



ANALYSIS

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1999, No. 56

An Act 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

[20 May 1999]

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 Crimes Act 1999.

(2) This Act comes into force on 1 September 1999.

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

- “Act of violence” means an act which, if committed in New Zealand, would constitute—
- (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:
- “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:
- “Maritime navigational facilities” includes—
- (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:
- “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:
- “New Zealand ship” means a ship that is registered under the Ship Registration Act 1992:
- “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:
- “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:
- “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:

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

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

- (a) A warship; or
- (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 Fixed Platforms

4. 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
- (b) On board a ship, commits an act of violence that is likely to endanger the safe navigation of the ship; or
- (c) Destroys a ship; or
- (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
- (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.

(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

(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 a ship, any act that is a crime against any of paragraphs (b) to (d) or paragraph (g) of subsection (1) if the threat—

(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.

5. Crimes relating to fixed platforms—(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 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

(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

(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—

(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 a fixed platform, any act that is a crime against any of paragraphs (b) to (d) of subsection (1) if the threat—

(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 platform.

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

- (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
- (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.

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

7. Penalties for crimes against sections 4 and 5—(1) A person who commits a crime against section 4 (1) or section 4 (2) (b) or section 4 (3) or section 5 (1) or section 5 (2) (b) or section 5 (3) is liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

(2) A person who commits a crime against section 4 (2) (a) or section 5 (2) (a),—

- (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.

Jurisdiction and Application Provisions

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

- (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
- (b) Any of the following applies:
 - (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 4 applies in respect of acts or omissions that occur outside New Zealand if—

(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 found in a country that is a party to the Rome Convention but is not the country where the act or omission occurred; and

(c) Either—

(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.

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

(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.

9. Extra-territorial jurisdiction in respect of crimes relating to fixed platforms—Section 5 applies in respect of acts or omissions that occur outside New Zealand if—

(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

(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 of the crimes described in section 4 or section 5 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);

(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

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 4.

(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

(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.

(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).

(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 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 who the master or the other person conducting the search has reasonable grounds to believe has committed or is committing or is likely to commit a crime against this Act:

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

(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.

(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—

- (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.

Extradition of Offenders

13. Definitions relating to extradition provisions—For the purposes of sections 14 to 16,—

“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—

- (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.

14. Crimes deemed to be included in extradition treaties—(1) For the purposes of the Extradition Act 1999 and any Order in Council in force under section 15 or section 40 or section 104 of that Act, each crime described in section 4 or section 5 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 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 1999 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 was deemed by that subsection to be an offence described in the relevant extradition treaty.

15. 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 4 or section 5, the Minister of Justice, or the court before which that person is brought, 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:

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

(2) To avoid doubt, section 99 of the Extradition Act 1999 applies if 2 or more countries seek and obtain an order for the surrender of the same person in respect of any act or omission that amounts to a crime described in section 4 or section 5.

(3) If—

- (a) Two or more countries request the surrender of a person under the Extradition Act 1999 in respect of any act or omission that amounts to a crime described in section 4; and
- (b) Those countries are parties to the Rome Convention; and
- (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, in addition to the matters specified in section 99 (2) of the Extradition Act 1999, have due regard to the interests and responsibilities of the country whose flag the ship was flying.

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

16. 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 14 that any country is a party to the Rome Convention or the Rome Protocol (as the case may be) is, in the absence of evidence to the contrary, sufficient proof of that fact.

Miscellaneous Provisions

17. Attorney-General's consent required for prosecutions—(1) No proceedings for the trial and punishment of a person charged with a crime against section 4 or section 5 can be instituted in any court except with the consent of the Attorney-General.

(2) However, a person charged with a crime against section 4 or section 5 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.

18. 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 a warship or a ship owned or operated by a country being used as a naval auxiliary is, in the absence of evidence to the contrary, sufficient proof of that fact.

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

This Act is administered in the Ministry of Justice.
