

CRIMES (INTERNATIONALLY PROTECTED PERSONS AND HOSTAGES) BILL

EXPLANATORY NOTE

THIS Bill, in effect, extends New Zealand jurisdiction to deal with specified crimes against internationally protected persons outside New Zealand. It also creates certain new crimes in respect of threats against such persons' lives and property, and in respect of hostage-taking.

The Bill gives effect, so far as legislation is required, to the following international conventions:

- (a) The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, 1973:
- (b) The Convention against the Taking of Hostages 1979.

Clause 1 relates to the Short Title and commencement. The Bill is to come into force on a date to be appointed by the Governor-General. It is intended that the Bill will be brought into force when New Zealand becomes bound by the 2 conventions, and power is taken to bring the Bill into force on different dates in respect of each of the conventions if that is necessary.

Clause 2: Subclause (1) defines certain terms used in the Bill. The most important term is "internationally protected person", and the wording of this definition follows closely that used in Article 1 of the 1973 Convention. In particular, it should be noted that the persons specified are, in general, only "protected" while outside their own countries.

Subclause (2) is intended to give the same protection to the Governors-General of Commonwealth countries as they would have if they were the Head of State.

Internationally Protected Persons

Clause 3, in effect, extends New Zealand's jurisdiction to certain crimes committed outside New Zealand against internationally protected persons. The act or omission concerned must be such that, if it had taken place in New Zealand, it would have constituted a crime against any of the provisions of the Crimes Act 1961 specified in the *First* Schedule to the Bill. In brief, these are most of the more serious crimes against the person, being crimes for which extradition may be sought under the Extradition Act 1965.

The clause provides, broadly, that the prosecution must show that, at the time of the alleged crime, the offender knew that the victim was an internationally protected person. However, some limits on the scope of this onus of proof are prescribed by *clause 7*.

Clause 4 makes similar provision in respect of certain specified crimes in relation to the official premises or private residence of any internationally protected person, or any vehicle used by any such person. A crime is committed under this clause only if, at the material time, an internationally protected person is in the premises or vehicle concerned.

Clause 5 renders it a crime to threaten (whether in New Zealand or outside) to commit any crime to which *clause 3* applies, and *clause 6* does the same in respect of crimes to which *clause 4* applies.

Clause 7 relates to the onus of proof in proceedings for a crime against an internationally protected person. As stated in the note to *clause 3* above, the onus generally lies on the prosecution to prove that the defendant knew that the victim was an internationally protected person as defined in *clause 2 (1)*. However, this clause provides that certain peripheral elements of this term need not be shown to have been within the knowledge of the accused.

To take one example. In proceedings for the alleged murder of the daughter of a UNESCO official, the Crown must prove the following matters (refer to *paragraphs (c) and (d)* of the definition of the term "internationally protected person" in *clause 2 (1)*):

- (a) That UNESCO is an international organisation of an intergovernmental character:
- (b) That the victim's father was an official or agent of UNESCO:
- (c) That in that capacity he was entitled under international law to special protection from attack on his person, freedom, or dignity:
- (d) That the victim was a member of his family:
- (e) That the victim was also a member of his household.

The Crown must further prove that the accused knew that the victim was a member of the family of an internationally protected person, but, by virtue of this clause, the Crown is not required to prove that the accused knew the identity of that person or the capacity in which he was an internationally protected person, nor that the accused knew that the victim was a member of that person's household.

Hostages

Clause 8 creates the crime of hostage-taking.

Subclause (1) specifies the elements of the crime. They are—

- (a) The wrongful seizure or detention of a hostage:
- (b) The intent to use the detention to induce some other person to do or refrain from doing something.

Subclause (2) provides that this clause does not apply where the hostage-taking occurs in New Zealand, and the offender and hostage are New Zealand citizens, and the offender is in New Zealand. In such a case, the ordinary New Zealand law will apply.

General Provisions

Clause 9 amends the Extradition Act 1965 by including in the list of extradition offences the crimes described in *clauses 3 to 6 and 8* of this Bill.

Clause 10 provides, in essence, that the crimes described in *clauses 3 to 8* of the Bill are to be deemed to be extradition offences under existing extradition treaties with foreign countries that are parties to the relevant Convention.

Clause 11 provides that where the surrender of any person is sought by another country under the Extradition Act 1965 (which provides for the surrender to foreign countries for trial of persons alleged to have committed an extradition offence within the jurisdiction of a foreign country) or under the Fugitive Offenders Act 1881 (U.K.) (which makes similar provision in the case of Commonwealth countries) in respect of any act or omission that amounts to any crime described in *clauses 3 to 8* of this Bill and which could be tried and punished in the country seeking surrender, and that other country is a party to the relevant Convention, that act or omission will be deemed to have been committed within the jurisdiction of that other country notwithstanding that it was committed outside the territory of that country.

Clause 12 is designed to give effect to Article 9 of the 1979 Convention, but it is also extended to crimes against internationally protected persons. It provides that a person whose extradition from New Zealand is sought purportedly for a crime covered by the Bill shall not be extradited if it appears to the Minister of Justice or to the Court—

- (a) That the true purpose for which the person's extradition is sought is to prosecute or punish him on account of his race, religion, nationality, or political opinions; or
- (b) That, if he is extradited, his position may be prejudiced either—
 - (i) In respect of any of the matters referred to in *paragraph (a)*;
 - or
 - (ii) Because communication with him by the appropriate authorities of the country entitled to exercise rights of protection cannot be effected.

Clause 13 provides that no proceedings for the trial and punishment of any person charged with any crime described in *clauses 3 to 8* of this Bill may be instituted in any Court without the prior consent of the Attorney-General.

Clause 14 provides that a certificate by the Secretary of Foreign Affairs, or a Deputy Secretary of Foreign Affairs, relating to any matter specified in the clause shall be sufficient evidence of the facts stated in the certificate.

Clause 15 provides that section 8 of the Crimes Act 1961 (which relates to jurisdiction in respect to crimes on ships or aircraft beyond New Zealand) and section 400 of that Act (which requires the consent of the Attorney-General to proceedings in certain cases for offences on ships or aircraft) will not apply to any crime described in *clauses 3 to 8* of the Bill.

Clause 16 is a savings provision.

Hon. Mr McLay

**CRIMES (INTERNATIONALLY PROTECTED
PERSONS AND HOSTAGES)**

ANALYSIS

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A BILL INTITULED

An Act to give effect to the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, 1973, and the Convention Against the Taking of Hostages 1979, and for matters incidental to the implementation of those Conventions

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Crimes (Internationally Protected Persons and Hostages) Act 1980.

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council, and different dates may be so appointed for the commencement of this Act in respect of the 1973 Convention and the 1979 Convention. 5

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Conviction on indictment” has the same meaning as in section 3 of the Crimes Act 1961:

“Internationally protected person”, in relation to an alleged act or omission that constitutes a crime by virtue of or against any of sections 3 to 6 of this Act, means— 10

(a) A person who, at the time of the alleged act or omission, is— 15

(i) A Head of State; or

(ii) A member of a body that performs the functions of a Head of State under the constitution of the State; or

(iii) A Head of Government; or 20

(iv) A Minister of Foreign Affairs—

and is outside the territory of the State in which he holds office:

(b) A member of the family of any person referred to in paragraph (a) of this definition who is accompanying that person: 25

(c) A person who, at the time of the alleged act or omission, is—

(i) A representative or an official of a State; or 30

(ii) An official or agent of an international organisation of an intergovernmental character—

and is entitled under international law to special protection from attack on his person, freedom, or dignity: 35

(d) A member of the family of any person referred to in paragraph (c) of this definition who is a member of that person’s household:

“New Zealand” includes all waters within the outer limits of the territorial sea of New Zealand (as defined by section 3 of the Territorial Sea and Exclusive Economic Zone Act 1977):

5 “The 1973 Convention” means the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, opened for signature at New York on the 14th day of December 1973:

10 “The 1979 Convention” means the Convention Against the Taking of Hostages, opened for signature at New York on the 18th day of December 1979:

“Vehicle” includes any means of conveyance.

15 (2) In paragraph (a) (i) of the definition of the term “internationally protected person” in subsection (1) of this section, the term “Head of State” includes, in relation to any Commonwealth country (other than the United Kingdom) of which Her Majesty the Queen is Head of State, the Governor-General or other person who performs the functions of
20 the Head of State as Her Majesty’s representative.

Cf. 1972, No. 137, s. 2; Internationally Protected Persons Act 1978, s. 1 (5) (U.K.)

Internationally Protected Persons

3. Crimes against persons—(1) Without limiting anything
25 in the Crimes Act 1961, every one commits a crime who, whether in or outside New Zealand, does or omits to do any act to, or in relation to, any person whom he knows to be an internationally protected person, if that act or omission constitutes, or would, if done or omitted to be done in New
30 Zealand, constitute,—

(a) A crime referred to or described in any of the provisions of the Crimes Act 1961 specified in the First Schedule to this Act; or

35 (b) An attempt to commit any such crime (where the crime is not itself constituted by a mere attempt).

(2) Every one who commits a crime against this section is liable on conviction on indictment to the same penalty to which he would have been liable had he been charged with a crime against the relevant provision of the Crimes Act 1961.

40 Cf. Internationally Protected Persons Act 1978, s. 1 (1) (a), (2) (a), (4) (U.K.)

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4. Crimes against premises or vehicles—(1) Without limiting anything in the Crimes Act 1961, every one commits a crime who, whether in or outside New Zealand, does or omits to do any act—

(a) To, or in relation to,— 5

(i) Any premises that he knows to be the official premises or private residence of any internationally protected person; or

(ii) Any vehicle that he knows is used by any internationally protected person,— 10

while an internationally protected person is present in those premises or that residence or vehicle; and

(b) Which constitutes, or would, if done or omitted to be done in New Zealand, constitute,—

(i) A crime referred to or described in any of the provisions of the Crimes Act 1961 specified in the Second Schedule to this Act; or 15

(ii) An attempt to commit any such crime (where the crime is not itself constituted by a mere attempt). 20

(2) Every one who commits a crime against this section is liable on conviction on indictment to the same penalty to which he would have been liable had he been charged with a crime against the relevant provision of the Crimes Act 1961.

Cf. Internationally Protected Persons Act 1978, s. 1 (1) 25
(b), (2) (a), (4) (U.K.)

5. Threats against persons—(1) Every one commits a crime who, whether in or outside New Zealand, threatens to do any act—

(a) To, or in relation to, any person whom he knows to be an internationally protected person; and 30

(b) Which constitutes a crime against section 3 of this Act.

(2) Every one who commits a crime against this section is liable on conviction on indictment to imprisonment for a term not exceeding— 35

(a) Seven years; or

(b) The term of years prescribed by the relevant provision of the Crimes Act 1961 in respect of the crime that he would have committed had he carried out his threat in New Zealand,—

5 whichever is the lesser.

Cf. Internationally Protected Persons Act 1978, s. 1 (3), (4) (U.K.)

6. Threats against property or vehicles—(1) Every one commits a crime who, whether in or outside New Zealand,
10 threatens to do any act—

(a) To, or in relation to,—

(i) Any premises that he knows to be the official premises or private residence of any internationally protected person; or

15 (ii) Any vehicle that he knows is used by any internationally protected person; and

(b) Which constitutes a crime against section 4 of this Act.

(2) Every one who commits a crime against this section is liable on conviction on indictment to imprisonment for a
20 term not exceeding 3 years.

Cf. Internationally Protected Persons Act 1978, s. 1 (3), (4) (U.K.)

7. Prosecution need not prove certain matters—Notwithstanding anything in sections 3 to 6 of this Act, in any proceedings brought under any of those sections, it shall not be
25 necessary for the prosecution to prove the following matters:

(a) In respect of any internationally protected person to whom paragraph (a) or paragraph (c) of the definition of that term in section 2 (1) of this Act
30 applies, that the defendant knew, at the time of the alleged crime, the identity of that person or the capacity in which he was an internationally protected person:

35 (b) In respect of any internationally protected person to whom paragraph (b) of that definition applies, that the defendant knew, at the time of the alleged crime, that the internationally protected person was accompanying any other person to whom paragraph (a) of that definition applies:

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- (c) In respect of any internationally protected person to whom paragraph (c) of that definition applies, that the defendant knew, at the time of the alleged crime, that the internationally protected person was entitled under international law to special protection from attack on his person, freedom, or dignity: 5
- (d) In respect of any internationally protected person to whom paragraph (d) of that definition applies, that the defendant knew, at the time of the alleged crime, that the internationally protected person was a member of the household of any other person referred to in paragraph (c) of that definition. 10

Hostages

8. Hostage-taking—(1) Subject to subsection (2) of this section, every one commits the crime of hostage-taking who, whether in or outside New Zealand, unlawfully seizes or detains any person (in this section called the hostage) without his consent, or with his consent obtained by fraud or duress, with intent to compel the Government of any country or any international intergovernmental organisation or any other person to do or abstain from doing any act as a condition, whether express or implied, for the release of the hostage. 15 20

(2) No one shall be convicted of the crime of hostage-taking if— 25

(a) The act of hostage-taking takes place in New Zealand; and

(b) The alleged offender and the hostage are New Zealand citizens; and

(c) The alleged offender is in New Zealand. 30

(3) Every one who commits the crime of hostage-taking is liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

General Provisions

9. Extradition Act amended—The First Schedule to the Extradition Act 1965 is hereby amended by adding to Part 35

II (as substituted by section 4 (2) of the Extradition Amendment Act 1969 and amended by section 6 of the Aviation Crimes Act 1972 and section 10 (6) of the Misuse of Drugs Act 1975), in their appropriate columns, the following words:

5	“The Crimes (Internationally Protected Persons and Hostages) Act 1980	3	4	Crimes against persons.
		5	6	Crimes against premises or vehicles.
		6	8	Threats against persons.
10		8		Threats against property or vehicles.
				Hostage-taking.”

Cf. 1972, No. 137, s. 6; Internationally Protected Persons Act 1978, s. 3 (1) (U.K.)

10. Crimes deemed to be included in extradition treaties—

15 (1) For the purposes of the Extradition Act 1965 and any Order in Council made under section 3 of that Act or referred to in section 21 of that Act,—

20 (a) Each crime described in section 3 or section 4 or section 8 of this Act, including attempting to commit that crime (where it is not itself constituted by a mere attempt), aiding, abetting, inciting, counselling, or procuring any person to commit any such crime, inciting, counselling, or attempting to procure any person to commit any such crime when it is not in fact committed, and being an accessory after the fact to that crime; and

25 (b) Each crime described in section 5 or section 6 of this Act,—

30 shall, if not already described in the treaty, be deemed to be an offence described in any extradition treaty concluded before the commencement of this section and for the time being in force between New Zealand and any foreign country that is a party to the 1973 Convention or, as the case may require, the 1979 Convention.

35 (2) Where any crime is deemed by subsection (1) of this section to be an offence described in an extradition treaty, a person whose surrender is sought under the Extradition Act 1965 in respect of an act or omission that amounts to that crime shall be liable to be surrendered in accordance with 40 the provisions of that Act, whether the act or omission occurred before or after the date on which the crime was deemed to be an offence described in the extradition treaty.

(3) For the purposes of this section, the expression “foreign country” includes any territory for whose international relations the Government of a foreign country is responsible and to which the extradition treaty and the 1973 Convention or, as the case may require, the 1979 Convention, 5 extends.

Cf. 1972, No. 137, s. 7; Internationally Protected Persons Act 1978, s. 3 (2) (U.K.)

11. Surrender of offenders—(1) Where the surrender of a person is sought under either the Extradition Act 1965 or the Fugitive Offenders Act 1881 of the United Kingdom Parliament (as amended by the Fugitive Offenders Amendment Act 1976) in respect of any act or omission— 10

(a) That amounts to—

(i) Any crime described in section 3 or section 4 or section 8 of this Act, including attempting to commit any such crime (where it is not itself constituted by a mere attempt), aiding, abetting, inciting, counselling, or procuring any person to commit any such crime, inciting, counselling, or attempting to procure any person to commit any such crime when it is not in fact committed, and being an accessory after the fact to any such crime; 15 20 or

(ii) Any crime described in section 5 or section 6 of this Act; and 25

(b) For which the person whose surrender is sought could be tried and punished in the country seeking surrender, being a country that is a party to the 1973 Convention or, as the case may require, the 1979 30 Convention,—

that act or omission shall be deemed to have been committed within the jurisdiction of that country notwithstanding that it was committed outside the territory of that country.

(2) In this section, the term “country” includes any territory for whose international relations the Government of a country is responsible and to which the extradition treaty (if any) and the 1973 Convention or, as the case may be, the 1979 Convention, extends. 35

Cf. 1972, No. 137, s. 8; Internationally Protected Persons Act 1978, s. 3 (3) (U.K.) 40

12. **Restrictions on surrender of offenders**—Notwithstanding sections 9 to 11 of this Act, a person accused of any crime against any of sections 3 to 8 of this Act shall not be returned from New Zealand to another country if it appears to the Minister of Justice, or to the Court before which that person is brought, or to any Court or Judge on an application for a writ of habeas corpus, that—

5 (a) The return of the accused person, although purporting to have been sought in respect of such a crime, was sought for the purpose of prosecuting or punishing him on account of his race, religion, nationality, or political opinions; or

10 (b) If the accused person is returned,—
(i) He may be prejudiced at his trial, or punished, detained, or restricted in his personal liberty, by reason of his race, religion, nationality, or political opinions; or

15 (ii) His position may be prejudiced because communication with him by the appropriate authorities of the country that is entitled in international law to exercise rights of protection in respect of the accused person cannot be effected.

Cf. 1976, No. 2, s. 7

13. **Attorney-General's consent required to prosecutions**—
25 (1) Subject to subsection (2) of this section, no proceedings for the trial and punishment of any person charged with a crime against any of sections 3 to 8 of this Act shall be instituted in any Court except with the consent of the Attorney-General.

30 (2) A person charged with a crime against any of those provisions may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the crime has
35 not been obtained, but no further proceedings shall be taken until that consent has been obtained.

Cf. 1972, No. 137, s. 18

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14. Evidence—For any purpose in connection with this Act, a certificate, given by the Secretary of Foreign Affairs or any Deputy Secretary of Foreign Affairs, certifying—

- (a) Any fact relevant to the question of whether a person was or was not an internationally protected person at any material time; or 5
 - (b) That any country is or is not, or was or was not at any material time, a party to the 1973 Convention or to the 1979 Convention; or
 - (c) That the Government of any country is or is not, or was or was not at any material time, responsible for the international relations of any territory,— 10
- shall be sufficient evidence of that fact.

Cf. Internationally Protected Persons Act 1978, s. 1 (1), (5) (U.K.) 15

15. Application of certain provisions of Crimes Act—Nothing in section 8 of the Crimes Act 1961 (which relates to jurisdiction in respect of crimes on ships or aircraft beyond New Zealand) or in section 400 of that Act (which requires the consent of the Attorney-General to proceedings in certain cases for offences on ships or aircraft) shall apply with respect to any proceedings brought under any of sections 3 to 8 of this Act. 20

Cf. 1972, No. 137, s. 10

16. Other Acts not affected—Nothing in this Act shall limit or affect the Immigration Act 1964, the Aviation Crimes Act 1972, nor, except as expressly provided in this Act, the Crimes Act 1961. 25

Cf. 1972, No. 137, s. 21

SCHEDULES

FIRST SCHEDULE

Section 3 (1) (a)

CRIMES AGAINST INTERNATIONALLY PROTECTED PERSONS

Section of Crimes Act 1961	Subject-matter
128	Rape
129	Attempt to commit rape
167, 168	Murder
171	Manslaughter
173	Attempt to murder
174	Counselling or attempting to procure murder
176	Accessory after the fact to murder
188	Wounding with intent
189	Injuring with intent
191	Aggravated wounding or injury
192	Aggravated assault
197	Disabling
198	Discharging firearm or doing dangerous act with intent
199	Acid throwing
200	Poisoning with intent
201	Infecting with disease
209	Kidnapping

SECOND SCHEDULE

Section 4 (b) (i)

CRIMES AGAINST PREMISES OR VEHICLES OF INTERNATIONALLY PROTECTED PERSONS

Section of Crimes Act 1961	Subject-matter
294	Arson
295	Attempted arson
296	Damage to other property by fire or explosive
297	Attempt to damage property by fire or explosive
298	Wilful damage
300	Interfering with means of transport