



ANALYSIS

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|----|---|-----|--|
| | Title | | |
| 1. | Short Title | 7. | Legal representation of prisoners of war |
| 2. | Purpose | 8. | Appeals by protected persons |
| 3. | Interpretation | 9. | Reduction of sentence, and custody of protected prisoners of war and internees |
| 4. | Act to bind Crown | | |
| | <u>PART 1</u> | | <u>PART 3</u> |
| | <u>PUNISHMENT OF</u> | | <u>PREVENTION OF ABUSE</u> |
| | <u>OFFENDERS AGAINST</u> | | <u>OF RED CROSS AND</u> |
| | <u>CONVENTIONS OR FIRST</u> | | <u>OTHER EMBLEMS,</u> |
| | <u>PROTOCOL</u> | | <u>DESIGNATIONS, SIGNALS</u> |
| 5. | Punishment for grave breaches of Conventions or First Protocol | 10. | Use of Red Cross and other emblems, designations, signals |
| | <u>PART 2</u> | | <u>PART 4</u> |
| | <u>PROVISIONS AS TO</u> | | <u>MISCELLANEOUS</u> |
| | <u>CERTAIN LEGAL</u> | | |
| | <u>PROCEEDINGS</u> | 11. | Regulations |
| 6. | Notice of trial of protected persons to be served on protecting power, etc. | 12. | High Court jurisdiction |
| | | 13. | Copies free of charge |
| | | 14. | Repeal and savings |

2002, No. 1

An Act to consolidate and amend the Geneva Conventions Act 1958

(11 February 2002)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by authority of the same as follows:

Price \$4.50

1. Short Title – This Act may be cited as the Geneva Conventions and Additional Protocols Act 2002.

2. Purpose – The purpose of this Act is to–

- (a) Continue to give effect to certain International Conventions done at Geneva on 12 August 1949 and purposes connected to those Conventions; and
- (b) Give effect to certain Protocols additional to those Conventions and purposes connected to those Protocols.

3. Interpretation – (1) In this Act, unless the context otherwise requires, –

“The First Convention” means the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, adopted at Geneva on 12 August 1949;

“The Second Convention” means the Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, adopted at Geneva on 12 August 1949;

“The Third Convention” means the Geneva Convention relative to the Treatment of Prisoners of War, adopted at Geneva on 12 August 1949;

“The Fourth Convention” means the Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted at Geneva on 12 August 1949;

“The Conventions” means the First Convention, the Second Convention, the Third Convention, and the Fourth Convention;

“Cook Islands aircraft” means any aircraft that is registered or required to be registered in the Cook Islands under the Civil Aviation Act 1985, or regulations or rules continued in force, deemed to be part of the law of the Cook Islands, or made, under that Act;

“Cook Islands vessel” means a vessel registered or required to be registered in the Cook Islands under the Shipping Act 1998 or regulations or rules continued in force, or made, under that Act;

“Court” –

- (a) Includes the High Court; and
- (b) Excludes any service court or service authority exercising jurisdiction under the Visiting Forces Act 1992-93;

“Designation” includes any design, sign, or wording;

“High Court” means the High Court of the Cook Islands;

“Minister” has the same meaning as in the Ministry of Foreign Affairs Act 1984;

“Minister of Justice”, in relation to any function or matter, means the Minister of the Crown with that title, and in the absence of such a Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for that function or matter;

“Ministry of Foreign Affairs” means the Ministry of Foreign Affairs constituted under the Ministry of Foreign Affairs Act 1984;

“Protected internee” means a person protected by the Fourth Convention and interned in the Cook Islands;

“Protected prisoner of war” means a person protected by the Third Convention;

“The protecting power”, in relation to a protected prisoner of war or a protected internee, means the power or organisation which is carrying out, in the interests of the power of which that prisoner or internee is a national, or of whose forces that prisoner or internee is, or was at any material time, a member, the duties assigned to protecting powers under the Third Convention or the Fourth Convention, as the case may be;

“The First Protocol” means the Protocol Additional to the Conventions and relating to the Protection of Victims of International Armed Conflicts, adopted at Geneva on 8 June 1977;

“The Second Protocol” means the Protocol Additional to the Conventions and relating to the Protection of Victims of Non-International Armed Conflicts adopted at Geneva on 8 June 1977;

“The Protocols” means the First Protocol and the Second Protocol.

(2) If any accession or succession on behalf of the Cook Islands to any of the Conventions or to either of the Protocols is subject to a reservation or is accompanied by a declaration, that Convention or that Protocol, as the case may require, shall, for the purposes of this Act, have effect and be construed subject to and in accordance with that reservation or declaration.

4. Act to bind Crown – This Act binds the Crown.

PART 1
PUNISHMENT OF OFFENDERS AGAINST CONVENTIONS OR
FIRST PROTOCOL

5. Punishment for grave breaches of Conventions or First Protocol –

(1) Any person who in the Cook Islands or elsewhere commits, or aids or abets or procures the commission by another person of, a grave breach of any of the Conventions or of the First Protocol is guilty of an offence.

(2) For the purposes of this section–

- (a) A grave breach of the First Convention is a breach of that Convention involving an act referred to in Article 50 of that Convention committed against persons or property protected by that Convention;
- (b) A grave breach of the Second Convention is a breach of that Convention involving an act referred to in Article 51 of that Convention committed against persons or property protected by that Convention;
- (c) A grave breach of the Third Convention is a breach of that Convention involving an act referred to in Article 130 of that Convention committed against persons or property protected by that Convention;
- (d) A grave breach of the Fourth Convention is a breach of that Convention involving an act referred to in Article 147 of that Convention committed against persons or property protected by that Convention;
- (e) A grave breach of the First Protocol is a breach of that Protocol involving–
 - (i) An act or omission referred to in Article 11(4) of that Protocol committed against or omitted in respect of persons protected by Article 11(1); or
 - (ii) An act referred to in Article 85(2) of that Protocol committed against persons or property protected by that Article; or
 - (iii) An act referred to in Article 85(3) of that Protocol committed against persons or property protected by that Article; or

- (iv) An act or omission referred to in Article 85(4) of that Protocol committed against or omitted in respect of persons or property protected by that Article.
- (3) This section applies to persons regardless of their nationality or citizenship.
- (4) The punishment for an offence against this section shall be, –
- (a) Where the offence involves the wilful killing of a person protected by the relevant Convention or by the First Protocol, as the case may require, the same as that for the time being for murder;
- (b) In any other case, imprisonment for a term not exceeding 14 years.
- (5) No one shall be prosecuted for an offence against this section without the leave of the Attorney-General.
- (6) The provisions of section 7 of this Act (other than section 7(2)) shall apply in relation to the trial of a person who is not a protected prisoner of war for an offence against this section in like manner as they apply in relation to the trial of a protected prisoner of war.
- (7) If–
- (a) In any proceedings under this section in respect of a grave breach of any of the Conventions any question arises under Article 2 of that Convention (which relates to the circumstances in which the Convention applies); or
- (b) In any proceedings under this section in respect of a grave breach of the First Protocol any question arises under Article 1(3), Article 1(4), or Article 3 of that Protocol (which relate to the circumstances in which that Protocol applies), –
- that question shall be determined by the Minister, and a certificate purporting to set out any such determination and to be signed by or on behalf of the Minister shall be received in evidence and be deemed to be so signed without further proof, unless the contrary is shown.

PART 2
PROVISIONS AS TO CERTAIN LEGAL PROCEEDINGS

6. Notice of trial of protected persons to be served on protecting power, etc.
- (1) The Court before which–
- (a) A protected prisoner of war is brought up for trial for any offence; or

(b) A protected internee is brought up for trial for an offence for which that Court has power to sentence that person to death or to imprisonment for a term of 2 years or more— shall not proceed with the trial until it is proved to the satisfaction of the Court that a notice containing the particulars set out in subsection (2), so far as they are known to the prosecutor, has been served by a constable not less than 3 weeks previously on the protecting power (if there is a protecting power), on the accused, and (if the accused is a protected prisoner of war) on the prisoners' representative.

(2) The particulars referred to in subsection (1) are—

- (a) The full name and description of the accused, including—
 - (i) Date of birth, and profession or trade (if any), of the accused; and
 - (ii) If the accused is a protected prisoner of war, the rank and army, regimental, personal, or serial number of the accused;
- (b) The place of detention, internment, or residence of the accused;
- (c) The offence with which the accused is charged; and
- (d) The Court before which the trial is to take place and the time and place appointed for the trial.

(3) For the purposes of this section a document purporting—

- (a) To be signed on behalf of the protecting power or by the prisoners' representative or by the person accused, as the case may be; and
- (b) To be an acknowledgment of the receipt by that power, representative, or person on a specified day of a notice described therein as a notice under this section—

shall, unless the contrary is shown, be sufficient evidence that the notice required by subsection (1) was served on that power, representative, or person on that day.

(4) In this section the expression "prisoners' representative" in relation to a particular protected prisoner of war at a particular time means the person by whom the functions of prisoners' representative within the meaning of Article 79 of the Third Convention were exercisable in relation to that prisoner at the camp or place at which that prisoner was, at or last before that time, detained as a protected prisoner of war.

(5) Any Court which adjourns a trial for the purpose of enabling the requirements of this section to be complied with may, notwithstanding anything in any other enactment or any rule of law, remand the accused for the period of the adjournment.

7. Legal representation of prisoners of war – (1) The Court before which a protected prisoner of war is brought up for trial for any offence shall not proceed with the trial, unless—

- (a) The accused is represented by counsel; and

- (b) It is proved to the satisfaction of the Court that a period of not less than 14 days has elapsed since instructions for the representation of the accused at the trial were first given to counsel for the accused; –

and if the Court adjourns the trial for the purpose of enabling the requirements of this subsection to be complied with, then, notwithstanding anything in any other enactment or rule of law, the Court may remand the accused for the period of the adjournment.

(2) In the absence of counsel accepted by the accused as representing the accused, counsel instructed for the purpose on behalf of the protecting power shall, without prejudice to the requirements of subsection (1)(b), be regarded for the purposes of subsection (1) as representing the accused.

(3) If the Court adjourns the trial pursuant to subsection (1) by reason that the accused is not represented by counsel, the Court shall direct that a counsel be assigned to watch over the interests of the accused at any further proceedings in connection with the offence; and at any such further proceedings, in the absence of counsel either accepted by the accused as representing the accused or instructed as set out in subsection (2), counsel assigned under this subsection shall, without prejudice to the requirements of subsection (1)(b), be regarded for the purposes of subsection (1) as representing the accused.

(4) A counsel shall be assigned under subsection (3) in such manner as may be prescribed by regulations made under this Act, and any counsel so assigned shall be entitled to receive, out of money appropriated by Parliament for the purpose, such remuneration and disbursements as may be in like manner prescribed. While there are no regulations for the purposes of this section or so far as any such regulations do not apply, the Minister of Justice in consultation with the Minister shall determine the assignment, remuneration, and disbursement of counsel under this section.

8. Appeals by protected persons – (1) Where a protected prisoner of war or a protected internee has been sentenced by a Court to death or to imprisonment for a term of 2 years or more, the time allowed in relation to the institution of an appeal or an application for leave to appeal against the conviction or sentence shall, notwithstanding anything to the contrary in any other enactment, be the period from the date of that person's conviction or, in the case of an appeal against sentence, of that person's sentence to the expiration of 28 days after the date on which the convicted person receives a notice that the protecting power has been notified of the conviction and sentence, being a notice given, –

- (a) In the case of a protected prisoner of war, by an officer of the Cook Islands police; or
- (b) In the case of a protected internee, by or on behalf of the person in charge of the prison or place in which that internee is confined.

(2) Where subsection (1) applies in relation to a convicted person, then, unless the Court otherwise orders, an order of the Court relating to the restitution of property or the payment of compensation to an aggrieved person shall not take effect, and any provision of law relating to the revesting of property on conviction shall not take effect in relation to the conviction, while an appeal by the convicted person against that conviction or sentence is possible.

(3) Subsection (1) shall not apply in relation to an appeal against a conviction or sentence if, at the time of the conviction or sentence, there is no protecting power.

(4) Notwithstanding anything to the contrary in any other Act, where a protected prisoner of war has been sentenced by a Court to death, the sentence shall not be executed before the expiration of 6 months from the date specified in Article 101 of the Third Convention.

(5) Notwithstanding anything to the contrary in any other Act, where a protected internee has been sentenced by a Court to death, the sentence shall not be executed before the expiration of 6 months from the date specified in Article 75 of the Fourth Convention.

9. Reduction of sentence, and custody of protected prisoners of war and internees – (1) When a protected prisoner of war or a protected internee is convicted of an offence, the Court shall, –

- (a) In fixing a term of imprisonment in respect of the offence, deduct from the term which it would otherwise have fixed any period during which the convicted person has been in custody in connection with that offence before the trial; and
- (c) In fixing any penalty other than imprisonment in respect of the offence, take that period of custody into account.

(2) Where the Court is satisfied that a protected prisoner of war accused of an offence has been in custody in connection with that offence, while awaiting trial, in a place other than a camp or place in which protected prisoners of war are detained, for an aggregate period of not less than 3 months, the Court may direct that the prisoner shall be transferred from that custody to the custody of an officer of the Cook Islands police and thereafter remain in police custody at a camp or place in which protected prisoners of war are detained, and be brought before the Court at the time appointed for that prisoner's trial.

PART 3

PREVENTION OF ABUSE OF RED CROSS AND OTHER EMBLEMS, DESIGNATIONS, SIGNALS

10. Use of Red Cross and other emblems, designations, signals – (1) Subject to section 12 of the Cook Islands Red Cross Society Act 2002, no person may, without the authority of the Minister or a person authorised by the Minister in writing to give consent under this section, use for any purpose any of the following:

- (a) The emblem of a red cross with vertical and horizontal arms of the same length on, and completely surrounded by, a white ground, or the designation "Red Cross" or "Geneva Cross";
- (b) The emblem of a red crescent moon on, and completely surrounded by, a white ground, or the designation "Red Crescent";
- (c) The following emblem in red on, and completely surrounded by, a white ground, that is to say, a lion passing from right to left of, and with its face turned towards, the observer, holding erect in its raised right forepaw a scimitar, with, appearing above the lion's back, the upper half of the sun shooting forth rays, or the designation "Red Lion and Sun";
- (d) Any design consisting of a white or silver cross with vertical and horizontal arms of the same length on, and completely surrounded by, a red ground (which is the heraldic emblem of the Swiss Confederation);
- (e) The sign of an equilateral blue triangle on, and completely surrounded by, an orange ground (which is the international distinctive sign of civil defence);
- (f) Any of the distinctive signals specified in Chapter III of Annex 1 to the First Protocol (which are the signals of identification for medical units and transports);
- (g) The sign of a group of three bright orange circles of equal size, placed on the same axis, the distance between each circle being one radius (which is the international special sign for works and installations containing dangerous forces);
- (h) Any emblem, designation, or signal, so nearly resembling any of the emblems, designations, or signals, specified in paragraphs (a) to (g) as to be capable of being mistaken for, or, as the case may be, understood as referring to, one of those emblems, designations, or signals.

(2) Any person who breaches subsection (1) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and to forfeit any goods upon or in connection with which the emblem, designation, or signal was used.

(3) The Minister or a person authorised by the Minister to give consents under this section may not refuse to give such a consent, and may not withdraw such a consent, except for the purpose of giving effect to—

- (a) The Conventions or the Protocols; or
- (b) The Cook Islands Red Cross Society Act 2002 or regulations made under that Act.

(4) Subsections (1) and (2) shall not apply to a trademark by reason only that that trademark consists of or contains—

- (a) An emblem or designation which reproduces or resembles an emblem or designation specified in paragraph (e) or paragraph (g) of subsection (1), if that trademark was registered before the coming into force of this Act; or
- (b) An emblem or designation which reproduces or resembles an emblem or designation specified in paragraph (b) or (c) of subsection (1), if that trademark was registered before 18 September 1958.

(5) Where a person is charged with breaching subsection (1) in respect of an emblem or designation referred to in subsection (4)(a) or (b), and it is proved that that person used it for a purpose other than as, or as part of, a trade mark described in subsection (4)(a) or (b), as the case may require, it shall be a defence for that person to prove—

- (a) That he or she lawfully used that emblem or designation for that purpose—
 - (i) In the case of an emblem or designation referred to in subsection (4)(a), before the coming into force of this Act; or
 - (ii) In all other cases, before 18 September 1958; or
- (b) In a case where that person is charged with using the emblem or designation upon goods, that the emblem or designation had been applied to the goods before he or she acquired them by some other person who had manufactured or dealt with the goods in the course of trade and who lawfully used the emblem or designation upon similar goods—
 - (i) In the case of an emblem or designation referred to in subsection (4)(a), before the coming into force of this Act; or
 - (ii) In all other cases, before 18 September 1958.

(6) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the body corporate, or any other person purporting to act in any such capacity, that person, as well as the body corporate, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(7) This section extends to the use in or outside the Cook Islands of an emblem, designation, or signal, referred to in subsection (1), on any Cook Islands aircraft or Cook Islands vessel.

(8) No one shall be prosecuted for an offence under this section without the leave of the Attorney-General.

PART 4
MISCELLANEOUS

11. Regulations – The Queen's Representative may, by Order in Executive Council, make regulations for all or any of the following purposes:

- (a) Providing for the assignment, remuneration, and disbursement of counsel for the purposes of section 7 of this Act;
- (b) Prescribing the form of flags, emblems, designations, signals, uniforms, and insignia for use for the purposes of the Conventions or the Protocols or both, and regulating their use;
- (c) Prescribing the form of identification cards for use for the purposes of the Conventions or the Protocols or both, and regulating their use;
- (d) For the purpose of giving effect to Article 38 or Article 39 of the First Protocol, prohibiting or restricting the use of such flags, emblems, designations, signals, uniforms, or insignia as may be specified in the regulations;
- (e) Providing for the keeping of such records, and the recording of such information, as are required to be kept or recorded under the Conventions or the Protocols;
- (f) Prescribing offences in respect of the contravention of or non-compliance with any regulations made under this section, and prescribing the amounts of the fines that may be imposed in respect of such offences, which fines shall be an amount not exceeding \$1,000;
- (g) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

12. High Court jurisdiction – All criminal jurisdiction conferred by this Act may be exercised by the High Court in the ordinary course of its criminal jurisdiction.

13. Copies free of charge – The Ministry of Foreign Affairs shall–

- (a) Make a copy of each Convention and Protocol available for inspection free of charge at the head office of the Ministry and at such other places as the Ministry determines as necessary or appropriate; and
- (b) Where practicable, supply a copy of a Convention or Protocol free of charge to any person who asks for it.

14. Repeal and savings – (1) The Geneva Conventions Act 1958 is repealed.

(2) Without limiting the provisions of the Acts Interpretation Act 1924, the repeal of any provision by this Act shall not affect any document made or any thing whatsoever done under the provision so repealed or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done.

This Act is administered in the Ministry of Foreign Affairs

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