

Version  
as at 28 October 2021



## Terrorism Suppression Act 2002

Public Act      2002 No 34  
Date of assent      17 October 2002  
Commencement      see section 2

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#### Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

**This Act is administered by the Ministry of Foreign Affairs and Trade and the Ministry of Justice.**

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## 1 Title

This Act is the Terrorism Suppression Act 2002.

## Part 1 Preliminary provisions

### 2 Commencement

- (1) Except as provided in subsection (2), this Act comes into force on the day after the date on which it receives the Royal assent.
- (2) Sections 18, 63 to 66, 68, 69, 76, 79, and 80 come into force on a date appointed by Order in Council.
- (3) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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#### Legislation Act 2019 requirements for secondary legislation made under this section

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 2(2): sections 18, 63–66, 68, 69, 76, 79, and 80 brought into force, on 5 December 2002, by clause 2 of the Terrorism Suppression Act Commencement Order 2002 (SR 2002/353).

Section 2(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

### 3 Purpose of this Act

The purpose of this Act is—

- (a) to make further provision in New Zealand law for the suppression of terrorism; and
- (b) to make provision to implement in New Zealand law New Zealand’s obligations under—
  - (i) the Bombings Convention; and
  - (ii) the Financing Convention; and
  - (iii) the Anti-terrorism Resolution; and
  - (iv) the Nuclear Material Convention; and
  - (v) the Plastic Explosives Convention; and
  - (vi) the Nuclear Terrorism Convention; and
  - (vii) Resolution 2178 (2014); and
- (c) to make further provision to implement, in part,—
  - (i) the ISIL (Da’esh) and Al-Qaida Sanctions Resolutions; and

(ii) the Taliban Sanctions Resolutions.

Section 3: substituted, on 20 November 2007, by section 4 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 3(b)(vii): inserted, on 5 October 2021, by section 4(1) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 3(c): replaced, on 5 October 2021, by section 4(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

#### 4 Interpretation

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

**act against a specified terrorism convention** means an act—

- (a) that constitutes an offence as defined in a specified terrorism convention; and
- (b) that is not excluded from the application of the specified terrorism convention (for example, because an international aspect required by 1 or more of its provisions does not exist)

**Al-Qaida** means the Al-Qaida organisation

**Al-Qaida entity**, for a measure that is set out, or referred to, in 1 or more ISIL (Da'esh) and Al-Qaida Sanctions Resolutions, and that is provided for in this Act, means Al-Qaida, or an entity that is not Al-Qaida but is designated, by or under those resolutions, as an entity that is—

- (a) associated with Al-Qaida; and
- (b) an entity to which that measure is to be applied

**Anti-terrorism Resolution** means Resolution 1373 (2001) of the Security Council of the United Nations, adopted under Chapter VII of the United Nations Charter on 28 September 2001, a copy of which is set out in Schedule 4

**basic needs** include, without limitation, needs satisfied by cash, funds, property, or support for all or any of the following:

- (a) foodstuffs:
- (b) rent or mortgage:
- (c) medicines or medical treatment:
- (d) taxes, insurance premiums, or public utility charges:
- (e) reasonable professional fees, and reimbursement of incurred expenses, associated with the provision of legal services:
- (f) fees or service charges for routine holding or maintenance of frozen funds or other financial assets or economic resources

**Bombings Convention** means the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United



Nations at New York on 15 December 1997, a copy of the English text of which is set out in Schedule 1

**carried out**, in relation to a terrorist act,—

- (a) has the meaning given to it in section 5A(1); but
- (b) in section 6A(1), has, despite section 5A(1), only the narrower meaning given to it in section 6A(2)

**classified security information** has the meaning given to it in section 32(1)

**country** includes any State, territory, province, or other part of a country

**critical infrastructure** means all or any of the following that provide the essential services of a population:

- (a) assets:
- (b) facilities:
- (c) networks:
- (d) systems

**deal with**, in relation to any property,—

- (a) means to use or deal with the property, in any way and by any means (for example, to acquire possession of, or a legal or an equitable interest in, transfer, pay for, sell, assign, or dispose of (including by way of gift) the property); and
- (b) includes allowing the property to be used or dealt with, or facilitating the use of it or dealing with it

**designated terrorist entity** means an entity—

- (a) for the time being designated under section 20 or 22 as a terrorist entity or associated entity; or
- (b) that is a United Nations listed terrorist entity

**duly authorised military device** means an explosive article, including, but not restricted to, a shell, bomb, projectile, mine, missile, rocket, shaped charge, grenade, and perforator, manufactured exclusively for lawful military or Police purposes and approved for those purposes by the Environmental Protection Authority established by section 7 of the Environmental Protection Authority Act 2011

**entity** means a person, group, trust, partnership, or fund, or an unincorporated association or organisation

**explosive or other lethal device** means—

- (a) an explosive or incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury, or substantial material damage; or

- (b) a weapon or device that is designed, or has the capability, to cause death, serious bodily injury, or substantial material damage through the release, dissemination, or impact of—
  - (i) toxic chemicals, biological agents or toxins or similar substances; or
  - (ii) radiation or radioactive material

**facility** has the meaning referred to in section 44(5)

**Financing Convention** means the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations at New York on 9 December 1999, a copy of the English text of which is set out in Schedule 2

**financing of, or provision of material support for, terrorism—**

- (a) means an offence against section 8(1), (1A), (2A), or (2B); but
- (b) despite paragraph (a), in sections 18, 68, and 69, means an offence of that kind involving a terrorist act of a kind referred to in section 5(1)(b) or (c)

**funds—**

- (a) means assets of every kind, whether tangible or intangible, moveable or immovable, however acquired; and
- (b) includes legal documents or instruments (for example, bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts, and letters of credit) in any form (for example, in electronic or digital form) evidencing title to, or an interest in, assets of any kind

**infrastructure facility** means a facility (whether publicly or privately owned) providing or distributing basic services for a population (for example, water, sewage disposal, energy, fuel, or communications)

**intelligence and security agency** means—

- (a) the New Zealand Security Intelligence Service;
- (b) the Government Communications Security Bureau
- (c) *[Repealed]*

**international organisation** means any organisation of States or Governments of States, or any organ or agency of any organisation of that kind

**ISIL (Da'esh)** means the splinter group of Al-Qaida known as the Islamic State in Iraq and the Levant (ISIL), also known as the Islamic State in Iraq and al Sham (ISIS), and also known as Da'esh

**ISIL (Da'esh) and Al-Qaida Sanctions Resolutions** means Resolution 1267 (1999) of the Security Council of the United Nations, adopted under Chapter

VII of the United Nations Charter on 15 October 1999 and its successor resolutions, including, without limitation,—

- (a) Resolution 1333 (2000) adopted on 19 December 2000; and
- (b) Resolution 1390 (2002) adopted on 16 January 2002; and
- (c) Resolution 1989 (2011) adopted on 17 June 2011; and
- (d) Resolution 2170 (2014) adopted on 15 August 2014; and
- (e) Resolution 2253 (2015) adopted on 17 December 2015

**ISIL (Da'esh) entity**, for a measure that is set out, or referred to, in 1 or more ISIL (Da'esh) and Al-Qaida Sanctions Resolutions, and that is provided for in this Act, means ISIL (Da'esh), or an entity that is not ISIL (Da'esh) but is designated, by or under those resolutions, as an entity that is—

- (a) associated with ISIL (Da'esh); and
- (b) an entity to which that measure is to be applied

**make available** has the meaning given to it in section 10(6)

**manufacture** means any process, including reprocessing, that produces plastic explosives

**material support**—

- (a) means support that does, or may, assist in, contribute to, or make easier, the carrying out of 1 or more terrorist acts; and
- (b) includes, without limiting the generality of paragraph (a), support that complies with that paragraph and that is all or any of the following:
  - (i) advice given in making available financial or related services, or financial or related services:
  - (ii) other advice, or other services, derived from acquired skills or knowledge (for example, agency, brokerage, translation, driving or pilotage, or training to impart skills):
  - (iii) equipment, information, technology, or other property or resources (for example, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, or personnel (the assistance or efforts of 1 or more individuals who may be or include oneself)):
  - (iv) accommodation, lodging, stockpiling, or storage:
  - (v) transportation; but
- (c) for the purposes of section 8 and of any other legislation that mentions section 8, excludes (despite paragraphs (a) and (b) of this definition) support specified in section 8(5)

**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)

**nuclear facility** means—

- (a) a nuclear reactor, including a reactor installed in or on any vessel, vehicle, aircraft, or space object for use as an energy source in order to propel the vessel, vehicle, aircraft, or space object or for any other purpose; or
- (b) a plant or conveyance—
  - (i) being used for the production, storage, processing, or transport of radioactive material; or
  - (ii) in which radioactive material is being used, handled, or disposed of in circumstances where damage to or interference with the operation of the plant or conveyance could lead to the release of significant amounts of radiation or radioactive substances

**nuclear material** has the same meaning as in Article 1(a) of the Nuclear Material Convention

**Nuclear Material Convention** means the Convention on the Physical Protection of Nuclear Material, done at New York and Vienna on 3 March 1980, a copy of the English text of which is set out in Schedule 2A

**nuclear material offence** means an offence against section 13C

**Nuclear Terrorism Convention** means the Convention for the Suppression of Acts of Nuclear Terrorism, adopted by the General Assembly of the United Nations in New York on 13 April 2005, a copy of the English text of which is set out in Schedule 2C

**nuclear terrorism offence** means an offence against section 13E

**Official Assignee** means the Official Assignee of New Zealand

**ordinarily resident in New Zealand** has the meaning given to it in subsection (2)

**place of public use**—

- (a) means those parts of any building, land, street, waterway, or other location that are accessible or open to members of the public (whether continuously, periodically, or occasionally, and whether for free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from the place); and
- (b) includes any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational, or similar place that is so accessible or open to the public

**plastic explosives** means explosive products, including explosives in flexible or elastic sheet form, formulated with 1 or more high explosives that, in their pure form, have a vapour pressure less than 10<sup>-4</sup> Pa at a temperature of 25°C; and are formulated with a binder material and are, as a mixture, malleable or flexible at room temperature

**Plastic Explosives Convention** means the Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March 1991, a copy of the English text of which is set out in Schedule 2B

**privileged communication** has the meaning given to it in section 45

**property**—

- (a) means real or personal property of any description, whether situated in New Zealand or elsewhere and whether tangible or intangible; and
- (b) includes an interest in any real or personal property of that kind

**public transportation system** means all conveyances (for example, aircraft, trains, ships, ferries, trucks, buses, or small passenger vehicles), facilities, buildings, and objects (whether publicly or privately owned) used in or for services that are available to the public for the transportation of persons or cargo

**radioactive device** means—

- (a) a nuclear weapon or other nuclear explosive device; or
- (b) a radioactive material dispersal device; or
- (c) a radiation-emitting device

**radioactive material** has the meaning given in Article 1 of the Nuclear Terrorism Convention

**relevant date** has the meaning given to it in section 69(4)

**relevant place, facility, or system** has the meaning given to it in section 7(2)

**relevant State** has the meaning given to it in section 66(3)

**relevant States Parties** has the meaning given to it in section 63(2)

**reporting entity** has the meaning referred to in section 44(5)

**Resolution 1267** means Resolution 1267 (1999) of the Security Council of the United Nations, adopted under Chapter VII of the United Nations Charter on 15 October 1999, a copy of the English text of which is set out in Schedule 4A

**Resolution 1333** means Resolution 1333 (2000) of the Security Council of the United Nations, adopted under Chapter VII of the United Nations Charter on 19 December 2000, a copy of the English text of which is set out in Schedule 4B

**Resolution 1390** means Resolution 1390 (2002) of the Security Council of the United Nations, adopted under Chapter VII of the United Nations Charter on 16 January 2002, a copy of the English text of which is set out in Schedule 4C

**Resolution 2178 (2014)** means Resolution 2178 (2014) of the Security Council of the United Nations, adopted under Chapter VII of the United Nations Charter on 24 September 2014, a copy of which is set out in Schedule 4D

**service** has the meaning referred to in section 44(5)

**specified agency** means—

- (a) an intelligence and security agency; or
- (b) the New Zealand Police

**specified terrorism convention** means any treaty specified in Schedule 3

**State or government facility** means any conveyance (for example, an aircraft, train, ship, ferry, truck, bus, small passenger vehicle, or car) or facility (whether permanent or temporary) used or occupied by any of the following persons in connection with their official duties:

- (a) representatives of a State:
- (b) members of the executive, legislative, or judicial branch of the Government of a State:
- (c) employees or officials of a State, or of any other public authority or entity:
- (d) employees or officials of an intergovernmental organisation

**suspicious activity report** has the meaning referred to in section 44(5)

**suspicious property report** means a report under section 43 and that (except as provided in section 44(2)) contains the details specified in Schedule 5

**Taliban** means the Afghan faction known as the Taliban, which also calls itself the Islamic Emirate of Afghanistan

**Taliban entity**, for a measure that is set out, or referred to, in 1 or more Taliban Sanctions Resolutions, and that is provided for in this Act, means an entity that—

- (a) is not Al-Qaida, an Al-Qaida entity, or the Taliban; but
- (b) is designated, by or under those resolutions, as an entity to which that measure is to be applied

**Taliban Sanctions Resolutions** means Resolution 1267 (1999) of the Security Council of the United Nations, adopted under Chapter VII of the United Nations Charter on 15 October 1999, and its successor resolutions, including, without limitation,—

- (a) Resolution 1333 (2000) adopted on 19 December 2000; and
- (b) Resolution 1390 (2002) adopted on 16 January 2002; and
- (c) Resolution 1988 (2011) adopted on 17 June 2011

**terrorist act** is defined in section 5(1)

**terrorist act in armed conflict** means an act—

- (a) that occurs in a situation of armed conflict; and
- (b) the purpose of which, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or abstain from doing any act; and

- (c) that is intended to cause death or serious bodily injury to a civilian or other person not taking an active part in the hostilities in that situation; and
- (d) that is not excluded from the application of the Financing Convention by article 3 of that Convention

**terrorist bombing** means an offence against section 7(1)

**transaction** has the meaning referred to in section 44(5)

**United Nations listed terrorist entity** means an entity that is—

- (a) Al-Qaida; or
- (b) an Al-Qaida entity; or
- (c) the Taliban; or
- (d) a Taliban entity; or
- (e) ISIL (Da'esh); or
- (f) an ISIL (Da'esh) entity

**unmarked**, in relation to a plastic explosive, means that has not had introduced into it at manufacture, in accordance with the technical annex to the Plastic Explosives Convention, a detection agent listed in Part 2 of that annex.

- (2) For the purposes of this Act, a person must be treated as being **ordinarily resident in New Zealand** if—
  - (a) the person's home is in New Zealand; or
  - (b) the person is residing in New Zealand with the intention of residing in New Zealand indefinitely; or
  - (c) having resided in New Zealand with the intention of establishing his or her home in New Zealand, or with the intention of residing in New Zealand indefinitely, the person is outside New Zealand but has an intention to return to establish his or her home in New Zealand or to reside in New Zealand indefinitely.
- (3) Terms and expressions used and not defined in this Act but defined in the Nuclear Material Convention, the Plastic Explosives Convention, or the Technical Annex to the Plastic Explosives Convention have the same meaning as in those Conventions and Annex, unless the context otherwise requires.

Section 4(1) **Al-Qaida**: inserted, on 20 November 2007, by section 5 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 4(1) **Al-Qaida and the Taliban Sanctions Resolutions**: repealed, on 5 October 2021, by section 5(1) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 4(1) **Al-Qaida entity**: replaced, on 5 October 2021, by section 5(1) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 4(1) **basic needs**: inserted, on 5 October 2021, by section 5(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 4(1) **carried out**: replaced, on 5 October 2021, by section 5(3) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 4(1) **critical infrastructure**: inserted, on 5 October 2021, by section 5(4) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 4(1) **deal with**: substituted, on 20 November 2007, by section 5 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 4(1) **designated terrorist entity**: inserted, on 20 November 2007, by section 5 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 4(1) **duly authorised military device**: inserted, on 18 January 2004, by section 4(1) of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

Section 4(1) **duly authorised military device**: amended, on 1 July 2011, by section 53(1) of the Environmental Protection Authority Act 2011 (2011 No 14).

Section 4(1) **facility**: inserted, on 5 October 2021, by section 5(5) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 4(1) **facility** and **financial institution**: repealed, on 5 October 2021, by section 5(5) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 4(1) **financing of, or provision of material support for, terrorism** (previously **financing of terrorism**): amended, on 5 October 2021, by section 5(6) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 4(1) **financing of, or provision of material support for, terrorism** (previously **financing of terrorism**) paragraph (a): amended, on 5 October 2021, by section 5(7) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 4(1) **intelligence and security agency** paragraph (c): repealed, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

Section 4(1) **ISIL (Da'esh)**: inserted, on 5 October 2021, by section 5(8) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 4(1) **ISIL (Da'esh) and Al-Qaida Sanctions Resolutions**: inserted, on 5 October 2021, by section 5(8) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 4(1) **ISIL (Da'esh) entity**: inserted, on 5 October 2021, by section 5(8) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 4(1) **manufacture**: inserted, on 18 January 2004, by section 4(1) of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

Section 4(1) **material support**: inserted, on 5 October 2021, by section 5(9) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 4(1) **New Zealand**: inserted, on 5 October 2021, by section 5(9) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 4(1) **nuclear facility**: inserted, on 20 November 2007, by section 5 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 4(1) **nuclear material**: inserted, on 18 January 2004, by section 4(1) of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

Section 4(1) **Nuclear Material Convention**: inserted, on 18 January 2004, by section 4(1) of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

Section 4(1) **nuclear material offence**: inserted, on 18 January 2004, by section 4(1) of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

Section 4(1) **Nuclear Terrorism Convention**: inserted, on 20 November 2007, by section 5 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 4(1) **nuclear terrorism offence**: inserted, on 20 November 2007, by section 5 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 4(1) **plastic explosives**: inserted, on 18 January 2004, by section 4(1) of the Terrorism Suppression Amendment Act 2003 (2003 No 106).



Section 4(1) **Plastic Explosives Convention**: inserted, on 18 January 2004, by section 4(1) of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

Section 4(1) **public transportation system**: amended, on 1 October 2017, by section 110(3) of the Land Transport Amendment Act 2017 (2017 No 34).

Section 4(1) **radioactive device**: inserted, on 20 November 2007, by section 5 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 4(1) **radioactive material**: replaced, on 8 March 2016, by section 98(2) of the Radiation Safety Act 2016 (2016 No 6).

Section 4(1) **reporting entity**: inserted, on 5 October 2021, by section 5(5) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 4(1) **Resolution 1267**: inserted, on 20 November 2007, by section 5 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 4(1) **Resolution 1333**: inserted, on 20 November 2007, by section 5 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 4(1) **Resolution 1390**: inserted, on 20 November 2007, by section 5 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 4(1) **Resolution 2178 (2014)**: inserted, on 5 October 2021, by section 5(9) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 4(1) **service**: inserted, on 5 October 2021, by section 5(5) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 4(1) **State or government facility**: amended, on 1 October 2017, by section 110(3) of the Land Transport Amendment Act 2017 (2017 No 34).

Section 4(1) **suspicious activity report**: inserted, on 5 October 2021, by section 5(5) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 4(1) **suspicious transaction report**: repealed, on 5 October 2021, by section 5(5) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 4(1) **Taliban**: inserted, on 20 November 2007, by section 5 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 4(1) **Taliban entity**: replaced, on 5 October 2021, by section 5(10) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 4(1) **Taliban Sanctions Resolutions**: inserted, on 5 October 2021, by section 5(10) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 4(1) **United Nations listed terrorist entity**: replaced, on 5 October 2021, by section 5(10) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 4(1) **unmarked**: added, on 18 January 2004, by section 4(1) of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

Section 4(3): added, on 18 January 2004, by section 4(2) of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

## **5 Terrorist act defined**

- (1) An act is a **terrorist act** for the purposes of this Act if—
  - (a) the act falls within subsection (2); or
  - (b) the act is an act against a specified terrorism convention (as defined in section 4(1)); or
  - (c) the act is a terrorist act in armed conflict (as defined in section 4(1)).

- (2) An act falls within this subsection if it is intended to cause, in any 1 or more countries, 1 or more of the outcomes specified in subsection (3), and is carried out for 1 or more purposes that are or include advancing an ideological, political, or religious cause, and with the following intention:
- (a) to intimidate a population; or
  - (b) to coerce or to force a government or an international organisation to do or abstain from doing any act.
- (3) The outcomes referred to in subsection (2) are—
- (a) the death of, or other serious bodily injury to, 1 or more persons (other than a person carrying out the act):
  - (b) a serious risk to the health or safety of a population:
  - (c) destruction of, or serious damage to, property of great value or importance, or major economic loss, or major environmental damage, if likely to result in 1 or more outcomes specified in paragraphs (a), (b), and (d):
  - (d) serious interference with, or serious disruption to, critical infrastructure, if likely to endanger human life:
  - (e) introduction or release of a disease-bearing organism, if likely to cause major damage to the national economy of a country.
- (4) However, an act does not fall within subsection (2) if it occurs in a situation of armed conflict and is, at the time and in the place that it occurs, in accordance with rules of international law applicable to the conflict.
- (5) To avoid doubt, the fact that a person engages in any protest, advocacy, or dissent, or engages in any strike, lockout, or other industrial action, is not, by itself, a sufficient basis for inferring that the person—
- (a) is carrying out an act for a purpose, or with an intention, specified in subsection (2); or
  - (b) intends to cause an outcome specified in subsection (3).

Compare: 1969 No 24 s 2(1); 1987 No 74 s 2(1); 1987 No 179 s 2(1); Terrorism Act 2000 s 1 (UK); Criminal Code s 83.01(1) (Canada)

Section 5(2): amended, on 5 October 2021, by section 6(1) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 5(2)(a): amended, on 5 October 2021, by section 6(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 5(2)(b): amended, on 5 October 2021, by section 6(3) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 5(3)(d): amended, on 5 October 2021, by section 6(4) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 5(3)(e): amended, on 5 October 2021, by section 6(5) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

**5A Carrying out and facilitating terrorist acts**

*Carrying out includes preparations, credible threats, and attempts*

- (1) For the purposes of this Act, a terrorist act is **carried out** if any 1 or more of the following occurs:
- (a) planning or other preparations to carry out the act, whether it is actually carried out or not:
  - (b) a credible threat to carry out the act, whether it is actually carried out or not:
  - (c) an attempt to carry out the act:
  - (d) the carrying out of the act.

*Facilitation requires some actual knowledge*

- (2) For the purposes of this Act, a terrorist act is **facilitated** only if the facilitator knows that a terrorist act is facilitated, but this does not require that—
- (a) the facilitator knows that any specific terrorist act is facilitated:
  - (b) any specific terrorist act was foreseen or planned at the time it was facilitated:
  - (c) any terrorist act was actually carried out.

Section 5A: inserted, on 5 October 2021, by section 7 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

**5B Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

Section 5B: inserted, on 5 October 2021, by section 7 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

**6 Act binds the Crown**

This Act binds the Crown.

**Part 2**  
**Suppression of terrorism**

*Terrorist act*

Heading: inserted, on 20 November 2007, by section 6 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

**6A Terrorist act: credible threat, attempt, and carrying out**

*Offence*

- (1) A person commits an offence if the person carries out a terrorist act.

*Meaning, in subsection (1), of carried out*

- (2) In subsection (1), **carried out**, in relation to a terrorist act, has, despite section 5A(1), only the meaning given in section 5A(1)(b), (c), and (d).

*Effect of subsection (1) applying to attempt*

- (3) However, subsection (1) applying to an attempt to carry out the act (within the meaning of section 5A(1)(c)) means only that the person may under section 72 of the Crimes Act 1961 be guilty of an attempt to commit the offence in that subsection as it applies to the carrying out of the act (within the meaning of section 5A(1)(d)).

*Penalty*

- (4) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for life or a lesser term.
- (5) A person who attempts to commit the offence in subsection (1) as it applies to the carrying out of the act (within the meaning of section 5A(1)(d)) is under section 311(1) of the Crimes Act 1961 liable to imprisonment for a term not exceeding 10 years.

Section 6A: inserted, on 20 November 2007, by section 6 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 6A heading: replaced, on 5 October 2021, by section 8(1) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 6A(1) heading: inserted, on 5 October 2021, by section 8(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 6A(1): amended, on 5 October 2021, by section 8(3) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 6A(2) heading: inserted, on 5 October 2021, by section 8(4) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 6A(2): replaced, on 5 October 2021, by section 8(4) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 6A(3) heading: inserted, on 5 October 2021, by section 8(4) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 6A(3): inserted, on 5 October 2021, by section 8(4) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 6A(4) heading: inserted, on 5 October 2021, by section 8(4) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 6A(4): inserted, on 5 October 2021, by section 8(4) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 6A(5): inserted, on 5 October 2021, by section 8(4) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

**6B Terrorist act: planning or other preparations to carry out***Offence*

- (1) A person commits an offence if the person carries out a terrorist act (within the meaning of section 5A(1)(a)) by planning or other preparations to carry out the act, whether it is actually carried out or not.

- (2) Subsection (1) applies only to planning done that is, or to other preparations made that are,—
  - (a) not carrying out a terrorist act within the meaning given in section 5A(1)(b), (c), and (d); and
  - (b) for the purposes of section 72(2) of the Crimes Act 1961, too remote to constitute an attempt to commit an offence against section 6A(1).
- (3) In a prosecution for an offence against subsection (1), the prosecutor—
  - (a) must prove that the planning done is, or the other preparations made are, for an act that is, or if it were actually carried out would be, a terrorist act as defined in section 5(1)(a), (b), or (c); and
  - (b) in particular, if that act falls within section 5(2) (in a case to which section 5(1)(a) applies), must prove the intention and purpose elements in section 5(2) and (3); but
  - (c) in a case to which section 5(1)(a), (b), or (c) applies, need not prove a specific target, location, date, or time for that act.

*Penalty*

- (4) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.

*Conspiring to commit offence, and attempt to commit or procure commission*

- (5) Sections 72, 310, and 311 of the Crimes Act 1961 do not apply to an offence against subsection (1).

Section 6B: inserted, on 5 October 2021, by section 9 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

*Terrorist bombing*

**7 Terrorist bombing**

- (1) A person commits an offence who, intentionally and without lawful justification or excuse, delivers, places, discharges, or detonates an explosive or other lethal device in, into, or against a relevant place, facility, or system, with the intent to cause—
  - (a) death or serious bodily injury; or
  - (b) extensive destruction—
    - (i) of the relevant place, facility, or system; and
    - (ii) that results, or is likely to result, in major economic loss.
- (2) In subsection (1), **relevant place, facility, or system** means—
  - (a) a place of public use;
  - (b) a State or government facility;
  - (c) a public transportation system:

- (d) an infrastructure facility.
- (3) A person who commits terrorist bombing is liable on conviction to imprisonment for life or a lesser term.

Section 7(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### *Financing of terrorism*

## **8 Financing of, or provision of material support for, terrorism**

### *Wilful provision or collection of funds for use to carry out terrorist acts*

- (1) A person commits an offence if the person provides or collects funds—
  - (a) directly or indirectly; and
  - (b) wilfully; and
  - (c) without lawful justification or reasonable excuse; and
  - (d) intending that the funds be used, or knowing that, or being reckless about whether, they will be used, in full or in part, in order to carry out 1 or more acts of a kind that, if they were carried out, would be 1 or more terrorist acts.

### *Wilful provision of material support for use to carry out terrorist acts*

- (1A) A person commits an offence if the person provides material support—
  - (a) directly or indirectly; and
  - (b) wilfully; and
  - (c) without lawful justification or reasonable excuse; and
  - (d) intending that the support be used, or knowing that, or being reckless about whether, it is to be used, in full or in part, in order to carry out 1 or more acts of a kind that, if they were carried out, would be 1 or more terrorist acts.

- (2) *[Repealed]*

### *Wilful provision or collection of funds for use by entity known to carry out or participate in carrying out of terrorist acts*

- (2A) A person commits an offence if the person provides or collects funds—
  - (a) directly or indirectly; and
  - (b) wilfully; and
  - (c) without lawful justification or reasonable excuse; and
  - (d) intending that the funds be used, or knowing that, or being reckless about whether, they will be used, by an entity that the person knows is an entity that carries out, or participates in the carrying out of, 1 or more terrorist acts.

*Wilful provision of material support for use by entity known to carry out or participate in carrying out of terrorist acts*

- (2B) A person commits an offence if the person provides material support—
- (a) directly or indirectly; and
  - (b) wilfully; and
  - (c) without lawful justification or reasonable excuse; and
  - (d) intending that the material support be used, or knowing that, or being reckless about whether, it will be used, by an entity that the person knows is an entity that carries out, or participates in the carrying out of, 1 or more terrorist acts.

*Funds or material support need not be used to carry out terrorist act*

- (3) In a prosecution for financing of, or provision of material support for, terrorism, it is not necessary for the prosecutor to prove that the funds or material support collected or provided were or was actually used, in full or in part, to carry out a terrorist act.

*Penalty*

- (4) A person who commits financing of, or provision of material support for, terrorism is liable on conviction to imprisonment for a term not exceeding—
- (a) 14 years, if the mental element under subsection (1)(d), (1A)(d), (2A)(d), or (2B)(d) is intention;
  - (b) 10 years, if the mental element under subsection (1)(d), (1A)(d), (2A)(d), or (2B)(d) is knowledge or recklessness.

*Material support excludes humanitarian support to satisfy basic needs*

- (5) For the purposes of this section and of any other legislation that mentions this section, **material support** excludes, despite paragraphs (a) and (b) of the definition of that term in section 4(1), support that does, or may do, no more than provide support necessary to satisfy basic needs of those to whom, or for whose benefit, it is provided—
- (a) in good faith for genuine humanitarian reasons; and
  - (b) impartially or neutrally as between people who have those needs.

Section 8 heading: amended, on 5 October 2021, by section 10(1) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 8(1) heading: inserted, on 5 October 2021, by section 10(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 8(1): replaced, on 5 October 2021, by section 10(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 8(1A) heading: inserted, on 5 October 2021, by section 10(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 8(1A): inserted, on 5 October 2021, by section 10(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 8(2): repealed, on 20 November 2007, by section 7 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 8(2A) heading: inserted, on 5 October 2021, by section 10(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 8(2A): replaced, on 5 October 2021, by section 10(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 8(2B) heading: inserted, on 5 October 2021, by section 10(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 8(2B): inserted, on 5 October 2021, by section 10(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 8(3) heading: inserted, on 5 October 2021, by section 10(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 8(3): replaced, on 5 October 2021, by section 10(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 8(4) heading: inserted, on 5 October 2021, by section 10(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 8(4): replaced, on 5 October 2021, by section 10(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 8(5) heading: inserted, on 5 October 2021, by section 10(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 8(5): inserted, on 5 October 2021, by section 10(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

### *Dealing with property*

## **9 Prohibition on dealing with property of, or derived or generated from property of, designated terrorist entity**

- (1) A person commits an offence who, without lawful justification or reasonable excuse, deals with any property knowing that the property is—
  - (a) property owned or controlled, directly or indirectly, by a designated terrorist entity; or
  - (b) property derived or generated from any property of the kind specified in paragraph (a).
- (2) For the purposes of subsection (1), examples of a reasonable excuse for dealing with property referred to in subsection (1) are—
  - (a) where the dealing with the property comprises an act that does no more than satisfy basic needs of (or of a dependant of) an individual designated under this Act;
  - (b) where a reporting entity acts to freeze assets of a designated terrorist entity.
- (3) Subsection (1) does not apply—
  - (a) if the Prime Minister has, under section 11, authorised the dealing with the property; or



- (b) if the property concerned is the subject of a direction under section 48 and the dealing concerned forms part of the exercise by the Official Assignee of his or her powers under section 80 of the Criminal Proceeds (Recovery) Act 2009 (as modified and applied by section 51(a)).
- (4) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (5) *[Repealed]*
- (6) A reference in the definition of deal with in section 4 to the transfer of property that is a security includes a reference to a transfer of the security by way of loan, mortgage, pledge, or bailment, whether in respect of a legal or an equitable interest.

Compare: SR 2001/26 rr 3(2), 15

Section 9 heading: amended, on 20 November 2007, by section 8(1) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 9(1)(a): amended, on 20 November 2007, by section 8(2) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 9(2): substituted, on 20 November 2007, by section 8(3) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 9(2): amended, on 5 October 2021, by section 11(1) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 9(2)(a): amended, on 5 October 2021, by section 11(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 9(2)(b): amended, on 5 October 2021, by section 11(3) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 9(3)(b): amended, on 1 December 2009, by section 219 of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

Section 9(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 9(5): repealed, on 20 November 2007, by section 8(4) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 9(6): amended, on 20 November 2007, by section 8(5) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

### *Making property, or material support, available*

Heading: amended, on 5 October 2021, by section 12 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

## **10 Prohibition on making property, or material support, available to designated terrorist entity**

- (1) A person commits an offence if the person makes available, or causes to be made available, to, or for the benefit of, a designated terrorist entity, any property, or any material support,—
  - (a) directly or indirectly; and
  - (b) without lawful justification or reasonable excuse; and

- (c) knowing that, or being reckless about whether, the entity is a designated terrorist entity.
- (2) *[Repealed]*
- (3) An example of making property available with a reasonable excuse, for the purposes of subsection (1), is where the property (for example, items of food, clothing, or medicine) is made available in an act that does no more than satisfy basic needs of (or of a dependant of) an individual designated under this Act.
- (4) Subsection (1) does not apply if the Prime Minister has, under section 11, authorised the making available of the property or support.
- (5) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 10 years.
- (6) In this section, **make available**, in relation to any property or support, means to make the property or support available in any way and by any means (for example, to send, transfer, deliver, or provide the property or support).
- (7) A reference in subsection (6) to the transfer of property that is a security includes a reference to a transfer of the security by way of loan, mortgage, pledge, or bailment, whether in respect of a legal or an equitable interest.

Compare: SR 2001/26 rr 3(2), 16

Section 10 heading: amended, on 5 October 2021, by section 13(1) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 10 heading: amended, on 20 November 2007, by section 9(1) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 10(1): replaced, on 5 October 2021, by section 13(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 10(2): repealed, on 20 November 2007, by section 9(3) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 10(3): amended, on 5 October 2021, by section 13(3) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 10(4): amended, on 5 October 2021, by section 13(4) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 10(5): amended, on 5 October 2021, by section 13(5) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 10(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 10(6): amended, on 5 October 2021, by section 13(6) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

*Authorisations to deal with property, or to make property, or material support,  
available*

Heading: amended, on 5 October 2021, by section 14 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

**11 Authorisations by Prime Minister**

- (1) The Prime Minister may, by notice, permit any activity or transaction or class or classes of activities or transactions that would otherwise be prohibited by section 9(1) or section 10(1).
- (2) Any authorisation of that kind—
  - (a) may be subject to terms or conditions; and
  - (b) may be amended, revoked, or revoked and replaced.
- (3) If a person has obtained an authorisation of that kind, another person involved in carrying out the activity or transaction or class or classes of activities or transactions to which the authorisation relates is not subject to section 9(1) or section 10(1).
- (4) However, subsection (3) does not apply if—
  - (a) the authorisation is subject to terms or conditions imposed under subsection (2)(a); and
  - (b) those terms or conditions are not satisfied.
- (5) The following are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements):
  - (a) an authorisation under this section:
  - (b) an instrument under subsection (2)(b) that amends, revokes, or revokes and replaces an authorisation under this section.

Compare: SR 2001/26 rr 15(2), 16(2); Criminal Code s 83.09 (Canada)

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**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	It is not required to be published	LA19 s 73(2)
<b>Presentation</b>	It is not required to be presented to the House of Representatives because a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 11(1): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 11(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

*Recruitment of members of terrorist groups***12 Recruiting members of terrorist groups**

- (1) A person commits an offence who recruits another person as a member of a group or organisation, knowing that the group or organisation is—
- (a) a designated terrorist entity; or
  - (b) an entity that carries out, or participates in the carrying out of, 1 or more terrorist acts.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 14 years.

Section 12(1)(a): substituted, on 20 November 2007, by section 10 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 12(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

*Participation in terrorist groups***13 Participating in terrorist groups**

- (1) A person commits an offence who participates in a group or organisation for the purpose stated in subsection (2), knowing that or being reckless as to whether the group or organisation is—
- (a) a designated terrorist entity; or
  - (b) an entity that carries out, or participates in the carrying out of, 1 or more terrorist acts.
- (2) The purpose referred to in subsection (1) is to enhance the ability of any entity (being an entity of the kind referred to in subsection (1)(a) or (b)) to carry out, or to participate in the carrying out of, 1 or more terrorist acts.
- (3) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 14 years.

Section 13(1): amended, on 20 November 2007, by section 11(1) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 13(1)(a): substituted, on 20 November 2007, by section 11(2) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 13(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

*Weapons training or combat training for terrorist purposes*

Heading: inserted, on 5 October 2021, by section 15 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

**13AA Providing or receiving weapons training or combat training for terrorist purposes**

*Offence*

- (1) A person commits an offence if the person—
  - (a) provides or receives weapons training or combat training; and
  - (b) knows that the training is provided or received for purposes that are or include 1 or both of the following purposes:
    - (i) to carry out 1 or more terrorist acts (whether any or all of them are actually carried out or not);
    - (ii) to enhance the ability of any entity to carry out, or to participate in the carrying out of, 1 or more terrorist acts (whether any or all of them are actually carried out or not).
- (2) In a prosecution for an offence against subsection (1), the prosecutor need not prove a specific target, location, date, or time for the 1 or more terrorist acts referred to in subsection (1)(b)(i) or (ii).

*Penalty*

- (3) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.

Section 13AA: inserted, on 5 October 2021, by section 15 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

*Harbouring or concealing terrorists*

Heading: inserted, on 18 January 2004, by section 5 of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

**13A Harbouring or concealing terrorists**

- (1) A person commits an offence who, with the intention of assisting another person to avoid arrest, escape lawful custody, or avoid conviction, harbours or conceals that person,—
  - (a) knowing, or being reckless as to whether, that person intends to carry out a terrorist act; or
  - (b) knowing, or being reckless as to whether, that person has carried out a terrorist act.
- (2) A person who commits an offence against subsection (1) is liable on conviction to a term of imprisonment not exceeding 7 years.

Section 13A: inserted, on 18 January 2004, by section 5 of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

Section 13A(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

*Offences relating to plastic explosives and nuclear materials*

Heading: inserted, on 18 January 2004, by section 5 of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

**13B Offences involving use and movement of unmarked plastic explosives**

- (1) A person commits an offence and is liable on conviction to a term of imprisonment not exceeding 10 years or a fine not exceeding \$500,000, or both, who—
  - (a) possesses, uses, or manufactures unmarked plastic explosives, knowing they are unmarked; or
  - (b) imports or exports unmarked plastic explosives to or from New Zealand, knowing they are unmarked.
- (2) Subsection (1) does not apply in respect of unmarked plastic explosives (not being explosives to which subsection (3) applies) that were lawfully manufactured in, or imported into New Zealand before the commencement of this section and that may, subject to the Health and Safety at Work Act 2015, be transported or possessed by—
  - (a) a person who performs military or Police functions during the period that begins with the entry into force of this section and ends 15 years later.
  - (b) *[Repealed]*
- (3) Nothing in this section applies to unmarked plastic explosives—
  - (a) that are manufactured or held in limited quantities for sole use in any of the following activities that are duly approved by the Environmental Protection Authority established by section 7 of the Environmental Protection Authority Act 2011 or by WorkSafe established by section 5 of the WorkSafe New Zealand Act 2013:
    - (i) research, development, or testing of new or modified explosives; or
    - (ii) training in explosives detection or testing of explosives detection equipment; or
    - (iii) forensic science activities; or
  - (b) that are destined to be, and are incorporated as, an integral part of a duly authorised military device in New Zealand within 3 years after the date on which this section comes into force.

Section 13B: inserted, on 17 February 2004, by section 5 of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

Section 13B(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 13B(2): amended, on 4 April 2016, by section 232 of the Health and Safety at Work Act 2015 (2015 No 70).

Section 13B(2)(a): amended, on 1 December 2017, by section 55 of the Hazardous Substances and New Organisms Amendment Act 2015 (2015 No 72).

Section 13B(2)(b): repealed, on 1 December 2017, by section 55 of the Hazardous Substances and New Organisms Amendment Act 2015 (2015 No 72).

Section 13B(3)(a): amended, on 1 December 2017, by section 55 of the Hazardous Substances and New Organisms Amendment Act 2015 (2015 No 72).

Section 13B(3)(a): amended, on 1 July 2011, by section 53(1) of the Environmental Protection Authority Act 2011 (2011 No 14).

### **13C Offences involving physical protection of nuclear material**

- (1) A person commits an offence who,—
- (a) without lawful authority, receives, possesses, uses, transfers, alters, disposes of, or disperses nuclear material, knowing it is nuclear material, and—
    - (i) that causes death, injury, or disease to any person or substantial damage to property; or
    - (ii) with intent to cause, or being reckless as to whether it causes death, injury, or disease to any person or substantial damage to property; or
    - (iii) that causes, or is likely to cause, substantial damage to the environment; or
  - (aa) without lawful authority, carries, sends, transports, or otherwise moves nuclear material into or out of New Zealand; or
  - (b) commits theft, as defined in section 219 of the Crimes Act 1961, of nuclear material knowing that it was nuclear material; or
  - (c) fraudulently obtains nuclear material, knowing that it was nuclear material; or
  - (d) makes a demand for nuclear material by threat, or by use of force, or by any other form of intimidation with intent to steal it; or
  - (e) with intent to intimidate, threatens to use nuclear material to cause—
    - (i) death, injury, or disease to any person; or
    - (ii) substantial damage to any property or to the environment; or
  - (f) with intent to compel any person, international organisation, or State to do, or refrain from doing, any act, threatens to steal nuclear material; or
  - (g) without lawful authority, commits an act, or threatens to commit an act against a nuclear facility, or interferes with the operation of a nuclear

facility with intent to cause, or being reckless as to whether it causes, death or serious injury to any person or substantial damage to property or to the environment by exposure to radiation or release of radioactive substances.

- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 10 years, or a fine not exceeding \$500,000, or both.

Section 13C: inserted, on 18 January 2004, by section 5 of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

Section 13C(1)(a)(iii): added, on 20 November 2007, by section 12(1) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 13C(1)(aa): inserted, on 8 March 2016, by section 98(3) of the Radiation Safety Act 2016 (2016 No 6).

Section 13C(1)(e)(ii): amended, on 20 November 2007, by section 12(2) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 13C(1)(f): amended, on 20 November 2007, by section 12(3) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 13C(1)(g): added, on 20 November 2007, by section 12(3) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 13C(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### *Importation, acquisition, possession, or control of radioactive material*

Heading: inserted, on 18 January 2004, by section 5 of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

### **13D Importation, acquisition, etc, of radioactive material**

A person commits an offence and is liable on conviction to a term of imprisonment not exceeding 10 years who imports, acquires, possesses, or has control over any radioactive material with intent to use it to commit an offence involving bodily injury, or the threat of violence, to any person.

Section 13D: inserted, on 18 January 2004, by section 5 of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

Section 13D: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### *Offences involving radioactive material and radioactive devices*

Heading: inserted, on 20 November 2007, by section 13 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

### **13E Offences involving radioactive material and radioactive devices**

- (1) A person commits an offence who—
- (a) makes or possesses a radioactive device or possesses radioactive material with intent to cause death or serious injury to any person or substantial damage to property or to the environment; or



- (b) uses radioactive material or a radioactive device or uses or damages a nuclear facility in a manner that releases or risks the release of radioactive material—
    - (i) with intent to cause death or serious injury to any person or substantial damage to property or to the environment; or
    - (ii) with intent to compel any person, international organisation, or State to do, or refrain from doing an act; or
  - (c) threatens to commit an offence set out in paragraph (b); or
  - (d) unlawfully and intentionally demands by threat, in circumstances that indicate the credibility of the threat, or by use of force or by any other form of intimidation, any radioactive material, radioactive device, or nuclear facility; or
  - (e) by use of force,—
    - (i) uses or threatens to use radioactive material or a radioactive device; or
    - (ii) uses or damages or threatens to use or damage a nuclear facility.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 10 years, or a fine not exceeding \$500,000, or both.

Section 13E: inserted, on 20 November 2007, by section 13 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 13E(1)(d): replaced, on 8 March 2016, by section 98(4) of the Radiation Safety Act 2016 (2016 No 6).

Section 13E(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### *Travelling intending to commit specified offence*

Heading: inserted, on 5 October 2021, by section 16 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

## **13F Travelling intending to commit specified offence**

### *Offence*

- (1) A person commits an offence if the person—
  - (a) travels (by any means) to, from, or via New Zealand; and
  - (b) does so intending to do anything that, if done wholly in New Zealand, would be a specified offence.

### *Travel to, from, or via New Zealand*

- (2) A person is taken to have travelled to New Zealand, for the purposes of subsection (1), if the person, for the purpose of arriving in New Zealand,—
  - (a) disembarks from a craft through a Customs place; or

- (b) disembarks from a craft and reports to a Customs officer, to a Police station, or to any other place as directed by a Customs officer.
- (3) A person is taken to have travelled from New Zealand, for the purposes of subsection (1) (*see also* subsection (8)(a)), if the person, for the purpose of departing from New Zealand,—
  - (a) goes towards a craft through a Customs place; or
  - (b) goes towards a craft as otherwise authorised by the chief executive of the New Zealand Customs Service, a Customs officer, the Customs and Excise Act 2018, or regulations made under that Act.
- (4) A person is taken to have travelled via New Zealand, for the purposes of subsection (1) (*see also* subsection (8)(a)), if the person, for the purpose of travelling via New Zealand,—
  - (a) disembarks from a craft through a Customs place; or
  - (b) disembarks from a craft and reports to a Customs officer, to a Police station, or to any other place as directed by a Customs officer.
- (5) Subsections (2) to (4) do not affect or limit—
  - (a) the generality of subsection (1) or (8)(a); or
  - (b) a prosecutor proving, without relying on subsection (2), (3), or (4), that a person has travelled to, from, or via New Zealand.
- (6) In subsections (2) to (4), **Customs officer** and **Customs place** have the meanings given to them in section 5(1) of the Customs and Excise Act 2018.

*Specified offence*
- (7) In this section, **specified offence** means an offence against all or any of the following:
  - (a) section 6A (terrorist act: credible threat and carrying out (but excluding an attempt));
  - (b) section 6B (terrorist act: planning or other preparations to carry out);
  - (c) section 7 (terrorist bombing);
  - (d) section 8 (financing of, or provision of material support for, terrorism);
  - (e) section 9 (prohibition on dealing with property of, or derived or generated from property of, designated terrorist entity);
  - (f) section 10 (prohibition on making property, or material support, available to designated terrorist entity);
  - (g) section 12 (recruiting members of terrorist groups);
  - (h) section 13 (participating in terrorist groups);
  - (i) section 13AA (providing or receiving weapons training or combat training for terrorist purposes);
  - (j) section 13A (harbouring or concealing terrorists);

- (k) section 13B (offences involving use and movement of unmarked plastic explosives):
- (l) section 13C (offences involving physical protection of nuclear material):
- (m) section 13D (importation, acquisition, etc, of radioactive material):
- (n) section 13E (offences involving radioactive material and radioactive devices).

*Application of offence*

- (8) Subsection (1) applies regardless of whether—
  - (a) the person, if travelling from, or via, New Zealand, departs from their original location, or reaches their intended ultimate destination:
  - (b) the person has the intention mentioned in subsection (1)(b) at any time or times, or at all times, during the travel concerned:
  - (c) the person intends to do wholly or in part in New Zealand, or wholly outside New Zealand, the thing that, if done in New Zealand, would be a specified offence:
  - (d) the person does the thing that, if done wholly in New Zealand, would be a specified offence.

*Penalty*

- (9) A person who commits an offence against subsection (1) is liable on conviction to the highest of the applicable maximum penalties specified in Schedule 4E.

Compare: 1961 No 43 s 311(1); Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Aust) s 57(3)

Section 13F: inserted, on 5 October 2021, by section 16 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

*Extraterritorial jurisdiction*

**14 Offences also apply in certain cases outside New Zealand**

- (1) Each of sections 6A to 13F applies in respect of acts that occurred wholly outside New Zealand, as provided in sections 15 to 18.
- (2) Subsection (1) does not affect the application of sections 6A to 13F in respect of—
  - (a) acts that occurred wholly within New Zealand; or
  - (b) an offence that, under section 7 of the Crimes Act 1961, is deemed to be committed in New Zealand; or
  - (c) acts that, under section 8A of that Act, are deemed to have taken place within New Zealand.

Section 14(1): amended, on 5 October 2021, by section 17(1) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 14(2): amended, on 5 October 2021, by section 17(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

**15 Offences apply to acts outside New Zealand by New Zealand citizens or on New Zealand aircraft and ships**

Proceedings may be brought in a New Zealand court for any offence against this Act (other than one against section 43 or section 47 or section 47G) if the acts alleged to constitute the offence occurred wholly outside New Zealand, but were done—

- (a) by a New Zealand citizen:
- (b) by a person who is ordinarily resident in New Zealand but is not a citizen of any State:
- (c) by any other person on board any aircraft—
  - (i) registered or required to be registered in New Zealand under the Civil Aviation Act 1990; or
  - (ii) for the time being used as an aircraft of the New Zealand Defence Force:
- (d) by any other person on board any ship—
  - (i) registered under the Ship Registration Act 1992; or
  - (ii) not registered under that Act but required or entitled to be registered under that Act; or
  - (iii) for the time being used as a ship of the New Zealand Defence Force.

Section 15: amended, on 12 December 2003, by section 9(2) of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

Section 15(d)(ii): amended, on 5 October 2021, by section 18 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

**16 Further acts outside New Zealand to which terrorist bombing applies**

Proceedings may also be brought in a New Zealand court for terrorist bombing if the acts alleged to constitute the offence occurred wholly outside New Zealand, but were done—

- (a) against a New Zealand citizen; or
- (b) against a State or government facility of New Zealand abroad (for example, a New Zealand embassy, or other New Zealand diplomatic or consular premises); or
- (c) in an attempt to compel the Government of New Zealand to do or abstain from doing any act.

**17 Further acts outside New Zealand to which financing of, or provision of material support for, terrorism applies**

Proceedings may also be brought in a New Zealand court for financing of, or provision of material support for, terrorism if the acts alleged to constitute the offence occurred wholly outside New Zealand, but were directed towards, or

resulted in, 1 or more terrorist acts being carried out (as defined in sections 4(1) and 5A(1))—

- (a) within New Zealand; or
- (b) against a New Zealand citizen; or
- (c) against a State or government facility of New Zealand abroad (for example, New Zealand diplomatic or consular premises); or
- (d) in an attempt to compel the Government of New Zealand to do or abstain from doing any act.

Section 17 heading: amended, on 5 October 2021, by section 19(1) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 17: amended, on 5 October 2021, by section 19(2)(a) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 17: amended, on 5 October 2021, by section 19(2)(b) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

## **18 Offences also apply to acts outside New Zealand if alleged offender is in New Zealand and is not extradited**

- (1) Even if the acts alleged to constitute the offence occurred wholly outside New Zealand, proceedings may be brought for a specified offence if the person to be charged has been found in New Zealand and has not been extradited.
- (2) In this section, a **specified offence** means an offence that is—
  - (a) terrorist bombing; or
  - (b) financing of, or provision of material support for, terrorism; or
  - (c) a nuclear terrorism offence; or
  - (d) a nuclear material offence.

Section 18: substituted, on 18 January 2004, by section 7 of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

Section 18(1): amended, on 5 October 2021, by section 20(1) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 18(2): inserted, on 5 October 2021, by section 20(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

## **19 Application of Crimes Act 1961**

The following sections of the Crimes Act 1961 do not apply in respect of any offence against this Act (except one against section 43 or section 47 or section 47G):

- (a) section 8 (which relates to jurisdiction in respect of crimes on ships or aircraft beyond New Zealand);
- (b) section 400 (which requires the consent of the Attorney-General to proceedings in certain cases for offences on ships or aircraft).

Section 19: amended, on 12 December 2003, by section 9(2) of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

*Interim designation***20 Interim designation as terrorist or associated entity**

- (1) The Prime Minister may designate an entity as a terrorist entity under this section if the Prime Minister has good cause to suspect that the entity has knowingly carried out, or has knowingly participated in the carrying out of, 1 or more terrorist acts.
- (2) On or after designating an entity as a terrorist entity under this Act, the Prime Minister may designate 1 or more other entities as an associated entity under this section.
- (3) The Prime Minister may exercise the power given by subsection (2) only if the Prime Minister has good cause to suspect that the other entity—
  - (a) is knowingly facilitating the carrying out of 1 or more terrorist acts by, or with the participation of, the terrorist entity (for example, by financing those acts, in full or in part); or
  - (b) is acting on behalf of, or at the direction of,—
    - (i) the terrorist entity, knowing that the terrorist entity has done what is referred to in subsection (1); or
    - (ii) an entity designated as an associated entity under subsection (2) and paragraph (a), knowing that the associated entity is doing what is referred to in paragraph (a); or
  - (c) is an entity (other than an individual) that is wholly owned or effectively controlled, directly or indirectly, by the terrorist entity, or by an entity designated under subsection (2) and paragraph (a) or paragraph (b).
- (4) Before designating an entity as a terrorist or associated entity under this section, the Prime Minister must consult with the Attorney-General and the Minister of Foreign Affairs and Trade about the proposed designation.
- (5) After an entity is designated as a terrorist or associated entity under this section, the Prime Minister and the Attorney-General must, if practicable before the making of the designation is publicly notified under section 21(c) and, if not so practicable, as soon as possible after that notification,—
  - (a) advise the Leader of the Opposition of the making of the designation; and
  - (b) if requested to do so by the Leader of the Opposition, brief that Leader as to the factual basis for the making of the designation.

**21 Further provisions relating to interim designation**

A designation under section 20—

- (a) may be made in respect of an entity only once, and therefore may not be made in respect of an entity who—

- (i) is the subject of an earlier designation made under section 20 that has not yet expired or been revoked; or
- (ii) was the subject of a designation under section 20 that has expired or been revoked:
- (b) takes effect on being made, and must be made in writing signed by the Prime Minister:
- (c) must be publicly notified—
  - (i) by a notice (in the prescribed form (if any)) indicating that it has been made being published in the *Gazette* as soon as practicable; and
  - (ii) in any other way the Prime Minister directs under section 28(1):
- (d) must also be notified—
  - (i) by a notice (in the prescribed form (if any)) indicating that it has been made being given (in the prescribed manner (if any)) with all reasonable speed to the designated entity, if practicable, where that entity or a representative of it is in New Zealand; and
  - (ii) by a notice indicating that it has been made being given to any other persons or bodies, as the Prime Minister directs under section 28(2):
- (e) expires on the close of the 30th day after the day on which it is made, unless it has earlier been revoked by the Prime Minister under section 34, or by the making of a final designation in respect of the entity concerned, under section 22:
- (f) operates until it expires or is revoked but, if it is made the subject of any judicial review (whether under the Judicial Review Procedure Act 2016 or otherwise) or other proceedings before a court and is not sooner revoked under section 23(b) or section 34, continues to operate until those proceedings are withdrawn or finally determined.

Section 21(f): amended, on 1 March 2017, by section 24 of the Judicial Review Procedure Act 2016 (2016 No 50).

### *Final designation*

## **22 Final designation as terrorist or associated entity**

- (1) The Prime Minister may designate an entity as a terrorist entity under this section if the Prime Minister believes on reasonable grounds that the entity has knowingly carried out, or has knowingly participated in the carrying out of, 1 or more terrorist acts.
- (2) On or after designating an entity as a terrorist entity under this Act, the Prime Minister may designate 1 or more other entities as an associated entity under this section.

- (3) The Prime Minister may exercise the power given by subsection (2) only if the Prime Minister believes on reasonable grounds that the other entity—
- (a) is knowingly facilitating the carrying out of 1 or more terrorist acts by, or with the participation of, the terrorist entity (for example, by financing those acts, in full or in part); or
  - (b) is acting on behalf of, or at the direction of,—
    - (i) the terrorist entity, knowing that the terrorist entity has done what is referred to in subsection (1); or
    - (ii) an entity designated as an associated entity under subsection (2) and paragraph (a), knowing that the associated entity is doing what is referred to in paragraph (a); or
  - (c) is an entity (other than an individual) that is wholly owned or effectively controlled, directly or indirectly, by the terrorist entity, or by an entity designated under subsection (2) and paragraph (a) or paragraph (b).
- (4) Before designating an entity as a terrorist or associated entity under this section, the Prime Minister must consult with the Attorney-General about the proposed designation.

## 23 Further provisions relating to final designation

A designation under section 22—

- (a) may be made in respect of an entity who—
  - (i) has never been the subject of a designation made under section 20; or
  - (ii) is the subject of a designation under section 20 that has not yet expired or been revoked; or
  - (iii) was the subject of a designation under section 20 that has expired or been revoked:
- (b) if it is made in respect of an entity who is the subject of a designation made under section 20 and that has not yet expired or been revoked, revokes that designation under section 20:
- (c) may be made in respect of an entity who was earlier the subject of a designation made under section 22 and that has expired or been revoked (the **earlier designation**) only if it is based on information that became available after the expiry or revocation of the earlier designation and is significantly different from the information on which the earlier designation was based:
- (d) takes effect on being made, and must be made in writing signed by the Prime Minister:
- (e) must be publicly notified—



- (i) by a notice (in the prescribed form (if any)) indicating that it has been made being published in the *Gazette* as soon as practicable; and
  - (ii) in any other way the Prime Minister directs under section 28(1):
- (f) must also be notified—
- (i) by a notice (in the prescribed form (if any)) indicating that it has been made being given (in the prescribed manner (if any)) with all reasonable speed to the designated entity, if practicable, where that entity or a representative of it is in New Zealand; and
  - (ii) by a notice indicating that it has been made being given to any other persons or bodies, as the Prime Minister directs under section 28(2):
- (g) *[Repealed]*
- (h) operates until it expires or is revoked but, if it is made the subject of any judicial review (whether under the Judicial Review Procedure Act 2016 or otherwise) or other proceedings before a court and is not sooner revoked under section 34, continues to operate until those proceedings are withdrawn or finally determined.

Section 23(g): repealed, on 20 November 2007, by section 16(a) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 23(h): amended, on 1 March 2017, by section 24 of the Judicial Review Procedure Act 2016 (2016 No 50).

Section 23(h): amended, on 20 November 2007, by section 16(b) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

### *Further provisions relating to interim and final designations*

## **24 Entity or property need not be in New Zealand**

An entity may be designated under section 20 or section 22 whether or not any of the following is in New Zealand:

- (a) the entity:
- (b) property owned or controlled, directly or indirectly, by the entity:
- (c) property derived or generated from any property of the kind referred to in paragraph (b).

## **25 Carrying out and facilitating terrorist acts**

*[Repealed]*

Section 25: repealed, on 5 October 2021, by section 21 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

## **26 Content of notice to designated entity**

A notice under section 21(d)(i) or section 23(f)(i) (to notify the designated entity of the making of the designation under section 20 or section 22)—

- (a) must state the section under which the designation is made, and whether the entity concerned is designated as a terrorist entity or as an associated entity:
- (b) may describe the entity concerned by reference to any name or names or associates or other details by which the entity may be identified:
- (ba) must state that any person who deals with the entity's property may be liable to prosecution for an offence under section 9:
- (c) must state the maximum period for which the designation may have effect or, if it is made under section 22, the maximum period for which it may have effect without being renewed under section 35:
- (d) must include general information about how it may be reviewed and revoked:
- (e) must include any other information specified for the purposes of this paragraph by regulations made under this Act.

Section 26(ba): inserted, on 20 November 2007, by section 17(1) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 26(c): amended, on 20 November 2007, by section 17(2) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

## **27 Content of notice to public and others**

- (1) Subsection (2) applies to—
  - (a) a notice under section 21(c)(i) or section 23(e)(i) (to notify publicly the making of a designation under section 20 or section 22); and
  - (b) a notice under section 21(d)(ii) or section 23(f)(ii) (to notify specified persons or bodies of the making of a designation under section 20 or section 22).
- (2) The notice—
  - (a) must state the section under which the designation is made, and whether the entity concerned is designated as a terrorist entity or as an associated entity:
  - (b) may describe the entity concerned by reference to any name or names or associates or other details by which the entity may be identified:
  - (ba) must state that any person who deals with the entity's property may be liable to prosecution for an offence under section 9:
  - (c) must state the maximum period for which the designation may have effect or, if it is made under section 22, the maximum period for which it may have effect without being renewed under section 35:
  - (d) must include any other information specified for the purposes of this paragraph by regulations made under this Act:

- (e) may include details of all earlier designations under this Act that have not yet expired or been revoked, so as to provide details of all entities currently designated under this Act.

Section 27(2)(ba): inserted, on 20 November 2007, by section 18(1) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 27(2)(c): amended, on 20 November 2007, by section 18(2) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

## **28 Further notification of making of designation**

- (1) The Prime Minister may, for the purposes of section 21(c)(ii) or section 23(e)(ii), direct that the making of a designation under section 20 or section 22 be publicly notified (other than by notice in the *Gazette*, and either in the prescribed manner or form or both (if any) or in any other manner or form or both that the Prime Minister thinks fit).
- (2) The Prime Minister may, for the purposes of section 21(d)(ii) or section 23(f)(ii), direct that notice of the making of a designation under section 20 or section 22 be given (either in the prescribed manner or in any other manner that the Prime Minister thinks fit) to any persons or bodies that the Prime Minister thinks fit (for example, to any registered banks or other persons—
  - (a) who may possess property which may be property to which section 9(1) relates; or
  - (b) who may make available property or support to which section 10(1) may relate).

Section 28(2)(b): amended, on 5 October 2021, by section 22 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

## **29 Designations not invalid for certain reasons**

No designation under section 20 or section 22 is invalid just because—

- (a) the entity concerned was not, before the designation was made, given notice that it may be made, or a chance to comment on whether it should be made, or both;
- (b) the making of it has not been notified, or notice of the making of it has not been given, in the manner or form required by section 21 or section 23.

## **29A Changes of description of designated entities**

- (1) If satisfied that an entity designated under section 22 should have a description other than that under which the entity was designated (or than the description stated in the most recent notice under this subsection relating to the entity), the Prime Minister may, by signing a written notice to that effect, state a new description for the entity.
- (2) The notice must identify the entity by reference to—
  - (a) its most recent description; and

- (b) the notice in the *Gazette* in which that description was stated.
- (3) Sections 23(e) and 23(f) apply to the notice as if it were a designation under section 22; and section 28(2) applies accordingly.
- (4) The stating of the new description does not affect the designation of the entity and (in particular) does not affect the application of section 35(1) to it.

Section 29A: inserted, on 17 November 2003, by section 8 of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

*Material on which designations may be based*

### **30 Information available to Prime Minister**

In considering whether to make or to revoke a designation under section 20 or section 22 or section 34, the Prime Minister may take into account any relevant information, including classified security information.

### **31 United Nations Security Council information**

*[Repealed]*

Section 31: repealed, on 20 November 2007, by section 19 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

### **32 Classified security information defined**

- (1) In this Act, **classified security information** means information—
  - (a) relevant to whether there are or may be grounds for designating an identifiable entity under this Act as a terrorist entity or as an associated entity; and
  - (b) held by a specified agency (as defined in section 4(1)); and
  - (c) that the head of the specified agency certifies in writing (in the prescribed form (if any)) cannot be disclosed except to the extent provided in section 38 or section 39 because, in the opinion of the head of the specified agency—
    - (i) the information is information of a kind specified in subsection (2); and
    - (ii) disclosure of the information would be disclosure of a kind specified in subsection (3).
- (2) Information falls within subsection (1)(c)(i) if it—
  - (a) might lead to the identification of, or provide details of, the source of the information, the nature, content, or scope of the information, or the nature or type of the assistance or operational methods available to the specified agency; or
  - (b) is about particular operations that have been undertaken, or are being or are proposed to be undertaken, in pursuance of any of the functions of the specified agency; or

- (c) has been provided to the specified agency by the government of another country or by an agency of a government of another country or by an international organisation, and is information that cannot be disclosed by the specified agency because the government or agency or organisation by which the information has been provided will not consent to the disclosure.
- (3) Disclosure of information falls within subsection (1)(c)(ii) if the disclosure would be likely—
- (a) to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or
  - (b) to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the government of another country or any agency of such a government, or by any international organisation; or
  - (c) to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or
  - (d) to endanger the safety of any person.

Compare: 1987 No 74 s 114B(1)

### *Review, revocation, and expiry of designations*

## **33 Judicial review of designations**

Nothing in this Act prevents a person from bringing any judicial review (whether under the Judicial Review Procedure Act 2016 or otherwise) or other proceedings before a court arising out of, or relating to, the making of a designation under this Act.

Section 33: amended, on 1 March 2017, by section 24 of the Judicial Review Procedure Act 2016 (2016 No 50).

## **34 Revocation of designations**

- (1) The Prime Minister may at any time revoke a designation made under section 20 or section 22, either on the Prime Minister's own initiative or on an application in writing for the purpose—
- (a) by the entity who is the subject of the designation; or
  - (b) by a third party with an interest in the designation that, in the Prime Minister's opinion, is an interest apart from any interest in common with the public.
- (2) Without limiting subsection (1)(b), a party may have an interest in a designation apart from any interest in common with the public through—
- (a) possessing or controlling, or having an interest in, property to which section 9 applies as a result of the designation; or

- (b) making available property or support to which section 10 applies as a result of the designation; or
  - (c) having an especially close association with the designated entity or its interests or objectives.
- (3) An application under subsection (1) for revocation of a designation must be based on the grounds—
  - (a) that the designation should not stand because the entity concerned does not satisfy the test stated in section 20(1) or (3) or, as the case requires, in section 22(1) or (3); or
  - (b) that the entity concerned is no longer involved in any way in acts of the kind that made, or that would make, the entity eligible for designation.
- (4) However, the Prime Minister may not refuse an application to revoke a designation under section 20 or section 22 without having first consulted with the Attorney-General about the proposed refusal.
- (5) Except as provided in subsection (4), subsection (1) overrides every other provision of this Act.

Compare: 1987 No 74 s 114N

Section 34(2)(b): amended, on 5 October 2021, by section 23 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

### **35 Designations under section 22 to expire after 3 years unless renewed by Prime Minister**

- (1) A designation under section 22 expires 3 years after the date on which it takes effect, unless it is earlier—
  - (a) revoked under section 34; or
  - (b) renewed by an order under subsection (2) or (3).
- (2) The Prime Minister may order that a designation made under section 22 remain in force for a further 3 years after the making of the order if the Prime Minister is satisfied that there are still reasonable grounds as set out in section 22 for an entity to be designated under that section.
- (3) Before the expiry of an order under subsection (2), the Prime Minister may make another order renewing the designation concerned for a further 3 years.
- (4) After making an order under subsection (2) or (3), the Prime Minister must report to the Intelligence and Security Committee on the renewal of the designation.
- (5) The Prime Minister may make any number of orders under subsection (3) in respect of the same designation.

Section 35: substituted, on 20 November 2007, by section 20 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

### **36 Applications under section 35 and related proceedings**

*[Repealed]*

Section 36: repealed, on 20 November 2007, by section 20 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

### **37 Grounds for orders under section 35(2)**

*[Repealed]*

Section 37: repealed, on 20 November 2007, by section 20 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

### **38 Procedure in proceedings involving classified security information**

- (1) This section applies to any proceedings in a court arising out of, or relating to, the making of a designation under this Act.
- (2) The court must determine the proceedings on the basis of information available to it (whether or not that information has been disclosed to or responded to by all parties to the proceedings).
- (3) If information presented, or proposed to be presented, by the Crown includes classified security information,—
  - (a) except where proceedings are before the Court of Appeal, the proceedings must be heard and determined by the Chief High Court Judge, or by 1 or more Judges nominated by the Chief High Court Judge, or both; and
  - (b) the court must, on a request for the purpose by the Attorney-General and if satisfied that it is desirable to do so for the protection of (either all or part of) the classified security information, receive or hear (the relevant part or all of) the classified security information in the absence of—
    - (i) the designated entity concerned; and
    - (ii) all barristers or solicitors (if any) representing that entity; and
    - (iii) members of the public.
- (4) Without limiting subsection (3), if the designated entity concerned participates in proceedings,—
  - (a) the court must approve a summary of the information of the kind referred to in section 32(2) that is presented by the Attorney-General except to the extent that a summary of any particular part of the information would itself involve disclosure that would be likely to prejudice the interests referred to in section 32(3); and
  - (b) on being approved by the court a copy of the statement must be given to the entity concerned.
- (5) Nothing in this section limits section 27 of the Crown Proceedings Act 1950 or any rule of law that authorises or requires the withholding of a document or the refusal to answer a question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.

- (6) Subsections (2) to (5) apply despite any enactment or rule of law to the contrary.

Section 38: substituted, on 20 November 2007, by section 21 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

### **39 Procedure in other cases involving classified security information**

*[Repealed]*

Section 39: repealed, on 20 November 2007, by section 21 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

### **40 Ancillary general practices and procedures to protect classified security information**

- (1) Any general practices and procedures that may be necessary to implement the procedures specified in section 38 and to ensure that classified security information is protected in all proceedings to which that section relates must be agreed between the Chief Justice and the Attorney-General as soon as practicable after the commencement of this section, and revised from time to time.
- (2) Without limiting the generality of subsection (1), general practices and procedures may be agreed under that subsection on the following matters:
- (a) measures relating to the physical protection of the information during all proceedings to which section 38 relates:
  - (b) the manner in which the information may be provided to the court:
  - (c) measures to preserve the integrity of the information until any appeals are withdrawn or finally determined.

Section 40(1): amended, on 20 November 2007, by section 22(1)(a) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 40(1): amended, on 20 November 2007, by section 22(1)(b) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 40(2)(a): amended, on 20 November 2007, by section 22(2) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

### **41 Appeal against decision on application under section 35**

*[Repealed]*

Section 41: repealed, on 20 November 2007, by section 23 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

### **42 Notification of revocation, expiry, or invalidity of designations**

- (1) If a designation under this Act expires or is revoked or is found to be or to have been invalid, under section 34 or section 35 or by virtue of any judicial review (whether under the Judicial Review Procedure Act 2016 or otherwise) or other proceedings before a court, the Prime Minister must—
- (a) ensure that notice of the revocation or expiry or invalidity is published in the *Gazette* as soon as practicable; and



- (b) take all reasonable steps to ensure that notice of the revocation or expiry or invalidity is given, in the manner and form required by section 21(d) or section 23(f), to every person and body specified in subsection (2) who is not already aware of it.
- (2) The persons and bodies referred to in subsection (1)(b) are every person or body to whom notice of the making of the designation was given under section 21(d) or section 23(f).

Section 42(1): amended, on 1 March 2017, by section 24 of the Judicial Review Procedure Act 2016 (2016 No 50).

### *Duty to report suspicions relating to property*

#### **43 Suspicions that property owned or controlled by designated terrorist entities to be reported**

- (1) This section applies to—
  - (a) property owned or controlled, directly or indirectly, by a designated terrorist entity; and
  - (b) property derived or generated from any property of the kind specified in paragraph (a).
- (2) A reporting entity or other person in possession or immediate control of property that the reporting entity or other person suspects on reasonable grounds is or may be property to which this section applies must, as soon as practicable after forming that suspicion, report it to the Commissioner of Police, in accordance with section 44.
- (3) Nothing in subsection (2) requires any lawyer to disclose any privileged communication (as defined in section 45).
- (4) Every person who knowingly contravenes subsection (2) commits an offence, and is liable on conviction to imprisonment for a term not exceeding 1 year.
- (5) In this section, **reporting entity** has the meaning referred to in section 44(5).

Compare: 1996 No 9 s 15(1)

Section 43 heading: amended, on 20 November 2007, by section 24(1) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 43(1)(a): amended, on 20 November 2007, by section 24(2) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 43(2): amended, on 5 October 2021, by section 24(1) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 43(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 43(5): amended, on 5 October 2021, by section 24(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

#### **44 Nature of suspicious property report**

- (1) Except as provided in subsection (2), every report under section 43 must—

- (a) contain the details specified in Schedule 5; and
  - (b) if made by a reporting entity, be signed by someone authorised to sign reports under section 43 on behalf of the reporting entity (unless the report is forwarded by email or another similar means of communication); and
  - (c) if made by any other person, be signed by the person or by someone authorised to sign reports under section 43 on behalf of the person (unless the report is forwarded by email or another similar means of communication); and
  - (d) be forwarded, in writing, to the Commissioner of Police at Police National Headquarters at Wellington—
    - (i) by way of transmission by fax; or
    - (ii) by another means (including, without limitation, by email or another similar means of communication) that may be agreed from time to time between that Commissioner and the reporting entity or person concerned.
- (2) However, if the urgency of the situation requires, a report under section 43 may be made orally to any constable authorised for the purpose by the Commissioner of Police, but in any case of that kind the reporting entity or other person must, as soon as practicable, forward to that Commissioner a report that complies with the requirements of subsection (1).
- (3) The Commissioner of Police may confer the authority to receive a report under subsection (2) on any specified constable or on constables of any specified level of position or class, or on any constable or constables for the time being holding any specified office or specified class of offices.
- (4) If a report under section 43 is made by or on behalf of a reporting entity in respect of property that came into the possession or immediate control of the reporting entity through a transaction or a service conducted or proposed to be conducted through the reporting entity, the reporting entity need not make a suspicious activity report in respect of the transaction or proposed transaction or service or proposed service unless asked to do so by or on behalf of the Commissioner of Police.
- (5) In this section, section 47, and Schedule 5,—
- (a) **facility, reporting entity, suspicious activity report, and transaction** have the meanings given to them in section 5 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009; and
  - (b) **service** has the meaning given to it in section 39A of that Act.

Compare: 1996 No 9 s 15(2)–(4)

Section 44(1)(b): amended, on 5 October 2021, by section 25(1)(a) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 44(1)(b): amended, on 5 October 2021, by section 25(1)(b) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 44(1)(b): amended, on 17 October 2009, by section 161(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35).

Section 44(1)(d)(ii): amended, on 5 October 2021, by section 25(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 44(2): amended, on 5 October 2021, by section 25(3) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 44(2): amended, on 17 October 2009, by section 161(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35).

Section 44(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 44(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 44(3): amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Section 44(4): amended, on 5 October 2021, by section 25(4)(a) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 44(4): amended, on 5 October 2021, by section 25(4)(b) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 44(4): amended, on 5 October 2021, by section 25(4)(c) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 44(4): amended, on 24 October 2019, by section 171(1) of the Statutes Amendment Act 2019 (2019 No 56).

Section 44(4): amended, on 17 October 2009, by section 161(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35).

Section 44(5): replaced, on 5 October 2021, by section 25(5) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

#### **45 Privileged communication defined**

- (1) For the purposes of section 43(3), a communication is a privileged communication only if—
  - (a) it is a confidential communication, whether oral or written, passing between—
    - (i) a lawyer in his or her professional capacity and another lawyer in that capacity; or
    - (ii) a lawyer in his or her professional capacity and his or her client,—whether made directly or indirectly through an agent of either; and
  - (b) it is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and
  - (c) it is not made or brought into existence for the purpose of committing or furthering the commission of some illegal or wrongful act.
- (2) However, where the information consists wholly or partly of, or relates wholly or partly to, the receipts, payments, income, expenditure, or financial transactions of a specified person (whether a lawyer, his or her client, or any other person), it is not a privileged communication if it is contained in, or comprises the whole or part of, any book, account, statement or other record prepared or kept

by the lawyer in connection with a trust account of the lawyer within the meaning of section 6 of the Lawyers and Conveyancers Act 2006.

- (3) For the purposes of this section, references to a lawyer include a firm or an incorporated law firm (within the meaning of the Lawyers and Conveyancers Act 2006) in which he or she is, or is held out to be, a partner, director, or shareholder.

Compare: 1996 No 9 s 19

Section 45(2): amended, on 1 August 2008, by section 348 of the Lawyers and Conveyancers Act 2006 (2006 No 1).

Section 45(3): substituted, on 1 August 2008, by section 348 of the Lawyers and Conveyancers Act 2006 (2006 No 1).

#### **46 Protection of persons**

- (1) A person has immunity from civil, criminal, or disciplinary proceedings under subsection (2) if the person—
- (a) acts in purported compliance with the requirements of section 9 or section 10 or both; or
  - (b) reports a suspicion to the Commissioner of Police under section 43; or
  - (c) otherwise discloses information to the Commissioner of Police in connection with a report of that kind.
- (2) No civil, criminal, or disciplinary proceedings lie against a person to whom subsection (1) applies—
- (a) in respect of the acts of the person in good faith and with reasonable care in purported compliance with the requirements of section 9 or section 10 or both; or
  - (b) in respect of the report or disclosure, or the manner of the report or disclosure, by that person, of the information referred to in subsection (1)(b) and (c); or
  - (c) for any consequences that follow from the report or disclosure of that information.
- (3) However, subsection (2)(b) and (c) do not apply if the information was reported or disclosed in bad faith, or without reasonable care having been taken in determining, before the report or disclosure, that the property is or may be property to which section 43 applies.

Compare: 1996 No 9 s 17

#### **47 Protection of identity of persons making reports**

- (1) This section applies in respect of the following information:
- (a) any report under section 43;
  - (b) any information the disclosure of which will identify, or is reasonably likely to identify, any person—

- (i) as a person who, in his or her capacity as an officer, employee, or agent of a reporting entity, has handled or identified property that was the subject of a report under section 43; or
  - (ii) as a person who has prepared a report under section 43; or
  - (iii) as a person who has made a report under section 43:
- (c) any information that discloses or is reasonably likely to disclose the existence of a report under section 43.
- (2) No constable may disclose any information to which this section applies except for the purposes of the enforcement of this Act, or for the purposes of the detection, investigation, and prosecution of an offence under this Act.
- (3) Nothing in subsection (2) limits the provision of assistance under the Mutual Assistance in Criminal Matters Act 1992.
- (4) No person may disclose, in any judicial proceeding (within the meaning of section 108 of the Crimes Act 1961) any information to which this section applies, unless the Judge or, as the case requires, the person presiding at the proceeding, is satisfied that the disclosure of the information is necessary in the interests of justice.
- (5) Every person who knowingly contravenes subsection (4) commits an offence, and is liable on conviction to a fine not exceeding \$10,000.

Compare: 1996 No 9 s 21

Section 47(1)(b)(i): amended, on 5 October 2021, by section 26 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 47(1)(b)(i): amended, on 17 October 2009, by section 161(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35).

Section 47(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 47(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### *Customs' powers in relation to certain property*

Heading: inserted, on 12 December 2003, by section 9(1) of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

## **47A Detention of goods suspected to be terrorist property**

- (1) A Customs officer or authorised person may, without warrant, seize and detain goods if—
  - (a) the goods came to his or her attention, or into his or her possession, during a search, inspection, audit, or examination under—
    - (i) the Customs and Excise Act 2018; or
    - (ia) subpart 6 of Part 2 and sections 114 and 115 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009; and
    - (ii) *[Repealed]*

- (b) the goods are in New Zealand and he or she is satisfied that they either—
    - (i) are being, or are intended to be, exported from New Zealand; or
    - (ii) are being, or have been, imported into New Zealand; and
  - (c) he or she has good cause to suspect—
    - (i) that the goods are property of any kind owned or controlled, directly or indirectly, by an entity; and
    - (ii) that the entity is a designated terrorist entity; or
  - (d) he or she has good cause to suspect—
    - (i) that the goods are cash or cash equivalents owned or controlled, directly or indirectly, by an entity; and
    - (ii) that the entity is an entity that carries out, or participates in the carrying out of, 1 or more terrorist acts.
- (2) In this section and sections 47B to 47G,—

**authorised person, Chief Executive, Customs, Customs officer, exportation, goods, and importation** have the meanings given to them in section 5(1) of the Customs and Excise Act 2018

**cash equivalents** includes (without limitation) bearer bonds, gemstones, money orders, postal notes, precious metals, and travellers cheques.

Section 47A: inserted, on 12 December 2003, by section 9(1) of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

Section 47A(1)(a)(i): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 47A(1)(a)(ia): inserted, on 17 October 2009, by section 161(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35).

Section 47(1)(a)(ia): amended, on 5 October 2021, by section 27(1) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 47A(1)(a)(ii): repealed, on 5 October 2021, by section 27(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 47A(1)(c)(ii): amended, on 20 November 2007, by section 25(1) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 47A(1)(d)(ii): substituted, on 20 November 2007, by section 25(2) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 47A(2): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

#### **47B Return of cash necessary to satisfy basic needs**

- (1) The power to detain goods under section 47A does not extend to, and the Customs must if practicable return immediately, cash seized under section 47A if the Customs is satisfied that the cash is (or that things for which it might be exchanged are) necessary to satisfy the basic needs—
- (a) of (or of a dependant of) an individual from whom the cash has been seized; and

- (b) arising on, or within 7 days after, the date on which the detention would otherwise be effected.
- (2) Nothing in subsection (1) requires the Customs to return any cash that the Customs is satisfied is not necessary for the purpose specified in that subsection.
- (3) If the 7-day period referred to in section 47D(1)(a) is extended under section 47E, subsection (1) applies to the extension, and the reference in subsection (1)(b) to 7 days must be read as a reference to the number of days (not exceeding 21) of that 7-day period as extended.

Section 47B: inserted, on 12 December 2003, by section 9(1) of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

Section 47B heading: amended, on 5 October 2021, by section 28(1) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 47B(1): amended, on 5 October 2021, by section 28(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

#### **47C Further provisions about detention under section 47A**

- (1) Reasonable force may be used if it is necessary for any of the following purposes:
  - (a) to seize goods under section 47A:
  - (b) to detain goods under section 47A.
- (2) If the person from whom goods have been seized and detained under section 47A is identified but is not present when the seizure and detention occurs (for example, because the goods concerned are in mail or cargo or in unaccompanied baggage), the Customs must make all reasonable efforts to notify that person of the detention and seizure as soon as practicable.
- (3) Goods detained under section 47A must be taken to such place of security as a Customs officer or authorised person directs, and there detained, unless section 47F applies.
- (4) Section 264 of the Customs and Excise Act 2018 (which protects persons acting under authority of that Act) applies, with all necessary modifications, in relation to the exercise of a power under any of sections 47A to 47F of this Act.
- (5) Nothing in section 47A limits or affects powers under the following Acts:
  - (a) Customs and Excise Act 2018:
  - (ab) Anti-Money Laundering and Countering Financing of Terrorism Act 2009:
  - (b) *[Repealed]*
  - (c) Mutual Assistance in Criminal Matters Act 1992:
  - (d) Criminal Proceeds (Recovery) Act 2009.

Section 47C: inserted, on 12 December 2003, by section 9(1) of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

Section 47C(4): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 47C(5)(a): replaced, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 47C(5)(ab): inserted, on 17 October 2009, by section 161(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35).

Section 47C(5)(b): repealed, on 5 October 2021, by section 29 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 47C(5)(d): substituted, on 1 December 2009, by section 220 of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

#### **47D Return of goods detained under section 47A**

- (1) In this section, **investigation period**, in relation to goods seized and detained under section 47A,—
  - (a) means the period of 7 days after the date on which the goods were seized and detained; and
  - (b) includes any extension of that period granted by the High Court under section 47E.
- (2) Goods seized and detained under section 47A must be returned to the person from whom they were seized as soon as practicable after whichever of the following occurs first:
  - (a) the completion of all relevant investigations, if they show either—
    - (i) that the goods are not property of the kind referred to in section 47A(1)(c)(i) or (d)(i); or
    - (ii) that the entity is not an entity of the kind referred to in section 47A(1)(c)(ii) or (d)(ii):
  - (b) the expiry of the investigation period.
- (3) However, the Customs need not return the goods as provided in subsection (2), and may continue to detain them pending a direction by the Prime Minister under section 48 that the Official Assignee take custody and control of them, if the Customs is advised by, or on behalf of, the Prime Minister—
  - (a) that the goods are property of any kind owned or controlled, directly or indirectly, by an entity; and
  - (b) that the entity is a designated terrorist entity.

Section 47D: inserted, on 12 December 2003, by section 9(1) of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

Section 47D(3)(b): amended, on 20 November 2007, by section 26 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).



**47E Extension of 7-day period in section 47D(1)(a)**

- (1) The 7-day period in section 47D(1)(a) may be extended (once only) by order of the High Court for a reasonable period up to a further 14 days if, on an application for the purpose made before the expiry of that 7-day period, that court is satisfied—
  - (a) that the good cause to suspect required by section 47A(1)(c) or (d) exists; and
  - (b) that the extension to be granted is necessary to enable investigations in or outside New Zealand in relation to the goods or entity to be completed.
- (2) The application must be made in writing and served on the person from whom the goods were seized (if that person can be identified and located), and must include the following particulars:
  - (a) a description of the goods detained;
  - (b) the date on which the detention commenced;
  - (c) a statement of the facts supporting the good cause to suspect required by section 47A(1)(c) or (d); and
  - (d) a statement of reasons why the extension sought is necessary to enable investigations in or outside New Zealand in relation to the goods or entity to be completed.
- (3) The person from whom the goods were seized is entitled to appear and be heard on the application.
- (4) The Customs must make all reasonable efforts to notify the person from whom the goods were seized, at least 24 hours before the hearing of the application, of the time and place of that hearing.

Section 47E: inserted, on 12 December 2003, by section 9(1) of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

**47F Custody of certain goods detained under section 47A**

- (1) If goods detained under section 47A are a craft, vehicle, or animal, a Customs officer may leave those goods in the custody of either—
  - (a) the person from whom the goods have been seized; or
  - (b) any other person authorised by the Customs officer and who consents to having such custody.
- (2) Every person who has the custody of goods under subsection (1) must, until a final decision is made under section 47D as to whether or not they are to be returned, hold them in safekeeping, without charge to the Crown and in accordance with any reasonable conditions that may be imposed by the Customs.
- (3) A person to whom subsection (2) applies must also—
  - (a) make the goods available to a Customs officer on request; and

- (b) not alter, or dispose of, or remove the goods from New Zealand, unless he or she is authorised to do so by a Customs officer; and
- (c) return the goods on demand to the custody of the Customs.

Compare: 1996 No 27 s 226(7), (8)

Section 47F: inserted, on 12 December 2003, by section 9(1) of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

#### **47G Offences in relation to certain detained goods**

- (1) Every person commits an offence who, having custody of goods pursuant to section 47F(1), acts in breach of any requirement of, or imposed pursuant to, section 47F(2) or (3).
- (2) Every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$5,000.
- (3) Every person commits an offence who, without the permission of the Chief Executive, takes or carries away or otherwise converts to his or her own use goods to which section 47F(2) and (3) applies.
- (4) Every person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 12 months, or to a fine not exceeding an amount equal to 3 times the value of the goods to which the offence relates.

Compare: 1996 No 27 s 215

Section 47G: inserted, on 12 December 2003, by section 9(1) of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

Section 47G(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 47G(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### *Management of property subject to section 9*

#### **48 Direction that Official Assignee take control of property**

- (1) The Prime Minister may, if satisfied that it is desirable to do so, direct the Official Assignee to take custody and control of property in New Zealand, if an entity is subject to a designation under section 22 or is a United Nations listed terrorist entity and the Prime Minister believes on reasonable grounds that the property is—
  - (a) property owned or controlled, directly or indirectly, by the entity; or
  - (b) property derived or generated from property of the kind referred to in paragraph (a).
- (2) The direction—
  - (a) must be in writing signed by the Prime Minister; and
  - (b) must specify the property concerned; and

- (c) may be subject to any terms and conditions the Prime Minister specifies.
- (3) A person who has custody or control of property specified in the direction must allow the Official Assignee to take custody and control of that property in accordance with the direction.

Compare: 1991 No 120 s 42(1)(b)

Section 48(1): amended, on 20 November 2007, by section 27 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

#### **49 Notice of direction**

- (1) Notice of the making of a direction under section 48 must be given—
- (a) with all reasonable speed to the designated entity concerned, if practicable, where that entity or a representative of it is in New Zealand; and
- (b) to any other person that the Prime Minister has reason to believe may have an interest in the property concerned.
- (2) No direction under section 48 is invalid just because notice of the making of it has not been given in the manner required by subsection (1)(a) or (b).

#### **50 Variation, revocation, or expiry of direction**

- (1) Having made a direction under section 48, the Prime Minister may—
- (a) make another direction varying—
- (i) the property to which the direction relates:
- (ii) terms and conditions to which the direction is subject:
- (b) revoke the direction under section 48.
- (2) The powers given by subsection (1)(a) and (b) are exercisable at any time after the making of the direction, and either on the Prime Minister's own initiative or on an application for the purpose in writing by or on behalf of the Official Assignee or a person who claims an interest in the property concerned.
- (3) If not earlier revoked, a direction under section 48 in relation to property of an entity expires—
- (a) on the entity ceasing to be subject to the designation under section 22; or
- (ab) on the entity ceasing to be a United Nations listed terrorist entity; or
- (b) on a forfeiture order being made under section 55 in relation to the property concerned, in which case section 85 of the Criminal Proceeds (Recovery) Act 2009 (as modified and applied by section 57(b) of this Act) applies.

Section 50(3)(ab): inserted, on 20 November 2007, by section 28 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 50(3)(b): substituted, on 1 December 2009, by section 221 of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

**51 Further provisions on management of property subject to section 9**

The following sections of the Criminal Proceeds (Recovery) Act 2009 apply, with the following (and any other necessary) modifications, to property that is the subject of a direction under section 48, as if the direction were a restraining order under that Act:

- (a) section 27 (which relates to the registration of restraining orders):
- (b) section 32 (which relates to applications for orders that certain dispositions or dealings be set aside, except that the applications must be made by the Attorney-General):
- (c) section 80 (which relates to powers of the Official Assignee to preserve the value of property):
- (d) section 81 (which relates to the Official Assignee's liability for payment of rates, etc, on the property):
- (e) section 87 (which relates to costs recoverable by the Official Assignee, and any regulations made under that Act for the purposes of that section apply, with any necessary modifications, accordingly):
- (f) sections 88 to 90 (which relate to the Official Assignee making and revoking delegations, except that the delegations must relate only to functions and powers of the Official Assignee under this Act):
- (g) section 150 (which makes it an offence to dispose of or deal with the property in contravention of a restraining order, knowing that the restraining order has been made in respect of the property):
- (h) section 157 (which relates to an indemnity for enforcement officers, except that the indemnity must relate only to the exercise or performance, or purported exercise or performance, or omission to exercise or perform, functions and powers of the Official Assignee under this Act).

Section 51: substituted, on 1 December 2009, by section 222 of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

*Relief for third parties if property is subject to section 9 or application for forfeiture, or is forfeited*

**52 Third parties may apply for relief**

- (1) A person who claims an interest in specified property that is subject to the prohibition in section 9 (not being property to which subsection (2) applies) may apply to the High Court for an order under section 54.
- (2) A person who claims an interest in specified property that is the subject of an application, under section 55(1), for an order under section 55 (an order that the property is forfeited to the Crown) may, before the order under section 55 is made, apply to the High Court for an order under section 54.

- (3) If not prevented by section 53, a person who claims an interest in specified property forfeited to the Crown under an order under section 55 may apply to the High Court for an order under section 54—
  - (a) within 6 months after the date on which the order under section 55 is made; or
  - (b) within any further time the court allows on an application for that purpose made before or after the end of that 6-month period.
- (4) No entity who is the subject of the designation concerned may make an application under this section.
- (5) A person who makes an application under this section must serve notice of the application on the Attorney-General, who is a party to any proceedings on the application.

Compare: 1991 No 120 s 17(1)–(3), (7)

### **53 Limits on applications under section 52(3)**

- (1) A person on whom notice of the application for an order under section 55, or of any amendment to the application, was served, or who appeared at the hearing of the application, may apply under section 52(3) only with the leave of the court.
- (2) The court must not grant leave unless there are special reasons for doing so.
- (3) Without limiting the generality of subsection (2), the court may grant leave if it is satisfied—
  - (a) that the applicant had good reason for failing to attend the hearing of the application for an order under section 55; or
  - (b) that evidence proposed to be adduced by the applicant in connection with the application under section 52(3) was not reasonably available to the applicant at the time of the hearing of the application for the order under section 55.

Compare: 1991 No 120 s 17(4)–(6)

### **54 Court may grant relief to third party**

- (1) Subsection (2) applies where—
  - (a) a person applies to the High Court under section 52(1) or (2) or (3) in respect of an interest in property; and
  - (b) the court is satisfied that the applicant’s claim to that interest is valid.
- (2) The court must, subject to subsection (3), make an order declaring the nature, extent, and value of the applicant’s interest in the property and,—
  - (a) if the application is under section 52(1), declaring that the interest is no longer subject to the prohibition in section 9:
  - (b) if the application is under section 52(2),—

- (i) directing that the interest must not be included in an order under section 55 made in respect of the proceedings that gave rise to the application; and
  - (ii) declaring that the interest is no longer subject to the prohibition in section 9:
- (c) if the application is under section 52(3), either—
  - (i) directing the Crown to transfer the interest to the applicant; or
  - (ii) declaring that there is payable by the Crown to the applicant an amount equal to the value of the interest declared by the court.
- (3) The court may, if it thinks fit, refuse to make an order under subsection (2), because it is satisfied that—
  - (a) the applicant was knowingly involved in any way in the carrying out of the terrorist acts that are the basis of the designation of the entity as a designated terrorist entity, or is wholly owned or effectively controlled, directly or indirectly, by that entity; or
  - (b) if the applicant acquired the interest at the time of or after the designation of the entity as a designated terrorist entity, the applicant did not acquire the interest in the property in good faith and for value, without knowing or having reason to believe that the property was, at the time of the acquisition, property subject to the prohibition in section 9.
- (4) However, nothing in subsection (3) requires a refusal to make an order under subsection (2), or limits the circumstances in which the court may refuse to make an order of that kind.

Compare: 1991 No 120 s 18

Section 54(3)(a): amended, on 20 November 2007, by section 29 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 54(3)(b): amended, on 20 November 2007, by section 29 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

### *Forfeiture*

#### **55 Forfeiture of property by order of High Court**

- (1) The High Court may, on an application by the Attorney-General for the purpose, order that specified property is forfeited to the Crown if it is in New Zealand and is—
  - (a) property owned or controlled, directly or indirectly, by an entity who is the subject of a designation under section 22 or is a United Nations listed terrorist entity; or
  - (b) property derived or generated from property of the kind referred to in paragraph (a).

- (2) However, an order of that kind may only be made if the court considers it appropriate that the specified property not remain subject to the prohibition in section 9, but be forfeited to the Crown.
- (3) In considering whether to make an order under this section in respect of particular property, the court may have regard to—
  - (a) any undue hardship that is reasonably likely to be caused to any person by the operation of such an order:
  - (b) the nature and extent of the entity’s interest in the property, and the nature and extent of other interests in it (if any).

Compare: 1991 No 120 s 15(2)(b), (c)

Section 55(1)(a): amended, on 20 November 2007, by section 30(1) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 55(2): substituted, on 20 November 2007, by section 30(2) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

#### **56 Notice of application under section 55**

- (1) The Attorney-General is required to name as a respondent to an application under section 55 only those persons who are known to the Attorney-General to have an interest in the property that is the subject of the application.
- (2) The Attorney-General must serve notice of an application under section 55 (in any manner, and within any time, the High Court may direct) on any person—
  - (a) who there is reason to believe may have an interest in the property; and
  - (b) that the High Court directs.
- (3) Any person who claims an interest in the property is entitled to appear and to adduce evidence at the hearing of the application.
- (4) Subsection (3) is subject to section 38.

#### **57 Further provisions relating to orders under section 55**

The following sections of the Criminal Proceeds (Recovery) Act 2009 and the Sentencing Act 2002 apply, with the following (and all other necessary) modifications, to the making, effect, operation, and discharge of an order under section 55, as if the order were an instrument forfeiture order under section 142N of the Sentencing Act 2002:

- (a) sections 70, 72, and 73 of the Criminal Proceeds (Recovery) Act 2009 (which relate to the effect of the order) except that—
  - (i) the reference in section 73(2) to the Official Assignee must be read as a reference to the Attorney-General, and the property may be disposed of or otherwise dealt with in accordance with any direction of the Attorney-General; and
  - (ii) references in section 73 to an instrument forfeiture order must be read as reference to an order under section 55 of this Act:

- (b) section 85 of the Criminal Proceeds (Recovery) Act 2009 (which relates to the Official Assignee discharging the order), except that the relevant appeal period in relation to the making of an order under section 55 of this Act means the period ending—
  - (i) when the time for bringing an appeal against the decision of the court expires, if no such appeal has been brought; or
  - (ii) if an appeal against the decision of the court has been brought, when the appeal is finally determined or withdrawn, whichever occurs first:
- (c) section 142N(3)(a), (4), and (5) of the Sentencing Act 2002 (which relate to the terms of the order and to any directions that are necessary and convenient for giving effect to it).

Section 57: substituted, on 1 December 2009, by section 223 of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

Section 57(a)(ii): amended, on 5 October 2021, by section 30 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 57(b): amended, on 5 October 2021, by section 30 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

## **58 Appeal against decision on application under section 55**

- (1) A party to an application under section 55 may appeal to the Court of Appeal against the decision of the High Court.
- (2) Subject to sections 38 and 40, the procedure for the appeal must be in accordance with rules of court.
- (3) For the avoidance of doubt, an appeal under subsection (1) is a civil proceeding for the purposes of the Senior Courts Act 2016.

Section 58(2): amended, on 20 November 2007, by section 31 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 58(3): added, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 58(3): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

## **59 Discharge of order under section 55 on appeal**

- (1) *[Repealed]*
- (2) The revocation, under section 34, of a designation that has been renewed by an order made under section 35(2), does not discharge any order made under section 55 against property of the entity who was the subject of the designation.
- (3) If an order under section 55 in respect of any property is discharged by a court hearing an appeal, under section 58, against the making of the order, the Attorney-General must,—
  - (a) as soon as practicable after the discharge of the order, serve notice of the discharge of the order under section 55 (in any manner, and within any



- time, the court may direct) on any person who the Attorney-General has reason to believe may have had an interest in the property immediately before the making of the order; and
- (b) if required to do so by a court, serve notice of the discharge of the order under section 55 (in any manner, and within any time, the court may direct) on such persons as the court may specify.
- (4) Every notice under subsection (3) must include a statement that a person claiming an interest in the property may apply under subsection (5) for the transfer of the interest to that person.
  - (5) If an order under section 55 is discharged, any person claiming an interest in the property immediately before the making of the order may apply to the Attorney-General, in writing, for the transfer of the interest to that person.
  - (6) If the Attorney-General is satisfied that any claim made under subsection (5) in respect of any interest in property is valid, the Attorney-General must,—
    - (a) if the interest is still vested in the Crown, arrange for the interest to be transferred to the claimant; or
    - (b) in any other case, and subject to section 60, arrange for payment to the claimant of an amount equal to the value of the interest.

Compare: 1991 No 120 s 19

Section 59 heading: amended, on 20 November 2007, by section 32(1) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 59(1): repealed, on 20 November 2007, by section 32(2) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 59(2): amended, on 20 November 2007, by section 32(3) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 59(3): amended, on 20 November 2007, by section 32(4) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 59(5): amended, on 20 November 2007, by section 32(5) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

## **60 Attorney-General may apply for directions**

- (1) In any case where there is any question as to the validity of any claim made under section 59(5),—
  - (a) the Attorney-General may apply to the High Court for directions concerning the claim; and
  - (b) the court may give any directions in the matter it thinks just.
- (2) If an application is made under subsection (1),—
  - (a) the Attorney-General must serve notice of the application (in any manner, and within any time, the court may direct) on every person that the Attorney-General has reason to believe may have an interest in the application:

- (b) the court may, at any time before the final determination of the application, direct the Attorney-General to serve notice of the application (in any manner, and within any time, the court may direct) on such persons as the court may specify:
- (c) every person who claims an interest in the application is entitled to appear and to adduce evidence at the hearing of the application.

Compare: 1991 No 120 s 20

### **61 Double benefit not permitted**

If, on an application made under section 52(3) in respect of any interest in any property, the court has made an order under section 54(2)(c) declaring that there is payable by the Crown to the applicant an amount equal to the value of the interest declared by the court, an amount equal to the amount so declared must be deducted from any amount required to be paid, under section 59(6)(b), to that applicant in respect of that interest.

Compare: 1991 No 120 s 21

## **Part 3 Miscellaneous provisions**

### *Evidence that States are, or are not, Parties to Conventions*

### **62 Certificates as to States Parties under Conventions**

A certificate that appears to be signed by, or on behalf of, the Secretary of Foreign Affairs and Trade, and that states that a State is, or is not, a State Party under the Bombings Convention, the Financing Convention, the Nuclear Material Convention, the Nuclear Terrorism Convention, or the Plastic Explosives Convention, is sufficient evidence of that matter unless the contrary is proved (for example, by the production of another certificate issued after the first certificate).

amendment by s 33 (2007 No 102): 'the Nuclear Terrorism Convention,' inserted after the comma following 'the Nuclear Material Convention' rather than before it as drafted

Section 62: amended, on 20 November 2007, by section 33 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 62: amended, on 18 January 2004, by section 10 of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

### *Investigation and prosecution of offences against Act or referred to in Conventions*

### **63 Application of sections 64 and 65**

- (1) Sections 64 and 65 apply whenever the Attorney-General receives information that there may be present in New Zealand a person who has committed, or is alleged to have committed, an offence referred to in article 2 of the Bombings

Convention, or article 2 of the Financing Convention, or article 7 of the Nuclear Material Convention, or article 2 of the Nuclear Terrorism Convention, as the case requires.

- (2) In sections 64 and 65, **relevant States Parties** means—
- (a) any States Parties that have established jurisdiction in accordance with article 6(1) or (2) of the Bombings Convention, or article 7(1) or (2) of the Financing Convention, or article 8 of the Nuclear Material Convention, or article 8 of the Nuclear Terrorism Convention; and
  - (b) any other interested States Parties the Attorney-General considers it advisable to inform or notify.

Section 63: substituted, on 20 November 2007, by section 34 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

**64 Attorney-General to indicate to relevant States Parties whether New Zealand to exercise jurisdiction**

When an investigation has been undertaken under New Zealand law of the facts contained in the information (being the investigation contemplated by article 7(1) of the Bombings Convention, or article 9(1) of the Financing Convention, or article 9 of the Nuclear Material Convention, or article 10 of the Nuclear Terrorism Convention, as the case requires, the Attorney-General must—

- (a) inform the relevant States Parties promptly of the findings of the investigation; and
- (b) indicate promptly to the relevant States Parties whether New Zealand intends to exercise jurisdiction.

Section 64: substituted, on 20 November 2007, by section 35 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

**65 Attorney-General to notify relevant States Parties if person taken into custody**

If the measures taken under New Zealand law to ensure the person's presence for the purpose of prosecution or extradition (being the measures contemplated by article 7 of the Bombings Convention, or article 9 of the Financing Convention, or article 9 of the Nuclear Material Convention, or article 10 of the Nuclear Terrorism Convention, as the case requires) include taking the person into custody, the Attorney-General must, immediately after the person is taken into custody, notify the relevant States Parties, either directly or through the Secretary-General of the United Nations, of—

- (a) the fact that the person is in custody; and
- (b) the circumstances that justify the person's detention.

Section 65: substituted, on 20 November 2007, by section 36 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

**66 Rights of certain persons taken into custody to communicate with consular representative, etc**

- (1) This section applies to a person who is taken into custody in New Zealand as part of the measures referred to in section 65 and who is neither—
  - (a) a New Zealand citizen; nor
  - (b) a person who is ordinarily resident in New Zealand but is not a citizen of any State.
- (2) Promptly after being taken into custody, a person to whom this section applies must be informed that he or she is entitled, and must be permitted,—
  - (a) to communicate without delay with the nearest appropriate representative of the relevant State; and
  - (b) to be visited by a representative of the relevant State.
- (3) In subsection (2), **relevant State**, in relation to a person, means—
  - (a) the State of which the person is a citizen; or
  - (b) the State that is otherwise entitled to protect the person's rights; or
  - (c) if the person is not a citizen of any State, the State in whose territory the person ordinarily resides.
- (4) Nothing in this section affects any other rights of a person to whom this section applies.

**67 Attorney-General's consent to prosecutions required**

- (1) No proceedings for any offence against this Act may be instituted in any court except with the consent of the Attorney-General.
- (2) However, a person alleged to have committed any offence against this Act may be arrested, or a warrant for the person's arrest may be issued and executed, and the person may be remanded in custody or on bail, even though the Attorney-General's consent under subsection (1) has not been obtained.
- (3) Despite subsections (1) and (2), nothing in this section applies in respect of an offence against section 43 or section 47 or section 47G.

Section 67(3): amended, on 12 December 2003, by section 14 of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

**68 Attorney-General to communicate outcome of prosecution**

If a person is prosecuted for terrorist bombing or financing of, or provision of material support for, terrorism, the Attorney-General must communicate the final outcome of the proceedings promptly to the Secretary-General of the United Nations, so that he or she may transmit the information to other States Parties to the Bombings Convention or, as the case requires, the Financing Convention.

Section 68: amended, on 5 October 2021, by section 31 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

*Extradition*

**69 Offences deemed to be included in extradition treaties**

- (1) For the purposes of the Extradition Act 1999 and any Order in Council in force under section 15 or section 104 of that Act, terrorist bombing, financing of, or provision of material support for, terrorism, and any nuclear material offence or nuclear terrorism offence are each, if not already described in the treaty, deemed to be an offence described in any extradition treaty concluded before the relevant date and for the time being in force between New Zealand and any country that is a party to any of the following conventions, or to which any of the following conventions extends:
  - (a) the Bombings Convention; or
  - (b) the Financing Convention; or
  - (c) the Nuclear Material Convention; or
  - (d) the Nuclear Terrorism Convention.
- (2) If under subsection (1) an offence is deemed to be an offence described in an extradition treaty, no person may be surrendered for the offence in accordance with the Extradition Act 1999 if the conduct alleged to constitute the offence occurred before the relevant date.
- (3) Subsection (2) does not prevent the person from being surrendered for an offence (other than terrorist bombing, financing of, or provision of material support for, terrorism, a nuclear material offence, or a nuclear terrorism offence) described in the extradition treaty and constituted by conduct that also constitutes or may constitute terrorist bombing, financing of, or provision of material support for, terrorism, a nuclear material offence, or a nuclear terrorism offence.
- (4) In this section, **relevant date** means,—
  - (a) in relation to terrorist bombing, 5 December 2002; and
  - (aa) in relation to an offence against section 8(1A) or (2B), the commencement date of the Counter-Terrorism Legislation Act 2021; and
  - (ab) in relation to any other financing of, or provision of material support for, terrorism, 5 December 2002; and
  - (b) in relation to a nuclear material offence, the date on which this section enters into force in relation to that offence; and
  - (c) in relation to a nuclear terrorism offence, the date on which this section enters into force in relation to that offence.

Section 69(1): substituted, on 18 January 2004, by section 15(1) of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

Section 69(1): amended, on 5 October 2021, by section 32(1) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 69(1): amended, on 20 November 2007, by section 37(1) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 69(1)(c): amended, on 20 November 2007, by section 37(2) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 69(1)(d): added, on 20 November 2007, by section 37(2) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 69(3): substituted, on 18 January 2004, by section 15(2) of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

Section 69(3): amended, on 5 October 2021, by section 32(1) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 69(3): amended, on 20 November 2007, by section 37(3) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 69(4): substituted, on 18 January 2004, by section 15(3) of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

Section 69(4): amended, on 5 October 2021, by section 32(2) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 69(4)(a): replaced, on 5 October 2021, by section 32(3) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 69(4)(aa): inserted, on 5 October 2021, by section 32(3) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 69(4)(ab): inserted, on 5 October 2021, by section 32(3) of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 69(4)(b): amended, on 20 November 2007, by section 37(4) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 69(4)(c): added, on 20 November 2007, by section 37(4) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

### *Review of provisions to implement Anti-terrorism Resolution*

#### *[Repealed]*

Heading: repealed, on 20 November 2007, by section 38 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

## **70 Review of operation of certain provisions of this Act**

### *[Repealed]*

Section 70: repealed, on 20 November 2007, by section 38 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

### *Relationship with other enactments*

## **71 Criminal Proceeds (Recovery) Act 2009 not affected**

Nothing in this Act affects the Criminal Proceeds (Recovery) Act 2009.

Section 71: substituted, on 1 December 2009, by section 224 of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

## 72 United Nations Act 1946 not affected

- (1) Nothing in section 9 or section 10 or section 12 or section 13, or in any other provision of this Act giving effect to the Anti-terrorism Resolution, affects the United Nations Act 1946 or any regulations made under it.
- (2) Without limiting the generality of subsection (1), regulations may be made under section 2 of the United Nations Act 1946 for the purpose of giving effect to the Anti-terrorism Resolution, or to other decisions of or on behalf of the Security Council of the United Nations that recall or reaffirm and are to give further or better effect to, the Anti-terrorism Resolution.

### *Regulations*

## 73 Regulations

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
  - (a) prescribing the forms of notices, reports, or other documents required under, or contemplated by, this Act, and requiring the use of the forms prescribed:
  - (b) prescribing methods for the giving or publication or service of notices, reports, or other documents required by this Act to be given or published or served:
  - (c) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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#### **Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 73(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

### *Revocations*

Heading: amended, on 5 October 2021, by section 33 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

## 74 Revocations

- (1) The United Nations Sanctions (Terrorism Suppression and Afghanistan Measures) Regulations 2001 (SR 2001/351) are revoked.
- (2) *Amendment(s) incorporated in the regulations.*

**75 Saving and transitional provision relating to specified entities**

*[Repealed]*

Section 75: repealed, on 20 November 2007, by section 39(2) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

*Amendment to Extradition Act 1999*

*[Repealed]*

Heading: repealed, on 5 October 2021, by section 34 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

**76 Amendment to Extradition Act 1999**

*[Repealed]*

Section 76: repealed, on 5 October 2021, by section 34 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

*Amendment to Financial Transactions Reporting Act 1996*

*[Repealed]*

Heading: repealed, on 5 October 2021, by section 34 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

**77 Amendment to Financial Transactions Reporting Act 1996**

*[Repealed]*

Section 77: repealed, on 5 October 2021, by section 34 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

*Amendment to Immigration Act 1987*

*[Repealed]*

Heading: repealed, on 5 October 2021, by section 34 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

**78 Amendment to Immigration Act 1987**

*[Repealed]*

Section 78: repealed, on 5 October 2021, by section 34 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

*Amendments to Mutual Assistance in Criminal Matters Act 1992*

*[Repealed]*

Heading: repealed, on 5 October 2021, by section 34 of the Counter-Terrorism Legislation Act 2021 (2021 No 37)

**79 Schedule amended to refer to Bombings Convention**

*[Repealed]*

Section 79: repealed, on 5 October 2021, by section 34 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).



**80 Schedule amended to refer to Financing Convention**

*[Repealed]*

Section 80: repealed, on 5 October 2021, by section 34 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

*Amendment to Proceeds of Crime Act 1991*

*[Repealed]*

Heading: repealed, on 1 December 2009, pursuant to section 225 of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

**81 Amendment to Proceeds of Crime Act 1991**

*[Repealed]*

Section 81: repealed, on 1 December 2009, by section 225 of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

## Schedule 1AA

### Transitional, savings, and related provisions

s 5B

Schedule 1AA: inserted, on 5 October 2021, by section 35 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

#### Part 1

#### Provisions relating to Counter-Terrorism Legislation Act 2021

Schedule 1AA Part 1: inserted, on 5 October 2021, by section 35 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

##### 1 Definitions

In this Part,—

**Amendment Act** means the Counter-Terrorism Legislation Act 2021

**commencement** means the commencement of the Amendment Act.

Schedule 1AA clause 1: inserted, on 5 October 2021, by section 35 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

##### 2 Amendments apply only to conduct after commencement

The amendments made by the Amendment Act apply only to conduct after the commencement.

Schedule 1AA clause 2: inserted, on 5 October 2021, by section 35 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

## Schedule 1

### International Convention for the Suppression of Terrorist Bombings

s 4(1)

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations,

Recalling the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations of 24 October 1995,

Recalling also the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994, in which, inter alia, “the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States”,

Noting that the Declaration also encouraged States “to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter”,

Recalling further General Assembly resolution 51/210 of 17 December 1996 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, annexed thereto,

Noting also that terrorist attacks by means of explosives or other lethal devices have become increasingly widespread,

Noting further that existing multilateral legal provisions do not adequately address these attacks,

Being convinced of the urgent need to enhance international cooperation between States in devising and adopting effective and practical measures for the prevention of such acts of terrorism, and for the prosecution and punishment of their perpetrators,

Considering that the occurrence of such acts is a matter of grave concern to the international community as a whole,

Noting that the activities of military forces of States are governed by rules of international law outside the framework of this Convention and that the exclusion of certain actions from the coverage of this Convention does not condone or make lawful otherwise unlawful acts, or preclude prosecution under other laws,

Have agreed as follows:

## Article 1

For the purposes of this Convention:

1. “State or government facility” includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.
2. “Infrastructure facility” means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel or communications.
3. “Explosive or other lethal device” means:
  - (a) An explosive or incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage; or
  - (b) A weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material.
4. “Military forces of a State” means the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security, and persons acting in support of those armed forces who are under their formal command, control and responsibility.
5. “Place of public use” means those parts of any building, land, street, waterway or other location that are accessible or open to members of the public, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public.
6. “Public transportation system” means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo.

## Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:
  - (a) With the intent to cause death or serious bodily injury; or

- (b) With the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.
2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1.
3. Any person also commits an offence if that person:
  - (a) Participates as an accomplice in an offence as set forth in paragraph 1 or 2; or
  - (b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2; or
  - (c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1 or 2 by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

### **Article 3**

This Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis under Article 6, paragraph 1, or Article 6, paragraph 2, of this Convention to exercise jurisdiction, except that the provisions of Articles 10 to 15 shall, as appropriate, apply in those cases.

### **Article 4**

Each State Party shall adopt such measures as may be necessary:

- (a) To establish as criminal offences under its domestic law the offences set forth in Article 2 of this Convention;
- (b) To make those offences punishable by appropriate penalties which take into account the grave nature of those offences.

### **Article 5**

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature.

## Article 6

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 2 when:
  - (a) The offence is committed in the territory of that State; or
  - (b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or
  - (c) The offence is committed by a national of that State.
2. A State Party may also establish its jurisdiction over any such offence when:
  - (a) The offence is committed against a national of that State; or
  - (b) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or
  - (c) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or
  - (d) The offence is committed in an attempt to compel that State to do or abstain from doing any act; or
  - (e) The offence is committed on board an aircraft which is operated by the Government of that State.
3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2 under its domestic law. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.
4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2.
5. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

## Article 7

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence as set forth in Article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.
2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appro-

- appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.
3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:
    - (a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;
    - (b) Be visited by a representative of that State;
    - (c) Be informed of that person's rights under subparagraphs (a) and (b).
  4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.
  5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with Article 6, subparagraph 1 (c) or 2 (c), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.
  6. When a State Party, pursuant to this Article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with Article 6, paragraphs 1 and 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

## **Article 8**

1. The State Party in the territory of which the alleged offender is present shall, in cases to which Article 6 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.
2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was

sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

### **Article 9**

1. The offences set forth in Article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.
2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in Article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in Article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.
4. If necessary, the offences set forth in Article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with Article 6, paragraphs 1 and 2.
5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in Article 2 shall be deemed to be modified as between State Parties to the extent that they are incompatible with this Convention.

### **Article 10**

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in Article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.



### Article 11

None of the offences set forth in Article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

### Article 12

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in Article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

### Article 13

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of testimony, identification or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention may be transferred if the following conditions are met:
  - (a) The person freely gives his or her informed consent; and
  - (b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.
2. For the purposes of this Article:
  - (a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;
  - (b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;
  - (c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;
  - (d) The person transferred shall receive credit for service of the sentence being served in the State from which he was transferred for time spent in the custody of the State to which he was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with this article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

### **Article 14**

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights.

### **Article 15**

States Parties shall cooperate in the prevention of the offences set forth in Article 2, particularly:

- (a) By taking all practicable measures, including, if necessary, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or engage in the perpetration of offences as set forth in Article 2;
- (b) By exchanging accurate and verified information in accordance with their national law, and coordinating administrative and other measures taken as appropriate to prevent the commission of offences as set forth in Article 2;
- (c) Where appropriate, through research and development regarding methods of detection of explosives and other harmful substances that can cause death or bodily injury, consultations on the development of standards for marking explosives in order to identify their origin in post-blast investigations, exchange of information on preventive measures, cooperation and transfer of technology, equipment and related materials.

### **Article 16**

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

### **Article 17**

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

### **Article 18**

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

### **Article 19**

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.
2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

### **Article 20**

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.
2. Each state may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.
3. Any State which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

### **Article 21**

1. This Convention shall be open for signature by all States from 12 January 1998 until 31 December 1999 at United Nations Headquarters in New York.
2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.
3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

### **Article 22**

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.
2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

### **Article 23**

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.
2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

### **Article 24**

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on 12 January 1998.

## Schedule 2

### International Convention for the Suppression of the Financing of Terrorism

s 4(1)

#### **Preamble**

*The States Parties to this Convention,*

*Bearing in mind* the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

*Deeply concerned* about the worldwide escalation of acts of terrorism in all its forms and manifestations,

*Recalling* the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations, contained in General Assembly resolution 50/6 of 24 October 1995,

*Recalling also* all the relevant General Assembly resolutions on the matter, including resolution 49/60 of 9 December 1994 and its annex on the Declaration on Measures to Eliminate International Terrorism, in which the States Members of the United Nations solemnly reaffirmed their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States,

*Noting* that the Declaration on Measures to Eliminate International Terrorism also encouraged States to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter,

*Recalling* General Assembly resolution 51/210 of 17 December 1996, paragraph 3, subparagraph (f), in which the Assembly called upon all States to take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and terrorist organizations, whether such financing is direct or indirect through organizations which also have or claim to have charitable, social or cultural goals or which are also engaged in unlawful activities such as illicit arms trafficking, drug dealing and racketeering, including the exploitation of persons for purposes of funding terrorist activities, and in particular to consider, where appropriate, adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes without impeding in any way the freedom of legitimate capital movements and to intensify the exchange of information concerning international movements of such funds,

*Recalling also* General Assembly resolution 52/165 of 15 December 1997, in which the Assembly called upon States to consider, in particular, the implementation of the

measures set out in paragraphs 3 (a) to (f) of its resolution 51/210 of 17 December 1996,

*Recalling further* General Assembly resolution 53/108 of 8 December 1998, in which the Assembly decided that the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 should elaborate a draft international convention for the suppression of terrorist financing to supplement related existing international instruments,

*Considering* that the financing of terrorism is a matter of grave concern to the international community as a whole,

*Noting* that the number and seriousness of acts of international terrorism depend on the financing that terrorists may obtain,

*Noting also* that existing multilateral legal instruments do not expressly address such financing,

*Being convinced* of the urgent need to enhance international cooperation among States in devising and adopting effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators,

*Have agreed as follows:*

## Article 1

For the purposes of this Convention:

1. “Funds” means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit.
2. “A State or governmental facility” means any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.
3. “Proceeds” means any funds derived from or obtained, directly or indirectly, through the commission of an offence set forth in article 2.

## Article 2

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

- (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or
  - (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.
2.
  - (a) On depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the annex may declare that, in the application of this Convention to the State Party, the treaty shall be deemed not to be included in the annex referred to in paragraph 1, subparagraph (a). The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the depositary of this fact;
  - (b) When a State Party ceases to be a party to a treaty listed in the annex, it may make a declaration as provided for in this article, with respect to that treaty.
3. For an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, subparagraphs (a) or (b).
4. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.
5. Any person also commits an offence if that person:
  - (a) Participates as an accomplice in an offence as set forth in paragraph 1 or 4 of this article;
  - (b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 4 of this article;
  - (c) Contributes to the commission of one or more offences as set forth in paragraphs 1 or 4 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
    - (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or
    - (ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article.

### Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender is a national of that State and is present in the territory of that State and no other State has a basis under article 7, paragraph 1, or article 7, para-

graph 2, to exercise jurisdiction, except that the provisions of articles 12 to 18 shall, as appropriate, apply in those cases.

#### **Article 4**

Each State Party shall adopt such measures as may be necessary:

- (a) To establish as criminal offences under its domestic law the offences set forth in article 2;
- (b) To make those offences punishable by appropriate penalties which take into account the grave nature of the offences.

#### **Article 5**

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence set forth in article 2. Such liability may be criminal, civil or administrative.
2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.
3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

#### **Article 6**

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

#### **Article 7**

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:
  - (a) The offence is committed in the territory of that State;
  - (b) The offence is committed on board a vessel flying the flag of that State or an aircraft registered under the laws of that State at the time the offence is committed;
  - (c) The offence is committed by a national of that State.
2. A State Party may also establish its jurisdiction over any such offence when:



- (a) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), in the territory of or against a national of that State;
  - (b) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), against a State or government facility of that State abroad, including diplomatic or consular premises of that State;
  - (c) The offence was directed towards or resulted in an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), committed in an attempt to compel that State to do or abstain from doing any act;
  - (d) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State;
  - (e) The offence is committed on board an aircraft which is operated by the Government of that State.
3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.
  4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties that have established their jurisdiction in accordance with paragraphs 1 or 2.
  5. When more than one State Party claims jurisdiction over the offences set forth in article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.
  6. Without prejudice to the norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

### **Article 8**

1. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing the offences set forth in article 2 as well as the proceeds derived from such offences, for purposes of possible forfeiture.
2. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the forfeiture of funds used or allocated for the purpose

- of committing the offences set forth in article 2 and the proceeds derived from such offences.
3. Each State Party concerned may give consideration to concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of the funds derived from the forfeitures referred to in this article.
  4. Each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to compensate the victims of offences referred to in article 2, paragraph 1, subparagraph (a) or (b), or their families.
  5. The provisions of this article shall be implemented without prejudice to the rights of third parties acting in good faith.

### Article 9

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.
2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.
3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:
  - (a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;
  - (b) Be visited by a representative of that State;
  - (c) Be informed of that person's rights under subparagraphs (a) and (b).
4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.
5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 7, paragraph 1, subparagraph (b), or paragraph 2, subparagraph (b), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.
6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of

the United Nations, the States Parties which have established jurisdiction in accordance with article 7, paragraph 1 or 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

### **Article 10**

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 7 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.
2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

### **Article 11**

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.
2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 7, paragraphs 1 and 2.
5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

### **Article 12**

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences set forth in article 2, including assistance in obtaining evidence in their possession necessary for the proceedings.
2. States Parties may not refuse a request for mutual legal assistance on the ground of bank secrecy.
3. The requesting Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.
4. Each State Party may give consideration to establishing mechanisms to share with other States Parties information or evidence needed to establish criminal, civil or administrative liability pursuant to article 5.
5. States Parties shall carry out their obligations under paragraphs 1 and 2 in conformity with any treaties or other arrangements on mutual legal assistance or information exchange that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

### **Article 13**

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. Accordingly, States Parties may not refuse a request for extradition or for mutual legal assistance on the sole ground that it concerns a fiscal offence.

### **Article 14**

None of the offences set forth in article 2 shall be regarded for the purposes of extradition or mutual legal assistance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may

not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

### **Article 15**

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

### **Article 16**

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences set forth in article 2 may be transferred if the following conditions are met:
  - (a) The person freely gives his or her informed consent;
  - (b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.
2. For the purposes of the present article:
  - (a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;
  - (b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;
  - (c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;
  - (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.
3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is trans-

ferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

### Article 17

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

### Article 18

1. States Parties shall cooperate in the prevention of the offences set forth in article 2 by taking all practicable measures, *inter alia*, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:
  - (a) Measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of offences set forth in article 2;
  - (b) Measures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity. For this purpose, States Parties shall consider:
    - (i) Adopting regulations prohibiting the opening of accounts the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;
    - (ii) With respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;
    - (iii) Adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of

- any restriction on disclosure of information if they report their suspicions in good faith;
- (iv) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic or international.
2. States Parties shall further cooperate in the prevention of offences set forth in article 2 by considering:
- (a) Measures for the supervision, including, for example, the licensing of all money-transmission agencies;
- (b) Feasible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.
3. States Parties shall further cooperate in the prevention of the offences set forth in article 2 by exchanging accurate and verified information in accordance with their domestic law and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences set forth in article 2, in particular by:
- (a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;
- (b) Cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:
- (i) The identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;
- (ii) The movement of funds relating to the commission of such offences.
4. States Parties may exchange information through the International Criminal Police Organization (Interpol).

### **Article 19**

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

### **Article 20**

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

### **Article 21**

Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of the United Nations, international humanitarian law and other relevant conventions.

### **Article 22**

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction or performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

### **Article 23**

1. The annex may be amended by the addition of relevant treaties that:
  - (a) Are open to the participation of all States;
  - (b) Have entered into force;
  - (c) Have been ratified, accepted, approved or acceded to by at least twenty-two States Parties to the present Convention.
2. After the entry into force of this Convention, any State Party may propose such an amendment. Any proposal for an amendment shall be communicated to the depositary in written form. The depositary shall notify proposals that meet the requirements of paragraph 1 to all States Parties and seek their views on whether the proposed amendment should be adopted.
3. The proposed amendment shall be deemed adopted unless one third of the States Parties object to it by a written notification not later than 180 days after its circulation.
4. The adopted amendment to the annex shall enter into force 30 days after the deposit of the twenty-second instrument of ratification, acceptance or approval of such amendment for all those States Parties having deposited such an instrument. For each State Party ratifying, accepting or approving the amendment after the deposit of the twenty-second instrument, the amendment shall enter into force on the thirtieth day after deposit by such State Party of its instrument of ratification, acceptance or approval.



### **Article 24**

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.
2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.
3. Any State which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

### **Article 25**

1. This Convention shall be open for signature by all States from 10 January 2000 to 31 December 2001 at United Nations Headquarters in New York.
2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.
3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

### **Article 26**

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.
2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

### **Article 27**

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.
2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

**Article 28**

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on 10 January 2000.

### **Annex**

1. Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.
2. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.
3. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.
4. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
5. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.
6. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.
7. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.
8. 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.
9. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

## Schedule 2A

### Convention on the Physical Protection of Nuclear Material and Nuclear Facilities

Schedule 2A: inserted, on 18 January 2004, by section 16 of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

Schedule 2A heading: substituted, on 20 November 2007, by section 40 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

*The States Parties to this Convention,*

*Recognizing* the right of all States to develop and apply nuclear energy for peaceful purposes and their legitimate interests in the potential benefits to be derived from the peaceful application of nuclear energy,

*Convinced* of the need to facilitate international co-operation and the transfer of nuclear technology for the peaceful application of nuclear energy,

*Bearing in mind* that physical protection is of vital importance for the protection of public health, safety, the environment and national and international security,

*Having in mind* the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good neighbourliness and friendly relations and co-operation among States,

*Considering* that under the terms of paragraph 4 of Article 2 of the Charter of the United Nations, “All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations,”

*Recalling* the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994,

*Desiring* to avert the potential dangers posed by illicit trafficking, the unlawful taking and use of nuclear material and the sabotage of nuclear material and nuclear facilities, and noting that physical protection against such acts has become a matter of increased national and international concern,

*Deeply concerned* by the worldwide escalation of acts of terrorism in all its forms and manifestations, and by the threats posed by international terrorism and organized crime,

*Believing* that physical protection plays an important role in supporting nuclear non-proliferation and counter-terrorism objectives,

*Desiring* through this Convention to contribute to strengthening worldwide the physical protection of nuclear material and nuclear facilities used for peaceful purposes,

*Convinced* that offences relating to nuclear material and nuclear facilities are a matter of grave concern and that there is an urgent need to adopt appropriate and effective measures, or to strengthen existing measures, to ensure the prevention, detection and punishment of such offences,

*Desiring* to strengthen further international co-operation to establish, in conformity with the national law of each State Party and with this Convention, effective measures for the physical protection of nuclear material and nuclear facilities,

*Convinced* that this Convention should complement the safe use, storage and transport of nuclear material and the safe operation of nuclear facilities,

*Recognizing* that there are internationally formulated physical protection recommendations that are updated from time to time which can provide guidance on contemporary means of achieving effective levels of physical protection,

*Recognizing* also that effective physical protection of nuclear material and nuclear facilities used for military purposes is a responsibility of the State possessing such nuclear material and nuclear facilities, and understanding that such material and facilities are and will continue to be accorded stringent physical protection,

*Have agreed* as follows:

Schedule 2A Preamble: substituted, on 20 November 2007, by section 40 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

## Article 1

For the purposes of this Convention:

- a. “nuclear material” means plutonium except that with isotopic concentration exceeding 80% in plutonium-238; uranium-233; uranium enriched in the isotopes 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-residue; any material containing one or more of the foregoing;
- b. “uranium enriched in the isotope 235 or 233” means uranium containing the isotopes 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature;
- c. “international nuclear transport” means the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the State where the shipment originates beginning with the departure from a facility of the shipper in that State and ending with the arrival at a facility of the receiver within the State of ultimate destination.
- (d) “nuclear facility” means a facility (including associated buildings and equipment) in which nuclear material is produced, processed, used, handled, stored or disposed of, if damage to or interference with such facility could lead to the release of significant amounts of radiation or radioactive material;
- (e) “sabotage” means any deliberate act directed against a nuclear facility or nuclear material in use, storage or transport which could directly or indirectly endanger the health and safety of personnel, the public or the environment by exposure to radiation or release of radioactive substances.

Schedule 2A Article 1(d): added, on 20 November 2007, by section 40 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Schedule 2A Article 1(e): added, on 20 November 2007, by section 40 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

## Article 1A

The purposes of this Convention are to achieve and maintain worldwide effective physical protection of nuclear material used for peaceful purposes and of nuclear facilities used for peaceful purposes; to prevent and combat offences relating to such material and facilities worldwide; as well as to facilitate co-operation among States Parties to those ends.

Schedule 2A Article 1A: inserted, on 20 November 2007, by section 40 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

## Article 2

1. This Convention shall apply to nuclear material used for peaceful purposes in use, storage and transport and to nuclear facilities used for peaceful purposes, provided, however, that articles 3 and 4 and paragraph 4 of article 5 of this Convention shall only apply to such nuclear material while in international nuclear transport.
2. The responsibility for the establishment, implementation and maintenance of a physical protection regime within a State Party rests entirely with that State.
3. Apart from the commitments expressly undertaken by States Parties under this Convention, nothing in this Convention shall be interpreted as affecting the sovereign rights of a State.
4.
  - (a) Nothing in this Convention shall affect other rights, obligations and responsibilities of States Parties under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.
  - (b) The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.
  - (c) Nothing in this Convention shall be construed as a lawful authorization to use or threaten to use force against nuclear material or nuclear facilities used for peaceful purposes.
  - (d) Nothing in this Convention condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws.
5. This Convention shall not apply to nuclear material used or retained for military purposes or to a nuclear facility containing such material.

Schedule 2A Article 2: substituted, on 20 November 2007, by section 40 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

## **Article 2A**

1. Each State Party shall establish, implement and maintain an appropriate physical protection regime applicable to nuclear material and nuclear facilities under its jurisdiction, with the aim of:
  - (a) protecting against theft and other unlawful taking of nuclear material in use, storage and transport;
  - (b) ensuring the implementation of rapid and comprehensive measures to locate and, where appropriate, recover missing or stolen nuclear material; when the material is located outside its territory, that State Party shall act in accordance with article 5;
  - (c) protecting nuclear material and nuclear facilities against sabotage; and
  - (d) mitigating or minimizing the radiological consequences of sabotage.
2. In implementing paragraph 1, each State Party shall:
  - (a) establish and maintain a legislative and regulatory framework to govern physical protection;
  - (b) establish or designate a competent authority or authorities responsible for the implementation of the legislative and regulatory framework; and
  - (c) take other appropriate measures necessary for the physical protection of nuclear material and nuclear facilities.
3. In implementing the obligations under paragraphs 1 and 2, each State Party shall, without prejudice to any other provisions of this Convention, apply insofar as is reasonable and practicable the following Fundamental Principles of Physical Protection of Nuclear Material and Nuclear Facilities.

### *Fundamental Principle A: Responsibility of the State*

The responsibility for the establishment, implementation and maintenance of a physical protection regime within a State rests entirely with that State.

### *Fundamental Principle B: Responsibilities During International Transport*

The responsibility of a State for ensuring that nuclear material is adequately protected extends to the international transport thereof, until that responsibility is properly transferred to another State, as appropriate.

### *Fundamental Principle C: Legislative and Regulatory Framework*

The State is responsible for establishing and maintaining a legislative and regulatory framework to govern physical protection. This framework should provide for the establishment of applicable physical protection requirements and include a system of evaluation and licensing or other procedures to grant authorization. This framework should include a system of inspection of nuclear facilities and transport to verify compliance with applicable requirements and

conditions of the license or other authorizing document, and to establish a means to enforce applicable requirements and conditions, including effective sanctions.

*Fundamental Principle D: Competent Authority*

The State should establish or designate a competent authority which is responsible for the implementation of the legislative and regulatory framework, and is provided with adequate authority, competence and financial and human resources to fulfill its assigned responsibilities. The State should take steps to ensure an effective independence between the functions of the State's competent authority and those of any other body in charge of the promotion or utilization of nuclear energy.

*Fundamental Principle E: Responsibility of the License Holders*

The responsibilities for implementing the various elements of physical protection within a State should be clearly identified. The State should ensure that the prime responsibility for the implementation of physical protection of nuclear material or of nuclear facilities rests with the holders of the relevant licenses or of other authorizing documents (e.g., operators or shippers).

*Fundamental Principle F: Security Culture*

All organizations involved in implementing physical protection should give due priority to the security culture, to its development and maintenance necessary to ensure its effective implementation in the entire organization.

*Fundamental Principle G: Threat*

The State's physical protection should be based on the State's current evaluation of the threat.

*Fundamental Principle H: Graded Approach*

Physical protection requirements should be based on a graded approach, taking into account the current evaluation of the threat, the relative attractiveness, the nature of the material and potential consequences associated with the unauthorized removal of nuclear material and with the sabotage against nuclear material or nuclear facilities.

*Fundamental Principle I: Defence in Depth*

The State's requirements for physical protection should reflect a concept of several layers and methods of protection (structural or other technical, personnel and organizational) that have to be overcome or circumvented by an adversary in order to achieve his objectives.

*Fundamental Principle J: Quality Assurance*

A quality assurance policy and quality assurance programmes should be established and implemented with a view to providing confidence that specified requirements for all activities important to physical protection are satisfied.



*Fundamental Principle K: Contingency Plans*

Contingency (emergency) plans to respond to unauthorized removal of nuclear material or sabotage of nuclear facilities or nuclear material, or attempts thereof, should be prepared and appropriately exercised by all license holders and authorities concerned.

*Fundamental Principle L: Confidentiality*

The State should establish requirements for protecting the confidentiality of information, the unauthorized disclosure of which could compromise the physical protection of nuclear material and nuclear facilities.

4. (a) The provisions of this article shall not apply to any nuclear material which the State Party reasonably decides does not need to be subject to the physical protection regime established pursuant to paragraph 1, taking into account the nature of the material, its quantity and relative attractiveness and the potential radiological and other consequences associated with any unauthorized act directed against it and the current evaluation of the threat against it.
- (b) Nuclear material which is not subject to the provisions of this article pursuant to subparagraph (a) should be protected in accordance with prudent management practice.

Schedule 2A Article 2A: inserted, on 20 November 2007, by section 40 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

### **Article 3**

Each State Party shall take appropriate steps within the framework of its national law and consistent with international law to ensure as far as practicable that, during international nuclear transport, nuclear material within its territory, or on board a ship or aircraft under its jurisdiction insofar as such ship or aircraft is engaged in the transport to or from that State, is protected at the levels described in Annex 1.

### **Article 4**

1. Each State Party shall not export or authorize the export of nuclear material unless the State Party has received assurances that such material will be protected during the international nuclear transport at the levels described in Annex 1.
2. Each State Party shall not import or authorize the import of nuclear material from a State not party to this Convention unless the State Party has received assurances that such material will during the international nuclear transport be protected at the levels described in Annex 1.
3. A State Party shall not allow the transit of its territory by land or internal waterways or through its airports or seaports of nuclear material between States that are not parties to this Convention unless the State Party has received assur-

- ances as far as practicable that this nuclear material will be protected during international nuclear transport at the levels described in Annex 1.
4. Each State Party shall apply within the framework of its national law the levels of physical protection described in Annex I to nuclear material being transported from a part of that State to another part of the same State through international waters or airspace.
  5. The State Party responsible for receiving assurances that the nuclear material will be protected at the levels described in Annex I according to paragraphs I to 3 shall identify and inform in advance States which the nuclear material is expected to transit by land or internal waterways, or whose airports or seaports it is expected to enter.
  6. The responsibility for obtaining assurances referred to in paragraph I may be transferred, by mutual agreement, to the State Party involved in the transport as the importing State.
  7. Nothing in this article shall be interpreted as in any way affecting the territorial sovereignty and jurisdiction of a State, including that over its airspace and territorial sea.

### Article 5

1. States Parties shall identify and make known to each other directly or through the International Atomic Energy Agency their point of contact in relation to matters within the scope of this Convention.
2. In the case of theft, robbery or any other unlawful taking of nuclear material or credible threat thereof, States Parties shall, in accordance with their national law, provide co-operation and assistance to the maximum feasible extent in the recovery and protection of such material to any State that so requests. In particular:
  - (a) a State Party shall take appropriate steps to inform as soon as possible other States, which appear to it to be concerned, of any theft, robbery or other unlawful taking of nuclear material or credible threat thereof, and to inform, where appropriate, the International Atomic Energy Agency and other relevant international organizations;
  - (b) in doing so, as appropriate, the States Parties concerned shall exchange information with each other, the International Atomic Energy Agency and other relevant international organizations with a view to protecting threatened nuclear material, verifying the integrity of the shipping container or recovering unlawfully taken nuclear material and shall:
    - (i) co-ordinate their efforts through diplomatic and other agreed channels;
    - (ii) render assistance, if requested;

- (iii) ensure the return of recovered nuclear material stolen or missing as a consequence of the above-mentioned events.

The means of implementation of this co-operation shall be determined by the States Parties concerned.

3. In the case of a credible threat of sabotage of nuclear material or a nuclear facility or in the case of sabotage thereof, States Parties shall, to the maximum feasible extent, in accordance with their national law and consistent with their relevant obligations under international law, cooperate as follows:
  - (a) if a State Party has knowledge of a credible threat of sabotage of nuclear material or a nuclear facility in another State, the former shall decide on appropriate steps to be taken in order to inform that State as soon as possible and, where appropriate, the International Atomic Energy Agency and other relevant international organizations of that threat, with a view to preventing the sabotage;
  - (b) in the case of sabotage of nuclear material or a nuclear facility in a State Party and if in its view other States are likely to be radiologically affected, the former, without prejudice to its other obligations under international law, shall take appropriate steps to inform as soon as possible the State or the States which are likely to be radiologically affected and to inform, where appropriate, the International Atomic Energy Agency and other relevant international organizations, with a view to minimizing or mitigating the radiological consequences thereof;
  - (c) if in the context of sub-paragraphs (a) and (b), a State Party requests assistance, each State Party to which a request for assistance is directed shall promptly decide and notify the requesting State Party, directly or through the International Atomic Energy Agency, whether it is in a position to render the assistance requested and the scope and terms of the assistance that may be rendered;
  - (d) co-ordination of the co-operation under sub-paragraphs (a) to (c) shall be through diplomatic or other agreed channels. The means of implementation of this cooperation shall be determined bilaterally or multilaterally by the States Parties concerned.
4. States Parties shall co-operate and consult, as appropriate, with each other directly or through the International Atomic Energy Agency and other relevant international organizations, with a view to obtaining guidance on the design, maintenance and improvement of systems of physical protection of nuclear material in international transport.
5. A State Party may consult and co-operate, as appropriate, with other States Parties directly or through the International Atomic Energy Agency and other relevant international organizations, with a view to obtaining their guidance on the design, maintenance and improvement of its national system of physical pro-

tection of nuclear material in domestic use, storage and transport and of nuclear facilities.

Schedule 2A Article 5: substituted, on 20 November 2007, by section 40 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

### Article 6

1. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations or to States that are not parties to this Convention in confidence, steps shall be taken to ensure that the confidentiality of such information is protected. A State Party that has received information in confidence from another State Party may provide this information to third parties only with the consent of that other State Party.
2. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or the physical protection of nuclear material or nuclear facilities.

Schedule 2A Article 6: substituted, on 20 November 2007, by section 40 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

### Article 7

1. The intentional commission of:
  - (a) an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property or to the environment;
  - (b) a theft or robbery of nuclear material;
  - (c) an embezzlement or fraudulent obtaining of nuclear material;
  - (d) an act which constitutes the carrying, sending, or moving of nuclear material into or out of a State without lawful authority;
  - (e) an act directed against a nuclear facility, or an act interfering with the operation of a nuclear facility, where the offender intentionally causes, or where he knows that the act is likely to cause, death or serious injury to any person or substantial damage to property or to the environment by exposure to radiation or release of radioactive substances, unless the act is undertaken in conformity with the national law of the State Party in the territory of which the nuclear facility is situated;

- (f) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;
- (g) a threat:
  - (i) to use nuclear material to cause death or serious injury to any person or substantial damage to property or to the environment or to commit the offence described in subparagraph (e), or
  - (ii) to commit an offence described in subparagraphs (b) and (e) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;
- (h) an attempt to commit any offence described in sub-paragraphs (a) to (e);
- (i) an act which constitutes participation in any offence described in sub-paragraphs (a) to (h);
- (j) an act of any person who organizes or directs others to commit an offence described in sub-paragraphs (a) to (h); and
- (k) an act which contributes to the commission of any offence described in sub-paragraphs (a) to (h) by a group of persons acting with a common purpose; such act shall be intentional and shall either:
  - (i) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence described in sub-paragraphs (a) to (g), or
  - (ii) be made in the knowledge of the intention of the group to commit an offence described in sub-paragraphs (a) to (g)

shall be made a punishable offence by each State Party under its national law.

2. Each State Party shall make the offences described in this article punishable by appropriate penalties which take into account their grave nature.

Schedule 2A Article 7(1): substituted, on 20 November 2007, by section 40 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

## Article 8

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 7 in the following cases:
  - a. when the offence is committed in the territory of that State or on board a ship or aircraft registered in that State;
  - b. when the alleged offender is a national of that State.
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these offences in cases where the alleged offender is present in its territory and it does not extradite him pursuant to article 11 to any of the States mentioned in paragraph 1.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.
4. In addition to the States Parties mentioned in paragraphs I and 2, each State Party may, consistent with international law, establish its jurisdiction over the offences set forth in article 7 when it is involved in international nuclear transport as the exporting or importing State.

### **Article 9**

Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take appropriate measures, including detention, under its national law to ensure his presence for the purpose of prosecution or extradition. Measures taken according to this article shall be notified without delay to the States required to establish jurisdiction pursuant to article 8 and, where appropriate, all other States concerned.

### **Article 10**

The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

### **Article 11**

1. The offences in article 7 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include those offences as extraditable offences in every future extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with paragraph I of article 8.

### **Article 11A**

None of the offences set forth in article 7 shall be regarded for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Schedule 2A Article 11A: inserted, on 20 November 2007, by section 40 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

### **Article 11B**

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 7 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Schedule 2A Article 11B: inserted, on 20 November 2007, by section 40 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

### **Article 12**

Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 7 shall be guaranteed fair treatment at all stages of the proceedings.

### **Article 13**

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article 7, including the supply of evidence at their disposal necessary for the proceedings. The law of the State requested shall apply in all cases.
2. The provisions of paragraph I shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

### **Article 13A**

Nothing in this Convention shall affect the transfer of nuclear technology for peaceful purposes that is undertaken to strengthen the physical protection of nuclear material and nuclear facilities.

Schedule 2A Article 13A: inserted, on 20 November 2007, by section 40 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

### Article 14

1. Each State Party shall inform the depositary of its laws and regulations which give effect to this Convention. The depositary shall communicate such information periodically to all States Parties.
2. The State Party where an alleged offender is prosecuted shall, wherever practicable, first communicate the final outcome of the proceedings to the States directly concerned. The State Party shall also communicate the final outcome to the depositary who shall inform all States.
3. Where an offence involves nuclear material in domestic use, storage or transport, and both the alleged offender and the nuclear material remain in the territory of the State Party in which the offence was committed, or where an offence involves a nuclear facility and the alleged offender remains in the territory of the State Party in which the offence was committed, nothing in this Convention shall be interpreted as requiring that State Party to provide information concerning criminal proceedings arising out of such an offence.

Schedule 2A Article 14(3): substituted, on 20 November 2007, by section 40 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

### Article 15

The Annexes constitute an integral part of this Convention

### Article 16

1. A conference of States Parties shall be convened by the depositary five years after the entry into force of the Amendment adopted on 8 July 2005 to review the implementation of this Convention and its adequacy as concerns the preamble, the whole of the operative part and the annexes in the light of the then prevailing situation.
2. At intervals of not less than five years thereafter, the majority of States Parties may obtain, by submitting a proposal to this effect to the depositary, the convening of further conferences with the same objective.

Schedule 2A Article 16: substituted, on 20 November 2007, by section 40 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

### Article 17

1. In the event of a dispute between two or more States Parties concerning the interpretation or application of this Convention, such States Parties shall consult with a view to the settlement of the dispute by negotiation, or by any other peaceful means of settling disputes acceptable to all parties to the dispute.
2. Any dispute of this character which cannot be settled in the manner prescribed in paragraph 1 shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where



a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In case of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.

3. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2. The other States Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2, with respect to a State Party which has made a reservation to that procedure.
4. Any State Party which has made a reservation in accordance with paragraph 3 may at any time withdraw that reservation by notification to the depositary.

### **Article 18**

1. This Convention shall be open for signature by all States at the Headquarters of the International Atomic Energy Agency in Vienna and at the Headquarters of the United Nations in New York from 3 March 1980 until its entry into force.
2. This Convention is subject to ratification, acceptance or approval by the signatory States.
3. After its entry into force, this Convention will be open for accession by all States.
  - a. This Convention shall be open for signature or accession by international organizations and regional organizations of an integration or other nature, provided that any such organization is constituted by sovereign States and has competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention.
  - b. In matters within their competence, such organizations shall, on their own behalf, exercise the rights and fulfill the responsibilities which this Convention attributes to States Parties.
  - c. When becoming party to this Convention such an organization shall communicate to the depositary a declaration indicating which States are members thereof and which articles of this Convention do not apply to it
  - d. Such an organization shall not hold any vote additional to those of its Member States.
4. Instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

### **Article 19**

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty first instrument of ratification, acceptance or approval with the depositary.
2. For each State ratifying, accepting, approving or acceding to the Convention after the date of deposit of the twenty first instrument of ratification, acceptance or approval, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

### **Article 20**

1. Without prejudice to article 16 a State Party may propose amendments to this Convention. The proposed amendment shall be submitted to the depositary who shall circulate it immediately to all States Parties. If a majority of States Parties request the depositary to convene a conference to consider the proposed amendments, the depositary shall invite all States Parties to attend such a conference to begin not sooner than thirty days after the invitations are issued. Any amendment adopted at the conference by a two-thirds majority of all States Parties shall be promptly circulated by the depositary to all States Parties.
2. The amendment shall enter into force for each State Party that deposits its instrument of ratification, acceptance or approval of the amendment on the thirtieth day after the date on which two thirds of the States Parties have deposited their instruments of ratification, acceptance or approval with the depositary. Thereafter, the amendment shall enter into force for any other State Party on the day on which that State Party deposits its instrument of ratification, acceptance or approval of the amendment.

### **Article 21**

1. Any State Party may denounce this Convention by written notification to the depositary.
2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the depositary.

### **Article 22**

The depositary shall promptly notify all States of:

- a. each signature of this Convention;
- b. each deposit of an instrument of ratification, acceptance, approval or accession;
- c. any reservation or withdrawal in accordance with article 17;
- d. communication made by an organization in accordance with paragraph 4(c) of article 18;

- e. the entry into force of this Convention;
- f. the entry into force of any amendment to this Convention; and
- g. any denunciation made under article 21.

### **Article 23**

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Director General of the International Atomic Energy Agency who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Convention,

opened for signature at Vienna and at New York on 3 March 1980.

## Annex 1

### Levels of Physical Protection to be Applied in International Transport of Nuclear Material as Categorized in Annex II

1. Levels of physical protection for nuclear material during storage incidental to international nuclear transport include:
  - a. For Category III materials, storage within an area to which access is controlled;
  - b. For Category II materials, storage within an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control or any area with an equivalent level of physical protection;
2. For Category I material, storage within a protected area as defined for Category II above, to which, in addition, access is restricted to persons whose trustworthiness has been determined, and which is under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their object the detection and prevention of any assault, unauthorized access or unauthorized removal of material.
3. Levels of physical protection for nuclear material during international transport include:
  - a. For Category II and III materials, transportation shall take place under special precautions including prior arrangements among sender, receiver, and carrier, and prior agreement between natural or legal persons subject to the jurisdiction and regulation of exporting and importing States, specifying time, place and procedures for transferring transport responsibility;
  - b. For Category I materials, transportation shall take place under special precautions identified above for transportation of Category II and III materials, and in addition, under constant surveillance by escorts and under conditions which assure close communication with appropriate response forces;
  - c. For natural uranium other than in the form of ore or ore-residue transportation protection for quantities exceeding 500 kilograms U shall include advance notification of shipment specifying mode of transport, expected time of arrival and confirmation of receipt of shipment.

## Annex 2

TABLE: CATEGORIZATION OF NUCLEAR MATERIAL

Material	Form	Category		
		I	II	III <sup>c/</sup>
1. Plutonium <sup>a/</sup>	Unirradiated <sup>b/</sup>	2 kg or more	Less than 2 kg but more than 500 g	500 g or less but more than 15 g
2. Uranium-235	Unirradiated <sup>b/</sup> - uranium enriched to 20% <sup>235</sup> U or more - uranium enriched to 10% <sup>235</sup> U but less than 20% - uranium enriched above natural, but less than 10% <sup>235</sup> U	5 kg or more	Less than 5 kg but more than 1 kg 10 kg or more	1 kg or less but more than 15 g Less than 10 kg but more than 1 kg 10 kg or more
3. Uranium-233	Unirradiated <sup>b/</sup>	2 kg or more	Less than 2 kg but more than 500 g	500 g or less but more than 15 g
4. Irradiated fuel			Depleted or natural uranium, thorium or low-enriched fuel (less than 10% fissile content) <sup>d/e/</sup>	

- a. All plutonium except that with isotopic concentration exceeding 80% in plutonium-238.
- b/ Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 1 gray/hour (100 rads/hour) at one metre unshielded.
- c. Quantities not falling in Category III and natural uranium should be protected in accordance with prudent management practice,
- d. Although this level of protection is recommended, it would be open to States, upon evaluation of the specific circumstances, to assign a different category of physical protection.
- e/ Other fuel which by virtue of its original fissile material content is classified as Category I and II before irradiation may be reduced one category level while the radiation level from the fuel exceeds 1 gray/hour (100 rads/hour) at one metre unshielded.

Schedule 2A Annex 2 footnote b: substituted, on 20 November 2007, by section 40 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Schedule 2A Annex 2 footnote e: substituted, on 20 November 2007, by section 40 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

**Schedule 2B**  
**Convention on the Marking of Plastic Explosives for the Purpose of  
Detection**

Schedule 2B: inserted, on 17 February 2004, by section 16 of the Terrorism Suppression Amendment Act 2003 (2003 No 106).

**Done at Montreal, on 1 March 1991**

THE STATES PARTIES to this Convention,

CONSCIOUS of the implications of acts of terrorism for international security;

EXPRESSING deep concern regarding terrorist acts aimed at destruction of aircraft, other means of transportation and other targets;

CONCERNED that plastic explosives have been used for such terrorist acts;

CONSIDERING that the marking of such explosives for the purpose of detection would contribute significantly to the prevention of such unlawful acts;

RECOGNIZING that for the purpose of deterring such unlawful acts there is an urgent need for an international instrument obliging States to adopt appropriate measures to ensure that plastic explosives are duly marked;

CONSIDERING United Nations Security Council Resolution 635 of 14 June 1989, and United Nations General Assembly Resolution 44/29 of 4 December 1989 urging the International Civil Aviation Organization to intensify its work on devising an international regime for the marking of plastic or sheet explosives for the purpose of detection;

BEARING IN MIND Resolution A27-8 adopted unanimously by the 27th Session of the Assembly of the International Civil Aviation Organization which endorsed with the highest and overriding priority the preparation of a new international instrument regarding the marking of plastic or sheet explosives for detection;

NOTING with satisfaction the role played by the Council of the International Civil Aviation Organization in the preparation of the Convention as well as its willingness to assume functions related to its implementation;

HAVE AGREED as follows:

**Article 1**

For the purposes of this Convention:

1. “Explosives” mean explosive products, commonly known as plastic explosives, including explosives in flexible or elastic sheet form, as described in the Technical Annex to this Convention.
2. “Detection agent” means a substance as described in the Technical Annex to this Convention which is introduced into an explosive to render it detectable.
3. “Marking” means introducing into an explosive a detection agent in accordance with the Technical Annex to this Convention.

4. “Manufacture” means any process, including reprocessing, that produces explosives.
5. “Duly authorized military devices” include, but are not restricted to, shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades and perforators manufactured exclusively for military or police purposes according to the laws and regulations of the State Party concerned.
6. “Producer State” means any State in whose territory explosives are manufactured.

## **Article 2**

Each State Party shall take the necessary and effective measures to prohibit and prevent the manufacture in its territory of unmarked explosives.

## **Article 3**

1. Each State Party shall take the necessary and effective measures to prohibit and prevent the movement into or out of its territory of unmarked explosives.
2. The preceding paragraph shall not apply in respect of movements for purposes not inconsistent with the objectives of this Convention, by authorities of a State Party performing military or police functions, of unmarked explosives under the control of that State Party in accordance with paragraph 1 of Article IV.

## **Article 4**

1. Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of unmarked explosives which have been manufactured in or brought into its territory prior to the entry into force of this Convention in respect of that State, so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.
2. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this Article not held by its authorities performing military or police functions are destroyed or consumed for purposes not inconsistent with the objectives of this Convention, marked or rendered permanently ineffective, within a period of three years from the entry into force of this Convention in respect of that State.
3. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this Article held by its authorities performing military or police functions and that are not incorporated as an integral part of duly authorized military devices are destroyed or consumed for purposes not inconsistent with the objectives of this Convention, marked or rendered permanently ineffective, within a period of fifteen years from the entry into force of this Convention in respect of that State.

4. Each State Party shall take the necessary measures to ensure the destruction, as soon as possible, in its territory of unmarked explosives which may be discovered therein and which are not referred to in the preceding paragraphs of this Article, other than stocks of unmarked explosives held by its authorities performing military or police functions and incorporated as an integral part of duly authorized military devices at the date of the entry into force of this Convention in respect of that State.
5. Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of the explosives referred to in paragraph II of Part 1 of the Technical Annex to this Convention so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.
- [6.] Each State Party shall take the necessary measures to ensure the destruction, as soon as possible, in its territory of unmarked explosives manufactured since the coming into force of this Convention in respect of that State that are not incorporated as specified in paragraph II (d) of Part 1 of the Technical Annex to this Convention and of unmarked explosives which no longer fall within the scope of any other subparagraphs of the said paragraph II.

### **Article 5**

1. There is established by this Convention an International Explosives Technical Commission (hereinafter referred to as “the Commission”) consisting of not less than fifteen nor more than nineteen members appointed by the Council of the International Civil Aviation Organization (hereinafter referred to as “the Council”) from among persons nominated by States Parties to this Convention.
2. The members of the Commission shall be experts having direct and substantial experience in matters relating to the manufacture or detection of, or research in, explosives.
3. Members of the Commission shall serve for a period of three years and shall be eligible for re-appointment.
4. Sessions of the Commission shall be convened, at least once a year at the Headquarters of the International Civil Aviation Organization, or at such places and times as may be directed or approved by the Council.
5. The Commission shall adopt its rules of procedure, subject to the approval of the Council.

### **Article 6**

1. The Commission shall evaluate technical developments relating to the manufacture, marking and detection of explosives.
2. The Commission, through the Council, shall report its findings to the States Parties and international organizations concerned.



3. Whenever necessary, the Commission shall make recommendations to the Council for amendments to the Technical Annex to this Convention. The Commission shall endeavour to take its decisions on such recommendations by consensus. In the absence of consensus the Commission shall take such decisions by a two-thirds majority vote of its members.
- [4.] The Council may, on the recommendation of the Commission, propose to States Parties amendments to the Technical Annex to this Convention.

### **Article 7**

1. Any State Party may, within ninety days from the date of notification of a proposed amendment to the Technical Annex to this Convention, transmit to the Council its comments. The Council shall communicate these comments to the Commission as soon as possible for its consideration. The Council shall invite any State Party which comments on or objects to the proposed amendment to consult the Commission.
2. The Commission shall consider the views of States Parties made pursuant to the preceding paragraph and report to the Council. The Council, after consideration of the Commission's report, and taking into account the nature of the amendment and the comments of States Parties, including producer States, may propose the amendment to all States Parties for adoption.
3. If a proposed amendment has not been objected to by five or more States Parties by means of written notification to the Council within ninety days from the date of notification of the amendment by the Council, it shall be deemed to have been adopted, and shall enter into force one hundred and eighty days thereafter or after such other period as specified in the proposed amendment for States Parties not having expressly objected thereto.
4. States Parties having expressly objected to the proposed amendment may, subsequently, by means of the deposit of an instrument of acceptance or approval, express their consent to be bound by the provisions of the amendment.
5. If five or more States Parties have objected to the proposed amendment, the Council shall refer it to the Commission for further consideration.
6. If the proposed amendment has not been adopted in accordance with paragraph 3 of this Article, the Council may also convene a conference of all States Parties.

### **Article 8**

1. States Parties shall, if possible, transmit to the Council information that would assist the Commission in the discharge of its functions under paragraph 1 of Article VI.
2. States Parties shall keep the Council informed of measures they have taken to implement the provisions of this Convention. The Council shall communicate

such information to all States Parties and international organizations concerned.

### **Article 9**

The Council shall, in co-operation with States Parties and international organizations concerned, take appropriate measures to facilitate the implementation of this Convention, including the provision of technical assistance and measures for the exchange of information relating to technical developments in the marking and detection of explosives.

### **Article 10**

The Technical Annex to this Convention shall form an integral part of this Convention.

### **Article 11**

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State Party may, at the time of signature, ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.
3. Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary.

### **Article 12**

Except as provided in Article XI no reservation may be made to this Convention.

### **Article 13**

1. This Convention shall be open for signature in Montreal on 1 March 1991 by States participating in the International Conference on Air Law held at Montreal from 12 February to 1 March 1991. After 1 March 1991 the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance

with paragraph 3 of this Article. Any State which does not sign this Convention may accede to it at any time.

2. This Convention shall be subject to ratification, acceptance, approval or accession by States. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary. When depositing its instrument of ratification, acceptance, approval or accession, each State shall declare whether or not it is a producer State.
3. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Depositary, provided that no fewer than five such States have declared pursuant to paragraph 2 of this Article that they are producer States. Should thirty-five such instruments be deposited prior to the deposit of their instruments by five producer States, this Convention shall enter into force on the sixtieth day following the date of deposit of the instrument of ratification, acceptance, approval or accession of the fifth producer State.
4. For other States, this Convention shall enter into force sixty days following the date of deposit of their instruments of ratification, acceptance, approval or accession.
5. As soon as this Convention comes into force, it shall be registered by the Depositary pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

#### **Article 14**

The Depositary shall promptly notify all signatories and States Parties of:

1. each signature of this Convention and date thereof;
2. each deposit of an instrument of ratification, acceptance, approval or accession and date thereof, giving special reference to whether the State has identified itself as a producer State;
3. the date of entry into force of this Convention;
4. the date of entry into force of any amendment to this Convention or its Technical Annex;
5. any denunciation made under Article XV; and
6. any declaration made under paragraph 2 of Article XI.

#### **Article 15**

1. Any State Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their Governments, have signed this Convention.

DONE at Montreal, this first day of March, one thousand nine hundred and ninety-one, in one original, drawn up in five authentic texts in the English, French, Russian, Spanish and Arabic languages.

## **Technical Annex**

### **Part 1: Description of Explosives**

1. The explosives referred to in paragraph 1 of Article 1 of this Convention are those that:
  - are formulated with one or more high explosives which in their pure form have a vapour pressure less than 10<sup>-4</sup> Pa at a temperature of 25-C;
  - a. are formulated with a binder material; and
  - b. are, as a mixture, malleable or flexible at normal room temperature.
2. The following explosives, even though meeting the description of explosive in paragraph 1 of this Part, shall not be considered to be explosives as long as they continue to be held or used for the purposes specified below or remain incorporated as there specified, namely those explosive that:
  - a. are manufactured, or held, in limited quantities solely for use in duly authorized research, development or testing of new or modified explosives;
  - b. are manufactured, or held, in limited quantities solely for use in duly authorized training in explosives detection and/or development or testing of explosives detection equipment;
  - c. are manufactured, or held, in limited quantities solely for duly authorized forensic science purposes; or
  - d. are destined to be and are incorporated as an integral part of duly authorized military devices in the territory of the producer State within three years after the coming into force of this Convention in respect of that State. Such devices produced in this period of three years shall be deemed to be duly authorized military devices within paragraph 4 of Article 4 of this Convention.
3. In this Part:

“duly authorized” in paragraph 2 (a), (b) and (c) means permitted according to the laws and regulations of the State Party concerned; and “high explosives” include but are not restricted to cyclotetramethylenetetranitramine (HMX), pentaerythritol tetranitrate (PETN) and cyclotrimethylenetrinitramine (RDX)

## Part 2: Detection Agents

The present version of the Conventions and Protocols might differ slightly from the consolidated official English versions which were - by end of November 2000 - not available to TPB in electronic form. Please contact the Codification Division of the UN Office of Legal Affairs (United Nations, Room S-3450 A, New York, N.Y. 10017, USA) for the official versions in English and other official UN languages.

Table:

<i>Name of detection agent</i>	<i>Molecular formula</i>	<i>Molecular weight</i>	<i>Minimum concentration</i>
Ethylene glycol dinitrate (EGDN)	C <sub>2</sub> H <sub>4</sub> (NO <sub>3</sub> ) <sub>2</sub>	152	0.2% by mass
2,3-Dimethyl-2,3-dinitro butane (DMNB)	C <sub>6</sub> H <sub>12</sub> (NO <sub>2</sub> ) <sub>2</sub>	176	0.1% by mass
para-Mononitrololuene (p-MNT)	C <sub>7</sub> H <sub>7</sub> NO <sub>2</sub>	137	0.5% by mass
ortho-Mononitrolouene (o-MNT)	C <sub>7</sub> H <sub>7</sub> NO <sub>2</sub>	137	0.5% by mass

Any explosive which, as a result of its normal formulation contains any of the designated detection agents at or above the required minimum concentration level shall be deemed to be marked.

## Schedule 2C

### Nuclear Terrorism Convention

s 4(1)

Schedule 2C: inserted, on 20 November 2007, by section 41 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

#### **International Convention for the Suppression of Acts of Nuclear Terrorism**

*The States Parties to this Convention,*

*Having in mind* the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

*Recalling* the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations of 24 October 1995,

*Recognizing* the right of all States to develop and apply nuclear energy for peaceful purposes and their legitimate interests in the potential benefits to be derived from the peaceful application of nuclear energy,

*Bearing in mind* the Convention on the Physical Protection of Nuclear Material of 1980,

*Deeply concerned* about the worldwide escalation of acts of terrorism in all its forms and manifestations,

*Recalling* the Declaration on Measures to Eliminate International Terrorism annexed to General Assembly resolution 49/60 of 9 December 1994, in which, inter alia, the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States,

*Noting* that the Declaration also encouraged States to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter,

*Recalling* General Assembly resolution 51/210 of 17 December 1996 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism annexed thereto,

*Recalling also* that, pursuant to General Assembly resolution 51/210, an ad hoc committee was established to elaborate, inter alia, an international convention for the suppression of acts of nuclear terrorism to supplement related existing international instruments,

*Noting* that acts of nuclear terrorism may result in the gravest consequences and may pose a threat to international peace and security,

*Noting also* that existing multilateral legal provisions do not adequately address those attacks,

*Being convinced* of the urgent need to enhance international cooperation between States in devising and adopting effective and practical measures for the prevention of such acts of terrorism and for the prosecution and punishment of their perpetrators,

*Noting* that the activities of military forces of States are governed by rules of international law outside of the framework of this Convention and that the exclusion of certain actions from the coverage of this Convention does not condone or make lawful otherwise unlawful acts, or preclude prosecution under other laws,

*Have agreed* as follows:

## Article 1

For the purposes of this Convention:

1. “Radioactive material” means nuclear material and other radioactive substances which contain nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionizing radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, owing to their radiological or fissile properties, cause death, serious bodily injury or substantial damage to property or to the environment.
2. “Nuclear material” means plutonium, except that with isotopic concentration exceeding 80 per cent in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore residue; or any material containing one or more of the foregoing;

Whereby “uranium enriched in the isotope 235 or 233” means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.

3. “Nuclear facility” means:
  - (a) Any nuclear reactor, including reactors installed on vessels, vehicles, aircraft or space objects for use as an energy source in order to propel such vessels, vehicles, aircraft or space objects or for any other purpose;
  - (b) Any plant or conveyance being used for the production, storage, processing or transport of radioactive material.
4. “Device” means:
  - (a) Any nuclear explosive device; or
  - (b) Any radioactive material dispersal or radiation-emitting device which may, owing to its radiological properties, cause death, serious bodily injury or substantial damage to property or to the environment.

5. “State or government facility” includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of a Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.
6. “Military forces of a State” means the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security and persons acting in support of those armed forces who are under their formal command, control and responsibility.

## Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally:
  - (a) Possesses radioactive material or makes or possesses a device:
    - (i) With the intent to cause death or serious bodily injury; or
    - (ii) With the intent to cause substantial damage to property or to the environment;
  - (b) Uses in any way radioactive material or a device, or uses or damages a nuclear facility in a manner which releases or risks the release of radioactive material:
    - (i) With the intent to cause death or serious bodily injury; or
    - (ii) With the intent to cause substantial damage to property or to the environment; or
    - (iii) With the intent to compel a natural or legal person, an international organization or a State to do or refrain from doing an act.
2. Any person also commits an offence if that person:
  - (a) Threatens, under circumstances which indicate the credibility of the threat, to commit an offence as set forth in paragraph 1 (b) of the present article; or
  - (b) Demands unlawfully and intentionally radioactive material, a device or a nuclear facility by threat, under circumstances which indicate the credibility of the threat, or by use of force.
3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.
4. Any person also commits an offence if that person:
  - (a) Participates as an accomplice in an offence as set forth in paragraph 1, 2 or 3 of the present article; or
  - (b) Organizes or directs others to commit an offence as set forth in paragraph 1, 2 or 3 of the present article; or



- (c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1, 2 or 3 of the present article by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

### **Article 3**

This Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis under article 9, paragraph 1 or 2, to exercise jurisdiction, except that the provisions of articles 7, 12, 14, 15, 16 and 17 shall, as appropriate, apply in those cases.

### **Article 4**

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.
2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.
3. The provisions of paragraph 2 of the present article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws.
4. This Convention does not address, nor can it be interpreted as addressing, in any way, the issue of the legality of the use or threat of use of nuclear weapons by States.

### **Article 5**

Each State Party shall adopt such measures as may be necessary:

- (a) To establish as criminal offences under its national law the offences set forth in article 2;
- (b) To make those offences punishable by appropriate penalties which take into account the grave nature of these offences.

## Article 6

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature.

## Article 7

1. States Parties shall cooperate by:
  - (a) Taking all practicable measures, including, if necessary, adapting their national law, to prevent and counter preparations in their respective territories for the commission within or outside their territories of the offences set forth in article 2, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or knowingly provide technical assistance or information or engage in the perpetration of those offences;
  - (b) Exchanging accurate and verified information in accordance with their national law and in the manner and subject to the conditions specified herein, and coordinating administrative and other measures taken as appropriate to detect, prevent, suppress and investigate the offences set forth in article 2 and also in order to institute criminal proceedings against persons alleged to have committed those crimes. In particular, a State Party shall take appropriate measures in order to inform without delay the other States referred to in article 9 in respect of the commission of the offences set forth in article 2 as well as preparations to commit such offences about which it has learned, and also to inform, where appropriate, international organizations.
2. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.
3. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or the physical protection of nuclear material.

4. States Parties shall inform the Secretary-General of the United Nations of their competent authorities and liaison points responsible for sending and receiving the information referred to in the present article. The Secretary-General of the United Nations shall communicate such information regarding competent authorities and liaison points to all States Parties and the International Atomic Energy Agency. Such authorities and liaison points must be accessible on a continuous basis.

### **Article 8**

For purposes of preventing offences under this Convention, States Parties shall make every effort to adopt appropriate measures to ensure the protection of radioactive material, taking into account relevant recommendations and functions of the International Atomic Energy Agency.

### **Article 9**

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:
  - (a) The offence is committed in the territory of that State; or
  - (b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or
  - (c) The offence is committed by a national of that State.
2. A State Party may also establish its jurisdiction over any such offence when:
  - (a) The offence is committed against a national of that State; or
  - (b) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or
  - (c) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or
  - (d) The offence is committed in an attempt to compel that State to do or abstain from doing any act; or
  - (e) The offence is committed on board an aircraft which is operated by the Government of that State.
3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established under its national law in accordance with paragraph 2 of the present article. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.
4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where

the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2 of the present article.

5. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its national law.

### Article 10

1. Upon receiving information that an offence set forth in article 2 has been committed or is being committed in the territory of a State Party or that a person who has committed or who is alleged to have committed such an offence may be present in its territory, the State Party concerned shall take such measures as may be necessary under its national law to investigate the facts contained in the information.
2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its national law so as to ensure that person's presence for the purpose of prosecution or extradition.
3. Any person regarding whom the measures referred to in paragraph 2 of the present article are being taken shall be entitled:
  - (a) To communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;
  - (b) To be visited by a representative of that State;
  - (c) To be informed of that person's rights under subparagraphs (a) and (b).
4. The rights referred to in paragraph 3 of the present article shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.
5. The provisions of paragraphs 3 and 4 of the present article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 9, paragraph 1 (c) or 2 (c), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.
6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 9, paragraphs 1 and 2, and, if it considers it advisable, any other interested States Parties, of the fact that that person is in custody and of the circumstances which warrant that person's detention. The State which

makes the investigation contemplated in paragraph 1 of the present article shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

### **Article 11**

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 9 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.
2. Whenever a State Party is permitted under its national law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1 of the present article.

### **Article 12**

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights.

### **Article 13**

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.
2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.
4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 9, paragraphs 1 and 2.
5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

#### **Article 14**

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their national law.

#### **Article 15**

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

#### **Article 16**

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

### Article 17

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of testimony, identification or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention may be transferred if the following conditions are met:
  - (a) The person freely gives his or her informed consent; and
  - (b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.
2. For the purposes of the present article:
  - (a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;
  - (b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;
  - (c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;
  - (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.
3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

### Article 18

1. Upon seizing or otherwise taking control of radioactive material, devices or nuclear facilities, following the commission of an offence set forth in article 2, the State Party in possession of such items shall:
  - (a) Take steps to render harmless the radioactive material, device or nuclear facility;
  - (b) Ensure that any nuclear material is held in accordance with applicable International Atomic Energy Agency safeguards; and

- (c) Have regard to physical protection recommendations and health and safety standards published by the International Atomic Energy Agency.
2. Upon the completion of any proceedings connected with an offence set forth in article 2, or sooner if required by international law, any radioactive material, device or nuclear facility shall be returned, after consultations (in particular, regarding modalities of return and storage) with the States Parties concerned to the State Party to which it belongs, to the State Party of which the natural or legal person owning such radioactive material, device or facility is a national or resident, or to the State Party from whose territory it was stolen or otherwise unlawfully obtained.
3. (a) Where a State Party is prohibited by national or international law from returning or accepting such radioactive material, device or nuclear facility or where the States Parties concerned so agree, subject to paragraph 3(b) of the present article, the State Party in possession of the radioactive material, devices or nuclear facilities shall continue to take the steps described in paragraph 1 of the present article; such radioactive material, devices or nuclear facilities shall be used only for peaceful purposes;
- (b) Where it is not lawful for the State Party in possession of the radioactive material, devices or nuclear facilities to possess them, that State shall ensure that they are placed as soon as possible in the possession of a State for which such possession is lawful and which, where appropriate, has provided assurances consistent with the requirements of paragraph 1 of the present article in consultation with that State, for the purpose of rendering it harmless; such radioactive material, devices or nuclear facilities shall be used only for peaceful purposes.
4. If the radioactive material, devices or nuclear facilities referred to in paragraphs 1 and 2 of the present article do not belong to any of the States Parties or to a national or resident of a State Party or was not stolen or otherwise unlawfully obtained from the territory of a State Party, or if no State is willing to receive such items pursuant to paragraph 3 of the present article, a separate decision concerning its disposition shall, subject to paragraph 3 (b) of the present article, be taken after consultations between the States concerned and any relevant international organizations.
5. For the purposes of paragraphs 1, 2, 3 and 4 of the present article, the State Party in possession of the radioactive material, device or nuclear facility may request the assistance and cooperation of other States Parties, in particular the States Parties concerned, and any relevant international organizations, in particular the International Atomic Energy Agency. States Parties and the relevant international organizations are encouraged to provide assistance pursuant to this paragraph to the maximum extent possible.
6. The States Parties involved in the disposition or retention of the radioactive material, device or nuclear facility pursuant to the present article shall inform the Director General of the International Atomic Energy Agency of the manner



in which such an item was disposed of or retained. The Director General of the International Atomic Energy Agency shall transmit the information to the other States Parties.

7. In the event of any dissemination in connection with an offence set forth in article 2, nothing in the present article shall affect in any way the rules of international law governing liability for nuclear damage, or other rules of international law.

### **Article 19**

The State Party where the alleged offender is prosecuted shall, in accordance with its national law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

### **Article 20**

States Parties shall conduct consultations with one another directly or through the Secretary-General of the United Nations, with the assistance of international organizations as necessary, to ensure effective implementation of this Convention.

### **Article 21**

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

### **Article 22**

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other State Party by its national law.

### **Article 23**

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months of the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.
2. Each State may, at the time of signature, ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not

be bound by paragraph 1 with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 of the present article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

### **Article 24**

1. This Convention shall be open for signature by all States from 14 September 2005 until 31 December 2006 at United Nations Headquarters in New York.
2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.
3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

### **Article 25**

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.
2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

### **Article 26**

1. A State Party may propose an amendment to this Convention. The proposed amendment shall be submitted to the depositary, who circulates it immediately to all States Parties.
2. If the majority of the States Parties request the depositary to convene a conference to consider the proposed amendments, the depositary shall invite all States Parties to attend such a conference to begin no sooner than three months after the invitations are issued.
3. The conference shall make every effort to ensure amendments are adopted by consensus. Should this not be possible, amendments shall be adopted by a two-thirds majority of all States Parties. Any amendment adopted at the conference shall be promptly circulated by the depositary to all States Parties.
4. The amendment adopted pursuant to paragraph 3 of the present article shall enter into force for each State Party that deposits its instrument of ratification, acceptance, accession or approval of the amendment on the thirtieth day after the date on which two thirds of the States Parties have deposited their relevant

instrument. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day after the date on which that State deposits its relevant instrument.

### **Article 27**

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.
2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

### **Article 28**

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on 14 September 2005.

### Schedule 3

#### Specified terrorism conventions

s 4(1)

- 1 Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.
- 2 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.
- 3 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.
- 4 International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
- 5 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.
- 6 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.
- 7 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.
- 8 International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations at New York on 15 December 1997.
- 9 Convention on the Physical Protection of Nuclear Material, done at New York and Vienna, 3 March 1980.  
Schedule 3 clause 9: added, on 18 January 2004, by section 17 of the Terrorism Suppression Amendment Act 2003 (2003 No 106).
- 10 Convention for the Suppression of Acts of Nuclear Terrorism, adopted by the General Assembly of the United Nations at New York on 13 April 2005.  
Schedule 3 clause 10: added, on 20 November 2007, by section 42 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).
- 11 Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at London on 14 October 2005.  
Schedule 3 clause 11: inserted, on 27 May 2018, by section 24 of the Maritime Crimes Amendment Act 2017 (2017 No 49).

- 12 Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at London on 14 October 2005.

Schedule 3 clause 12: inserted, on 27 May 2018, by section 24 of the Maritime Crimes Amendment Act 2017 (2017 No 49).

## Schedule 4

### United Nations Security Council Resolution 1373 (2001)

s 4(1)

#### **Adopted by the Security Council at its 4385th meeting, on 28 September 2001**

*The Security Council,*

*Reaffirming* its resolutions 1269 (1999) of 19 October 1999 and 1368 (2001) of 12 September 2001,

*Reaffirming also* its unequivocal condemnation of the terrorist attacks which took place in New York, Washington, D.C. and Pennsylvania on 11 September 2001, and expressing its determination to prevent all such acts,

*Reaffirming further* that such acts, like any act of international terrorism, constitute a threat to international peace and security,

*Reaffirming* the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations as reiterated in resolution 1368 (2001),

*Reaffirming* the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

*Deeply concerned* by the increase, in various regions of the world, of acts of terrorism motivated by intolerance or extremism,

*Calling* on States to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism,

*Recognizing* the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism,

*Reaffirming* the principle established by the General Assembly in its declaration of October 1970 (resolution 2625 (XXV)) and reiterated by the Security Council in its resolution 1189 (1998) of 13 August 1998, namely that every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts,

*Acting* under Chapter VII of the Charter of the United Nations,

1. *Decides* that all States shall:
  - (a) Prevent and suppress the financing of terrorist acts;
  - (b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;

- (c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;
- (d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

2. *Decides also* that all States shall:

- (a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;
- (b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;
- (c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;
- (d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;
- (e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;
- (f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;
- (g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;

3. *Calls* upon all States to:
  - (a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;
  - (b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;
  - (c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;
  - (d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;
  - (e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);
  - (f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;
  - (g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists;
4. *Notes* with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard *emphasizes* the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security;
5. *Declares* that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations;
6. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of



the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and *calls upon* all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution;

7. *Directs* the Committee to delineate its tasks, submit a work programme within 30 days of the adoption of this resolution, and to consider the support it requires, in consultation with the Secretary-General;
8. *Expresses* its determination to take all necessary steps in order to ensure the full implementation of this resolution, in accordance with its responsibilities under the Charter;
9. *Decides* to remain seized of this matter.

## Schedule 4A

### United Nations Security Council Resolution 1267 (1999)

s 4(1)

Schedule 4A: inserted, on 20 November 2007, by section 43 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

#### **Resolution 1267 (1999)**

##### **Adopted by the Security Council at its 4051st meeting on 15 October 1999**

*The Security Council,*

*Reaffirming* its previous resolutions, in particular resolutions 1189 (1998) of 13 August 1998, 1193 (1998) of 28 August 1998 and 1214 (1998) of 8 December 1998, and the statements of its President on the situation in Afghanistan,

*Reaffirming* its strong commitment to the sovereignty, independence, territorial integrity and national unity of Afghanistan, and its respect for Afghanistan's cultural and historical heritage,

*Reiterating* its deep concern over the continuing violations of international humanitarian law and of human rights, particularly discrimination against women and girls, and over the significant rise in the illicit production of opium, and stressing that the capture by the Taliban of the Consulate-General of the Islamic Republic of Iran and the murder of Iranian diplomats and a journalist in Mazar-e-Sharif constituted flagrant violations of established international law,

*Recalling* the relevant international counter-terrorism conventions and in particular the obligations of parties to those conventions to extradite or prosecute terrorists,

*Strongly condemning* the continuing use of Afghan territory, especially areas controlled by the Taliban, for the sheltering and training of terrorists and planning of terrorist acts, and reaffirming its conviction that the suppression of international terrorism is essential for the maintenance of international peace and security,

*Deploring* the fact that the Taliban continues to provide safe haven to Usama bin Laden and to allow him and others associated with him to operate a network of terrorist training camps from Taliban-controlled territory and to use Afghanistan as a base from which to sponsor international terrorist operations,

*Noting* the indictment of Usama bin Laden and his associates by the United States of America for, *inter alia*, the 7 August 1998 bombings of the United States embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania and for conspiring to kill American nationals outside the United States, and noting also the request of the United States of America to the Taliban to surrender them for trial (S/1999/1021),

*Determining* that the failure of the Taliban authorities to respond to the demands in paragraph 13 of resolution 1214 (1998) constitutes a threat to international peace and security,

*Stressing* its determination to ensure respect for its resolutions,

*Acting* under Chapter VII of the Charter of the United Nations,

1. *Insists* that the Afghan faction known as the Taliban, which also calls itself the Islamic Emirate of Afghanistan, comply promptly with its previous resolutions and in particular cease the provision of sanctuary and training for international terrorists and their organizations, take appropriate effective measures to ensure that the territory under its control is not used for terrorist installations and camps, or for the preparation or organization of terrorist acts against other States or their citizens, and cooperate with efforts to bring indicted terrorists to justice;
2. *Demands* that the Taliban turn over Usama bin Laden without further delay to appropriate authorities in a country where he has been indicted, or to appropriate authorities in a country where he will be returned to such a country, or to appropriate authorities in a country where he will be arrested and effectively brought to justice;
3. *Decides* that on 14 November 1999 all States shall impose the measures set out in paragraph 4 below, unless the Council has previously decided, on the basis of a report of the Secretary-General, that the Taliban has fully complied with the obligation set out in paragraph 2 above;
4. *Decides further* that, in order to enforce paragraph 2 above, all States shall:
  - (a) Deny permission for any aircraft to take off from or land in their territory if it is owned, leased or operated by or on behalf of the Taliban as designated by the Committee established by paragraph 6 below, unless the particular flight has been approved in advance by the Committee on the grounds of humanitarian need, including religious obligation such as the performance of the Hajj;
  - (b) Freeze funds and other financial resources, including funds derived or generated from property owned or controlled directly or indirectly by the Taliban, or by any undertaking owned or controlled by the Taliban, as designated by the Committee established by paragraph 6 below, and ensure that neither they nor any other funds or financial resources so designated are made available, by their nationals or by any persons within their territory, to or for the benefit of the Taliban or any undertaking owned or controlled, directly or indirectly, by the Taliban, except as may be authorized by the Committee on a case-by-case basis on the grounds of humanitarian need;
5. *Urges* all States to cooperate with efforts to fulfil the demand in paragraph 2 above, and to consider further measures against Usama bin Laden and his associates;
6. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council consisting of all the members of the Council to undertake the following tasks and to report on its work to the Council with its observations and recommendations:

- (a) To seek from all States further information regarding the action taken by them with a view to effectively implementing the measures imposed by paragraph 4 above;
  - (b) To consider information brought to its attention by States concerning violations of the measures imposed by paragraph 4 above and to recommend appropriate measures in response thereto;
  - (c) To make periodic reports to the Council on the impact, including the humanitarian implications, of the measures imposed by paragraph 4 above;
  - (d) To make periodic reports to the Council on information submitted to it regarding alleged violations of the measures imposed by paragraph 4 above, identifying where possible persons or entities reported to be engaged in such violations;
  - (e) To designate the aircraft and funds or other financial resources referred to in paragraph 4 above in order to facilitate the implementation of the measures imposed by that paragraph;
  - (f) To consider requests for exemptions from the measures imposed by paragraph 4 above as provided in that paragraph, and to decide on the granting of an exemption to these measures in respect of the payment by the International Air Transport Association (IATA) to the aeronautical authority of Afghanistan on behalf of international airlines for air traffic control services;
  - (g) To examine the reports submitted pursuant to paragraph 9 below;
7. *Calls upon* all States to act strictly in accordance with the provisions of this resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to the date of coming into force of the measures imposed by paragraph 4 above;
  8. *Calls upon* States to bring proceedings against persons and entities within their jurisdiction that violate the measures imposed by paragraph 4 above and to impose appropriate penalties;
  9. *Calls upon* all States to cooperate fully with the Committee established by paragraph 6 above in the fulfilment of its tasks, including supplying such information as may be required by the Committee in pursuance of this resolution;
  10. *Requests* all States to report to the Committee established by paragraph 6 above within 30 days of the coming into force of the measures imposed by paragraph 4 above on the steps they have taken with a view to effectively implementing paragraph 4 above;
  11. *Requests* the Secretary-General to provide all necessary assistance to the Committee established by paragraph 6 above and to make the necessary arrangements in the Secretariat for this purpose;

12. *Requests* the Committee established by paragraph 6 above to determine appropriate arrangements, on the basis of recommendations of the Secretariat, with competent international organizations, neighbouring and other States, and parties concerned with a view to improving the monitoring of the implementation of the measures imposed by paragraph 4 above;
13. *Requests* the Secretariat to submit for consideration by the Committee established by paragraph 6 above information received from Governments and public sources on possible violations of the measures imposed by paragraph 4 above;
14. *Decides* to terminate the measures imposed by paragraph 4 above once the Secretary-General reports to the Security Council that the Taliban has fulfilled the obligation set out in paragraph 2 above;
15. *Expresses* its readiness to consider the imposition of further measures, in accordance with its responsibility under the Charter of the United Nations, with the aim of achieving the full implementation of this resolution;
16. *Decides* to remain actively seized of the matter.

## Schedule 4B

### United Nations Security Council Resolution 1333 (2000)

s 4(1)

Schedule 4B: inserted, on 20 November 2007, by section 43 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

#### Resolution 1333 (2000)

##### Adopted by the Security Council at its 4251st meeting, on 19 December 2000

*The Security Council,*

*Reaffirming* its previous resolutions, in particular resolution 1267 (1999) of 15 October 1999 and the statements of its President on the situation in Afghanistan,

*Reaffirming* its strong commitment to the sovereignty, independence, territorial integrity and national unity of Afghanistan, and its respect for Afghanistan's cultural and historical heritage,

*Recognizing* the critical humanitarian needs of the Afghan people,

*Supporting* the efforts of the Personal Representative of the Secretary-General for Afghanistan to advance a peace process through political negotiations between the Afghan parties aimed at the establishment of a broad-based, multi-ethnic, and fully representative government, and *calling for* the warring factions to cooperate fully with those efforts to conclude a ceasefire and begin discussions leading to a political settlement, by moving forward promptly in the process of dialogue to which they have committed themselves,

*Noting* the December 2000 meeting of the Afghan Support Group which emphasized that the situation in Afghanistan is a complex one that requires a comprehensive, integrated approach to a peace process and issues of narcotics trafficking, terrorism, human rights, and international humanitarian and development aid,

*Recalling* the relevant international counter-terrorism conventions and in particular the obligations of parties to those conventions to extradite or prosecute terrorists,

*Strongly condemning* the continuing use of the areas of Afghanistan under the control of the Afghan faction known as Taliban, which also calls itself the Islamic Emirate of Afghanistan (hereinafter known as the Taliban), for the sheltering and training of terrorists and planning of terrorist acts, and *reaffirming* its conviction that the suppression of international terrorism is essential for the maintenance of international peace and security,

*Noting* the importance of the Taliban acting in accordance with the 1961 Single Convention, the 1971 Convention on Psychotropic Substances, and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, and the commitments of the 1998 Twentieth Special Session of the General Assembly on Narcotic Drugs, including to work closely with the United Nations Drug Control Programme,

*Noting* that the Taliban benefits directly from the cultivation of illicit opium by imposing a tax on its production and indirectly benefits from the processing and traf-

ficking of such opium, and *recognizing* that these substantial resources strengthen the Taliban's capacity to harbour terrorists,

*Deploring* the fact that the Taliban continues to provide safehaven to Usama bin Laden and to allow him and others associated with him to operate a network of terrorist training camps from Taliban-controlled territory and to use Afghanistan as a base from which to sponsor international terrorist operations,

*Noting* the indictment of Usama bin Laden and his associates by the United States of America for, inter alia, the 7 August 1998 bombings of the United States embassies in Nairobi, Kenya and Dar es Salaam, Tanzania and for conspiring to kill American nationals outside the United States, and *noting also* the request of the United States of America to the Taliban to surrender them for trial (S/1999/1021),

*Reiterating* its deep concern over the continuing violations of international humanitarian law and of human rights, particularly discrimination against women and girls, and over the significant rise in the illicit production of opium,

*Stressing* that the capture by the Taliban of the Consulate-General of the Islamic Republic of Iran and the murder of Iranian diplomats and a journalist in Mazar-e-Sharif constituted flagrant violations of established international law,

*Determining* that the failure of the Taliban authorities to respond to the demands in paragraph 13 of resolution 1214 (1998) and in paragraph 2 of resolution 1267 (1999) constitutes a threat to international peace and security,

*Stressing* its determination to ensure respect for its resolutions,

*Reaffirming* the necessity for sanctions to contain adequate and effective exemptions to avoid adverse humanitarian consequences on the people of Afghanistan, and that they be structured in a way that will not impede, thwart or delay the work of international humanitarian assistance organizations or governmental relief agencies providing humanitarian assistance to the civilian population in the country,

*Underlining* the responsibility of the Taliban for the well-being of the population in the areas of Afghanistan under its control, and in this context *calling on* the Taliban to ensure the safe and unhindered access of relief personnel and aid to all those in need in the territory under their control,

*Recalling* the relevant principles contained in the Convention on the Safety of United Nations and Associated Personnel adopted by the General Assembly in its resolution 49/59 of 9 December 1994,

*Acting* under Chapter VII of the Charter of the United Nations,

1. *Demands* that the Taliban comply with resolution 1267 (1999) and, in particular, cease the provision of sanctuary and training for international terrorists and their organizations, take appropriate effective measures to ensure that the territory under its control is not used for terrorist installations and camps, or for the preparation or organization of terrorist acts against other States or their citizens, and cooperate with international efforts to bring indicted terrorists to justice;

2. *Demands also* that the Taliban comply without further delay with the demand of the Security Council in paragraph 2 of resolution 1267 (1999) that requires the Taliban to turn over Usama bin Laden to appropriate authorities in a country where he has been indicted, or to appropriate authorities in a country where he will be returned to such a country, or to appropriate authorities in a country where he will be arrested and effectively brought to justice;
3. *Demands further* that the Taliban should act swiftly to close all camps where terrorists are trained within the territory under its control, and *calls* for the confirmation of such closures by the United Nations, inter alia, through information made available to the United Nations by Member States in accordance with paragraph 19 below and through such other means as are necessary to assure compliance with this resolution;
4. *Reminds* all States of their obligation to implement strictly the measures imposed by paragraph 4 of resolution 1267 (1999);
5. *Decides* that all States shall:
  - (a) Prevent the direct or indirect supply, sale and transfer to the territory of Afghanistan under Taliban control as designated by the Committee established pursuant to resolution 1267 (1999), hereinafter known as the Committee, by their nationals or from their territories, or using their flag vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned;
  - (b) Prevent the direct or indirect sale, supply and transfer to the territory of Afghanistan under Taliban control, as designated by the Committee, by their nationals or from their territories, of technical advice, assistance, or training related to the military activities of the armed personnel under the control of the Taliban;
  - (c) Withdraw any of their officials, agents, advisers, and military personnel employed by contract or other arrangement present in Afghanistan to advise the Taliban on military or related security matters, and urge other nationals in this context to leave the country;
6. *Decides* that the measures imposed by paragraph 5 above shall not apply to supplies of non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance or training, as approved in advance by the Committee, and *affirms* that the measures imposed by paragraph 5 above do not apply to protective clothing, including flak jackets and military helmets, exported to Afghanistan by United Nations personnel, representatives of the media, and humanitarian workers for their personal use only;
7. *Urges* all States that maintain diplomatic relations with the Taliban to reduce significantly the number and level of the staff at Taliban missions and posts and restrict or control the movement within their territory of all such staff who remain; in the case of Taliban missions to international organizations, the host



State may, as it deems necessary, consult the organization concerned on the measures required to implement this paragraph;

8. *Decides* that all States shall take further measures:
  - (a) To close immediately and completely all Taliban offices in their territories;
  - (b) To close immediately all offices of Ariana Afghan Airlines in their territories;
  - (c) To freeze without delay funds and other financial assets of Usama bin Laden and individuals and entities associated with him as designated by the Committee, including those in the Al-Qaida organization, and including funds derived or generated from property owned or controlled directly or indirectly by Usama bin Laden and individuals and entities associated with him, and to ensure that neither they nor any other funds or financial resources are made available, by their nationals or by any persons within their territory, directly or indirectly for the benefit of Usama bin Laden, his associates or any entities owned or controlled, directly or indirectly, by Usama bin Laden or individuals and entities associated with him including the Al-Qaida organization and *requests* the Committee to maintain an updated list, based on information provided by States and regional organizations, of the individuals and entities designated as being associated with Usama bin Laden, including those in the Al-Qaida organization;
9. *Demands* that the Taliban, as well as others, halt all illegal drugs activities and work to virtually eliminate the illicit cultivation of opium poppy, the proceeds of which finance Taliban terrorist activities;
10. *Decides* that all States shall prevent the sale, supply or transfer, by their nationals or from their territories, of the chemical acetic anhydride to any person in the territory of Afghanistan under Taliban control as designated by the Committee or to any person for the purpose of any activity carried on in, or operated from, the territory under Taliban control as designated by the Committee;
11. *Decides also* that all States are required to deny any aircraft permission to take off from, land in or over-fly their territories if that aircraft has taken off from, or is destined to land at, a place in the territory of Afghanistan designated by the Committee as being under Taliban control, unless the particular flight has been approved in advance by the Committee on the grounds of humanitarian need, including religious obligations such as the performance of the Hajj, or on the grounds that the flight promotes discussion of a peaceful resolution of the conflict in Afghanistan, or is likely to promote Taliban compliance with this resolution or with resolution 1267 (1999);
12. *Decides further* that the Committee shall maintain a list of approved organizations and governmental relief agencies which are providing humanitarian assistance to Afghanistan, including the United Nations and its agencies, gov-

ernmental relief agencies providing humanitarian assistance, the International Committee of the Red Cross and non-governmental organizations as appropriate, that the prohibition imposed by paragraph 11 above shall not apply to humanitarian flights operated by, or on behalf of, organizations and governmental relief agencies on the list approved by the Committee, that the Committee shall keep the list under regular review, adding new organizations and governmental relief agencies as appropriate and that the Committee shall remove organizations and governmental agencies from the list if it decides that they are operating, or are likely to operate, flights for other than humanitarian purposes, and shall notify such organizations and governmental agencies immediately that any flights operated by them, or on their behalf, are thereby subject to the provisions of paragraph 11 above;

13. *Calls upon* the Taliban to ensure the safe and unhindered access of relief personnel and aid to all those in need in the territory under their control, and underlines that the Taliban must provide guarantees for the safety, security and freedom of movement for United Nations and associated humanitarian relief personnel;
14. *Urges* States to take steps to restrict the entry into or transit through their territory of all senior officials of the rank of Deputy Minister or higher in the Taliban, the equivalent rank of armed personnel under the control of the Taliban, and other senior advisers and dignitaries of the Taliban, unless those officials are travelling for humanitarian purposes, including religious obligation such as the performance of the Hajj, or where the travel promotes discussion of a peaceful resolution of the conflict in Afghanistan or involves compliance with this resolution or resolution 1267 (1999);
15. *Requests* the Secretary-General in consultation with the Committee:
  - (a) To appoint a committee of experts to make recommendations to the Council within sixty days of the adoption of this resolution regarding how the arms embargo and the closure of terrorist training camps demanded in paragraphs 3 and 5 above can be monitored, including inter alia the use of information obtained by Member States through their national means and provided by them to the Secretary-General;
  - (b) To consult with relevant Member States to put into effect the measures imposed by this resolution and resolution 1267 (1999) and report the results of such consultations to the Council;
  - (c) To report on the implementation of the existing measures, assess problems in enforcing these measures, make recommendations for strengthening enforcement, and evaluate actions of the Taliban to come into compliance;
  - (d) To review the humanitarian implications of the measures imposed by this resolution and resolution 1267 (1999), and to report back to the Council within 90 days of the adoption of this resolution with an assess-

- ment and recommendations, to report at regular intervals thereafter on any humanitarian implications and to present a comprehensive report on this issue and any recommendations no later than 30 days prior to the expiration of these measures;
16. *Requests* the Committee to fulfil its mandate by undertaking the following tasks in addition to those set out in resolution 1267 (1999):
- (a) To establish and maintain updated lists based on information provided by States, regional, and international organizations of all points of entry and landing areas for aircraft within the territory of Afghanistan under control by the Taliban and to notify Member States of the contents of such lists;
  - (b) To establish and maintain updated lists, based on information provided by States and regional organizations, of individuals and entities designated as being associated with Usama bin Laden, in accordance with paragraph 8 (c) above;
  - (c) To give consideration to, and decide upon, requests for the exceptions set out in paragraphs 6 and 11 above;
  - (d) To establish no later than one month after the adoption of this resolution and maintain an updated list of approved organizations and governmental relief agencies which are providing humanitarian assistance to Afghanistan, in accordance with paragraph 12 above;
  - (e) To make relevant information regarding implementation of these measures publicly available through appropriate media, including through the improved use of information technology;
  - (f) To consider, where and when appropriate, a visit to countries in the region by the Chairman of the Committee and such other members as may be required to enhance the full and effective implementation of the measures imposed by this resolution and resolution 1267 (1999) with a view to urging States to comply with relevant Council resolutions;
  - (g) To make periodic reports to the Council on information submitted to it regarding this resolution and resolution 1267 (1999), including possible violations of the measures reported to the Committee and recommendations for strengthening the effectiveness of these measures;
17. *Calls upon* all States and all international and regional organizations, including the United Nations and its specialized agencies, to act strictly in accordance with the provisions of this resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to the date of coming into force of the measures imposed by paragraphs 5, 8, 10 and 11 above;

18. *Calls upon* States to bring proceedings against persons and entities within their jurisdiction that violate the measures imposed by paragraphs 5, 8, 10 and 11 above and to impose appropriate penalties;
19. *Calls upon* all States to cooperate fully with the Committee in the fulfilment of its tasks, including supplying such information as may be required by the Committee in pursuance of this resolution;
20. *Requests* all States to report to the Committee within 30 days of the coming into force of the measures imposed by paragraphs 5, 8, 10 and 11 above on the steps they have taken with a view to effectively implementing this resolution;
21. *Requests* the Secretariat to submit for consideration by the Committee information received from Governments and public sources on possible violations of the measures imposed by paragraphs 5, 8, 10 and 11 above;
22. *Decides* that the measures imposed by paragraphs 5, 8, 10 and 11 above shall come into force at 00.01 Eastern Standard Time, one month after the adoption of this resolution;
23. *Further decides* that the measures imposed by paragraphs 5, 8, 10 and 11 above are established for twelve months and that, at the end of this period, the Council will decide whether the Taliban has complied with paragraphs 1, 2 and 3 above, and, accordingly, whether to extend these measures for a further period with the same conditions;
24. *Decides* if the Taliban comply with the conditions of paragraphs 1, 2 and 3 above, before the twelve-month period has elapsed, the Security Council shall terminate the measures imposed by paragraphs 5, 8, 10 and 11 above;
25. *Expresses* its readiness to consider the imposition of further measures, in accordance with its responsibility under the Charter of the United Nations, with the aim of achieving full implementation of this resolution and resolution 1267 (1999), inter alia, taking into account the impact assessment referred to in paragraph 15 (d) with a view to enhancing the effectiveness of sanctions and avoiding humanitarian consequences;
26. *Decides* to remain actively seized of the matter.

## Schedule 4C

### United Nations Security Council Resolution 1390 (2002)

s 4(1)

Schedule 4C: inserted, on 20 November 2007, by section 43 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

#### **Resolution 1390 (2002)**

##### **Adopted by the Security Council at its 4452nd meeting, on 16 January 2002**

*The Security Council,*

*Recalling* its resolutions 1267 (1999) of 15 October 1999, 1333 (2000) of 19 December 2000 and 1363 (2001) of 30 July 2001,

*Reaffirming* its previous resolutions on Afghanistan, in particular resolutions 1378 (2001) of 14 November 2001 and 1383 (2001) of 6 December 2001,

*Reaffirming* also its resolutions 1368 (2001) of 12 September 2001 and 1373 (2001) of 28 September 2001, and *reiterating* its support for international efforts to root out terrorism, in accordance with the Charter of the United Nations,

*Reaffirming* its unequivocal condemnation of the terrorist attacks which took place in New York, Washington and Pennsylvania on 11 September 2001, expressing its determination to prevent all such acts, *noting* the continued activities of Usama bin Laden and the Al-Qaida network in supporting international terrorism, and expressing its determination to root out this network,

*Noting* the indictments of Usama bin Laden and his associates by the United States of America for, inter alia, the 7 August 1998 bombings of the United States embassies in Nairobi, Kenya and Dar es Salaam, Tanzania,

*Determining* that the Taliban have failed to respond to the demands in paragraph 13 of resolution 1214 (1998) of 8 December 1998, paragraph 2 of resolution 1267 (1999) and paragraphs 1, 2 and 3 of resolution 1333 (2000),

*Condemning* the Taliban for allowing Afghanistan to be used as a base for terrorists training and activities, including the export of terrorism by the Al-Qaida network and other terrorist groups as well as for using foreign mercenaries in hostile actions in the territory of Afghanistan,

*Condemning* the Al-Qaida network and other associated terrorist groups, for the multiple criminal, terrorist acts, aimed at causing the deaths of numerous innocent civilians, and the destruction of property,

*Reaffirming* further that acts of international terrorism constitute a threat to international peace and security,

*Acting* under Chapter VII of the Charter of the United Nations,

1. *Decides* to continue the measures imposed by paragraph 8 (c) of resolution 1333 (2000) and *takes note* of the continued application of the measures imposed by paragraph 4 (b) of resolution 1267 (1999), in accordance with

- paragraph 2 below, and *decides* to terminate the measures imposed in paragraph 4 (a) of resolution 1267 (1999);
2. *Decides* that all States shall take the following measures with respect to Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them, as referred to in the list created pursuant to resolutions 1267 (1999) and 1333 (2000) to be updated regularly by the Committee established pursuant to resolution 1267 (1999) hereinafter referred to as “the Committee”;
    - (a) Freeze without delay the funds and other financial assets or economic resources of these individuals, groups, undertakings and entities, including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly, for such persons’ benefit, by their nationals or by any persons within their territory;
    - (b) Prevent the entry into or the transit through their territories of these individuals, provided that nothing in this paragraph shall oblige any State to deny entry into or require the departure from its territories of its own nationals and this paragraph shall not apply where entry or transit is necessary for the fulfilment of a judicial process or the Committee determines on a case by case basis only that entry or transit is justified;
    - (c) Prevent the direct or indirect supply, sale and transfer, to these individuals, groups, undertakings and entities from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned and technical advice, assistance, or training related to military activities;
  3. *Decides* that the measures referred to in paragraphs 1 and 2 above will be reviewed in 12 months and that at the end of this period the Council will either allow these measures to continue or decide to improve them, in keeping with the principles and purposes of this resolution;
  4. *Recalls* the obligation placed upon all Member States to implement in full resolution 1373 (2001), including with regard to any member of the Taliban and the Al-Qaida organization, and any individuals, groups, undertakings and entities associated with the Taliban and the Al-Qaida organization, who have participated in the financing, planning, facilitating and preparation or perpetration of terrorist acts or in supporting terrorist acts;
  5. *Requests* the Committee to undertake the following tasks and to report on its work to the Council with its observations and recommendations;

- (a) to update regularly the list referred to in paragraph 2 above, on the basis of relevant information provided by Member States and regional organizations;
  - (b) to seek from all States information regarding the action taken by them to implement effectively the measures referred to in paragraph 2 above, and thereafter to request from them whatever further information the Committee may consider necessary;
  - (c) to make periodic reports to the Council on information submitted to the Committee regarding the implementation of this resolution;
  - (d) to promulgate expeditiously such guidelines and criteria as may be necessary to facilitate the implementation of the measures referred to in paragraph 2 above;
  - (e) to make information it considers relevant, including the list referred to in paragraph 2 above, publicly available through appropriate media;
  - (f) to cooperate with other relevant Security Council Sanctions Committees and with the Committee established pursuant to paragraph 6 of its resolution 1373 (2001);
6. *Requests* all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement the measures referred to in paragraph 2 above;
7. *Urges* all States, relevant United Nations bodies, and, as appropriate, other organizations and interested parties to cooperate fully with the Committee and with the Monitoring Group referred to in paragraph 9 below;
8. *Urges* all States to take immediate steps to enforce and strengthen through legislative enactments or administrative measures, where appropriate, the measures imposed under domestic laws or regulations against their nationals and other individuals or entities operating on their territory, to prevent and punish violations of the measures referred to in paragraph 2 of this resolution, and to inform the Committee of the adoption of such measures, and *invites* States to report the results of all related investigations or enforcement actions to the Committee unless to do so would compromise the investigation or enforcement actions;
9. *Requests* the Secretary-General to assign the Monitoring Group established pursuant to paragraph 4 (a) of resolution 1363 (2001), whose mandate expires on 19 January 2002, to monitor, for a period of 12 months, the implementation of the measures referred to in paragraph 2 of this resolution;
10. *Requests* the Monitoring Group to report to the Committee by 31 March 2002 and thereafter every 4 months;
11. *Decides* to remain actively seized of the matter.

## Schedule 4D

### United Nations Security Council Resolution 2178 (2014)

s 4

Schedule 4D: inserted, on 5 October 2021, by section 36 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

#### **Resolution 2178 (2014)**

##### **Adopted by the Security Council at its 7272nd meeting, on 24 September 2014**

*The Security Council,*

*Reaffirming* that terrorism in all forms and manifestations constitutes one of the most serious threats to international peace and security and that any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever and by whomsoever committed, and *remaining* determined to contribute further to enhancing the effectiveness of the overall effort to fight this scourge on a global level,

*Noting with concern* that the terrorism threat has become more diffuse, with an increase, in various regions of the world, of terrorist acts including those motivated by intolerance or extremism, and *expressing* its determination to combat this threat,

*Bearing in mind* the need to address the conditions conducive to the spread of terrorism, and *affirming* Member States' determination to continue to do all they can to resolve conflict and to deny terrorist groups the ability to put down roots and establish safe havens to address better the growing threat posed by terrorism,

*Emphasizing* that terrorism cannot and should not be associated with any religion, nationality or civilization,

*Recognizing* that international cooperation and any measures taken by Member States to prevent and combat terrorism must comply fully with the Charter of the United Nations,

*Reaffirming* its respect for the sovereignty, territorial integrity and political independence of all States in accordance with the Charter,

*Reaffirming* that Member States must ensure that any measures taken to counter terrorism comply with all their obligations under international law, in particular international human rights law, international refugee law, and international humanitarian law, *underscoring* that respect for human rights, fundamental freedoms and the rule of law are complementary and mutually reinforcing with effective counter-terrorism measures, and are an essential part of a successful counter-terrorism effort and notes the importance of respect for the rule of law so as to effectively prevent and combat terrorism, and *noting* that failure to comply with these and other international obligations, including under the Charter of the United Nations, is one of the factors contributing to increased radicalization and fosters a sense of impunity,

*Expressing grave concern* over the acute and growing threat posed by foreign terrorist fighters, namely individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or par-



ticipation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict, and *resolving* to address this threat,

*Expressing* grave concern about those who attempt to travel to become foreign terrorist fighters,

*Concerned* that foreign terrorist fighters increase the intensity, duration and intractability of conflicts, and also may pose a serious threat to their States of origin, the States they transit and the States to which they travel, as well as States neighbouring zones of armed conflict in which foreign terrorist fighters are active and that are affected by serious security burdens, and *noting* that the threat of foreign terrorist fighters may affect all regions and Member States, even those far from conflict zones, and *expressing* grave concern that foreign terrorist fighters are using their extremist ideology to promote terrorism,

*Expressing concern* that international networks have been established by terrorists and terrorist entities among States of origin, transit and destination through which foreign terrorist fighters and the resources to support them have been channelled back and forth,

*Expressing* particular concern that foreign terrorist fighters are being recruited by and are joining entities such as the Islamic State in Iraq and the Levant (ISIL), the Al-Nusrah Front (ANF) and other cells, affiliates, splinter groups or derivatives of Al-Qaida, as designated by the Committee established pursuant to resolutions 1267 (1999) and 1989 (2011), *recognizing* that the foreign terrorist fighter threat includes, among others, individuals supporting acts or activities of Al-Qaida and its cells, affiliates, splinter groups, and derivative entities, including by recruiting for or otherwise supporting acts or activities of such entities, and *stressing* the urgent need to address this particular threat,

*Recognizing* that addressing the threat posed by foreign terrorist fighters requires comprehensively addressing underlying factors, including by preventing radicalization to terrorism, stemming recruitment, inhibiting foreign terrorist fighter travel, disrupting financial support to foreign terrorist fighters, countering violent extremism, which can be conducive to terrorism, countering incitement to terrorist acts motivated by extremism or intolerance, promoting political and religious tolerance, economic development and social cohesion and inclusiveness, ending and resolving armed conflicts, and facilitating reintegration and rehabilitation,

*Recognizing* also that terrorism will not be defeated by military force, law enforcement measures, and intelligence operations alone, and *underlining* the need to address the conditions conducive to the spread of terrorism, as outlined in Pillar I of the United Nations Global Counter-Terrorism Strategy (A/RES/60/288),

*Expressing* concern over the increased use by terrorists and their supporters of communications technology for the purpose of radicalizing to terrorism, recruiting and inciting others to commit terrorist acts, including through the internet, and financing and facilitating the travel and subsequent activities of foreign terrorist fighters, and *underlining* the need for Member States to act cooperatively to prevent terrorists from

exploiting technology, communications and resources to incite support for terrorist acts, while respecting human rights and fundamental freedoms and in compliance with other obligations under international law,

*Noting* with appreciation the activities undertaken in the area of capacity building by United Nations entities, in particular entities of the Counter-Terrorism Implementation Task Force (CTITF), including the United Nations Office of Drugs and Crime (UNODC) and the United Nations Centre for Counter-Terrorism (UNCCT), and also the efforts of the Counter Terrorism Committee Executive Directorate (CTED) to facilitate technical assistance, specifically by promoting engagement between providers of capacity-building assistance and recipients, in coordination with other relevant international, regional and subregional organizations, to assist Member States, upon their request, in implementation of the United Nations Global Counter-Terrorism Strategy,

*Noting* recent developments and initiatives at the international, regional and subregional levels to prevent and suppress international terrorism, and *noting* the work of the Global Counterterrorism Forum (GCTF), in particular its recent adoption of a comprehensive set of good practices to address the foreign terrorist fighter phenomenon, and its publication of several other framework documents and good practices, including in the areas of countering violent extremism, criminal justice, prisons, kidnapping for ransom, providing support to victims of terrorism, and community-oriented policing, to assist interested States with the practical implementation of the United Nations counter-terrorism legal and policy framework and to complement the work of the relevant United Nations counter-terrorism entities in these areas,

*Noting* with appreciation the efforts of INTERPOL to address the threat posed by foreign terrorist fighters, including through global law enforcement information sharing enabled by the use of its secure communications network, databases, and system of advisory notices, procedures to track stolen, forged identity papers and travel documents, and INTERPOL's counter-terrorism fora and foreign terrorist fighter programme,

*Having regard to and highlighting* the situation of individuals of more than one nationality who travel to their states of nationality for the purpose of the perpetration, planning, preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, and *urging* States to take action, as appropriate, in compliance with their obligations under their domestic law and international law, including international human rights law,

*Calling* upon States to ensure, in conformity with international law, in particular international human rights law and international refugee law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, including by foreign terrorist fighters,

*Reaffirming* its call upon all States to become party to the international counter-terrorism conventions and protocols as soon as possible, whether or not they are a party to regional conventions on the matter, and to fully implement their obligations under those to which they are a party,

*Noting* the continued threat to international peace and security posed by terrorism, and *affirming* the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts, including those perpetrated by foreign terrorist fighters,

*Acting* under Chapter VII of the Charter of the United Nations,

1. *Condemns* the violent extremism, which can be conducive to terrorism, sectarian violence, and the commission of terrorist acts by foreign terrorist fighters, and *demand*s that all foreign terrorist fighters disarm and cease all terrorist acts and participation in armed conflict;
2. *Reaffirms* that all States shall prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents, *underscores*, in this regard, the importance of addressing, in accordance with their relevant international obligations, the threat posed by foreign terrorist fighters, and *encourages* Member States to employ evidence-based traveller risk assessment and screening procedures including collection and analysis of travel data, without resorting to profiling based on stereotypes founded on grounds of discrimination prohibited by international law;
3. *Urges* Member States, in accordance with domestic and international law, to intensify and accelerate the exchange of operational information regarding actions or movements of terrorists or terrorist networks, including foreign terrorist fighters, especially with their States of residence or nationality, through bilateral or multilateral mechanisms, in particular the United Nations;
4. *Calls upon* all Member States, in accordance with their obligations under international law, to cooperate in efforts to address the threat posed by foreign terrorist fighters, including by preventing the radicalization to terrorism and recruitment of foreign terrorist fighters, including children, preventing foreign terrorist fighters from crossing their borders, disrupting and preventing financial support to foreign terrorist fighters, and developing and implementing prosecution, rehabilitation and reintegration strategies for returning foreign terrorist fighters;
5. *Decides* that Member States shall, consistent with international human rights law, international refugee law, and international humanitarian law, prevent and suppress the recruiting, organizing, transporting or equipping of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, and the financing of their travel and of their activities;

6. *Recalls* its decision, in resolution 1373 (2001), that all Member States shall ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice, and *decides* that all States shall ensure that their domestic laws and regulations establish serious criminal offenses sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offense:
  - (a) their nationals who travel or attempt to travel to a State other than their States of residence or nationality, and other individuals who travel or attempt to travel from their territories to a State other than their States of residence or nationality, for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training;
  - (b) the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to finance the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training; and,
  - (c) the wilful organization, or other facilitation, including acts of recruitment, by their nationals or in their territories, of the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training;
7. *Expresses* its strong determination to consider listing pursuant to resolution 2161 (2014) individuals, groups, undertakings and entities associated with Al-Qaida who are financing, arming, planning, or recruiting for them, or otherwise supporting their acts or activities, including through information and communications technologies, such as the internet, social media, or any other means;
8. *Decides* that, without prejudice to entry or transit necessary in the furtherance of a judicial process, including in furtherance of such a process related to arrest or detention of a foreign terrorist fighter, Member States shall prevent the entry into or transit through their territories of any individual about whom that State has credible information that provides reasonable grounds to believe that he or she is seeking entry into or transit through their territory for the purpose of participating in the acts described in paragraph 6, including any acts or activities indicating that an individual, group, undertaking or entity is associated with Al-Qaida, as set out in paragraph 2 of resolution 2161 (2014), provided that nothing in this paragraph shall oblige any State to deny entry or require the departure from its territories of its own nationals or permanent residents;

9. *Calls upon* Member States to require that airlines operating in their territories provide advance passenger information to the appropriate national authorities in order to detect the departure from their territories, or attempted entry into or transit through their territories, by means of civil aircraft, of individuals designated by the Committee established pursuant to resolutions 1267 (1999) and 1989 (2011) (“the Committee”), and further *calls upon* Member States to report any such departure from their territories, or such attempted entry into or transit through their territories, of such individuals to the Committee, as well as sharing this information with the State of residence or nationality, as appropriate and in accordance with domestic law and international obligations;
10. *Stresses* the urgent need to implement fully and immediately this resolution with respect to foreign terrorist fighters, *underscores* the particular and urgent need to implement this resolution with respect to those foreign terrorist fighters who are associated with ISIL, ANF and other cells, affiliates, splinter groups or derivatives of Al-Qaida, as designated by the Committee, and *expresses* its readiness to consider designating, under resolution 2161 (2014), individuals associated with Al-Qaida who commit the acts specified in paragraph 6 above;

#### *International Cooperation*

11. *Calls upon* Member States to improve international, regional, and subregional cooperation, if appropriate through bilateral agreements, to prevent the travel of foreign terrorist fighters from or through their territories, including through increased sharing of information for the purpose of identifying foreign terrorist fighters, the sharing and adoption of best practices, and improved understanding of the patterns of travel by foreign terrorist fighters, and for Member States to act cooperatively when taking national measures to prevent terrorists from exploiting technology, communications and resources to incite support for terrorist acts, while respecting human rights and fundamental freedoms and in compliance with other obligations under international law;
12. *Recalls* its decision in resolution 1373 (2001) that Member States shall afford one another the greatest measure of assistance in connection with criminal investigations or proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings, and *underlines* the importance of fulfilling this obligation with respect to such investigations or proceedings involving foreign terrorist fighters;
13. *Encourages* Interpol to intensify its efforts with respect to the foreign terrorist fighter threat and to recommend or put in place additional resources to support and encourage national, regional and international measures to monitor and prevent the transit of foreign terrorist fighters, such as expanding the use of INTERPOL Special Notices to include foreign terrorist fighters;

14. *Calls upon* States to help build the capacity of States to address the threat posed by foreign terrorist fighters, including to prevent and interdict foreign terrorist fighter travel across land and maritime borders, in particular the States neighbouring zones of armed conflict where there are foreign terrorist fighters, and *welcomes* and *encourages* bilateral assistance by Member States to help build such national capacity;

*Countering Violent Extremism in Order to Prevent Terrorism*

15. *Underscores* that countering violent extremism, which can be conducive to terrorism, including preventing radicalization, recruitment, and mobilization of individuals into terrorist groups and becoming foreign terrorist fighters is an essential element of addressing the threat to international peace and security posed by foreign terrorist fighters, and *calls upon* Member States to enhance efforts to counter this kind of violent extremism;
16. *Encourages* Member States to engage relevant local communities and non-governmental actors in developing strategies to counter the violent extremist narrative that can incite terrorist acts, address the conditions conducive to the spread of violent extremism, which can be conducive to terrorism, including by empowering youth, families, women, religious, cultural and education leaders, and all other concerned groups of civil society and adopt tailored approaches to countering recruitment to this kind of violent extremism and promoting social inclusion and cohesion;
17. *Recalls* its decision in paragraph 14 of resolution 2161 (2014) with respect to improvised explosive devices (IEDs) and individuals, groups, undertakings and entities associated with Al-Qaida, and *urges* Member States, in this context, to act cooperatively when taking national measures to prevent terrorists from exploiting technology, communications and resources, including audio and video, to incite support for terrorist acts, while respecting human rights and fundamental freedoms and in compliance with other obligations under international law;
18. *Calls upon* Member States to cooperate and consistently support each other's efforts to counter violent extremism, which can be conducive to terrorism, including through capacity building, coordination of plans and efforts, and sharing lessons learned;
19. *Emphasizes* in this regard the importance of Member States' efforts to develop non-violent alternative avenues for conflict prevention and resolution by affected individuals and local communities to decrease the risk of radicalization to terrorism, and of efforts to promote peaceful alternatives to violent narratives espoused by foreign terrorist fighters, and *underscores* the role education can play in countering terrorist narratives;

*United Nations Engagement on the Foreign Terrorist Fighter Threat*

20. *Notes* that foreign terrorist fighters and those who finance or otherwise facilitate their travel and subsequent activities may be eligible for inclusion on the Al-Qaida Sanctions List maintained by the Committee pursuant to resolutions 1267 (1999) and 1989 (2011) where they participate in the financing, planning, facilitating, preparing, or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of, Al-Qaida, supplying, selling or transferring arms and related materiel to, or recruiting for, or otherwise supporting acts or activities of Al-Qaida or any cell, affiliate, splinter group or derivative thereof, and *calls upon* States to propose such foreign terrorist fighters and those who facilitate or finance their travel and subsequent activities for possible designation;
21. *Directs* the Committee established pursuant to resolution 1267 (1999) and 1989 (2011) and the Analytical Support and Sanctions Monitoring Team, in close cooperation with all relevant United Nations counter-terrorism bodies, in particular CTED, to devote special focus to the threat posed by foreign terrorist fighters recruited by or joining ISIL, ANF and all groups, undertakings and entities associated with Al-Qaida;
22. *Encourages* the Analytical Support and Sanctions Monitoring Team to coordinate its efforts to monitor and respond to the threat posed by foreign terrorist fighters with other United Nations counter-terrorism bodies, in particular the CTITF;
23. *Requests* the Analytical Support and Sanctions Monitoring Team, in close cooperation with other United Nations counter-terrorism bodies, to report to the Committee established pursuant to resolutions 1267 (1999) and 1989 (2011) within 180 days, and provide a preliminary oral update to the Committee within 60 days, on the threat posed by foreign terrorist fighters recruited by or joining ISIL, ANF and all groups, undertakings and entities associated with Al-Qaida, including:
  - (a) a comprehensive assessment of the threat posed by these foreign terrorist fighters, including their facilitators, the most affected regions and trends in radicalization to terrorism, facilitation, recruitment, demographics, and financing; and
  - (b) recommendations for actions that can be taken to enhance the response to the threat posed by these foreign terrorist fighters;
24. *Requests* the Counter-Terrorism Committee, within its existing mandate and with the support of CTED, to identify principal gaps in Member States' capacities to implement Security Council resolutions 1373 (2001) and 1624 (2005) that may hinder States' abilities to stem the flow of foreign terrorist fighters, as well as to identify good practices to stem the flow of foreign terrorist fighters

in the implementation of resolutions 1373 (2001) and 1624 (2005), and to facilitate technical assistance, specifically by promoting engagement between providers of capacity-building assistance and recipients, especially those in the most affected regions, including through the development, upon their request, of comprehensive counter-terrorism strategies that encompass countering violent radicalization and the flow of foreign terrorist fighters, recalling the roles of other relevant actors, for example the Global Counterterrorism Forum;

25. *Underlines* that the increasing threat posed by foreign terrorist fighters is part of the emerging issues, trends and developments related to resolutions 1373 (2001) and 1624 (2005), that, in paragraph 5 of resolution 2129 (2013), the Security Council directed CTED to identify, and therefore merits close attention by the Counter-Terrorism Committee, consistent with its mandate;
26. *Requests* the Committee established pursuant to resolutions 1267 (1999) and 1989 (2011) and the Counter-Terrorism Committee to update the Security Council on their respective efforts pursuant to this resolution;
27. *Decides* to remain seized of the matter.



## Schedule 4E

### Applicable maximum penalties for offence against section 13F(1)

s 13F(9)

Schedule 4E: inserted, on 5 October 2021, by section 36 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Item	Offence against	Maximum penalty
1	Section 13F(7)(a)— section 6A (terrorist act: credible threat and carrying out (but excluding an attempt))	Imprisonment for a term not exceeding 10 years
2	Section 13F(7)(b)—section 6B (terrorist act: planning or other preparations to carry out)	Imprisonment for a term not exceeding 3 years and 6 months
3	Section 13F(7)(c)—section 7 (terrorist bombing)	Imprisonment for a term not exceeding 10 years
4	Section 13F(7)(d)—section 8 (financing of, or provision of material support for, terrorism)	Imprisonment for a term not exceeding— (a) 7 years, if the mental element under section 8(1)(d), (1A)(d), (2A)(d), or (2B)(d) is intention; or (b) 5 years, if the mental element under section 8(1)(d), (1A)(d), (2A)(d), or (2B)(d) is knowledge or recklessness
5	Section 13F(7)(e)—section 9 (prohibition on dealing with property of, or derived or generated from property of, designated terrorist entity)	Imprisonment for a term not exceeding 3 years and 6 months
6	Section 13F(7)(f)— section 10 (prohibition on making property, or material support, available to designated terrorist entity)	Imprisonment for a term not exceeding 5 years
7	Section 13F(7)(g)— section 12 (recruiting members of terrorist groups)	Imprisonment for a term not exceeding 7 years
8	Section 13F(7)(h)— section 13 (participating in terrorist groups)	Imprisonment for a term not exceeding 7 years
9	Section 13F(7)(i)— section 13AA (providing or receiving weapons training or combat training for terrorist purposes)	Imprisonment for a term not exceeding 3 years and 6 months
10	Section 13F(7)(j)— section 13A (harbouring or concealing terrorists)	Imprisonment for a term not exceeding 3 years and 6 months
11	Section 13F(7)(k)— section 13B (offences involving use and movement of unmarked plastic explosives)	Imprisonment for a term not exceeding 5 years or a fine not exceeding \$250,000, or both

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<b>Item</b>	<b>Offence against</b>	<b>Maximum penalty</b>
12	Section 13F(7)(l)— section 13C (offences involving physical protection of nuclear material)	Imprisonment for a term not exceeding 5 years or a fine not exceeding \$250,000, or both
13	Section 13F(7)(m)— section 13D (importation, acquisition, etc, of radioactive material)	Imprisonment for a term not exceeding 5 years
14	Section 13F(7)(n)— section 13E (offences involving radioactive material and radioactive devices)	Imprisonment for a term not exceeding 5 years or a fine not exceeding \$250,000, or both

## Schedule 5

### Details to be included in suspicious property reports

s 44(1)(a)

- 1 The name, and (if available) the last known address, of the designated terrorist entity concerned.  
  
Schedule 5 clause 1: amended, on 20 November 2007, by section 44 of the Terrorism Suppression Amendment Act 2007 (2007 No 102).
- 2 For property that came into the possession or immediate control of a reporting entity through a transaction conducted or proposed to be conducted through the reporting entity and involving a facility with the reporting entity:
  - (a) the grounds on which the reporting entity holds the suspicion referred to in section 43(2) and the date on which that suspicion was formed:
  - (b) (to the best of the knowledge of the reporting entity) the date on which the reporting entity became aware of the existence of the property, and (if readily available to the reporting entity) the type of, and all other available identifying information about, the property:
  - (c) (if readily available electronically to the reporting entity)—
    - (i) the nature of the transaction; and
    - (ii) the date of the transaction:
  - (d) the type and identifying number of the facility:
  - (e) the value of the property in the facility (if known to the person preparing the report for the reporting entity):
  - (f) the name, address, date of birth (if applicable), and (if known to the person preparing the report for the reporting entity) occupation (or, if appropriate, business or principal activity) of the person in whose name the facility is operated, and (if available to the person preparing the report for the reporting entity) details of any documentary or other evidence held by the reporting entity and used to establish the identity of that person:
  - (g) the names of the signatories to the facility and (if available to the person preparing the report for the reporting entity) details of any documentary or other evidence held by the reporting entity and used to establish the identity of the signatories to the facility:
  - (h) (if readily available electronically to the reporting entity) the name, address, date of birth (if applicable), and occupation (or, if appropriate, business or principal activity) of each person conducting the transaction and of any person on whose behalf the transaction is conducted:
  - (i) (if applicable) the branch name, address, and telephone number of the reporting entity which provided the facility involved in the transaction or

the reporting entity through which the transaction was conducted, as the case may be.

Schedule 5 clause 2: amended, on 5 October 2021, by section 37 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Schedule 5 clause 2: amended, on 17 October 2009, by section 161(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35).

Schedule 5 clause 2(a): amended, on 5 October 2021, by section 37 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Schedule 5 clause 2(a): amended, on 17 October 2009, by section 161(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35).

Schedule 5 clause 2(b): amended, on 5 October 2021, by section 37 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Schedule 5 clause 2(b): amended, on 17 October 2009, by section 161(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35).

Schedule 5 clause 2(c): amended, on 5 October 2021, by section 37 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Schedule 5 clause 2(c): amended, on 17 October 2009, by section 161(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35).

Schedule 5 clause 2(e): amended, on 5 October 2021, by section 37 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Schedule 5 clause 2(e): amended, on 17 October 2009, by section 161(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35).

Schedule 5 clause 2(f): amended, on 5 October 2021, by section 37 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Schedule 5 clause 2(f): amended, on 17 October 2009, by section 161(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35).

Schedule 5 clause 2(g): amended, on 5 October 2021, by section 37 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Schedule 5 clause 2(g): amended, on 17 October 2009, by section 161(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35).

Schedule 5 clause 2(h): amended, on 5 October 2021, by section 37 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Schedule 5 clause 2(h): amended, on 17 October 2009, by section 161(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35).

Schedule 5 clause 2(i): amended, on 5 October 2021, by section 37 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Schedule 5 clause 2(i): amended, on 17 October 2009, by section 161(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35).

- 3 For other property in the possession or immediate control of a reporting entity or any other person—
- (a) the grounds on which the reporting entity or other person holds the suspicion referred to in section 43(2) and the date on which that suspicion was formed:
  - (b) (to the best of the knowledge of the reporting entity or other person) the date on which the reporting entity or other person became aware of the existence of the property, and (if readily available to the reporting entity

or other person) the type of, and all other available identifying information about, the property:

- (c) the value of the property (if known to the reporting entity or other person):
- (d) (if available to the reporting entity or other person) the name, address, date of birth (if applicable), and occupation (or, if appropriate, business or principal activity) of the person who owns the property (if it is not owned by the entity), and details of any documentary or other evidence held by the reporting entity or other person and used to establish the identity of the person who owns the property:
- (e) (if available to the reporting entity or other person) the name, address, date of birth (if applicable), and occupation (or, if appropriate, business or principal activity) of the person who controls the property (if it is not controlled by the entity), and details of any documentary or other evidence held by the reporting entity or other person and used to establish the identity of the person who controls the property.

Schedule 5 clause 3: amended, on 5 October 2021, by section 37 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Schedule 5 clause 3: amended, on 17 October 2009, by section 161(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35).

Schedule 5 clause 3(a): amended, on 5 October 2021, by section 37 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Schedule 5 clause 3(a): amended, on 17 October 2009, by section 161(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35).

Schedule 5 clause 3(b): amended, on 5 October 2021, by section 37 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Schedule 5 clause 3(b): amended, on 17 October 2009, by section 161(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35).

Schedule 5 clause 3(c): amended, on 5 October 2021, by section 37 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Schedule 5 clause 3(c): amended, on 17 October 2009, by section 161(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35).

Schedule 5 clause 3(d): amended, on 5 October 2021, by section 37 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Schedule 5 clause 3(d): amended, on 17 October 2009, by section 161(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35).

Schedule 5 clause 3(e): amended, on 5 October 2021, by section 37 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Schedule 5 clause 3(e): amended, on 17 October 2009, by section 161(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35).

- 4 If the report is made in relation to property controlled or possessed by a reporting entity, the name, position, and phone and fax number of the person authorised by the reporting entity to prepare and submit the report. In all other cases,

the name, position (if relevant), and phone and fax numbers of the person who prepared the report.

Schedule 5 clause 4: amended, on 5 October 2021, by section 37 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Schedule 5 clause 4: amended, on 17 October 2009, by section 161(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35).

## **Terrorism Suppression Amendment Act 2007**

Public Act	2007 No 102
Date of assent	19 November 2007
Commencement	see section 2

### **1 Title**

This Act is the Terrorism Suppression Amendment Act 2007.

### **2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

## **Part 1**

### **Amendments to principal Act**

#### **39 Transitional provision relating to entity designated under section 20 or 22**

- (1) Every designation of an entity under section 20 or 22 of the principal Act before the commencement of this Act is deemed to be revoked under section 34 of the principal Act.
- (2) *Amendment(s) incorporated in the Act(s).*

## Notes

### **1** *General*

This is a consolidation of the Terrorism Suppression Act 2002 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

### **2** *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

### **3** *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

### **4** *Amendments incorporated in this consolidation*

Counter-Terrorism Legislation Act 2021 (2021 No 37): Part 1

Secondary Legislation Act 2021 (2021 No 7): section 3

Statutes Amendment Act 2019 (2019 No 56): section 171

Customs and Excise Act 2018 (2018 No 4): section 443(3)

Maritime Crimes Amendment Act 2017 (2017 No 49): section 24

Land Transport Amendment Act 2017 (2017 No 34): section 110(3)

Intelligence and Security Act 2017 (2017 No 10): section 335

Judicial Review Procedure Act 2016 (2016 No 50): section 24

Senior Courts Act 2016 (2016 No 48): section 183(b)

Radiation Safety Act 2016 (2016 No 6): section 98

Hazardous Substances and New Organisms Amendment Act 2015 (2015 No 72): section 55

Health and Safety at Work Act 2015 (2015 No 70): section 232

Criminal Procedure Act 2011 (2011 No 81): section 413

Environmental Protection Authority Act 2011 (2011 No 14): section 53(1)

Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35): section 161(2)

Criminal Proceeds (Recovery) Act 2009 (2009 No 8): sections 219–225

Policing Act 2008 (2008 No 72): sections 116(a)(ii), 130(1)

Terrorism Suppression Amendment Act 2007 (2007 No 102)

Lawyers and Conveyancers Act 2006 (2006 No 1): section 348



Terrorism Suppression Amendment Act 2003 (2003 No 106)

Supreme Court Act 2003 (2003 No 53): section 48(1)

Terrorism Suppression Act Commencement Order 2002 (SR 2002/353)