

THE COOK ISLANDS / NEW ZEALAND

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The Kreddha Autonomy Mapping Project commissioned case studies from experts and academics throughout the Asia-Pacific region (or experts on the region). Each case study gives information about the specific arrangements and the formative processes that define the governance relationships between autonomous regions and the states within which they exist. The information is presented online in the project database in a number of formats. This paper represents the original case study drafted for this research project by the author named above.

The purpose of the project is to provide comprehensive information about the many options for and models of autonomy arrangements that satisfy the needs of specific population groups for protection and respect of their distinct identities, as well as their desire to govern themselves – while equally satisfying the states' interests, including the preservation of territorial integrity. The division and sharing of powers and responsibilities at different levels and through various governmental structures is at the core of these autonomy arrangements.

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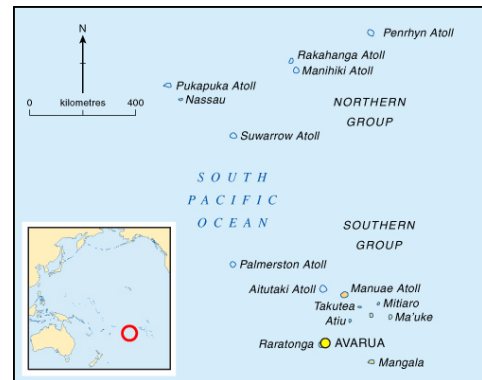
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CURRENT STATUS

The Cook Islands is a self-governing state in free association with the state of New Zealand. The Cook Islands Constitution Act 1964 (which was enacted by the Parliament of New Zealand) provides the main features of the free association relationship.

BASIC GEOGRAPHIC AND DEMOGRAPHIC FACTS

- Population: 19,569 (2006 Cook Islands census). The population of the state of New Zealand is 4 million.
- Ethnicity: Polynesian – Cook Islands Maori
- Religion: Christian, the majority of the population are members of the protestant Cook Islands Christian Church
- Linguistic: Cook Islands Maori and English
- Land area: 240 sq miles
- EEZ: 1,830,000 sq miles



Map of the Cook Islands

Close relationship with New Zealand is based on historical ties. In 1900 the New Zealand Parliament approved the annexation of the Cook Islands to New Zealand. From 1901 the boundaries of New Zealand were extended to include the Cook Islands. The Cook Islands was administered by New Zealand as a dependent territory from 1901 to 1965. The Cook Islands was listed by New Zealand with the United Nations Decolonisation Committee as a non-self-governing territory. In accordance with United Nations norms the Cook Islands self-determined in 1965 and chose a future status of free association with New Zealand.

In 1973 the Heads of Government of New Zealand and the Cook Islands which elaborated on the nature of the relationship of free association between the two states. Those letters emphasised the autonomy of each of the states and also the expectations of a partnership which was founded on the sharing of New Zealand citizenship with the people of the Cook Islands.

In June 2001 Prime Ministers of the Cook Islands and New Zealand signed the 'Joint Centenary Declaration of the Principles of the Relationship between New Zealand and the Cook Islands'. This is the most extensive statement on the nature of the relationship between the two countries. A basic principle of the relationship is that the governments of the two countries will consult and work together closely on foreign affairs and other matters of shared interest.

The Cook Islands is a geographically isolated archipelagic state with a small land resource base. It has high economic reliance on external support. Historically that economic support has come primarily from New Zealand. The shared citizenship of the peoples of the Cook Islands and New Zealand has enabled free movement between the countries and the establishment of a significant Cook Islands community in the state of New Zealand.

New Zealand has other internationally recognised autonomous regions. Niue is a self-governing state in free association with the state of New Zealand. Tokelau is a territory of the state of New Zealand listed for decolonisation with the United Nations. Tokelau is substantially internally self-governing.

Other regions have less formalised self-governance arrangements. Currently identified as the Chatham Islands Territory, the islands are a district under the New Zealand local government

legislation.

Tokelau is non-self-governing territory of New Zealand which is currently on the UN decolonisation list. Tokelau has almost full internal self-government. It has negotiated a treaty package with New Zealand for the purpose of becoming a state in free association with New Zealand. Tokelau has voted on this package in 2006 and 2007. On neither occasion was the two-thirds vote required for acceptance of the package achieved. Tokelau therefore remains a colony of New Zealand with effective autonomy. In recent years New Zealand has not unilaterally exercised there legislative and administrative powers which it constitutionally has.

DOCUMENTS THAT DEFINE THE AUTONOMY ARRANGEMENTS

The Cook Islands Constitution Act 1964 (NZ) provided for the Cook Islands to become a self-governing state and set out the Constitution for the Cook Islands as a Schedule to the Act. The Act came into force on 4 August 1965.

- Constitution of the Cook Islands
 - article 2: Her Majesty the Queen in right of New Zealand is the Head of State in the Cook Islands
 - article 3: the Representative of Her Majesty the Queen in the Cook Islands is the Queen's Representative
 - article 5: the Queen's Representative shall act on the advice of the Cabinet or a Minister
 - article 41: deals with the power of Parliament to repeal or amend the Constitution. A two-thirds majority of the total membership of Parliament is needed to modify or repeal any provision in the Constitution. Article 41(2) deals with the stronger entrenchment of sections 2 to 6 of the Cook Islands Constitution Act 1964 (relating to the relationship between NZ and the Cook Islands) or Article 2 of the Constitution (Head of State).
- Cook Islands Constitution Act 1964
 - section 3: the Cook Islands is self-governing
 - section 4: the Constitution of the Cook Islands is the supreme law of the Cook Islands
 - section 5: Her Majesty the Queen in right of New Zealand has responsibilities for the external defence and affairs of the Cook Islands which are to be discharged after consultation with the Prime Ministers of the two countries
 - section 6: self-government is not to affect the rights of the people of the Cook Islands to New Zealand citizenship (this is supplemented by section 29 of the Citizenship Act 1977 of New Zealand)
- The Letters Patent constituting the Office of Governor-General of New Zealand 1983
 - clause 1: the Realm of New Zealand comprises the state of New Zealand, the self-governing state of the Cook Islands, the self-governing state of Niue and the Ross Dependency.
 - clause 6: the Governor-General of the Realm of New Zealand undertakes to serve the Head of State and "the people of the Realm of New Zealand, in accordance with their respective laws and customs".
- The Kirk/Henry letters 1973
- Joint Centenary Declaration of the Principles of the Relationship between New Zealand and the Cook Islands 2001

IMPLEMENTATION AND ENTRENCHMENT OF THE AUTONOMY ARRANGEMENT

From 1901 to 1965 the Cook Islands was administered by New Zealand as a dependent territory. In 1965 the Cook Islands became self-governing in free association with New Zealand following an act of self-determination in accordance with United Nations decolonisation norms. The act of self-determination was the consequence of a parliamentary election in which the successful party had campaigned on the basis that it would enter into a relationship of free association with New Zealand.

Recognition within the New Zealand national constitution was by ordinary Act of Parliament. New Zealand does not have an entrenched written constitution. The supreme form of legislation is therefore an ordinary unentrenched Act of Parliament.

It was a common understanding at the time that New Zealand would continue to provide economic support to the Cook Islands if it were to become a state in free association with New Zealand. There was no formal legal arrangement to that effect.

There is no authority responsible for management of the arrangement. The partnership relationship requires that the two Heads of Government consult on a regular basis in the interests of the partnership.

The arrangement is entrenched by constitutional convention. This means that the Government of the state of New Zealand has no power to administer or legislate for the Cook Islands. The Cook Islands Constitution Act 1964 was an act of denial of power. The arrangement has the approval and support of the international community as a consequence of the act of self-determination. In accordance with the United Nations norms the state of New Zealand is bound to the arrangement but the Cook Islands has the freedom unilaterally to choose to become an independent state.

DIVISION OF COMPETENCIES BETWEEN NATIONAL AND AUTONOMOUS GOVERNMENTS

The Cook Islands Constitution Act 1964 sets out the relationship of the Cook Islands and New Zealand. Key factors include:

- The Cook Islands has the power to make its own laws. New Zealand cannot make laws for the Cook Islands;
- The Cook Islands Government has full executive powers;
- The Cook Islands is part of the Realm of New Zealand. The Head of State of the Cook Islands is the Queen of New Zealand in right of the Realm of New Zealand;
- Cook Islanders retain New Zealand citizenship. There is no Cook Islands citizenship;
- New Zealand has residual responsibilities for the external affairs and defence of the Cook Islands. These may be engaged at the request and on behalf of the Government of the Cook Islands. There is no power of control in the Government of New Zealand. In matters of diplomatic representation in countries where there is no Cook Islands representative, the New Zealand Government Office will represent the interests of the Cook Islands.

No competencies are reserved.

BASIC POLITICAL STRUCTURES OF THE AUTONOMOUS GOVERNMENT

The Cook Islands has its own elected unicameral Parliament which consists of 24 elected members. A parliamentary term consists of 4 years. There is also a 24-member House of Ariki (Chiefs) which advises the Government on land use and customary issues. The Ariki is composed of six Ariki from Rarotonga and 18 from the outer islands. There is full adult suffrage; registration is compulsory but voting is not. There is no representation of New Zealand in the Cook Islands Parliament nor of the Cook Islands in the New Zealand Parliament.

Executive. The Head of State of the Cook Islands is the Queen of New Zealand in right of the Realm of New Zealand. The Governor-General is the representative of the Head of State in the Realm. There is a resident Queen's Representative in the Cook Islands.

Executive authority is exercised by a Cabinet of Ministers comprising the Prime Minister of the Cook Islands and between 6 and 8 other Ministers.

Judicial. The High Court of the Cook Islands was established under Article 47 of the Constitution. The High Court has all the jurisdiction necessary to administer the law of the Cook Islands. The Court of Appeal is the superior court of record as established under article 56 of the Constitution. By Article 59 of the Constitution there is also a possibility of a right of appeal to Her Majesty in Council. In October 2003 New Zealand abolished appeals from New Zealand to the Privy Council, however the New Zealand legislation does not affect the rights of appeal from the Cook Islands.

The Constitution of the Cook Islands provides for a House of Ariki (High Chiefs). This council is made of up to 24 hereditary leaders appointed by the Queen's Representative. The House of Ariki advises the Cook Islands government traditional matters and customary land.

The Cook Islands Public Service is autonomous and established under article 72 of the Constitution.

Electoral. The Electoral Act 2004 describes the basic electoral structure of the Cook Islands. The Parliament consists of 24 members which are elected by their constituency. The election is done by secret ballot under a system of universal suffrage. Each voter can only vote for one candidate in their constituency and the candidate with the most votes at the final count will win that constituency. The Constitution sets out the qualification of electors, special voting, and the qualification of candidates.

The Ombudsman Act 1984 provides for the appointment of an Ombudsman to investigate administrative decisions or acts of departments, government and certain other organisations. The Act defines the Ombudsman's functions and powers.

The Constitution establishes the Audit Office and a Public Expenditure Committee under article 71. The Public Expenditure Committee has powers set out by article 71 to investigate expenditure from the Cook Islands Government Account and other public funds or accounts of the executive government.

The Cook Islands Public Service is provided for Part VI of the Cook Islands Constitution. This service is autonomous and has no relationship to the New Zealand Public Service.

FINANCIAL AND ECONOMIC STRUCTURES AND INSTITUTIONS OF THE AUTONOMOUS GOVERNMENT

Part 5 of the Constitution deals with the public revenues of the Cook Islands. Revenue is received through taxes of the people in the Cook Islands. The annual Appropriation Act establishes an annual expenditure. The Audit Office of the Cook Islands is the Auditor of the

Cook Islands Government Account.

The Cook Islands' currency is the New Zealand dollar.

The Cook Islands receives financial support from New Zealand. The New Zealand Government provided it with NZ\$6.34 million in 2006/7. The Cook Islands also receives international aid from other countries and organisations eg the European Community through the Cotonou Agreement.

Local revenue resources include agriculture, local taxation, tourism and marine resources. The Cook Islands major exports are pearls and fish.

The Cook Islands has been a member of the Asian Development Bank since 1976. The ADB has approved 13 loan projects and 27 technical assistance projects.

Public funds are to be put into the Cook Islands Government Account unless it is provided by law that public funds are to go into another account. Article 70 states that all expenditure in any financial year from the Cook Islands Government Account or from any other public fund or account shall be charged to votes specified in an Appropriation Act and in accordance with the statement of proposed expenditure for that financial year as approved by Parliament. Every Appropriation Act lapses at the end of the financial year in which it relates.

The Minister responsible for finance or the Executive Council subject to such limits and restrictions as set out in legislation, can approve the expenditure of such sums as he or it considers necessary.

Before a general election is held the Audit Office has to forward to the Speaker, for presentation to Parliament, a separate report specifying any expenditure made in any financial year that is in excess of the limits set and which has not been previously report. Parliament may then by Act validate the whole or any part of that expenditure.

The Cook Islands had its own currency, the Cook Islands dollar, which ran on par with the New Zealand dollar until 1995. It then switched exclusively to the New Zealand dollar.

SOCIAL AND CULTURAL STRUCTURES

The Citizenship Act 1977 deals with citizenship in the Cook Islands, Cook Islanders have New Zealand citizenship. The Passport Act 1992 of New Zealand governs the right of New Zealand citizens to such passports. The grant of citizenship and the issue of New Zealand passports is exclusively in the power of the state of New Zealand.

Immigration and residency for the Cook Islands is managed under the Entry, Residence and Departure Act 1971-72 of the Cook Islands. In those situations where the grant of citizenship depends on residence, the Cook Islands Government has a degree of control by way of its control over immigration matters in the Cook Islands. The New Zealand Government has no control over immigration in the Cook Islands.

The common citizenship is a key aspect of the relationship of free association.

The Cook Islands legislates for itself. It enacts its own Acts and Regulations regarding such issues as education and language, cultural policies, health and environmental protection.

The official language of Parliament is Cook Islands Maori and English (Article 35 of the Constitution). All proposed legislation must be dual language. However if there is any inconsistency between the two versions, the English language version will prevail (Article 35(4) of the Constitution). The Constitution of the Cook Islands is written only in English.

The Cook Islands have enacted the Cultural and Historic Places Act 1994-95 and have a Ministry of Cultural Development which is regulated by the Ministry of Cultural Development Act 1990.

The Constitution outlines the fundamental human rights and freedoms of the people of the Cook Islands (Article 64). Rules for interpreting legislation in accordance with protected human rights are also set out in the Constitution (Article 65(1)).

The Cook Islands health system is governed by the Public Health Act 2004 and is independent of the New Zealand health system.

Environmental law for the Cook Islands can be found in the Cook Islands Native Timber Preservation Ordinance 1957, the Cook Islands Natural Heritage Trust 1999 (objective includes educating the public about flora and fauna), the Cook Islands Pearl Authority Act 1993 (create a sustainable pearl industry), the Environment Act 2003, the Marine Resources Act 1908, and the Prevention of Marine Pollution Act 1998.

The Ministry of Marine Resources, governed by the Ministry of Marine Resources Act 1984, advises the Government in specific areas with regard to the exploitation, management, and conservation of marine resources.

The flag and national anthem of the Cook Islands are identified in Schedules in the Constitution.

INTERNATIONAL RELATIONS

The Cook Islands is responsible for the conduct of its international relations. The New Zealand Government provides assistance when requested and where appropriate. The only constraint on the Cook Islands in the exercise of its foreign affairs is the commitment to the shared values of the common citizenship it shares with New Zealand. This means that there is on the part of the New Zealand Government an expectation of a common approach on key issues of international policy e.g. the one China policy, and respect for international human rights.

New Zealand retains some responsibilities for the external affairs and defence of the Cook Islands. These responsibilities, however, confer no rights of control to the New Zealand Government and can only be acted on at the request of and on behalf of the Government of the Cook Islands.

The Cook Islands is a member of international organisations such as WHO, FAO, UNESCO, ADB and the ACP group of states. The Cook Islands is an associate member of the Commonwealth.

The Cook Islands is a member of the Pacific Islands Forum and other regional organisations such as PIF, PIDP, PILOM, JCC, SPREP, FFA, SPC, SOPAC and USP.

The Cook Islands is a party to the South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA), the Pacific Islands Countries Trade Agreement (PICTA) and the Pacific Agreement on Closer Economic Relations (PACER). The Cook Islands is also a member of the Pacific Islands Trade Investment Commission (NZ).

The Cook Islands maintains a High Commission in Wellington, New Zealand and a Consulate General in Auckland, New Zealand. The Cook Islands also has honorary consuls in Australia, Hawaii, Norway, and Belgium.

SECURITY ARRANGEMENTS AND STRUCTURES

The Cook Islands has its own disciplined forces. They are governed by the Police Act 1981 and the Prisons Act 1967.

New Zealand retains responsibilities for the external affairs and defence of the Cook Islands. These responsibilities, however, confer no rights of control to the New Zealand Government and can only be acted on at the request of and on behalf of the Government of the Cook Islands.

INTERGOVERNMENTAL RELATIONS AND POWER SHARING AT THE NATIONAL LEVEL

In order for the Cook Islands and New Zealand to work closely together on foreign affairs and other matters of shared interest, there are regular meetings between Heads of Government and between officials to discuss a common approach.

DISTINCT FEATURES

The distinctive feature of the Cook Islands legal situation is that the Cook Islands is not within another state. It is a separate state but with special links to the state of New Zealand. This special relationship has arisen because of the colonial links between the Cook Islands and New Zealand. The present status evolved from the earlier colonial status.

The Cook Islands and New Zealand share a number of things. Most visible is that they share a Head of State. Both countries are within a constitutional structure identified as the Realm of New Zealand. The Sovereign of New Zealand is by law the Sovereign of the Realm of New Zealand. From that common starting point, the three states in the Realm have Heads of State who are identified as the Head of State "in Right of New Zealand" which means "in right of the Realm of New Zealand". In the governing prerogative document, the Letters Patent Constituting the Office of Governor-General of New Zealand, the state of New Zealand is identified as "New Zealand" and the Cook Islands as "the self-governing state of the Cook Islands".

Other matters in common are citizenship and currency. The Cook Islands has the privilege of citizenship of the state of New Zealand. The grant of that citizenship is under the sole control of the state of New Zealand. The Cook Islands could establish its own citizenship but has not done so. The use of currency is a matter totally under the control of the Cook Islands Government. The current legislation provides for the New Zealand dollar to be legal tender.

The Cook Islands situation might best be described as inchoate independence. The Cook Islands governs itself both internally and externally but has chosen to have a relationship in the nature of a partnership with another state. This is not unlike the situation that would be achieved by two states through a treaty of friendship. A treaty of friendship would be a more formal way of doing what is already being done by the Cook Islands and New Zealand in a largely informal way. A treaty could deal with economic support, with mutual defence arrangements and with diplomatic representation. There is no legal reason why the Cook Islands and New Zealand could not have their relationship regulated by a treaty between them. Such a treaty would have to include provision for access to New Zealand citizenship by the people of the Cook Islands; that citizenship provision would not typically be found in a treaty of friendship.

The Cook Islands could at any time and without consultation or approval of New Zealand declare itself to be independent and no longer in a relationship of free association with New Zealand. A consequence of such a declaration would probably be the termination of access to New Zealand citizenship for the Cook Islands. It can therefore be seen that citizenship is the key

constitutional feature of the special relationship that the state of the Cook Islands has with the state of New Zealand. Both states are autonomous; neither is within the other; both are in the Realm of New Zealand; the state of New Zealand extends its citizenship as a privilege to the Cook Islands.

ADDITIONAL INFORMATION RESOURCES

The most valuable additional resource is Alison Quentin-Baxter *Pacific States and Territories: Cook Islands*. LexisNexis, 2007.

Recent legislation of the Cook Islands can be obtained from Law Publications PO Box 9451 Wellington New Zealand.