



ANALYSIS

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Price \$3.00

An Act to implement the obligations of the Cook Islands under the
Comprehensive Nuclear-Test-Ban Treaty

(30th November 2007)

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

PART 1
INTRODUCTION

1. Short Title - This Act may be cited as the Nuclear-Test-Ban Act 2007.
2. Interpretation - (1) In this Act, unless the context otherwise requires, -
 - “Clarification inspection” has the meaning given to it by section 10(2);
 - “International inspector” means an individual designated by the Technical Secretariat, according to the procedures set out in the Protocol to the Treaty, to carry out an on-site inspection in accordance with the Treaty; and includes an inspection assistant as defined in the Treaty;
 - “Minister” means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act;
 - “Secretary” means the Secretary of Foreign Affairs and Immigration;
 - “Treaty” means the Comprehensive Nuclear-Test-Ban Treaty, made at New York on 24 September 1996 (a copy of extracts of the Treaty from the English text of which is deposited and held at the Ministry of Foreign Affairs and Immigration in the Cook Islands); and includes the Annexes to the Treaty, the Protocol to the Treaty, and the Annexes to the Protocol, and any amendments to, or substitutions of, those documents, that are, or will become, binding on the Cook Islands from time to time.(2) Terms and expressions used and not defined in this Act, unless the context otherwise requires, have the same meaning as in the Treaty.
3. Purpose - (1) The purpose of this Act is to implement the obligations of the Cook Islands under the Treaty.
 - (2) Every person exercising a power or discretion conferred under this Act must have regard to the obligations of the Cook Islands under the Treaty.
4. Crown bound - This Act binds the Crown.

PART 2
PROHIBITIONS AND OFFENCES

5. Nuclear explosions prohibited - (1) No person may -
- (a) Carry out any nuclear weapon test explosion or any other nuclear explosion; or
 - (b) Cause, encourage, or in any way participate in, the carrying out of any nuclear weapon test explosion or any other nuclear explosion.
- (2) Every person who engages in conduct prohibited by subsection (1) commits an offence.
- (3) Every person who commits an offence against subsection (2) is liable on conviction on indictment to imprisonment for a term not exceeding 10 years or a fine not exceeding \$1,000,000.
6. Prohibitions and offences also apply in certain cases outside the Cook Islands - (1) Section 5 applies to acts done or omitted to be done outside the Cook Islands -
- (a) By a Cook Island citizen; or
 - (b) By any other person on board a Cook Island ship.
- (2) If an offence against section 5(2) is alleged to have occurred anywhere outside the Cook Islands, -
- (a) An information may be laid only with the consent of the Attorney-General and on his or her certificate that it is expedient that the information be laid;
 - (b) Before the Attorney-General's consent has been obtained, a person may be arrested, or a warrant for a person's arrest may be issued and executed, and the person may be remanded in custody or on bail, but no further or other proceedings are to be taken until that consent has been obtained.

PART 3
INFORMATION-GATHERING POWERS

7. Secretary may seek information - (1) This section applies if the Secretary considers that any person is capable of giving information relevant to -
- (a) Clarification of a matter which may cause concern about possible non-compliance with Article I of the Treaty, which the Cook Islands must provide to another State Party on a request under paragraph 29 of Article IV of the Treaty; or
 - (b) Clarification as may be necessary to resolve an ambiguity that has arisen during an on-site inspection, which the Cook Islands, if it is the inspected State Party, must provide to an on-site inspection team under paragraph 61(g) of Part II of the Protocol to the Treaty; or

- (c) The implementation of the Treaty or the enforcement of this Act.
- (2) The Secretary may, by written notice given to a person, require the person to give to the Secretary such information as is specified in the notice, within such reasonable period and in such manner as is specified in the notice.
- (3) Information required by a notice under subsection (2) must be given in writing and -
 - (a) If given by a natural person, must be signed by the person; and
 - (b) If given by a body corporate, must be signed by an officer authorised to sign on behalf of the body corporate.
- (4) The Secretary may, by written notice given to a person, require the person to give to the Secretary particular documents, or documents of a particular kind, specified in the notice, within such reasonable period as is specified in the notice.

8. Failure to supply information an offence - (1) Every person commits an offence who, without reasonable excuse, fails to comply with a notice under section 7 to the extent that the person is capable of complying with it.

(2) Every person who commits an offence against subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 1 year or a fine not exceeding \$100,000.

9. False or misleading statements and documents - (1) Every person commits an offence who, in any document prepared under section 7, makes a statement or omits any matter knowing that, or being reckless as to whether, the statement or omission makes the document false or misleading in a material particular.

(2) Every person who commits an offence against subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 1 year or a fine not exceeding \$100,000.

10. Clarification inspections - (1) This section applies if another State Party, without having made a request for an on-site inspection under paragraph 34 of Article IV of the Treaty, requests the Cook Islands to clarify, either directly or through the Organization, whether or not at a place in the Cook Islands there has been non-compliance with Article I of the Treaty.

(2) If this section applies, a member of the police may enter the place and conduct an inspection (a "clarification inspection") of the place.

(3) For the purposes of subsection (2), -

(a) Sections 17 and 19 apply (with necessary modification) as if the clarification inspection were an on-site inspection; and

(b) The member of the Police has the functions contemplated, and the powers provided for, in the Treaty for on-site inspections by an international inspector.

PART 4
INSPECTIONS

11. Purpose of this Part - The purpose of this Part is to facilitate on-site inspections under the Treaty by -

- (a) Confirming the right of international inspectors to inspect places in the Cook Islands within an on-site inspection area; and
- (b) Enabling Cook Islands officers to secure access for an international inspector where consent is not, or may not be, obtainable; and
- (c) Enabling Cook Islands officers to accompany or assist an international inspector.

12. On-site inspections - An international inspector has the right, and every person must permit an international inspector, to-

- (a) Enter a place in the Cook Islands within an on-site inspection area in accordance with the Treaty; and
- (b) Inspect the place in accordance with the Treaty; and
- (c) Exercise, in connection with the on-site inspection, a function contemplated, or a power provided for, in the Treaty.

13. Persons who may accompany international inspectors - To facilitate on-site inspections, an international inspector may be accompanied by -

- (a) Up to 3 observers for the purposes of giving effect to paragraph 61 of Article IV of the Treaty;
- (b) A person appointed by the Minister under section 15;
- (c) A member of the police.

14. Ministerial directions - (1) The Minister may, by notice in writing, issue directions to any person for the purpose of facilitating an on-site inspection under the Treaty.

(2) Every person commits an offence who wilfully fails to comply with a direction given by the Minister under subsection (1).

(3) Every person who commits an offence against subsection (2) is liable on summary conviction to a fine not exceeding \$100,000.

15. Appointment of Cook Islands officials - The Minister may appoint any person to accompany or assist an international inspector.

16. Identification certificates - The Minister may issue a certificate identifying an international inspector or other person authorised to accompany or assist an international inspector.

17. Search warrants - (1) A Justice of the High Court of the Cook Islands, Justice of the Peace, or Registrar (not being a member of the police) may, on an application, issue a search warrant in respect of a place in the Cook Islands if satisfied that there are reasonable grounds for believing that -

- (a) The place is within an on-site inspection area; and
 - (b) Entry to the place is necessary for the purpose of exercising any function contemplated, or any power provided for, in the Treaty.
- (2) An application under subsection (1) -
- (a) May not be made unless the consent of a person in control of the place is not, or may not be, obtainable; and
 - (b) Must be made in writing by a member of the police or person appointed under section 15; and
 - (c) Must include a copy of relevant provisions of the Treaty and a copy of the inspection mandate.
- (3) For the purposes of subsection (2)(a), "consent" means consent to an international inspector, and any person accompanying or assisting the inspector, entering the place to exercise any function contemplated, or any power provided for, in the Treaty.
- (4) A warrant issued under subsection (1) -
- (a) authorises the international inspector (and any person authorised to accompany or assist the inspector) to enter the place, at any time within 14 days of the issue of the warrant (or within such further time as the Judge, Justice, Community Magistrate, or Registrar may specify in the warrant) for the purpose of exercising any function contemplated, or any power provided for, in the Treaty;
 - (b) authorises a member of the police, or person appointed under section 15, who accompanies the international inspector, to use such force as is reasonable in the circumstances for effecting entry to or inspection of a place specified in the warrant (including force to break down a door or break open anything in the place);
 - (c) may be issued without conditions or subject to any conditions the Justice, Justice of the Peace, or Registrar thinks fit.

18. Search without warrant -(1) In the circumstances set out in subsection (2) an international inspector (and any member of the police, or person appointed under section 15) may exercise the powers in section 17(4) in respect of a place as if a warrant under section 17(1) had been issued in respect of the place.

(2) The circumstances referred to in subsection (1) are that a member of the police, or person appointed under section 15, is satisfied that there are reasonable grounds for believing, in respect of the place, that -

- (a) There are grounds for the issue of a warrant under section 17(1); and
- (b) It is not practicable to obtain possession of a warrant immediately; and
- (c) Delaying entry until a warrant can be obtained would create a real risk that the exercise of a function contemplated, or a power provided for, in the Treaty, would be frustrated.

19. Obligations of persons accompanying international inspectors - (1)
Every person who accompanies an international inspector on an inspection -

- (a) Must carry any identification certificate issued to him or her under section 16 or another means of identifying himself or herself as a person authorised to accompany or assist an international inspector; and
- (b) Must produce the identification certificate or other means of identification to any person appearing to be in charge of a place entered -
 - (i) on entering the place (if such a person is then present); and
 - (ii) at any reasonable time afterwards, if asked to do so by the person; and
- (c) Must have any warrant (whether issued under section 17 or otherwise) authorising entry to the place with him or her and produce it if required to do so; and
- (d) If any thing is seized, must ensure that an occupier or person in charge of the place is given a written inventory of all things seized.

(2) If there is no person appearing to be in charge of the place at any time between the time of entry and the time the inspection concerned has been completed, every person who accompanies an international inspector on the inspection must, as soon as practicable after the inspection is completed, ensure that an occupier or person in charge of the place is given a written notice stating that the place has been entered, and specifying -

- (a) The time and date of entry;
- (b) The circumstances and purpose of entry;
- (c) The name of every person entering.

(3) If a person appointed under section 15 discovers any offence or suspected offence under this Act as a result of accompanying an international inspector on an on-site inspection, the person must report that offence or suspected offence to the police as soon as practicable after the completion of that inspection.

20. Obstruction of international inspectors - (1) Every person commits an offence who willfully obstructs, hinders, resists, or deceives any international inspector who is exercising any function contemplated, or any power provided for, in the Treaty.

(2) Nothing in subsection (1) applies to a refusal to give consent to entry by an international inspector who is not acting pursuant to section 18 or a search warrant (whether issued under section 17 or otherwise).

(3) Every person who commits an offence against subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding \$20,000.

PART 5 MISCELLANEOUS

21. Self-incrimination (1) A person is not excused from answering a question or giving any information or document under this Act or the Treaty on the ground that to do so may incriminate or tend to incriminate that person.

(2) A self-incriminating statement or document made or given under this Act or the Treaty is not admissible as evidence in criminal proceedings against that person except on the prosecution of that person for an offence against section 9(1) in relation to that statement or document.

22. Regulations - (1) The Queen's Representative may from time to time, by Order in Executive Council, make regulations for all or any of the following purposes-

(a) Providing for any matter that is necessary or desirable for the purpose of implementing the Treaty or any agreement or arrangement that is concluded between the Cook Islands and the Organization under the Treaty;

(b) Prescribing offences in respect of the contravention of or non-compliance with any provision of any regulations made under this section, and prescribing fines, not exceeding \$5,000, that may, on summary conviction, be imposed in respect of any such offence;

(c) Providing for such other matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

(2) The Queen's Representative may from time to time, by Order in Executive Council, -

(a) Amend the Schedule by making such amendments to the text of the extracts of the Treaty set out in the Schedule as are required to bring that text up to date;

(b) Revoke the Schedule, and substitute a new schedule setting out in an up-to-date form the text of the extracts of the Treaty.

(3) Any order made under subsection (2) is a regulation for the purposes of the Regulations Act 1971-72.

23. Amendment to Diplomatic Privileges and Immunities Act 1968 - Section 10 of the Diplomatic Privileges and Immunities Act 1968 is amended as follows:

"10. Privileges and immunities of Judges of, and suitors to, the International Court of Justice – The Queen's Representative may from time to time, by Order in Council, -

- (a) Confer on the Judges and Registrars of the International Court of Justice established by the Charter of the United Nations, and on suitors to that Court and their agents, counsel, and advocates, such privileges, immunities, and facilities as may be required to give effect to any resolution of, or convention approved by, the General Assembly of the United Nations;
- (b) Confer upon any persons to whom paragraph 57 of Article II of the Comprehensive Nuclear-Test-Ban Treaty applies, and any persons to whom Part II, Section B of the Protocol to that Treaty applies, any additional privileges and immunities that are required by that Treaty."

This Act is administered in the Ministry of Foreign Affairs and Immigration