

Reprint
as at 1 October 2018



Diplomatic Privileges (International Criminal Court)
Order 2004
(SR 2004/79)

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 29th day of March 2004

Present:

Her Excellency the Governor-General in Council

Pursuant to sections 10D and 10E of the Diplomatic Privileges and Immunities Act 1968, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

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Order

1 Title

This order is the Diplomatic Privileges (International Criminal Court) Order 2004.

2 Commencement

This order comes into force on 1 July 2004.

3 Interpretation

In this order, unless the context otherwise requires,—

agreement means the Agreement on the Privileges and Immunities of the International Criminal Court adopted by the Assembly of States Parties on 9 September 2002

Assembly means the Assembly of States Parties to the Rome Statute

counsel means a defence counsel representing any person in relation to proceedings before the ICC or a legal representative of any victim to whom those proceedings relate

Deputy Prosecutor means a Deputy Prosecutor elected by the Assembly in accordance with Article 42(4) of the Rome Statute

Deputy Registrar means the Deputy Registrar elected by the ICC in accordance with Article 43(4) of the Rome Statute

duty means a duty as defined in section 5(1) of the Customs and Excise Act 2018

ICC means the International Criminal Court established under the Rome Statute; and includes any of the organs of the International Criminal Court referred to in the Rome Statute

ICC State Party means a State that is party to the Rome Statute

Inland Revenue Acts has the same meaning as in section 3(1) of the Tax Administration Act 1994

Judge means a Judge of the ICC

permanent resident means a person who is the holder of a residence class visa under the Immigration Act 2009

Presidency means the organ comprised of the President and the first and second Vice-Presidents of the ICC

Prosecutor means the Prosecutor elected by the Assembly in accordance with Article 42(4) of the Rome Statute

Registrar means the Registrar elected by the ICC in accordance with Article 43(4) of the Rome Statute

representative—

- (a) in relation to a State, includes any delegate, alternate, adviser, technical expert, and secretary of a delegation:
- (b) in relation to an intergovernmental organisation, means the executive head of an intergovernmental organisation, including any official acting on his or her behalf

Rome Statute means the Rome Statute of the ICC dated 17 July 1998 (the English text of which is set out in the Schedule of the International Crimes and International Criminal Court Act 2000)

Rules of Procedure and Evidence means the Rules of Procedure and Evidence adopted in accordance with Article 51 of the Rome Statute

Vienna Convention means the Vienna Convention on Diplomatic Relations of 18 April 1961 (the English text of which is set out in Schedule 1 of the Diplomatic Privileges and Immunities Act 1968).

Clause 3 **duty**: amended, on 1 October 2018, by section 443(4) of the Customs and Excise Act 2018 (2018 No 4).

Clause 3 **permanent resident**: substituted, at 2 am on 29 November 2010, by section 406(2) of the Immigration Act 2009 (2009 No 51).

4 Order not in force in Tokelau

This order is not in force in Tokelau.

Part 1

Privileges and immunities of International Criminal Court

5 Capacities of body corporate

In New Zealand the ICC has the capacities of a body corporate and may undertake any lawful activity that is necessary for the fulfilment of its functions and purposes.

6 Inviolability of ICC's premises

Any premises of the ICC in New Zealand are inviolable.

7 Flag, emblem, and markings

The ICC may display its flag, emblem, and markings at its premises and on vehicles and other means of transportation used for official purposes.

8 Immunity from legal process

- (1) In New Zealand, the ICC and its property, funds, and other assets, in any form and regardless of who holds them, enjoy immunity from suit and other legal process.
- (2) Subclause (1) does not apply if, in a particular case, the ICC has expressly waived its immunity.
- (3) If the ICC grants a waiver under subclause (2), a separate waiver of immunity is required before any judgment or other order may be executed against the ICC or against its property, funds, or other assets.

9 Immunity from search

The ICC has immunity from search, requisition, confiscation, expropriation, or any other form of interference in relation to its property, funds, and other assets.

10 Exemption of property from certain restrictions

To the extent necessary to carry out its functions, the property, funds, and other assets of the ICC are exempt from restrictions, controls, or moratoria of any nature and however described, imposed by or under any enactment.

11 Inviolability of ICC's archives and documents

- (1) In New Zealand, the archives of the ICC, and all papers and documents in any form and regardless of who holds them, and materials being sent to or from the ICC, held by the ICC or belonging to it, are inviolable.
- (2) Subclause (1) does not affect any protective measures that the ICC may order under the Rome Statute or the Rules of Procedure and Evidence with regard to documents and materials that—
 - (a) are made available to or used by the ICC; and
 - (b) are not inviolable or have ceased to be inviolable.

12 Taxes, duties, and rates

- (1) The ICC, its assets, income, and other property, and its operations and transactions are exempt from income tax and rates, other than rates that are charges for the supply of water, electric power, rubbish collection, or other public utility services.
- (2) However, there is no exemption for duties and taxes which are included in the price of movable and immovable property and taxes paid for services supplied (for example, goods and services tax).
- (3) Subclause (2) does not prevent the making of administrative arrangements in accordance with any applicable enactment for the reimbursement of goods and services tax and any duties paid on major purchases of the kind referred to in Article 9(1) of the agreement.

13 Exemption from taxes, duties, and prohibitions and restrictions on import or export of goods for official use

- (1) This clause applies to—
 - (a) goods that the ICC directly imports into, or exports from, New Zealand for its official use; and
 - (b) any publications of the ICC directly imported or exported by it.
- (2) The ICC is exempt from tax, duties, and prohibitions and restrictions under the Customs and Excise Act 2018 in respect of goods to which this clause applies.

Clause 13(2): amended, on 1 October 2018, by section 443(4) of the Customs and Excise Act 2018 (2018 No 4).

14 Communication facilities

- (1) For the purposes of its official communications and correspondence, the ICC has the right to enjoy treatment no less favourable than that accorded to any intergovernmental organisation or diplomatic mission in New Zealand in the matter of priorities, rates, and taxes applicable to mail and the various forms of communication and correspondence.
- (2) The official communications and correspondence of the ICC are inviolable and may not be intercepted or censored under New Zealand law.
- (3) The ICC may use all means of communication that it considers appropriate, including electronic means of communication, and has the right to use codes or cipher for its official communications and correspondence.
- (4) The ICC may dispatch and receive correspondence and other materials or communications by courier or in sealed bags with the same privileges, immunities, and facilities as diplomatic couriers and bags.

15 General provision on privileges and immunities

The ICC enjoys in New Zealand any other privileges and immunities that are not provided for in clauses 6 to 14 that are necessary for the fulfilment of its purposes.

Part 2

Privileges and immunities of ICC Judges, staff, and persons involved in ICC proceedings

16 General provision relating to privileges and immunities

The privileges and immunities conferred under this Part on Judges and staff of the ICC, and other individuals involved in ICC proceedings, are granted to facilitate the good administration of justice and are not for the personal benefit of the individuals themselves.

*Judges, Prosecutor, Deputy Prosecutors, and Registrar***17 Judges, Prosecutor, Deputy Prosecutors, and Registrar have diplomatic privileges and immunities**

Every Judge, the Prosecutor, every Deputy Prosecutor, and the Registrar enjoys the same privileges and immunities, when engaged on or with respect to the business of the ICC, as are accorded to heads of diplomatic missions.

18 Taxation of salaries, emoluments, and allowances

- (1) The salaries, emoluments, and allowances paid by the ICC to its Judges, the Prosecutor, the Deputy Prosecutors, and the Registrar, including those who are New Zealand citizens or permanent residents, are exempt from taxation in New Zealand.
- (2) If any incidence of any form of taxation depends on residence, periods during which the Judges, the Prosecutor, the Deputy Prosecutors, and the Registrar are present in New Zealand for the discharge of their functions are not treated as periods of residence in New Zealand for the purposes of the Inland Revenue Acts.
- (3) If subclause (1) applies, salaries, emoluments, and allowances may be taken into account for the purpose of assessing the amount of tax payable in respect of income from other sources.
- (4) To avoid doubt, pensions or annuities paid to former Judges, Prosecutors, Deputy Prosecutors, and Registrars and their dependants are not exempt from income tax in New Zealand.

19 Repatriation and other facilities

- (1) The Judges, the Prosecutor, the Deputy Prosecutors, the Registrar, and members of their families forming part of their households enjoy—
 - (a) every facility for leaving the country where they may happen to be and for entering and leaving the country where the ICC is sitting (if either country is New Zealand);
 - (b) the same repatriation facilities in times of international crisis as are accorded to diplomatic agents under the Vienna Convention.
- (2) This clause does not apply to New Zealand citizens and permanent residents.

20 Privileges and immunities while at disposal of ICC

If a Judge, the Prosecutor, a Deputy Prosecutor, or the Registrar, for the purpose of holding himself or herself at the disposal of the ICC, resides in New Zealand, but is not a New Zealand citizen or permanent resident, he or she, together with family members forming part of his or her household, enjoy all the diplomatic privileges, immunities, and facilities granted to diplomatic agents in similar circumstances under the Vienna Convention.

21 Privileges and immunities during transit through New Zealand

- (1) The Judges, the Prosecutor, the Deputy Prosecutors, and the Registrar who travel through New Zealand on journeys in connection with the exercise of their functions for the ICC enjoy all the privileges, immunities, and facilities granted to diplomatic agents in similar circumstances under the Vienna Convention.
- (2) Subclause (1) applies to New Zealand citizens and permanent residents only to the extent that the privileges and immunities are of the kind specified in clause 22.

22 Judges, Prosecutor, Deputy Prosecutors, and Registrar who are New Zealand citizens or permanent residents

Every Judge, Prosecutor, Deputy Prosecutor, or Registrar who is a New Zealand citizen or permanent resident enjoys the following privileges and immunities under New Zealand law when engaged on or with respect to the business of the ICC, to the extent necessary for the independent performance of his or her functions:

- (a) immunity from personal arrest or detention:
- (b) immunity from suit or other legal process in respect of words spoken or written and all acts performed by the person in the course of the performance of his or her functions for the ICC:
- (c) inviolability of papers and documents in any form and materials relating to the exercise of his or her functions for the ICC:
- (d) the right to receive and send papers and documents in any form for the purposes of his or her communications with the ICC.

23 Immunity from legal process after expiry of term

After the expiry of his or her term of office, a Judge, the Prosecutor, a Deputy Prosecutor, and the Registrar (including a person to whom clause 22 applies) continues to enjoy immunity from suit or other legal process of every kind in respect of words which had been spoken or written and acts which had been performed by that person in his or her official capacity.

24 Privileges continue where Judge remains in office to complete trial or appeal

Clauses 17 to 21, and, if applicable, clause 22, apply to a Judge of the ICC, even after his or her term of office has expired, if the Judge continues to exercise his or her functions in accordance with Article 36(10) of the Rome Statute.

25 Waiver of privileges and immunities

The privileges and immunities conferred by clauses 17 to 24 may be waived in accordance with Article 26(2)(a) to (c) of the agreement and Article 48(5)(a) to (c) of the Rome Statute in the following manner:

- (a) in the case of a Judge or the Prosecutor, by an absolute majority of the Judges:
- (b) in the case of the Registrar, by the Presidency:
- (c) in the case of a Deputy Prosecutor, by the Prosecutor.

Deputy Registrar, staff of Office of Prosecutor, and staff of Registry

26 General provision on privileges and immunities of Deputy Registrar, staff of Office of Prosecutor, and staff of Registry

- (1) The Deputy Registrar, the staff of the Office of the Prosecutor, and the staff of the Registry enjoy such privileges, immunities, and facilities under New Zealand law when engaged on or with respect to the business of the ICC as are necessary for the independent performance of their functions and in particular, the privileges and immunities specified in clauses 27 to 33.
- (2) A person who is a New Zealand citizen or permanent resident is entitled only to the privileges and immunities specified in clauses 27, 28, 29, and 32.

27 Immunity from arrest

The Deputy Registrar, the staff of the Office of the Prosecutor, and the staff of the Registry enjoy immunity from personal arrest or detention under New Zealand law, to the extent necessary for the independent performance of their functions.

28 Immunity from legal process

- (1) The Deputy Registrar, the staff of the Office of the Prosecutor, and the staff of the Registry enjoy immunity from suit or other legal process of every kind in New Zealand in respect of words spoken or written and all acts performed by them in their official capacity.
- (2) The immunity in subclause (1) continues after the end of the person's employment with the ICC, in respect of acts done while so employed.

29 Protection of papers and communications

- (1) Official papers, documents, and materials in any form relating to the exercise of the functions of the Deputy Registrar, the staff of the Office of the Prosecutor, and the staff of the Registry are inviolable.
- (2) The Deputy Registrar, the staff of the Office of the Prosecutor, and the staff of the Registry who are New Zealand citizens or permanent residents have the right to receive and send papers and documents in any form for the purposes of their communications with the ICC.

30 Seizure and inspection of personal baggage

- (1) The Deputy Registrar, the staff of the Office of the Prosecutor, and the staff of the Registry—

- (a) enjoy immunity from seizure of their personal baggage:
 - (b) are exempt, when entering or leaving New Zealand, from inspection of personal baggage.
- (2) Subclause (1)(b) does not apply if a constable or any other enforcement officer has substantial grounds for believing that the baggage contains articles the import or export of which—
- (a) is prohibited by New Zealand law; or
 - (b) is subject to restrictions or conditions under New Zealand law.
- (3) If subclause (2) applies, the baggage of any official referred to in subclause (1) may be inspected, but any such inspection must be conducted only if authorised under another enactment and in the presence of that official.
- (4) Subject to clause 29(1), this clause does not apply to New Zealand citizens or permanent residents.

Section 30(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

31 Repatriation facilities

- (1) The Deputy Registrar, the staff of the Office of the Prosecutor, and the staff of the Registry, together with members of their families forming part of their household, have the same repatriation facilities in times of international crisis as are accorded to diplomatic agents under the Vienna Convention.
- (2) This clause does not apply to New Zealand citizens and permanent residents.

32 Privileges relating to taxation on income

- (1) The Deputy Registrar, the staff of the Office of the Prosecutor, and the staff of the Registry (including those who are New Zealand citizens or permanent residents) are exempt from taxation in New Zealand on the salaries, emoluments, and allowances paid to them by the ICC.
- (2) To avoid doubt,—
- (a) salaries, emoluments, and allowances may be taken into account for the purpose of assessing the amount of taxes payable in respect of income from other sources; and
 - (b) pensions or annuities paid to former Deputy Registrars, members of the staff of the Office of the Prosecutor, members of the staff of the Registry, and their dependants are not exempt from income tax.

33 Exemption relating to import and export of furniture and effects

- (1) The Deputy Registrar, the staff of the Office of the Prosecutor, and the staff of the Deputy Registrar are exempt from duties on furniture and effects imported at the time of first taking up post in New Zealand and have the right to re-export such furniture and effects free of duties to their country of permanent residence.

- (2) This clause does not apply to New Zealand citizens and permanent residents.

34 Waiver of privileges and immunities

The privileges and immunities conferred by clauses 27 to 33 may be waived in accordance with Article 26(2)(c) and (d) of the agreement and Article 48(5)(c) and (d) of the Rome Statute in the following manner:

- (a) in the case of staff of the Office of the Prosecutor, by the Prosecutor:
(b) in the case of the Deputy Registrar or staff of the Office of the Registry, by the Registrar.

Locally recruited staff

35 Immunity and facilities for locally recruited staff

- (1) This clause applies to personnel recruited by the ICC in New Zealand who are not otherwise covered by this order.
- (2) A person to whom this clause applies enjoys immunity from legal process in respect of words spoken or written and all acts performed in his or her official capacity for the ICC.
- (3) The immunity described in subclause (2) continues after the end of the period of the person's employment with the ICC, in respect of activities while so employed.
- (4) During his or her employment, a person enjoys such other facilities as may be necessary for the independent exercise of his or her functions for the ICC.

36 Waiver of immunity

The immunity conferred in clause 35 may be waived in accordance with Article 26(2)(e) of the agreement by the head of the organ of the ICC employing the person concerned.

Counsel and persons assisting defence counsel

37 Counsel and persons assisting defence counsel

- (1) A counsel enjoys the privileges, immunities, and facilities specified in clauses 38 to 43 to the extent necessary for the independent performance of his or her functions as counsel (including the time spent on journeys in connection with the performance of his or her functions).
- (2) The enjoyment by counsel of the privileges, immunities, and facilities is subject to production of the Registrar's certificate under Article 18(2) of the agreement.
- (3) This clause and clauses 38 to 43 apply, with any necessary modifications, to persons assisting defence counsel in accordance with Rule 22 of the Rules of Procedure and Evidence.

- (4) A person to whom this clause applies who is a New Zealand citizen or permanent resident is entitled only to the privileges and immunities specified in clauses 38, 39, and 40.

38 Immunity from arrest

A counsel enjoys immunity from personal arrest or detention.

39 Immunity from legal process

- (1) A counsel enjoys immunity from suit and other legal process of every kind in respect of words spoken or written and all acts performed by that counsel in his or her official capacity as counsel.
- (2) The immunity in subclause (1) continues after the counsel has ceased to exercise his or her functions in relation to words spoken or written and all acts performed as counsel.

40 Protection of papers and communications

- (1) Papers, documents, and materials, in any form, relating to the exercise of a person's functions as counsel are inviolable.
- (2) A counsel has the right to receive and send papers and documents in any form for the purposes of communications in pursuance of his or her functions as counsel.

41 Seizure and inspection of personal baggage

- (1) A counsel—
- (a) enjoys immunity from seizure of his or her personal baggage; and
 - (b) is exempt, when entering or leaving New Zealand, from inspection of personal baggage.
- (2) Subclause (1)(b) does not apply if a constable or any other enforcement officer has substantial grounds for believing that the baggage contains articles the import or export of which—
- (a) is prohibited by New Zealand law; or
 - (b) is subject to restrictions or conditions under New Zealand law.
- (3) If subclause (2) applies, the baggage of a counsel may be inspected, but any such inspection must be conducted only if authorised under another enactment and in the presence of that counsel.
- (4) Subject to clause 40(1), this clause does not apply to New Zealand citizens or permanent residents.

Section 41(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

42 Repatriation facilities

- (1) A counsel has the same repatriation facilities in times of international crisis as are accorded to a diplomatic agent under the Vienna Convention.
- (2) This clause does not apply to New Zealand citizens or permanent residents.

43 Taxation

If the incidence of any form of taxation depends upon residence, periods during which a counsel is present in New Zealand for the discharge of his or her functions are not considered under New Zealand law to be periods of residence.

44 Waiver of privileges and immunities

The privileges and immunities provided in clauses 38 to 42 may be waived in accordance with Article 26(2)(f) of the agreement by the Presidency.

*Experts***45 Privileges and immunities of experts**

- (1) An expert performing functions for the ICC enjoys the privileges, immunities, and facilities specified in clauses 46 to 50 to the extent necessary for the independent exercise of his or her functions (including the time spent on journeys in connection with his or her functions).
- (2) An expert's enjoyment of the privileges, immunities, and facilities is subject to production of the document provided by the ICC under Article 21(2) of the agreement that is issued by the ICC certifying that the expert is performing functions for the ICC and specifying a time period for which his or her functions will last.
- (3) An expert who is a New Zealand citizen or permanent resident is entitled only to the privileges and immunities specified in clauses 46, 47, and 48.

46 Immunity from arrest

An expert enjoys immunity from personal arrest or detention.

47 Immunity from legal process

- (1) An expert enjoys immunity from suit and other legal process of every kind in respect of words spoken or written and all acts performed by him or her in the course of the performance of his or her functions for the ICC.
- (2) The immunity in subclause (1) continues after the expert has ceased to exercise his or her functions in relation to words spoken or written and all acts performed in the course of the performance of his or her functions for the ICC.

48 Protection of papers and communications

- (1) All papers and documents in any form and materials relating to the exercising of the person's functions as an expert for the ICC are inviolable.

- (2) An expert has the right to receive and send papers and documents in any form by courier or in sealed bags for the purposes of his or her communications with the ICC.

49 Seizure and inspection of personal baggage

- (1) An expert—
 - (a) enjoys immunity from seizure of his or her personal baggage; and
 - (b) is exempt, when entering or leaving New Zealand, from inspection of personal baggage.
- (2) Subclause (1)(b) does not apply if a constable or any other enforcement officer has substantial grounds for believing that the baggage contains articles the import or export of which—
 - (a) is prohibited by New Zealand law; or
 - (b) is subject to restrictions or conditions under New Zealand law.
- (3) If subclause (2) applies, the baggage of an expert may be inspected but any such inspection must be conducted only if authorised under another enactment and in the presence of that expert.
- (4) Subject to clause 48(1), this clause does not apply to New Zealand citizens or permanent residents.

Section 49(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

50 Repatriation facilities

- (1) An expert has the same repatriation facilities in times of international crisis as are accorded to diplomatic agents under the Vienna Convention.
- (2) This clause does not apply to New Zealand citizens or permanent residents.

51 Waiver of privileges and immunities

The privileges and immunities provided in clauses 46 to 50 may be waived in accordance with Article 26(2)(h) of the agreement by the head of the organ of the ICC appointing the expert.

Witnesses

52 Privileges and immunities of witnesses

- (1) A witness enjoys the privileges, immunities, and facilities specified in clauses 53 to 57 to the extent necessary for his or her appearance before the ICC for purposes of giving evidence (including the time spent on journeys in connection with his or her appearance before the ICC).
- (2) A witness's enjoyment of the privileges, immunities, and facilities is subject to production of the document provided by the ICC under Article 19(2) of the

agreement certifying that the appearance of the witness is required and specifying a time period during which that appearance is necessary.

- (3) A witness who is a New Zealand citizen or permanent resident is entitled only to the privileges and immunities specified in clauses 53, 54, and 55.

53 Immunity from arrest

A witness enjoys immunity from personal arrest or detention.

54 Immunity from legal process

- (1) A witness enjoys immunity from suit or other legal process of every kind in respect of words spoken or written and all acts performed by the witness in the course of his or her testimony.
- (2) The immunity in subclause (1) continues after a witness's appearance and testimony before the ICC in relation to words spoken or written and all acts performed in the course of his or her testimony.

55 Protection of papers and communications

- (1) Papers, documents, and materials, in any form, relating to a person's testimony as a witness before the ICC are inviolable.
- (2) A witness has the right to receive and send papers and documents in any form for the purposes of communications with the ICC and counsel in connection with his or her testimony.

56 Seizure of personal baggage

- (1) Subject to clause 55(1), a witness enjoys immunity from seizure of his or her personal baggage.
- (2) Subclause (1) does not apply if a constable or any other enforcement officer believes that the baggage contains articles the import or export of which—
 - (a) is prohibited by New Zealand law; or
 - (b) is subject to restrictions or conditions under New Zealand law.
- (3) Subject to clause 55(1), this clause does not apply to New Zealand citizens and permanent residents.

Section 56(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

57 Repatriation facilities

- (1) A witness has the same repatriation facilities in times of international crisis as is accorded to diplomatic agents under the Vienna Convention.
- (2) This clause does not apply to New Zealand citizens and permanent residents.

58 Waiver of privileges and immunities

The privileges and immunities provided in clauses 53 to 57 may be waived in accordance with Article 26(2)(g) of the agreement by the Presidency.

Victims and other persons required to be present at seat of ICC

59 Privileges and immunities of victims and other persons required to be present at ICC

- (1) A victim participating in the proceedings in accordance with Rules 89 to 91 of the Rules of Procedure and Evidence enjoys the privileges, immunities, and facilities specified in clauses 60 to 62 to the extent necessary for his or her appearance before the ICC (including the time spent on journeys in connection with his or her appearance before the ICC).
- (2) A victim's enjoyment of the privileges, immunities, and facilities is subject to production of the document provided by the ICC under Article 20(2) of the agreement that is issued by the ICC certifying that the participation of the victim in the proceedings of the Court is required and specifying a time period for that participation.
- (3) The provisions of this clause and clauses 60 to 62 apply, with any necessary modifications, to other persons required to be present at the ICC to the extent necessary for their presence.
- (4) A person to whom this clause applies who is a New Zealand citizen or permanent resident is entitled only to the privileges and immunities specified in clauses 60 and 61.

60 Immunity from arrest

A victim enjoys immunity from personal arrest or detention.

61 Immunity from legal process

- (1) A victim enjoys immunity from suit or other legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their appearance before the ICC.
- (2) The immunity in subclause (1) continues after a victim's appearance before the ICC in relation to words spoken or written and all acts performed in the course of his or her appearance.

62 Seizure of personal baggage

- (1) A victim enjoys immunity from seizure of his or her personal baggage.
- (2) Subclause (1) does not apply if a constable or any other enforcement officer believes that the baggage contains articles the import or export of which—
 - (a) is prohibited by New Zealand law; or
 - (b) is subject to restrictions or conditions under New Zealand law.

- (3) This clause does not apply to New Zealand citizens and permanent residents.
Section 62(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

63 Waiver of privileges and immunities

The privileges and immunities provided in clauses 60 to 62 may be waived by the Presidency in accordance with Article 26(2)(g) of the agreement (in the case of victims) and Article 26(2)(i) of the agreement (in the case of other persons required to be present at the seat of the ICC).

Representatives of States participating in ICC proceedings

64 Representatives of States participating in ICC proceedings

- (1) A representative of a State, while exercising his or her official functions, and during his or her journey to and from the place of the proceedings in New Zealand, enjoys the privileges and immunities referred to in clauses 66 to 71.
- (2) The privileges and immunities conferred by this clause—
- (a) are accorded to a representative not for his or her personal benefit but in order to safeguard the independent exercise of his or her functions in connection with the ICC; and
 - (b) do not apply in so far as in any particular case any privilege or immunity is waived by the State or international organisation of which the person concerned is a representative.

Part 3

Assembly of States Parties and its subsidiary organs

65 Privileges and immunities of representatives

- (1) This Part applies to any of the following persons attending a meeting of the Assembly or its subsidiary organs in New Zealand:
- (a) a duly accredited or authorised representative of a State that is an ICC State Party; and
 - (b) a duly accredited or authorised representative of any other State attending the meeting as an observer in accordance with Article 112(1) of the Rome Statute; and
 - (c) a representative of a State or an intergovernmental organisation invited to attend such a meeting—
- but does not include any representative of the Government of New Zealand.
- (2) While exercising his or her official functions and during his or her journey to and from the place of meeting, a representative to whom this Part applies enjoys the privileges and immunities set out in clauses 66 to 71.

66 Immunity from arrest

A representative to whom this Part applies enjoys immunity from personal arrest or detention.

67 Immunity from legal process

- (1) A representative to whom this Part applies enjoys immunity from suit or other legal process of every kind in respect of words spoken or written and all acts performed by the representative in his or her official capacity.
- (2) The immunity in subclause (1) continues after the representative has ceased to exercise his or her functions in relation to words spoken or written and all acts performed as a representative.

68 Protection of papers

Papers and documents of a representative in any form are inviolable.

69 Communication facilities

A representative has the right to use codes or cipher, to receive papers and documents or correspondence by courier or in sealed bags, and to receive and send electronic communications.

70 Seizure and inspection of personal baggage

A representative has the same immunities and facilities in respect of his or her personal baggage as are accorded to diplomatic envoys under the Vienna Convention.

71 Repatriation facilities

A representative has the same protection and repatriation facilities in times of international crisis as are accorded to diplomatic agents under the Vienna Convention.

72 Other privileges, immunities, and facilities

- (1) A representative enjoys such other privileges, immunities, and facilities as diplomatic agents enjoy that are not inconsistent with those conferred in clauses 66 to 71.
- (2) Despite subclause (1), a representative has no right to claim exemption from duties on goods imported (otherwise than as part of his or her personal baggage) or from goods and services tax.
- (3) If the incidence of any form of taxation depends upon residence, periods during which the representative is present in New Zealand for the discharge of his or her functions are not considered to be periods of residence for the purposes of the Inland Revenue Acts.

73 Waiver

The privileges and immunities conferred by this clause—

- (a) are accorded to a representative not for his or her personal benefit but in order to safeguard the independent exercise of the representative's functions in connection with the work of the Assembly or its subsidiary organs; and
- (b) do not apply in so far as in any particular case any privilege or immunity is waived by the State or intergovernmental organisation of which the person concerned is a representative.

Diane Morcom,
Clerk of the Executive Council.

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Reprints notes

1 *General*

This is a reprint of the Diplomatic Privileges (International Criminal Court) Order 2004 that incorporates all the amendments to that order as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Customs and Excise Act 2018 (2018 No 4): section 443(4)

Immigration Act 2009 (2009 No 51): section 406(2)

Policing Act 2008 (2008 No 72): section 116(a)(ii)