

COOK ISLANDS: CONSTITUTIONAL STATUS AND INTERNATIONAL PERSONALITY

The Cook Islands has a special constitutional relationship of free association with New Zealand. This relationship reflects the long historical and formal relationship between the two countries.

Historical development

From 1901 (when it was annexed by New Zealand) to 1965, the Cook Islands was a dependent territory of New Zealand. In 1965, following an act of self-determination under United Nations auspices, the Cook Islands became self-governing in free association with New Zealand, adopting its own Constitution and establishing its own government.

Constitutional status

The status of self-government in free association is distinct from integration with the metropolitan state (on the one hand) and independence from the metropolitan state (on the other). Quite where a free association relationship falls on the spectrum between the two can vary quite a lot and will depend on a number of factors (such as how much ongoing economic and administrative assistance the former territory may need from the metropolitan state).

Under the free association relationship between New Zealand and the Cook Islands, the Cook Islands has evolved quite a long way along the spectrum towards independence. Specifically:

- The Cook Islands is self-governing with the power to make its own laws. New Zealand cannot make laws for it (unless authorised by an Act of Parliament of the Cook Islands, which in practice never happens).
- The Cook Islands Government has full executive powers.

On the other hand:

- The Cook Islands remains part of the Realm of New Zealand (albeit a separate part), and the Queen in Right of New Zealand remains the Head of State of the Cook Islands.
- Cook Islanders retain New Zealand citizenship (and do not have additional Cook Islands citizenship).

Although, under section 5 of the Cook Islands Constitution Act, New Zealand retains some residual responsibility for the external affairs and defence of the Cook Islands, these responsibilities 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. This interpretation of section 5 was confirmed in the Joint Centenary Declaration of the Principles of the Relationship between New Zealand and the Cook Islands, signed by the New Zealand and Cook Islands Prime Ministers in Rarotonga on 11 June 2001 (attached). Clauses 4 and 5 of the Declaration are critical:

Clause 4*Foreign Affairs*

1. In the conduct of its foreign affairs, the Cook Islands interacts with the international community as a sovereign and independent state. Responsibility at international law rests with the Cook Islands in terms of its actions and the exercise of its international rights and fulfilment of its international obligations.

2. Any action taken by New Zealand in respect of its constitutional responsibilities for the foreign affairs of the Cook Islands will be taken on the delegated authority, and as an agent or facilitator at the specific request of, the Cook Islands. Section 5 of the Cook Islands Constitution Act 1964 thus records a responsibility to assist the Cook Islands and not a qualification of Cook Islands' statehood.

Clause 5*Treaties*

The Government of the Cook Islands possesses the capacity to enter into treaties and other international agreements in its own right with governments and regional and international organisations.

International personality

The international personality of the Cook Islands has developed significantly over the last 15 years, as demonstrated in a range of areas:

- The Cook Islands is party to significant treaties with other states, both bilateral (with New Zealand, the United States, France, the Republic of Korea, and others) and multilateral (for example, the four Geneva Conventions, the Convention on International Civil Aviation, the United Nations Convention on the Law of the Sea, the Vienna Convention for the Protection of the Ozone Layer (and Montreal Protocol), and the United Nations Framework Convention on Climate Change (and Kyoto Protocol).
- As at May 2005 the Cook Islands Government had established direct diplomatic relations with 21 countries and international bodies: Australia, Bosnia Herzegovina, China, the European Union, Fiji, France, Germany, the Holy See, India, Iran, Italy, Jamaica, Malaysia, New Zealand, Nauru, Papua New Guinea, Portugal, South Africa, Spain, Thailand, and Timor-Leste.
- Although the Cook Islands is not a member of the United Nations in its own right, it is a member of a range of international organisations, including the Asian Development Bank, the Pacific Islands Forum, the World Health Organisation, the United Nations Food and Agriculture Organisation, the International Civil Aviation Organisation, and the United Nations Educational, Scientific, and Cultural Organisation, and is also an Associate Member of both the Commonwealth and the United Nations Economic and Social Commission for Asia and the Pacific.

The Joint Centenary Declaration of the Principles of the Relationship between New Zealand and the Cook Islands describes the New Zealand/Cook Islands relationship as at 2001 and takes into

account that the Cook Islands has developed a separate international identity from that of New Zealand. The Declaration does not make formal changes to the constitutional relationship of free association but clarifies how it operates.

The maturity of the Cook Islands' international personality does not mean that the Cook Islands is, in constitutional terms, an independent sovereign state. In New Zealand's view, a constitutional change of that significance would have implications in terms of Cook Islanders' eligibility for New Zealand citizenship, and would require formal constitutional acts including a referendum and changes to the Cook Islands Constitution.

Legal Division
Ministry of Foreign Affairs and Trade
WELLINGTON

May 2005

JOINT CENTENARY DECLARATION
OF THE PRINCIPLES OF THE RELATIONSHIP BETWEEN
NEW ZEALAND AND THE COOK ISLANDS

Signed by the Prime Minister of New Zealand and the Prime Minister of the Cook Islands at
Rarotonga on 11 June 2001.

THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF THE COOK ISLANDS (hereinafter referred to as “the Signatories”), on the occasion of the centenary of the establishment of the formal relationship between their two countries;

RECOGNISING the close traditional, cultural and social ties that have existed between the two countries and their people for many hundreds of years;

RECALLING that the formal association between the Cook Islands and New Zealand began on 11 June 1901;

HAVING REGARD TO the endorsement of the Cook Islands’ act of self-determination by the United Nations General Assembly on 16 December 1965 (GA Resolution 2064(XX)), pursuant to which act the Cook Islands voluntarily entered into a relationship of free association with New Zealand;

RECALLING the Exchange of Letters between Prime Minister Norman Kirk of New Zealand and Premier Albert Henry of the Cook Islands in 1973 that set out fundamental principles then underpinning the relationship between the two States;

RECALLING FURTHER that in accordance with the Cook Islands Constitution the Cook Islands has full and exclusive powers to make its own laws and adopt its own policies;

RECOGNISING the evolution that has taken place in the constitutional relationship between the two countries and the development of a unique relationship between them;

AFFIRMING the wish of both Signatories to strengthen their cooperation both bilaterally and multilaterally;

AND DESIRING ON THIS CENTENARY to restate the principles underpinning the relationship of partnership and free association between the Cook Islands and New Zealand as equal States independent in the conduct of their own affairs;

JOINTLY STATE:

Clause 1
Partnership

The relationship of partnership requires that all issues affecting the two countries should be resolved on a cooperative and consultative basis. The Signatories will continue to work together, to consult on issues as they arise, and to cooperate on matters of mutual interest, including:

- a. undertaking and maintaining bilateral and international programmes and initiatives to promote their joint and national objectives and to enhance their contribution to international peace and security;
- b. promoting the continued development of relations between persons and organisations in their two countries with a view to deepening understanding, friendship and cooperation;
- c. continued expansion of commercial, economic and investment relations between the private sectors of each country; and
- d. encouraging frequent contacts at the political, official, commercial and community levels of the two countries.

Clause 2
Citizenship

1. The people of the Cook Islands will retain New Zealand citizenship, respecting and upholding the fundamental values on which that citizenship is based. The Cook Islands and New Zealand share a mutually acceptable standard of values in their laws and policies, founded on respect for human rights, for the purpose and principles of the United Nations Charter, and for the rule of law.

2. The Government of the Cook Islands will accord New Zealand citizens preferential consideration in respect of entry into and residence in the Cook Islands.

Clause 3
Head of State

1. Her Majesty the Queen as Head of State of the Cook Islands is advised exclusively by Her Cook Islands Ministers in matters relating to the Cook Islands.
2. In all matters affecting the Realm of New Zealand, of which the Cook Islands and New Zealand are part, there will be close consultation between the Signatories.

Clause 4
Foreign Affairs

1. In the conduct of its foreign affairs, the Cook Islands interacts with the international community as a sovereign and independent state. Responsibility at international law rests with the Cook Islands in terms of its actions and the exercise of its international rights and fulfilment of its international obligations.
2. Any action taken by New Zealand in respect of its constitutional responsibilities for the foreign affairs of the Cook Islands will be taken on the delegated authority, and as an agent or facilitator at the specific request of, the Cook Islands. Section 5 of the Cook Islands Constitution Act 1964 thus records a responsibility to assist the Cook Islands and not a qualification of Cook Islands' statehood.
3. Without impairing the right of either Signatory to formulate and implement its own foreign policies, the Signatories undertake to:
 - a. consult regularly on foreign affairs matters with a view to formulating common policies on important foreign affairs issues;
 - b. cooperate in the pursuit of common foreign relations objectives; and
 - c. advise each other when a proposed foreign policy initiative may affect the rights, obligations and interests of the other Signatory.

Clause 5
Treaties

The Government of the Cook Islands possesses the capacity to enter into treaties and other international agreements in its own right with governments and regional and international organisations.

Clause 6
Diplomatic and Consular Relations

1. Official relations between the Signatories are based on the 1961 Vienna Convention on Diplomatic Relations and the 1968 Vienna Convention on Consular Relations.
2. Each Signatory recognises the right of the other in accordance with its national interests to establish diplomatic relations with third parties.

Clause 7
Defence and Security

1. The Government of the Cook Islands has full legal and executive competence in respect of its own defence and security. Section 5 of the Cook Islands Constitution Act 1964 thus records a responsibility to assist the Cook Islands and not a qualification of Cook Islands' statehood.
2. In accordance with its constitutional responsibilities, the Government of New Zealand will continue to assist the Government of the Cook Islands with the defence of the Cook Islands as may be requested from time to time by the Government of the Cook Islands.
3. The Signatories undertake to:
 - a. cooperate with and assist each other in regard to their defence and national security in accordance with their respective capacities; and

b. consult regularly on defence and security issues and advise each other of any risks that may affect either or both Signatories as they become known.

SIGNED BY the Prime Minister of New Zealand and the Prime Minister of the Cook Islands on behalf of their respective Governments, at Rarotonga this 11th day of June 2001.

[Rt Hon Helen Clark]	[Hon Dr Terepai Maoate]
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**Prime Minister
of New Zealand**

**Prime Minister
of the Cook Islands**

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EXCHANGE OF LETTERS

BETWEEN THE PRIME MINISTER OF NEW ZEALAND
AND THE PREMIER OF THE COOK ISLANDS CONCERN-
ING THE NATURE OF THE SPECIAL RELATIONSHIP
BETWEEN THE COOK ISLANDS AND NEW ZEALAND

Presented to the House of Representatives by Leave

BY AUTHORITY:
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EXCHANGE OF LETTERS BETWEEN THE PRIME MINISTER OF NEW ZEALAND AND THE PREMIER OF THE COOK ISLANDS CONCERNING THE NATURE OF THE SPECIAL RELATIONSHIP BETWEEN THE COOK ISLANDS AND NEW ZEALAND

No. 1

The Right Honourable N. E. KIRK, P.C.,
Prime Minister of New Zealand

to

The Honourable A. H. HENRY,
Premier of the Cook Islands

Office of the Prime Minister,
Wellington, 4 May 1973

My dear Premier,

When you visited Wellington earlier this year, we discussed the nature of the special relationship between the Cook Islands and New Zealand; and we then agreed to exchange letters clarifying aspects of this relationship.

You explained to me your Government's desire that the free association between the Cook Islands and New Zealand should not be regarded as restricting the Cook Islands' powers of self-government. I was glad to assure you that, in the view of the New Zealand Government, there are no legal fetters of any kind upon the freedom of the Cook Islands, which make their own laws and control their own Constitution.

That also is the view of the United Nations. The General Assembly accepted the referendum approving the present Constitution as an act of self-determination, which had ended the dependent status of the Cook Islands.

Thenceforward, the relationship between our two countries has been simply one of partnership, freely entered into and freely maintained. The Cook Islands Constitution Act, and the Constitution itself, provide guarantees and guidelines for the conduct of this partnership; but, in the final analysis, everything turns on the will of each of our countries to make the arrangement work.

It is, of course, an integral part of that arrangement that the Cook Islands can continue to rely on New Zealand's help and protection. To that end, the New Zealand Government has a statutory responsibility for the external affairs and defence of the Cook Islands. It is, however, also intended that the Cook Islands be

free to pursue their own policies and interests—as they are doing, for example, through separate membership of the South Pacific Forum and other regional bodies.

I need hardly assure you, Mr Premier, that the New Zealand Government welcomes the role which your country is now playing, and looks forward to continued co-operation with your Government in the wide range of matters which are our common concern. At the same time, I would like especially to draw your attention to the central feature of the constitutional relationship between our two countries.

By their own express wish, the people of the Cook Islands remain New Zealand citizens. Like other New Zealand citizens, they owe allegiance to Her Majesty the Queen in right of New Zealand, and they acknowledge the Queen in Her New Zealand capacity as their Head of State. In this way the Cook Islands people retain the right to regard New Zealand as their own country, even while they enjoy self-government within the Cook Islands.

The very survival of a state may depend upon the belief of its citizens in common ideals and their sense of loyalty towards each other. It is therefore unusual for a state to extend its citizenship to people living in areas beyond the reach of its own laws. That New Zealand has taken this step in relation to the Cook Islands is the strongest proof of its regard for, and confidence in, the people of your country.

For the reasons I have already indicated, the bond of citizenship does entail a degree of New Zealand involvement in Cook Islands affairs. This is reflected in the scale of New Zealand's response to your country's material needs; but it also creates an expectation that the Cook Islands will uphold, in their laws and policies a standard of values generally acceptable to New Zealanders.

It seems to my Government that this is the heart of the matter. The special relationship between the Cook Islands and New Zealand is on both sides a voluntary arrangement which depends upon shared interests and shared sympathies. In particular, it calls for understanding on New Zealand's part of the Cook Islands' natural desire to lead a life of their own, and for equal understanding on the Cook Islands' part of New Zealand's determination to safeguard the values on which its citizenship is based.

I shall be grateful for your reply confirming that the Cook Islands Government shares the views expressed in this letter, and wishes to maintain the special relationship of free association between the Cook Islands and New Zealand. I would, moreover, suggest that my letter and your reply be tabled by our respective Governments in the Cook Islands Legislative Assembly and in the New Zealand Parliament, as an indication to all who are interested of the true nature of the ties between our two countries.

Yours sincerely,

NORMAN KIRK.

No. 2

The Honourable A. H. HENRY,
Premier of the Cook Islands

to

The Right Honourable N. E. KIRK, P.C.,
Prime Minister of New Zealand

Wellington, 9 May 1973

My dear Prime Minister,

Thank you for your letter of 4 May about the special relationship between the Cook Islands and New Zealand.

I confirm that the Cook Islands Government shares the views expressed in your letter, and wishes to maintain the special relationship of free association between the Cook Islands and New Zealand.

I agree that your letter and this reply be tabled by our respective governments in the Cook Islands Legislative Assembly and in the New Zealand Parliament.

Yours sincerely,

A. H. HENRY.

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