

## **2.2 Deputy M.R. Higgins of St. Helier of H.M. Attorney General regarding the extent of the Island's power as a Crown Dependency to negotiate treaties on its own behalf:**

Will H.M. Attorney General inform Members of the extent of the Island's power as a Crown Dependency to negotiate treaties on its own behalf as referred to in the report entitled *External Relations: Common Policy*, R.140/2012, and the extent of our powers to act independently of the United Kingdom Government?

### **Mr. T.J. Le Cocq Q.C., H.M. Attorney General:**

A treaty is an international agreement concluded between Sovereign States in a written form and governed by international law. Jersey is not a Sovereign State and has no power to negotiate international agreements, other than with the consent of and to the extent permitted by the United Kingdom, which has responsibility for Jersey's external or international relations. Jersey may become a party to international agreements in one of 2 ways. It may be entrusted, on behalf of the Crown by the United Kingdom Government by a letter of entrustment, to negotiate and conclude an agreement on its own behalf with a foreign country. An example of this would be tax information exchange agreements, negotiated under the letter of entrustment from the United Kingdom of November 2009. Jersey may also ask the United Kingdom to have the United Kingdom's ratification of an international agreement extended to it, either at the time of the United Kingdom ratification or subsequently. An example of this might be the United Nations Convention on Corruption.

### **2.2.1 Deputy M.R. Higgins:**

Supplementary, Sir? Could I ask if the Attorney General or his department saw a copy of R.140/2012 before it was sent out, because it does give a misleading impression that the Island has the ability to enter into its own treaties, which obviously is false.

#### **The Attorney General:**

I believe that I have seen a copy of that before it was otherwise sent out. I am not sure that I would agree - I do not have it in front of me - that it gave a misleading impression. I am certain that the Island's ability to enter into treaties depends upon being entrusted to do so by the United Kingdom.

### **2.2.2 Deputy R.G. Le Hérissier of St. Saviour:**

It is often thought that we are the unwitting recipients of European Union legislation, which essentially the United Kingdom Government accepts and then without any real discretion on our part is extended to us.

[9:45]

Would the Attorney General outline the circumstances in which we can actively and materially affect the application of European Union legislation?

#### **The Bailiff:**

I am not sure that has anything at all to do with our ability to enter into treaties. **[Laughter]**

#### **The Attorney General:**

Clearly, Jersey is bound to European law to the extent that it falls within Protocol 3. It is to that extent and that extent alone that we are compelled to adopt European legislation. The United Kingdom before it extends or wishes to extend any form of legislation to us as a constitutional norm - and now I would say a rule - needs to consult with us and would not do so without the consent of the Island.

### **2.2.3 Deputy M. Tadier of St. Brelade:**

The Attorney General said that the U.K. (United Kingdom) is responsible for external and international relations, *vis-à-vis* Jersey and the other Crown Dependencies. Would he state

whether it would be problematic therefore if we were to have our own Minister with responsibility for external and international relations given that it is a U.K. responsibility?

**The Attorney General:**

I am not sure that that is any closer to the question of treaties than the preceding question. The United Kingdom has entered into a framework agreement. The framework agreement provides for the enhancement of Jersey's international personality and I do not see anything wrong, in principle, with a role designed to facilitate that within the Island.

**2.2.4 Senator S.C. Ferguson:**

I wonder if the Attorney General could possibly follow up what happens in the case of the United Kingdom consulting with us and we say: "No, thank you. We do not want that."

**The Attorney General:**

That is a very difficult question to answer because it will depend, of course, upon the circumstances of the case. If the Island was adamant that it did not wish something to be extended to it but the United Kingdom wished to do so, then we would potentially be in the realms of constitutional difficulties, which may have to be resolved by further discussion or by the courts.

**Deputy M.R. Higgins:**

No thank you, Sir. Senator Ferguson asked what I was going to ask. Thank you.