



ANALYSIS

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1998, No. 36

An Act to amend the Crimes (Internationally Protected Persons and Hostages) Act 1980 [3 June 1998]

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

1. Short Title and commencement—(1) This Act may be cited as the Crimes (Internationally Protected Persons and Hostages) Amendment Act 1998, and is part of the Crimes (Internationally Protected Persons and Hostages) Act 1980 (“the principal Act”).

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

2. Altering Title and Short Title of principal Act—(1) The principal Act may from now on be cited as the Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980.

(2) The principal Act is amended by repealing the Title, and substituting the following Title:

“An Act to give effect to—

(a) The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, 1973; and

(b) The Convention Against the Taking of Hostages 1979; and

(c) The Convention on the Safety of United Nations and Associated Personnel 1994;—

and for matters incidental to the implementation of those Conventions”.

(3) The Short Title of the principal Act, wherever it appears, is amended by omitting the words “Internationally Protected Persons and Hostages”, and substituting the words “Internationally Protected Persons, United Nations and Associated Personnel, and Hostages”.

3. Interpretation—The principal Act is amended by repealing section 2 (1), and substituting the following subsection:

“(1) In this Act, unless the context otherwise requires,—

“‘Associated person’, in relation to an alleged act or omission that constitutes a crime by virtue of or against any of sections 3 to 6, means—

“(a) A person assigned by a Government or an intergovernmental organisation with the agreement of the competent organ of the United Nations; or

“(b) A person engaged by—

“(i) The Secretary-General of the United Nations;
or

“(ii) A specialised agency of the United Nations;
or

“(iii) The International Atomic Energy Agency; or

“(c) A person deployed by a humanitarian non-governmental organisation or agency under an agreement with—

“(i) The Secretary-General of the United Nations;
or

“(ii) A specialised agency of the United Nations;
or

“(iii) The International Atomic Energy Agency—
to carry out activities in support of the fulfilment of the mandate of a United Nations operation:

- “‘Conviction on indictment’ has the same meaning as in section 3 of the Crimes Act 1961:
- “‘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, means—
- “(a) A person who, at the time of the alleged act or omission, is—
- “(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
- “(iv) A Minister of Foreign Affairs—
- and is outside the territory of the State in which he or she holds office:
- “(b) A member of the family of a person referred to in paragraph (a) who is accompanying that person:
- “(c) A person who, at the time of the alleged act or omission, is—
- “(i) A representative or an official of a State; or
- “(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 or her person, freedom, or dignity:
- “(d) A member of the family of a person referred to in paragraph (c) 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, Contiguous Zone, and Exclusive Economic Zone Act 1977):
- “‘Person protected by a convention’ means—
- “(a) An associated person; or
- “(b) An internationally protected person; or
- “(c) A United Nations person:
- “‘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 14 December 1973:

“ ‘The 1979 Convention’ means the Convention Against the Taking of Hostages, opened for signature at New York on 18 December 1979:

“ ‘The 1994 Convention’ means the Convention on the Safety of United Nations and Associated Personnel, opened for signature at New York on 9 December 1994:

“ ‘United Nations operation’ means an operation established by the competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control—

“(a) If the operation is for the purpose of maintaining or restoring international peace and security; or

“(b) If the Security Council of the United Nations, or the General Assembly of the United Nations, has declared, for the purposes of the 1994 Convention, that there exists an exceptional risk to the safety of the personnel participating in the operation:

“ ‘United Nations person’, in relation to an alleged act or omission that constitutes a crime by virtue of or against any of sections 3 to 6, means—

“(a) A person engaged or deployed by the Secretary-General of the United Nations as a member of the military, police, or civilian components of a United Nations operation; or

“(b) An official or expert on mission of—

“(i) The United Nations; or

“(ii) A specialised agency of the United Nations;
or

“(iii) The International Atomic Energy Agency—
who is present in an official capacity in the area where a United Nations operation is being conducted:

“ ‘Vehicle’ includes any means of conveyance.”

4. New cross-heading and section substituted—The principal Act is amended by repealing the cross-heading above section 3, and section 3, and substituting the following cross-heading and section:

*“Internationally Protected Persons and United Nations and
Associated Personnel*

3. Crimes against persons—(1) Without limiting anything in the Crimes Act 1961, every one commits a crime who does an act or omits to do an act, if—

“(a) He or she does the act, or omits to do the act, in New Zealand or outside New Zealand; and

“(b) He or she does the act, or omits to do the act, to or in relation to a person whom he or she knows to be a person protected by a convention; and

“(c) The act or omission is one that constitutes, or would, if done or made in New Zealand, constitute,—

“(i) A crime referred to or described in a provision of the Crimes Act 1961 specified in Schedule 1; or

“(ii) An attempt to commit such a crime, if 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 or she would have been liable had he or she been charged with a crime against the relevant provision of the Crimes Act 1961.”

5. Crimes against premises or vehicles—Section 4 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) Without limiting anything in the Crimes Act 1961, every one commits a crime who does an act or omits to do an act, if—

“(a) He or she does the act, or omits to do the act, in New Zealand or outside New Zealand; and

“(b) He or she does the act, or omits to do the act, to or in relation to—

“(i) Premises that he or she knows to be the official premises or private residence of a person protected by a convention; or

“(ii) A vehicle that he or she knows is used by a person protected by a convention; and

“(c) He or she does the act, or omits to do the act, while such a person is present in those premises or that residence or vehicle; and

“(d) The act or omission is one that constitutes, or would, if done or made in New Zealand, constitute,—

“(i) A crime referred to or described in a provision of the Crimes Act 1961 specified in Schedule 2; or

“(ii) An attempt to commit such a crime, if the crime is not itself constituted by a mere attempt.”

6. Threats against persons—Section 5 of the principal Act is amended by repealing subsection (1), and substituting the following subsections:

“(1) Every one commits a crime who threatens to do an act, if—

“(a) The act constitutes a crime against section 3; and

“(b) He or she makes the threat in New Zealand or outside New Zealand; and

“(c) He or she makes the threat to or in relation to a person whom he or she knows to be an internationally protected person.

“(1A) Every one commits a crime who threatens to do an act, if—

“(a) The act constitutes a crime against section 3; and

“(b) He or she makes the threat in New Zealand or outside New Zealand; and

“(c) He or she makes the threat to or in relation to a person whom he or she knows to be a United Nations person or an associated person; and

“(d) He or she makes the threat with the intention of compelling the person, or any other person, to do or refrain from doing an act.”

7. Threats against premises or vehicles—Section 6 of the principal Act is amended by repealing subsection (1), and substituting the following subsections:

“(1) Every one commits a crime who threatens to do an act, if—

“(a) The act constitutes a crime against section 4; and

“(b) He or she makes the threat in New Zealand or outside New Zealand; and

“(c) He or she makes the threat to or in relation to—

“(i) Premises that he or she knows to be the official premises or private residence of an internationally protected person; or

“(ii) A vehicle that he or she knows is used by an internationally protected person.

“(1A) Every one commits a crime who threatens to do an act, if—

“(a) The act constitutes a crime against section 4; and

- “(b) He or she makes the threat in New Zealand or outside New Zealand; and
- “(c) He or she makes the threat to or in relation to—
- “(i) Premises that he or she knows to be the official premises or private residence of a United Nations person or an associated person; or
 - “(ii) A vehicle that he or she knows is used by a United Nations person or an associated person; and
- “(d) He or she makes the threat with the intention of compelling the person, or any other person, to do or refrain from doing an act.”

8. Sections 3 to 6 not to apply to certain United Nations operations—The principal Act is amended by inserting, after section 6, the following section:

“6A. Sections 3 to 6 do not apply, in relation to United Nations personnel and associated personnel, to a United Nations operation—

- “(a) Authorised by the Security Council of the United Nations as an enforcement action under Chapter VII of the Charter of the United Nations; and
- “(b) In which United Nations personnel or associated personnel are engaged as combatants against organised armed forces; and
- “(c) To which the law of international armed conflict applies.”

9. Prosecution need not prove certain matters—Section 7 of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

- “(a) In respect of—
 - “(i) An internationally protected person to whom paragraph (a) or paragraph (c) of the definition of that term in section 2 (1) applies; or
 - “(ii) A United Nations person or an associated person,—
that the defendant knew, at the time of the alleged crime, the identity of that person or the capacity in which that person was an internationally protected person, a United Nations person, or an associated person.”.

10. Crimes deemed to be included in extradition treaties—(1) Section 10 (1) of the principal Act is amended by omitting the words “or, as the case may require, the 1979 Convention”, and substituting the words “, the 1979 Convention, or the 1994 Convention”.

(2) Section 10 (3) of the principal Act is amended by omitting the words “or, as the case may require, the 1979 Convention,”, and substituting the words “, the 1979 Convention, or the 1994 Convention”.

11. Surrender of offenders—(1) Section 11 (1) (b) of the principal Act is amended by omitting the words “or, as the case may require, the 1979 Convention”, and substituting the words “, the 1979 Convention, or the 1994 Convention”.

(2) Section 11 (2) of the principal Act is amended by omitting the words “or, as the case may be, the 1979 Convention,”, and substituting the words “, the 1979 Convention, or the 1994 Convention”.

12. Evidence—Section 15 of the principal Act is amended by repealing paragraphs (a) and (b), and substituting the following paragraphs:

“(a) Any fact relevant to the question of whether a person was or was not, at any material time, a person protected by a convention; or

“(b) Any fact relevant to the question of whether an operation was or was not, at any material time, a United Nations operation of a kind described in section 6A; or

“(ba) That any country is or is not, or was or was not at any material time, a party to the 1973 Convention, the 1979 Convention, or the 1994 Convention; or”.

13. Schedules amended—(1) The First Schedule of the principal Act is amended by—

(a) Omitting the words “FIRST SCHEDULE”, and substituting the expression “SCHEDULE 1”:

(b) Omitting the heading of the schedule, and substituting the heading “CRIMES AGAINST PERSONS PROTECTED BY A CONVENTION”.

(2) The Second Schedule of the principal Act is amended by—

(a) Omitting the words “SECOND SCHEDULE”, and substituting the expression “SCHEDULE 2”:

- (b) Omitting the heading of the schedule, and substituting the heading “CRIMES AGAINST PREMISES OR VEHICLES OF PERSONS PROTECTED BY A CONVENTION”.

This Act is administered in the Ministry of Justice.
