

Terrorism (Bombings and Financing) Bill

Government Bill

Explanatory note

General policy statement

This Bill is to implement in New Zealand law obligations in—

- the International Convention for the Suppression of Terrorist Bombings (the **Bombings Convention**); and
- the International Convention for the Suppression of the Financing of Terrorism (the **Financing Convention**).

Both conventions were presented to Parliament on 15 November 2000 in accordance with Standing Orders 384 and 385. The Foreign Affairs, Defence and Trade Committee presented its report to the House on 30 November 2000, noting that it had completed the international treaty examination process and had no matters to bring to the attention of the House. The enactment of this Bill will enable New Zealand to accede to the Bombings Convention (which was not signed before the closing date specified in the Convention), and to ratify the Financing Convention (which New Zealand signed on 7 September 2000).

International legal framework to combat terrorism

Over the last 30 years, an international legal framework has evolved with the objective of preventing terrorism. The framework has developed in an ad hoc manner, and now comprises 13 instruments which fall into the following 5 broad categories:

(1) Terrorism involving aircraft

- Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963)

- Convention for the Suppression of Unlawful Seizure of Aircraft (1970)
- Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (1971)
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1988)

(2) Terrorism involving ships

- Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (1988)
- Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on the Continental Shelf (1988)

(3) Terrorist acts against persons

- Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents (1973)
- Convention against the Taking of Hostages (1979)
- Convention on the Safety of United Nations and Associated Personnel (1994)

(4) Terrorism involving particular materials

- Convention on the Physical Protection of Nuclear Material (1979)
- Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991)
- Convention for the Suppression of Terrorist Bombings (1997)

(5) Financing of terrorism

- Convention for the Suppression of the Financing of Terrorism (1999).

The evolution of the international framework reflects the changing nature of terrorist activities. In the 1960s, hijacking of aircraft was a common form of terrorism, and became the focus of the early instruments. Often the catalyst for the development of particular instruments has been a particular incident that has revealed a gap in the existing framework, for instance, the Entebbe incident led to the

Hostages Convention, and the *Achille Lauro* incident led to the 1988 maritime instruments.

There are 2 other conventions currently on the agenda of the United Nations General Assembly's Ad-hoc Working Group on Terrorism: a draft convention for the suppression of acts of nuclear terrorism, and a draft comprehensive convention against terrorism. In both cases, negotiations are at an early stage.

New Zealand's participation in terrorism instruments

New Zealand is currently a party to 9 of the 13 terrorism instruments.

(a) Instruments relating to terrorism involving aircraft

New Zealand is a party to all 4 instruments dealing with terrorism involving aircraft. The implementing legislation for these instruments is the Aviation Crimes Act 1972 (as amended in 1999). The Act creates a range of offences and includes provisions on extradition and other forms of international cooperation in investigations and prosecutions.

(b) Instruments relating to terrorism involving ships

In 1999, New Zealand became a party to the Convention and Protocol relating to maritime terrorism. The implementing legislation for these instruments is the Maritime Crimes Act 1999.

(c) Conventions relating to terrorist acts against persons

New Zealand is a party to all 3 conventions involving terrorist acts against persons. The implementing legislation for these conventions is the Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980. The Act was amended in 1998 to encompass the Convention on the Safety of United Nations and Associated Personnel, and includes similar provisions to those in the Aviation Crimes and Maritime Crimes Acts.

(d) Other terrorism conventions

There are 4 terrorism conventions to which New Zealand is currently not a party. These are the 2 Conventions this Bill relates to (the Bombings Convention and the Financing Convention), the Convention on the Physical Protection of Nuclear Material, and the

Convention on the Marking of Plastic Explosives for the Purpose of Detection. The latter 2 conventions have not been regarded as priorities given their limited application in the New Zealand context.

Bombings Convention

The initiative to develop a new convention dealing with terrorist bombings arose from concerns that attacks using explosives or other lethal devices appear to be increasingly widespread, with government facilities often being the targets. The earlier instruments did not cover this sort of terrorism adequately.

The primary obligation in the Convention is for States Parties to create an offence of “terrorist bombing”. Like the earlier instruments, there are associated obligations directed at improving international cooperation generally, with specific measures relating to extradition and mutual legal assistance. These measures are aimed at ensuring that it is less easy for a person who commits an international terrorist act to find a safe haven.

Financing Convention

The comparatively rapid conclusion of the Bombings Convention was followed by negotiations on a convention to combat the financing of terrorism. There has been a growing realisation that new strategies are needed to deal with terrorism. One significant measure is seen to be restricting access to funds, as the number and seriousness of terrorist acts depend to a large extent on the financing available.

The Convention therefore has a different focus from the earlier instruments. Those were more situation-specific (for example, hostage-taking), whereas this Convention is linked to 9 of the earlier instruments by targeting the financing of the terrorist acts specified in those instruments (*see* the annex of the Financing Convention). This financing could be direct or indirect, and could be through organisations that have legitimate goals or through organised criminal groups.

The Convention requires States Parties to create an offence of financing of terrorism and to have the usual extradition and mutual assistance provisions. But it also goes further, requiring States Parties to consider adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes, and to intensify the exchange of information concerning

international movements of those funds. In New Zealand's case, measures already taken to combat money laundering (which include measures under the Financial Transactions Reporting Act 1996) mean that there is already substantial compliance with the Convention's provisions dealing with the movement of funds.

The Financing Convention contemplates that when a State becomes a party to it, the State may make a declaration to the effect that the Convention does not apply in relation to a treaty specified in the annex of the Convention and to which New Zealand is not already a party. At this stage, New Zealand would need to make such a declaration in relation to the Convention on the Physical Protection of Nuclear Material, but that declaration ceases to have effect if, in the future, New Zealand becomes a party to that Convention.

Clause by clause analysis

Clause 1 is the Title clause.

Part 1

Preliminary provisions

Clause 2 provides that the Bill comes into force on a date appointed by the Governor-General by Order in Council. Different dates of commencement may be appointed by 1 or more Orders in Council for different provisions and for different purposes. The reason for providing that provisions of the Bill come into force on a date or dates to be appointed by Order in Council is that neither of the 2 Conventions has entered into force. Each enters into force on the 30th day after the date of deposit with the Secretary-General of the United Nations of the 22nd instrument of ratification, acceptance, approval, or accession (*see* article 22 of the Bombings Convention, and article 26 of the Financing Convention). On 30 March 2001, 19 such instruments had been deposited for the Bombings Convention, and 3 such instruments had been deposited for the Financing Convention.

Clause 3 states that the Bill's purpose is—

- (a) to make further provision in New Zealand law for the suppression of terrorism; and
- (b) to implement in New Zealand law New Zealand's obligations under the Bombings Convention and the Financing Convention.

Clause 4 is the interpretation clause. It lists terms used and defined in the Bill, and gives the definitions or their locations. A number of the definitions follow very closely definitions in article 1 of the Bombings Convention and article 1 of the Financing Convention, departing from them only if that is necessary to present definitions in a way familiar to users of New Zealand legislation, or to avoid some uncertainty in a way consistent with the Convention (an example is the insertion, in paragraph (a) of the definition of **place of public use**, of the words in brackets, which are a clarification made desirable by the definitions of **public place** in section 2(1) of the Summary Offences Act 1981 and section 2(1) of the International Terrorism (Emergency Powers) Act 1987).

Clause 5(1) empowers the Governor-General, by Order in Council, to amend *Schedule 3*—

- (a) by adding or inserting a treaty listed in the annex of the Financing Convention and to which New Zealand has become a party; or
- (b) by omitting a treaty listed in that annex and to which New Zealand has ceased to be a party.

The treaties specified in *Schedule 3* are each a **specified terrorism convention** for the purposes of the offence of financing of terrorism. *Clause 5(2)* provides that the power conferred by *clause 5(1)* may be exercised only to ensure that *Schedule 3* specifies all the treaties listed in the annex of the Financing Convention that are treaties to which New Zealand is a party, but no other treaties. The power is provided for because the Convention requires New Zealand to make conduct that a treaty listed in the annex defines as an offence a part of the offence, under New Zealand law, of financing of terrorism, only if New Zealand is a party to that treaty (*see* article 2(2) of the Convention). *Clause 5(3)* ensures that orders under *clause 5(1)* will be published in the Statutory Regulations (SR) series, and will be subject to scrutiny by the Regulations Review Committee, and to disallowance.

Clause 6 relates to certificates as to States Parties under the Bombings Convention or the Financing Convention.

Clause 7 provides that the Bill will bind the Crown.

Part 2

Suppression of terrorist bombings and financing of terrorism

Terrorist bombing

Clause 8(1) creates the offence of terrorist bombing, as required by articles 2 and 4 of the Bombings Convention. *Clause 8(1)* provides that 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 (as defined by *clause 8(2)*), 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.

Financing of terrorism

Clause 9(1) creates the offence of financing of terrorism, as required by articles 2 and 4 of the Financing Convention. *Clause 9(1)* provides that a person commits an offence who, directly or indirectly, wilfully and without lawful justification or excuse, provides or collects funds with the intention that they be used, or in the knowledge that they are to be used, in full or in part, in order to engage in—

- (a) acts or omissions that constitute an offence within the scope of and as defined in any specified terrorism convention (as defined by *clause 9(2)*); or
- (b) other terrorist acts (as defined by *clause 9(2)*).

Clause 10 contains further provisions relating to financing of terrorism. *Clause 10(1)(b)* makes clear, in a way consistent with article 2 of the Financing Convention, a matter left unclear by that article. The rest of *clause 10* contains the further provisions contemplated by articles 2(3) and 5 of the Financing Convention.

Penalties

Clause 11 states penalties for terrorist bombing and financing of terrorism. Consistent with article 4(b) of the Bombings Convention and article 4(b) of the Financing Convention, *clause 11* makes the

offences punishable by appropriate penalties that take into account the grave nature of the offences.

Extraterritorial jurisdiction

Clause 12(1) provides that *clauses 8 and 9* each apply in respect of acts that occurred wholly outside New Zealand, as provided in *clauses 13 to 16*. This extraterritorial jurisdiction is in part required by the Conventions (*see* article 6(1)(b) and (c) of the Bombings Convention and article 7(1)(b) and (c) of the Financing Convention), and is in part a result of New Zealand's decision to establish the broader extraterritorial jurisdiction contemplated by the Conventions (*see* article 6(2) of the Bombings Convention and article 7(2) of the Financing Convention). *Clause 12(2)* makes it clear that *clause 12(1)* does not affect the application of *clause 8 or clause 9* in respect of—

- (a) acts that occurred wholly within New Zealand (as contemplated by article 6(1)(a) of the Bombings Convention and article 7(1)(a) of the Financing Convention); 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.

Clause 13 provides that proceedings may be brought in a New Zealand court for terrorist bombing or financing of terrorism if the acts alleged to constitute the offence occurred wholly outside New Zealand, but were done by a New Zealand citizen, or a stateless person ordinarily resident in New Zealand, or any other person and on board a New Zealand ship or a New Zealand aircraft.

Clause 14 relates to further acts outside New Zealand to which the offence of terrorist bombing applies.

Clause 15 relates to further acts outside New Zealand to which the offence of financing of terrorism applies.

Clause 16 provides that proceedings may also be brought in a New Zealand court for terrorist bombing or financing of terrorism if the acts alleged to constitute the offence occurred wholly outside New Zealand, but the alleged offender is present in New Zealand and is not extradited.

Clause 17 ensures that neither section 8 of the Crimes Act 1961 nor section 400 of that Act applies in respect of terrorist bombing or financing of terrorism.

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

Clause 18(1) provides that *clauses 19 and 20* 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. *Clause 18(2)* defines **relevant States Parties**.

Clause 19 requires the Attorney-General to inform the relevant States Parties promptly of the findings of an investigation under New Zealand law of the facts contained in the information, and to indicate promptly to the relevant States Parties whether New Zealand intends to exercise jurisdiction (as contemplated by article 7(1) and (6) of the Bombings Convention and article 9(1) and (6) of the Financing Convention).

Clause 20 requires the Attorney-General, immediately after a person is taken into custody under New Zealand law for the purpose of prosecution or extradition as part of the measures contemplated by article 7 of the Bombings Convention or, as the case requires, article 9 of the Financing Convention, to notify the relevant States Parties (as contemplated by article 7(6) of the Bombings Convention and article 9(6) of the Financing Convention) of the fact that the person is in custody, and of the circumstances that justify the person's detention.

Clause 21 applies to a person who is taken into custody in New Zealand as part of the measures referred to in *clause 20* and who is neither a New Zealand citizen nor a stateless person who is ordinarily resident in New Zealand. As contemplated by article 7(3) of the Bombings Convention and article 9(3) of the Financing Convention, *clause 21(2)* provides that, promptly after being taken into custody, a person to whom *clause 21* 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.

Clause 21(3) defines **relevant State**. *Clause 21(4)* makes it clear that nothing in *clause 21* affects any other rights of a person to whom *clause 21* applies.

Clause 22 requires the Attorney-General's consent to be obtained before proceedings for terrorist bombing or financing of terrorism are instituted in any court.

Clause 23 requires the Attorney-General to communicate promptly to the Secretary-General of the United Nations the final outcome of any prosecutions for terrorist bombing or financing of terrorism (as contemplated by article 16 of the Bombings Convention and article 19 of the Financing Convention).

Extradition

Clause 24(1) provides that, for the purposes of the Extradition Act 1999, terrorist bombing and financing of terrorism are each, if not already described in the treaty, deemed to be an offence included in any extradition treaty concluded before the commencement of *clause 8* or *clause 9*, and for the time being in force between New Zealand and any foreign country that is party to the Bombings Convention or the Financing Convention, or to which the Bombings Convention or the Financing Convention extends. (That deeming of those offences is required by article 9(1) of the Bombings Convention and article 11(1) of the Financing Convention.)

Part 3 **Amendments**

Amendment to Criminal Justice Act 1985

Clause 25 inserts in the Criminal Justice Act 1985 a *new section 81AA*, relating to prisoners charged with or convicted of an offence against New Zealand law (the **New Zealand offence**), and transferred to a foreign country pursuant to a request by that country under *new section 38A(2)* of the Mutual Assistance in Criminal Matters Act 1992. *New section 81AA* ensures any period those (remand) prisoners spend in custody outside New Zealand in connection with the request before sentence is imposed for the New Zealand offence is taken into account in determining their eligibility for parole or final release.

Amendment to Immigration Act 1987

Clause 26 amends the definition of **act of terrorism** in section 2(1) of the Immigration Act 1987. The term is used in provisions on eligibility for certain exemptions or permits under that Act, and in provisions on susceptibility to deportation as a suspected terrorist.

The amendment ensures that the term includes any act that constitutes, or that would, if committed in New Zealand, constitute, an offence against the Maritime Crimes Act 1999 or this Bill.

Amendments to Mutual Assistance in Criminal Matters Act 1992

Clauses 27 to 42 and Schedule 4 amend the Mutual Assistance in Criminal Matters Act 1992. (It is intended that they be divided from the Bill at the Committee of the whole House stage to form a separate Mutual Assistance in Criminal Matters Amendment Bill.) *Clause 27* provides that the **principal Act** amended by *clauses 28 to 42 and Schedule 4* is the Mutual Assistance in Criminal Matters Act 1992.

Clause 28(2) adds to the principal Act a *new section 2(6)*. *New section 2(6)*, which is similar to section 2(3) of the Extradition Act 1999, provides that, in the principal Act, an offence of a political character does not include—

- (a) an offence—
 - (i) that is constituted by conduct of a kind referred to in a multilateral treaty to which New Zealand is a party; and
 - (ii) for which parties have an obligation to provide to one another assistance in criminal matters; or
- (b) any offence in relation to which New Zealand has agreed in writing with another country that the offence will not be treated as a political offence for the purposes of the provision of assistance in criminal matters between New Zealand and that country.

New section 2(6) ensures that the principal Act will comply with article 11 of the Bombings Convention and article 13 of the Financing Convention.

Clause 29 relates to section 24A of the principal Act which (together with Schedules 1 and 2 of that Act) imposes certain limits on requests by convention countries under Part 3 of that Act. *Clause 29* repeals section 24A and substitutes a *new section 24A*. In a related amendment, *clause 42* repeals Schedules 1 and 2 and the heading above them, and substitutes a *new Schedule* linked to *new section 24A*. *New section 24A* and the *new Schedule* are to simplify and shorten the provisions they replace, and differ from them in 2 ways. First, they refer to the Bombings Convention, the Financing Convention, and the offences against this Bill. Second, they ensure the

offences listed in the *new Schedule* are linked only to the Conventions to which those offences relate.

Clause 35 inserts in the principal Act a *new section 38A* relating to assistance in arranging prisoners' attendance to provide assistance in relation to the investigation of offences in foreign countries that correspond to terrorist bombing or financing of terrorism.

Clause 39 inserts in the principal Act *new sections 41A and 41B*. *New section 41A* relates to the effect on a remand prisoner's sentence of a transfer to a foreign country pursuant to a request under *new section 38A(2)*. *New section 41B* relates to certificates that state how long a remand prisoner spent in custody overseas pursuant to a request under *new section 38A(2)*.

Amendment to Proceeds of Crime Act 1991

Clause 43 amends section 2(1) of the Proceeds of Crime Act 1991 by repealing the definition of **tainted property**, and substituting a new, extended definition of that term. The extension is required by article 8(2) of the Financing Convention, which requires States Parties to take appropriate measures, in accordance with their domestic legal principles, for the forfeiture of funds used *or allocated* for the purpose of committing offences referred to in the Convention.

Hon Phil Goff

Terrorism (Bombings and Financing) Bill

Government Bill

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Schedule 1
International Convention
for the Suppression of
Terrorist Bombings

Schedule 2
International Convention
for the Suppression of
the Financing of Terrorism

Schedule 3
Specified terrorism conventions

Schedule 4
New Schedule of principal Act
substituted

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Terrorism (Bombings and Financing) Act **2001**.

Part 1
Preliminary provisions

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2 Commencement

This Act comes into force on a date appointed by the Governor-General by Order in Council; and 1 or more Orders in Council may be made appointing different dates for different provisions and for different purposes.

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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 implement in New Zealand law New Zealand's obligations under the Bombings Convention and the Financing Convention. 5

4 Interpretation

In this Act, unless the context otherwise requires,—

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** 10

country has the meaning given to it by **section 24(4)** 15

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— 20
 - (i) toxic chemicals, biological agents or toxins or similar substances; or 25
 - (ii) radiation or radioactive material

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** 30

financing of terrorism means an offence against **section 9(1)**

funds—

- (a) means assets of every kind, whether tangible or intangible, moveable or immovable, however acquired; and 35
- (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 any facility (whether publicly or privately owned) providing or distributing services (for example, supplying water, sewage disposal services, energy, fuel, or communications services) for the benefit of the public 5
ordinarily resident in New Zealand has the same meaning as in section 4 of the Crimes Act 1961

other terrorist acts has the meaning given to it by **section 9(2)**

place of public use— 10

(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 15

(b) includes any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational, or similar place that is so accessible or open to the public 20

public transportation system means all conveyances (for example, any aircraft, trains, ships, ferries, trucks, buses, or taxis), 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 25

relevant date has the meaning given to it by **section 24(4)**

relevant place, facility, or system has the meaning given to it by **section 8(2)**

relevant State has the meaning given to it by **section 21(3)** 30

relevant States Parties has the meaning given to it by **section 18(2)**

specified terrorism convention has the meaning given to it by **section 9(2)**

State or government facility means any conveyance (for example, an aircraft, train, ship, ferry, truck, bus, taxi, or car) or facility (whether permanent or temporary) used or occupied by any of the following persons in connection with their official duties: 35

- (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: 5
- (d) employees or officials of an intergovernmental organisation

terrorist bombing means an offence against **section 8(1)**.

5 Power to amend Schedule 3

- (1) The Governor-General may, by Order in Council, amend **Schedule 3** by— 10
 - (a) adding to it, or inserting in it, a treaty listed in the annex of the Financing Convention and to which New Zealand has become a party; or
 - (b) omitting from it a treaty listed in that annex and to which New Zealand has ceased to be a party. 15
- (2) The power conferred by **subsection (1)** may only be exercised to ensure that **Schedule 3** specifies all the treaties listed in the annex of the Financing Convention that are treaties to which New Zealand is a party, but no other treaties. 20
- (3) An order under **subsection (1)** is a regulation for the purposes of the Acts and Regulations Publication Act 1989 and the Regulations (Disallowance) Act 1989.

6 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 states that a State is, or is not, a State Party under the Bombings Convention or, as the case requires, under the Financing 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). 25 30

7 Crown bound

This Act binds the Crown.

Part 2

Suppression of terrorist bombings and financing of terrorism

Terrorist bombing

- 8 Terrorist bombing** 5
- (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— 10
- (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. 15
- (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. 20

Financing of terrorism

- 9 Financing of terrorism**
- (1) A person commits an offence who, directly or indirectly, wilfully and without lawful justification or excuse, provides or collects funds with the intention that they be used, or in the knowledge that they are to be used, in full or in part, in order to engage in— 25
- (a) acts or omissions that constitute an offence within the scope of and as defined in any specified terrorism convention; or 30
- (b) other terrorist acts.
- (2) In **subsection (1),—**
- other terrorist acts** means acts—
- (a) that occur in a situation of armed conflict; and
- (b) that are 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 35

- (c) the purpose of which, as shown by their nature or context, is to intimidate a population, or compel a government or an international organisation to do or abstain from doing any act

specified terrorism convention means any treaty specified in **Schedule 3**. 5

10 Further provisions relating to financing of terrorism

- (1) In a prosecution for financing of terrorism, it is not necessary for the prosecution to prove—
- (a) that the funds were actually used, in full or in part, to engage in acts or omissions referred to in **section 9(1)(a) or (b)**; or 10
- (b) that any acts or omissions of that kind occurred.
- (2) In a prosecution of a body corporate for financing of terrorism, the acts of the body corporate must be taken to include (but not to be limited to) the acts of a person who— 15
- (a) is a director, or a person concerned in the management, of the body corporate; and
- (b) engaged in the acts in that capacity.
- (3) Liability of a body corporate for financing of terrorism that arises out of acts of the body corporate that are or include acts of a person does not affect the personal liability of that person for financing of terrorism arising out of the acts of that person. 20

Penalties

- 11 Penalties for offences** 25
- (1) A person who commits terrorist bombing is liable on conviction on indictment to imprisonment for life or a lesser term.
- (2) A person who commits financing of terrorism is liable on conviction on indictment,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 14 years: 30
- (b) in the case of a body corporate, to a fine not exceeding \$250,000.

Extraterritorial jurisdiction

- 12 Offences also apply in certain cases outside New Zealand** 35
- (1) **Sections 8 and 9** each apply in respect of acts that occurred wholly outside New Zealand, as provided in **sections 13 to 16**.

- (2) **Subsection (1)** does not affect the application of **section 8 or section 9** 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 5
 - (c) acts that, under section 8A of that Act, are deemed to have taken place within New Zealand.
- 13 Offences apply to acts outside New Zealand by New Zealand citizens or on New Zealand aircraft and ships** 10
- Proceedings may be brought in a New Zealand court for terrorist bombing or financing of terrorism 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: 15
 - (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: 20
 - (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 to be registered under that Act; or 25
 - (iii) for the time being used as a ship of the New Zealand Defence Force.
- 14 Further acts outside New Zealand to which terrorist bombing applies** 30
- 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 35
 - (c) in an attempt to compel the Government of New Zealand to do or abstain from doing any act.

- 15 Further acts outside New Zealand to which financing of terrorism applies**
- Proceedings may also be brought in a New Zealand court for financing of terrorism if the acts alleged to constitute the offence occurred wholly outside New Zealand, but were directed towards, or resulted in, acts or omissions referred to in **section 9(1)(a) or (b)** being done or omitted to be done—
- (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.
- 16 Offences also apply to acts outside New Zealand if alleged offender is in New Zealand and is not extradited**
- Proceedings may also be brought in a New Zealand court for terrorist bombing or financing of terrorism if the acts alleged to constitute the offence occurred wholly outside New Zealand, but—
- (a) there is present in New Zealand a person alleged to have committed an offence referred to in (as the case requires)—
 - (i) article 2 of the Bombings Convention; or
 - (ii) article 2 of the Financing Convention; and
 - (b) the person is not extradited to (as the case requires)—
 - (i) a State Party to the Bombings Convention that has established jurisdiction in accordance with article 6(1) or (2) of that Convention; or
 - (ii) a State Party to the Financing Convention that has established jurisdiction in accordance with article 7(1) or (2) of that Convention.
- 17 Application of Crimes Act 1961**
- The following sections of the Crimes Act 1961 do not apply in respect of terrorist bombing or financing of terrorism:
- (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).

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

18 Application of sections 19 and 20

- (1) **Sections 19 and 20** 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, as the case requires, article 2 of the Financing Convention. 5
- (2) **In sections 19 and 20, relevant States Parties** means— 10
- (a) any States Parties that have established jurisdiction in accordance with article 6(1) or (2) of the Bombings Convention or, as the case requires, article 7(1) or (2) of the Financing Convention; and
- (b) any other interested States Parties the Attorney-General considers it advisable to inform or notify. 15

19 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, as the case requires, article 9(1) of the Financing Convention), the Attorney-General must— 20
- (a) inform the relevant States Parties promptly of the findings of the investigation; and 25
- (b) indicate promptly to the relevant States Parties whether New Zealand intends to exercise jurisdiction.

20 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, as the case requires, article 9 of the Financing Convention) 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— 30
- (a) the fact that the person is in custody; and 35

- (b) the circumstances that justify the person's detention.

21 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 20** and who is neither— 5
- (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,— 10
- (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. 15
- (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 20
- (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.

22 Attorney-General's consent to prosecutions required 25

- (1) No proceedings for terrorist bombing or financing of terrorism may be instituted in any court except with the consent of the Attorney-General.
- (2) However, a person alleged to have committed terrorist bombing or financing of terrorism 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. 30

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

If a person is prosecuted for terrorist bombing or financing of 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.

5

Extradition

24 **Offences deemed to be included in extradition treaties** 10

(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 and financing of terrorism 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 the Bombings Convention or (as the case requires) the Financing Convention, or to which the Bombings Convention or (as the case requires) the Financing Convention extends.

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(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.

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(3) **Subsection (2)** does not prevent the person from being surrendered for an offence (other than terrorist bombing or financing of terrorism) described in the extradition treaty and constituted by conduct that also constitutes or may constitute terrorist bombing or financing of terrorism.

30

(4) For the purposes of this section,—

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

relevant date means,—

(a) in relation to terrorist bombing, the date on which **section 8** comes into force:

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(b) in relation to financing of terrorism, the date on which **section 9** comes into force.

Part 3 Amendments

Amendment to Criminal Justice Act 1985

- 25** **New section 81AA inserted in Criminal Justice Act 1985**
The Criminal Justice Act 1985 is amended by inserting, after section 81A, the following section: 5
- “81AA Period in custody in relation to certain mutual assistance requests to be taken as time served**
- “(1)** An offender is a mutual assistance offender for the purposes of this section if— 10
- “(a)** **section 41A(1)** of the Mutual Assistance in Criminal Matters Act 1992 applies to the offender; and
- “(b)** a certificate was obtained under **section 41B** of that Act showing the total period during which the offender was held in custody overseas in relation to a request by a foreign country before the imposition of sentence in New Zealand. 15
- “(2)** In determining the length of any sentence of imprisonment to be imposed, the sentencing Judge must not take into account any part of the period during which the offender was detained in custody as recorded on the certificate obtained under **section 41B** of the Mutual Assistance in Criminal Matters Act 1992, and must not specify any such period on the warrant of commitment. 20
- “(3)** Subject to **subsection (9)**, on receiving a warrant of commitment for any sentenced offender, the superintendent must cause any period during which the offender was detained in custody in relation to the request by the foreign country (as so recorded) to be determined and entered on the warrant of commitment. 25
- “(4)** Subject to **section 41B(2)** of the Mutual Assistance in Criminal Matters Act 1992, subsections (4) to (6) of section 81 of this Act apply to a warrant completed in accordance with **subsection (3)** as if the time in custody entered on the warrant were time on remand entered under section 81(3) of this Act. 30
- “(5)** For the purposes of determining the dates on which a mutual assistance offender to whom **subsection (1)** applies will become eligible for parole or final release, as the case may be, the mutual assistance offender is deemed to have been serving the sentence during the period specified on the warrant of commitment in accordance with **subsection (3)**. 35
- 40

- “(6) For the purposes of **subsection (5)**, terms of imprisonment under cumulative sentences must be treated as 1 term determined in the manner provided in section 92.
- “(7) Nothing in this section limits or affects section 81 of this Act.
- “(8) **Subsection (9)** applies if— 5
- “(a) a certificate under **section 41B** of the Mutual Assistance in Criminal Matters Act 1992 is not available at the time the superintendent receives the warrant of commitment, but is received by the superintendent at any later date while the offender is still in custody; or 10
- “(b) a further certificate is received in the circumstances described in **section 41B(5)** of the Mutual Assistance in Criminal Matters Act 1992 and a fresh determination is required to be made.
- “(9) If this subsection applies, the superintendent must determine and enter the time in custody in accordance with **subsection (3)** when the certificate (or the further certificate) is received. 15
- “(10) **Subsection (9)** applies even if any time spent by the offender on remand or in detention has been entered on the warrant of commitment under section 81 of this Act and any further process under subsections (4) to (6) of section 81 of this Act has been completed.” 20

Amendment to Immigration Act 1987

- 26 Amendment to Immigration Act 1987** 25
- Section 2(1) of the Immigration Act 1987 is amended by inserting in paragraph (d) of the definition of **act of terrorism**, after the expression “1980”, the expression “or the Maritime Crimes Act 1999 or the **Terrorism (Bombings and Financing) Act 2001**”.

Amendments to Mutual Assistance in Criminal Matters Act 1992 30

- 27 Mutual Assistance in Criminal Matters Act 1992 called principal Act in sections 28 to 42 and Schedule 4** 35
- In **sections 28 to 42** and **Schedule 4**, the Mutual Assistance in Criminal Matters Act 1992¹ is called “the principal Act”.

¹ 1992 No 86

28 Interpretation

- (1) Section 2(1) of the principal Act is amended by omitting from the definition of **convention country** the expression “specified in Schedule 1:”, and substituting the expression “referred to in column 1 of the table in the **Schedule**”. 5
- (2) Section 2 of the principal Act is amended by adding the following subsection:
- “(6) In this Act, a reference to an offence of a political character does not include—
- “(a) an offence— 10
- “(i) that is constituted by conduct of a kind referred to in a multilateral treaty to which New Zealand is a party; and
- “(ii) for which parties have an obligation to provide to one another assistance in criminal matters; or 15
- “(b) any offence in relation to which New Zealand has agreed in writing with another country that the offence will not be treated as a political offence for the purposes of the provision of assistance in criminal matters between New Zealand and that country.” 20

29 New section 24A substituted

The principal Act is amended by repealing section 24A, and substituting the following section:

- “24A **Limitations on requests by convention countries** 25
- If a convention country requests assistance under this Part in accordance with a convention referred to in column 1 of the table in the **Schedule**, the request must relate to criminal matters arising from the commission or suspected commission of an offence that, if committed within the jurisdiction of New Zealand, would correspond to an offence listed in column 2 of that table in the same row as the reference to the convention.” 30

30 Further limitations on requests by convention countries

- (1) Section 24B(1)(a) of the principal Act is amended by omitting the expression “Schedule 1”, and substituting the expression “column 1 of the table in the **Schedule**”. 35
- (2) Section 24B(2)(b) of the principal Act is amended by omitting the expression “Schedule 2 or section 24A(3) or section 24A(4) or section 24A(6)”, and substituting the expression “column 2 of the table in the **Schedule**”.

- (3) Section 24B(3) of the principal Act is amended by omitting the expression “Schedule 2 or section 24A(3) or section 24A(4) or section 24A(6)”, and substituting the expression “column 2 of the table in the **Schedule**”.
- 31 Form of request** 5
Section 26(bb) of the principal Act is amended by omitting the expression “Schedule 1”, and substituting the expression “column 1 of the table in the **Schedule**”.
- 32 Refusal of assistance** 10
Section 27 of the principal Act is amended by omitting from subsections (1)(g) and 2(d) the words “of this Act”, and substituting in each case the expression “or **section 38A**”.
- 33 Assistance in arranging attendance of person to give evidence in foreign country** 15
The heading to section 37 of the principal Act is amended by omitting the words “**give evidence**”, and substituting the words “**give or provide evidence or assistance in relation to criminal matter**”.
- 34 Assistance in arranging attendance of prisoner** 20
The heading to section 38 of the principal Act is amended by adding the words “**to give evidence in relation to criminal proceedings in foreign country**”.
- 35 New section 38A inserted** 25
The principal Act is amended by inserting, after section 38, the following section:
- “38A Assistance in arranging attendance of prisoner to provide assistance in investigation of offences in foreign country corresponding to terrorist bombing or financing of terrorism**
- “(1) In this section,—** 30
“**Bombings Convention** and **Financing Convention** have the meanings given to them by **section 4** of the **Terrorism (Bombings and Financing) Act 2001**
“**financing of terrorism** means an offence that, if committed within the jurisdiction of New Zealand, would correspond to 35

an offence against **section 9(1)** of the **Terrorism (Bombings and Financing) Act 2001**

“**terrorist bombing** means an offence that, if committed within the jurisdiction of New Zealand, would correspond to an offence against **section 8(1)** of the **Terrorism (Bombings and Financing) Act 2001**.”

- “(2) A foreign country that is party to the Bombings Convention or, as the case requires, the Financing Convention may request the Attorney-General to assist in arranging the attendance, in that country, of a person described in any of paragraphs (a) to (e) of section 38(1) for the purposes of providing assistance in relation to a criminal investigation in respect of terrorist bombing or, as the case requires, financing of terrorism. 10
- “(3) Subsections (2) to (5) of section 38 apply, with all necessary modifications, in respect of a request made under **subsection (2)**, as if references in subsections (2) and (3) of section 38 to giving evidence in, or relevant to, or at a hearing connected with, criminal proceedings in a foreign country included references to providing assistance in relation to a criminal investigation in that country. 15 20
- “(4) Nothing in this section affects the application of section 38 in respect of any request by a foreign country for assistance in arranging the attendance, in that country, of the person to give evidence in relation to criminal proceedings in the foreign country in respect of terrorist bombing or, as the case requires, financing of terrorism.” 25

36 Undertakings required from foreign country

Section 39 of the principal Act is amended—

- (a) by omitting the words “of this Act”, and substituting the expression “or **section 38A**”: 30
- (b) by omitting the word “either” in both places where it appears, and substituting in each case the word “any”:
- (c) by adding to subparagraph (i) of paragraph (a) the expression “, other than an offence in respect of which the Attorney-General consents to the person being so detained, prosecuted, or punished”. 35

- 37 Penalty not to be imposed for refusal to consent**
Section 40 of the principal Act is amended by omitting the words “of this Act”, and substituting the expression “or **section 38A**”.
- 38 Effect of removal to foreign country on prisoner’s term of imprisonment** 5
Section 41 of the principal Act is amended by omitting the words “of this Act”, and substituting the expression “or **section 38A**”.
- 39 New sections 41A and 41B inserted** 10
The principal Act is amended by inserting, after section 41, the following sections:
- “41A Effect of transfer to foreign country pursuant to request under section 38A(2) on remand prisoner’s sentence**
- “(1)** If a prisoner who is charged with or convicted of an offence against the law of New Zealand (the **New Zealand offence**) is transferred to a foreign country pursuant to a request by that country under **section 38A(2)**, **section 41B** of this Act and **section 81AA** of the Criminal Justice Act 1985 apply to any period that the person spends in custody outside New Zealand in connection with the request before sentence is imposed for the New Zealand offence. 15 20
- “(2)** Nothing in this section affects section 41.
- “41B Information about time remand prisoner spent in custody overseas pursuant to request under section 38A(2)** 25
- “(1)** If a prisoner who is charged with or convicted of an offence against the law of New Zealand (the **New Zealand offence**) is transferred to a foreign country pursuant to a request by that country under **section 38A(2)** before sentence is imposed for the New Zealand offence, the Attorney-General may request the foreign country to provide a certificate recording the total period during which the prisoner was detained outside New Zealand in connection with the request until sentence was imposed for the New Zealand offence. 30 35
- “(2)** A certificate obtained under **subsection (1)** is presumed to be accurate, unless the contrary is proved.

- “(3) The Attorney-General may issue a certificate setting out the date and period referred to in **subsection (1)** if—
- “(a) the foreign country does not provide a certificate within a reasonable time after the Attorney-General makes a request under **subsection (1)**; and 5
- “(b) the Attorney-General is satisfied from the information that the Attorney-General has that an accurate calculation can be made of the period referred to in **subsection (1)**.
- “(4) For the purposes of **section 81AA** of the Criminal Justice Act 1985, a certificate given by the Attorney-General under **subsection (3)** has the same effect as a certificate under **subsection (1)**. 10
- “(5) **Subsection (6)** applies if, after the Attorney-General has given a certificate under **subsection (3)**,— 15
- “(a) a certificate requested under **subsection (1)** is obtained from the foreign country; and
- “(b) the time period specified in that certificate is different from that specified in the Attorney-General’s certificate. 20
- “(6) If this subsection applies, a fresh determination must be made under **section 81AA** of the Criminal Justice Act 1985 in reliance on the certificate from the foreign country.”
- 40 Certificates relating to convention countries** 25
Section 64A(1) of the principal Act is amended by omitting the expression “specified in Schedule 1”, and substituting the expression “referred to in column 1 of the table in the **Schedule**”.
- 41 Amendment of Schedule 1** 30
Section 64B of the principal Act is repealed.
- 42 Schedules 1 and 2 and heading repealed and new Schedule substituted** 35
The principal Act is amended by repealing Schedules 1 and 2 and the heading immediately above them, and substituting the **Schedule** set out in **Schedule 4**.

*Amendment to Proceeds of Crime Act 1991***43 Amendment to Proceeds of Crime Act 1991**

Section 2(1) of the Proceeds of Crime Act 1991 is amended by repealing the definition of **tainted property**, and substituting the following definition:

“tainted property,—

“(a) in relation to a serious offence, means—

“(i) property used to commit, or to facilitate the commission of, the offence; or

“(ii) proceeds of the offence; and

“(b) when used without reference to a particular offence, means tainted property in relation to any serious offence; and

“(c) in relation to a serious offence that is an offence against **section 9(1) of the Terrorism (Bombings and Financing) Act 2001**, includes funds (as defined in **section 4** of that Act) allocated for the purpose of committing that serious offence; and

“(d) in relation to a foreign serious offence that, if committed within the jurisdiction of New Zealand, would correspond to an offence against **section 9(1) of the Terrorism (Bombings and Financing) Act 2001**, includes funds (as so defined) allocated for the purpose of committing that foreign serious offence”.

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Schedule 1

International Convention for the Suppression of Terrorist Bombings

s 4

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, 5

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations, 10

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”, 15
20

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”, 25

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, 30

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 35

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. 15
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. 20
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 25
 - (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. 30
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. 35
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. 5

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: 10

(a) With the intent to cause death or serious bodily injury; or 15

(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. 20

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 25

(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. 30

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 35

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: 5

(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

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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. 15

Article 6

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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 25

(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: 30

(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. 5

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. 10

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. 15

5. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law. 20

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. 25

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. 30

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; 35

- (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
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. 10
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. 15
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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. 25
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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 35

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

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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. 10

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. 15

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. 20

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. 25

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. 30

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. 35

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. 5

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. 10

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. 15
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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: 25
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- (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: 35

- (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; 5

(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; 10

(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. 15 20

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. 25

Article 15

States Parties shall cooperate in the prevention of the offences set forth in Article 2, particularly: 30

(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; 35

(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. 5
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. 10
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. 15

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. 20
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. 25
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. 30
2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of 35

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. 5
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

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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. 15

Schedule 2

International Convention for the Suppression of the Financing of Terrorism

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Preamble

The States Parties to this Convention, 5

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, 10

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, 15
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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, 25

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 30
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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, 5

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, 10

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, 15

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, 20

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, 25

Have agreed as follows:

Article 1 30

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. 35

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. 5

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 10

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: 15

(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. 20

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; 25 30

(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). 35

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; 5
 - (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 10
 - (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. 15

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, paragraph 2, to exercise jurisdiction, except that the provisions of articles 12 to 18 shall, as appropriate, apply in those cases. 20

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; 25
- (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. 30 35

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. 5

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. 10

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: 15
- (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; 20
 - (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; 25
 - (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; 30
 - (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; 35

(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. 5

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. 10

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. 15

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. 20

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. 25

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. 30

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. 35

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

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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.

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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.

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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;

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(b) Be visited by a representative of that State;

(c) Be informed of that person's rights under subparagraphs (a) and (b).

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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.

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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.

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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. 5

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. 15

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. 20 25

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. 30

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 35

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. 5

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. 10

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. 15

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. 20

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. 25

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. 30

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. 35

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. 5

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. 10 15

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. 20 25

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: 30

- (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. 35

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;

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(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;

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(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.

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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.

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Article 17

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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.

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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:

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(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: 5
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(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; 15

(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; 20

(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; 25

(iv) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic or international. 30

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; 35

(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. 40

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: 5
- (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: 10
 - (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. 15
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. 20

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. 25

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. 30

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.

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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;

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(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.

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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.

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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.

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Article 24

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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

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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. 5

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. 10

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. 15

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. 20

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. 25

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. 30

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. 35

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.

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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. 5
 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. 10
 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. 15
 7. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988. 20
 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. 25
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ss 5, 9(2)

Schedule 3
Specified terrorism conventions

- 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. 5
 - 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. 10
 - 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. 15
 - 6 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988. 20
 - 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.
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Schedule 4

New Schedule of principal Act substituted

s 42

Schedule

Limitations on requests by convention countries

ss 2(1), 24A

Convention under which request made	New Zealand offence that convention country offence would correspond to	5
1 The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, opened for signature at New York on 14 December 1973	An offence against any of the following sections of the Crimes Act 1961:	
	<i>section</i> <i>subject-matter</i>	
	128 sexual violation	10
	129 attempt to commit sexual violation	
	142A compelling indecent act with animal	
	167, 168 murder	
	171 manslaughter	
	173 attempt to murder	15
or		
2 The Convention on the Safety of United Nations and Associated Personnel, opened for signature at New York on 9 December 1994	174 counselling or attempting to procure murder	
	176 accessory after the fact to murder	
	188(1) wounding with intent to cause grievous bodily harm	20
	188(2) wounding with intent to injure	
	189(1) injuring with intent to cause grievous bodily harm	
	189(2) injuring with intent to injure, or with reckless disregard for the safety of others	25
	191(1) aggravated wounding	
	191(2) aggravated injury	
	192 aggravated assault	
	197 disabling	30
	198 discharging firearm or doing dangerous act with intent	
	199 acid throwing	
	200 poisoning with intent	
	201 infecting with disease	35
	209 kidnapping	
	294 arson	
	295 attempted arson	
	296 damage to other property by fire or explosive	40
	297 attempt to damage property by fire or explosive	
	298 wilful damage	
	300 interfering with means of transport	
	<i>(offences continued over page)</i>	45

Schedule—continued

Convention under which request made	New Zealand offence that convention country offence would correspond to	
9 The Convention for the Suppression of Unlawful Seizure of Aircraft, done at the Hague on 16 December 1970	An offence against any of the following sections of the Aviation Crimes Act 1972: <i>section subject-matter</i> 3 hijacking 4 crimes in connection with hijacking	5
10 The Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 23 September 1971	An offence against the following section of the Aviation Crimes Act 1972: <i>section subject-matter</i> 5 other crimes relating to aircraft	10
11 The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on 24 February 1988	An offence against the following section of the Aviation Crimes Act 1972: <i>section subject-matter</i> 5A crimes relating to international airports	15
12 The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988	An offence against the following section of the Maritime Crimes Act 1999: <i>section subject-matter</i> 4 crimes relating to ships	20
13 The Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988	An offence against the following section of the Maritime Crimes Act 1999: <i>section subject-matter</i> 5 crimes relating to fixed platforms	25
14 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	An offence against the following section of the Terrorism (Bombings and Financing) Act 2001 : <i>section subject-matter</i> 8(1) terrorist bombing	30
15 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	An offence against the following section of the Terrorism (Bombings and Financing) Act 2001 : <i>section subject-matter</i> 9(1) financing of terrorism	35
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