



## ANALYSIS

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1982, No. 6

An Act of the Parliament of the Cook Islands 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

(8 September 1982)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title - This Act may be cited as the Crimes (Internationally Protected Persons and Hostages) Act 1982.

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

"Cook Islander" means a person belonging to the part of the Polynesian race indigenous to the Cook Islands; and includes -

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- (a) Any person descended from a Cook Islander;  
and
- (b) Any person who has the status of a permanent resident of the Cook Islands pursuant to Article 76A of the Constitution (as enacted by section 13 of the Constitution Amendment (No.9) Act 1980-81:

"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 -

- (a) A person who, at the time of the alleged act or omission, is -
  - (i) A Head of State or person lawfully performing the functions of 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 or a person lawfully performing the functions of such a Minister. -

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:
- (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 person, freedom, or dignity:

- (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:

"Cook Islands" includes all waters within the outer limits of the territorial sea of the Cook Islands (as defined by section 3 of the Territorial Sea and Exclusive Economic Zone Act 1977):

"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"

"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.

### Internationally Protected Persons

3. Crimes against persons - (1) Without limiting anything in the Crimes Act 1969, every one commits a crime who, whether in or outside the Cook Islands, 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 the Cook Islands, constitute, -

- (a) A crime referred to or described in any of the provisions of the Crimes Act 1969 specified in the First Schedule to this Act; or
- (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 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 1969.

4. Crimes against premises or vehicles - (1) Without limiting anything in the Crimes Act 1969, every one commits a crime who, whether in or outside the Cook Islands, 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 accommodation 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 accommodation or vehicle; and
- (b) Which constitutes, or would, if done or omitted to be done in the Cook Islands, constitute, -
  - (i) A crime referred to or described in any of the provisions of the Crimes Act 1969 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 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 1969.

5. Threats against persons - (1) Every one commits a crime who, whether in or outside the Cook Islands, 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 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 1969 in respect of the crime that he would have committed had he carried out his threat in the Cook Islands, -
- whichever is the lesser.

6. Threats against premises or vehicles - (1) Every one commits a crime who, whether in or outside the Cook Islands, threatens to do any act -

- (a) To, or in relation to, -
  - (i) Any premises that he knows to be the official premises or private accommodation of any internationally protected person; or
  - (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 to imprisonment for a term not exceeding three years.

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 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 of this Act 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:
- (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:
- (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.

### 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 the Cook Islands, 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.

(2) No one shall be convicted of the crime of hostage-taking if -

- (a) The act of hostage-taking takes place in the Cook Islands; and
- (b) The alleged offender and the hostage are Cook Islanders; and
- (c) The alleged offender is in the Cook Islands.

(3) Every one commits the crime of hostage-taking is liable on conviction to imprisonment for a term not exceeding 14 years.

### General Provisions

9. Amendments to other enactments - (1) The First Schedule to the Extradition Act 1965 of the New Zealand Parliament shall have effect as if it had been amended by adding to Part II (as substituted by section 4(2) of the Extradition Amendment Act 1969 of the New Zealand Parliament and amended by section 3(2) of the Narcotics Amendment Act 1970 of the New Zealand Parliament and by section 16 of the Aviation Offences Act 1973 of the Cook Islands Parliament), in the appropriate columns thereof, the following words:

"The Crimes (Internationally Protected Persons and Hostages) Act 1982 of the Parliament of the Cook Islands	3	Crimes against persons
	4	Crimes against premises or vehicles
	5	Threats against persons
	6	Threats against property or vehicles
	8	Hostage-taking

(2) The First Schedule to the Fugitive Offenders Act 1969 (as amended by section 16 of the Aviation Offences Act 1973) is hereby further amended by adding to the offences specified therein the following:

"31. Crimes against sections 3, 4, 5, 6, and 8 of the Crimes (Internationally Protected Persons and Hostages) Act 1982."

10. Crimes deemed to be included in extradition treaties -  
 (1) For the purposes of the Extradition Act 1965 of the New

Zealand Parliament and any Order in Council having effect as part of the law of the Cook Islands made under section 3 of that Act or referred to in section 21 of that Act, -

- (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
- (b) Each crime described in section 5 or section 6 of this Act, -

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 having effect as part of the law of the Cook Islands if the foreign country party to that extradition treaty is a party to the 1973 Convention or, as the case may require, the 1979 Convention.

(2) Notwithstanding subsection (1) of this section, no person shall be liable to be surrendered under the Extradition Act 1965 of the New Zealand Parliament 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.

(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.

11. Surrender of offenders - (1) Where the surrender of a person is sought under either the Extradition Act 1965 of the New Zealand Parliament or the Fugitive Offenders Act 1969 in respect of any act or omission -

- (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; or
  - (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 1963 Convention or, as the case may require, the 1979 Convention, -

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.

(2) Without limiting subsection (1) of this section, where any act or omission to which that subsection applies occurred in the Cook Islands, the Extradition Act 1965 of the New Zealand Parliament and the relevant extradition treaty, or (as the case may require) the Fugitive Offenders Act 1969, shall apply with any necessary modifications as if the act or omission had occurred outside the Cook Islands.

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

12. Restrictions on surrender of offenders - (1) Notwithstanding sections 9 to 11 of this Act, or the Extradition Act 1965 of the New Zealand Parliament, a person whose 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 the Cook Islands to another country if it appears to the Minister of Justice, or to High Court on that person being brought before it, or to High Court or a Judge thereof on an application for a writ of habeas corpus, that -

- (a) The 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 punishing him on account of his race, ethnic origin, religion, nationality, or political opinions; or
- (b) If the accused person is 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 to the accused person cannot be effected.

(2) Notwithstanding sections 9 to 11 of this Act or any other Act, the High Court shall not, without the consent of the Minister of Justice, order the surrender of any person whose surrender is sought in respect of any act or omission that amounts to a crime against sections 3 to 8 of this Act, if it appears to the Court that, in respect to 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.

13. Further restrictions on surrender of offenders - (1) Notwithstanding sections 9 to 11 of this Act or any other Act, no person shall be surrendered from the Cook Islands 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 the Cook Islands against that person in respect of the act or omission.

(2) Notwithstanding sections 9 to 11 of this Act or any other Act, but subject to subsection (3) of this section, the High Court shall not 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 the Cook Islands 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 the Cook Islands against the person in respect of the act or omission, the Attorney-General shall advise the High Court accordingly, and the Court shall proceed with the matter as if the Attorney-General's certificate had never been given.

14. 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 the High 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.

15. Evidence - For any purpose in connection with this Act, a certificate given by the Secretary of the Department of External 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
  - (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, -
- shall be sufficient evidence of that fact.

16. Application of certain provisions of Crimes Act - Nothing in section 7 of the Crimes Act 1969 (which relates to jurisdiction in respect of crimes on ships or aircraft beyond the Cook Islands) or in section 412 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 respect to any proceedings brought under any of sections 3 to 8 of this Act.



17. Other Acts not affected - Nothing in this Act shall limit or affect the Entry, Residence, and Departure Act 1971-72, the Aviation Offences Act 1973, nor, except as expressly provided in this Act, the Crimes Act 1969.

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SCHEDULES

Section 3(1)

## FIRST SCHEDULE

CRIMES AGAINST INTERNATIONALLY PROTECTED PERSONS

Section of Crimes Act 1969	Subject-matter
141	Rape
142	Attempt to commit rape
187, 188	Murder
191	Manslaughter
193	Attempt to murder
194	Counselling or attempting to procure murder
196	Accessory after the fact to murder
208	Wounding with intent
209	Injuring with intent
211	Aggravated wounding or injury
212	Aggravated assault
219	Disabling
220	Discharging firearm or doing dangerous act with intent
221	Acid throwing
222	Poisoning with intent
223	Infecting with disease
231	Kidnapping