

## MARITIME AND AVIATION CRIMES BILL

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### EXPLANATORY NOTE

#### *General Policy Statement*

This Bill contains the requisite statutory provisions that will give effect, so far as legislation is required, to the following international anti-terrorist Conventions:

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

The Rome Convention, and the related Rome Protocol, resulted from the Achille Lauro affair which highlighted the inadequacy of existing anti-terrorism measures (and indeed, the laws relating to piracy) in their application to the situation of the seizure of a ship by terrorists. The Rome Convention creates offences relating to the seizure or destruction of, or damage to a ship, or to the injury of a person aboard such a ship. The Rome Protocol covers the same ground in relation to fixed platforms. Both seek to ensure that the perpetrators of these offences will in all cases be punished, either in the State where they are found or in the State to which they are extradited. In addition, State parties are required to co-operate with a view to preventing the commission of such offences.

The Montreal Protocol supplements the Convention for the Suppression of Unlawful Acts Against the Safety of Civilian Aviation (“the Montreal Convention”), and was the result of a Canadian initiative taken in response to the 1985 bombings at the Rome and Vienna airports. The Montreal Convention was implemented by the Aviation Crimes Act 1972. The key feature of the Montreal Protocol is the extension of the Montreal Convention’s provisions to unlawful acts of violence committed at international airports. This ensures that terrorists who have committed acts of the kind dealt with in the Protocol are denied a safe haven in the territory of a State party.

The key feature of all these conventions is the requirement that States establish criminal offences to combat the terrorist actions in question and, in addition, apprehend an alleged offender in its territory and either extradite the offender or submit the case to its domestic authorities for the purpose of prosecution

(commonly referred to as the “prosecute or extradite” rule). To varying degrees, the conventions also obligate the parties to take the important practical step of attempting to apprehend the accused and hold him or her in custody.

#### *Guide to Parts*

*Part 1 (clauses 2 to 21)* gives effect to the Rome Convention and the Rome Protocol.

*Part 2 (clauses 22 to 33)* amends the Aviation Crimes Act 1972. Most of the amendments give effect to the Montreal Protocol.

*Part 3 (clauses 34 to 36)* amends the Extradition Act 1965.

The 3 Parts of the Bill will be broken up into separate Bills at the committee of the whole stage in the House. *Part 1* will become a separate Bill called the Maritime Crimes Bill, *Part 2* will become a separate Bill called the Aviation Crimes Amendment Bill, and *Part 3* will become a separate Bill called the Extradition Amendment Bill.

#### *Clause by Clause Analysis*

*Clause 1* relates to the Short Title and commencement of the Bill. *Part 1* (except for *clause 13*) and *Parts 2 and 3* come into force 28 days after the date on which the Act receives the Royal assent. *Clause 13* comes into force on a date to be appointed by Order in Council. The commencement of *clause 13* is delayed because it relates to extradition matters. Under the Extradition Act 1965, any extradition must be based on a treaty or an agreement between New Zealand and the country requesting extradition of the offender. The Rome Convention provides that State parties can view the Convention as constituting an amendment to any existing extradition agreements that they may have with one another. However, before New Zealand can rely on this provision, New Zealand must be a State party to the Rome Convention. This takes place when New Zealand ratifies the Rome Convention after this Bill is passed. Consequently, it is appropriate to delay *clause 13* coming into force until ratification occurs.

### PART 1

#### MARITIME CRIMES

*Clause 2* is the interpretation provision.

#### *Crimes Relating to Ships and Offshore Installations*

*Clause 3* sets out the crimes that may be committed in relation to ships. This clause gives effect to Article 3 of the Rome Convention.

*Clause 4* sets out the crimes that may be committed in relation to offshore installations. This clause gives effect to Article 2 of the Rome Protocol.

*Clause 5* defines the meaning of the term “injuring in connection with the commission or attempted commission of”. This term is used in *clauses 3 (2) and 4 (2)* in respect of crimes relating to ships and offshore installations.

*Clause 6* prescribes the penalties for crimes against *clauses 3 and 4*. If the crimes involve murder or manslaughter then the penalties are the same as those contained in the Crimes Act 1961. In all other cases, a person will be liable on conviction on indictment to imprisonment for a maximum term of 14 years.

#### *Jurisdiction and Application Provisions*

*Clause 7* sets out when *clause 3* applies to acts or omissions that occur outside New Zealand. As a general rule, New Zealand has jurisdiction only over crimes that are committed in New Zealand. So, *clause 7* extends this jurisdiction to crimes committed outside New Zealand in certain cases. This meets New Zealand’s international obligations under Articles 4 and 6 of the Rome Convention.

*Clause 8* sets out 2 circumstances when *clause 3* will not apply. It will not apply in relation to ships that are used in military, customs, or police service, or to ships that have been withdrawn from navigation or are laid up.

*Clause 9* sets out when *clause 4* applies to acts or omissions that occur outside New Zealand. Again, this changes the general rule that New Zealand has jurisdiction only over crimes that are committed in New Zealand. This clause gives effect to Article 3 of the Rome Protocol.

*Clause 10* provides that sections 8, 92, and 400 of the Crimes Act 1961 do not apply in respect of any of the crimes described in *clause 3* or *clause 4*.

#### *Powers of Masters*

*Clauses 11 and 12* relate to the powers of masters of ships. *Clause 11* sets out the obligations of a master of a New Zealand ship if an alleged offender is found on board. The master may deliver the alleged offender to the appropriate authorities of a country that is a party to the Rome Convention.

*Clause 12* gives the master power to search persons on board and their baggage. There are a number of restrictions on this search power.

*Clause 13* provides that *clauses 11 and 12* do not apply in relation to ships used in the military, customs, or police service.

#### *Extradition of Offenders*

*Clauses 14 to 18* deal with extradition matters.

*Clause 14* defines the terms “country” and “crime” for the purposes of *clauses 15 to 18*.

Under *clause 15*, crimes described in *clauses 3 and 4* are deemed to be crimes described in any extradition treaty between New Zealand and any country that is a party to the Rome Convention or the Rome Protocol for the purposes of the Extradition Act 1965 and associated Orders in Council.

*Clause 16* confirms that if the surrender of a person is sought under certain Acts in relation to any act or omission that amounts to a crime described in *clause 3* or *clause 4*, and the country seeking the surrender is a party to the Rome Convention or the Rome Protocol, then the act or omission is deemed to be committed within the jurisdiction of that country.

*Clause 17* sets out some considerations that must be taken into account when deciding whether or not to order the surrender of a person to another country.

*Clause 18* relates to certificates given by the Minister of Foreign Affairs and Trade as to whether a country is a party to the Rome Convention or the Rome Protocol.

#### *Miscellaneous Provisions*

*Clauses 19 to 21* contain a number of general miscellaneous matters. In particular, under *clause 19 (1)*, the Attorney-General must consent to court proceedings for the trial and punishment of a person charged with a crime against *clause 3* or *clause 4*.

## PART 2

### AMENDMENTS TO AVIATION CRIMES ACT 1972

*Clause 23* amends the Title of the Aviation Crimes Act 1972 (“the principal Act”) to take into account the Montreal Protocol.

*Clause 24* inserts 2 new definitions into section 2 of the principal Act. These are “international airport” and “Montreal Protocol”.

*Clause 25* amends the heading above section 3 in the principal Act.

*Clause 26* inserts *new section 5A* into the principal Act. *New section 5A (1)* sets out the crimes that may be committed, whether in or outside New Zealand, in relation to international airports. This gives effect to Article II of the Montreal Protocol. *Subclause (2)* prescribes the penalty for crimes against *subclause (1)*. As with other crimes against the principal Act, a person is liable on conviction on indictment to imprisonment for a maximum term of 14 years.

*Clause 27* repeals section 6 of the principal Act. This repeal results from amendments to Part II of the First Schedule of the Extradition Act 1965 under *Part 3* of the Bill.

*Clause 28* inserts *new section 7A* into the principal Act. *New section 7A* deals with extradition matters and is similar to section 7 of the principal Act which applies to the crime of hijacking and crimes against section 5.

*Clause 29* makes consequential amendments to section 8 of the principal Act. This section deals with the surrender of offenders and the proposed amendments incorporate references to *new section 5A* and the Montreal Protocol.

*Clause 30* amends section 9 of the principal Act. Section 9 sets out certain provisions in relation to the application of sections 3, 4, and 5 of the principal Act. The proposed amendment inserts a *new paragraph (d)* in both subsections (1) and (2). Consequently, New Zealand may have jurisdiction in cases where the aircraft, which is the object of the crime, is leased without crew to a lessee—

- whose principal place of business is in New Zealand; or
- in any other case, who is a New Zealand citizen or a person ordinarily resident in New Zealand.

This change is not related to the Montreal Protocol but gives effect to the original terms of the Montreal Convention and the Hague Convention.

*Clause 31* inserts *new section 9A* into the principal Act. *New section 9A* sets out when *new section 5A* does not apply. It will not apply to acts or omissions that occur outside New Zealand unless—

- the act or omission, if it occurred in New Zealand, would constitute a crime against *section 5A*; and
- the alleged offender is present in New Zealand.

*Clause 32* makes a consequential amendment to section 18 to take into account *new section 5A*.

*Clause 33* removes an outdated reference to the Aliens Act 1948 which has been repealed.

### PART 3

#### AMENDMENTS TO EXTRADITION ACT 1965

*Clauses 35 and 36* make consequential changes to the Extradition Act 1965. The changes result from the creation of the new crimes in *new section 5A* of the Aviation Crimes Act 1972 and *clauses 3 and 4* of this Bill.

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## MARITIME AND AVIATION CRIMES

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## A BILL INTITLED

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
- (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
- (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
- (d) To make consequential amendments to the Extradition Act 1965

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.
- (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.

## PART 1

## MARITIME CRIMES

- 2. Interpretation**—In this Act, unless the context otherwise requires,—
- “Continental shelf” has the same meaning as in section 2 (1) of the Continental Shelf Act 1964:
- “Maritime navigational aid” 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:

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

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

10 “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; and includes a ship that is not registered under that Act but is required or entitled to be registered under that Act:

15 “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:

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

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

30 “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—

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

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

- 45 (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:

(c) A submarine or other submersible.

*Crimes Relating to Ships and Offshore Installations*

- 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 5
  - (b) On board a ship, commits an assault 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 10
  - (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 15
  - (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 20
  - (h) Endangers the safe navigation of a ship by communicating to another person information which the person communicating the information knows to be false. 25
- (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, and 171 of the Crimes Act 1961; or 30
  - (b) Injures any person in connection with the commission or attempted commission of any of the crimes against **subsection (1)**. 35
- (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 40
  - (b) Is likely to endanger the safe navigation of the ship.



**4. Crimes relating to offshore installations**—(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
- (c) Destroys an offshore installation; or
- 10 (d) Causes damage to an offshore installation and that damage is likely to endanger the safety of the installation; or
- (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.

15 (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, 20 167, 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)**.

25 (3) A person commits a crime who threatens to do, in relation to an offshore installation, 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
- 30 (b) Is likely to endanger the safety of the installation.

**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

35 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—

- (a) To commit or facilitate the commission or attempted commission of any of those crimes; or
- 40 (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”.

**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. 5

(2) A person who commits a crime against **section 3 (2) (a) or section 4 (2) (a)**,— 10

(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. 15

*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— 20

(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 25

(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: 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; 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— 35

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

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

(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 40

(d) 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.

5     **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.

10    **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

15    (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.

20    (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

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

25    **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 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);

30    (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).

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

*Powers of Masters*

40    **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**.

(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 5

(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. 10

(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)**. 15

(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, 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. 20

(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— 25

(a) Search a person on board the ship in respect of whom 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: 30

(b) Search the baggage of a person who is searched under **paragraph (a)**: 35

(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. 40

(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
- 5 (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  
10 possession of the article is otherwise lawful.

**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.

15 *Extradition of Offenders*

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

20 “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—

- 25 (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;
- 30 (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  
35 **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 Rome Convention or the Rome Protocol (as the case may be).

40 (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 was deemed by that subsection to be an offence described in the relevant extradition treaty.

**16. Surrender of offenders—If—**

- (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— 5
- (i) That amounts to a crime described in **section 3 or section 4**; and 10
- (ii) For which the person whose surrender is sought 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),— 15

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.

**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: 20 25

- (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 30
- (b) The right to be visited by a representative of the country referred to in **paragraph (a)**.

(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 35
- (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,— 40

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

(3) If—

- 5 (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
- 10 (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,—

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.

15 (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.

20 **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 absence of evidence to the contrary, sufficient proof of that

25 fact.

*Miscellaneous Provisions*

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

30 (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

35 remanded in custody or on bail, even though the Attorney-General's consent under **subsection (1)** has not been obtained.

**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

40 military service, is, in the absence of 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

“‘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: 20

“‘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

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

**26. Crimes relating to international airports**—The principal Act is amended by inserting, after section 5, the following section: 30

“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 of the following acts that endangers or is likely to endanger the safety of an international airport: 35

“(a) At the international airport, commits an assault 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

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

“(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.”

10 **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:

15 “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.

20 “(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.

30 “(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.

35 “(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—

“(a) An attempt to commit that crime:

40 “(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:  
 “ ‘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.”

5

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

(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

10

(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”.

15

**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—

20

“(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.”

25

(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

30

“(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:

35

“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

40

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

**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”.

- 5      **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”.

### PART 3

#### AMENDMENTS TO EXTRADITION ACT 1965

- 10      **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).

(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

- 15      **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**.

- 20      **36. Consequential amendments**—The enactments specified in **Schedule 2** are amended in the manner indicated in that schedule.
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**SCHEDULES****Section 35****SCHEDULE 1**

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
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 offshore installations

SCHEDULE 2  
CONSEQUENTIAL AMENDMENTS TO OTHER ENACTMENTS

## Section 36

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).