Office said that, as recommended by the Stonham Working Party, it had given further consideration to the Isle of Man proposal that the Attorney General should be appointed by the Lieutenant Governor. The difficulties which had been stated in the Working Party, consequent on the Attorney General's duties including not only those of principal legal adviser to the Isle of Man Government but also that of acting as the Crown's agent in enforcing the law, did not appear any less and the department saw no prospect of meeting the wishes of Tynwald in this matter.

The office of Bailiff in the Channel Islands

1425. We received from the Guernsey Labour Group a suggestion that the office of Bailiff should be split. There would be an official appointed by the Crown as Head of the Judiciary, and another elected by the people or by their representatives to preside over the States. The Group considered it wrong in principle that one person should have these dual functions. They were not dissatisfied with the present Bailiff, but thought that a t some future time the arrangement might be against the interests of the Guernsey people. A similar suggestion was put to us in Jersey by the Jersey Communist Party.

1447. The suggestion was opposed by representatives of both the States of Guernsey and the States of Jersey when we put it to them. They drew attention to the fact that in 1947 a Privy Council Committee looked at the matter and recommended no change. The Committee considered that the objection to the combination of the dual functions of the Bailiff would be justified only if it were established that in the States the Bailiff exercised undue influence in the course of deliberations or that in the court he allowed his political position to influence his decisions. No evidence had been tendered to the Committee in support of such contention. The Committee also considered that the Bailiff as president of the States exercised important functions in advising the assembly on constitutional procedure, which, from the nature of the constitution, required an intimate knowledge of the privileges, rights and customs of the Islands. We were told in both Islands that the States considered these arguments to be equally applicable today, that the arrangement whereby their president is appointed by the Crown is acceptable to the members of the States, and that importance is attached to the maintenance of the status of the office of Bailiff as the Island's chief citizen and representative.

ALDERNEY AND SARK

1448. Alderney, with a population of about 1700, and Sark, with a population of about 590, are parts of the Bailiwick of Guernsey, and the States of Guernsey legislate for them in certain matters. But each has a large measure of autonomy, including an independent relationship with the United Kingdom through the Lieutenant Governor of Guernsey. We therefore considered it appropriate that we should take evidence from the authorities in the two Islands. In their evidence both the States of Alderney and the Chief Pleas of Sark stated that the constitutional relationships between the Islands

and the United Kingdom were, broadly speaking, the same as those between Guernsey and the United Kingdom, as set out in the evidence of the States of Guernsey; and this was accepted by the States of Guernsey and by the Home Office.

Alderney

1449. Though not strictly relevant to our enquiries, we found it helpful to our understanding of the problems of the smaller Islands to look at their relationships with Guernsey. Before the war the constitutional links between Guernsey and Alderney were slender. The States of Guernsey legislated for Alderney on criminal matters; but in most other matters, including finance, Alderney made its own laws, which, like other insular legislation, required the Royal Assent, and administered its own services. During the war the Island was evacuated and considerable damage was done by the German occupying forces. When the civilian population returned, it was apparent that the Island would not for some time be able to stand on its own feet. A Committee of the Privy Council made proposals which resulted, with the agreement of Alderney, in a curtailment of the Island's independence and a reform of the organisation of government. Guernsey took over responsibility for the main services in Alderney, including the airport, education, health, immigration and police, on the basis that Alderney would be taxed on the Guernsey scale. The existing Guernsey laws on these matters were applied to Alderney and it fell thereafter to Guernsey to legislate on them. The States of Alderney retained some legislative powers, but legislation involving additional expenditure became subject to the control of Guernsey.

1450. At the time of our visit, the States of Alderney consisted of the |president, elected by direct vote for a term of three years, and nine members (since increased to twelve), all elected by the electorate of the whole Island for a term of three years, three (nor four) retiring each year. The States nominate two of their members to represent Alderney in the States of Guernsey.

1451. The arrangements made after the war are not considered to have affected Alderney's general constitutional position as a largely autonomous dependency of the Crown. They are regarded in Alderney as temporary ones, made for the convenience of the Island, with the intention that Alderney should one day regain a measure of independence similar to that which it enjoyed before the war. We were told that the Island is financially independent in that all the services provided for it by both the States of Guernsey and the States of Alderney are paid for out of the proceeds of taxes collected in Alderney.

1452. In their evidence the States of Alderney proposed that the constitutional relationship between the United Kingdom and Alderney should be so altered that Alderney's inclusion in international treaties which affect her financial and domestic affairs should be dependent upon the concurrence of the States of Alderney. The proposal was prompted by the view that if the Island were to be incorporated in the European Economic Community without safeguards, the prosperity of the inhabitants and indeed its self-government would be jeopardised.

Sark

1453. Ownership of the Island of Sark was granted to the first Seigneur by Queen Elizabeth I in 1565. One of the conditions of the grant was that the Island should be continually inhabited by forty men, and Letters Patent of James I in 1612 provided that the forty tenements should remain

undivided. The Chief of Pleas, the Island's legislative body, consist of the Seigneur, the Seneschal, who is appointed for a three-year term of office by the Seigneur with the approval of the Lieutenant Governor and is *ex officio* President of the Chief Pleas, the forty Tenants and twelve Deputies of the People, elected triennially. The Chief Pleas may not be held unless the Seigneur, or the Seigneur's Deputy, is present. The States of Guernsey may legislate for Sark on criminal matters without the consent of the Chief Pleas, and on any other matter with their consent. The Chief Pleas may legislate for Sark on any matter by *Projet de Loi*, which requires the Royal Assent, and on a limited range of local affairs by Ordinance. The seigneur has power to veto an Ordinance, but the Chief Pleas may then resolve that it should nevertheless have effect. The Royal Court of Guernsey may annul an Ordinance on the ground that it is unreasonable or *ultra vires* the Chief Pleas; but the Chief Pleas may then appeal to Your Majesty in Council against the annulment; we were told that there had been no recent case of the exercise of the power of annulment.

1454. In their evidence the Chief Pleas sought no change in the present constitutional relationship with the United Kingdom. Their representatives told us that they had a real fear of the consequences of entry into the European Economic Community and had asked to be excluded from any provisions resulting from entry by the United Kingdom. Sark had managed its own affairs for over 400 years and had always remained solvent. It had at no time received grants from any outside source, not even by way of compensation for war damage.

OTHER EVIDENCE

1455. In addition to that of the Island authorities and the other organisations already mentioned, we received evidence from a small number of individuals and organisations in each of the Islands. Some of this evidence related to the internal affairs of the Islands or to particular problems arising out of the United Kingdom's application to join the European Economic Community, and therefore fell largely outside our terms of reference. We refer here to the remaining evidence in so far as it included proposals of a kind substantially different from those we have already mentioned.

1456. Although we received a few complaints against the administrative actions of the insular authorities, only one witness in Jersey and one in Guernsey proposed the incorporation of the Islands in the United Kingdom. At the other extreme, Mec Vannin, a nationalist organisation in the Isle of Man, sought independence for the Island within the Commonwealth. It argued that the Isle of Man should have complete freedom to manage its own affairs, on the grounds that Manx people believe in freedom, that limitations of freedom are handicaps to national integrity and efficient administration, that self-determination is the accepted right of all free peoples and that the Manx are essentially different in character and have a language and culture different from the Anglo-Saxons in the dominant south-east part of the United Kingdom. Representatives of Mec Vannin when they appeared before us admitted that there was little support in the Island for their views, and that very few people spoke the Manx language, including probably only one for whom it was the mother tongue.

1457. One witness in Guernsey stressed the importance of jersey and Guernsey continuing to have similar relationships with the United Kingdom, saying that it would be a matter of the greatest regret if the Islands were to be treated differently. Two witnesses argued that the Channel islands would be stronger and better able to deal with external pressures if they had a federal form of government. One suggested that Alderney and Sark should become independent Bailiwicks and that there should be changes in the status of the Seigneur of Sark; also that the offices of Lieutenant Governor of Jersey and Guernsey should be abolished and that there should be appointed instead a Warden of the Isles

(an office said to have existed in earlier days), who would assume some of the functions of the Lieutenant Governors and preside over a federal committee, which would be a co-ordinating and negotiating body for the Islands as a whole but have no power of government.

1458. Eight witnesses in Alderney submitted a joint memorandum in which they stressed the importance of viewing the relationship between the United Kingdom and the Channel islands in its historic perspective. They said that the supreme legislative power over the Islands remained vested exclusively in the Sovereign and that the legal effectiveness of Acts of Parliament derived not from their enactment by Westminster but from their application to the Islands by the Sovereign as successor to the Dukes of Normandy. They recommended that a Royal Charter should be published declaring that Channel islands citizens are personal subjects of the Sovereign and that the Imperial Parliament has no power to legislate for the Islands. Access by the Islanders to the Sovereign would be the Sovereign would be through a Committee of the Privy Council consisting of persons nominated by the legislatures of the Islands. This Committee would also be able to advise the Sovereign on internal legislation. Advice on external affairs would be given as now by United Kingdom Ministers after consultation with the Islands. The memorandum dealt also with the question of membership of the European Economic community, arguing that as the Channel islands are the personal responsibility of the Sovereign and not that of the United Kingdom Government, the admission of the United Kingdom would not automatically include the Islands.

CHAPTER 33

CONCLUSIONS

INTRODUCTION

Our approach to the Islands

1459. Before we record our conclusions on all these matters, it will be as well for us to try to express the spirit in which we have approached the Channel islands and the Isle of Man. We have been conscious of the fact that, whereas in dealing with the United Kingdom we are all citizens of the country for whose constitutional relationships we are prescribing, this is not so in the case of the Islands – though we would add that we have had opportunities not often given to external bodies of understanding the true nature and actual working of their systems of government. That system, as we have said, is unique and not capable of description by any of the usual categories of political science. It is full of anomalies, peculiarities and anachronisms, which even those who work the system find it hard to define precisely. We do not doubt that more logical and orderly races than the British would have swept all these away long ago and incorporated the Channel Islands and the Isle of Man into the United Kingdom as fully as the Orkney and Shetland Islands (whose position, if the accidents of history had fallen out differently, might so easily have been the same as the Isle of Man's) were incorporated first in the Kingdom of Scotland and then in the United Kingdom.

1460. In saying this, we do not mean to begrudge the Islands their independence. On the contrary, anomalies seem to us to be things that should be, if not encouraged, at least accepted so long so they are cherished by those most directly affected and do no harm to others. We have not approached the Islands in any spirit of reforming zeal. We have found no signs that this was the desire of the Government of the United Kingdom, nor did anyone sin the islands accuse the Government of it. There are few grievances of any substance. Indeed, if only the constitutional relationships between the United Kingdom and the islands could remain as they have been in recent years (with the possible exception of some small adjustments) everybody would be happy and our task would disappear. If there are difficult problems, this is solely because of the impact of external events and the rapidly changing nature of the relationships between sovereign states.

Relevance of the Treaty of Rome

1461. A preliminary word also needs to be said about the Treaty of Rome. Its shadow, cast before, created the arguments we were called upon to consider, and dominated virtually all the evidence we heard in the Islands, at least on the question of the applicability of treaties, which by common consent was the most important part of our agenda. Every proposal bearing on the application of international agreements to the island was tested by the contribution it made to the solution of the problems raised by the Treaty. The problem has since been resolved by the successful negotiation by the United Kingdom of special arrangements for the Islands within the European Economic Community; these arrangements are summarised in paragraph 1532 below. But that does not mean that we can proceed with our conclusions in disregard of the Treaty. It stands as an example of the grave difficulties that can arise out of the application to the Islands of international treaties accepted by the United Kingdom. It may be difficult at present to imagine another such case. But then the Treaty of Rome itself could hardly have been imagined a generation ago. No settlement of the constitutional relationships

between the United Kingdom and the islands can afford to be based on the assumption that what has happened once will not happen again.

Existing constitutional relationships

1462. In considering, as required by our terms of reference, whether any changes are desirable in the constitutional and economic relationships between the United Kingdom and the Islands, it is natural that we should start by attempting to establish what those relationships are. We have noted that there are areas of uncertainty. The authorities in al the Islands, but not some other witnesses, agreed that the United Kingdom parliament has power to legislate for the Islands, but that the exercise of the power is limited by the convention that parliament does not legislate without the Islands' consent in respect of purely domestic matters. But what are purely domestic matters? How binding is the convention? In what circumstances is it proper for the Royal Assent to be refused to insular legislation? And what is the scope of the prerogative power of the Crown to legislate for the Islands by Order in Council? All these matters are in doubt or dispute.

1463. The first question we had to ask ourselves was whether we should seek to determine these issues and to draw up an authoritative statement of the present relationships. The evidence we received on the constitutional histories of the Islands shows that the issues are complex, and that earlier commissions or committees of enquiry into Channel islands constitutional matters expressed views which were not entirely consistent. The issues could be conclusively determined only by a court of law. It seemed to us in any case that our proper task was not to attempt to adjudicate on the matters in dispute in the existing relationships, but to consider what in the changed international situation the future relationships should be.

1464. This did not of course mean that we could ignore the existing relationships. Unless there is to be a radical change, any new relationships must grow out of the old. With the very few exceptions noted at the end of the last chapter, our witnesses did not propose any radical change. They did not want the Islands to lose the independence they now enjoy and they were not asking for any greater measure of independence, except in so far as this might be an incidental consequence of formal constitutional change designed only to preserve the Islands' existing autonomy in domestic matters. Had there been any substantial body of opinion, within the Islands or outside, discontented with the existing arrangements for their government, we are confident that this would have been brought to our notice. As it was, although organisations in both jersey and Guernsey referred in their evidence to dissatisfaction with some of the policies adopted in the Islands and attributed this to the undemocratic nature of the legislative assemblies, they argued only for the retention of the existing likes with the United Kingdom as being needed to place some restraint on the exercise of legislative powers in the Islands and not for any diminution of those powers. It has been made quite clear to us that all sections of the population of the Islands have a great pride in their independence and value it immensely. Incorporation in the United Kingdom, or any other form of close association involving representation in the Parliament at Westminster, is specifically rejected and unless at some future date there is a substantial reversal of opinion in the Islands, which at present seems inconceivable, there will be no grounds for considering any such solution.

1465. At the same time, the Islanders value no less their link with the Crown and have no desire to loosen it; and although we were told in all the Islands that the loyalty of the people is to Your Majesty and not to any United Kingdom Government, the practical links, both official and unofficial, with the United Kingdom are strong, and are tending to increase with the growing complexity of affairs and the improved means of communication. Only Mec Vannin in the isle of Man, which admitted to

having little support for its views, advocated complete independence. But Tynwald, in its evidence, said that its general objective was the evolution of the constitutional relationships between the Isle of Man and the United Kingdom towards more complete self-government; it wished to see established indisputably for the Manx people the right and the principle of self-determination, which it saw as a right, in the last analysis, to be independent or at least a right to negotiate for independence. Tynwald wished us to endorse its view that this right exists as much for the dependencies which form part of the British isles as for those further afield which come under the control of the Foreign and Commonwealth Office. The representatives of Tynwald stressed that the Isle of Man was not seeking complete independence at the present time; but they wished it to be recognised that the island had a right at any time to move further in this direction if that appeared to Tynwald to be necessary in order to preserve its autonomy in domestic matters.

1466. We believe that the United Kingdom and Island Governments will always wish, for reasons of sentiment as well as on practical grounds to go to very great lengths to avoid a situation in which any Island would feel impelled to seek independence. If the Islands were to sever their connexions with the United Kingdom we have little doubt that they would be presented, in the long term if not immediately, with grave problems. Nor, in spite of words that are sometimes uttered in the heat of debate, do we believe that the vast majority of the inhabitants of any of the Islands would be prepared, except as a last resort, seriously to contemplate cutting themselves off from that community with the people of the United Kingdom which their present status enables them to enjoy.

1467. Independence was a possibility that the |Islands did indeed have to consider when it became apparent that this was the only alternative to inclusion in the European Economic Community on the terms that had been negotiated for them. They were told that in view of the peculiar nature of the Treaty of Rome the United Kingdom Government did not wish to impose accession on them. The only means by which an Island could have been freed of all Treaty obligations would have been by its assumption of independence. No doubt some special relationship with the United Kingdom would have been maintained, but this could have been brought about only by agreement between sovereign states and, on the United Kingdom's side, in conformity with its Treaty obligations.

1468. Faced with these alternatives, all the islands decided in favour of entry into the Community on the special terms, and we have no doubt that they were much relieved that the problem had been resolved in a way which allowed their constitutional relationships with the United Kingdom to continue largely undisturbed. It was clear from what we were told in the Islands that no substantial change in those relationships is desired. Most people would indeed be happy to see the old relationships continue if that were possible. It is not dissatisfaction with them, but changes in circumstances in the world outside in which they must operate, that have necessitated a review. The sensible course, and one which will be generally acceptable, will be to preserve as much as possible of the existing relationships, adapting them only so far as this is necessary to meet the new circumstances. Given then that our task was to examine the need for adaptation, it became important, in order to establish the starting point, to formulate our own views on the areas of the existing relationships which were in doubt, even though those views could not be authoritative in the sense that they would be binding on anyone else.

1469. All our official witnesses accepted that Parliament has power to legislate for the Islands and that, in some matters at least, the exercise of this power is not dependent upon the Islands' consent being given. It has, however, been the practice not to legislate for the Islands without their consent on matters which are of purely domestic concern to them. There has been strict adherence to the practice over a very long period, and it is in this sense that it can be said that a constitutional

convention has been established whereby Parliament does not legislate for the islands without their consent on domestic matters.

1470. it seems worth asking why the convention was established in the first place and why it has lasted so long. The answer is surely that it was convenient to both sides that as much a s possible of the law governing the Islands should be made in the Islands; the Islands' legislatures were fully competent to deal with domestic matters and it satisfied the self-reliant spirit in the Islands that they should; with few exceptions it was easy to identify domestic matters; and it was sufficient for the United Kingdom's interest to ensure that, by frequent consultation and discussion, the islands' policy did not get seriously out of line with that of the United Kingdom so far as the interests of third countries were concerned. So long as third countries were not concerned in the subject matter of Island government, there was not reason for intervention by the United Kingdom.

1471. In these circumstances there was until recently no occasion to enquire whether the convention would have the effect in all circumstances of precluding parliament from legislating for the Islands on a domestic matter without their consent. The question of the extent of Parliament's powers hardly arose. When a few years ago it did arise, over the broadcasting issue in the Isle of Man, technical considerations of a novel kind were present, and it was possible to regard the issue as one of determining on which side of a more or less static borderline the subject fell. But the borderline is now moving as the tendency grows for international agreements to relate to matters which in the past were regarded as domestic. It is arguable that any matter which becomes the subject of international agreement can no longer be regarded as of purely domestic concern and is therefore not covered by the constitutional convention which limits the scope of parliament's action. But whether or not one adopts this simple view, it is apparent that, with growing international co-operation and mutual dependence, any rule which depends on drawing a distinction between matters which are domestic and those which are not becomes increasingly difficult to apply, if needed it is not largely meaningless.

1472. The conclusion we draw is hat despite the existence of the convention, Parliament does have power to legislate for the Islands without their consent on any matter in order to give effect to an international agreement. There appear, in any event, to be good grounds for accepting the more extreme view that if Parliament has power to legislate for the Islands at all, which we believe not to be in doubt, there are no circumstances in which it would be precluded from exercising this power. Lord Reid, giving judgement in a Southern Rhodesia case[1] before the Judicial Committee of the Privy Council in 1968, said:-

> "The learned judges" (in Southern Rhodesia) "refer to the statement of the United Kingdom Government in 1961 ... setting out the convention that the Parliament of the United Kingdom does not legislate without the consent of the Government of Southern Rhodesia on matters within the competence of the Legislative Assembly. That was a very important convention but it had no legal effect in limiting the legal power of Parliament.
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> It is often said that it would be unconstitutional for the United Kingdom Parliament to do certain things, meaning that the moral, political and other reasons against doing them are so strong that most people would regard it as highly improper if Parliament did these things. But that does not mean that it is beyond the power of Parliament to do such things. If Parliament chose to do any of them the courts could not hold the Act of Parliament invalid. It may be

[1] *Madzimbamuto v. Larner-Burke* (1969 1 Appeal Cases at pp. 722-3).

> that it would have been thought, before 1965, that it would be unconstitutional to disregard this convention. But it may also be that the unilateral Declaration of Independence released the United Kingdom from any obligation to observe the convention. Their lordships in declaring the law are not concerned with these matters. They are only concerned with the legal powers of Parliament."

This passage was quoted by the Jersey Constitutional Association in its supplementary evidence to us. The Association was drawing attention to the consequences of conceding that Parliament has any power to legislate for Jersey. In none of the Islands do the authorities deny that this power exists in some form, and we were not persuaded by the evidence of the Association that it does not.

1473. Our own conclusion therefore is that in the eyes of the courts Parliament has a paramount power to legislate for the Islands in any circumstances, and we have proceeded on this assumption. This does not, of course, mean that Parliament should be any more ready than in the past to interfere in the Islands' domestic affairs and any less mindful of the need to preserve their autonomy. On the contrary, in the changed international situation greater vigilance may be needed. But if, exceptionally, circumstances should demand the application to the Islands without their consent of measures of a kind hitherto regarded as domestic, then Parliament would, in our view, have the power to enact the necessary legislation.

INTERNATIONAL AGREEMENTS

1474. Looking to the future our main concern has been to see if means can be found of reconciling the Islands' autonomy in domestic matters with the United Kingdom's responsibility for their external relations. We have fully considered the proposals put forward by the Island Governments and other witnesses, and have tested the proposals by examination of the witnesses in the Islands. We have received from the Home Office and the Foreign and Commonwealth Office comments on the proposals and their own proposals for reducing to a minimum the area of potential conflict, and we have had full discussions with officials of the departments.

A new declaration

1475. The first proposal put to us in Jersey and the Isle of Man was that the United Kingdom Government should make a new international declaration, perhaps similar to the declaration made in 1967 in respect of the West Indies Associated States, to the effect that in future any international treaty ratified by the United Kingdom Government without a particular Island being named would not apply to that Island. This would restore to the Islands the position which the declaration made in 1950 was intended to secure for them, that they would not be bound by treaties on which they had not been consulted or which, when they were consulted, they did not wish to have applied to them. The Islands told us that they had been led to believe during he course of discussions with the Home Office while the Vienna Convention of 1969 on the Law of Treaties was being negotiated that a declaration which would be helpful to them might be made when the Convention came into operation. When we discussed the matter with them, however, the view of the Home Office and the Foreign and Commonwealth Office was quite firmly that the difficulties could not be resolved in that way since they could see no prospect of the proposed new declaration securing international acceptance, without which it would be of no effect.

1476. We have no means of testing this view of the departments. It is certainly true that the Islands around the British shores are very different, in terms of geography, history and relationships with the

United Kingdom, from the West Indies Associated States. Even if a declaration were to be made and accepted internationally, it would have only limited value. International agreement to the exclusion of the Islands from a particular treaty which the United Kingdom wished to ratify would not necessarily follow. It should be borne in mind that the inclusion of an Associated State in an international treaty is not dependent on its consent being given, though the State may as an alternative to inclusion terminate its association with the United Kingdom. Moreover the declaration would have no effect in relation to a treaty, such as the Treaty of Rome, applying in terms to all territories for whose international relations a signatory state has responsibility. For these reasons we do not consider that a new declaration offers a solution to the problem.

Division of responsibility for international relations

1477. The next proposal was one put forward by Tynwald that there should be a formal division of responsibility between the United Kingdom and the Isle of Man Governments for the Isle of Man's external relations. On matters of domestic concern the Isle of Man Government would have responsibility, thought it might ask the United Kingdom Government to act on its behalf. While we have some sympathy with the reasoning which prompted the proposal – that such an arrangement would demonstrate the United Kingdom's inability to commit the Isle of Man without its consent to any agreement on a transferred matter – we regard it as wholly impracticable. It attempts to give the Island what we believe would be a novel status in international law, that of a state fully independent for some purposes but not for others. We believe that the arrangement would have no chance of being internationally accepted. It would be seen to be simply a device to permit avoidance of treaty obligations in territories for whose international relations the United Kingdom had at least partial responsibility. IN any event, because of the difficulty of dividing matters which may become the subject of international agreement into those which are of purely domestic concern and those which are not, it would in our view prove to be unworkable.

International opinion

1478. There is one basic difficulty about suggestions for general declarations, divisions of responsibility and other devices for enabling the islands to continue to enjoy a special status in international law which we do not think that the inhabitants of the Islands, including many of those who carry the responsibility of government, sufficiently appreciate. All would require general acceptance by the community of nations, and there has been a sharp movement in that community in recent years against all kinds of special status. This has had two distinct impulses. One, to which we have already referred, is the dislike among the newly emergent nations of any sort of dependency. The other is illustrated by the main purpose of the Treaty of Rome itself, which is precisely to work towards uniformity of law and administration throughout the territories of its member states. The preservation of their special position, which seems so natural to the people of the Channel islands and the Isle of Man, and which the British people regard with the sympathy born of their long historical association, is not a cause that can always count on support in the international arena.

RESPONSIBILITY FOR LEGISLATION

The Jersey and Isle of Man Bills

1479. The proposals for setting formal limits on the power of Parliament to legislate for the islands also derive principally from the apprehension of unwelcome obligations being imposed in relation to the Islands as the result of their being included in a treaty signed by the United Kingdom

Government. If there is no legal means of excluding the Islands from the treaty, the argument goes, let it at least be for them to decide its legislative implementation.

1480. The principal proposal of both the States of Jersey and Tynwald is that there should be an Act of Parliament making a formal division of legislative and executive responsibilities between the United Kingdom and the Islands. Each submitted the draft of a Bill to show the kind of measure it had in mind. The broad effect of the proposal is that the United Kingdom Government would have a continuing responsibility for the islands, and Parliament would have a paramount power to legislate for the Islands, on specified matters only, being matters considered to affect the vital interests of the United Kingdom or to transcend the Islands' domestic concerns. The United Kingdom Government would continue to be responsible for the Islands' external relations; but Parliament would not be able to legislate to give effect to an international agreement in the Islands without their consent unless the subject matter of the agreement was one for which it possessed paramount powers. The Home Office and the Foreign and Commonwealth Office found the proposals unacceptable because they would leave the United Kingdom Government with responsibility both for the good government of the Islands and for their external relations, but without the power needed to exercise that responsibility.

Difficulties of principle

1481. There would be difficulties both of principle and of detail. The representatives of the States of Jersey told us that their object in proposing such a statute was not so much to change the existing state of affairs as to crystallise it in law. But, as we have seen, there is a difference of opinion between the States of Jersey and the Home Office on what the present position is, and the difference goes to the heart of the matter. The States of Jersey maintain that the right of Parliament, and of the Crown by use of the prerogative, to legislate for Jersey in domestic matters without the consent of the States has, by virtue of centuries of non-use, ceased to exist. The Home Office contends that it is still there, unused but still usable, and this is the view we have ourselves taken. The draft Bill proposed by the States, though it might not alter the present state of affairs as they see it, would certainly run counter to this view. That, indeed, may be thought to be its main purpose. Clearly, therefore, it would be, to say the least, very difficult to secure agreement on such a Bill, and without the agreement of the United Kingdom Government it would stand no chance of acceptance by Parliament.

Difficulties of detail

1482. if this major hurdle could be overcome, there would remain the difficulties of detail. The greatest of these would concern the selection and definition of subjects for which the United Kingdom Parliament and Government would retain paramount power. The lists of subjects specified in the Jersey and Isle of Man Bills are, as we have noted, by no means identical. Though it is possible that a case might be made for treating the individual Islands differently in respect of some particular matter, this would be exceptional, and generally one would expect the subjects of continuing concern to the United Kingdom to be the same in all the Islands.

1483. if a decision in principle to have an Act had been taken, it would no doubt be possible to secure agreement on many of the debatable issues. Others would almost certainly cause difficulty. Broadcasting, which Jersey would leave with the United Kingdom but the Isle of Man would not, is an obvious example in the light of the history of disputes between the United Kingdom and Isle of Man Governments over the last few years. A solution might be found by providing in the Act that

the United Kingdom's paramount powers should extend only to certain prescribed aspects of broadcasting; similarly in relation to other subjects the areas of the reserved powers would be carefully defined. The departments, however, expressed the view that the practical difficulties of distinguishing such areas with any degree of precision for the purpose of drafting were awesome. Our own enquiries suggest that this was by no means an over-statement.

1484. A further difficulty arises out of the impossibility of knowing what new subjects may have to be legislated for in the future. Earlier legislators could not possibly have foreseen the problems that have arisen in the field of broadcasting. From time to time, therefore, the need might arise for additions to the list of reserved matters. But under the arrangements proposed the Act would include a provision permitting it to be amended only by agreement, and this would well give rise to difficulty. A possible alternative to the comprehensive listing of subjects would be to include in the Act a provision in general terms, if appropriate wording could be devised, reserving to the United Kingdom powers over matters transcending the frontiers of the Islands. The extent of those powers in relation to a subject not specifically dealt with in the Act would then in the absence of agreement have to be determined by the courts or by some other tribunal. The issues that would be likely to arise do not, however, seem to be of a kind which it would be likely to arise do not, however, seem to be of a kind which it would be appropriate, even if it were practicable, to have settled purely as a matter of law. And much of the value of the statute would be lost if it could not be counted upon to provide a certain answer to any question which might arise.

1485. The problem here is very different from the one we have earlier considered of drafting a statute conferring powers on a subordinate legislature and government in part of the United Kingdom. In that case the precise scope of the powers conferred would be of less importance, since the statute would itself provide a mechanism for adjustment. Parliament would retain paramount power in all matters and could at any time, by unilateral action if necessary, alter the definition of transferred matters. But in the case of the Islands the whole essence of the problem is to define the matters in which Parliament would be left without powers in relation to the Islands and to remove from Parliament the ability to alter that definition without the Islands' consent.

The position of Parliament

1486. Despite these formidable difficulties, if there were to be an agreement on the desirability of having the constitutional relationships enshrined in an Act of Parliament, and a readiness on all sides to compromise in order to secure an agreed draft, a Bill might be prepared. Its enactment would then depend on the willingness of Parliament to restrict its own powers in relation to the Islands in the way proposed. It might be prepared to do so if advised by the government of the day, but there could be no certainty of this.

1487. Another question which arises is whether Parliament could bind its successors not to legislate for the Islands without their consent except in certain prescribed fields. On this Jersey and the Isle of Man, each advised by an eminent constitutional lawyer, took different views. Jersey thought that it could, though acknowledged that the matter was not beyond doubt. The Isle of Man accepted that it could not and that enactment of its Bill would in legal theory leave Parliamentary sovereignty unimpaired in all fields. The representatives of Tynwald said that, adapting the language of Section 75 of the Government of Ireland Act 1920, notwithstanding anything contained in the proposed Act, the supreme authority of the Parliament of the United Kingdom would remain unaffected and undiminished over all persons, matters and things in the Isle of Man. But they would not include in the Act a section comparable to Section 75, and they saw the Act as binding future Parliaments, in

practice if not in legal theory, in a way that Parliament has not been bound in relation to Northern Ireland by the provisions of the 1920 Act.

1488. Both Jersey and the Isle of Man assume therefore that, whatever the position might be in law, the proposed enactment would have the desired effect of preventing Parliament from legislating in future in breach of its provisions. We understand that it is one of the most disputed questions in constitutional law whether there are any circumstances in which Parliament can restrict the freedom of its successors to legislate. The legal effect of the enactment of legislation proposed by the Islands would therefore be uncertain. Future Parliaments might well be tempted, in the face of international pressures or for some other reason, to legislate for the Islands where the Act purported to preclude their doing so, and the Act might not be so effective an instrument for the defence of the Islands' interests as they would wish.

Effectiveness of proposed legislation

1489. The Act could nevertheless be expected, despite its limitations – of doubtful legal effect, with provisions based on compromise and with an element of uncertainty in respect of future developments – to give the Islands at least some often protection they seek for their autonomy in domestic affairs. It would introduce an element of rigidity into relations between the United Kingdom and the Islands. That would indeed be its purpose. There is at the same time much to be said for the contrary view, which was put to us by the States of Guernsey, that the present unwritten relationships have the advantage of flexibility, enabling adjustments and innovations to be made to meet new developments. The loss of this flexibility, and the replacement of a largely informal relationship by a more formal one would, we think, to be worthwhile have to bring some very solid advantages to the Islands.

1490. How effective would the new formal constitutional relationships be in achieving their primary object of permitting the Islands to decide whether or not to become parties to international agreements ratified by the United Kingdom? This would depend on the acceptance by other countries of the United Kingdom's inability to incur international obligations in some fields in respect of territories for whose international relations it was responsible. Probably in relation to most international agreements there would be no difficulty. But there is no difficulty now in the great majority of agreements entered into by the United Kingdom, with the Islands choosing whether or not to become parties to them. It would be only in relation to the relatively small number of agreements where difficulty may arise under the existing relationships that the effectiveness of the new formal relationships would be tested. In such cases the United Kingdom Government would presumably have to attempt, by securing the inclusion in the treaty of an optional territorial application clause, or by making reservations at the stage of ratification, to give effect to the Islands' wishes.

1491. The following questions then arise. Should the United Kingdom Government be placed in the position of being obliged to press for international acceptance of terms which it regards as unreasonable? Would the Islands' legislative independence strengthen the hands of the United Kingdom Government in negotiating international agreements on their behalf? And what would happen if the united Kingdom Government failed to secure acceptance of the Islands' wishes and the Islands remained adamant?

1942. To the first question we think the answer is undoubtedly that the United Kingdom Government should not be placed in such a position. To give an extreme example, it would be

intolerable for it to be obliged to press on behalf of one of the Islands for exclusion from an international agreement on human rights if it were not satisfied that there were good grounds for the exclusion. It must be doubted also whether much reliance could be placed on the Islands' changed status to secure international compliance with their wishes. Other countries would be under no compulsion to agree to their exclusion from a treaty or to make special provision for them. If there appeared to be no good case for not applying to the Islands a treaty to which the United Kingdom wished to adhere, the United Kingdom Government would be under pressure to bring the Islands in with it. The alternatives for the United Kingdom might, as now, be to remain outside the agreement or to bring the islands in on the same terms or with such differences as were regarded as internationally acceptable. If the United Kingdom Government considered it to be in the United Kingdom's interests to go in, it would again be intolerable that this should be prevents by the inability to secure the agreement of the Islands.

1943. It was represented to us that there were many precedents, in countries with a federal type of constitution, for the situation in which powers of the United Kingdom Government in external maters affecting the Islands would not be coextensive with those of the United Kingdom Parliament, and that there was no reason to think that difficulties would arise in practice no matter how anomalous the situation might appear in theory. In our view, however, the circumstances are by no means comparable. The range of independent powers enjoyed by the provinces in a federation is less (for example, in respect of taxation and customs) than those enjoyed by the Islands; so therefore, is the scope for disagreement on a matter which is to become the subject of an international agreement. Within a federation, too, internal pressures to produce agreement can more easily be brought to bear. In the case of the United States of America the constitution specifically provides that all treaties made under the authority of the United States shall be the supreme law of the land, over-riding anything in the constitution of r laws of any state. The Islands are not seeking a federal relationship with the United Kingdom. They have a wish to retain a very much greater degree of independence and the ability to adopt different policies to an extent that would not be practicable within a federation. The risk of conflict is potentially greater.

Our conclusion on the proposed legislation

1494 Our firm conclusion is that the formal division of legislative and executive responsibilities between the United Kingdom and Island authorities does not provide a solution to the problem of maintaining the Islands' autonomy in domestic affairs while preserving the essential domestic and international interests of the United Kingdom. Even if the formidable difficulties of drafting could be overcome to the satisfaction of the United Kingdom and Island Governments so far as concerned their own domestic relationships, it would not overcome the potential difficulties in the international field. So long as the United Kingdom remains responsible for the international relations of the Islands it must have powers in the last resort to secure compliance in the Islands with international agreements. We see no possibility of circumventing this by making a division of responsibility for international relations; the United Kingdom's ultimate responsibility, if it is to be retained, must extend over the whole field of government.

1495. It is perhaps worth noting that even if the United Kingdom ceased to be responsible for the international relations of the Islands and they were to become independent, their freedom of action would still be constrained by their membership of the international community and the need to adapt their policies to political and economic circumstances outside the Islands, including the policies of their very much more powerful neighbours. In the particular case of the Treaty of Rome, by which, as we have said, all arguments had to be tested, the total exclusion of the Islands from the Community,

with its consequences of tariff and possibly migration and other barriers between them and the United Kingdom, would have set them problems different from those posed by total inclusion, but hardly less severe.

1496. It follows from our conclusion on the proposed legislation that we regard as unacceptable Tynwald's suggestion that it should have the power to revoke extensions of United Kingdom legislation to the Isle of Man and, in so far as it relates to the proposal for a division of legislative competence, the suggestion that there should be a division of Island legislation into that for which Royal Assent would be given as now by submission to Your Majesty in Council and that for which Royal Assent would bee given by the Lieutenant Governor under delegated powers. Provision for the grant of Royal Assent by the Lieutenant Governor would not be open to objection in principle if machinery were to be devised, as was done in the case of Northern Ireland under the 1920 constitution, for reserving a Bill for the signification of Your Majesty's pleasure hen this was desired. We doubt, however, whether such an arrangement would make a significant contribution to the efficient despatch of business.

THE RELATIONSHIPS IN PRACTICE

1497. Although we have thus felt constrained to return a negative answer to the main proposals put before us by Jersey, Alderney and the Isle of Man, and in doing so to agree with the views of Guernsey and Sark, it does not in the least follow that we are lacking in sympathy with the Islands in the position in which they find themselves. It is not from any lack of willingness to help that we reach our conclusion, but from the facts of the international situation as well as from the inherent difficulties of providing a legislative solution. Nor, within the firm lines of the conclusion in principle, must it be assumed that there is no scope for practical measures to lubricate the relationships and to ameliorate the consequences for the Islands. To these we now turn.

Rights and obligations

1498. The first point we would make is that both the United Kingdom and the Islands have not only rights but also obligations towards each other. The Islands have a right to respect for their autonomy in domestic affairs and to the observance by Parliament of the convention that it does not in the ordinary course legislate for the Islands without their consent on such matters. But coupled with this is an obligation to give all reasonable assistance and co-operation to the United Kingdom authorities in the exercise of their domestic and international responsibilities. The United Kingdom authorities, for their part, have a right to expect this co-operation and in the last resort to intervene if it is not given and intervention is necessary to safeguard their own essential interests. In turn they have the obligation to give all reasonable assistance to the Islands, to respect their autonomy and to work for its preservation.

Circumstances justifying the exercise of the United Kingdom's paramount powers

1499. This statement, in the most general terms, will probably not be disputed except by those who believe, which we do not, that it is practicable to define an area of domestic affairs in which the Islands' autonomy should be absolute. One can give a little more precision to it by examining rather more closely the circumstances in which the United Kingdom should be free in practice to exercise its paramount powers. We suggest that they may be considered under five heads – (I) defence, (ii) matters of common concern to British people throughout the world, (iii) the interests of the Islands, (iv) the international responsibilities of the United Kingdom and (v) the domestic interests of the

United Kingdom. We would stress our view that an element of opinion and of political judgement may sometimes enter into a decision whether or not the exercise of paramount powers is justified, and that the question is not one that can be properly determined by a court of law or by any other independent tribunal by the application of a body of established principles. Our five headings are not intended to be definitive and they are not mutually exclusive; they are suggested merely for convenience.

(i) Defence

1500. Both the Jersey and Isle of Man draft Bills make provision for the United Kingdom's paramount powers to be exercised in relation to defence, and, following the terms of the West Indies Act 1967, avoid the difficulty of definition by leaving it to the United Kingdom' to decide whether or not a particular matter relates to defence.

(ii) Matters common to British people throughout the world

1501. The Islands accept also that there is a category of matters, which in the Tynwald evidence are referred to as matters common to British people throughout the world, to which the United Kingdom's paramount powers should extend. Both the Jersey and Isle of Man draft Bills include Succession to the Throne and the Royal Style and Titles; the Isle of Man draft includes also nationality and citizenship. Although there is room for differences of opinion about the range of matters to be included in this category, its general scope is fairly clear; it embraces all matters in which uniformity of policy is essential throughout Your Majesty's territories. In the Stonham Working Party the Southern Rhodesia Act 1965 was cited as an example. The Act, which declared Southern Rhodesia to be part of Your Majesty's dominions and empowered the Privy Council to make orders for various purposes connected with Southern Rhodesia, had been applied to the Islands not by virtue of an Order in Council but by express provision applying it to all Your Majesty's possessions. The Isle of Man, while conceding that uniformity of legislation was desirable, had represented that Tynwald should instead have been given the opportunity to pass legislation of its own. Although the difference between the United Kingdom and Isle of Man Governments in this instance was one of means rather than ends, the case does serve to illustrate the difficulties that would attend any attempt to make a statutory division of legislative responsibilities. We do not believe that in practice, however, given goodwill on both sides, any serious differences are likely to arise in relation to matters falling under this general heading.

(iii) The interests of the Islands

1502. The Home Office and the Foreign and Commonwealth Office listed as one of the considerations having a particular bearing on proposals for change in the constitutional relationships the ultimate responsibility of the Crown for the good government of the Islands. In this respect they regarded the Islands as being in a category apart from all other dependencies of the Crown; since the British Islands are an entity in the eyes of the world, the United Kingdom Government would be held responsible internationally if practices in the Islands were to overstep the limits of acceptability. The States of Jersey maintained that Parliament's powers to legislate for the Islands other than at the request of the States should be exercisable only in the event of grave internal disruption. For the isle of Man, Tynwald acknowledged that the United Kingdom Government must have a power of intervention in pursuance of its ultimate responsibility for good government. There is room for difference of opinion on the circumstances in which it would be proper to exercise that power. Intervention would certainly be justifiable to preserve law and order in the event of grave internal disruption. Whether there are other circumstances in which it would be justified is a question which is so hypothetical as in our view not to be worth pursuing. We think that the United Kingdom Government and Parliament ought to be very slow to seek to impose their will on the Islands merely on the grounds that they know better than the Islands what is good for them; there is ample evidence in the differences between United Kingdom and Island legislation in social matters to show that this policy has in fact been followed for very many years.

(iv) International responsibilities

1503. The fourth heading of circumstances justifying the United Kingdom's intervention in the domestic affairs of the islands concerns international responsibilities. We have already discussed this matter fully. In summary our views are as follows. A claim by one of the Islands for exclusion from an international agreement or for special terms must be reasonable in all the circumstances. The Islands cannot expect, without very good cause, to be excluded from an agreement which lays down minimum standards of conduct or if exemptions would seriously damage the object of the agreement or prevent the United Kingdom's participation in it. But if the Islands take up and, after consultation, maintain a position which is not untenable or unreasonable, the United Kingdom Government should, we think, attempt to secure its international acceptance, even though this may make the Government's negotiating position more difficult.

1504. It must be accepted, however, that circumstances may arise in which an international agreement will be applied to the Islands against their wishes and that this may come about through no fault of the United Kingdom Government, which may have tried but failed to secure acceptance of the Islands' views. If in such a case legislation needed to implement the agreement in the Islands is of a kind which would ordinarily be enacted by the Island legislatures, then the Islands should, unless the matter is of great urgency, be given the opportunity to enact that legislation. Only in the event of their unwillingness or failure to do so should United Kingdom legislation be applied. If, in a particular case, the implementation of an international agreement were considered to impose an undue financial or administrative burden on the Islands, we do not see why arrangements should not be made for United Kingdom assistance to be given; but this would be a matter for separate negotiation and not a condition of legislation if legislation were need to implement the agreement.

(v) The protection of the United Kingdom's domestic interests

1505. The need for intervention in the affairs of the Island under the last of our five headings, to protect the United Kingdom's domestic interest in the absence of international treaty obligations, is likely to be rare. But relationships are so close that it would be possible for practices to develop in the Islands, particularly in the commercial field, that would be detrimental to the well-being of the

British Islands as a whole. The possibility that intervention in the affairs of the Islands to protect United Kingdom interests may be needed has therefore to be envisaged.

1506. The Isle of Man has already seen this as a problem. Its proposals for a division of legislative competence between Parliament and Tynwald, and for a division of insular legislation for the purposes of signifying the Royal Assent, were in part at least directed to ensuring that the United Kingdom Government could not, to suit its own domestic purposes, arbitrarily set the dividing line between the domestic affairs of the isle of Man and those which transcend the frontiers of the Island. Its concern, as we have earlier noted, arises largely from dissatisfaction with actions taken in recent years by the United Kingdom Government in the field of broadcasting, and we can best express our own views under this fifth heading by reference to events in this field.

Lessons of the disputes on broadcasting

1495. Although the broadcasting issue is in many ways unique – none of our witnesses could think of another subject which would be likely to present such complex problems affecting the relationships between the United kingdom and Island Governments – it provides an interesting case study of the practical application of those relationships, in both the international and the domestic fields, and some conclusions of more general application can be drawn from it.

1496. The brief account we have given in paragraphs 1421-1429 of the protracted disputes on broadcasting matters shows that the United Kingdom Government has sought both to comply with its international obligations and to protect the United Kingdom's domestic interests. Indeed the two have perhaps inevitably, been intermingled, and it has not always been clear on what ground the Government was purporting to act. In the dispute on Manx Radio it insisted on keeping in its own hands the control of frequencies which is required by international agreement, and it refused on domestic grounds to allow Manx Radio to operate with such power as would allow its programmes to be received on a regular basis in any part of the United Kingdom. In the pirate broadcasting issue the need to ensure compliance with the European agreement to suppress unlicensed stations may have been the paramount consideration, but there was also a domestic interest in ensuring that stations whose programmes would be received in the United Kingdom could not be supplied and serviced in the Isle of Man.

1497. As regards international agreements, the Isle of Man has not, at least after the rejection of its initial request for a licence to broadcast to Europe, sought to operate in breach of international regulations and has been prepared to undertaken, if given its own powers of licensing, to ensure the observance of those regulations. The question arises whether it would be practicable to exercise all the necessary controls if the United Kingdom and Isle of Man governments shared the licensing powers, as the Isle of Man has proposed. This is mainly a technical question which we are not competent to answer; but as the United Kingdom has to work with the limited number of frequencies allocated by the International Telecommunications Union for use in the British Islands as a whose, we can see that there may be advantage in keeping the allocation and control of frequencies in the hands of the responsible United Kingdom Minster (as the Channel Islands have accepted) and that any arrangement for shared control might indeed be impracticable. So far as the pirate broadcasting issue is concerned, the United Kingdom Government appears, in applying the United Kingdom Act to the Isle of Man, to have acted in accordance with the principles which we have suggested as being appropriate to the application of international agreements.

1498. If the allocation and control of frequencies does remain in United Kingdom hands, there is a clear obligation to provide for the reasonable requirements of the Islands, that is, to see that they get their fair share of available frequencies. The main dispute with the Isle of Man has concerned the refusal to permit broadcasts from the Island to be receivable on a regular basis in any part of the United Kingdom. Tynwald claims that this restriction, imposed only to protect the United Kingdom's domestic interests and not necessary for international purposes, is in breach of the conventions governing the constitutional relationship. Placing a somewhat unexpected interpretation on the phrase "transcending the frontiers of the Island", it maintains that the United Kingdom Government's powers of intervention in the Island, so far as they exist, are restricted to matters which affect states outside the British Islands, and that the Isle of Man constitutionally has complete freedom to do anything which is not in conflict with international obligations, no matter what the consequences might be for other parts of the British Islands.

1499. This view of the United Kingdom's paramount powers appears to us to be altogether too restrictive. It would not, for example, seem to be sensible that a state should enter into a series of international agreements designed to promote mutual interests, and then be unable to protect its own interests against the action of a semi-autonomous community for whose international relations it was responsible. While relations between the United Kingdom and the Islands are not directly affected by international agreements, the content of such agreements ought properly to be regarded as a factor to be taken into account in determining what those relations should be. For the rest, the nature and extent of the intervention by the United Kingdom in its own interests in the affairs of the Islands must be a matter of judgement, weighing the potential damage to United Kingdom interests against the invasion of the Islands' autonomy. In striking this balance, it seems to us that the United Kingdom should be very careful not to confuse its essential interests with its own convenience and preference or the damage to those essential interests with mere irritation or annoyance.

1500. It is not for us to express a view on whether the stand taken by the United Kingdom Government in relation to broadcasting from the Isle of Man is or is not in all the circumstances a reasonable one. Decisions in matters of this kind, as we have said, have to be taken not by application of a rigid set of rules but in the light of political judgement. The history of the dispute does, however, point to the importance of identifying and specifying clearly the international obligation or essential United Kingdom interest which is to be safeguarded when intervening in Island affairs or refusing to meet Island requests. From what we have been told, it seems possible that this has not always been done with certainty or consistency in the matter of broadcasting.

Our conclusions on the exercise of paramount powers

1501. We have considered under five headings – defence, matters of common concern to British people throughout the world, the interests of the Islands, the international responsibilities of the United Kingdom and the domestic interests of the United Kingdom – the circumstances in which in practice it would be proper for the United Kingdom to exercise its paramount powers. We believe that, with recognition on each side of the rights and obligations of the other, including obligations in the international field, most matters can be satisfactorily arranged. Nevertheless, the hard core of difficulty remains. Accepting that the number of cases of real difficulty will in any event be very few, and that the number that will not yield to treatment by the established methods, expanded and improved in the ways the United Kingdom government departments have proposed, will be even fewer, we must face the fact that cases where there is an irreconcilable conflict of view may still arise. In such cases we are firmly of the opinion that the United Kingdom Government has, and should

retain, the right to decide, and that Parliament has, and should retain, the right in the last resort to legislate for the Islands.

THE SETTLEMENT OF DISPUTES

A proposal for a Standing Committee

1502. As we have reached this firm conclusion, it seems to us to be all the more necessary to review and if possible improve the machinery for ensuring that as few matters as possible – ideally, none at all – reach this last resort. We received a good deal of evidence relating to the machinery for consultation between the United Kingdom and the Islands and for the resolution of disputes.

1503. Serious disputes in the past have been rare and we have no doubt that in future solutions will continue to be found by informal consultation to the vast majority of the problems that arise. In the case of the Isle of Man, as we have seen, the informal processes have been reinforced, in accordance with a recommendation of the Stonham Working Party, by the establishment of a formal standing committee. The States would like to see a similar committee established for that Island.

1504. At the time our enquiries were made, it was too early to assess the contribution which the Isle of Man Committee may be able to make to ironing out any difficulties in relations between the Island and the United Kingdom. The report of the Stonham Working Party shows that when the establishment of this Committee was first mooted the Home Office representatives thought that any value it might have would be marginal. It is true that there are potential disadvantages in the introduction of formal machinery of this kind. Because it exists, people will want to use it. Any tendency to place less reliance on the informal channels carries the risk of rendering those channels less fruitful. Difficulties may tend to be magnified. Business may be transacted more slowly but with no greater certainty. The departments have pointed out that when international agreements are being negotiated speed is often essential.

1505. Despite these considerations we believe that there would be value in having some formal machinery for consultation. In recent years there has been a notable increase in the number of matters which have not been easily resolved through the normal informal channels of communication. The increase is attributable to the growing complexity of domestic administration and the greater international involvement in affairs formerly regarded as purely domestic. These trends are likely to continue. Relations with the European Economic Community alone are likely to throw up many problems which will not be quickly or easily resolved. The ability to refer them to a formal negotiating body may be helpful. And as the questions for consideration will generally be of concern to all the Islands we recommend the establishment of a standing consultative committee on which the Governments of the United Kingdom and of all the Islands are represented. We believe that there would be advantage in having a single committee rather than a separate committee for each Island. The committee would be empowered to consider maters referred to it by any of the governments concerned, which would generally be matters on which agreement could not be reached through the normal processes of informal consultation, and it would have a general responsibility to keep under review relations between the United Kingdom and the Islands. It would be able to appoint sub-committees to consider particular matters, including matters of concern to one Island only.

A proposal for a Council of the Islands

1506. We believe that a committee of this kind, used to supplement but not to replace consultation through the normal channels, would be found to serve a useful purpose. But whatever procedures there may be for consultation between the United Kingdom and the Islands on matters of common concern, and however great may be the willingness to reach agreement, cases may arise in which the United Kingdom Government will feel impelled to act against the wishes of one or more of the Islands. The question therefore arises as to the nature of the machinery, if any, which should exist for hearing appeals against decisions of the United Kingdom Government. Under existing arrangements, as we have seen, there is a right of petition to the Crown. Petitions are referred to a Committee of the Privy Council which is made up of United Kingdom Ministers. This is regarded, particularly in the Isle of Man in the light of recent experience over the pirate broadcasting issue, as unsatisfactory in that, in effect, the same body acts as court of initial judgement and court of appeal. Suggestions for constituting the Committee of the Privy Council in some different way were regarded by the Home Office as unacceptable. In the view of the department, so long as the United Kingdom Government has responsibility in relation to the Islands it cannot surrender the final power of decision (on a matter of policy and not one of interpretation of la, which would appropriate for judicial determination) to a body over which it has no control, no matter how responsible that body may be. We have no hesitation in saying the this view must be accepted. In any petition to the Crown the point at issue is likely to be of such importance that the final decision cannot properly be taken other than on the advice of United Kingdom Ministers.

1507. We nevertheless have sympathy with the view that the existing arrangement is not entirely satisfactory, and we believe that there would be advantage in introducing an independent element into the consideration of a disputed matter before the final decision was taken by the Privy Council. This independent element could have only an advisory function, and we consider that it could best be provided through he appointment of independent members to the consultative committee we have proposed.

1508. Our idea is that this body, which might be designated “The Council of the Islands”, would be composed of a chairman and two other independent m embers appointed by the Crown, up to six representatives of the United Kingdom Government and six representatives of the Islands. Its independent position would be emphasised if the members of its secretariat were not themselves officials of the Home Office or of any of the Island Governments. With continued reliance for day-to-day business on the informal channels of communication which have proved so effective in the past, the Council would not be much concerned with routine affairs. Its primary role, as we have suggested, would be to keep relationships between the United Kingdom and the Island sunder review and to seek to find solutions to the more difficult questions referred to it.

1509. If in any particular matter an agreed solution could not be reached in the Council and the United Kingdom found it necessary to take action in the absence of agreement, it would be open to the aggrieved authorities in any Island to petition the Crown. Or there might be a petition on an Island matter from some aggrieved person or persons other than the authorities. There would be an understanding that in the ordinary course any such petition would be referred to the Council for its opinion (though the Privy Council could not be under a legal obligation to refer a petition, and United Kingdom Ministers might exceptionally have to advise against a reference if in the exercise of their overriding responsibilities they considered, for example, that time did not permit or that the procedure was being abused). The council would make a report on the petition to the Privy Council, and in the absence of security considerations this report would be published. In any case arising out of action taken by the United Kingdom Government against the wishes of one or more of the Islands a report containing a unanimous recommendation could not be expected. The matter would probably already

have been considered by the Council at an earlier stage without agreement being reached. The report would then set out the relevant facts, the views of the two sides and the assessment of the independent members with any recommendations they might wish to make.

1510. In making their assessment, the independent members would in no way be acting as a court of law. They would not have a detailed set of rules to apply. But they would have a statement of the constitutional relationships between the United Kingdom and the Islands, based perhaps, if it is accepted, on the statement contained in their report, with all its reservations, of the circumstances in which the United Kingdom should be free in practice to exercise its paramount powers. If then the United Kingdom claimed that the action against which complaint was made was being taken, for example, to preserve an essential domestic interest of the United Kingdom, this claim and the likely implications of failure to take such action could be examined. By virtue of their membership of the Council and their participation in its work as a consultative body the independent members would acquire a better understanding of the relationships between the United Kingdom and the Islands than they would have if they were called upon to advise only in respect of disputed matters which became the subject of petitions to the Privy Council; and it is for this reason that we suggest that the functions of providing formal machinery for consultation and of giving advice on petitions should be combined in a single body rather than be exercised by two separate bodies.

1511. How effective would the Council of the Islands be in safeguarding the interests of the Islands? The United Kingdom Ministers would still have the last word. But the presence of the independent members might in some cases assist in securing agreement on a disputed matter. The United Kingdom representatives on the Council might be induced to give way if they did not have the support of the independent members. They would know that if they decided against the Islands and the matter became the subject of a petition to the Privy Council which was referred to the Council of the Islands for its opinion, the independent members would be likely to reiterate their support for the Islands in a report which would be made public before the Privy Council's decision was taken. If in this report the independent members recommended a certain course of action, the Privy Council might be expected to reject it only for some demonstrably compelling reason. Conversely, if in any dispute the independent members tended to support the United Kingdom Government, the likelihood of a petition to the Crown against its decision would be much reduced. Thus petitions, of which there have been very few in the past, might be expected to become even more infrequent. And where an aggrieved Island or other body or individual did have recourse to petition, it would have the satisfaction, even if the petition were rejected, at least of knowing that before that position was reached the matter had been given a full and impartial hearing.

1512. We have not discussed this suggestion for the establishment of a Council of Islands which would include independent members with any of the Island authorities. We believe, however, that it goes as far as is practicable in constitutional terms to meet the quite legitimate criticism of the existing arrangements for the resolution of disputed matters. We recommend, therefore, that the United Kingdom and Island Governments should together consider whether a scheme of this kind should be adopted.

CROWN APPOINTMENTS

1513. The remaining proposals put to us by the Islands relate to Crown appointments. They were that the consultation which now takes place on the selection of persons for appointment should be formalised; that in Jersey the selection, except in the case of the Lieutenant Governor, should be effectively in the hands of the insular authorities; and that in the Isle of Man the Attorney General

should be appointed by the Lieutenant Governor. None of the proposals is prompted by a sense of grievance, and it is not thought likely that their adoption would lead to different persons being appointed. They are designed to ensure that consultation is not overlooked and to demonstrate to the world at large the Islands' independence.

1514. We do not feel able to support these proposals. We do not think it would be consistent with the responsibility of the Crown for the good government of the islands for the insular authorities to have the last word in the appointment to Crown offices. It is clearly essential for the Islands to be consulted, as is now the practice, before appointments are made. And where an Islander is to be appointed, as is generally the case with offices other than that of Lieutenant Governor, the advice of the insular authorities will naturally weigh very heavily in the selection. Acceptance of the Islands proposals would probably therefore, as they suggest, make little or no difference in practice. But in our view, which was shared by the representatives of the States of Guernsey who gave evidence, it will be preferable for appointments to be made outside the Islands and for advice to remain informal than to be formalised in a body of elected persons who might be swayed to some extent by political considerations. And if the giving of advice were to be restricted (as we understood the Jersey proposals to imply) to such persons, other individuals whose advice might be valuable would be excluded.

1515. On the proposal put to us by private organisations in Jersey and Guernsey for splitting the office of Bailiff, we take the same view as the Privy Council Committee of 1947. Although an arrangement under which one person presides over both the Royal Court and the legislative assembly may be considered to be contrary to good democratic principle and to be potentially open to abuse, it appears in practice to have some advantages and not to have given grounds for complaint; and as the office of Bailiff is an ancient and honourable one which the States in each Island wish to see continued with its present range of functions, we see no reason for recommending a change.

ECONOMIC RELATIONSHIPS

Existing relationships

1516. Our terms of reference covered economic as well as constitutional relationships. We have already noted the main features of the financial and economic relationships. The Islands are self-financing, paying for their own needs out of their own revenues. But, as the Home Office pointed out in evidence, they are inevitably dependent on the United Kingdom for the provision of many services - ranging from defence to the accommodation in the United Kingdom of some prisoners sentenced by the Island courts – that it would be uneconomic or impossible for such small communities to furnish from their own resources. In general the Island either pay for these services or provide reciprocal benefits. But the Channel Islands make no contribution to the cost of defence or international representation, while the Isle of Man makes a payment that falls well short of a proportionate share[1]. The Islands have their own fiscal systems, but are treated as part of the United Kingdom for exchange control purposes. They are independent customs areas, though the Isle of Man, but not the Channel Islands, is by agreement in customs union with the United Kingdom.

1517. All the Islands have a pride in their financial independence and prosperity, the maintenance of which in their view requires the continuation of a policy of low taxation. Hence their deep concern at the time of our visits, on a practical as well as theoretical plane, about the potential loss of

[1] See footnote on page 412.

independence which would follow their entry with the United Kingdom into the European Economic Community.

The European Economic Community

1518. All the Islands believed that entry into the Community would do grave harm to their economies unless special terms were negotiated for them. The harmonisation of taxation within the Community, indirect taxes at first and possibly direct taxes later, would deprive them of their favourable tax position. The introduction of a value added tax would increase the cost of imports, which greatly outweigh exports and bear high transport costs because of the geographical situation of the Islands. There would be no corresponding benefit in increased revenues from exports; the smaller islands in particular would suffer (we were told in Alderney that the only export the Island could claim was empty bottles). The Islands would lose their present preferential position, by comparison with other countries of the Community, of being able to send their agricultural produce into the United Kingdom duty free. There would be a substantial increase in food prices as a result of the community's common agricultural policy. Additional burdens would result from Community provisions on freedom of movement, right of establishment and reciprocity of social service benefits. All these changes would combine to increase the cost of living for residents and to make the Islands less attractive to tourists and new residents, and would lead eventually to depopulation.

1519. The smaller Islands of Alderney and Sark regarded the prospect of entry into the Community as ruinous. But all the Islands were seriously concerned. They recognised that they would also be in difficulty if they were outside the Community with the United Kingdom in, and wished to have special arrangements made for them. Even Guernsey, which proposed no change in constitutional relationships and accepted that if the United Kingdom joined the community the Island would probably have to do so also, had represented the need to be cushioned against the immediate impact of entry.

1520. As we have earlier noted, special terms were in fact negotiated for the Islands, which were accepted by them and included in the Treaty of Accession providing for the United Kingdom's entry into the European Communities. Under these terms the Islands were included within the European Economic Community for the purpose of free movement of industrial and agricultural goods. To that end they are required to apply the common external tariff, the agricultural levies to imports from third countries and certain parts of the common agricultural policy. Other provisions of the Treaty of Rome, including those relating to the free movement of persons, capital movements, and the harmonisation of taxation and social policies, do not apply to them. As well as being relieved of some obligations under the Treaty, the islands are deprived of some of the benefits; in particular, Islanders who do not possess close ties with the United Kingdom have no rights of free movement, for purposes of employment and right to establishment, within Community countries, although they maintain their traditional rights of free access to the United Kingdom labour market. Under a non-discrimination clause all Community persons and bodies corporate have to be given parity of treatment by the Island authorities; if, for instance, the Islands wish to maintain controls over the employment of aliens, including people from Community countries, it will be necessary for them to apply those controls to people from the United Kingdom also. Lastly, there is a safeguard clause providing for the application of special measures should either the Islands or the Community encounter difficulties in applying the special arrangements; this clause could not be used to impose provisions entirely outside the scope of the agreement.

Tax havens

1521. Apart from the many references to the European Economic Community, we received little evidence on finance and economic matters, and no proposals from the United Kingdom or island Governments for change in the existing economic relationships. There are, however, two matters to which public attention has from time to time been drawn as possibly calling for action by the United Kingdom Government, and it is appropriate that we should comment upon them. The first concerns the use of the Islands as tax havens, and the second the so-called imperial contribution, an annual contribution towards the cost of defence, overseas representation and any other services supplied by the United Kingdom to the Islands which are not paid for or reciprocated in some other way.

1522. Interest has been expressed in the use of the Islands as tax havens by United Kingdom residents taking advantage of the comparatively low rates of taxation. The Islands are not unique in offering this advantage. Some countries in other parts o the world either levy no tax at all or offer other advantages which may for some people make them preferable to the Islands as tax havens. The Islands do, however, offer certain advantages in their proximity to the United Kingdom, their treatment as part of the United Kingdom for exchange control purposes and the presence of British banks and financial institutions

1523. In our general conclusions about the constitutional relationships between the Islands and the United Kingdom, we have endorsed the spirit of co-operative independence which has been the general basis of those relationships for many years. We have said that legislation on domestic matters should in the ordinary circumstances continue to be the province of the Island legislatures, and taxation has always been regarded as a domestic matter. It follows that, subject to any obligations arising out of international agreements, the taxes imposed in the Islands, and the levels of those taxes, will remain a matter for the Islands to decide. Implicit in this situation is the opportunity for abuse; but the Islands to decide. Implicit in this situation is the opportunity for abuse; but the United Kingdom taxation authorities have ample statutory powers to deal with such abuse. A person who makes artificial use of the islands or any other tax haven for the purpose of avoiding United Kingdom tax lays himself open to counteraction by the authorities. Given that the situation is one which flows from a constitutional position which both sides accept, it is a matter for good sense and co-operation between the United Kingdom and island Government to ensure that any loss of tax to the United Kingdom Exchequer is kept to the minimum.

Imperial contributions

1524. An attempt was made by the United Kingdom Government after the First World War to require imperial contributions to be paid by Jersey and Guernsey. This attempt was successfully resisted by the Islands on the ground that any contribution must be a purely voluntary one. They argued that contributions would have to be paid out of taxation; the imposition by the United Kingdom Government of an annual charge would amount to the imposition of taxation, whereas for many centuries the Islands had enjoyed, by grant of charter and by usage, freedom from taxation without the consent of the States. This argument did not preclude the payment of voluntary contributions, and both Islands did make a once-for-all voluntary payment to the United Kingdom Exchequer as a final contribution to the cost of the war.

1525. it seems clear to us that any new contributions by the Channel Islands, whether annual or not, or any change in the contribution made by the Isle of Man, should be made on the same voluntary basis. The value to the Islands of the services concerned, mainly defence and overseas representation, is not quantifiable, at least with any degree of precision, and any attempt to estimate what the level of

contributions, if any, should be would have to take into account the Islands' capacity to pay. In our view, if this matter is to be pursued at all it should be by means of direct discussion between the United Kingdom and Island Governments. We express no view on whether contributions should be made or, if so, what amounts might be appropriate.

Our conclusions on economic relationships

1526. We have not, as we stated at the beginning of this chapter, approached the Islands in any spirit of reforming zeal, and we have not though it right to go out of our way to make searching enquiry into matters on which we received no evidence of need for change. Apart from these two questions – the use of the Islands as tax havens and the imperial contribution, neither of which we were invited to take up – and the all-important question of the position of the Islands in relation to the European Economic Community, our attention has not been drawn to any aspect of the islands' financial and economic relationships with the United Kingdom, and we make no recommendations for change.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

1527. Our main conclusions and recommendations are as follows:-

(1) Although an authoritative pronouncement on aspects of the existing constitutional relationships which are in dispute could be made only by a court of law, we have proceeded on the assumption, which appears to us to be a correct one, that Parliament does possess an ultimate paramount power to legislate for the Islands on all matters and in any circumstances, despite the existence of the convention that it does not legislate for the Islands without their consent on domestic matters (paragraphs 1462-1473).

(2) We have been impressed by the virtual unanimity of opinion in the evidence submitted to us in favour of maintaining the existing constitutional relationships, either without change or furnished with additional defences against encroachment on the Islands' autonomy (paragraphs 1464-1468).

(3) Our main concern has been to see if means can be found of reconciling the Islands' autonomy in domestic matters with the United Kingdom's responsibilities for their external relations (paragraph 1474).

(4) We note the view of the Home Office and the Foreign and Commonwealth Office that a declaration similar to that made in 1967 in respect of the Associated States in the West Indies would be unlikely to secure international acceptance, without which it would have no effect. It would in any event have only limited value (paragraphs 1475-1476).

(5) We regard as wholly impracticable a suggestion for dividing responsibility for external relations between the United Kingdom and Island Governments (paragraph 1477).

(6) We commend proposals of the Home Office and the Foreign and Commonwealth Office for a formal strengthening of the procedures for consultation with the Islands over the application to them of international agreements (paragraphs 1401-1403).

(7) The division between matters which are of domestic concern to the Islands and those which concern the United Kingdom'' international and domestic interests is not clear cut and is continually changing. It would not be practicable to make a formal division of legislative and executive responsibilities between the United Kingdom and Island authorities, with each enjoying exclusive power over matters allocated to it (paragraphs 1479-1496).

(8) So long as the United Kingdom Government remains responsible for the international relations of the Islands and for their good government, it must have powers in the last resort to intervene in any Island matter in the exercise of those responsibilities (paragraph 1494).

(9) While it is not possible to define them with the precision needed for inclusion in a statute, we have indicated in general terms the circumstances in which the United Kingdom Government might in practice be justified in using its paramount powers to intervene in the affairs of the Islands. We have done so under five headings – defence, matters of common concern to British people throughout the world, the interests of the Islands, international responsibilities and the domestic interests of the United Kingdom (paragraphs 1497-1512).

(10) While we have reached the conclusion that the problem of reconciling the Islands' autonomy in domestic affairs with the United Kingdom Government's responsibility for their external relations cannot be resoled by changes in the constitutional relationships, we believe that, with goodwill and recognition on each side of the rights and obligations of the other, few serious difficulties should arise, and that those that do will be capable of being overcome at least as well under the existing relationships as under any new relationships that could be contemplated (paragraph 1513).

(11) A committee similar to the Standing Committee on the Common Interests of the Isle of Man and the United Kingdom should be established for any of the other Islands which desires to

have one; or, and we think this may be preferable, there should be a single committee covering the interests of all the Islands (paragraphs 1514-1517).

(12) We regard as unsatisfactory the existing arrangements by which petitions to the Crown from the Island authorities against decisions of the United Kingdom Government are referred to and considered only by a Committee of the Privy Council consisting of Ministers of the United Kingdom Government. We accept that the effective power of decision must remain with the United Kingdom Government. We recommend, however, that consideration should be given to the possibility of devising a new procedure whereby petitions could be referred to a body which included some independent members for enquiry and report before being accepted or rejected. We suggest as one possibility the addition of independent members to the standing committee proposed in (xi) above. This body, which might be known as "The Council of the islands" and be composed of a chairman and two other independent members appointed by the Crown and up to six representatives each of the United Kingdom Government and the Islands, with an independent secretariat, would combine the function of conciliation with that of giving advice to the Committee of the Privy Council on petitions from the Islands (paragraphs 1518-1524).

(13) We recommend no change in the methods of selecting persons for appointment to Crown offices in the Islands (paragraphs 1525-1527).

(14) We make no recommendations for change in economic relationships (paragraphs 1528-1538).

INDEX TO PART XI
THE CHANNEL ISLANDS AND THE ISLE OF MAN

Extract from the preface to the Memorandum of Dissent by Lord Crowther-Hunt and Professor A T Peacock

"We cannot accept the constitutional recommendations our colleagues make about the Channel Islands and the Isle of Man. This is because although our terms of reference also required us to examine the economic relationships between the United Kingdom and the Channel Islands and the Isle of Man', there has in fact been no such examination. As a Commission, we do not know, for example, the extent to which these off-shore islands have developed, and are still further developing, as 'tax havens' either for United Kingdom citizens or international companies. Without such information (and we consider an urgent enquiry should be mounted to get it) we do not believe one can make any worthwhile pronouncements on their future constitutional relationships with the United Kingdom. We, therefore, make no such pronouncements".