

# Legislation

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**18Sep1958 - NIU**

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## Geneva Conventions Act 1958

**- Niue -**

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**1958/19 (NZ) - 18 September 1958**

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### **To enable effect to be given to certain International Conventions done at Geneva on 12 August 1949, and for purposes connected therewith**

#### **1 Short title**

This is the Geneva Conventions Act 1958.

#### **2 Interpretation**

(1) In this Act -

"the First Convention" means the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, a

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at Geneva on 12 August 1949, a copy of which Convention (not including the annexes to that Convention) is set out in Schedule 1;

"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, a copy of which Convention (not including the annex to that Convention) is set out in Schedule 2;

"the Third Convention" means the Geneva Convention relative to the Treatment of Prisoners of War adopted at Geneva on 12 August 1949, a copy of which Convention (not including the annexes to that Convention) is set out in Schedule 3;

"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, a copy of which Convention (not including the annexes to that Convention) is set out in Schedule 4;

"Conventions" means the First Convention, the Second Convention, the Third Convention, and the Fourth Convention;

"Court" does not include a Court Martial;

"Niue aircraft" means any aircraft that is registered or required to be registered in Niue and includes any aircraft belonging to or in the service of Her Majesty in right of Niue, whether a civil or a military aircraft;

"Niue ship" means a "Niue ship" or "ship belonging to Her Majesty" and includes an unregistered ship which required by the law of Niue to be registered in Niue or in some other Commonwealth country;

"protected internee" means a person protected by the Fourth Convention and interned in Niue;

"protected prisoner of war" means a person protected by the Third Convention;

"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 he is a national, or of whose forces he 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.

(2) If the ratification on behalf of Niue of any of the Conventions is subject to a reservation or is accompanied by a declaration, that Convention shall, for the purposes of this Act, have effect and be construed subject to and in accordance with that reservation or declaration.

### *Punishment of Offenders Against Conventions*

#### **3 Punishment for grave breaches of Conventions**

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

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(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.

(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, the same as that for the time being for murder;

(b) In any other cases, imprisonment for a term not exceeding 14 years.

(5) No one shall be prosecuted for an offence under this section without the leave of Cabinet.

(6) The provisions of section 5 (other than subsection (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 in 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), that question shall be determined by the Minister of Foreign Affairs and a certificate purporting to set out any such determination and to be signed by or on behalf of that Minister shall be received in evidence and be deemed to be so signed without further proof, unless the contrary is shown.

(8) The enactments relating to the trial by Court Martial of persons who commit civil offences shall have effect for the purposes of the jurisdiction of Court Martial convened in Niue as if this section had not been passed.

#### *Provisions as to Certain Legal Proceedings*

### **4 Notice of trial of protected persons to be served on protecting power**

(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 him to death or to imprisonment for a  
2 years or more -

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shall not proceed with the trial until it is proved to the satisfaction of the court that a notice containing the particulars mentioned in subsection (2), so far as they are known to the prosecutor, has been served 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 the date of his birth and his profession or trade, if any, and, if the accused is a protected prisoner of war, his rank and his army, regimental, personal, or serial number;
- (b) His place of detention, internment, or residence;
- (c) The offence with which he 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 acknowledgement of the receipt by that power, representative or person on a specified day of a notice described in it 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 "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.

## 5 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;

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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 him, 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 that subsection as representing the accused.

(3) If the court adjourns the trial under 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 the absence of counsel either accepted by the accused as representing him or instructed as mentioned in subsection (2), counsel assigned under this subsection shall, without prejudice to the requirements of subsection (1)(b) be regarded for the purposes of the said subsection (1) as representing the accused.

(4)

(a) 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 the Assembly for the purpose, such remuneration and disbursements as may be in like manner prescribed.

(b) While there are no regulations for the purposes of this section or so far as any such regulations do not apply, the Offenders Legal Aid Act 1954 (NZ) and of any regulations made under that Act shall apply to the assignment, remuneration, and disbursement of counsel under this section.

## 6 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 his conviction or, in the case of an appeal against sentence, of his 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 his conviction and sentence, being a notice given -

(a) In the case of a protected prisoner of war, by an officer of the New Zealand armed forces; 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 he is confined.

(2) [Repealed 1971/208/53 (NZ)]

(3) Where subsection (1) applies in relation to a convicted person, then, the Court otherwise orders, an order of the Court relating to the restitution of

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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 his conviction or sentence is possible.

(4) Subsections (1) and (2) 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.

(5) 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.

(6) 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 74 of the Fourth Convention.

## **7 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

(b) In fixing any penalty other than imprisonment in respect of the offence, take that period of custody into account.

(2) Where the Minister of Justice 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, that Minister may direct that the prisoner shall be transferred from that custody to the custody of an officer of the New Zealand armed forces and thereafter remain in military 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 his trial.

### *Prevention of Abuse of Red Cross and Other Emblems*

## **8 Use of Red Cross and other emblems**

(1) Subject to this section, it shall not be lawful for any person, without the authority of the Minister of Defence or a person authorised by him in writing to give consent under this section, to use for any purpose whatsoever any of the following emblems, designations, designs, or wordings:

(a) The emblem of a red cross with vertical and horizontal arms of the same length on, and completely surrounded by, a white ground, designation "Red Cross" or "Geneva Cross";

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(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, being the heraldic emblem of the Swiss Confederation, or any other design so nearly resembling that design as to be capable of being mistaken for that heraldic emblem;

(e) Any design or wording so nearly resembling any of the emblems or designations specified in the foregoing provisions of this subsection as to be capable of being mistaken for, or, as the case may be, understood as referring to, one of those emblems.

(2) If any person contravenes the foregoing provisions of this section he shall be guilty of an offence and be liable on summary conviction to a fine not exceeding 1 penalty unit and to forfeit any goods upon or in connection with which the emblem, designation, design, or wording was used.

(3) The Minister of Defence or a person authorised by that Minister to give consents under this section shall not refuse to give such a consent, and shall not withdraw such a consent, except for the purpose of giving effect to the provisions of the Conventions.

(4) In the case of a trade mark registered before the passing of this Act, the foregoing provisions of this section shall not apply by reason only of its consisting of or containing a design or wording which reproduces or resembles an emblem or designation specified in subsection (1)(b) or (c).

(5) Where a person is charged with using a design or wording to which subsection (4) applies for any purpose and it is proved that he used it otherwise than as, or as part of, a trade mark registered as aforesaid, it shall be a defence for him to prove -

(a) That he lawfully used that design or wording for that purpose before the passing of this Act; or

(b) In a case where he is charged with using the design or wording upon goods, that the design or wording had been applied to the goods before he acquired them by some other person who had manufactured or dealt with the goods in the course of trade and who lawfully used the design or wording upon similar goods before the passing of this Act.

(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 person purporting to act in any such capacity he, as well as the body corporate, shall be deemed to be guilty of the offence and shall be liable to be prosecuted against and punished accordingly.

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(7) This section extends to the use in or outside Niue of an emblem, designation, design, or wording referred to in subsection (1) on any Niue ship or Niue aircraft.

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

### *Miscellaneous*

## **9 Regulations**

(1) The Governor-General, may by Order in Council, make all such regulations as may be necessary or expedient for giving full effect to this Act and for the due administration of it.

(2) All regulations made under this section shall be laid before Parliament within 28 days after the date of the making of it if Parliament is then in session and, if not, shall be laid before Parliament within 28 days after the date of the commencement of the next ensuing session.

**10-11** [Spent]

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### SCHEDULES [Not reproduced]

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[Source: Niue Laws (Tau Fakatufono-Tohi A Niue), Legislation as at December 2006, Vol. 2 (Tohi 2), Statutes Constitutional–M, Government of Niue, Alofi, 2006, pp. 877-883.]

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#### **International Criminal Law:**

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