

MARITIME AND AVIATION CRIMES BILL

AS REPORTED FROM THE FOREIGN AFFAIRS, DEFENCE
AND TRADE COMMITTEE

COMMENTARY

Recommendation

The Foreign Affairs, Defence and Trade Committee has examined the Maritime and Aviation Crimes Bill and recommends that it be passed with the amendments shown in the bill.

Conduct of the examination

The Maritime and Aviation Crimes Bill was referred to the Foreign Affairs, Defence and Trade Committee on 7 May 1998. The closing date for submissions was 26 June 1998. We received and considered two written submissions from interested groups. Consideration on the bill took two hours and seven minutes.

We received advice from the Ministry of Foreign Affairs and Trade.

This commentary sets out the details of our consideration of the bill and the major issues we addressed.

Background

The bill aims to implement, as necessary in New Zealand legislation, provisions of three international anti-terrorist conventions. These are:

- The 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (the “Rome Convention”);
- The 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (the “Rome Protocol”);
- The 1989 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (the “Montreal Protocol”).

Part 1 of the bill creates offences and establishes New Zealand jurisdiction as required by the Rome Convention and Protocol dealing with the safety of maritime navigation and fixed platforms on the continental shelf. Part 2 deals with attacks on international airports by amending the Aviation Crimes Act 1972. Part 3 of the bill amends the Extradition Act 1965 to allow the extradition of

offenders to other countries which are party to conventions and are able to claim jurisdiction over the offender. (A new Part 4 has been added to include necessary consequential amendments to the Mutual Assistance in Criminal Matters Act 1992.)

Key features of the bill

Prosecute or extradite

The Rome Convention and Protocol arose out of the inadequacies of existing anti-terrorism measures and their application to the seizure of a ship in international waters by terrorists in the Achille Lauro affair. The Convention and Protocol extend the “prosecute or extradite” rule to offences relating to the seizure or destruction of, or damage to, a ship, or to the injury of a person aboard such a ship, and in relation to fixed platforms. In both cases perpetrators of these offences will be punished, either in the State where they are found or in the State to which they are extradited. In addition, States parties are required to co-operate with a view to preventing the commission of such offences. The Montreal Protocol arose in response to the 1985 bombings at airports in Rome and Vienna. It also extends the “prosecute or extradite” rule to cover unlawful acts of violence committed at international airports.

Definition of “terrorism” in terms of specific criminal offences

The main difficulty that confronted the international community was the inability of countries to reach an agreement on an accurate definition of “terrorism”. Instead, the anti-terrorist conventions attempt to capture specific criminal offences that have an international connection or element (see clauses 3, 4 and 26). In the Rome Convention and Protocol, the international element is established by primarily limiting the application of the offences to attacks on ships which are undertaking, or scheduled to undertake, an international voyage or situations where the offender is attempting to escape responsibility for the offence in another country. Consequently, provision for extra-territorial jurisdiction is established in the bill in clauses 7 and 9.

Extra-territorial jurisdiction

Crimes defined under the Rome Convention are specified in clause 3 of the bill. Clause 7(1) is designed to indicate when New Zealand will exercise extra-territorial jurisdiction over these offences, and extends the application of clause 3 to cover situations involving an international voyage. Clause 7(1)(c) further requires that the situation involve a New Zealand ship, or the alleged offender is a New Zealand citizen or person ordinarily resident in New Zealand, or the alleged offender is simply present in New Zealand. Subclauses (2) and (3) relate to situations not involving an international voyage. Clause 7(2) extends the application of clause 3 to actions that occurred outside New Zealand’s territory when the alleged offender is found in the territory of a State party to the Rome Convention but not the country where the act or omission occurred. The subclause goes on to require that the situation involve a New Zealand ship or an offender who is a New Zealand citizen or a person normally resident in New Zealand. Clause 7(3) covers the situation where the offender is found in New Zealand. (Clause 8 exempts ships used in military, customs or police service, or those that are withdrawn from navigation or laid up for repair.)

Crimes defined under the Rome Protocol are specified in clause 4. Clause 9 exercises extra-territorial jurisdiction over these offences. As offshore installations are attached to the continental shelf, the jurisdiction provisions do not have to account for any international voyage. Therefore, clause 9 simply extends the

extra-territorial application of clause 4 to situations involving offshore installations located on New Zealand's continental shelf, or where the offender is a New Zealander or a person ordinarily resident in the New Zealand, or the alleged offender is simply present in New Zealand.

In respect of the Montreal Protocol, extra-territorial jurisdiction has already been established by the Montreal Convention, to which the Protocol is an addition. This jurisdiction is implemented in the Aviation Crimes Act 1972 and applies to specified crimes occurring in aircraft. The Protocol extends this to include crimes relating to international airports as well, as defined in clause 26.

Issues arising in committee consideration

Basis of, and enforcement in, extra-territorial jurisdiction at sea

As noted above, clause 7 sets out the additional conditions that must be met before New Zealand authorities can exercise extra-territorial jurisdiction under this bill. These conditions reflect Article 6 (1) of the Rome Convention which obliges States Parties to establish jurisdiction in the circumstances described in subsection (c). Article 4 also establishes that the Convention applies to situations involving international navigation.

We were interested in the enforcement of extra-territorial jurisdiction. Although the Rome Convention establishes grounds for the exercise of jurisdiction in certain circumstances on the high seas, it does not, of itself, cover the issue of enforcement. We were advised that in this regard, customary international law has been codified by Article 110 of the 1982 UN Convention on the Law of the Sea (UNCLOS). Indeed, Article 9 of the Rome Convention specifically provides that nothing in the convention shall affect in any way the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag. On this basis, any enforcement action that New Zealand wished to take in respect of a vessel on the high seas that was not a New Zealand registered vessel and where there was no threat to New Zealand, could be taken only with the consent of the flag State.

Attaching the text of the conventions

We considered the issue of whether it was desirable to attach the text of the conventions as new schedules to the bill. We agree with the Legislation Advisory Committee that this may be desirable in some circumstances. We were also aware that other legislation previously considered by this committee had adopted this practice. However, we considered that there were mitigating factors in this instance that would have complicated subsequent stages in the legislative process for this bill.

As outlined in the explanatory note to the introductory copy of the bill, it is intended that each Part become a separate bill at the committee of the whole House stage of its consideration. This is because provisions of the bill relating to maritime crimes will become a new Act, whereas provisions relating to aviation crimes and extradition will become amendment Acts. Although we could have opted to attach both conventions and the protocol to the bill as it stands, complications could have arisen particularly in respect of the Aviation Crimes Act. This Act, derived from the earlier Montreal Convention on aviation crimes, does not have the principal convention attached (nor any of the subsequent conventions implemented by this Act either). Hence, attaching the convention texts in the Maritime and Aviation Crimes Bill would mean that the Montreal Protocol was attached to the proposed Aviation Crimes Amendment Bill even though the original Montreal Convention was not. Apart from the obvious

inconsistency within the Aviation Crimes Act such an amendment would create, there may be an additional problem of the relative status of conventions referred to in the principal Act if they are implemented by different means. (The possibility of attaching to the principal Act the texts of conventions already implemented would have been outside of the scope of the Maritime and Aviation Crimes Bill.) Although we appreciate the advantages of scheduling treaty texts in other instances, we considered that the complications that could arise in the Maritime and Aviation Crimes Bill outweighed any potential advantages in this case.

Proposed amendments to the bill

A number of amendments arising from submissions and during consideration were considered by the committee.

An issue raised in the submission by the New Zealand Shipping Federation related to the definition of “New Zealand ship”. The submission identifies problems surrounding the use of the definition of “New Zealand ship” that has been imported from the Maritime Transport Act 1994. We were advised that this definition relates specifically to the policy context of the Maritime Transport Act (in terms of foreign ships leased by New Zealand-based operators) and could, if implemented unamended, create a situation where New Zealand was attempting to assert extra-territorial jurisdiction over foreign flagged ships. Accordingly, the definition has been substituted by one referring to the Ship Registration Act 1992 (but omitting references to ships required or entitled to be registered under that Act).

We also considered other amendments, raised by the Legislation Advisory Committee (LAC), in respect of aligning the draft of the bill with the original text of the conventions. We agree that this is desirable in order to remove any potential for ambiguity in interpretation. This included substituting the definition of “ship” with that used in the Rome Convention. Similarly, we also recommend that the term “offshore installation” be replaced with the term “fixed platform” as used in the Rome Protocol. The LAC also questioned whether the term “assault” sufficiently incorporated the offences envisaged by the phrase “act of violence” as used in the conventions. The term “assault” has the advantage of clear definition in New Zealand law, and the extreme nature of any offences likely to be carried out by terrorist activity is such that as much clarity as possible is desirable to determine what offence has occurred. Nonetheless, as noted above, it is also desirable to be consistent with the convention text for the instruments to operate effectively and unambiguously, and, as we are advised that “act of violence” probably has a wider meaning than “assault”, we recommend that the bill be amended accordingly. For similar reasons, the term “military service” has been replaced by the terminology from the convention. Instead, the term “warship” is used, as well as the phrase “a ship owned or operated by a country when being used as a naval auxiliary or for customs or police purposes”.

We also recommend a number of smaller, largely technical, consequential amendments to the bill. The most significant of these is the addition of a new Part to the bill. This is Part 4, “Amendments to Mutual Assistance in Criminal Matters Act 1992”. The Part contains amendments to the Mutual Assistance in Criminal Matters Act that would apply where another country requires assistance from New Zealand under the provisions of the conventions.

KEY TO SYMBOLS USED IN REPRINTED BILL
AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous)

Subject to this Act,

Text struck out unanimously

New (Unanimous)

Subject to this Act,

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

MARITIME AND AVIATION CRIMES

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A BILL INTITULED

An Act—

- (a) To give effect to the provisions of the Rome Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Rome Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf and to give effect to other matters incidental to the Rome Convention and the Rome Protocol; and 5
- (b) To amend the Aviation Crimes Act 1972 to give effect to the provisions of the Montreal Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation; and 10
- (c) To give effect to further matters incidental to the Hague Convention for the Suppression of Unlawful Seizure of Aircraft and the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation; and 15
- (d) To make consequential amendments to the Extradition Act 1965 20

BE IT ENACTED by the Parliament of New Zealand as follows:

1. **Short Title and commencement**—(1) This Act may be cited as the Maritime and Aviation Crimes Act 1998. 25
- (2) Except for section 15, Part 1 comes into force 28 days after the date on which this Act receives the Royal assent.
- (3) Section 15 comes into force on a date to be appointed by the Governor-General by Order in Council.
- (4) Parts 2 and 3 come into force 28 days after the date on which this Act receives the Royal assent. 30

New (Unanimous)

- (5) Part 4 comes into force on a date to be appointed by the Governor-General by Order in Council.

PART 1

MARITIME CRIMES

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

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New (Unanimous)

“Act of violence” means an act which, if committed in New Zealand, would constitute—

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- (a) An assault as defined in any of sections 192, 193, 194, 196, or 202C of the Crimes Act 1961; or
- (b) Any of the crimes specified in sections 188, 189, 190, 191, 197, 198, 198A, 198B, 199, 200, 202, 203, or 209 of the Crimes Act 1961:

“Continental shelf” has the same meaning as in section 2 (1) of the Continental Shelf Act 1964:

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New (Unanimous)

“Fixed platform” means any artificial island, installation, or structure permanently attached to the seabed for the purpose of exploration or exploitation of resources or for other economic purposes:

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“Maritime navigational (*aid*) facilities” includes—

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- (a) Any lightship and any floating or other light exhibited for the guidance of ships;
- (b) Any description of a fog signal not carried on a ship;
- (c) All marks and signs in aid of marine navigation;
- (d) An electronic, radio, or other aid to marine navigation not carried on board a ship:

“Master” means a person (except a pilot) having command or charge of a ship:

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Struck Out (Unanimous)

“Military service” includes naval and air-force service:

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

Struck Out (Unanimous)

“New Zealand ship” means a ship that is registered under the Ship Registration Act 1992; and includes a ship that is not registered under that Act but is required or entitled to be registered under that Act:

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New (Unanimous)

“New Zealand ship” means a ship that is registered under the Ship Registration Act 1992:

Struck Out (Unanimous)

“Offshore installation” or “installation” includes an artificial structure (including a floating structure other than a ship) used or intended to be used in or on, or anchored or attached to, the seabed for the purpose of the exploration for, or the exploitation or associated processing of, any mineral; but does not include a pipeline:

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“Ordinarily resident in New Zealand” has the same meaning as in section 4 of the Crimes Act 1961:

“Rome Convention” means the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988:

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“Rome Protocol” means the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988:

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“Scheduled to navigate”, in relation to a ship, means that the ship has—

- (a) An intended route; or
- (b) A voyage plan; or
- (c) A normal course of plying; or
- (d) An advertised sailing schedule:

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Struck Out (Unanimous)

5 “Ship” means every description of boat or craft used in navigation, whether or not it has any means of propulsion; and includes—

(a) A barge, lighter, or other like vessel;

(b) A hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates;

10 (c) A submarine or other submersible.

New (Unanimous)

15 “Ship” means a vessel of any type whatsoever not permanently attached to the seabed, including dynamically supported craft, submersibles, or any other floating craft.

2A. Act does not apply to certain ships—This Act does not apply in relation to—

- (a) A warship; or
- 20 (b) A ship owned or operated by a country when being used as a naval auxiliary or for customs or police purposes; or
- (c) A ship that has been withdrawn from navigation or is laid up.

Crimes Relating to Ships and (Offshore Installations) Fixed Platforms

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3. Crimes relating to ships—(1) A person commits a crime who intentionally—

- (a) By force or by threat of force or by any other form of intimidation seizes or exercises control over a ship; or
- 30 (b) On board a ship, commits an *(assault)* act of violence that is likely to endanger the safe navigation of the ship; or
- (c) Destroys a ship; or
- 35 (d) Causes damage to a ship or the ship’s cargo and that damage is likely to endanger the safe navigation of the ship; or
- (e) Places or causes to be placed on a ship anything that is likely to destroy the ship; or

- (f) Places or causes to be placed on a ship anything that is likely to cause damage to the ship or the ship's cargo and that damage endangers or is likely to endanger the safe navigation of the ship; or

Struck Out (Unanimous)

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- (g) Destroys, damages, or interferes with the operation of any maritime navigational aid, if the destruction, damage, or interference is likely to endanger the safe navigation of a ship; or

New (Unanimous)

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- (g) Destroys, seriously damages, or seriously interferes with the operation of any maritime navigational facilities, if the destruction, damage, or interference is likely to endanger the safe navigation of a ship; or

- (h) Endangers the safe navigation of a ship by communicating to another person information which the person communicating the information knows to be false.

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(2) A person commits a crime who intentionally—

- (a) Causes the death of any person in connection with the commission or attempted commission of any of the crimes against **subsection (1)** in circumstances where the conduct concerned is the same as conduct described as murder or manslaughter under sections 158, 160, 167, 168, and 171 of the Crimes Act 1961; or

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- (b) Injures any person in connection with the commission or attempted commission of any of the crimes against **subsection (1)** or **paragraph (a)** of this subsection.

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(3) A person commits a crime who threatens to do, in relation to a ship, any act that is a crime against any of **paragraphs (b) to (d)** or **paragraph (g)** of **subsection (1)** if the threat—

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- (a) Is in order to compel any other person to do or abstain from doing any act; and
- (b) Is likely to endanger the safe navigation of the ship.

4. Crimes relating to fixed platforms—

Struck Out (Unanimous)

- (1) A
person commits a crime who intentionally—
- 5 (a) By force or by threat of force or by any other form of intimidation seizes or exercises control over an offshore installation; or
 - (b) On board an offshore installation, commits an assault that is likely to endanger the safety of the installation; or
 - 10 (c) Destroys an offshore installation; or
 - (d) Causes damage to an offshore installation and that damage is likely to endanger the safety of the installation; or
 - 15 (e) Places or causes to be placed on an offshore installation anything that is likely to destroy the installation or to endanger the safety of the installation.

New (Unanimous)

- (1) A
person commits a crime who intentionally—
- 20 (a) By force or by threat of force or by any other form of intimidation seizes or exercises control over a fixed platform; or
 - (b) On board a fixed platform, commits an act of violence that is likely to endanger the safety of the platform; or
 - 25 (c) Destroys a fixed platform; or
 - (d) Causes damage to a fixed platform and that damage is likely to endanger the safety of the platform; or
 - 30 (e) Places or causes to be placed on a fixed platform anything that is likely to destroy the platform or to endanger the safety of the platform.

- (2) A person commits a crime who intentionally—
- 35 (a) Causes the death of any person in connection with the commission or attempted commission of any of the crimes against **subsection (1)** in circumstances where the conduct concerned is the same as conduct described as murder or manslaughter under sections 158, 160, 167, 168, and 171 of the Crimes Act 1961; or

(b) Injures any person in connection with the commission or attempted commission of any of the crimes against **subsection (1) or paragraph (a)** of this subsection.

(3) A person commits a crime who threatens to do, in relation to an (*offshore installation*) fixed platform, any act that is a crime against any of **paragraphs (b) to (d) of subsection (1)** if the threat— 5

(a) Is in order to compel any other person to do or abstain from doing any act; and

(b) Is likely to endanger the safety of the (*installation*) platform. 10

5. Further provisions relating to crimes against sections 3 and 4—(1) For the purposes of **sections 3 (2) and 4 (2)**, an act or omission by any person occurs in connection with the commission or attempted commission of any of the crimes against **section 3 (1) or section 4 (1)** (as the case may be) if it was done or omitted with intent— 15

(a) To commit or facilitate the commission or attempted commission of any of those crimes; or

(b) To avoid the detection of himself or herself or of any other person in the commission or attempted commission of any of those crimes; or 20

(c) To avoid the arrest or facilitate the flight of himself or herself or of any other person on the commission or attempted commission of any of those crimes. 25

(2) **Subsection (1)** does not limit the generality of the expression “in connection with the commission or attempted commission of”.

6. Penalties for crimes against sections 3 and 4—(1) A person who commits a crime against **section 3 (1) or section 3 (2) (b) or section 3 (3) or section 4 (1) or section 4 (2) (b) or section 4 (3)** is liable on conviction on indictment to imprisonment for a term not exceeding 14 years. 30

(2) A person who commits a crime against **section 3 (2) (a) or section 4 (2) (a)**,— 35

(a) In circumstances where the conduct concerned is the same as conduct described as murder, must on conviction on indictment be sentenced to imprisonment for life; and

(b) In circumstances where the conduct concerned is the same as conduct described as manslaughter, is liable on conviction on indictment to imprisonment for life. 40

Jurisdiction and Application Provisions

7. Extra-territorial jurisdiction in respect of crimes relating to ships—(1) **Section 3** applies in respect of acts or omissions that occur outside New Zealand if—

- 5 (a) The act or omission occurs against or on board a ship that is navigating, or is scheduled to navigate, into or through or from the waters beyond the outer limits of the territorial sea of a country or the lateral limits of its territorial sea with adjacent countries; and

10 *Struck Out (Unanimous)*

(b) The act or omission, if it occurred in New Zealand, would constitute a crime against **section 3**; and

(c) Any of the following apply:

- 15 (i) The ship is a New Zealand ship; or
(ii) The alleged offender is a New Zealand citizen or a person ordinarily resident in New Zealand; or
(iii) The alleged offender is present in New Zealand.

(2) Regardless of **subsection (1)**, **section 3** applies in respect of acts or omissions that occur outside New Zealand if—

- 20 (a) The act or omission occurs against or on board a ship that is within the territory of another country; and

Struck Out (Unanimous)

(b) The act or omission, if it occurred in New Zealand, would constitute a crime against **section 3**; and

- 25 (c) The alleged offender is found in a country that is a party to the Rome Convention but is not the country where the act or omission occurred; and

(d) Either—

- 30 (i) The ship is a New Zealand ship; or
(ii) The alleged offender is a New Zealand citizen or a person ordinarily resident in New Zealand.

New (Unanimous)

35 (3) Regardless of **subsection (1)** or **subsection (2)**, **section 3** applies in respect of acts or omissions that occur outside New Zealand if—

New (Unanimous)

- (a) The act or omission occurs against or on board a ship that is within the territory of another country; and
- (b) The alleged offender is present in New Zealand.

Struck Out (Unanimous)

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8. Section 3 not to apply in certain cases—(1) **Section 3** does not apply in relation to a ship that is used in military, customs, or police service.

(2) **Section 3** does not apply in relation to a ship that has been withdrawn from navigation or is laid up.

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9. Extra-territorial jurisdiction in respect of crimes relating to offshore installations—(1) **Section 4** applies in respect of acts or omissions that occur outside New Zealand if—

(a) The act or omission, if it occurred in New Zealand, would constitute a crime against **section 4**; and

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(b) The act or omission is—

(i) By a person on an offshore installation that is located on the continental shelf of New Zealand; or

(ii) By a New Zealand citizen or a person ordinarily resident in New Zealand.

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(2) Regardless of **subsection (1)**, **section 4** applies in respect of acts or omissions that occur outside New Zealand if—

(a) The act or omission, if it occurred in New Zealand, would constitute a crime against **section 4**; and

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(b) The alleged offender is present in New Zealand.

New (Unanimous)

9. Extra-territorial jurisdiction in respect of crimes relating to fixed platforms—**Section 4** applies in respect of acts or omissions that occur outside New Zealand if—

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(a) The act or omission is—

(i) By a person on a fixed platform that is located on the continental shelf of New Zealand; or

(ii) By a New Zealand citizen or a person ordinarily resident in New Zealand; or

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New (Unanimous)

(b) The alleged offender is present in New Zealand.

10. Application of Crimes Act 1961—(1) The following sections of the Crimes Act 1961 do not apply in respect of any

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of the crimes described in **section 3** or **section 4** of this Act:

(a) Section 8 (which relates to jurisdiction in respect of crimes on ships or aircraft beyond New Zealand);

(b) Section 92 (which relates to piracy);

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(c) Section 400 (which relates to the consent of the Attorney-General to proceedings in certain cases for offences on ships or aircraft).

(2) Except for **subsection (1)**, this Act does not limit the Crimes Act 1961.

Powers of Masters

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11. Master may deliver alleged offender to appropriate authorities—(1) A master of a New Zealand ship may deliver to the appropriate authorities of a country that is a party to the Rome Convention any person whom the master has reasonable grounds to believe has committed a crime against **section 3**.

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(2) A master who intends to deliver a person under **subsection (1)** must notify the appropriate authorities of the country of—

(a) His or her intention to deliver the person to those authorities; and

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(b) His or her reasons for intending to do so.

(3) A notification under **subsection (2)** must be given,—

(a) If it is reasonably practicable to do so, before the ship enters the territorial sea of the country; or

(b) In any other case, as soon as is reasonably practicable.

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(4) If a master delivers a person under **subsection (1)**, the master must give to the authorities of the country any evidence relating to the alleged crime that is in the master's possession.

(5) A master commits an offence who fails, without reasonable excuse, to comply with **subsection (2)** or **subsection (3)**.

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(6) A master who commits an offence against **subsection (5)** is liable on summary conviction to a fine not exceeding \$500.

12. Power to search persons and baggage on ships—

(1) This section applies if, because of the distance from land or (*otherwise*) for any other reason, it is impractical for the master

of a ship to obtain, within a reasonable time, the assistance of a member of the police in New Zealand or a law enforcement officer of another country.

(2) If a master of a ship has reasonable grounds to believe that a crime against this Act has been, is being, or is likely to be, committed on board or in relation to the ship, the master, or any member of the crew, or any other person on board the ship authorised by the master to do so, may—

(a) Search a person on board the ship (*in respect of whom*) who the master or the other person (*who is*) conducting the search has reasonable grounds to believe has committed or is committing or is likely to commit a crime against this Act: 10

(b) Search the baggage of a person who is searched under paragraph (a): 15

(c) Search any baggage that the master or the other person who is conducting the search has reasonable grounds to believe contains any article that has been used or could be used to effect or facilitate the commission of a crime against this Act. 20

(3) The person who conducts the search may take possession of any article found during the search that has been used or could be used to effect or facilitate the commission of a crime against this Act.

(4) If an article is seized under this section, it must be dealt with— 25

(a) In accordance with section 11 (4); or

(b) By giving it to a member of the police in New Zealand or a law enforcement officer of another country; or

(c) By returning the article to its owner if the master of the ship considers that the article has not been used and is not or is not likely to be used to effect or facilitate the commission of a crime against this Act, and the possession of the article is otherwise lawful. 30

Struck Out (Unanimous)

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13. Ships in military, customs, or police service—
Sections 11 and 12 do not apply to ships used in the military, customs, or police service of New Zealand or any other country.

Extradition of Offenders

14. Definitions relating to extradition provisions—For the purposes of **sections 15 to 18**,—

5 “Country” includes any territory for whose international relations the Government of a country is responsible and to which the extradition treaty and the Rome Convention or the Rome Protocol (as the case may be) extends:

“Crime” includes—

- 10 (a) An attempt to commit that crime:
(b) Aiding, abetting, inciting, counselling, or procuring a person to commit that crime:
(c) Inciting, counselling, or attempting to procure a person to commit that crime when it is not in fact
15 committed:
(d) Being an accessory after the fact to that crime.

15. Crimes deemed to be included in extradition treaties—(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, each crime described in **section 3 or section 4** of this Act is 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 country which is a party to the
20 Rome Convention or the Rome Protocol (as the case may be).

(2) Despite **subsection (1)**, no person is liable to be surrendered under the Extradition Act 1965 in respect of an act or omission that amounts to a crime to which that subsection applies if that act or omission occurred before the date on which the crime
25 was deemed by that subsection to be an offence described in the relevant extradition treaty.

16. Surrender of offenders—If—

- 35 (a) The surrender of a person is sought under the Extradition Act 1965 or the Fugitive Offenders Act 1881 of the United Kingdom Parliament in respect of any act or omission—
(i) That amounts to a crime described in **section 3 or section 4**; and
(ii) For which the person whose surrender is sought
40 could be tried or punished in the country seeking surrender; and

- (b) The country seeking the surrender is a party to the Rome Convention or the Rome Protocol (as the case may be),—

then that act or omission is deemed to have been committed within the jurisdiction of that country even if it was committed outside the territory of that country. 5

17. Restriction on surrender—(1) If the surrender of a person is sought in respect of any act or omission that amounts to a crime described in **section 3 or section 4**, the Minister of Justice, or the court before which that person is brought, or any court or Judge on an application for a writ of habeas corpus, in deciding whether to order the surrender of that person must have due regard to whether the country that is seeking the surrender will give effect to the following rights of that person: 10

- (a) The right to communicate, without delay, with the nearest appropriate representative of the country of which that person is a citizen or is habitually resident; and 15

- (b) The right to be visited by a representative of the country referred to in **paragraph (a)**. 20

(2) If—

- (a) Two or more countries request the surrender of a person in respect of any act or omission that amounts to a crime described in **section 3**; and

- (b) Those countries are parties to the Rome Convention; and 25

- (c) The ship in respect of which the act or omission relates was flying the flag of 1 of those countries when the alleged crime was committed,—

then the Minister of Justice must have due regard to the interests and responsibilities of that country whose flag the ship was flying. 30

(3) If—

- (a) The surrender of a person is sought under Part II of the Fugitive Offenders Act 1881 of the United Kingdom Parliament in respect of any act or omission that amounts to a crime described in **section 3 or section 4**; and 35

- (b) It appears to the court before which that person is brought, or any court or Judge on an application for writ of habeas corpus, that the provisions of **paragraphs (a) to (c) of subsection (2)** apply,— 40

then the Court or Judge (as the case may be) may not order the surrender of that person without the consent of the Minister of Justice.

(4) This section does not limit any other considerations which the Minister of Justice or a court or Judge (as the case may be) may take into account when considering whether or not to order the surrender of a person.

5 **18. Certification of country as party to Rome Convention or Rome Protocol**—A certificate given by the Minister of Foreign Affairs and Trade for the purposes of **section 15** or **section 16** that any country is a party to the Rome Convention or the Rome Protocol (as the case may be) is, in the
10 absence of evidence to the contrary, sufficient proof of that fact.

Miscellaneous Provisions

19. Attorney-General's consent required for prosecutions—

15

Struck Out (Unanimous)

(1) The Attorney-General must consent to proceedings being instituted in a court for the trial and punishment of any person charged with a crime against **section 3** or **section 4**.

20

New (Unanimous)

(1) No proceedings for the trial and punishment of a person charged with a crime against **section 3** or **section 4** can be instituted in any court except with the consent of the Attorney-General.

25

(2) However, a person charged with a crime against **section 3** or **section 4** may be arrested or a warrant for that person's arrest may be issued and executed, and that person may be remanded in custody or on bail, even though the Attorney-General's consent under **subsection (1)** has not been obtained.

30

20. Certification of ships in military service—A certificate given by the Minister of Foreign Affairs and Trade for the purposes of this Act that any ship is or is not (*used in military service*) a warship or a ship owned or operated by a country being used as a naval auxiliary, is, in the absence of
35 evidence to the contrary, sufficient proof of that fact.

21. Immigration Act 1987 not limited—This Act does not limit or affect the Immigration Act 1987.

PART 2

AMENDMENTS TO AVIATION CRIMES ACT 1972

22. Part to be part of Aviation Crimes Act 1972—(1) This Part is part of the Aviation Crimes Act 1972* (in this Part referred to as the principal Act). 5

(2) This Part comes into force 28 days after the date on which this Act receives the Royal assent.

* R.S. Vol. 23, p. 213

23. Altering Title of principal Act—The Title of the principal Act is amended by inserting, after the words “**Civil Aviation**,” the words “**the Montreal Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation**,”. 10

24. Interpretation—Section 2 (1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions: 15

New (Unanimous)

“Act of violence” means an act which, if committed in New Zealand, would constitute— 20

(a) An assault as defined in any of sections 192, 193, 194, 196, or 202C of the Crimes Act 1961; or

(b) Any of the crimes specified in sections 188, 189, 190, 191, 197, 198, 198A, 198B, 199, 200, 202, 203, or 209 of the Crimes Act 1961: 25

“‘International airport’ means any airport designated as an airport of entry and departure for international air traffic where the formalities incident to customs, immigration, public health, animal and plant quarantine, and similar procedures are carried out: 30

“‘The Montreal Protocol’ means the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on 24 February 1988.”.

25. Heading amended—The heading above section 3 is amended by adding the words “*and International Airports*”. 35

New (Unanimous)

25A. Other crimes relating to aircraft—Section 5 (a) of the principal Act is amended by omitting the word “assault”, and substituting the words “act of violence”.

5 **26. Crimes relating to international airports**—The principal Act is amended by inserting, after section 5, the following section:

10 “5A. (1) A person commits a crime who, whether in or outside New Zealand, using any device, substance, or weapon, intentionally does (*1 or more*) any of the following acts that endangers or is likely to endanger the safety of an international airport:

15 “(a) At the international airport, commits an (*assault*) act of violence that causes or is likely to cause serious injury or death; or

 “(b) Destroys or seriously damages the facilities of the international airport; or

 “(c) Destroys or seriously damages an aircraft that is not in service and is located at the international airport; or

20 “(d) Disrupts the services of the international airport.

Struck Out (Unanimous)

“**(2)** A person who commits a crime against this section is liable on conviction on indictment to imprisonment for a term not exceeding 14 years.”

25 *New (Unanimous)*

“**(2)** Subject to **subsection (3)**, a person who commits a crime against this section is liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

30 “(3) A person who commits a crime against **subsection (1) (a)**,—
 “(a) In circumstances where the conduct concerned is the same as conduct described as murder under sections 158, 160, 167, and 168 of the Crimes Act 1961, must on conviction on indictment be sentenced to imprisonment for life; and

New (Unanimous)

“(b) In circumstances where the conduct concerned is the same as conduct described as manslaughter under sections 158, 160, and 171 of the Crimes Act 1961, is liable on conviction on indictment to imprisonment for life.” 5

27. Section 6 of principal Act repealed—Section 6 of the principal Act is repealed.

28. Crimes against section 5A deemed to be included in extradition treaties—The principal Act is amended by inserting, after section 7, the following section: 10

“7A. (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, each crime described in **section 5A** of this Act is 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 which is a party to the Montreal Protocol. 15

“(2) When **subsection (1)** deems a crime 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 which amounts to that crime is liable to be surrendered in accordance with 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. 20 25

“(3) This section does not apply in respect of an act or omission that was not an offence under New Zealand law when it occurred. 30

“(4) A certificate given under the hand of the Minister of Foreign Affairs and Trade that any foreign country is a party to the Montreal Protocol is sufficient evidence of that fact.

“(5) For the purposes of this section,—

“‘Crime’ includes— 35

“(a) An attempt to commit that crime:

“(b) Aiding, abetting, inciting, counselling, or procuring a person to commit that crime:

“(c) Inciting, counselling, or attempting to procure a person to commit that crime when it is not in fact committed:

“(d) Being an accessory after the fact to that crime:

5 “‘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 Montreal Protocol extends.”

29. Surrender of offenders—(1) Section 8 (1) of the principal Act is amended—

10 (a) By inserting, after the expression “section 5”, the expression “or section 5A”; and

(b) By inserting, after the words “Montreal Convention”, the words “or the Montreal Protocol”; and

15 (c) By inserting, after the words “either Convention”, the words “or the Protocol”.

(2) Section 8 (2) of the principal Act is amended by inserting, after the words “Montreal Convention”, the words “or the Montreal Protocol”.

20 **30. Application of sections 3, 4, and 5**—(1) Section 9 (1) of the principal Act is amended by adding to paragraph (c) the expression “; or”, and also by adding the following paragraph:

“(d) The aircraft is leased without crew to a lessee—

25 “(i) Whose principal place of business is in New Zealand; or

“(ii) In any other case, who is a New Zealand citizen or a person ordinarily resident in New Zealand.”

30 (2) Section 9 (2) of the principal Act is amended by adding to paragraph (c) the expression “; or”, and also by adding the following paragraph:

“(d) The aircraft is leased without crew to a lessee—

“(i) Whose principal place of business is in New Zealand; or

35 “(ii) In any other case, who is a New Zealand citizen or a person ordinarily resident in New Zealand.”

31. Application of section 5A—The principal Act is amended by inserting, after section 9, the following section:

Struck Out (Unanimous)

“9A. (1) **Section 5A** does not apply in respect of acts or omissions that occur outside New Zealand unless—

“(a) The act or omission, if it occurred in New Zealand, would constitute a crime against **section 5A**; and

“(b) The alleged offender is present in New Zealand.”

5

New (Unanimous)

“9A. **Section 5A** does not apply in respect of acts or omissions that occur outside New Zealand unless the alleged offender is present in New Zealand.”

10

32. Attorney-General’s consent required to prosecutions—Section 18 of the principal Act is amended by inserting, after the expression “section 5”, the expression “or **section 5A**”.

33. Other Acts not affected—Section 21 of the principal Act is amended by omitting the words “Aliens Act 1948, or of any provision of the”.

15

PART 3

AMENDMENTS TO EXTRADITION ACT 1965

34. Part to be part of Extradition Act 1965—(1) This Part is part of the Extradition Act 1965* (in this Part referred to as the principal Act).

20

(2) This Part comes into force 28 days after the date on which this Act receives the Royal assent.

* R.S. Vol. 18, p. 113

35. First Schedule amended—The First Schedule of the principal Act is amended by repealing Part II, and substituting the Part II set out in **Schedule 1**.

25

36. Consequential amendments—The enactments specified in **Schedule 2** are amended in the manner indicated in that schedule.

30

New (Unanimous)

PART 4

AMENDMENTS TO MUTUAL ASSISTANCE IN CRIMINAL MATTERS
ACT 1992

5 **37. Part to be part of Mutual Assistance in Criminal
Matters Act 1992**—(1) This Part is part of the Mutual
Assistance in Criminal Matters Act 1992* (in this Part referred
to as the principal Act).

10 (2) This Part comes into force on a date to be appointed by
the Governor-General by Order in Council.

*1992, No. 86

Amendments: 1994, No. 48; 1996, No. 135; 1998, No. 15

38. Limitations on requests by convention countries—

Section 24A of the principal Act is amended by repealing
subsections (3) to (5), and substituting the following subsections:

15 “(3) If a convention country requests assistance under this
Part in accordance with a convention specified in **Part 3** of
Schedule 1, the request must relate to criminal matters arising
from the commission or suspected commission of an offence
that, if committed within the jurisdiction of New Zealand,
would correspond to an offence against any of the provisions of
20 the Aviation Crimes Act 1972 that are listed in **Part 4** of
Schedule 2.

25 “(4) If a convention country requests assistance under this
Part in accordance with a convention specified in **Part 4** of
Schedule 1, the request must relate to criminal matters arising
from the commission or suspected commission of an offence
that, if committed within the jurisdiction of New Zealand,
would correspond to an offence against **section 3 or section 4 of the
Maritime and Aviation Crimes Act 1998.**”

30 **39. Further limitations on requests by convention
countries**—The principal Act is amended by inserting, after
section 24A, the following section:

“24B. (1) The provisions of **subsections (2) and (3)** apply if—

35 “(a) A convention country requests assistance under this Part
in accordance with a convention specified in
Schedule 1; and

“(b) The convention country is also a prescribed foreign
country.”

New (Unanimous)

“(2) In any case where there is a treaty between New Zealand and the convention country that relates (in whole or in part) to the provision of assistance in criminal matters,—

“(a) The request for assistance must, as far as practicable, be made and dealt with in the manner specified in that treaty, unless (or except to the extent that) to do so would be inconsistent with the convention; and 5

“(b) If the treaty excludes any of the offences listed in Schedule 2 or **section 24A (3) or section 24A (4)** or limits the types of assistance that may be requested under this Part in relation to those offences, the exclusion or limitation does not apply. 10

“(3) In any case where the application of this Part to the convention country is subject to conditions, exceptions, or qualifications as specified in regulations made under section 65, and the regulations exclude any of the offences listed in Schedule 2 or **section 24A (3) or section 24A (4)** or limit the types of assistance that may be requested under this Part in relation to those offences, the exclusion or limitation does not apply.” 15 20

40. Schedule 1 amended—Schedule 1 of the principal Act is amended by adding the Parts set out in **Schedule 3** of this Act.

41. Schedule 2 amended—Schedule 2 of the principal Act is amended by adding the Part set out in **Schedule 4** of this Act.

SCHEDULES

SCHEDULE 1

Section 35

NEW PART II SUBSTITUTED IN FIRST SCHEDULE OF EXTRADITION ACT 1965
 "PART II—CRIMES UNDER OTHER ENACTMENTS

Short Title of Act	Section of Act	Offence
Insolvency Act 1967	126	Crimes by bankrupt
	127 (2)	Failure to keep proper books of account
Aviation Crimes Act 1972	3	Hijacking
	5	Other crimes relating to aircraft
	5A	Crimes relating to international airports
Misuse of Drugs Act 1975	6	Dealing with controlled drugs
	9	Cultivation of prohibited plants
	10	Aiding offences against corresponding law of another country
	<u>12A</u>	<u>Equipment, material, and substances used in production or cultivation of controlled drugs</u>
	<u>12B</u>	<u>Laundering proceeds of drug offences</u>
	<u>12C</u>	<u>Commission of offences outside New Zealand</u>
Crimes (Internationally Protected Persons and Hostages) Act 1980	3	Crimes against persons
	4	Crimes against premises or vehicles
	5	Threats against persons
	6	Threats against premises or vehicles
	8	Hostage-taking
Crimes of Torture Act 1989	3 (1)	Committing or being a party to an act of torture
	3 (2)	Attempting or conspiring to commit, or being an accessory after the fact to, an act of torture
Maritime and Aviation Crimes Act 1998	3	Crimes relating to ships
	4	Crimes relating to (<i>offshore installations</i>) <u>fixed platforms</u>

Section 36**SCHEDULE 2****CONSEQUENTIAL AMENDMENTS TO OTHER ENACTMENTS**

Enactment	Amendment
1969, No. 76—The Extradition Amendment Act 1969 (R.S. Vol. 18, p. 130)	By repealing section 4 (2).
1975, No. 116—The Misuse of Drugs Act 1975 (R.S. Vol. 26, p. 567)	By repealing section 10 (6).
1980, No. 44—The Crimes (Internationally Protected Persons and Hostages) Act 1980	By repealing section 9.
1989, No. 106—The Crimes of Torture Act 1989	By repealing section 6 (3).

New (Unanimous)

1998, No. 14—The Misuse of Drugs Amendment Act 1998	By omitting so much of Schedule 2 as relates to the Extradition Act 1965.
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*New (Unanimous)***Section 40****SCHEDULE 3****NEW PARTS ADDED TO SCHEDULE 1 OF MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 1992****“PART 3**

The Convention for the Suppression of Unlawful Seizure of Aircraft, done at the Hague on 16 December 1970

The Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 23 September 1971

The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on 24 February 1988.

PART 4

The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988

The Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988”.

New (Unanimous)

SCHEDULE 4 Section 41 NEW PART ADDED TO SCHEDULE 2 OF MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 1992 "PART 4 LIST OF CORRESPONDING OFFENCES IN AVIATION CRIMES ACT 1972	
Provision of Aviation Crimes Act 1972	Subject-matter
Section 3 Section 4 Section 5 Section 5A	Hijacking Crimes in connection with hijacking Other crimes relating to aircraft Crimes relating to international airports".