

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

House of Representatives, 2 October 1980.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

Hon. Mr McLay

CRIMES (INTERNATIONALLY PROTECTED PERSONS AND HOSTAGES)

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A BILL INTITULED

5 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

10 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.

No. 29—2

Price 45c

(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:

New

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“Fugitive Offenders Act 1881” means the Fugitive Offenders Act 1881 of the Parliament of the United Kingdom (as amended by the Fugitive Offenders Amendment Act 1976):

“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— 15

(a) A person who, at the time of the alleged act or omission, is— 20

(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 25

(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: 30

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

(i) A representative or an official of a State; or 35

(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: 40

(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.

(2) In paragraph (a) (i) of the definition of the term
15 “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,—

(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,—
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

(ii) 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.

Cf. Internationally Protected Persons Act 1978, s. 1 (1) (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

(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—

(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:

(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:
35

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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. 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 5 6 8	Crimes against persons. Crimes against premises or vehicles. Threats against persons. Threats against property or vehicles. Hostage-taking.”
10			

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 *Struck Out*

40 (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 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.

New

(2) Notwithstanding subsection (1) of this section, no person shall be 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 was deemed by that subsection to be an offence described in the relevant extradition treaty. 5

(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, extends. 10

Cf. 1972, No. 137, s. 7; Internationally Protected Persons Act 1978, s. 3 (2) (U.K.) 15

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— 20

(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; 25
or 30

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

(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 Convention,— 35

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. 40

New

(1A) Without limiting subsection (1) of this section, where any act or omission to which that subsection applies occurred in New Zealand, the Extradition Act 1965 and the relevant
5 extradition treaty, or (as the case may require) the Fugitive Offenders Act 1881, shall apply with any necessary modifications as if the act or omission had occurred outside New Zealand.

(2) In this section, the term "country" includes any territory
10 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.

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

Struck Out

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
20 returned from New Zealand to another country if it appears

New

12. Restrictions on surrender of offenders—(1) Notwithstanding sections 9 to 11 of this Act or the Extradition Act 1965 or the Fugitive Offenders Act 1881, a person whose
25 surrender is sought in respect of any act or omission that amounts to a crime under section 8 of this Act shall not be surrendered from New Zealand to another country if it appears

to the Minister of Justice, or to the Court before which that
30 person is brought, or to any Court or Judge on an application for a writ of habeas corpus, that—

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

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(b) If the accused person is (*returned*) surrendered,—

(i) He may be prejudiced at his trial, or punished, detained, or restricted in his personal liberty, by reason of his race, ethnic origin, religion, nationality, or political opinions; or

(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.

New

(2) Notwithstanding sections 9 to 11 of this Act, but without limiting section 6 of the Fugitive Offenders Act 1881, the Minister of Justice may decline under the said section 6 to order the surrender of a person from New Zealand to another Commonwealth country in respect of any act or omission that amounts to a crime against any of sections 3 to 8 of this Act if it appears to the Minister that, in respect of the act or omission, the person has been sentenced to death or is liable to be so sentenced by the appropriate authority in the country to which his surrender is sought.

(3) Notwithstanding sections 9 to 11 of this Act or section 14 of the Fugitive Offenders Act 1881, no Judge shall, without the consent of the Minister of Justice, order the surrender under the said section 14 of a person from New Zealand to another Commonwealth country in respect of any act or omission that amounts to a crime against any of sections 3 to 8 of this Act if it appears to the Judge that, in respect of the act or omission, the person has been sentenced to death or is liable to be so sentenced by the appropriate authority in the country to which his surrender is sought.

Cf. 1976, No. 2, s. 7

New

12A. Further restrictions on surrender of offenders—
(1) Notwithstanding sections 9 to 11 of this Act or the Extradition Act 1965 or the Fugitive Offenders Act 1881, no person shall be surrendered from New Zealand to another country in respect of any act or omission that amounts to a crime against any of sections 3 to 8 of this Act if proceedings have been brought in New Zealand against that person in respect of the act or omission.

New

(2) Notwithstanding sections 9 to 11 of this Act or the Extradition Act 1965 or the Fugitive Offenders Act 1881, but subject to subsection (3) of this section, no Court in New Zealand shall order the surrender, or the committal for the purposes of surrender, of a person to another country in respect of an act or omission that amounts to a crime against any of sections 3 to 8 of this Act if the Attorney-General certifies that the case is being or is about to be considered to determine whether or not proceedings should be brought in New Zealand against that person in respect of the act or omission.

(3) If, in any case to which subsection (2) of this section applies, it is subsequently determined that proceedings should not be brought in New Zealand against the person in respect of the act or omission, the Attorney-General shall advise the Court accordingly, and the Court shall proceed with the matter as if the Attorney-General's certificate had never been given.

13. Attorney-General's consent required to prosecutions—

(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.

(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 not been obtained, but no further proceedings shall be taken until that consent has been obtained.

Cf. 1972, No. 137, s. 18

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

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- (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,— 5
- shall be sufficient evidence of that fact.

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

15. Application of certain provisions of Crimes Act— 10
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 15 respect to any proceedings brought under any of sections 3 to 8 of this Act.

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 20 Act 1972, nor, except as expressly provided in this Act, the Crimes Act 1961.

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