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**NATIONAL LAWS AND REGULATIONS ON
THE PREVENTION AND SUPPRESSION OF
INTERNATIONAL TERRORISM**

Part II (M-Z)



Série législative des Nations Unies

**DISPOSITIONS LÉGISLATIVES
ET RÉGLEMENTAIRES NATIONALES
RELATIVES À LA PRÉVENTION
ET À L'ÉLIMINATION
DU TERRORISME INTERNATIONAL**

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INTRODUCTION

This volume of the *United Nations Legislative Series*, entitled "National laws and regulations on the prevention and suppression of international terrorism, Part II (M-Z)" has been prepared by the Codification Division of the Office of Legal Affairs, pursuant to paragraph 10 (b) of the Declaration on Measures to Eliminate International Terrorism (annexed to General Assembly resolution 49/60 of 9 December 1994). The aim of this compilation of national laws and regulations is to provide resource material and thereby contribute to enhancing international cooperation in the struggle against terrorism.

This volume of the *Legislative Series* is confined to information received from Member States, some of which was submitted to the Counter-Terrorism Committee. It reproduces texts of national legislation submitted by States relating to the prevention and suppression of terrorism in all its forms and manifestations. Some submissions consist of specific legislation implementing international conventions on terrorism. Others are provisions of national law relevant to the topic, or a substantive summary thereof. Texts submitted by Member States that are only indirectly related to the topic of international terrorism have generally not been reproduced, due to resource limitations, but are available for consultation. The purpose of this volume is to reproduce, as far as possible, actual texts of national laws. Available extracts of such laws have been reproduced, in some cases supplemented by summaries. This volume should also be read in conjunction with the annual report of the Secretary-General on "Measures to eliminate international terrorism" which summarizes information received by States on the various measures taken by them to address international terrorism, as well as the relevant reports to the Counter-Terrorism Committee.

As in the case of other volumes of the *Legislative Series*, texts in English or French have been reproduced in their original version. To the extent that available resources permitted, texts submitted in other official languages of the United Nations have been translated into English by the Secretariat and have been included in this volume. Member States whose official language is not one of the official languages of the United Nations were asked to provide their own translation or a summary in either English or French of their relevant laws and regulations.

* * *

INTRODUCTION

Le présent volume de la *Série législative des Nations Unies* intitulé « Dispositions législatives et réglementaires nationales relatives à la prévention et à l'élimination du terrorisme international, deuxième partie (M-Z) » a été établi par la Division de la codification du Bureau des affaires juridiques, conformément au paragraphe 10 b) de la Déclaration sur les mesures visant à éliminer le terrorisme international (dont le texte figure en annexe à la résolution 49/60 de l'Assemblée générale en date du 9 décembre 1994). Le but de la compilation est de fournir du matériel de référence et de contribuer ainsi à renforcer la coopération internationale dans la lutte contre le terrorisme.

Le présent volume de la *Série législative* se limite aux informations reçues des États Membres, dont certaines ont été soumises au Comité Contre le Terrorisme. S'y trouvent reproduits les textes des législations nationales concernant la prévention et l'élimination du terrorisme sous toutes ses formes et manifestations qui ont été soumis par les États. Certains de ces textes concernent des lois spécifiques portant application de conventions internationales sur le terrorisme. D'autres sont des dispositions du droit national se rapportant à la question, ou un résumé substantiel de ces dispositions. Les textes soumis par les États membres, n'ayant seulement qu'un lien indirect avec le terrorisme international, n'ont pas été reproduits à cause du manque de ressources, mais sont disponibles pour consultation. Le présent volume vise à reproduire, dans la mesure du possible, le texte même des lois nationales. Des extraits de ces lois sont reproduits accompagnés, le cas échéant, de sommaires de ces dispositions. Il devrait être lu parallèlement au rapport annuel du Secrétaire général sur les « mesures visant à éliminer le terrorisme international », qui résume les informations reçues des États sur les diverses mesures qu'ils ont prises pour faire face au problème, ainsi que les rapports pertinents soumis au Comité Contre le Terrorisme.

Comme pour les autres volumes de la *Série législative*, les textes en anglais ou en français ont été reproduits dans leur version originale. Dans la mesure où les ressources dont il disposait le lui ont permis, le Secrétariat a traduit en anglais les textes présentés dans les autres langues officielles de l'Organisation des Nations Unies et les a reproduits dans le présent volume. Les États Membres dont la langue officielle n'est pas l'une des langues officielles de l'Organisation ont été priés de fournir leur propre traduction ou un résumé en anglais ou en français de leurs dispositions législatives ou réglementaires pertinentes.

LXV. MADAGASCAR¹

ELEMENTS DU DISPOSITIF LEGISLATIF ET REGLEMENTAIRE DE MADAGASCAR

(a) Code Pénal

Aucune disposition spécifique n'existe, en l'état actuel, dans la législation malgache en matière de "terrorisme international", mais les actes pouvant se rattacher à ce genre d'infraction se trouvant, du point de vue répressif, inclus de manière implicite dans diverses sections du Code pénal, se rapportent notamment aux crimes et délits contre la sûreté extérieure de l'État (articles 76.3, 77, 82.1); aux crimes contre la sûreté de l'État (articles 91, 95); à la résistance et autres manquements envers l'autorité publique (articles 210, 212, 218, 257); aux associations de malfaiteurs (articles 265 et 266); aux destructions, dégradations, dommages (articles 434, 435, 436, 437 bis, et 438); aux meurtres, autres crimes capitaux, menaces d'attentat contre les personnes (articles 302, 303 et 304); aux blessures et coups volontaires (articles 309, 310, 311 et 318); aux arrestations et séquestration de personnes (articles 341, 342, 343 et 344).

Il n'existe aucune disposition législative permettant de réprimer le recrutement de membres de groupes terroristes. Seule l'association de malfaiteurs est prévue et réprimée par le Code pénal².

(b) Code de justice du service national

Le Code de justice du Service national comporte également des dispositions qui sont applicables à certaines catégories d'actes terroristes (Articles 136, 137, 154, 155, 156 et 157).

¹ Transmitted to the Secretariat by that Government on 21 February 2002 (S/2002/203, appendix) and 17 April 2003 (S/2003/496, enclosure). Information was also provided in respect of Loi No 90-030 du 22 février 1995 relative à l'activité et au contrôle des établissements de crédit et Loi N° 62-002 sur l'organisation et le contrôle de l'immigration à Madagascar.

² Outre les dispositions du Code pénal précitées (articles 265 et 266), l'ordonnance No 60-063 du 23 juillet 1960 relative à la dissolution de certaines associations convaincues d'actions subversives et l'assignation des membres à résidence fixe comporte également des sanctions applicables à des activités terroristes à Madagascar.

LXVI. MALAYSIA³

SUMMARY OF LEGISLATION OF MALAYSIA RELATED TO TERRORISM

(a) Internal Security Act 1960 (ISA)

There is a definition of “terrorist” in Section 2 of the ISA which reads as follows:

“Terrorist” means any person who by the use of any firearm, explosive or ammunition acts in a manner prejudicial to the public safety or to the maintenance of public order or incites to violence or counsels disobedience to the law or to any lawful order; carries or has in his possession or under his control any firearm, ammunition or explosive without lawful authority therefor; demands, collects or receives any supplies for the use of any person who intends or is about to act, or has recently acted, in a manner prejudicial to public safety or the maintenance of public order.”

Section 8 and Section 73 empower the preventive detention of persons suspected of acting in any manner prejudicial to Malaysia’s national security maintenance of essential services the economic life of Malaysia.

Section 38 provides that any officer or person authorized to exercise the powers of entry or investigation under Section 36 may seize any document or other thing in respect of which he reasonably believes an offence to have been committed under Chapter IV of the Act (Sections 32-41) or any order made thereunder or which he reasonably believes to be or to contain evidence relating to such an offence provided that nothing in this section shall be deemed to affect the powers of a police officer under the Criminal Procedure Code.

Section 59 makes it an offence for any person to collect or receive any supplies (including money) which raises a reasonable presumption that he intends or is about to act or has recently acted in a manner prejudicial to public security or public order.

Section 62 provides that no person, knowing or having reasonable cause to believe that another person has committed an offence against Part III of the Act shall, whether within or outside a security area, give that other person any

³ Transmitted to the Secretariat by that Government on 4 January 2002 (S/2002/35, enclosure), 22 November 2002 (S/2002/1334, enclosure) and 14 July 2003 (S/2003/729, enclosure). Information was also provided in respect of the Exchange Control Act 1953, the Arms Act 1960, the Banking and Financial Institutions Act 1989; the Anti-Money Laundering Act 2001.

assistance with intent thereby to prevent, hinder or interfere with the apprehension, trial or punishment of that person for the said offence.

Section 76 provides for the inspection of bankers' books for the purposes of the Act by empowering the Minister, if he is satisfied that any evidence of the commission of an offence against this Act or against any written law for the time being specified in the Second Schedule is likely to be found in any banker's book, by order authorize any police officer to inspect any such book, and a police officer so authorized may, at all reasonable times, enter the bank specified in the order and inspect the banker's books kept therein, and may take copies of any entry in any such book.

(b) Penal Code

Section 120A provides for criminal conspiracy, as an offence. Acts of persons who cooperate with a terrorist who may be elsewhere by way of an agreement to commit an unlawful act is said to be conspiring with the terrorist.

Section 125 criminalizes the waging of war, or attempts or abetments thereof, against the Government of any power in alliance or at peace with the Yang di-Pertuan Agong, whether in conjunction with the enemies of the Yang di-Pertuan Agong or otherwise (Yang di Pertuan Agong is the Supreme Head of the Federation.)

Section 125A makes it an offence to "harbour" or attempt to "harbour" the enemies of the Yang di-Pertuan Agong in Malaysia or elsewhere; or in the territories of any power at war with, or otherwise in actual hostility against, the Yang di-Pertuan Agong.

Section 126 criminalizes the commission of depredation (i.e. plundering, looting or ravaging) or any preparation to commit depredation, on the territories of any power in alliance or at peace with the Yang di-Pertuan Agong.

(c) Aviation Offences Act 1984

Section 7(1) of the Aviation Offences Act (1984) makes it an offence for a person on board an aircraft in flight to unlawfully, by use of force or by threats of any kind, to seize the aircraft or exercise control of it, whatever his nationality or citizenship, whatever the State of registration of the aircraft and whether the aircraft is in Malaysia or elsewhere.

Section 7(2) provides that Section 7(1) does not apply if the aircraft is used in military, customs or police service unless the person seizing or exercising control of the aircraft is a citizen of Malaysia; his act is committed in or over Malaysia; or the aircraft is used in the military, customs or police service of Malaysia.

Section 8 makes it an offence to do any act of violence against the passengers or crew of any aircraft in flight in connection with the hijacking and provides that Malaysia is seized of the offence whatever the act of violence, whatever the State of registration of the aircraft and whatever the nationality or citizenship of the person committing the act

Section 9(1) makes it an offence for any person to unlawfully and intentionally destroy an aircraft in service or so damage such aircraft as to render it incapable of flight or as to likely endanger its safety in flight commit on board an aircraft in flight any act of violence that is likely to endanger the safety of the aircraft

Section 9(2) makes it an offence for any person to unlawfully and intentionally place or cause to be placed on an aircraft in service any device or substance that is likely to destroy the aircraft or is likely so to damage it as to render it incapable of flight or as to be likely to endanger its safety in flight

Section 9(3) provides that Malaysia will be seized of the offences under Section 9 whether the acts are committed in Malaysia or elsewhere, whatever the State of registration of the aircraft or whatever the nationality or citizenship of the person committing the act

Section 9(4) provides that no offence under Sections 9(1) or (2) is committed if the act is committed in relation to an aircraft used in military, customs or police service unless the act is committed in or over Malaysia; or where the act is committed outside Malaysia, the person committing the act is a citizen of Malaysia.

(d) Extra-territorial Offences Act 1976

The term “extra-territorial jurisdiction” as used in the context of the Extra-territorial Offences Act 1976 means that Malaysian authorities claim jurisdiction over certain specified offences under Malaysian law as if these offences were committed in Malaysia when such offences are committed on the high seas on board any ship or on any aircraft registered in Malaysia by any citizen or permanent resident on the high seas on board any ship or on any aircraft; by any citizen or permanent resident in any place without and beyond the limits of Malaysia.

These offences are specified in Section 2 of the Extra-territorial Offences Act 1976 as follows: any act contrary to the provisions of the Official Secrets Act 1972 and the Sedition Act 1948; any offence under any other written law the commission of which is certified by the Attorney General to affect the security of Malaysia.

If the person who participates in the financing, planning, preparation or perpetration of terrorist acts or participates in supporting terrorist acts is a citizen

or permanent resident of Malaysia or if the terrorist acts specified are committed on a Malaysian registered vessel or aircraft, Malaysia would claim jurisdiction over the offence as if the offence had been committed within Malaysia and, where the evidence is sufficient, duly prosecute such person in accordance with the law. Malaysia has not had to invoke the Extra-territorial Jurisdiction Act 1976 to date as those suspected of compromising the security of Malaysia have committed their acts within Malaysia.

LXVII. MALTA⁴

SUMMARY OF LEGISLATION OF MALTA RELATED TO TERRORISM

There is no definition of “terrorism” or “terrorist acts” in the Maltese Criminal Code. However, terrorist acts are generally punishable under the current Criminal Code though not as terrorist acts as such. However, the act of making any funds, financial assets, or economic resources or financial or other related services available for the benefit of persons involved in the commission of any crime punishable under the Criminal Code, is punishable as such under the same code.

Since there is currently no definition of “terrorism”, “terrorist” or “terrorist act” in Maltese law, there is no specific law denying a safe haven to “terrorists” though many of the acts committed by terrorists are punishable under the current Criminal Code.

Acts of violence usually linked to terrorism are dealt with as criminal offences in sections 311 to 328 of the Criminal Code, under the sub-title ‘Of Crimes against the Public Safety and of Injury to Property’

Furthermore section 5 of the Criminal Code concerning jurisdiction of the Maltese Courts makes special provision for the extension of jurisdiction over certain criminal offences committed against internationally protected persons, even when such offences are committed outside Malta.

Following are the legal provisions establishing as criminal offences acts related to terrorism together with an indication of the relative penalty:

- promoting, constituting, organising or financing an organisation of two or more persons with a view to committing criminal offences (Section 83A – Criminal Code; Chapter 9 of the Laws of Malta) from 3

⁴ Transmitted to the Secretariat by that Government on 21 December 2001 (S/2001/1250, enclosure) and 11 January 2002 (S/2002/876, enclosure). Information was also provided in respect of the Refugees Act of 2000 (came into force on 1 October 2001), the Prevention of Money Laundering Act, the Arms Ordinance, and the Immigration Act.

to 7 years increased to 4 to 20 years where the number of persons is ten or more;

– belonging to an organisation as aforesaid (Section 83A – Criminal Code; Chapter 9 of the Laws of Malta) from 1 to 5 years increased to 18 months to 9 years where the number of person in the organisation is ten or more;

– In the case of bodies corporate the punishment for the above offences varies from a minimum of 10, 000 Maltese liri to 500, 000 Maltese liri;

– “Illegal Arrest, Detention Or Confinement⁵”: from 7 months to 2 years imprisonment increased to 13 months to 3 years in aggravated cases;

– illegal arrest, detention or confinement when the offender threatens to kill, to injure or to continue to detain or confine the person arrested, detained or confined with the object of compelling a state, an international governmental organisation or person to do or to abstain from doing an act⁶: life imprisonment;

– “theft of nuclear material⁷”: from 7 months to 2 years in the simplest cases but may go up to life imprisonment in aggravated circumstances;

– “maliciously causing an explosion of a nature likely to endanger life or to cause serious injury to the property of others⁸”: from 3 to 14 years imprisonment even though no injury to person or property has been caused;

– the above punishment not in its minimum if serious damage to property is caused;⁹

– life imprisonment if a person dies as a result;¹⁰

– 4 to 20 years if grievous bodily harm is caused;¹¹

– making or knowingly being in possession or having under one’s control any explosive substance in circumstances giving rise to a

⁵ Sections 86 and 87 (1).

⁶ Section 87 (2).

⁷ Section 271 and 281.

⁸ Section 311.

⁹ Section 312 (3).

¹⁰ Section 312 (1).

¹¹ Section 312 (2).

reasonable suspicion that the explosive is meant for an unlawful object¹²: 18 months to 9 years;

– malicious delivery, placing, discharging or detonating a lethal device likely to endanger life or to cause serious injury to property¹³: from 3 to 14 years imprisonment even though no injury to person or property has been caused;

– the above punishment not in its minimum if serious damage to property is caused;

– life imprisonment if a person dies as a result;

– 4 to 20 years if grievous bodily harm is caused;

– the above punishments are increased by one degree where the offence takes place in, or is directed at, a public place, a state or government facility, an infrastructural facility, or a public transportation system;

– malicious possession or making, use, transfer, alteration, disposal, or dispersal of nuclear material likely to cause death or serious injury to any person or substantial damage to property¹⁴: from 3 to 14 years imprisonment even though no injury to person or property has been caused;

– life imprisonment if a person dies as a result;

– 4 to 20 years if a grievous bodily harm is caused;

– knowingly keeping, being in possession or having under one's control any nuclear material in circumstances giving rise to a reasonable suspicion that the explosive is meant for an unlawful object¹⁵: 18 months to 9 years;

– willfully setting on fire or otherwise destroying any arsenal, vessel of war, powder magazine, public dock or artillery park¹⁶: life imprisonment;

– willfully setting on fire any house, warehouse, shop, dwelling house, vessel, dock or any building, shed or other place whatsoever, any person being therein at the time¹⁷: life imprisonment;

¹² Section 313.

¹³ Section 314A and 311.

¹⁴ Section 314B (1) and 311.

¹⁵ Section 314B (3) and 313.

¹⁶ Section 315.

¹⁷ Section 316.

- if no one dies, but it could have been foreseen that a person was in the place: from 9 to 12 years;
- otherwise: from 5 to 9 years;
- wilfully setting on fire any house, warehouse, shop, dwelling house, vessel, dock or any building, shed or other place whatsoever, no person being therein at the time, or wilfully setting on fire any combustible substance which could communicate to any other building etc. any person being therein at the time¹⁸: life imprisonment where the fire actually communicates as aforesaid reduced to 3 to 9 years, depending on circumstances, if no person dies as a result;
 - from 3 to 5 years if the fire does not communicate;
- wilfully setting on fire any house etc. no person being present and provided the fire could not communicate to a place where a person is present¹⁹: 2 to 4 years imprisonment;
- hijacking²⁰: life imprisonment;
- acts of violence against a person on board an aircraft in flight likely to endanger the safety of the aircraft²¹: life imprisonment;
- destruction of an aircraft in service or damage to such aircraft in a manner as to render it incapable of flight or which is likely to endanger its safety in flight²²: life imprisonment;
- placing or causing to be placed on an aircraft in service a device or substance likely to destroy or to cause damage to that aircraft rendering it incapable of flight or likely to endanger its safety in flight²³: life imprisonment;
- communicating information known to be false so as to endanger the safety of an aircraft in flight²⁴: life imprisonment;
- by the unlawful and intentional use of any device, substance or weapon performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death, or destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service

¹⁸ Section 317.

¹⁹ Section 318.

²⁰ Section 13 – Civil Aviation (Security) Act (Chapter 353 of the Laws of Malta).

²¹ Section 19 (1)(a).

²² Section 19 (1)(b).

²³ Section 19 (1)(c).

²⁴ Section 19 (1)(d).

located therein or disrupts the services of the airport²⁵: life imprisonment if such act endangers or is likely to endanger the safety of that airport or to such lesser punishment being not less than three years imprisonment as the Court may deem fit;

– the unlawful and intentional destruction or damage of air navigation facilities or interference with their operation in such a manner as is likely to endanger the safety of the aircraft in flight²⁶: life imprisonment;

– by means of any device, substance or weapon intentionally to commit at an airport serving civil aviation any act of violence which causes or is likely to cause death or serious personal injury and endangers or is likely to endanger the safe operation of the airport or the safety of persons at the airport²⁷: life imprisonment;

– by means of any device, substance or weapon unlawfully and intentionally to destroy or seriously damage property used for the provision of any facilities at an airport serving civil aviation or any aircraft which is at such an airport but not in service, or to disrupt the services of such an airport in such a way as to endanger or is likely to endanger the safe operation of the airport or the safety of persons at the airport²⁸: life imprisonment.

It should be noted that Act I of 2001 amended the Interpretation Act (Chapter 249 of the Laws of Malta) by the addition, *inter alia*, of the following provision:

Section 3 (4)(c): The terms "crimes against humanity", "crimes against international law" and "political offence" shall have the same meaning assigned to them under customary international law in general and in international instruments to which Malta may be a party in particular.

The amendment which has been made to the Interpretation Act concerning political offences does not include an amendment to the Maltese Constitution since the amendment to the Interpretation Act is considered sufficient for the purpose.

Financing of terrorism

In addition, the financing of terrorist acts is criminalised as is the financing of terrorist organisations under the provisions of existing legislation. The financing of terrorist acts would amount to complicity in the terrorist act or to

²⁵ Section 19 (2).

²⁶ Section 20.

²⁷ Section 8 (1) – Airports and Civil Aviation (Security) Act (Chapter 405 of the Laws of Malta).

²⁸ Section 8 (2).

conspiracy to commit the terrorist act. The financing of a terrorist organisation would amount to the offence of promoting, constituting, organising or financing an organisation with a view to commit criminal offences. For complicity the same punishment is due as for the perpetrator of the offence, while for conspiracy the same punishment is due as for the completed offence with a decrease of two or three degrees.

By Act III of 2002 the new offences of promoting, constituting, organising or financing an organisation of two or more persons with a view to committing criminal offences and of belonging to an organisation as aforesaid were introduced. The recruitment of members of terrorist groups and the collection of funds for such groups now constitute one of the said offences.

Territorial application

Not all the provisions of the Criminal Code apply to acts committed outside Malta by a citizen of or habitual resident in Malta or to acts committed outside Malta by a foreign national who is currently in Malta. The Maltese Courts, however, have jurisdiction over all terrorism-related offences, when, inter alia, these are committed outside Malta by a citizen of Malta or by a permanent resident in Malta as well as over the same offences when committed outside Malta by a foreigner currently in Malta.

LXVIII. MARSHALL ISLANDS²⁹

1. SUMMARY OF LEGISLATION OF THE MARSHALL ISLANDS RELATED TO TERRORISM

The Marshall Islands has enacted laws against terrorism of all kind and also established mechanisms that would counter terrorist acts all over its territory. These include legislation covering banking, money laundering, importation and exportation of weapons of mass destruction including small arms and light weapons. In particular, in 2002, the Parliament enacted the following legislations:

The Counter-Terrorism Act
The Proceed of Crimes Act
Amendments to the Banking Act; re Money Laundering

²⁹ Transmitted to the Secretariat by that Government on 13 January 2003 (S/2003/145, enclosure) and 3 September 2003 (S/2003/1039, enclosure). Information was also provided in respect of the Marshall Islands Banking Act, 1987; the Mutual Assistance in Criminal Matters Act, 2002; the Controlled Substance Act, 2002; the Transnational Extradition and Transfer of Convicted Persons Act, 2002; the Foreign Evidence Act, 2002; the Banking Amendment Act, 2002; Public Law 2000-2, Public Law 2002-65. In addition, Bill 101 of 2002, containing the proposal for the Counter-Terrorism Act, 2002 was submitted on 28 May 2003.

Foreign Evidence Act
The Mutual Assistance in Criminal Matters Act
The Transnational Extradition and Transfer of Convicted Persons Act

2. COUNTER-TERRORISM ACT, 2002

Section 7

Unless otherwise provided, any person convicted of an offence against this Act shall where no other punishment is prescribed be punishable by a term of imprisonment of not less than 30 years and maximum term of life, or a fine of not more than USD\$1,000,000; or both such term of imprisonment and a fine; provided that any person convicted shall not be entitled to probation for an offence committed under this Act, and term of imprisonment imposed shall not run concurrently with any other term of imprisonment.

In lieu of the amount of the fine otherwise authorized by this Act, and in addition to any term of imprisonment, a defendant who derived profits or other proceeds from a crime established by this Act may be liable to fine of not more than twice the gross profits or other proceeds, where the profits or proceeds from the offence exceed the maximum assessable fine.

A person commits a crime, punishable under the subsection (1), if that person knowingly:

- (a) attempts, conspires, or threatens to commit;
- (b) participates as an accomplice in;
- (c) organizes or directs others to commit;
- (d) contributes to the commission of; any crime established by this Act.

Notwithstanding any provision of any other law, statute of limitation shall not apply in respect of a crime established under this Act.

Where there is reasonable ground to believe that detention of any person is necessary for the purpose of preventing such person from engaging in acts of terrorism; or to prevent any person from interfering with an investigation relating to suspected terrorism, any law enforcement officer, immigration officer, immigration officer, or customs official in the Marshall Islands shall have the powers to detain such person for a period of 48 hours for purposes of investigation; provided, however, such period of detention may be extended by court order for an additional 7 days, without the filing of criminal charges against such person.

The court, in imposing sentence on any person convicted of a terrorism offence, shall order, in addition to any other sentence imposed, that the person forfeit to the Marshall Islands all property described in section 8.

Section 8

Any person convicted of a terrorism offence shall be liable to forfeit to the Marshall Islands, irrespective of any other provision of law: (a) any property, real or personal, owned, possessed, or used by a person involved in the offence; (b) any property constituting, or derived from, and proceeds the person obtained, directly or indirectly, as the result of such offence; and (c) any of the property used in any matter or part, to commit, ort to facilitate the commission of, such offence;

Weapons of mass destruction, plastic explosives, and nuclear material shall be seized, confiscated and forfeited to the Marshall Islands; and the Attorney General shall provide for their destruction for their destruction or other appropriate disposition.

For the purpose of forfeiture proceedings under this section, a temporary restraining order and seizure warrant may be entered upon application of the Attorney General without notice or opportunity for a hearing when an information or complaint has not yet been filed with respect to the property, where there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and exigent circumstances exist that place the life or health of any person in danger.

The provisions of this section shall be implemented without prejudice to the rights of third parties acting in good faith.

The owner or possessor of any property seized under this section shall be liable to the Marshall Islands for any expenses incurred incident to the seizure, including any expenses relating to the handling, storage, transportation, and destruction or other disposition of the seized property.

Section 15

The Attorney General may make a request on behalf of the Marshall Islands to the appropriate authority of a foreign State, or grant requests of a foreign State, for legal assistance in any investigation or proceeding relating to terrorism, or a terrorist organization. (II) Mutual legal assistance provided under this Act shall be carried-out pursuant to and in accordance with the Mutual Assistance in Criminal Matters Act, 2002.

Section 16

The Attorney General, and other law enforcement authorities and officers of the Marshall Islands designated by the Attorney General shall have the authority to share and disclose intelligence information relating to terrorism, terrorist organizations, transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical,

biological and other potentially deadly materials, and to provide early warning of such matters to the competent law enforcement authorities of:

- (1) any foreign State, that is a State Party to an international terrorism convention in respect of which the Marshall Islands is also a Party;
- (2) any foreign State that is a member of the Pacific Islands Forum;
- (3) the United States, in accordance with the duties and responsibilities of the Marshall Islands under the Compact of Free Association with the United States;
- (4) any other foreign State that is a member of the United Nations.

Section 17

The Republic of the Marshall Islands shall not grant refugee status or provide asylum or safe haven to any terrorist, or to any alleged offender.

Section 18, subsection 1

The Marshall Islands shall cooperate with the competent authorities of the United Nations and the Pacific Islands Forum in the prevention of terrorism by taking all practicable measures to prevent and counter preparations in the Marshall Islands for the perpetration of terrorism within or outside the territory of the Marshall Islands, including measures to prohibit illegal activities of persons and organizations that knowingly encourage, instigate, organize, finance, or engage terrorism.

Section 18, subsection 2c

The Marshall Islands shall cooperate in the prevention of terrorism by exchanging accurate and verified information to provide early warning of possible terrorism, in particular conducting inquiries, with respect to terrorists and members of terrorist organizations, concerning

- (a) the identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they engage in terrorism or are members of a terrorist organization,
- (b) the movement of funds linked to persons who engage in terrorism or are members of a terrorist organization;” and

Section 18, subsection 2d

The Marshall Islands shall cooperate in the prevention of terrorism by exchanging accurate and verified information to provide early warning of possible terrorism, in particular conducting inquiries, with respect to terrorists and members

of terrorist organizations, concerning participation in research and development and exchange of information regarding methods of detection of cross border movement of terrorists and members of terrorist organizations, including detection of forged or falsified travel documents, traffic in arms, explosives, illicit drugs, contraband, or sensitive materials, and cross-border movement of nuclear, chemical, biological and other potentially deadly materials, or use of communications technologies by terrorist groups.

Section 23

The following persons shall be inadmissible to the Marshall Islands for purposes of immigration, or under a temporary visa of any kind, or otherwise, except for the purpose of the prosecution or extradition for a terrorist offense:

- (a) a foreign national
 - (i) convicted of a terrorism offense; or
 - (ii) who admits to having engaged in terrorism; or
 - (iii) as to whom there is probable cause to believe such person has engaged in terrorism;
 - (iv) who the Attorney General knows, or has reasonable ground to believe, is engaged in or is likely after entry, to engage in terrorism; or
 - (v) who has used his or her position of prominence within any country to endorse or espouse terrorism, or to persuade others to support terrorism or a terrorist organization, in a way that the Attorney General has determined undermines the efforts of the Marshall Islands to reduce or eliminate terrorism;
 - (vi) who is a representative of a terrorist organization, specified as such in regulations promulgated by the Minister or designated as a terrorist organization by the United Nations Security Council; or
 - (vii) who is a representative of a political, social, or other similar group whose public endorsement of terrorism, or terrorist organizations, the Attorney General has determined undermines the efforts of the Marshall Islands to reduce or eliminate terrorism;
- (b) A foreign who the Minister, after consultation with the Attorney General, determines has been associated with a terrorist organization or terrorism and intends while in the Marshall Islands to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the Marshall Islands.

A person who is the spouse or the child of an foreign national who is inadmissible under subsection 1, shall also be inadmissible, if the activity causing the foreign national to be found inadmissible occurred within the last 5 years.

Except as otherwise provided in this section, foreign nationals who are inadmissible under this section, shall be inadmissible to be admitted to the Marshall Islands for any purpose, except, when necessary for the purposes of prosecution or extradition for a terrorism offense.

Section 24

All airlines, ships, and other entities that provide transportation, conveyance or freight services to and from the Marshall Islands shall be authorized and required to immediately report to the Attorney General through disclosure of passenger manifests and any other available means, the intended movement of suspected terrorists into or out of the Marshall Islands, and information regarding possible forged or falsified travel documents, traffic arms, explosives, illicit drugs, contraband, or sensitive materials, and cross-border movement of nuclear, chemical, biological and other potentially deadly materials.

Section 25

Except as authorized by the Cabinet, any person who knowingly, by any means, directly or indirectly, develops, produces, ships, transports, transfers, receives, acquires, retains, possesses, imports, exports, or manufactures a weapons of mass destruction, commits a crime punishable by the penalties established by section 7 of this Act; provided, however, where such was done with the intent to engage in terrorism or with knowledge that the weapon of mass destruction is intended to be used for terrorism, the maximum fine shall be fifty million United States dollar (US\$50,000,000) for natural persons and fifty million United States dollar (US\$50,000,000) for legal persons. Any person who, without lawful authority expressly given by the Cabinet of the Marshall Islands, uses or deploys a weapon of mass destruction, commits a crime punishable by the penalties established by section 7 of this Act; provided, however the maximum fine shall be increased to \$1,000,000,000 for natural persons and \$10,000,000,000 for legal persons.

LXIX. MAURITANIA³⁰

ELEMENTS DU DISPOSITIF LEGISLATIF ET REGLEMENTAIRE DE LA MAURITANIE

La Convention de la République islamique de Mauritanie, du 20 juillet 1991, proscrit toute forme de violence physique et morale. De même, toute la législation et la réglementation en vigueur (art. 13, dernier alinéa), concernant aussi bien la création que le fonctionnement des partis politiques, des organisations de presse, des organisations non gouvernementales et des associations, interdisent toute forme d'acquisition ou de manipulation de biens ou de fonds provenant de sources douteuses, notamment d'organisations clandestines ou terroristes.

C'est ainsi que la loi No 9337 du 20 juillet 1993, relative à la répression de la production, du trafic et de l'usage illicite des substances psychotropes, a été adoptée comme point de départ et de cadre institutionnel pour combattre le phénomène de la criminalité et du terrorisme.

LXX. MAURITIUS³¹

THE PREVENTION OF TERRORISM (SPECIAL MEASURES) REGULATIONS 2002

REGULATIONS UNDER SECTIONS 6(2), 10(6) AND 33 OF THE PREVENTION OF TERRORISM ACT 2002

1. These regulations may be cited as the Prevention of Terrorism (Special Measures) Regulations 2002.

2. In these regulations –

“Act” means the Prevention of Terrorism Act 2002;

“central bank” means the Bank of Mauritius established under the Bank of Mauritius Act;

³⁰ Transmitted to the Secretariat by that Government on 26 August 2002 (S/2002/971, enclosure) and 31 March 2003 (S/2003/484, enclosure).

³¹ Transmitted to the Secretariat by that Government on 26 December 2001 (S/2001/1286, enclosure), 16 July 2002 (S/2002/880, enclosure) and 28 January 2003 (S/2003/260, enclosure). Information was also provided in respect of the Economic Crime and Anti-Money Laundering Act, the Banking Act 1988, the Foreign Exchange Dealers Act 1995, the Prevention of Terrorism Act 2002.

“Commission” means the Financial Services Commission established under the Financial Services Development Act 2001;

“financial or other related services” means the services specified in the Schedules;

“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 credit, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit;

“international terrorist group” means any group that has been declared to be an international terrorist group under section 10(4) of the Act;

“listed terrorist” means an international terrorist group or suspected international terrorist;

“Mauritius ship” means a ship registered in Mauritius under the Merchant Shipping Act;

“property” means real or personal property, moveable or immovable, including a lease of immovable property as well as a right or interest in such property;

“suspected international terrorist” means any person who has been declared to be a suspected international terrorist under section 10(1) of the Act.

3. On publication of a declaration in the Gazette under section 10(7) of the Act, the central bank, or the Commission, as the case may be, shall, by notice, direct that any account, property or funds held by financial institutions under its regulatory authority on behalf of any listed terrorist be frozen and a report be made to it in such form and manner as it deems fit.

4. Where the report made under regulations 3 discloses existence of accounts maintained by any listed terrorist or property or funds in the possession of, or under the control of, any financial institution on behalf of any listed terrorist, the matter shall be referred by the central bank, or the Commission, as the case may be, to the Commission of Police for investigation.

5. A notice under regulation 3 shall –

(a) be given in writing and shall specify –

(i) the period for which it is to have effect; or

(ii) that the direction is to have effect until it is revoked by notice under regulation 6;q

(b) require the institution to send a copy of the notice without delay to the listed terrorists or to the person or entity on whose behalf the funds are held.

6. The central bank, or the Commission, as the case may be, may, at any time, by notice, revoke a direction made under regulation 3.

7. (1) No person shall –

(a) deal, directly or indirectly, in any property that is owned or controlled by or on behalf of any listed terrorist, including funds derived or generated from property owned or controlled, directly or indirectly, by any listed terrorist;

(b) enter into or facilitate, directly or indirectly, any financial transaction related to a dealing in property referred to in sub-paragraph (a); or

(c) provide any financial or other related services in respect of any property referred to in sub-paragraph (a) to, or for the benefit of, or on the direction or order of, any listed terrorist.

(2) Reference in paragraph (1) to a listed terrorist shall be deemed to include reference to an entity owned or controlled by any listed terrorist.

8. (1) No person shall –

(a) make available any funds or other financial assets or economic resources; or

(b) make available any financial or other related services for the benefit of any listed terrorist

(2) Reference in paragraph (1) to a listed terrorist shall be deemed to include reference to –

(a) any entity owned or controlled by any listed terrorist; or

(b) any person or entity acting on behalf, or at the direction of any listed terrorist or of any entity owned or controlled by any listed terrorist.

9. No person shall, directly or indirectly, export, sell, supply or ship any arms, weapons, ammunitions, military vehicles and equipment, paramilitary equipment, spare parts and related material to any listed terrorist.

10. No owner or master of a Mauritius ship and no operator of an aircraft registered in Mauritius shall, directly or indirectly, carry, or cause or permit to be carried, any arms, weapons, ammunitions, military vehicles and equipment, paramilitary equipment, spare parts and related material, for any listed terrorist.

11. No person shall, directly or indirectly, provide any listed terrorist with technical advice, assistance or training related to military activities.

12. Any person who contravenes these regulations shall commit an offence and shall, on conviction, be liable to penal servitude for a period not exceeding 5 years.

13. The regulations shall come into operation on ...³²

Made by the Prime Minister on ... 2003³³

LXXI. MEXICO³⁴

SUMMARY OF LEGISLATION OF MEXICO RELATED TO TERRORISM

(a) Federal Penal Code

Under Mexican law, the following are considered terrorism: the use of explosives, toxic substances, firearms or any other form of violence to attack persons, property or public services in a manner causing alarm, terror or fear in the general public or in a group or sector thereof for the purpose of disturbing the public peace, attempting to undermine the authority of the State or bringing pressure to bear on the authorities to take a particular decision. Such offences are punishable by 2 to 40 years' imprisonment and a fine of up to 50,000 pesos; however, the proposed reform would raise the minimum sentence to 18 years' imprisonment.

In addition, the following offences are also covered by Mexican law:

- Involvement in the clandestine importation into Mexican territory of explosives subject to control (5 to 30 years' imprisonment and a daily fine of 20 to 500 days);

³² These Regulations came into operation on 25 January 2003.

³³ Schedules 1 and 2, containing regulation 2 and the Status of Signature/Ratification of International Convention related to Prevention and Combating of Terrorism of Mauritius respectively, have been intentionally omitted from this publication.

³⁴ Transmitted to the Secretariat by that Government on 21 December 2001 (S/2001/1254, enclosure), 15 July 2002 (S/2002/877, appendix) and 8 September 2003 (S/2003/869, enclosure). Information was also provided in respect of the Health Act, the Population Act, the General Act on Credit Organizations and Related Activities, and the Federal Civil Code.

- Manufacture of explosives without the required permit; permits establish the conditions for the manufacture, sale and transport of explosives (5 to 15 years' imprisonment and a daily fine of 100 to 500 days);
- Management of a factory, industrial plant or other establishment in which activities involving explosives are conducted without meeting the safety regulations established by law (2 months' to 2 years' imprisonment and a daily fine of 2 to 100 days; the relevant permits may also be suspended or revoked);
- Carrying for unlawful purposes of an offensive weapon not used in work- or recreation-related activities (3 months' to 3 years' imprisonment);
- Unauthorized use of harmful substances or residues which pose a threat to public health (6 months' to 6 years' imprisonment);
- Seizure or diversion from its route or destination of a ship, aircraft, automobile, train or other means of transport through the use of physical violence, threats or deception (3 to 20 years' imprisonment and a daily fine of 100 to 400 days);
- Destruction using explosives or incendiary devices or by any other means of a ship, aircraft or other vehicle which is State-owned or provides services to the public (5 to 20 years' imprisonment; the sentence is increased to 20 to 30 years' imprisonment if the vehicle is occupied);
- Infringement of the inviolability of a sovereign or representative of another nation (3 days' to 2 years' imprisonment, without prejudice to any penalties imposed for other offences); and
- Hostage-taking with threat to kill or harm in order to induce the authorities or an individual to act or cease to act in some way (15 to 40 years' imprisonment and a daily fine of 500 to 2,000 days).

Once the amendments to the Federal Penal Code have been adopted, the offence of financing terrorism will be punishable by 18 to 40 years' imprisonment and a daily fine of 500 to 1,000 days.

Terrorism is criminalized in article 139 of the Federal Penal Code.

Article 139, paragraph 2, provides for one to nine years' imprisonment and a fine of up to 10,000 pesos for anyone who, having knowledge of the activities of a terrorist and his or her identity, does not report such knowledge to the authorities.

In accordance with article 13, paragraph VI, persons who fraudulently aid or abet others in committing an offence are considered to have participated in it. This means that when a terrorist act is committed or attempted, those who have provided funds to support it may be tried and punished as accomplices to the crime.

Article 141 of the Code imposes a penalty of one to nine years' imprisonment and a fine of up to 10,000 pesos on persons who conspire to commit the offence of terrorism and agree on the means to carry out their intentions.

(b) Federal Firearms and Explosive Act

In the case of supply of weapons and explosives to terrorist groups, the Federal Firearms and Explosives Act regulates, through strict controls, the sale, possession, transport, import and export of firearms and explosives in Mexican territory.

While this Act does not explicitly make it a crime to supply weapons to terrorists as such, it does penalize the stockpiling, possession, import and export of firearms and explosives without a licence or permit issued by the Ministry of Defence. Articles 84, 84 bis and 84 ter of the Federal Firearms and Explosives Act prohibit the illegal importation into the national territory of weapons, ammunition, cartridges, explosives and controlled substances and impose penalties of from three to 30 years' imprisonment.

(c) Federal Organized Crime Act

The Federal Organized Crime Act characterizes as organized crimes the arms stockpiling and trafficking referred to in articles 83 bis and 84 of the Federal Firearms and Explosives Act.

With respect to organized criminal groups, the Federal Organized Crime Act provides that the mere association of three or more persons who conspire to organize or who organize in order to engage, repeatedly or on an ongoing basis, in conduct which, in itself or together with other conduct, has as its purpose or result the commission of certain offences, including terrorism, shall be regarded as organized crime. The authorities have broad powers of investigation to prevent or, where applicable, to punish the crimes committed by such offenders; it is sufficient, for this purpose, for such offenders to organize or agree to organize and to be within the national territory.

Under article 2, paragraph I, of the Federal Organized Crime Act, terrorism is considered an offence of organized crime if three or more persons conspire to organize or organize in order to commit the offence repeatedly or on an ongoing basis:

Consequently, the rules contained in the Federal Organized Crime Act for investigation, prosecution, trial, punishment and enforcement shall be applied to members of organized crime who commit terrorist acts.

The following are noteworthy examples of such rules:

Investigation

Pursuant to article 8 of the aforementioned Act and articles 2, 19 bis and 19 bis (1) of the Regulations implementing the Act establishing the Office of the Attorney-General, a special organized crime unit in that Office is responsible for investigating and prosecuting offences committed by organized criminal groups, including terrorist groups.

For the investigation of such offences, the Federal Organized Crime Act provides for the interception of private communications, the doubling of pre-trial detention periods and the infiltration of agents into criminal groups. It also sets forth measures to protect witnesses, judges, experts, victims and other persons involved in criminal proceedings for offences related to organized crime. The Act also provides for certain benefits for any members of criminal groups who cooperate in investigations and prosecutions against other members.

Penalties

Persons managing, directing or supervising a criminal organization involved in terrorism are subject to eight to 16 years' imprisonment in addition to the penalty provided for in article 139 of the Federal Penal Code (see above), which may be up to 40 years.

For those not having the aforementioned functions, a sentence of four to eight years' imprisonment may be imposed, in addition to the penalty imposed for the offence of terrorism. These sentences may be increased by up to 50 per cent if the offender is a public servant or if minors or legally incompetent persons are used in committing the crime.

(d) Federal Code of Criminal Procedure

Article 194, paragraph I (4), of the Federal Code of Criminal Procedure defines terrorism as a serious offence.

LXXII. MONACO³⁵

1. LOI N° 1.162 DU 7 JUILLET 1993 RELATIVE A LA PARTICIPATION DES ORGANISMES FINANCIERS A LA LUTTE CONTRE LE BLANCHIMENT DE CAPITAUX ET LE FINANCEMENT DU TERRORISME³⁶

...

SECTION II

De l'obligation de déclaration mise a la charge des organismes financiers

Article 3

Les organismes financiers sont tenus de déclarer au Ministre d'Etat:

...

toutes les sommes inscrites dans leurs livres et toutes les opérations portant sur des sommes qui pourraient être liées au terrorisme, à des actes terroristes ou à des organisations terroristes ou sont destinées à être utilisées au financement de ces derniers et les faits qui constituent les indices sur lesquels ils se fondent pour effectuer leur déclaration.

...

SECTION IV

De l'obligation de Déclaration mise à la charge des personnes visées à l'article 2

Article 19

Les personnes visées à l'article 2 sont tenues de déclarer au Ministre d'Etat:

...

toutes les sommes inscrites dans leurs livres et toutes les opérations portant sur des sommes qui pourraient être liées au terrorisme, à des actes terroristes ou à des organisations terroristes ou sont destinées à être utilisées au financement de ces derniers et les faits qui constituent les indices sur lesquels ils se fondent pour effectuer leur déclaration.

³⁵ Transmitted to the Secretariat by that Government on 18 January 2002 (S/2002/93, enclosure), 21 May 2002 (S/2002/93/Add.1, enclosure), 23 December 2002 (S/2002/1418, enclosure) and 15 September 2003 (S/2003/894, enclosure).

³⁶ Telle que modifiée par la Loi n° 1.253 du 12 juillet 2002.

...

SECTION VI

Dispositions diverses

Article 25

Les maisons de jeux visées par la loi n° 1.103 du 12 juin 1987 relative aux jeux de hasard sont tenues de déclarer au Ministre d'Etat:

...

toutes les sommes inscrites dans leurs livres et toutes les opérations portant sur des sommes qui pourraient être liés au terrorisme, à des actes terroristes ou à des organisations terroristes ou sont destinées à être utilisées au financement de ces derniers et les faits qui constituent les indices sur lesquels ils se fondent pour effectuer leur déclaration.

...

Article 27

Lorsqu'ils constatent des faits susceptibles de relever soit du trafic de stupéfiants ou d'activités criminelles organisées, soit du terrorisme, d'actes terroristes, d'organisations terroristes ou du financement de ces derniers, les agents du service institué par l'article 3 établissent un procès-verbal qu'ils transmettent au Ministre d'Etat.

Article 28

Les renseignements recueillis par les agents, commissionnés et assermentés à cet effet, ne peuvent être utilisés par ceux-ci à d'autres fins que celles prévues par la présente loi sous peine de l'application des sanctions prévues à l'article 308 du code pénal.

Toutefois, le service précité peut communiquer les renseignements recueillis au procureur général lorsque ceux-ci portent sur des faits relevant du trafic de stupéfiants ou d'activités criminelles organisées, du terrorisme, d'actes terroristes, d'organisations terroristes ou du financement de ces derniers donnant lieu à une poursuite judiciaire. Il est informé des jugements et des ordonnances de non lieu dans les affaires ayant fait l'objet du signalement d'une déclaration.

Le service institué par l'article 3 peut recevoir toutes informations utiles du procureur général, des autorités de contrôle ainsi que des services de l'Etat.

Article 31

Sous réserve de réciprocité et à condition qu'aucune procédure pénale ne soit déjà engagée dans la Principauté de Monaco sur la base des mêmes faits, le Ministre d'Etat peut communiquer aux autorités étrangères compétentes les informations relatives à des opérations paraissant avoir un lien avec le trafic de stupéfiants ou des activités criminelles organisées, avec le terrorisme, des actes terroristes ou des organisations terroristes ou avec le financement de ces derniers.

2. ORDONNANCE SOUVERAINE N° 15.320 DU 8 AVRIL 2002 SUR LA REPRESSION DU FINANCEMENT DU TERRORISME³⁷

Vu la Constitution et notamment son article 68;

Vu la Convention internationale pour la répression du financement du terrorisme du 9 décembre 1999;

Vu Notre ordonnance n° 15.319 du 8 avril 2002 portant ratification de ladite Convention;

Vu la délibération du Conseil de Gouvernement en date du 20 mars 2002 qui Nous a été communiquée par Notre Ministre d'Etat;

Avons Ordonné et Ordonnons:

Article Premier

Pour l'application de la présente ordonnance, les termes et expressions "fonds", "installation gouvernementale ou publique", "produits" ont le sens qui leur est donné par l'article 1^{er} de la Convention internationale des Nations Unies pour la répression du financement du terrorisme adoptée à New York le 9 décembre 1999.

Article 2

Est qualifié "financement du terrorisme" au sens de la présente ordonnance et réprimé comme tel le fait, par quelque moyen que ce soit, directement ou indirectement, de fournir, réunir ou gérer des fonds, dans l'intention de les voir utilisés ou en sachant qu'ils seront utilisés en vue de commettre l'un des actes suivants:

- 1°) Les actes, commis ou non à bord, qui peuvent compromettre la sécurité d'un aéronef ou de personnes ou de biens à bord, ou compromettent le bon ordre et la discipline à bord.

³⁷ Publiée au journal de Monaco n° 7.542 du 12 avril 2002.

2°) L'acte commis à bord d'un aéronef en vol consistant, illicitement, par violence ou menace de violence, à s'emparer de cet aéronef ou en exercer le contrôle, ainsi que la tentative et la complicité de tels actes.

3°) L'acte de toute personne qui, illicitement et intentionnellement, à l'aide d'un dispositif, d'une substance ou d'une arme:

a) accompli à l'encontre d'une personne, dans un aéroport servant à l'aviation civile internationale, un acte de violence qui cause ou est de nature à causer des blessures graves ou la mort, ou

b) détruit ou endommage gravement les installations d'un aéroport servant à l'aviation civile internationale ou des aéronefs qui ne sont pas en service et qui se trouvent dans l'aéroport ou interrompt les services de l'aéroport si cet acte compromet ou est de nature à compromettre la sécurité dans cet aéroport.

4°) Le fait pour quiconque de s'emparer d'un ou plusieurs otages, de les détenir et menacer de les tuer, de les blesser ou de continuer à les détenir afin de contraindre une tierce partie, à savoir un Etat, une organisation internationale intergouvernementale, une personne physique ou morale ou un groupe de personnes, à accomplir un acte quelconque ou à s'en abstenir en tant que condition explicite ou implicite de la libération des otages, ainsi que la tentative et la complicité de tels faits.

5°) Le fait de commettre intentionnellement l'un des actes suivants:

a) le recel, la détention, l'utilisation, la cession, l'altération ou la dispersion de matières nucléaires, sans y être habilité, et entraînant ou pouvant entraîner la mort ou des blessures graves pour autrui ou des dommages considérables pour les biens;

b) le vol simple ou le vol qualifié de matières nucléaires;

c) le détournement ou toute autre appropriation indue de matières nucléaires;

d) le fait d'exiger des matières nucléaires par la menace, le recours à la force ou par toute autre forme d'intimidation;

e) la menace:

i) d'utiliser des matières nucléaires pour tuer ou blesser gravement autrui ou causer des dommages considérables aux biens;

ii) de commettre l'une des infractions visées au b) ci-dessus, afin de contraindre une personne physique ou morale, une organisation internationale ou un Etat à faire ou à s'abstenir de faire un acte.

6°) Le fait de toute personne qui, illicitement ou intentionnellement:

- a) s'empare d'un navire ou d'une plate-forme fixe ou en exerce le contrôle par violence ou menace de violence;
- b) accomplit un acte de violence à l'encontre d'une personne se trouvant à bord d'un navire ou d'une plate-forme fixe si cet acte est de nature à compromettre leur sécurité ou la navigation du navire;
- c) détruit un navire ou cause à un navire ou à sa cargaison des dommages qui sont de nature à compromettre la sécurité de la navigation du navire, ou détruit une plate-forme fixe ou lui cause des dommages qui sont de nature à compromettre sa sécurité;
- d) place ou fait placer sur un navire, par quelque moyen que ce soit, un dispositif ou une substance propre à détruire le navire ou à causer au navire ou à sa cargaison des dommages qui compromettent ou sont de nature à compromettre la sécurité du navire; ou place ou fait placer sur une plate-forme fixe, par quelque moyen que ce soit, un dispositif ou une substance propre à détruire la plate-forme ou lui cause des dommages qui sont de nature à compromettre sa sécurité;
- e) détruit ou endommage gravement des installations ou services de navigation maritime ou en perturbe gravement le fonctionnement si l'un de ces actes est de nature à compromettre la sécurité de la navigation d'un navire;
- f) communique une information qu'elle sait être fautive et, de ce fait, compromet la sécurité de la navigation d'un navire;
- g) blesse ou tue toute personne lorsque ces faits présentent un lien de connexité avec l'un des actes prévus aux alinéas a) à f), que celui-ci ait été commis ou tenté;
- h) tente de commettre l'un des faits susvisés ou s'en rend complice;
- i) menace de commettre l'un des faits prévus aux alinéas b), c) et e) si cette menace, assortie d'une condition visant à contraindre une personne physique ou morale à accomplir ou à s'abstenir d'accomplir un acte quelconque, est de nature à compromettre la sécurité de la navigation du navire en question.

7°) Les actes terroristes visés à l'article 2 de l'ordonnance souveraine n°15.088 du 30 octobre 2001.

8°) Tout autre acte destiné à tuer ou blesser grièvement un civil, ou toute autre personne qui ne participe pas directement aux hostilités dans une situation de conflit armé, lorsque, par sa nature ou son contexte, et acte vise à intimider une population ou à contraindre un gouvernement ou une organisation internationale à accomplir ou à s'abstenir d'accomplir un acte quelconque.

Article 3

L'infraction prévue par l'article 2 est constituée même si les fonds n'ont pas été effectivement utilisés pour commettre les faits prévus aux chiffres 1 à 8 dudit article.

Article 4

Est puni de la réclusion criminelle de 5 à 10 ans quiconque, sur le territoire de la Principauté de Monaco, à bord d'un navire battant pavillon monégasque ou d'un aéronef immatriculé à Monaco, se rend coupable d'un ou plusieurs actes de financement définis au premier alinéa de l'article 2, sans préjudice de peines, plus lourdes si ces actes constituent d'autres crimes.

Article 5

Est puni des mêmes peines celui qui, dans la Principauté de Monaco, tente de commettre ou se rend complice d'un ou plusieurs des actes de financement visés au premier alinéa de l'article 2 ou qui, de quelque façon que ce soit, organise la commission d'un tel acte ou donne l'ordre de le commettre.

Article 6

Est puni des mêmes peines le Monégasque ou l'apatride résidant en Principauté de Monaco qui, à l'étranger, se rend coupable d'un ou plusieurs actes définis au premier alinéa de l'article 2 ou à l'article 5.

Article 7

Est puni des mêmes peines quiconque, à l'étranger, se rend coupable des actes de financement définis au premier alinéa de l'article 2 ou à l'article 5 lorsque l'infraction avait pour but ou a eu comme résultat la commission d'un des faits visés aux chiffres 1 à 8 de l'article 2, soit sur le territoire monégasque, soit contre un ressortissant monégasque, un représentant ou un fonctionnaire de la Principauté ou une installation publique monégasque située hors du territoire national.

Article 8

Toute personne morale dont le siège social est situé à Monaco ou constituée sous l'empire de la législation monégasque, à l'exclusion de l'Etat, de la Commune ou des établissements publics, est pénalement responsable des infractions définies au 1^{er} alinéa de l'article 2 et à l'article 5, commises pour son compte par ses organes ou représentants, sans préjudice de la responsabilité pénale des personnes physiques qui ont commis lesdites infractions.

Article 9

La personne morale dont la responsabilité pénale est établie en application de l'article 8 est punie de l'amende prévue au chiffre 4 de l'article 26 du Code Pénal.

Cette amende peut être élevée au montant des fonds effectivement fournis ou réunis.

En outre, le Ministre d'Etat peut, par arrêté, prononcer le retrait de toute autorisation administrative préalablement accordée.

Article 10

Dans tous les cas, la juridiction saisie prononcera la confiscation des fonds utilisés ou destinés à être utilisés pour commettre les infractions définies au premier alinéa de l'article 2 et à l'article 5 ainsi que du produit de ces infractions.

Article 11

Pour les besoins de l'extradition ou de l'entraide judiciaire telles que prévues par la Convention, aucune des infractions définies au premier alinéa de l'article 2 et à l'article 5 n'est considérée comme une infraction politique, connexe à une infraction politique, ou inspirée par des mobiles politiques.

Elle n'est pas, non plus, considérée comme une infraction fiscale.

Article 12

L'extradition ou l'entraide judiciaire sont refusées s'il existe des raisons sérieuses de croire que la demande a été présentée aux fins de poursuivre ou de punir une personne pour des considérations de race, de religion, de nationalité, d'origine ethnique ou d'opinions politiques ou que la situation de cette personne risque d'être aggravée pour une quelconque de ces considérations.

...

Donné en Notre Palais à Monaco, le huit avril deux mille deux.

3. ORDONNANCE SOUVERAINE N° 15.321 DU 8 AVRIL 2002 RELATIVE AUX PROCEDURES DE GEL DES FONDS AUX FINS DE LUTTE CONTRE LE TERRORISME³⁸

Vu l'article 68 de la Constitution;

Vu Notre ordonnance n° 15.319 du 8 avril 2002 rendant exécutoire la Convention internationale pour la répression du financement du terrorisme du 9 décembre 1999;

Vu la résolution 1373 (2001) du 28 septembre 2001 du Conseil de Sécurité des Nations Unies;

...

Article Premier

Aux fins de lutte contre le terrorisme, les établissement de crédit, toute autre institution financière, les entreprises d'assurance et tout organisme, entité ou personne sont tenus de procéder au gel des fonds, tels que définis à l'article premier de la Convention internationale pour la répression du financement du terrorisme du 9 décembre 1999, appartenant aux personnes physiques ou morales, entités ou organismes énumérés par arrêté ministériel ou détenus par eux.

Article 2

La procédure de gel des fonds s'entend de la mise en œuvre de toute action visant à empêcher tout mouvement, transfert, modification, utilisation ou manipulation desdits fonds qui aurait pour conséquence un changement de leur volume, de leur montant, de leur localisation, de leur propriété, de leur possession, de leur nature, de leur destination ou toute autre modification qui pourrait en rendre possible l'utilisation, notamment la gestion de portefeuille dont les mandats sont réputés suspendus.

Article 3

Il est interdit de mettre, directement ou indirectement, les fonds objets de la procédure de gel à la disposition d'une ou des personnes physiques ou morales, entités ou organismes désignés par l'arrêté ministériel à l'article premier, ou de les utiliser à leur bénéfice.

Il est également interdit aux établissements de crédit, à toute autre institution financière, aux entreprises d'assurance, de fournir ou de continuer de fournir des services à ces mêmes personnes, entités ou organismes.

³⁸ Publiée au journal de Monaco n° 7.542 du 12 avril 2002.

Il est interdit de réaliser ou de participer, sciemment, et intentionnellement, à des opérations ayant pour but ou effet de contourner, directement ou indirectement, les dispositions de l'article premier et des premier et deuxième alinéas du présent article.

Article 4

Nonobstant les règles du secret professionnel, les établissements de crédit, les autres institutions financières, les entreprises d'assurance et les autres organismes, entités ou personnes sont tenus de fournir au Directeur du Budget et du Trésor toutes les informations nécessaires pour assurer le respect des dispositions de la présente ordonnance.

Les informations fournies ou reçues conformément au présent article ne sont utilisées qu'aux fins pour lesquelles elles ont été fournies ou reçues.

Article 5

Pour des besoins humanitaires essentiels, des autorisations d'utilisation de fonds gelés peuvent être accordées par le Ministre d'Etat.

Pour protéger les intérêts de la Principauté de Monaco, des autorisations de dégeler des fonds peuvent être délivrées par arrêté ministériel.

Ces mesures sont prises selon des modalités tendant à prévenir le financement d'actes de terrorisme.

Article 6

Les fonds dus en vertu de contrats, accords ou obligations conclus ou nés antérieurement à l'entrée en vigueur des procédures de gel de fonds sont prélevés sur les comptes gelés; les fruits et intérêts échus des fonds gelés sont versés sur ces mêmes comptes.

Article 7

Tout manquement aux dispositions de la présente ordonnance sera poursuivi et puni des peines prévues au chiffre 4 de l'article 26 du Code pénal.

Donné en Notre Palais à Monaco, le huit avril deux mille deux.

**4. ORDONNANCE SOUVERAINE N° 15.655 DU 7 FEVRIER 2003
PORTANT APPLICATION DE DIVERS TRAITES
INTERNATIONAUX RELATIFS A LA LUTTE CONTRE LE
TERRORISME³⁹**

RAINIER III

PAR LA GRACE DE DIEU PRINCE SOUVERAIN DE MONACO

Vu la Constitution, notamment son article 68;

Vu la Convention pour la répression de la capture illicite d'aéronefs, faite à La Haye le 16 décembre 1970 et rendue exécutoire en Principauté de Monaco par Notre ordonnance n° 7.962 du 24 avril 1984 ;

Vu la Convention pour la répression d'actes illicites dirigés contre la sécurité de l'aviation civile, faite à Montréal le 23 septembre 1971 et rendue exécutoire en Principauté de Monaco par Notre ordonnance n° 7.964 du 24 avril 1984 ;

Vu la Convention sur la prévention et la répression des infractions contre les personnes jouissant d'une protection internationale, y compris les agents diplomatiques, faite à New York le 14 décembre 1973 et rendue exécutoire par Notre ordonnance n° 15.638 du 24 janvier 2003;

Vu la Convention Internationale contre la prise d'otages, faite à New York le 17 décembre 1979 et rendue exécutoire en Principauté de Monaco par Notre ordonnance n° 15.157 du 20 décembre 2001;

Vu la Convention Internationale sur la protection physique des matières nucléaires, faite à Vienne le 3 mars 1980 et rendue exécutoire en Principauté de Monaco par Notre ordonnance n° 12.093 du 28 novembre 1996;

Vu le Protocole pour la répression d'actes illicites de violence dans les aéroports servant à l'aviation civile internationale, complémentaire à la Convention pour la répression d'actes illicites dirigés contre la sécurité de l'aviation civile, fait à Montréal le 24 février 1988 et rendu exécutoire en Principauté de Monaco par Notre ordonnance n° 11.177 du 10 février 1994;

Vu la Convention pour la répression d'actes illicites contre la sécurité de la navigation maritime, faite à Rome le 10 mars 1988 et rendue exécutoire en Principauté de Monaco par Notre ordonnance n° 15.322 du 8 avril 2002 ;

Vu le Protocole pour la répression d'actes illicites contre la sécurité des plates-formes fixes situées sur le plateau continental, fait à Rome le 10 mars 1988

³⁹ Publiée au journal de Monaco n° 7.586 du 14 février 2003.

et rendu exécutoire en Principauté de Monaco par Notre ordonnance n° 15.323 du 8 avril 2002;

Vu la Convention Internationale pour la répression du financement du terrorisme, faite à New York le 9 décembre 1999 et rendue exécutoire en Principauté de Monaco par Notre ordonnance n° 15.319 du 8 avril 2002 ;

Vu la délibération Conseil de Gouvernement en date du 8 janvier 2003 qui Nous a été communiquée par Notre Ministre d'Etat;

Avons Ordonné et Ordonnons :

Article Premier

Est puni de la réclusion criminelle de 10 à 20 ans et de l'amende prévue au chiffre 4 de l'article 26 du Code Pénal dont le maximum pourra être porté au quintuple, s'il n'encourt des peines plus graves prévues par d'autres dispositions pénales, quiconque commet les faits ou actes énumérés aux chiffres 1 à 8 ci-dessous :

1/ Les actes, commis ou non à bord qui peuvent compromettre la sécurité d'un aéronef ou de personnes ou de biens à bord, ou compromettent le bon ordre ou la discipline à bord.

2/ Les actes commis à bord d'un aéronef en vol consistant, illicitement par la violence ou la menace de violence, à s'emparer de cet aéronef ou en exercer le contrôle.

3/ L'acte de toute personne, qui illicitement, à l'aide d'un dispositif, d'une substance ou d'une arme:

a) accomplit à l'encontre d'une personne, dans un aéroport assujéti aux règles de l'aviation civile internationale, un acte de violence qui cause ou est de nature à causer des blessures graves ou la mort;

b) ou détruit ou endommage gravement les installations d'un aéroport assujéti aux règles de l'aviation civile internationale ou des aéronefs qui ne sont pas en service et qui se trouvent dans l'aéroport, ou interrompt les services de l'aéroport, si cet acte compromet ou est de nature à compromettre la sécurité dans l'aéroport.

4/ Le fait pour quiconque de s'emparer d'un ou plusieurs otages, de les détenir et menacer de les tuer, de les blesser ou de continuer à les détenir, afin de contraindre une tierce partie, à savoir la Principauté de Monaco, ou tout autre Etat, une organisation internationale intergouvernementale, une personne physique ou morale ou un groupe

de personnes, à accomplir un acte quelconque ou à s'en abstenir, en tant que condition explicite ou implicite de la libération de ou des otages.

5/ Le fait de commettre intentionnellement l'un des actes suivants:

- a) le recel, la détention, l'utilisation, la cession, l'altération, l'aliénation ou la dispersion de matières nucléaires sans y être habilité et entraînant ou pouvant entraîner la mort ou des blessures graves pour autrui ou des dommages considérables pour les biens;
- b) le vol simple ou le vol qualifié de matières nucléaires;
- c) le détournement ou toute autre appropriation indue de matières nucléaires ;
- d) le fait d'exiger des matières nucléaires par la menace, le recours à la force ou par toute autre forme d'intimidation;
- e) la menace:
 - d'utiliser des matières nucléaires pour tuer ou blesser gravement autrui ou causer des dommages considérables aux biens;
 - de commettre l'une des infractions visées à la lettre b) ci-dessus afin de contraindre la Principauté de Monaco, ou tout autre Etat, ou une personne physique ou morale, ou une organisation internationale à faire ou à s'abstenir de faire un acte quelconque.

6/ Le fait de toute personne qui, illicitement ou intentionnellement:

- a) s'empare d'un navire ou d'une plate-forme fixe ou en exerce le contrôle par violence ou menace de violence;
- b) accomplit un acte de violence à l'encontre d'une personne se trouvant à bord d'un navire ou d'une plate-forme fixe si cet acte est de nature à compromettre leur sécurité ou la navigation du navire;
- c) détruit un navire ou cause à ce navire ou à sa cargaison des dommages qui sont de nature à compromettre la sécurité de la navigation du navire ou détruit une plateforme fixe ou lui cause des dommages qui sont de nature à compromettre sa sécurité;
- d) place ou fait placer sur un navire, par quelque moyen que ce soit, un dispositif ou une substance propre à détenir le navire ou à causer au navire ou à sa cargaison des dommages qui compromettent ou sont de nature à compromettre la sécurité du

navire, ou place ou fait placer sur une plate-forme fixe, par quelque moyen que ce soit, un dispositif ou une substance propre à détruire la plate-forme ou lui causer des dommages qui sont de nature à compromettre sa sécurité;

e) détruit ou endommage gravement des installations ou services de navigation maritime ou en perturbe gravement le fonctionnement si l'un de ces actes est de nature à compromettre la sécurité ou la navigation d'un navire;

f) communique une information qu'elle sait fautive et, de ce fait, compromet la sécurité de la navigation d'un navire;

g) blesse ou tue toute personne lorsque ces faits présentent un lien de connexité avec l'un des actes prévus aux paragraphes a) et f);

h) menace de commettre l'un des faits prévus aux paragraphes b), c) et e) si cette menace, assortie d'une condition visant à contraindre une personne physique ou morale à accomplir ou à s'abstenir d'accomplir un acte quelconque, est de nature à compromettre la sécurité de la navigation du navire en question;

7/ Le fait de commettre un meurtre, un enlèvement ou toute autre attaque contre la personne ou la liberté d'une personne jouissant d'une protection internationale au sens de l'article premier de la Convention sur la prévention et la répression des infractions contre les personnes jouissant d'une protection internationale, y compris les agents diplomatiques, faite à New York le 14 décembre 1973, ou ;

Le fait de mettre en danger une personne visée à l'alinéa précédent, consécutif à une attaque ou une menace d'attaque commise avec violence contre les locaux officiels, le logement privé; ou les moyens de transport dont elle dispose.

8/ Tout autre acte destiné à tuer ou blesser grièvement un civil ou toute autre personne qui ne participe pas directement aux hostilités dans une situation de conflit armé, lorsque, par sa nature ou son contexte, cet acte vise à intimider une population ou à contraindre le gouvernement monégasque, ou le gouvernement de tout autre Etat ou une organisation internationale à accomplir ou à s'abstenir d'accomplir un acte quelconque.

La complicité et la tentative de ces crimes sont punies selon les règles applicables en la matière.

Article 2

L'auteur d'une de ces infractions visées à l'article premier commise à bord d'un aéronef pourra être poursuivi et jugé par les juridictions monégasques s'il atterrit sur le territoire monégasque et s'il se trouve encore à bord lors de cet atterrissage.

Pourra être également poursuivi et jugé par les juridictions monégasques, l'auteur d'une des infractions visées à l'article premier s'il a loué sans équipage, à Monaco, un aéronef, monégasque ou étranger, s'il a lui-même son siège principal ou sa résidence dans la Principauté de Monaco.

Article 3

Pour l'application exclusive des traités internationaux ci-dessus visés, la Principauté de Monaco accorde l'entraide judiciaire la plus large possible pour enquête ou procédure pénale ou pour procédure d'extradition relatives aux infractions visées à l'article premier, y compris pour l'obtention des éléments de preuve en sa possession qui sont nécessaires aux fins de la procédure.

Pour les besoins de l'extradition ou de l'entraide judiciaire prévus à l'alinéa précédent, aucune des infractions visées à l'article premier de la présente ordonnance n'est considérée comme une infraction politique, comme à une infraction politique ou inspirée par des mobiles politiques.

L'extradition ou l'entraide judiciaire sont refusées s'il existe des raisons sérieuses de croire que la demande a été présentée aux fins de poursuivre ou de punir une personne pour des considérations de race, de religion, de nationalité, d'origine ethnique ou d'opinions politiques ou que la situation de cette personne risque d'être aggravée pour une quelconque de ces considérations.

Article 4

Notre Secrétaire d'Etat, Notre Directeur des Services Judiciaires et Notre Ministre d'Etat sont chargés, chacun en ce qui le concerne, de l'exécution de la présente ordonnance.

Donné en Notre Palais à Monaco, le sept février deux mille trois.

LXXIII. MONGOLIA⁴⁰

SUMMARY OF LEGISLATION OF MONGOLIA RELATED TO TERRORISM

According to the 1992 Constitution of Mongolia, “the international treaties to which Mongolia is a Party become effective as domestic legislation upon the entry into force of the laws on their ratification or accession” (Article 10.3).

On 3 January 2002, the State Great Khural of Mongolia (Parliament) adopted the new Criminal Code. The following provisions of the Criminal Code pertain to terrorist activities:

CHAPTER 4 - OFFENCES AGAINST PUBLIC ORDER

- *Article 81* (Serious bodily harm to and killing of the President, members of Parliament, ministers etc.)
- *Article 83* (Coup d'état)
- *Article 84* (Sabotage)
- *Article 86* (Intended damages to national integrity)

CHAPTER 16 - OFFENCES AGAINST INDIVIDUALS AND PERSONAL REPUTATION

- *Article 112* (Kidnapping)

CHAPTER 21 - OFFENCES AGAINST PUBLIC SECURITY

Article 177 (Terrorist acts) - *Article 177* (1) of the Criminal Code stipulates that a person who employs or threatens to employ means that are dangerous to the public, thereby putting pressure on authorized organizations or individuals, in order to compel directly or indirectly certain decisions to be made or not made or to be issued or not issued, is to be sentenced to no less than 10 years but not more than 15 years of imprisonment. *Article 177* (2) stipulates that if such actions are perpetrated by a dangerous criminal (criminal of an organized group), or criminal group and it leads to the death of people and harm to the public,

⁴⁰ Transmitted to the Secretariat by that Government on 10 November 2001 (S/2001/1135 enclosure) and 4 October 2002 (S/2002/1152, enclosure). Information was also provided in respect of the Law of Mongolia on its nuclear-weapons free status adopted in 2000 and Resolution No. 226 on the Support of the Anti-Terrorist Coalition adopted by the Government on 10 October 2001.

the perpetrators are to be sentenced to no less than 20 years but not more than 25 years of imprisonment, or given the death penalty.

- *Article 179* (Acts causing public disorders)

- *Article 182* (Organized crime)

- *Article 188* (Illicit arms trafficking) - *Article 188 (4)* provides that if an organized or criminal group illicitly imports or exports firearms, weaponry, narcotic drugs, poisonous, radioactive or explosive substances (implying the criminal responsibility of individuals or groups of individuals who commit, participate in, plan, prepare, assist and perpetrate the crime of terrorism), the perpetrators are to be sentenced to no less than 20 but not more than 25 years of imprisonment.

CHAPTER 30 - CRIMES AGAINST HUMANITY

- *Article 302* (Ethnic cleansing)

- *Article 303* (Training terrorists)

LXXIV. MOROCCO⁴¹

1. ELEMENTS DU DISPOSITIF LEGISLATIF ET REGLEMENTAIRE DU MAROC

Le droit marocain ne donne pas une définition précise du terrorisme, les actes terroristes et qualifiés comme tels par les législations étrangères et les instruments juridiques internationaux sont considérés comme des actes criminels et sont passibles des peines les plus sévères. Ainsi, les actes terroristes sont sanctionnés par le Code pénal marocain comme des infractions de droit commun. Les peines prévues s'échelonnent de cinq ans de prison à la peine de mort. Elles ont fait l'objet des articles ci-après du Code pénal:

- Articles 163 à 207 relatifs aux «crimes et délits contre la sûreté de l'État »;

- Articles 293 à 299 concernant «l'association de malfaiteurs et de l'assistance aux criminels » ;

⁴¹ Transmitted to the Secretariat by that Government on 24 December 2001 (S/2001/1288, annex) and 10 July 2002 (S/2002/777, enclosure). Information was also provided in respect of: le Dahir du 21 mai 1974 relatif aux stupéfiants et le Dahir du 2 septembre 1958 concernant les armes, munitions et explosifs.

- Articles 392 à 424 qui traitent de «l'homicide volontaire, de l'empoisonnement et des violences»;
- Articles 436 à 441 traitant des «atteintes portées par des particuliers à la liberté individuelle, de la prise d'otages et de l'inviolabilité du domicile»;
- Articles 505 à 539 relatifs aux «vols et extorsions»;
- Articles 580 à 607 traitant des «destructions, dégradations et dommages causés aux édifices publics et privés»;
- Articles 607 *bis* et 607 *ter* relatifs aux «détournements d'aéronefs, à la dégradation d'aéronefs et la dégradation des installations aériennes».

En outre, le Code pénal marocain considère comme crime «la non-dénonciation d'attentat contre la sûreté de l'État» (art. 209 et 299), ainsi que le fait de donner «subsides, moyens d'existence, logement, lieu de retraite ou de réunion» à des auteurs de crimes ou délits contre la sûreté extérieure de l'État (art. 196), de «receler ou soustraire un criminel à l'arrestation ou aux recherches ou l'aider à se cacher ou à prendre la fuite» (art. 297).

La loi marocaine autorise également la confiscation de biens ayant servi aux crimes en cas de condamnation (art. 36), ainsi que la confiscation comme mesure de sûreté même si aucune condamnation n'est prononcée (art. 89).

Le Code de procédure pénale dispose que les juridictions du Royaume sont compétentes pour connaître de toute infraction commise sur le territoire marocain quelle que soit la nationalité de son auteur.

L'accomplissement au Maroc du fait principal est attributif de compétence aux juridictions du Royaume même lorsque certains des éléments constitutifs ont été réalisés en pays étranger et quelle que soit la nationalité des coauteurs.

La compétence des juridictions marocaines pour juger le fait principal s'étend à tous les faits de complicité ou de recel même perpétrés hors du Royaume et par des étrangers (art. 748 du Code de procédure pénale). Il en est de même pour les crimes commis en haute mer sur « des navires battant pavillon marocain quelle que soit la nationalité de leurs auteurs » ainsi que les crimes à bord des aéronefs étrangers si l'auteur ou la victime est de nationalité marocaine ou si l'appareil atterrit au Maroc après le crime ou le délit (art. 749 et 750 du Code de procédure pénale).

En matière d'entraide judiciaire internationale, la législation marocaine envisage une série de mesures visant à consolider la coopération pénale. Ainsi, le Code de procédure pénale, dans le chapitre réservé aux relations judiciaires avec les autorités étrangères, prévoit-il un certain nombre de dispositions dans le cas

d'absence ou de silence des conventions avec des États étrangers, notamment dans le domaine des commissions rogatoires et de l'extradition.

2. LOI N° 03-03 RELATIVE A LA LUTTE CONTRE LE TERRORISME

TITRE PREMIER

DES DISPOSITIONS PENALES

ARTICLE PREMIER

Le titre premier du livre III du code pénal approuvé par le dahir n° 1-59-413 du 28 joumada II 1382 (26 novembre 1962) est complété par le chapitre premier *bis* suivant:

Chapitre premier *bis*

Le terrorisme

Article 218.1.- Constituent des actes de terrorisme, lorsqu'elles sont intentionnellement en relation avec une entreprise individuelle ou collective ayant pour but l'atteinte grave à l'ordre public par l'intimidation, la terreur ou la violence, les infractions suivantes:

- 1) l'atteinte volontaire à la vie des personnes ou à leur intégrité, ou à leurs libertés, l'enlèvement ou la séquestration des personnes;
- 2) la contrefaçon ou la falsification des monnaies ou effets de crédit public, des sceaux de l'Etat et des poinçons, timbres et marques, ou le faux ou la falsification visés dans les articles 360, 361 et 362 du présent code;
- 3) les destructions, dégradations ou détériorations;
- 4) le détournement, la dégradation d'aéronef ou des navires ou de tout autre moyen de transport, la dégradation des installations de navigation aérienne, maritime et terrestre et la destruction, la dégradation ou la détérioration des moyens de communication;
- 5) le vol et l'extorsion des biens;
- 6) la fabrication, la détention, le transport, la mise en circulation ou l'utilisation illégale d'armes, d'explosifs ou de munitions;

7) les infractions relatives aux systèmes de traitement automatisé des données;

8) le faux ou la falsification en matière de chèque ou de tout autre moyen de paiement visés respectivement par les articles 316 et 331 du code de commerce;

9) la participation à une association formée ou à une entente établie en vue de la préparation ou de la commission d'un des actes de terrorisme;

10) le recel sciemment du produit d'une infraction de terrorisme;

Article 218-2.- Est puni d'un emprisonnement de 2 à 6 ans et d'une amende de 10.00 à 200.000 dirhams, quiconque fait l'apologie d'actes constituant des infractions de terrorisme, par les discours, cris ou menaces proférés dans les lieux ou les réunions publics ou par des écrits, des imprimés vendus, distribués ou mis en vente ou exposés dans les lieux ou réunions publics soit par des affiches exposées au regard du public par les différents moyens d'information audio-visuels et électroniques.

Article 218-3.- Constitue également un acte de terrorisme, au sens du premier alinéa de l'article 218-1 ci-dessus, le fait d'introduire ou de mettre dans l'atmosphère, sur le sol, dans le sous-sol ou dans les eaux, y compris celles de la mer territoriale, une substance qui met en péril la santé de l'homme ou des animaux ou le milieu naturel.

Les faits prévus au premier alinéa ci-dessus sont punis de dix à vingt ans de réclusion.

La peine est la réclusion à perpétuité, lorsque les faits ont entraîné une mutilation, amputation ou privation de l'usage d'un membre, cécité, perte d'un œil ou toutes autres infirmités permanentes pour une ou plusieurs personnes.

Le coupable est puni de mort lorsque les faits ont entraîné la mort d'une ou de plusieurs personnes.

Article 218-4.- Constituent des actes de terrorisme les infractions ci-après:

- Le fait de fournir, de réunir ou de gérer par quelque moyen que ce soit, directement ou indirectement, des fonds, des valeurs ou des biens dans l'intention de les voir utiliser ou en sachant qu'ils seront utilisés, en tout ou en partie, en vue de commettre un acte de terrorisme, indépendamment de la survenance d'un tel acte;

- Le fait d'apporter un concours ou de donner des conseils à cette fin.

Les infractions visées au présent article sont punies:

- pour les personnes physiques, de cinq à vingt ans de réclusion et d'une amende de 500.000 à 2.000.000 de dirhams;
- pour les personnes morales, d'une amende de 1.000.000 à 5.000.000 de dirhams, sans préjudice des peines qui pourraient être prononcées à l'encontre de leurs dirigeants ou agents impliqués dans les infractions.

La peine est portée à dix ans et à trente ans de réclusion et l'amende au double:

- lorsque les infractions sont commises en utilisant les facilités que procure l'exercice d'une activité professionnelle;
- lorsque les infractions sont commises en bande organisée;
- en cas de récidive.

La personne coupable de financement du terrorisme encourt, en outre, la confiscation de tout ou partie de ses biens.

Article 218-5.- Quiconque, par quelque moyen que ce soit, persuade, incite ou provoque autrui à commettre l'une des infractions prévues par le présent chapitre, est passible des peines prescrites pour cette infraction.

Article 218-6.- Outre les cas de complicité prévus à l'article 129 du présent code, est punie de la réclusion de dix à vingt ans, quiconque, sciemment, fournit à une personne auteur, coauteur ou complice d'un acte terroriste, soit des armes, munitions ou instruments de l'infraction, soit des contributions pécuniaires, des moyens de subsistance, de correspondance ou de transport, soit un lieu de réunion, de logement ou de retraite ou qui les aide à disposer du produit de leurs inffaits, ou qui, de tout autre manière, leur porte sciemment assistance.

Toutefois, la juridiction peut exempter de la peine encourue les parents ou alliés jusqu'au quatrième degré, inclusivement, de l'auteur, coauteur ou du complice d'un acte terroriste, lorsqu'ils ont seulement fourni à ce dernier logement ou moyens de subsistance personnels.

Article 218-7.- Le maximum des peines prévues pour les infractions visées à l'article 218-1 ci-dessus, est relevé comme suit, lorsque les faits commis constituent des infractions de terrorisme:

- la mort lorsque la peine prévue est la réclusion perpétuelle;
- la réclusion perpétuelle lorsque le maximum de la peine prévue est de 30 ans de réclusion;
- le maximum de peines privatives de liberté est relevé au double, sans dépasser trente ans lorsque la peine prévue est la réclusion ou l'emprisonnement;
- lorsque la peine prévue est une amende, le maximum de la peine est multiplié par cent sans être inférieur à 100.000 dirhams;
- lorsque l'auteur est une personne morale, la dissolution de la personne morale ainsi que les deux mesures de sûreté prévues à l'article 62 du code pénal doivent être prononcées sous réserve des droits d'autrui.

Article 218-8.- Est coupable de non-révélation d'infractions de terrorisme et punie de la réclusion de cinq à dix ans, toute personne qui, ayant connaissance de projets ou d'actes tendant à la perpétration de faits constituant des infractions de terrorisme, n'en fait pas, dès le moment où elle les a connus, la déclaration aux autorités judiciaires, de sécurité, administratives ou militaires.

Toutefois, la juridiction peut, dans le cas prévu au premier alinéa du présent article, exempter de la peine encourue les parents ou alliés jusqu'au quatrième degré, inclusivement, de l'auteur, du coauteur ou du complice d'une infraction de terrorisme.

Lorsqu'il s'agit d'une personne morale, la peine est l'amende de 100.000 à 1.000.000 de dirhams.

Article 218-9.- Bénéficie d'une excuse absolutoire, dans les conditions prévues aux articles 143 à 145 du présent code, l'auteur, le coauteur ou le complice qui, avant toute tentative de commettre une infraction de terrorisme faisant l'objet d'une entente ou d'une association et avant toute mise en mouvement de l'action publique, a le premier, révélé aux autorités judiciaires, de sécurité, administratives ou militaires l'entente établie ou l'existence de l'association.

Lorsque la dénonciation a eu lieu après l'infraction, la peine est diminuée de moitié pour l'auteur, le coauteur ou le complice qui se présente d'office aux autorités ci-dessus mentionnées ou qui dénonce les coauteurs ou complices dans l'infraction.

Lorsque la peine prévue est la mort, elle est commuée à la peine de réclusion perpétuelle, lorsqu'il s'agit de la peine de la réclusion perpétuelle, elle est commuée à la réclusion de 20 à 30 ans.

ARTICLE DEUX

Les articles 40, 70, 72 et 86 (1^{er} alinéa) du code pénal précité sont complétés comme suit:

Article 40 (2^e alinéa ajouté).- Les juridictions peuvent également appliquer les dispositions du premier alinéa du présent article lorsqu'elles prononcent une peine délictuelle pour une infraction de terrorisme.

Article 70.- Toute juridictionà cinq ans.

(2^e alinéa ajouté). - Lorsque l'acte commis constitue une infraction de terrorisme, la juridiction peut assigner au condamné un lieu de résidence tel que prévu au premier alinéa ci-dessus dont il ne pourra s'éloigner sans autorisation pendant la durée fixée dans le jugement sans toutefois dépasser dix ans.

La décision d'assignation de résidence
.....
.....

(La suite sans modification)

*Article 72 .-*L'interdiction.....
.....
..... loi.

Elle peut
ce délit.

Elle.....
..... principale.

(4^e alinéa ajouté). - Toutefois, l'interdiction de séjour peut toujours être prononcée lorsque la juridiction applique une peine d'emprisonnement pour une infraction de terrorisme.

Article 86 (premier alinéa) - L'incapacité d'exercer toutes fonctions ou emplois publics doit être prononcée par la juridiction dans les cas édictés par la loi et lorsqu'il s'agit d'une infraction constituant un acte de terrorisme.

ARTICLE TROIS

Le chapitre II du titre I du livre premier du code pénal précité est complété par l'article 44-I suivant :

Article 44-1. – Lorsqu'il s'agit d'un acte constituant une infraction de terrorisme, la juridiction peut prononcer la confiscation prévue à l'article 42 du présent code.

La confiscation doit toujours être prononcée, dans les cas prévus aux articles 43 et 44 du présent code, sous réserve des droits des tiers, en cas de condamnation pour une infraction de terrorisme.

TITRE II

DES DISPOSITION DE PROCEDURE PENALE

ARTICLE QUATRE

Les dispositions des articles 59 (2^e alinéa), 62, 79, 102, 108 (3^e et 4^e alinéas) et 115 de la loi n° 22-01 relative à la procédure pénale promulguée par le dahir n° 1-02-255 du 25 rejeb 1423 (3 octobre 2002) sont complétées comme suit:

Article 59 (2^e alinéa) .- Sauf en matière d'atteinte à la sûreté de l'Etat ou lorsqu'il s'agit d'une infraction de terrorisme, l'officier de police judiciaire a seul avec les personnes désignées à l'article 60, le droit de prendre connaissance des papiers ou documents avant de procéder à leur saisie.

Article 62 (3^e alinéa ajouté) .- Lorsqu'il s'agit d'une infraction de terrorisme et si les nécessités de l'enquête, le cas d'extrême urgence ou la crainte de disparition de preuves l'exigent, les perquisitions et les visites domiciliaires peuvent avoir lieu, à titre exceptionnel, avant six heures du matin et après neuf heures du soir sur autorisation écrite du ministère public.

Article 79 .- Les perquisitions
..... a lieu.

Cet assentiment
..... que de son assentiment.

Les dispositions sont applicables.

(4^e alinéa ajouté) – Lorsqu'il s'agit d'une infraction de terrorisme et si la personne chez laquelle l'opération doit avoir lieu s'est abstenue de donner son accord, ou lorsqu'il n'est pas possible d'obtenir cet accord,

les opérations prévues au premier alinéa du présent article peuvent avoir lieu sur autorisation écrite du ministère public en présence de la personne concernée. Lorsque ladite personne s'abstient de donner son accord ou en cas d'empêchement, l'opération doit avoir lieu en présence de deux personnes autres que les subordonnés de l'officier de police judiciaire.

Article 102. – En matière de crime, ou lorsqu'il s'agit d'une infraction de terrorisme, si la perquisition est effectuée au domicile de l'inculpé, le juge d'instruction est habilité à y procéder, en dehors des heures fixées à l'article 62, à condition de le faire personnellement et en présence du représentant du ministère public.

Lorsqu'il s'agit d'une infraction de terrorisme, le juge d'instruction peut, en cas d'extrême urgence, par décision motivée, requérir, par commission rogatoire, un magistrat ou un ou plusieurs officiers de police judiciaire, pour effectuer la perquisition en dehors des heures légales en présence du représentant du ministère public.

Article 108 (3^e alinéa) – Le procureur général du Roi peut également, si les nécessités de l'enquête l'exigent, requérir par écrit, du premier président de la Cour d'appel, d'ordonner l'interception des appels téléphoniques ou des communications effectués par les moyens de communication à distance, de les enregistrer et d'en prendre copies ou de les saisir, lorsque l'infraction objet de l'enquête porte atteinte à la sûreté de l'Etat, lorsqu'il s'agit d'une infraction de terrorisme ou lorsqu'elle est relative aux associations de malfaiteurs, à l'homicide, à l'empoisonnement, à l'enlèvement des personnes et à la prise d'otages, à la contrefaçon ou à la falsification de la monnaie ou des effets de crédit public, aux stupéfiants et aux substances psychotropes, aux armes, munitions et explosifs ou à la protection de la santé.

(4^e alinéa) – Toutefois, le procureur général du Roi, peut, exceptionnellement, en cas d'extrême urgence, lorsque les nécessités de l'enquête exigent la célérité, par crainte de disparition de moyens de preuve, ordonner par écrit l'interception des appels téléphoniques ou des communications effectués par les moyens de communication à distance, de les enregistrer, d'en prendre copies et de les saisir, lorsque l'infraction porte atteinte à la sûreté de l'Etat, lorsqu'il s'agit d'une infraction de terrorisme ou lorsqu'elle est relative aux stupéfiants, aux substances psychotropes, aux armes, munitions et explosifs, à l'enlèvement des personnes ou à la prise d'otages.

Article 115 (2^e alinéa ajouté). – Sans préjudice des dispositions pénales plus sévères, la peine est de cinq à dix ans de réclusion lorsque les faits prévus au premier alinéa ci-dessus sont accomplis pour des fins de terrorisme.

ARTICLE CINQ

Les dispositions des articles 66 (4^e et 9^e alinéas) et 80 (4^e et 10^e alinéas) de la loi relative à la procédure pénale précitée sont modifiées et complétées comme suit:

Article 66 (4^e alinéa ajouté) – Lorsqu’il s’agit d’une infraction de terrorisme, la durée de la garde à vue est fixée à quatre-vingt-seize heures renouvelable deux fois pour une durée de quatre-vingt-seize heures chaque fois sur autorisation écrite du ministère public.

(9^e alinéa) – En cas d’une infraction de terrorisme ou des infractions visées à l’article 108 de la présente loi et si les nécessités de l’enquête l’exigent, le représentant du ministère public peut, à la demande de l’officier de police judiciaire, retarder la communication de l’avocat avec son client sans que ce retard ne dépasse quarante-huit heures à compter de la première prolongation.

Article 80 (4^e alinéa). – Lorsqu’il s’agit d’une infraction de terrorisme, la durée de la garde à vue est fixée à quatre-vingt-seize heures renouvelable deux fois, pour une durée de quatre-vingt-seize heures chaque fois sur autorisation écrite du ministère public.

(10^e alinéa). – En cas d’infraction de terrorisme ou des infractions visées à l’article 108 de la présente loi et si les nécessités de l’enquête l’exigent, le représentant du ministère public peut retarder la communication de l’avocat avec son mandant à la demande de l’officier de police judiciaire sans que ce retard ne dépasse quarante-huit heures à compter de la première prolongation

ARTICLE SIX

Le livre V de la loi relative à la procédure pénale précitée est complétée par le titre IV suivant:

TITRE IV

PROCEDURE RELATIVE AU FINANCEMENT DU TERRORISME

Article 595-1 – Le procureur général du Roi peut, à l’occasion d’une enquête judiciaire, demander, aux banques soumises aux dispositions du dahir portant loi n° 1-93-147 du 15 moharrem 1414 (6 juillet 1993) relatif à l’exercice de l’activité des établissements de crédit et de leur contrôle et aux banques offshore régies par la loi n° 58-90 relative aux places financières offshore promulguées par le dahir n° 1-93-131 du 23 chaabane 1412 (26 février 1992), des renseignements sur des opérations

ou des mouvements de fonds soupçonnés d'être liés au financement du terrorisme.

Saisis d'une procédure en relation avec une infraction de terrorisme, le juge d'instruction et la juridiction de jugement peuvent également demander les renseignements prévus au premier alinéa du présent article.

Article 595-2 – Les autorités judiciaires prévues à l'article précédent peuvent ordonner le gel ou la saisie des fonds soupçonnés d'être liés au financement du terrorisme.

Elles peuvent demander l'assistance de Bank Al-Maghrib pour la mise en exécution de ces mesures.

Elles notifient à Bank Al-Maghrib les mesures prises et la suite qui leur a été donnée.

Article 595-3 – On entend par le terme « gel » l'interdiction temporaire du transfert, de la conversion, de la disposition ou du mouvement des biens ou le fait de les soumettre à la garde.

Article 595-4 – Les établissements bancaires visés à l'article 595-1 ci-dessus, doivent fournir les renseignements demandés dans un délai maximum de 30 jours à compter de la date de réception de la demande.

Le secret professionnel ne peut être opposé aux autorités visées à l'article 595-1 ci-dessus ou à Bank Al-Maghrib par les banques.

Pour tous faits et actes accomplis à l'occasion de l'exercice des missions qui sont dévolues à Bank Al-Maghrib ou aux banques par le présent titre, aucune poursuite fondée sur l'article 446 du code pénal et aucune action en responsabilité civile ne peuvent être engagées à l'encontre de ces établissements ou de leurs dirigeants ou agents.

Article 595-5 – Il est interdit d'utiliser les renseignements recueillis à d'autres fins que celles prévues par le présent titre.

Article 595-6 – Dans le cadre de l'application des conventions internationales en matière de lutte contre le financement du terrorisme auxquelles le Royaume du Maroc a adhéré et dûment publiées, le gouvernement peut, à la demande d'un Etat étranger, saisir de la demande le procureur général du Roi afin de prendre les mesures suivantes:

- 1- la recherche et l'identification du produit d'une infraction de financement du terrorisme, des biens qui ont servi ou étaient

destinés à commettre cette infraction ou de tout bien dont la valeur correspond au produit de cette infraction;

2- le gel ou la saisie des biens;

3- la prise de mesures conservatoires sur ces biens.

La demande est rejetée par le procureur général du Roi si:

- son exécution risque de porter atteinte à la souveraineté, à la sécurité, aux intérêts essentiels de l'Etat ou à l'ordre public;
- les faits sur lesquels elle porte ont fait l'objet d'une décision judiciaire définitive sur le territoire national;
- la décision judiciaire étrangère a été prononcée dans des conditions n'offrant pas de garanties suffisantes au regard des droits de la défense;
- les faits à l'origine de la demande ne sont pas liés au financement du terrorisme.

Article 595-7- L'exécution sur le territoire national d'une décision de gel, de saisie ou de confiscation prononcée par une autorité judiciaire étrangère et faisant l'objet d'une demande présentée par ladite autorité, est subordonnée à l'autorisation du procureur général du Roi.

La décision de gel, de saisie ou de confiscation doit viser un bien ayant servi ou qui était destiné à commettre l'infraction, et se trouvant sur le territoire national, ou consister en l'obligation de payer une somme d'argent correspondante à la valeur de ce bien.

L'exécution de la décision étrangère est subordonnée à la satisfaction de la double condition suivante:

- 1- La décision judiciaire étrangère est définitive et exécutoire selon la loi de l'Etat requérant;
- 2- Les biens à geler, à saisir ou à confisquer en vertu de cette décision sont susceptibles d'être gelés, saisis ou confisqués dans des circonstances analogues selon la législation marocaine.

Article 595-8 - L'autorisation par le procureur général du Roi de la confiscation entraîne, sans préjudice des droits des tiers, le transfert à l'Etat marocain de la propriété des biens confisqués, sauf s'il en est convenu autrement avec l'Etat requérant ou dans le cadre de

l'application d'une convention internationale ou du principe de la réciprocité.

La décision d'autorisation du procureur général du Roi permettant le gel ou la saisie n'entraîne que l'indisponibilité des fonds objet de la décision qui ne peuvent faire l'objet d'aucune alinéation pendant la durée d'effet de la décision.

Article 595-9 – Toutes les personnes qui participent au traitement du renseignement financier et à l'action contre les circuits liés au financement du terrorisme et plus généralement, toutes personnes appelées, à un titre quelconque, à connaître ou à exploiter de tels renseignements, sont strictement tenues au secret professionnel sous peine de la sanction prévue à l'article 446 du code pénal.

Article 595-10 – Sont punis des peines prévues à l'article 446 du code pénal, les dirigeants ou agents des banques qui auront sciemment porté à la connaissance de la personne en cause ou de toute autre personne, par quelque moyen que ce soit, des renseignements sur une enquête menée sur les mouvements de ses fonds soupçonnés d'être liés au financement du terrorisme.

Est punie des mêmes peines toute personne qui aurait utilisé sciemment les renseignements recueillis à d'autres fins que celles prévues par le présent titre.

ARTICLE SEPT

Nonobstant les règles de compétence prévues par le code de procédure pénale ou par d'autres textes, la Cour d'appel de Rabat est compétente pour les poursuites, l'instruction et le jugement des actes constituant des infractions de terrorisme.

Ladite juridiction peut, pour des motifs de sécurité publique et exceptionnellement, tenir ses audiences dans les sièges d'une autre juridiction.

ARTICLE HUIT

Sous réserve des dispositions de l'article 9 ci-dessus, l'article 355 de la loi n° 22-01 relative à la procédure pénale, promulguée par le dahir n° 1-02-255 du 25 rejab 1423 (3 octobre 2002), est modifié ainsi qu'il suit:

Article 755 (1^{er} alinéa).- Les dispositions de la présente loi entrent en vigueur à compter du premier octobre 2003.

ARTICLE NEUF

Les dispositions de la présente loi et celles du chapitre V du titre III du livre premier de la loi n° 22-01 relative à la procédure pénale entrent en vigueur à compter de la date de sa publication au *Bulletin officiel*.

LXXV. MOZAMBIQUE⁴²

SUMMARY OF LEGISLATION OF MOZAMBIQUE RELATED TO TERRORISM

Generally, Act No. 19/91 Concerning Crimes Against the State Security, together with other penal legislation, covers in terms of pursuance and punishment of terrorism crimes, including preparatory acts for such crimes.

The definition of terrorism under Article 13 of the Act covers direct involvement as well as complicity in crimes falling into this category.

In accordance with paragraph 1 of Article 13, the person committing terrorism is the one who:

- a) Places or causes to be placed, by any means, in a craft or aircraft, in public or private place or installations, as well as in any public or private equipment, any explosive or device capable to destruct or damage them, putting at stake goods, places or human and animal life, with the intent of creating social insecurity, terror or fright in the population or exert pressure on the State or any other economic, social or political organization to carry out or refrain from carrying out certain activities;
- b) Forges substances or food products or any others for consumption of people, animals or socio-economic units aimed to cause death or severe disturbances to health or economic life, in order to create insecurity social, terror and fright. These crimes are punishable with penalties, which varies from sixteen to twenty year of maximum imprisonment.

Furthermore, paragraph 2 of Article 13 provides that:

“Import, manufacture, stockpiling, purchase, sale or disposal, use and bearing of inflammable substances or instruments, explosives, fire arms,

⁴² Transmitted to the Secretariat by that Government on 27 December 2001 (S/2001/1319, enclosure) and 2 June 2003 (S/2003/1036 enclosure). Information was also provided in respect of the Act No. 7/2002 (Money Laundering Act) and Act No. 3/96 (Foreign Exchange Law).

stifling, toxic or chemical and biological agents, or any others elements whose combinations can result in products of the some nature as those described above, or any other substance or explosive, beyond legal conditions or in contrary to prescriptions by competent authorities, are punishable, if their authors aimed or they knew that they were aimed to perpetrate any crime against State security, with a penalty from twelve to sixteen years of imprisonment. The penalties above described become more severe in the cases of crime of homicide.”

LXXVI. MYANMAR⁴³

SUMMARY OF LEGISLATION OF MYANMAR RELATED TO TERRORISM

In Myanmar, effective measures against terrorists are taken under two laws: the Unlawful Associations Act of 1908 promulgated to take action against the members of terrorist organizations and its supporters and the Emergency Provisions Act of 1950 enacted for effective prevention and suppression of terrorism acts that affect the security of the Union.

Under these laws, terrorist acts are regarded as serious criminal offences and are punishable by sentences ranging from 7 years imprisonment to death penalty reflecting seriousness attributed to such terrorist acts.

The Emergency Provisions Act, *inter alia*, contains the following pertinent provisions:

Section 6

Whoever does any act with the intention of deteriorating, obstructing, or destroying the purpose and ability of:

- (a) a building, vehicle, machinery, equipment, or other property used or intended to be used for Government purpose;
- (b) a road, bridge, drainage-crossing, embankment, port or dockyard;
- (c) a building, an object, a sanitary installation, a mine, or a factory used with respect to the manufacture, distribution or supply of essential goods;

⁴³ Transmitted to the Secretariat by that Government on 30 November 2001 (S/2001/1144, annex) and 5 September 2001 (S/2002/1045, enclosure). Information was also provided in respect of the Control of Money Laundering Law of 2002 and the Law of Taking Action Against Owning and Marketing of Properties Obtained by Unlawful Means of 1986.

(d) a restricted area or a protected area;

(e) a water-supply work, pipe connections, machine, apparatus, or other objects related to water-supply

shall be punished with imprisonment for a term not more than 7 years, or fined, or with both.

Section 6A

(1) Whoever with the intention of causing extreme suffering to the public or loss of lives or of endangering the lives or security of the public, or knowing that extreme suffering will befall the public or lives will be lost or that the lives or security of the public will be endangered, destroys or causes to destroy:

(a) a public train, a motor vehicle, a vessel, an aircraft or other vehicle;

(b) a public road, a railway-line, a railway-bridge or other bridge;

(c) a public reservoir, a water-supply work and a pipe connected thereto;

(d) a public dam;

shall be punished with death.

(2) Whoever with the intention of causing extreme suffering to the public or loss of lives or of endangering the lives or the safety of the public, or knowing that extreme suffering will befall the public or lives will be lost or that the lives or security of the public will be endangered, uses a mine or dynamite in any manner to destroy any object mentioned in sub-section (1), shall be punished with death.

(3) Notwithstanding anything contained in sub-section (1) and (2), any person who commits any offence mentioned in sub-section (1) or (2) under coercion and intimidation shall be punished with imprisonment of any type for a term which may extend to 7 years.

LXXVII. NAMIBIA⁴⁴

SUMMARY OF LEGISLATION OF NAMIBIA RELATED TO TERRORISM

Namibia has completed drafting an Anti-Terrorism Activities Bill, and it is set to go through the necessary legislative process for adoption by the National Assembly. The Bill, *inter alia*, prohibits any person from providing material, logistical or organizational support or other resources when he or she knows or ought to have known that such assistance, support or resources are calculated or intended to be used in the commission of terrorist acts. Any person who in preparation for the commission or attempted commission of terrorism provides or receives instructions or training in the making or use of firearms, explosives, or chemical, biological or nuclear weapons commits an offence punishable by imprisonment, without the option of a fine, for a period not exceeding 10 years. Until the Act becomes law, Namibia will deal with perpetrators of terrorist acts according to the ordinary criminal law.

The Government of Namibia through the Ministry of Finance has instructed all banking institutions in Namibia to investigate as to whether terrorists or terrorist organizations make use of their banking institutions, and has strongly advised the banking institutions to tighten their existing financial regulations.

Act 75 of 1969 on Arms and Ammunitions, has regulatory mechanisms regarding import and export of weapons and possession and handling of arms and ammunitions in Namibia. Law enforcement agencies are empowered by the said Act to make sure that weapons destined for terrorist groups or for terrorist use are not smuggled via Namibia and that in general the territory of Namibia is not used as a transit of weapons for terrorists.

A new Defence Bill, which was passed by the National Assembly in November 2001, prohibits acts of terrorism and gives additional powers to the Defence Force to assist the police and other State law enforcement agencies, in their ongoing efforts to prevent and suppress terrorism in all respects.

⁴⁴ Transmitted to the Secretariat by that Government on 10 January 2002 (S/2001/1305, annex) and 25 April 2003 (S/2003/494, enclosure). Information was also provided in respect of the Banking Institutions Act of 1998, the Criminal Procedure Act of 1977, the Defence Act of 1957 and the Immigration Control Act of 1993.

LXXVIII. NAURU⁴⁵

SUMMARY OF LEGISLATION OF NAURU RELATED TO TERRORISM

(a) Laws of Nauru directly implementing international obligations to control criminal activities

The Air Navigation Act 1971 and regulations made there under prohibit the carriage of any form of munitions, explosives and dangerous goods.

Extradition of Fugitive Offenders Act 1973 provides for the extradition from Nauru of persons accused of offences in foreign countries. Extraditable offences include murder, manslaughter, kidnapping acts done with intent to endanger a vehicle, vessel or aircraft, offences against laws relating to dangerous drugs or narcotics, hi-jacking aircraft and money laundering.

(b) Laws of Nauru generally relating to criminal activities

The Criminal Code of Queensland applied to Nauru provides for a large measure of prohibition of criminal activity including murder, manslaughter, assaults, threats of violence, possession of explosives, dangerous or noxious substances or things. It covers parties who with intent to commit an offence attempt to do so, whether or not the intention is carried out or cannot be carried out, or procure or attempt to procure a criminal act or omission. Parties who may be liable include principal offenders, conspirators and other accessories which including persons who finance criminal activity. Liability attaches to offences committed wholly or partly in Nauru, to accessories outside Nauru who counsel or procure offences in Nauru, and to accessories in Nauru who counsel or procure offences outside of Nauru.

In addition, the Explosives Ordinance 1924 prohibits the importing or possession of any form of explosive without a permit.

Moreover, the Expulsion of Undesirables Ordinance 1961 provides for the expulsion from Nauru by Presidential Order of any non-Nauruan who has been convicted of an offence punishable by imprisonment for one year or more, or whose conduct is likely to be prejudicial to the peace, order or good government of Nauru.

⁴⁵ Transmitted to the Secretariat by that Government on 31 May 2001 (S/2002/615, enclosure) and 8 January 2003 (S/2003/127 enclosure). Information was also provided in respect of the Dangerous Drugs Ordinance 1952-67, Arms and Opium Prohibition 1936-1967, Passports Act 1997, Anti Money Laundering Act 2001.

LXXIX. NEPAL⁴⁶

SUMMARY OF LEGISLATION OF NEPAL RELATED TO TERRORISM

(a) The Terrorism and Disruptive Activities Control and Punishment Ordinance 2058 (2001)⁴⁷

The Terrorism and Disruptive Activities Control and Punishment Ordinance has identified the following activities as terrorist activities:

- a) Any act or plan of using any kinds of arms, grenades or explosives, or any other equipment or goods with the objective of affecting or hurting sovereignty or the security and law and order of the Kingdom of Nepal or any part thereof or the property of the Nepalese diplomatic missions abroad thereby causing damage to property at any place or any act causing loss of life or dismemberment or injury or setting fire or hurting physically and mentally, or any act of poisoning goods of daily consumption causing loss of life or injury, or any other aforesaid acts thereby causing panic among the people in motion or assembled;
- b) Acts of intimidation or terrorizing of individuals at any place or in any vehicle or abducting them or creating terror among them by threatening to abduct them from vehicles and places or abduction of people travelling on such vehicles as well as activities like taking the life of others, causing physical mutilation, injury and harm or causing other types of damage by using substances mentioned in the relevant section in that connection or by threatening to use such substances or any other substances other than those mentioned in that section or threatening to use them, or, acts like the production, distribution, accumulation, peddling, import and export, marketing or possession or installation of any kind of arms and ammunition or bombs or explosive substances or poisonous substances or any assistance in this connection;
- c) Acts of recruiting people or giving training for this purpose;
- d) Any other acts aimed at creating and spreading fear and terror in public life;

⁴⁶ Transmitted to the Secretariat by the Government on 28 December 2001 (S/2001/1326, enclosure), 31 March 2003 (S/2003/487, enclosure) and 18 November 2003 (S/2003/1119, enclosure). Information was also provided in respect of the Nepal Rastra Bank Act, 2058 (2002), the Extradition Act, the Income Tax Act, the Union and Association Act and the Nepal Treaty Act.

⁴⁷ This Ordinance has subsequently become "the Terrorism and Disruptive Activities (Control and Punishment) Act, 2058 (2002)."

e) Acts such as extortion of cash or property or looting of property for this purpose, forcibly raising cash or other assets or looting property in pursuit of the said purpose;

f) Any attempt or conspiracy to engage in terrorist or disruptive activity, or to encourage or force anyone to take up such activity, recruitment of more than one individual for such purpose, constituting any group to the same end, or assigning anyone to such activity or participating in such activity with or without pay or engaging in publicity for such activity, causing obstruction to government communications system, or giving refuge to any individual engaged in terrorist or disruptive activity, or hiding any person engaged in any of these activities.

The following provisions have been made in the new Ordinance to address terrorist activities:

a) Anyone indulging in crime in Nepal while residing abroad will also be subject to punishment;

b) The Government can declare a terrorist affected area or terrorist individuals;

c) House arrest can be used to prevent any terrorist and disruptive act;

d) Cases will be heard in a court constituted or designated by His Majesty's Government;

e) Arrangements will be made for reasonable expenses for treatment and compensation in case of the maiming or death of security personnel or police assigned to control or investigate terrorist and disruptive activities. Cases instituted under this Ordinance will not be subject to any statute of limitations;

f) Individuals arresting or helping in the arrest of any terrorist will be suitably awarded.

Financing, planning, preparation or perpetration of terrorist acts or supporting terrorist acts are considered serious crimes and they carry the same gravity as other terrorist activities do. The Ordinance defines as an act of terrorism the act of recruitment of members of terrorist groups and giving training for the purpose of creating and spreading fear and terror in public life; any attempt or conspiracy to engage in terrorist or disruptive activity or to encourage or force anyone to take up such activity, recruitment of more than one individual for such purpose, constituting any group to the same end, or assigning anyone to such activity or participating in such activity with or without pay or engaging in publicity for such activity or giving refuge to any individual engaged in terrorist or

disruptive activity, or hiding any person involved in such activities. The Ordinance provides the sentence of up to life imprisonment for such crimes.

The Ordinance further provides that “acts such as extortion of cash or other property or looting of property for this purpose (the purpose of terrorist activities), forcibly raising cash and other assets or looting of property in pursuit of the said purpose” is an act of terrorism. The Ordinance provides for the punishment of up to life imprisonment for such activities.

Any person, whether a Nepali or a foreigner, committing an act of terrorism directed against Nepal or any other State or citizen from the territory of Nepal, is subject to the provisions of this Act and hence punishable.

(b) Other Laws

There are several legal provisions in the laws of Nepal that prohibit the recruitment of members of terrorist groups and prevent the supply of weapons to terrorist.

The Sections 3, 4 and 5 of the Arms and Ammunition Act 2019 strictly prohibit the production, possession and sale of any kind of weapons (including any kind of machine gun, artillery gun and mortar, rifle, pistol, revolver, miring and grenade, fog signal, fuse, gun powder, detonator, cartridge and other weapons as defined by the Act) without license. Similarly, no one is authorized to buy such weapons without license within the country or outside the country under the provision of section 1 and 3 of the same Act. Any person who commits such a crime may face 7 years of imprisonment and financial penalty.

LXXX. NETHERLANDS⁴⁸

SUMMARY OF LEGISLATION OF THE NETHERLANDS RELATED TO TERRORISM

The financing of terrorism is a criminal offence under the Dutch Criminal Code. It can be prosecuted in three ways. Firstly, as preparations for a criminal act under article 46 of the Criminal Code. The maximum penalty depends on the maximum penalty applying to the terrorist crime for which the financing was intended. In this case, the terrorist act need not actually have been committed. Secondly, as financing in the context of a criminal organization. In this case the

⁴⁸ Transmitted to the Secretariat by that Government on 21 December 2001 (S/2001/1264, enclosure), 30 September 2002 (S/2002/1136, enclosure) and 11 September 2003 (S/2003/897, enclosure). Information was also submitted in respect of the Foreign Exchange Ordinance, the Dutch Aliens Act, the Money Transaction Offices Act, the Trust Offices Act, the Intelligence and Security Services Act.

suspect can be prosecuted for participating in a criminal organization (article 140 of the Criminal Code). The maximum penalty for this is six years' imprisonment. Thirdly, it can be prosecuted as participation in an offence, such as conspiracy to incite a terrorist offence (whether successful or not), under articles 46(a) and 47 of the Criminal Code. The maximum penalties again depend on the maximum penalty applying to the terrorist offence for which the financing was intended.

Under the Dutch Criminal Code it is possible to hold both natural and legal persons criminally liable for offences committed (article 51 of the Criminal Code).

Dutch sanctions legislation is also relevant. Under the Sanctions Act (Sanctiewet 1977), the Government can implement international sanctions by means of a national decree. Violation of the Sanction Act can be prosecuted under the Economic Offences Act.

Recruitment to terrorist groups can be dealt with under criminal law in the Netherlands as incitement to any criminal offence or violent action against the public authorities (articles 131 and 132 of the Criminal Code). It can also be prosecuted as actual or attempted incitement to commit a criminal offence (articles 46(a) and 47 of the Criminal Code).

At the moment, participation in a criminal organization is punishable (article 140 of the Criminal Code) by up to six years' imprisonment. If this participation consists of founding, leading or administering the organization, the sentence may be increased to a maximum of eight years' imprisonment.

Secondary universal jurisdiction with respect to major terrorist crimes has been established in the Dutch Criminal Code. This means that in cases where the Netherlands does not extradite a person suspected of committing a terrorist offence, it is obliged to prosecute the individual in question in the Netherlands. This prevents terrorists from finding a safe haven in the Netherlands.

Article 140 of the Criminal Code, whereby it is an offence to participate in a criminal organization, does not only apply to organizations whose aim is to commit criminal offences in the Netherlands. This means that a person in the Netherlands who participates in an organization whose aim is to commit criminal offences abroad, is committed a criminal offence under Dutch law.

LXXXI. NEW ZEALAND⁴⁹

1. SUMMARY OF LEGISLATION OF NEW ZEALAND RELATED TO TERRORISM

Counter-Terrorism Bill

In 2003, New Zealand passed the Counter-Terrorism Bill. The Bill implements in domestic law the requirements of two international Conventions relating to the Physical Protection of Nuclear Material (1979), and on the Marking of Plastic Explosives for the Purposes of Detection (1991).

It created the following new offences designed to deal with terrorist-type activity:

- harbouring or concealing a person knowing that person has carried out, or intends to carry out, terrorist activity;
- causing sickness or disease in animals, intending to cause serious risk to the animal population of New Zealand and major damage to the New Zealand economy, or being reckless as to whether such an outcome occurs;
- contaminating products (food, water, crops) intended for human consumption, intending or being reckless as to whether one of the following results: harm to one or more persons, major economic loss to a person, or major damage to the national economy;
- threatening to do an act that is likely to cause risk to the health or safety of one or more persons, or major property damage, or major economic loss to a person, or major damage to the national economy, or communicating information that is known or believed to be false about one of those outcomes, intending to significantly disrupt the civilian population, or an infrastructure facility, or the administration of government, or commercial interests.

The Bill makes terrorism an aggravating factor for sentencing purposes, and provides that when murder occurs in the course of a "terrorist act" (as defined in section 5 of the Terrorism Suppression Act), there will be a presumption in favour of 17 years' minimum non-parole.

⁴⁹ Transmitted to the Secretariat by that Government on 24 December 2001 (S/2001/1269, enclosure), 10 July 2002 (S/2002/795, enclosure), 11 April 2003 and 3 September 2003 (S/2003/860, enclosure) and 9 June 2004. Information was also provided in relation of the Aviation Crimes Act of 1972 (as amended in 1999), the Extraction Act 1999 and the Counter Terrorism Bill.

The Bill also gives the New Zealand Customs Service the power to detain property intercepted crossing the border, where there is good cause to suspect that the property is owned or controlled by a designated terrorist entity, or an entity that is eligible for designation under the Terrorism Suppression Act. In the case of already designated entities, Customs will be able to detain all property intercepted. In the case of entities eligible but not yet designated, the detention power will apply only to cash or cash equivalents (such as precious metals). In both instances, there is a “necessities of life” exception that refers to “cash...necessary to satisfy essential human needs”. This is modeled on similar provisions in the Terrorism Suppression Act.

The Bill provides for the following investigative powers that are not terrorism specific but are deemed necessary to address serious criminal offending in general, including in terrorism:

- the use of tracking devices by Police and Customs officers (subject to safeguards, such as a warrant requirement and reporting obligations);
- a requirement which “may require a specified person to provide information or assistance that is reasonable and necessary to allow the (Police) to access data held in, or accessible from, a computer that is on premises named in the warrant”;
- provides that when evidence of a serious criminal offence (such as drug related, serious violent, and terrorist offences) is fortuitously discovered in the course of investigating a different serious offence under an interception warrant (such a warrant allows the interception of oral communications by means of listening devices), evidence of the first offence will be admissible.

2. TERRORISM SUPPRESSION ACT 2002⁵⁰

The Parliament of New Zealand enacts as follows:

1. *Title*

This Act is the Terrorism Suppression Act 2002.

PART 1- PRELIMINARY PROVISIONS

2. *Commencement*

- (1) Except as provided in subsection (2), this Act comes into force on the day after the date on which it receives the Royal assent.

⁵⁰ Public Act 2002 No. 34

(2) Sections 18, 63 to 66, 68, 69, 76, 79, and 80 come into force on a date appointed by Order in Council.

3. *Purpose of this act*

The purpose of this Act is—

(a) to make further provision in New Zealand law for the suppression of terrorism; and

(b) to make provision to implement in New Zealand law New Zealand's obligations under

(i) the Bombings Convention; and

(ii) the Financing Convention; and

(iii) the Anti-terrorism Resolution.

4. *Interpretation*

(1) In this Act, unless the context otherwise requires, act against a specified terrorism convention means an act

(a) that constitutes an offence as defined in a specified terrorism convention; and

(b) that is not excluded from the application of the specified terrorism convention (for example, because an international aspect required by 1 or more of its provisions does not exist).

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

“Bombings Convention” means the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations at New York on 15 December 1997, a copy of the English text of which is set out in Schedule 1 carried out, in relation to a terrorist act, has the meaning given to it in section 25(1).

“classified security information” has the meaning given to it in section 32(1).

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

“deal with” has the meaning given to it in section 9(5).

“entity” means a person, group, trust, partnership, or fund, or an unincorporated association or organization.

“explosive or other lethal device” means

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

(b) a weapon or device that is designed, or has the capability, to cause death, serious bodily injury, or substantial material damage through the release, dissemination, or impact of

(i) toxic chemicals, biological agents or toxins or similar substances; or

(ii) radiation or radioactive material.

“facility and financial institution” have the meanings referred to in section 44(5).

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

“financing of terrorism”

(a) means an offence against section 8(1); but

(b) despite paragraph (a), in sections 18, 68, and 69, means an offence of that kind involving a terrorist act of a kind referred to in section 5(1)(b) or (c)

“funds”

(a) means assets of every kind, whether tangible or intangible, moveable or immoveable, however acquired; and

(b) includes legal documents or instruments (for example, bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts, and letters of credit) in any form (for example, in electronic or digital form) evidencing title to, or an interest in, assets of any kind.

“infrastructure facility” means a facility (whether publicly or privately

owned) providing or distributing basic services for a population (for example, water, sewage disposal, energy, fuel, or communications).

“intelligence and security agency” means

- a) the New Zealand Security Intelligence Service;
- (b) the Government Communications Security Bureau;
- (c) any other agency declared by the Governor-General from time to time by Order in Council as an intelligence and security agency for the purposes of the Inspector-General of Intelligence and Security Act 1996.

“international organization” means any organisation of States or Governments of States, or any organ or agency of any organisation of that kind.

“make available” has the meaning given to it in section 10(6).

“Official Assignee” means the Official Assignee of New Zealand.

“ordinarily resident in New Zealand” has the meaning given to it in subsection (2).

“place of public use”

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

“privileged communication” has the meaning given to it in section 45.

“property”

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

“public transportation system” means all conveyances (for example, aircraft, trains, ships, ferries, trucks, buses, or 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.

“relevant date” has the meaning given to it in section 69(4).

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

“relevant State” has the meaning given to it in section 66(3).

“relevant States Parties” has the meaning given to it in section 63(2).

“specified agency” means

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

“specified terrorism convention” means any treaty specified in Schedule 3.

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

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

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

“suspicious transaction report” has the meaning referred to in section 44(5).

“terrorist act” is defined in section 5(1).

“terrorist act in armed conflict” means an act

- (a) that occurs in a situation of armed conflict; and
- (b) the purpose of which, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or abstain from doing any act; and
- (c) that is intended to cause death or serious bodily injury to a civilian or other person not taking an active part in the hostilities in that situation; and
- (d) that is not excluded from the application of the Financing Convention by article 3 of that Convention.

“terrorist bombing” means an offence against section 7(1)

“transaction” has the meaning referred to in section 44(5).

(2) For the purposes of this Act, a person must be treated as being ordinarily resident in New Zealand if

- (a) the person's home is in New Zealand; or
- (b) the person is residing in New Zealand with the intention of residing in New Zealand indefinitely; or
- (c) having resided in New Zealand with the intention of establishing his or her home in New Zealand, or with the intention of residing in New Zealand indefinitely, the person is outside New Zealand but has an intention to return to establish his or her home in New Zealand or to reside in New Zealand indefinitely.

5. *Terrorist Act Defined*

(1) An act is a terrorist act for the purposes of this Act if

- (a) the act falls within subsection (2); or
- (b) the act is an act against a specified terrorism convention (as defined in section 4(1)); or
- (c) the act is a terrorist act in armed conflict (as defined in section 4(1)).

(2) An act falls within this subsection if it is intended to cause, in any 1 or more countries, 1 or more of the outcomes specified in subsection (3), and is carried out for the purpose of advancing an ideological, political,

or religious cause, and with the following intention:

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

Compare: 1969 No 24 s2(1); 1987 No 74 s2(1); 1987 No 179 s2(1); Terrorism Act 2000 s 1 (UK); Criminal Code s 83.01(1) (Canada)

6. *Act Binds The Crown*

This Act binds the Crown.

PART 2- SUPPRESSION OF TERRORISM

TERRORIST BOMBING

7. *Terrorist Bombing*

(1) A person commits an offence who, intentionally and without lawful justification or excuse, delivers, places, discharges, or detonates an explosive or other lethal device in, into, or against a relevant place, facility, or system, with the intent to cause

- (a) death or serious bodily injury; or
- (b) extensive destruction
 - (i) of the relevant place, facility, or system; and
 - (ii) that results, or is likely to result, in major economic loss.

(2) In subsection (1), *relevant place, facility, or system* means

- (a) a place of public use;
- (b) a State or government facility;
- (c) a public transportation system;
- (d) an infrastructure facility.

(3) A person who commits terrorist bombing is liable on conviction on indictment to imprisonment for life or a lesser term.

Financing of terrorism

8. *Financing of terrorism*

(1) A person commits an offence who, directly or indirectly, wilfully and without lawful justification or reasonable excuse, provides or collects funds intending that they be used, or knowing that they are to be used, in full or in part, in order to carry out 1 or more acts of a kind that, if they were carried out, would be 1 or more terrorist acts.

(2) To avoid doubt, nothing in subsection (1) makes it an offence to provide or collect funds intending that they be used, or knowing that they are to be used, for the purpose of advocating democratic government or the protection of human rights.

(3) In a prosecution for financing of terrorism, it is not necessary for

the prosecutor to prove that the funds collected or provided were actually used, in full or in part, to carry out a terrorist act.

(4) A person who commits financing of terrorism is liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

Dealing with property

9. Prohibition on dealing with property of, or derived or generated from property of, terrorist and associated entities

(1) A person commits an offence who, without lawful justification or reasonable excuse, deals with any property knowing that the property is

(a) property owned or controlled, directly or indirectly, by an entity for the time being designated under this Act as a terrorist entity or as an associated entity; or

(b) property derived or generated from any property of the kind specified in paragraph (a).

(2) An example of dealing with property with a reasonable excuse, for the purposes of subsection (1), is where the dealing with the property occurs in an act that does no more than satisfy essential human needs of (or of a dependant of) an individual designated under this Act.

(3) Subsection (1) does not apply

(a) if the Prime Minister has, under section 11, authorised the dealing with the property; or

(b) if the property concerned is the subject of a direction under section 48 and the dealing concerned forms part of the exercise by the Official Assignee of his or her powers under section 50 of the Proceeds of Crime Act 1991 (as modified and applied by section 51(a)).

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

(5) In this section, *deal with*, in relation to any property,

(a) means to use or deal with the property, in any way and by any means (for example, to acquire possession of, or a legal or an equitable interest in, transfer, pay for, sell, assign, or dispose of (including by way of gift) the property); and

(b) includes allowing the property to be used or dealt with, or facilitating the use of it or dealing with it.

(6) A reference in subsection (5) to the transfer of property that is a security includes a reference to a transfer of the security by way of loan, mortgage, pledge, or bailment, whether in respect to a legal or an equitable interest.

Compare: SR 2001/26 r3(2), r15

Making property, financial or related services, available

10. Prohibition on making property, financial or related services, available to terrorist and associated entities

(1) A person commits an offence who makes available, or causes to be made available, directly or indirectly, without lawful justification or reasonable excuse, any property, any financial or related services, either to, or for the benefit of, an entity, knowing that the entity is an entity for the time being designated under this Act as a terrorist entity or as an associated entity.

(2) To avoid doubt, nothing in subsection (1) makes it an offence to make property or services available, or to cause property or services to be made available, either to, or for the benefit of, a movement or organisation advocating democratic government or the protection of human rights and that is not involved in any way in the carrying out of terrorist acts.

(3) An example of making property available with a reasonable excuse, for the purposes of subsection (1), is where the property (for example, items of food, clothing, or medicine) is made available in an act that does no more than satisfy essential human needs of (or of a dependant of) an individual designated under this Act.

(4) Subsection (1) does not apply if the Prime Minister has, under section 11, authorised the making available of the property or services.

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

(6) In this section, *make available*, in relation to any property or services, means to make the property or services available in any way and by any means (for example, to send, transfer, deliver, or provide the property or services).

(7) A reference in subsection (6) to the transfer of property that is a security includes a reference to a transfer of the security by way of loan, mortgage, pledge, or bailment, whether in respect of a legal or an equitable interest.

Compare: SR 2001/26 r3(2), r16

Authorisations to deal with property, or to make property, or financial or related services, available

11. Authorisations by Prime Minister

(1) The Prime Minister may, by notice in writing, permit any activity or transaction or class or classes of activities or transactions that would otherwise be prohibited by section 9(1) or section 10(1).

(2) Any authorisation of that kind

(a) may be subject to terms or conditions; and

(b) may be amended, revoked, or revoked and replaced.

(3) If a person has obtained an authorization of that kind, another person involved in carrying out the activity or transaction or class or classes of activities or transactions to which the authorization relates is not subject to section 9(1) or section 10(1).

(4) However, subsection (3) does not apply if

(a) the authorization is subject to terms or conditions imposed under subsection (2)(a); and

(b) those terms or conditions are not satisfied.

Compare: SR 2001/26 r15(2), r16(2); Criminal Code S 83.09 (Canada)

Recruitment of members of terrorist groups

12. Recruiting members of terrorist groups

(1) A person commits an offence who recruits another person as a member of a group or organisation, knowing that the group or organisation is

(a) an entity that is for the time being designated under this Act as a terrorist entity; or

(b) an entity that carries out, or participates in the carrying out of, 1 or more terrorist acts.

(2) A person who commits an offence against subsection (1) is liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

Participation in terrorist groups

13. Participating in terrorist groups

(1) A person commits an offence who participates in a group or organisation for the purpose stated in subsection (2), knowing that the group or organisation is

(a) an entity that is for the time being designated under this Act as a terrorist entity; or

(b) an entity that carries out, or participates in the carrying out of, 1 or more terrorist acts.

(2) The purpose referred to in subsection (1) is to enhance the ability of any entity (being an entity of the kind referred to in subsection (1)(a) or (b)) to carry out, or to participate in the carrying out of, 1 or more terrorist acts.

(3) A person who commits an offence against subsection (1) is liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

Extraterritorial jurisdiction

14. Offences also apply in certain cases outside New Zealand

(1) Each of sections 7 to 13 applies in respect of acts that occurred wholly outside New Zealand, as provided in sections 15 to 18.

(2) Subsection (1) does not affect the application of sections 7 to 13 in respect of

(a) acts that occurred wholly within New Zealand; or

(b) an offence that, under section 7 of the Crimes Act 1961, is deemed to be committed in New Zealand; or

(c) acts that, under section 8A of that Act, are deemed to have taken place within New Zealand.

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

Proceedings may be brought in a New Zealand court for any offence against this Act (other than one against section 43 or section 47) 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 a resident in New Zealand but is not a citizen of any State:
- (c) by any other person on board any aircraft
 - (i) registered or required to be registered in New Zealand under the Civil Aviation Act 1990; or
 - (ii) for the time being used as an aircraft of the New Zealand Defence Force:
- (d) by any other person on board any ship
 - (i) registered under the Ship Registration Act 1992; or
 - (ii) not registered under that Act but required to be registered under that Act; or
 - (iii) for the time being used as a ship of the New Zealand Defence Force.

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

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

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

17. Further acts outside New Zealand to which financing of 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, 1 or more terrorist acts being 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.

18. 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.

19. Application of Crimes Act 1961

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

- (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).

Interim designation

20. *Interim designation as terrorist or associated entity*

(1) The Prime Minister may designate an entity as a terrorist entity under this section if the Prime Minister has good cause to suspect that the entity has knowingly carried out, or has knowingly participated in the carrying out of, 1 or more terrorist acts.

(2) On or after designating an entity as a terrorist entity under this Act, the Prime Minister may designate 1 or more other entities as an associated entity under this section.

(3) The Prime Minister may exercise the power given by subsection (2) only if the Prime Minister has good cause to suspect that the other entity

(a) is knowingly facilitating the carrying out of 1 or more terrorist acts by, or with the participation of, the terrorist entity (for example, by financing those acts, in full or in part); or

(b) is acting on behalf of, or at the direction of,

(i) the terrorist entity, knowing that the terrorist entity has done what is referred to in subsection (1); or

(ii) an entity designated as an associated entity under subsection (2) and paragraph (a), knowing that the associated entity is doing what is referred to in paragraph (a); or

(c) is an entity (other than an individual) that is wholly owned or effectively controlled, directly or indirectly, by the terrorist entity, or by an entity designated under subsection (2) and paragraph (a) or paragraph (b).

(4) Before designating an entity as a terrorist or associated entity under this section, the Prime Minister must consult with the Attorney-General and the Minister of Foreign Affairs and Trade about the proposed designation.

(5) After an entity is designated as a terrorist or associated entity under this section, the Prime Minister and the Attorney-General must, if practicable before the making of the designation is publicly notified under section 21(c) and, if not so practicable, as soon as possible after that notification,

(a) advise the Leader of the Opposition of the making of the designation; and

(b) if requested to do so by the Leader of the Opposition, brief that Leader as to the factual basis for the making of the designation.

21. *Further provisions relating to interim designation*

A designation under section 20

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

(i) is the subject of an earlier designation made under section 20 that has not yet expired or been revoked; or

(ii) was the subject of a designation under section 20 that has expired or been revoked:

(b) takes effect on being made, and must be made in writing signed by the Prime Minister:

(c) must be publicly notified

(i) by a notice (in the prescribed form (if any)) indicating that it has been made published in the *Gazette* as soon as practicable; and

(ii) in any other way the Prime Minister directs under section 28(1):

(d) must also be notified

(i) by a notice (in the prescribed form (if any)) indicating that it has been made given (in the prescribed manner (if any)) with all reasonable speed to the designated entity, if practicable, where that entity or a representative of it is in New Zealand; and

(ii) by a notice indicating that it has been made given to any other persons or bodies, as the Prime Minister directs under section 28(2):

(e) expires on the close of the 30th day after the day on which it is made, unless it has earlier been revoked by the Prime Minister under section 34, or by the making of a final designation in respect of the entity concerned, under section 22:

(f) operates until it expires or is revoked but, if it is made the subject of any judicial review (whether under Part 1 of the Judicature Amendment Act 1972 or otherwise) or other proceedings before a court and is not sooner revoked under section 23(b) or section 34, continues to operate until those proceedings are withdrawn or finally determined.

Final designation

22. Final designation as terrorist or associated entity

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

(2) On or after designating an entity as a terrorist entity under this Act, the Prime Minister may designate 1 or more other entities as an associated entity under this section.

(3) The Prime Minister may exercise the power given by subsection (2) only if the Prime Minister believes on reasonable grounds that the other entity

(a) is knowingly facilitating the carrying out of 1 or more terrorist acts by, or with the participation of, the terrorist entity (for example, by financing those acts, in full or in part); or

(b) is acting on behalf of, or at the direction of,

(i) the terrorist entity, knowing that the terrorist entity has done what is referred to in subsection (1); or

(ii) an entity designated as an associated entity under subsection (2) and paragraph (a), knowing that the associated entity is doing what is referred to in paragraph (a); or

(c) is an entity (other than an individual) that is wholly owned or effectively controlled, directly or indirectly, by the terrorist entity, or by an entity designated under subsection (2) and paragraph (a) or paragraph (b).

(4) Before designating an entity as a terrorist or associated entity under this section, the Prime Minister must consult with the Attorney-General about the proposed designation.

23. Further provisions relating to final designation

A designation under section 22

(a) may be made in respect of an entity who

(i) has never been the subject of a designation made under section 20; or

- (ii) is the subject of a designation under section 20 that has not yet expired or been revoked; or
 - (iii) was the subject of a designation under section 20 that has expired or been revoked:
- (b) if it is made in respect of an entity who is the subject of a designation made under section 20 and that has not yet expired or been revoked, revokes that designation under section 20:
- (c) may be made in respect of an entity who was earlier the subject of a designation made under section 22 and that has expired or been revoked (the earlier designation) only if it is based on information that became available after the expiry or revocation of the earlier designation and is significantly different from the information on which the earlier designation was based:
- (d) takes effect on being made, and must be made in writing signed by the Prime Minister:
- (e) must be publicly notified
 - (i) by a notice (in the prescribed form (if any)) indicating that it has been made published in the *Gazette* as soon as practicable; and
 - (ii) in any other way the Prime Minister directs under section 28(1):
- (f) must also be notified
 - (i) by a notice (in the prescribed form (if any)) indicating that it has been made given (in the prescribed manner (if any)) with all reasonable speed to the designated entity, if practicable, where that entity or a representative of it is in New Zealand; and
 - (ii) by a notice indicating that it has been made given to any other persons or bodies, as the Prime Minister directs under section 28(2):
- (g) expires, under section 35, 3 years after the date on which it took effect, unless it has earlier been
 - (i) revoked, by the Prime Minister, under section 34; or
 - (ii) extended by an order of the High Court made under section 35(2), or by an application for an order of that kind having been made, but not withdrawn or finally determined:

(h) operates until it expires or is revoked but (and without limiting section 35(1) or section 36(1)), if it is made the subject of any judicial review (whether under Part 1 of the Judicature Amendment Act 1972 or otherwise) or other proceedings before a court and is not sooner revoked under section 34, continues to operate until those proceedings are withdrawn or finally determined.

Further provisions relating to interim and final designations

24. Entity or property need not be in New Zealand

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

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

25. Carrying out and facilitating terrorist acts

(1) For the purposes of this Act, a terrorist act is *carried out* if any 1 or more of the following occurs:

- (a) planning or other preparations to carry out the act, whether it is actually carried out or not;
- (b) a credible threat to carry out the act, whether it is actually carried out or not;
- (c) an attempt to carry out the act;
- (d) the carrying out of the act.

(2) For the purposes of this Act, a terrorist act is facilitated only if the facilitator knows that a terrorist act is facilitated, but this does not require that

- (a) the facilitator knows that any specific terrorist act is facilitated;
- (b) any specific terrorist act was foreseen or planned at the time it was facilitated;
- (c) any terrorist act was actually carried out.

26. *Content of notice to designated entity*

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

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

27. *Content of notice to public and others*

(1) Subsection (2) applies to

- (a) a notice under section 21(c)(i) or section 23(e)(i) (to notify publicly the making of a designation under section 20 or section 22); and
- (b) a notice under section 21(d)(ii) or section 23(f)(ii) (to notify specified persons or bodies of the making of a designation under section 20 or section 22).

(2) The notice

- (a) must state the section under which the designation is made, and whether the entity concerned is designated as a terrorist entity or as an associated entity:
- (b) may describe the entity concerned by reference to any name or names or associates or other details by which the entity may be identified:
- (c) must state the maximum period for which the designation may have effect or, if it is made under section 22, the maximum period for which it may have effect without being extended:

(d) must include any other information specified for the purposes of this paragraph by regulations made under this Act:

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

28. *Further notification of making of designation*

(1) The Prime Minister may, for the purposes of section 21(c)(ii) or section 23(e)(ii), direct that the making of a designation under section 20 or section 22 be publicly notified (other than by notice in the *Gazette*, and either in the prescribed manner or form or both (if any) or in any other manner or form or both that the Prime Minister thinks fit).

(2) The Prime Minister may, for the purposes of section 21(d)(ii) or section 23(f)(ii), direct that notice of the making of a designation under section 20 or section 22 be given (either in the prescribed manner or in any other manner that the Prime Minister thinks fit) to any persons or bodies that the Prime Minister thinks fit (for example, to any registered banks or other persons

(a) who may possess property which may be property to which section 9(1) relates; or

(b) who may make available property or services to which section 10(1) may relate).

29. *Designations not invalid for certain reasons*

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

(a) the entity concerned was not, before the designation was made, given notice that it may be made, or a chance to comment on whether it should be made, or both:

(b) the making of it has not been notified, or notice of the making of it has not been given, in the manner or form required by section 21 or section 23.

Material on which designations may be based

30. *Information available to Prime Minister*

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

31. *United Nations Security Council information*

(1) Information to which this section applies is, in the absence of evidence to the contrary, sufficient evidence of the matters to which it relates.

(2) This section applies to information that is available to the Prime Minister and that indicates that the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, or a Committee established by that Council and acting pursuant to a resolution made under that Chapter, considers that an entity is

(a) an entity that has carried out, or has participated in the carrying out of, 1 or more terrorist acts; or

(b) an entity that is facilitating the carrying out of 1 or more terrorist acts by, or with the participation of, another entity; or

(c) an entity that is acting on behalf of, or at the direction of, an entity of the kind referred to in paragraph (a) or paragraph (b); or

(d) an entity (other than an individual) that is wholly owned or effectively controlled, directly or indirectly, by an entity of a kind referred to in paragraph (a) or paragraph (b) or paragraph (c).

(3) Information must be treated as if it were information of the kind referred to in subsection (2) if the information is available to the Prime Minister and indicates that an entity is

(a) an entity designated, by or under 1 or more resolutions of the Security Council relating to Afghanistan, as an entity associated with Usama bin Laden, and against whom a sanction specified in those resolutions, and of the kind given effect to by this Act, is to be imposed; or

(b) an entity designated, by or under 1 or more resolutions of the Security Council relating to Afghanistan, as an entity owned or controlled (directly or indirectly) by, or associated with, the Taliban, and against whom a sanction specified in those resolutions, and of the kind given effect to by this Act, is to be imposed.

32. *Classified security information defined*

(1) In this Act, classified security information means information

(a) relevant to whether there are or may be grounds for designating an identifiable entity under this Act as a terrorist entity or as an associated entity; and

- (b) held by a specified agency (as defined in section 4(1)); and
 - (c) that the head of the specified agency certifies in writing (in the prescribed form (if any)) cannot be disclosed except to the extent provided in section 38 or section 39 because, in the opinion of the head of the specified agency

 - (i) the information is information of a kind specified in subsection (2); and
 - (ii) disclosure of the information would be disclosure of a kind specified in subsection (3).
- (2) Information falls within subsection (1)(c)(i) if it
- (a) might lead to the identification of, or provide details of, the source of the information, the nature, content, or scope of the information, or the nature or type of the assistance or operational methods available to the specified agency; or
 - (b) is about particular operations that have been undertaken, or are being or are proposed to be undertaken, in pursuance of any of the functions of the specified agency; or
 - (c) has been provided to the specified agency by the government of another country or by an agency of a government of another country or by an international organisation, and is information that cannot be disclosed by the specified agency because the government or agency or organisation by which the information has been provided will not consent to the disclosure.
- (3) Disclosure of information falls within subsection (1)(c)(ii) if the disclosure would be likely
- (a) to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or
 - (b) to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the government of another country or any agency of such a government, or by any international organisation; or
 - (c) to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or
 - (d) to endanger the safety of any person.

Compare: 1987 No 74 s114B(1)

Review, revocation, and expiry of designations

33. *Judicial review of designations*

Nothing in this Act prevents a person from bringing any judicial review (whether under Part 1 of the Judicature Amendment Act 1972 or otherwise) or other proceedings before a court arising out of, or relating to, the making of a designation under this Act.

34. *Revocation of designations*

(1) The Prime Minister may at any time revoke a designation made under section 20 or section 22, either on the Prime Minister's own initiative or on an application in writing for the purpose

(a) by the entity who is the subject of the designation; or

(b) by a third party with an interest in the designation that, in the Prime Minister's opinion, is an interest apart from any interest in common with the public.

(2) Without limiting subsection (1)(b), a party may have an interest in a designation apart from any interest in common with the public through

(a) possessing or controlling, or having an interest in, property to which section 9 applies as a result of the designation; or

(b) making available property or services to which section 10 applies as a result of the designation; or

(c) having an especially close association with the designated entity or its interests or objectives.

(3) An application under subsection (1) for revocation of a designation must be based on the grounds

(a) that the designation should not stand because the entity concerned does not satisfy the test stated in section 20(1) or (3) or, as the case requires, in section 22(1) or (3); or

(b) that the entity concerned is no longer involved in any way in acts of the kind that made, or that would make, the entity eligible for designation.

(4) However, the Prime Minister may not refuse an application to revoke a designation under section 20 or section 22 without having first consulted with the Attorney-General about the proposed refusal.

(5) Except as provided in subsection (4), subsection (1) overrides every other provision of this Act.

Compare: 1987 No 74 s114N

35. Designations under section 22 to expire after 3 years unless extended by order of high court

(1) A designation under section 22 expires 3 years after the date on which it takes effect, unless it is earlier

(a) revoked; or

(b) extended by an order under subsection (2); or

(c) made the subject of an application for an order under subsection (2), in which case (and without limiting section 36(1)) the designation continues to operate until the application is withdrawn or finally determined.

(2) The High Court may, on an application for the purpose by the Attorney-General, order that a designation made under section 22 remain in force for 3 years after the making of the order.

(3) On an application for the purpose by the Attorney-General before the expiry of an order under subsection (2), the High Court may make another order under subsection (2) extending the designation concerned for a further 3 years.

(4) The Attorney-General may make 2 or more applications under subsection (3), and the Court may make 2 or more orders under subsection (2), in respect of the same designation.

(5) An application under subsection (2) or subsection (3) must be served (in any manner, and within any time, the Court may direct) on such persons as the Court may specify.

Status Compendium

36. Applications under section 35 and related proceedings

(1) Despite section 35(1) to (3) if, before the determination of an application under section 35(2) or (3) in respect of a designation, the designation is or becomes the subject of any judicial review (whether under Part 1 of the Judicature Amendment Act 1972 or otherwise) or other proceedings before a court,

(a) the High Court must determine the application (if it continues to be necessary to do so) after those proceedings are withdrawn or finally determined; and

(b) if not found in the proceedings to be or to have been invalid, the designation continues to operate until the High Court has determined the application.

(2) If, on making an application under section 35(2) or (3), the Attorney-General knows that there is in New Zealand specific property that is owned or controlled, directly or indirectly, by the entity who is the subject of the designation concerned, or property derived or generated from any property of that kind,

(a) the Attorney-General may also make an application for an order under section 55 in respect of that property; and

(b) the High Court must hear and determine the 2 applications together, unless it is impracticable to do so.

37. Grounds for orders under section 35(2)

The High Court must not make an order under section 35(2) unless the Attorney-General satisfies the Court on the balance of probabilities that the entity who is the subject of the designation concerned

(a) is the subject of criminal proceedings in a national or international court or tribunal (within or outside New Zealand), for an offence relating

(i) to carrying out, or to participating in the carrying out of, 1 or more terrorist acts; or

(ii) to facilitating the carrying out of 1 or more terrorist acts by, or with the participation of, another entity; or

(iii) to acting on behalf of, or at the direction of, another entity that has done, or is doing, what is referred to in subparagraph (i) or subparagraph (ii); or

(b) has been convicted in criminal proceedings in a national or international court or tribunal (whether within or outside New Zealand), being proceedings not subject to any appeal and that are finally determined, of an offence relating

(i) to carrying out, or to participating in the carrying out of, 1 or more terrorist acts; or

(ii) to facilitating the carrying out of 1 or more terrorist acts by, or with the participation of, another entity; or

(iii) to acting on behalf of, or at the direction of, another entity that has done, or is doing, what is referred to in subparagraph (i) or subparagraph (ii); or

(c) either

(i) has knowingly carried out, or knowingly participated in the carrying out of, 1 or more terrorist acts; or

(ii) is knowingly facilitating the carrying out of 1 or more terrorist acts by, or with the participation of, another entity; or

(iii) is acting on behalf of, or at the direction of, another entity, knowing that the other entity has done, or is doing, what is referred to in subparagraph (i) or subparagraph (ii); or

(d) is an entity (other than an individual) that is wholly owned, or effectively controlled, directly or indirectly, by an entity that has done, or is doing, what is referred to in paragraph (c)(i) or (ii) or (iii).

38. Procedure on applications (and on appeals from decisions) under section 35 or section 55

(1) On or before determining an application under section 35 or section 55, the High Court may give any directions and make any orders that it thinks appropriate in the circumstances of the case.

(2) The Court must determine whether to grant the application on the basis of information available to it (whether or not that information has been disclosed to or responded to by all parties to the proceedings).

(3) If information presented or proposed to be presented in support of the application includes classified security information,

(a) the proceedings must be heard and determined by the Chief Justice, or by 1 or more Judges nominated by the Chief Justice, or both; and

(b) the Court must, on a request for the purpose by the Attorney-General and if satisfied that it is desirable to do so for the protection of (either all or part of) the classified security information, receive or hear (the part or all of) the classified security information in the absence of

(i) the designated entity concerned; and

(ii) all barristers or solicitors (if any) representing that entity; and

(iii) members of the public.

(4) Without limiting subsection (3), if the designated entity concerned participates in proceedings relating to an application under section 35 or section 55,

(a) the Court must approve a summary of the information of the kind referred to in section 32(2) that is presented by the Attorney-General except to the extent that a summary of any particular part of the information would itself involve disclosure that would be likely to prejudice the interests referred to in section 32(3); and

(b) on being approved by the Court (with or without amendments directed by the Court in accordance with paragraph (a)), a copy of the statement must be given to the entity concerned.

(5) The procedure specified in subsections (2), (3)(b), and (4) applies with all necessary modifications to an appeal under section 41 or section 58.

(6) Nothing in this section or in section 39 limits section 27 of the Crown Proceedings Act 1950 or any rule of law that authorizes or requires the withholding of a document or the refusal to answer a question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.

(7) Subsections (2) to (6) and section 39(3) and (4) apply despite any enactment or rule of law to the contrary.

39. Procedure in other cases involving classified security information

(1) This section applies to any proceedings in a court (except for an appeal under section 41 or section 58)

(a) arising out of, or relating to, the making of a designation under this Act; and

(b) in which the Crown is a defendant or respondent.

(2) On or before determining the proceedings, the Court may give any directions and make any orders that it thinks appropriate in the circumstances of the case.

(3) If information presented or proposed to be presented by the Crown includes classified security information, then section 38(3) (but not also section 38(4)) applies with all necessary modifications to the proceedings as if the proceedings were an application to the High Court under section 35 or section 55. However, if the proceedings are before the Court of Appeal, section 38(3)(a) does not apply.

(4) In determining the proceedings, the Court may take into account any relevant classified security information available to it, even though that information has not been disclosed to or responded to by other parties to the proceedings.

40. Ancillary general practices and procedures to protect classified security information

(1) Any general practices and procedures that may be necessary to implement the procedures specified in sections 38 and 39 and to ensure that classified security information is protected in all proceedings to which those sections relate must be agreed between the Chief Justice and the Attorney-General as soon as practicable after the commencement of this section, and revised from time to time.

(2) Without limiting the generality of subsection (1), general practices and procedures may be agreed under that subsection on the following matters:

(a) measures relating to the physical protection of the information during all proceedings to which sections 38 and 39 relate:

(b) the manner in which the information may be provided to the Court:

(c) measures to preserve the integrity of the information until any appeals are withdrawn or finally determined.

41. Appeal against decision on application under section 35

(1) A party to an application under section 35 may appeal to the Court of Appeal against the decision of the High Court.

(2) Subject to sections 38 to 40, the procedure for the appeal must be in accordance with rules of Court.

42. Notification of revocation, expiry, or invalidity of designations

(1) If a designation under this Act expires or is revoked or is found to be or to have been invalid, under section 34 or section 35 or by virtue of any judicial review (whether under Part 1 of the Judicature Amendment Act 1972 or otherwise) or other proceedings before a court, the Prime Minister must

(a) ensure that notice of the revocation or expiry or invalidity is published in the *Gazette* as soon as practicable; and

(b) take all reasonable steps to ensure that notice of the revocation or expiry or invalidity is given, in the manner and form required by section 21(d) or section 23(f), to every person and body specified in subsection (2) who is not already aware of it.

(2) The persons and bodies referred to in subsection (1)(b) are every person or body to whom notice of the making of the designation was given under section 21(d) or section 23(f).

Duty to report suspicions relating to property

43. Suspicions that property owned or controlled by designated entities, etc. to be reported

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

Compare: 1996 No 9 s15(1)

44. Nature of suspicious property report

- (1) Except as provided in subsection (2), every report under section 43 must
 - (a) contain the details specified in Schedule 5; and
 - (b) if made by a financial institution, be signed by someone authorized to sign reports under section 43 on behalf of the financial institution (unless the report is forwarded by email or another similar means of communication); and
 - (c) if made by any other person, be signed by the person or by someone authorized to sign reports under section 43 on behalf of the person (unless the report is forwarded by email or another similar means of communication); and

(d) be forwarded, in writing, to the Commissioner of Police at Police National Headquarters at Wellington

(i) by way of transmission by fax; or

(ii) by another means (including, without limitation, by email or another similar means of communication) that may be agreed from time to time between that Commissioner and the financial institution or person concerned.

(2) However, if the urgency of the situation requires, a report under section 43 may be made orally to any member of the police authorized for the purpose by the Commissioner of Police, but in any case of that kind the financial institution or other person must, as soon as practicable, forward to that Commissioner a report that complies with the requirements of subsection (1).

(3) The Commissioner of Police may confer the authority to receive a report under subsection (2) on any specified member of the police or on members of the police of any specified rank or class, or on any member or members of the police for the time being holding any specified office or specified class of offices.

(4) If a report under section 43 is made by or on behalf of a financial institution in respect of property that came into the possession or immediate control of the financial institution through a transaction conducted or proposed to be conducted through the financial institution, the financial institution need not make a suspicious transaction report in respect of the transaction or proposed transaction unless asked to do so by or on behalf of the Commissioner of Police.

(5) In this section, section 47, and Schedule 5, facility, financial institution, suspicious transaction report, and transaction have the meanings given to them in section 2(1) of the Financial Transactions Reporting Act 1996.

Compare: 1996 No 9 s15(2)-(4)

45. Privileged communication defined

(1) For the purposes of section 43(3), a communication is a privileged communication only if

(a) it is a confidential communication, whether oral or written, passing between

(i) a lawyer in his or her professional capacity and another lawyer in that capacity; or

(ii) a lawyer in his or her professional capacity and his or her client, whether made directly or indirectly through an agent of either; and

(b) it is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and

(c) it is not made or brought into existence for the purpose of committing or furthering the commission of some illegal or wrongful act.

(2) However, where the information consists wholly or partly of, or relates wholly or partly to, the receipts, payments, income, expenditure, or financial transactions of a specified person (whether a lawyer, his or her client, or any other person), it is not a privileged communication if it is contained in, or comprises the whole or part of, any book, account, statement or other record prepared or kept by the lawyer in connection with a trust account of the lawyer within the meaning of section 2 of the Law Practitioners Act 1982.

(3) For the purposes of this section, references to a lawyer include a firm in which he or she is a partner or is held out to be a partner.

Compare: 1996 No 9 s19

46. Protection of persons

(1) A person has immunity from civil, criminal, or disciplinary proceedings under subsection (2) if the person

(a) acts in purported compliance with the requirements of section 9 or section 10 or both; or

(b) reports a suspicion to the Commissioner of Police under section 43; or

(c) otherwise discloses information to the Commissioner of Police in connection with a report of that kind.

(2) No civil, criminal, or disciplinary proceedings lie against a person to whom subsection (1) applies

(a) in respect of the acts of the person in good faith and with reasonable care in purported compliance with the requirements of section 9 or section 10 or both; or

(b) in respect of the report or disclosure, or the manner of the report or disclosure, by that person, of the information referred to in subsection (1)(b) and (c); or

(c) for any consequences that follow from the report or disclosure of that information.

(3) However, subsection (2)(b) and (e) do not apply if the information was reported or disclosed in bad faith, or without reasonable care having been taken in determining, before the report or disclosure, that the property is or may be property to which section 43 applies.

Compare: 1996 No 9 s17

47. Protection of identity of persons making reports

(1) This section applies in respect of the following information:

(a) any report under section 43:

(b) any information the disclosure of which will identify, or is reasonably likely to identify, any person

(i) as a person who, in his or her capacity as an officer, employee, or agent of a financial institution, has handled or identified property that was the subject of a report under section 43; or

(ii) as a person who has prepared a report under section 43; or

(iii) as a person who has made a report under section 43:

(c) any information that discloses or is reasonably likely to disclose the existence of a report under section 43.

(2) No member of the police may disclose any information to which this section applies except for the purposes of the enforcement of this Act, or for the purposes of the detection, investigation, and prosecution of an offence under this Act.

(3) Nothing in subsection (2) limits the provision of assistance under the Mutual Assistance in Criminal Matters Act 1992.

(4) No person may disclose, in any judicial proceeding (within the meaning of section 108 of the Crimes Act 1961) any information to which this section applies, unless the Judge or, as the case requires, the person presiding at the proceeding, is satisfied that the disclosure of the information is necessary in the interests of justice.

(5) Every person who knowingly contravenes subsection (4) commits an offence, and is liable on summary conviction to a fine not exceeding \$10,000.

Compare: 1996 No 9 s21

Management of property subject to section 9

48. Direction that official assignee take control of property

(1) The Prime Minister may, if satisfied that it is desirable to do so, direct the Official Assignee to take custody and control of property in New Zealand, if an entity is subject to a designation under section 22 and the Prime Minister believes on reasonable grounds that the property is

(a) property owned or controlled, directly or indirectly, by the entity; or

(b) property derived or generated from property of the kind referred to in paragraph (a).

(2) The direction

(a) must be in writing signed by the Prime Minister; and

(b) must specify the property concerned; and

(c) may be subject to any terms and conditions the Prime Minister specifies.

(3) A person who has custody or control of property specified in the direction must allow the Official Assignee to take custody and control of that property in accordance with the direction.

Compare: 1991 No 120 s42(1)(b)

49. Notice of direction

(1) Notice of the making of a direction under section 48 must be given

(a) with all reasonable speed to the designated entity concerned, if practicable, where that entity or a representative of it is in New Zealand; and

(b) to any other person that the Prime Minister has reason to believe may have an interest in the property concerned.

(2) No direction under section 48 is invalid just because notice of the making of it has not been given in the manner required by subsection (1)(a) or (b).

50. Variation, revocation, or expiry of direction

- (1) Having made a direction under section 48, the Prime Minister may
 - (a) make another direction varying
 - (i) the property to which the direction relates:
 - (ii) terms and conditions to which the direction is subject:
 - (b) revoke the direction under section 48.
- (2) The powers given by subsection (1)(a) and (b) are exercisable at any time after the making of the direction, and either on the Prime Minister's own initiative or on an application for the purpose in writing by or on behalf of the Official Assignee or a person who claims an interest in the property concerned.
- (3) If not earlier revoked, a direction under section 48 in relation to property of an entity expires
 - (a) on the entity ceasing to be subject to the designation under section 22; or
 - (b) on a forfeiture order being made under section 55 in relation to the property concerned, in which case section 54 of the Proceeds of Crime Act 1991 (as modified and applied by section 57(c) of this Act) applies.

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

The following sections of the Proceeds of Crime Act 1991 apply, with the following (and all other necessary) modifications, to property that is the subject of a direction under section 48, as if that direction were a restraining order and a direction under section 42(1) of that Act:

- (a) section 50 (which relates to powers of the Official Assignee to preserve the property):
- (b) sections 57 and 58 (which relate to registration of directions, and make it an offence to dispose of or deal with the property in contravention of a direction, knowing that the direction has been made in respect of the property):
- (c) section 59 (which relates to applications to the High Court for orders that certain dispositions or dealings be set aside, except that the applications must be made by the Attorney-General, not by the Solicitor-General):

(d) section 61 (which relates to the Official Assignee's liability for payment of rates, etc, on the property):

(e) section 62 (which relates to an indemnity for the Official Assignee, except that the indemnity must relate only to the exercise or performance, or purported exercise or performance, or omission to exercise or perform, functions, duties, and powers of the Official Assignee under this Act):

(f) section 63, except subsection (1)(b)(i) (which section relates to costs recoverable by the Official Assignee, and any regulations made under that Act for the purposes of that section apply, with all necessary modifications, accordingly):

(g) sections 86 and 87 (which relate to the Official Assignee making and revoking delegations, except that the delegations must relate only to functions, duties, and powers of the Official Assignee under this Act).

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

52. *Third parties may apply for relief*

(1) A person who claims an interest in specified property that is subject to the prohibition in section 9 (not being property to which subsection (2) applies) may apply to the High Court for an order under section 54.

(2) A person who claims an interest in specified property that is the subject of an application, under section 55(1), for an order under section 55 (an order that the property is forfeited to the Crown) may, before the order under section 55 is made, apply to the High Court for an order under section 54.

(3) If not prevented by section 53, a person who claims an interest in specified property forfeited to the Crown under an order under section 55 may apply to the High Court for an order under section 54

(a) within 6 months after the date on which the order under section 55 is made; or

b) within any further time the Court allows on an application for that purpose made before or after the end of that 6-month period.

(4) No entity who is the subject of the designation concerned may make an application under this section.

(5) A person who makes an application under this section must serve notice of the application on the Attorney-General, who is a party to any proceedings on the application.

Compare: 1991 No 120 s17(1)-(3), (7)

53. Limits on applications under section 52(3)

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

Compare: 1991 No 120 s17(4)-(6)

54. Court may grant relief to third party

- (1) Subsection (2) applies where
 - (a) a person applies to the High Court under section 52(1) or (2) or (3) in respect of an interest in property; and
 - (b) the Court is satisfied that the applicant's claim to that interest is valid.
- (2) The Court must, subject to subsection (3), make an order declaring the nature, extent, and value of the applicant's interest in the property and,
 - (a) if the application is under section 52(1), declaring that the interest is no longer subject to the prohibition in section 9;
 - (b) if the application is under section 52(2),
 - (i) directing that the interest must not be included in an order under section 55 made in respect of the proceedings that gave rise to the application; and

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

Compare: 1991 No 120 s18

Forfeiture

55. Forfeiture of property by order of High Court

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

- (a) the Court is satisfied that
 - (i) an order has been made under section 35(2) extending the designation concerned; and
 - (ii) that order was made on a ground stated in section 37(b) or (c) or (d); and
 - (b) the Court considers it appropriate that the specified property not remain subject to the prohibition in section 9, but instead be forfeited to the Crown.
- (3) In considering whether to make an order under this section in respect of particular property, the Court may have regard to
- (a) any undue hardship that is reasonably likely to be caused to any person by the operation of such an order:
 - (b) the nature and extent of the entity's interest in the property, and the nature and extent of other interests in it (if any).

Compare: 1991 No 120 s15(2)(b), (c)

56. Notice of application under section 55

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

57. Further provisions relating to orders under section 55

The following sections of the Proceeds of Crime Act 1991 apply, with the following (and all other necessary) modifications, to the making, effect, operation, and discharge of an order under section 55, as if the order were a forfeiture order under section 15(1) of that Act:

(a) section 15(3)(a) and (4) to (7) (which relate to the terms of the order and to any directions that are necessary and convenient for giving effect to it, including the issue of warrants authorizing officers of Court to enter and search any place or thing and to seize any document required to effect the transfer of the property):

(b) section 16 (which relates to the effect of the order, except that the reference in subsection (4)(b) to the Minister must be read as a reference to the Attorney-General, and references in subsections (5) and (6) to the making of a forfeiture order or the entering of a person's conviction must be read as references to the making of an order under section 55 and to the making of an order under section 35(2):

(c) section 54 (which relates to the Official Assignee discharging the order, except that

(i) the reference to a restraining order must be read as a reference to a direction under section 48:

(ii) the direction to discharge must be given by the Attorney-General, not by the Minister:

(iii) in determining the relevant appeal period referred to in section 16 of that Act, references in section 16(5) and (6) of that Act to the making of a forfeiture order or the entering of a person's conviction must be read as references to the making of an order under section 55 and to the making of an order under section 35(2):

(iv) the reference to sections 17 to 23 of that Act must be read as a reference to sections 52 to 61 of this Act).

58. Appeal against decision on application under section 55

(1) A party to an application under section 55 may appeal to the Court of Appeal against the decision of the High Court.

(2) Subject to sections 38 to 40, the procedure for the appeal must be in accordance with rules of Court.

59. Discharge of order under section 55 on appeal or by quashing of related order under section 35(2)

(1) If the High Court makes an order under section 55 against property in respect of an entity the subject of an order under section 35(2), and the order under section 35(2) is later quashed on appeal, the quashing of that order operates to discharge the order under section 55.

(2) The revocation, under section 34, of a designation that has been extended by an order made under section 35(2), does not discharge any

order made under section 55 against property of the entity who was the subject of the designation.

(3) If an order under section 55 in respect of any property is discharged as provided in subsection (1) or by a Court hearing an appeal, under section 58, against the making of the order, the Attorney-General must,

(a) as soon as practicable after the discharge of the order, serve notice of the discharge of the order under section 55 (in any manner, and within any time, the Court may direct) on any person who the Attorney-General has reason to believe may have had an interest in the property immediately before the making of the order; and

(b) if required to do so by a Court, serve notice of the discharge of the order under section 55 (in any manner, and within any time, the Court may direct) on such persons as the Court may specify.

(4) Every notice under subsection (3) must include a statement that a person claiming an interest in the property may apply under subsection (5) for the transfer of the interest to that person.

(5) If an order under section 55 is discharged in either of the ways referred to in subsection (3), any person claiming an interest in the property immediately before the making of the order may apply to the Attorney-General, in writing, for the transfer of the interest to that person.

(6) If the Attorney-General is satisfied that any claim made under subsection (5) in respect of any interest in property is valid, the Attorney-General must,

(a) if the interest is still vested in the Crown, arrange for the interest to be transferred to the claimant; or

(b) in any other case, and subject to section 60, arrange for payment to the claimant of an amount equal to the value of the interest.

Compare: 1991 No 120 s19

60. Attorney-general may apply for directions

(1) In any case where there is any question as to the validity of any claim made under section 59(5),

(a) the Attorney-General may apply to the High Court for directions concerning the claim; and

(b) the Court may give any directions in the matter it thinks just.

(2) If an application is made under subsection (1),

(a) the Attorney-General must serve notice of the application (in any manner, and within any time, the Court may direct) on every person that the Attorney-General has reason to believe may have an interest in the application:

(b) the Court may, at any time before the final determination of the application, direct the Attorney-General to serve notice of the application (in any manner, and within any time, the Court may direct) on such persons as the Court may specify:

(c) every person who claims an interest in the application is entitled to appear and to adduce evidence at the hearing of the application.

Compare: 1991 No 120 s20

61. Double benefit not permitted

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

Compare: 1991 No 120 s21

Part 3 - Miscellaneous provisions

Evidence that States are, or are not, parties to conventions

62. Certificates as to States Parties under conventions

A certificate that appears to be signed by, or on behalf of, the Secretary of Foreign Affairs and Trade, and that states that a State is, or is not, a State Party under the Bombings Convention 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).

Investigation and prosecution of offences against act or referred to in conventions

63. Application of sections 64 and 65

(1) Sections 64 and 65 apply whenever the Attorney-General receives information that there may be present in New Zealand a person who has

committed, or is alleged to have committed, an offence referred to in article 2 of the Bombings Convention or, as the case requires, article 2 of the Financing Convention.

(2) In sections 64 and 65, relevant States Parties means

(a) any States Parties that have established jurisdiction in accordance with article 6(1) or (2) of the Bombings Convention or, 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.

64. Attorney-general to indicate to relevant States Parties whether New Zealand to exercise jurisdiction

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

(a) inform the relevant States Parties promptly of the findings of the investigation; and

(b) indicate promptly to the relevant States Parties whether New Zealand intends to exercise jurisdiction.

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

If the measures taken under New Zealand law to ensure the person's presence for the purpose of prosecution or extradition (being the measures contemplated by article 7 of the Bombings Convention or, 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

(a) the fact that the person is in custody; and

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

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

(1) This section applies to a person who is taken into custody in New Zealand as part of the measures referred to in section 65 and who is neither

- (a) a New Zealand citizen; nor
- (b) a person who is ordinarily resident in New Zealand but is not a citizen of any State.

(2) Promptly after being taken into custody, a person to whom this section applies must be informed that he or she is entitled, and must be permitted,

- (a) to communicate without delay with the nearest appropriate representative of the relevant State; and
- (b) to be visited by a representative of the relevant State.

(3) In subsection (2), relevant State, in relation to a person, means

- (a) the State of which the person is a citizen; or
- (b) the State that is otherwise entitled to protect the person's rights; or
- (c) if the person is not a citizen of any State, the State in whose territory the person ordinarily resides.

(4) Nothing in this section affects any other rights of a person to whom this section applies.

67. Attorney-General's consent to prosecutions required

(1) No proceedings for any offence against this Act may be instituted in any court except with the consent of the Attorney-General.

(2) However, a person alleged to have committed any offence against this Act may be arrested, or a warrant for the person's arrest may be issued and executed, and the person may be remanded in custody or on bail, even though the Attorney-General's consent under subsection (1) has not been obtained.

(3) Despite subsections (1) and (2), nothing in this section applies in respect of an offence against section 43 or section 47.

68. 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.

Extradition

69. Offences deemed to be included in extradition treaties

(1) For the purposes of the Extradition Act 1999 and any Order in Council in force under section 15 or section 104 of that Act, terrorist bombing 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.

(2) If under subsection (1) an offence is deemed to be an offence described in an extradition treaty, no person may be surrendered for the offence in accordance with the Extradition Act 1999 if the conduct alleged to constitute the offence occurred before the relevant date.

(3) Subsection (2) does not prevent the person from being surrendered for an offence (other than terrorist bombing 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.

(4) In this section, relevant date, in relation to terrorist bombing or financing of terrorism, means the date on which this section comes into force.

Review of provisions to implement Anti-terrorism Resolution

70. Review of operation of certain provisions of this Act

(1) This section applies to the provisions of this Act that are to implement New Zealand's obligations under the Anti-terrorism Resolution (the provisions).

(2) The House of Representatives must, as soon as practicable after 1 December 2004, refer to a select committee for consideration the following matters:

(a) the operation of the provisions since the date of the commencement of this section:

(b) whether the provisions should be retained or repealed:

(c) if they should be retained, whether any amendments to this Act (for example, amendments making provision for compensation) are necessary or desirable.

(3) The select committee to which those matters are referred must report its view on them to the House of Representatives before 1 December 2005.

Compare: 1993 No 87 s264

Relationship with other enactments

71. Proceeds of Crime Act 1991 not affected

Nothing in this Act affects the Proceeds of Crime Act 1991.

72. United Nations Act 1946 not affected

(1) Nothing in section 9 or section 10 or section 12 or section 13, or in any other provision of this Act giving effect to the Anti-terrorism Resolution, affects the United Nations Act 1946 or any regulations made under it.

(2) Without limiting the generality of subsection (1), regulations may be made under section 2 of the United Nations Act 1946 for the purpose of giving effect to the Anti-terrorism Resolution, or to other decisions of or on behalf of the Security Council of the United Nations that recall or reaffirm and are to give further or better effect to, the Anti-terrorism Resolution.

Regulations

73. Regulations

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

(a) prescribing the forms of notices, reports, or other documents required under, or contemplated by, this Act, and requiring the use of the forms prescribed:

(b) prescribing methods for the giving or publication or service of notices, reports, or other documents required by this Act to be given or published or served:

(c) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

Revocations and saving and transitional provision

74. Revocations

(1) The United Nations Sanctions (Terrorism Suppression and Afghanistan Measures) Regulations 2001 (SR 2001/351) are revoked.

(2) Regulation 20A of the United Nations Sanctions (Afghanistan) Regulations 2001 (SR 2001/26) is consequentially revoked.

75. Saving and transitional provision relating to specified entities

(1) This section applies to the entities that, immediately before the commencement of this section, were specified entities for the purposes of the United Nations Sanctions (Terrorism Suppression and Afghanistan Measures) Regulations 2001.

(2) Each of the entities must for the purposes of this Act be treated as if it were an entity that has been designated as a terrorist entity under section 22, and therefore is the subject of a designation as a terrorist entity under section 22.

(3) The designations referred to in subsection (2) must be treated as having been in every respect validly made and notified, and as having taken effect on the commencement of this section, but may be revoked by the Prime Minister under section 34(1).

76. Amendment to Extradition Act 1999

Section 101A(2) of the Extradition Act 1999 is amended by adding the following paragraph:

“(ga) section 69 of the Terrorism Suppression Act 2002.”

Amendment to Financial Transactions Reporting Act 1996

77. Amendment to Financial Transactions Reporting Act 1996

Section 15(1) of the Financial Transactions Reporting Act 1996 is amended by inserting, after the words “section 19 of this Act”, the words “and to section 44(4) of the Terrorism Suppression Act 2002”.

Amendment to Immigration Act 1987

78. Amendment to Immigration Act 1987

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 against section 7(1) or section 8(1) of the Terrorism Suppression Act 2002”.

Amendments to Mutual Assistance in Criminal Matters Act 1992

79. Schedule amended to refer to Bombings Convention

The Schedule of the Mutual Assistance in Criminal Matters Act 1992 is amended by inserting, in its appropriate numerical order, the following row:

23 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 Suppression Act 2002: <i>section</i> <i>subject matter</i> 7(1) terrorist bombing
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80. Schedule amended to refer to Financing Convention

The Schedule of the Mutual Assistance in Criminal Matters Act 1992 is amended by inserting, in its appropriate numerical order, the following row:

24 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— (a) against the following section of the Terrorism Suppression Act 2002: <i>section</i> <i>subject matter</i> 8(1) financing of terrorism; and (b) that involves a terrorist act of a kind referred to in section 5(1)(b) or (c) of that Act Amendment to Proceeds of Crime Act 1991
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81. 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

8(1) of the Terrorism Suppression Act 2002, includes funds (as defined in section 4(1) 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 8(1) of the Terrorism Suppression Act 2002, includes funds (as so defined) allocated for the purpose of committing that foreign serious offence”.

3. TERRORISM SUPPRESSION AMENDMENT ACT 2003

Public Act : 2003 No 106

Date of assent: 30 October 2003

Commencement : see section 2

The Parliament of New Zealand enacts as follows:

1. Title

- (1) This Act is the Terrorism Suppression Amendment Act 2003.
- (2) In this Act, the Terrorism Suppression Act 2002 is called "the principal Act".

2. Commencement

- (1) Sections 3 to 18 and the Schedule come into force on a date to be appointed by the Governor-General by Order in Council; and
 - (a) one or more Orders in Council may appoint different dates for different provisions; and
 - (b) in the case of a provision inserting or substituting 2 or more provisions in an Act other than this Act, one or more Orders in Council may appoint different dates for different provisions inserted or substituted.
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

3. Purpose of this Act

Section 3(b) of the principal Act is amended by adding the following subparagraphs:

- "(iv) the Nuclear Material Convention; and
- "(v) the Plastic Explosives Convention."

4 . Interpretation

(1) Section 4 of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

"duly authorised military device means an explosive article, including, but not restricted to, a shell, bomb, projectile, mine, missile, rocket, shaped charge, grenade, and perforator, manufactured exclusively for lawful military or police purposes and approved for those purposes by the Environmental Risk Management Authority

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

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

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

"nuclear material offence means an offence against section 13C

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

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

"radioactive material has the same meaning as in section 2(1) of the Radiation Protection Act 1965

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

(2) Section 4 of the principal Act is amended by adding the following subsection:

"(3) Terms and expressions used and not defined in this Act but defined in the Nuclear Material Convention, the Plastic Explosives Convention, or the Technical Annex to the Plastic Explosives Convention have the same meaning as in those Conventions and Annex, unless the context otherwise requires."

5. New headings and sections 13A and 13D inserted

The principal Act is amended by inserting, after section 13, the following headings and sections:

"Harbouring or concealing terrorists

"13A Harbouring or concealing terrorists

"(1) A person commits an offence who, with the intention of assisting another person to avoid arrest, escape lawful custody, or avoid conviction, harbours or conceals that person,--

"(a) knowing, or being reckless as to whether, that person intends to carry out a terrorist act; or

"(b) knowing, or being reckless as to whether, that person has carried out a terrorist act.

"(2) A person who commits an offence against subsection (1) is liable on conviction on indictment to a term of imprisonment not exceeding 7 years.

"Offences relating to plastic explosives and nuclear materials

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

"(1) A person commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding 10 years or a fine not exceeding \$500,000, or both, who--

"(a) possesses, uses, or manufactures unmarked plastic explosives, knowing they are unmarked; or

"(b) imports or exports unmarked plastic explosives to or from New Zealand, knowing they are unmarked.

"(2) Subsection (1) does not apply in respect of unmarked plastic explosives (not being explosives to which subsection (3) applies) that were lawfully manufactured in, or imported into New Zealand before the

commencement of this section and that may, subject to the Hazardous Substances and New Organisms Act 1996, be transported or possessed by—

"(a) a person who performs military or police functions during the period that begins with the entry into force of this section and ends 15 years later; or

"(b) any other person during the period that begins with the entry into force of this section and ends 3 years later:

"(3) Nothing in this section applies to unmarked plastic explosives—

"(a) that are manufactured or held in limited quantities for sole use in any of the following activities that are duly approved by the Environmental Risk Management Authority:

"(i) research, development, or testing of new or modified explosives; or

"(ii) training in explosives detection or testing of explosives detection equipment; or

"(iii) forensic science activities; or

"(b) that are destined to be, and are incorporated as, an integral part of a duly authorised military device in New Zealand within 3 years after the date on which this section comes into force.

"13C Offences involving physical protection of nuclear material

"(1) A person commits an offence who,—

"(a) without lawful authority, receives, possesses, uses, transfers, alters, disposes of, or disperses nuclear material, knowing it is nuclear material, and—

"(i) that causes death, injury, or disease to any person or substantial damage to property; or

"(ii) with intent to cause, or being reckless as to whether it causes death, injury, or disease to any person or substantial damage to property; or

"(b) commits theft, as defined in section 219 of the Crimes Act 1961, of nuclear material knowing that it was nuclear material; or

"(c) fraudulently obtains nuclear material, knowing that it was nuclear material; or

"(d) makes a demand for nuclear material by threat, or by use of force, or by any other form of intimidation with intent to steal it; or

"(e) with intent to intimidate, threatens to use nuclear material to cause—

"(i) death, injury, or disease to any person; or

"(ii) substantial damage to any property; or "

"(f) with intent to compel any person, international organisation, or State to do, or refrain from doing, any act, threatens to steal nuclear material.

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

"Importation, acquisition, possession, or control of radioactive material

"13D Importation, acquisition, etc, of radioactive material

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

6. Offences also apply in certain cases outside New Zealand

Section 14(1) of the principal Act is amended by inserting, after the words "sections 7 to 13", the words "and 13B to 13D".

7. New section 18 substituted

The principal Act is amended by repealing section 18, and substituting the following section:

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

Even if the acts alleged to constitute the offence occurred wholly outside New Zealand, proceedings *may* be brought for terrorist bombing, financing of terrorism, or a nuclear material offence if the person to be charged has been found in New Zealand and has not been extradited."

8. New section 29A inserted

The principal Act is amended by inserting, after section 29, the following section:

"29A Changes of description of designated entities

"(1) If satisfied that an entity designated under section 22 should have a description other than that under which the entity was designated (or than the description stated in the most recent notice under this subsection relating to the entity), the Prime Minister may, by signing a written notice to that effect, state a new description for the entity.

"(2) The notice must identify the entity by reference to

"(a) its most recent description; and

"(b) the notice in the *Gazette* in which that description was stated.

"(3) Sections 23(e) and 23(f) apply to the notice as if it were a designation under section 22; and section 28(2) applies accordingly.

"(4) The stating of the new description does not affect the designation of the entity and (in particular) does not affect the application of section 35(1) to it."

9. New heading and sections 47A to 47G inserted

(1) The principal Act is amended by inserting, after section 47, the following heading and sections:

"Customs' powers in relation to certain property

"47A Detention of goods suspected to be terrorist property"

"(1) A Customs officer or authorised person may, without warrant, seize and detain goods if—

"(a) the goods came to his or her attention, or into his or her possession, during a search, inspection, audit, or examination under—

"(i) the Customs and Excise Act 1996; or

"(ii) Part V of the Financial Transactions Reporting Act 1996 (which relates to reporting of imports and exports of cash); and

"(b) the goods are in New Zealand and he or she is satisfied that they either–

"(i) are being, or are intended to be, exported from New Zealand; or

"(ii) are being, or have been, imported into New Zealand; and

"(c) he or she has good cause to suspect

"(i) that the goods are property of any kind owned or controlled, directly or indirectly; by an entity; and "(ii) that the entity is an entity designated under section 20 or section 22 of this Act as a terrorist or associated entity; or

"(d) he or she has good cause to suspect-

"(i) that the goods are cash or cash equivalents owned or controlled, directly or indirectly, by an entity; and

"(ii) that the entity is an entity eligible for designation under section 20 or section 22 of this Act as a terrorist or associated entity.

"(2) In this section and sections 47B to 47G,–

"authorised person, Chief Executive, the Customs, Customs officer or officer, exportation, goods, and importation have the meanings given to them in section 2(1) of the Customs and Excise Act 1996

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

"47B Return of cash necessary to satisfy essential human needs

"(1) The power to detain goods under section 47A does not extend to, and the Customs must if practicable return immediately, cash seized under section 47A if the Customs is satisfied that the cash is (or that things for which it might be exchanged are) necessary to satisfy the essential human needs–

"(a) of (or of a dependant of) an individual from whom the cash has been seized; and

"(b) arising on, or within 7 days after, the date on which the detention would otherwise be effected.

"(2) Nothing in subsection (1) requires the Customs to return any cash that the Customs is satisfied is not necessary for the purpose specified in that subsection.

"(3) If the 7-day period referred to in section 47D(1)(a) is extended under section 47E, subsection (1) applies to the extension, and the reference in subsection (1)(b) to 7 days must be read as a reference to the number of days (not exceeding 21) of that 7-day period as extended.

"47C Further provisions about detention under section 47A

"(1) Reasonable force may be used if it is necessary for any of the following purposes:

"(a) to seize goods under section 47A:

"(b) to detain goods under section 47A.

"(2) If the person from whom goods have been seized and detained under section 47A is identified but is not present when the seizure and detention occurs (for example, because the goods concerned are in mail or cargo or in unaccompanied baggage), the Customs must make all reasonable efforts to notify that person of the detention and seizure as soon as practicable.

"(3) Goods detained under section 47A must be taken to such place of security as a Customs officer or authorised person directs, and there detained, unless section 47F applies.

"(4) Section 175 of the Customs and Excise Act 1996 (which protects persons acting under authority of that Act) applies, with all necessary modifications, in relation to the exercise of a power under any of sections 47A to 47F of this Act.

"(5) Nothing in section 47A limits or affects powers under the following Acts:

"(a) Customs and Excise Act 1996:

"(b) Financial Transactions Reporting Act 1996:

"(c) Mutual Assistance in Criminal Matters Act 1992:

"(d) Proceeds of Crime Act 1991.

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

"(1) In this section, *investigation period*, in relation to goods seized and detained under section 47A,–

"(a) means the period of 7 days after the date on which the goods were seized and detained; and

"(b) includes any extension of that period granted by the High Court under section 47E.

"(2) Goods seized and detained under section 47A must be returned to the person from whom they were seized as soon as practicable after whichever of the following occurs first:

"(a) the completion of all relevant investigations, if they show either–

"(i) that the goods are not property of the kind referred to in section 47A(1)(c)(i) or (d)(i); or

"(ii) that the entity is not an entity of the kind referred to in section 47A(1)(c)(ii) or (d)(ii):

"(b) the expiry of the investigation period.

"(3) However, the Customs need not return the goods as provided in subsection (2), and may continue to detain them pending a direction by the Prime Minister under section 48 that the Official Assignee take custody and control of them, if the Customs is advised by, or on behalf of, the Prime Minister

"(a) that the goods are property of any kind owned or controlled, directly or indirectly, by an entity; and

"(b) that the entity is an entity designated under section 20 or section 22 as a terrorist or associated entity.

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

"(1) The 7-day period in section 47D(1)(a) may be extended (once only) by order of the High Court for a reasonable period up to a further 14 days if, on an application for the purpose made before the expiry of that 7-day period, that Court is satisfied

"(a) that the good cause to suspect required by section 47A(1)(c) or (d) exists; and

"(b) that the extension to be granted is necessary to enable investigations in or outside New Zealand in relation to the goods or entity to be completed.

"(2) The application must be made in writing and served on the person from whom the goods were seized (if that person can be identified and located), and must include the following particulars:

"(a) a description of the goods detained:

"(b) the date on which the detention commenced:

"(c) a statement of the facts supporting the good cause to suspect required by section 47A(1)(c) or (d); and

"(d) a statement of reasons why the extension sought is necessary to enable investigations in or outside New Zealand in relation to the goods or entity to be completed.

"(3) The person from whom the goods were seized is entitled to appear and be heard on the application.

"(4) The Customs must make all reasonable efforts to notify the person from whom the goods were seized, at least 24 hours before the hearing of the application, of the time and place of that hearing.

47F Custody of certain goods detained under section 47A

"(1) If goods detained under section 47A are a craft, vehicle, or animal, a Customs officer may leave those goods in the custody of either–

"(a) the person from whom the goods have been seized; or

"(b) any other person authorised by the Customs officer and who consents to having such custody.

"(2) Every person who has the custody of goods under subsection (1) must, until a final decision is made under section 47D as to whether or not they are to be returned, hold them in safekeeping, without charge to the Crown and in accordance with any reasonable conditions that may be imposed by the Customs.

"(3) A person to whom subsection (2) applies must also–

"(a) make the goods available to a Customs officer on request; and

"(b) not alter, or dispose of, or remove the goods from New Zealand, unless he or she is authorised to do so by a Customs officer; and

"(c) return the goods on demand to the custody of the Customs.

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

"47G Offences in relation to certain detained goods

"(1) Every person commits an offence who, having custody of goods pursuant to section 47F(1), acts in breach of any requirement of, or imposed pursuant to, section 47F(2) or (3).

"(2) Every person who commits an offence against subsection (1) is liable on summary conviction to a fine not exceeding \$5,000.

"(3) Every person commits an offence who, without the permission of the Chief Executive, takes or carries away or otherwise converts to his or her own use goods to which section 47F(2) and (3) applies.

"(4) Every person who commits an offence against subsection (3) is liable on summary conviction to imprisonment for a term not exceeding 12 months, or to a fine not exceeding an amount equal to 3 times the value of the goods to which the offence relates.

Compare: 1996 No 27 s 215".

(2) Sections 15 and 19 of the principal Act are consequentially amended by inserting, after the expression "section 47", the words "or section 47G".

10. Certificates as to States Parties under Conventions

Section 62 of the principal Act is amended by omitting the words "Bombings Convention or, as the case requires, under the Financing Convention", and substituting the words "Bombings Convention, the Financing Convention, the Nuclear Material Convention, or the Plastic Explosives Convention".

11. Application of sections 64 and 65

(1) Section 63(1) of the principal Act is amended by adding the words "or, as the case requires, article 7 of the Nuclear Material Convention".

(2) Section 63(2)(a) of the principal Act is amended by inserting, after the words "article 7(1) or (2) of the Financing Convention", the words "or, as the case requires, article 8 of the Nuclear Material Convention".

12. Attorney-General to indicate to relevant States Parties whether New Zealand to exercise jurisdiction

Section 64 of the principal Act is amended by inserting, after the words "article 9(1) of the Financing Convention", the words "or, as the case requires, article 9 of the Nuclear Material Convention".

13. Attorney-General to notify relevant States Parties if person taken into custody

Section 65 of the principal Act is amended by inserting, after the words "article 9 of the Financing Convention", the words "or, as the case requires, article 9 of the Nuclear Material Convention".

14. Attorney-General's consent to prosecutions required

Section 67(3) of the principal Act is amended by adding the words "or section 47G".

15. Offences deemed to be included in extradition treaties

(1) Section 69 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

"(1) For the purposes of the Extradition Act 1999 and any Order in Council in force under section 15 or section 104 of that Act, terrorist bombing, financing of terrorism, and any nuclear material offence are each, if not already described in the treaty, deemed to be an offence described in any extradition treaty concluded before the relevant date and for the time being in force between New Zealand and any country that is a party to any of the following conventions, or to which any of the following conventions extends:

"(a) the Bombings Convention; or

"(b) the Financing Convention; or

"(c) the Nuclear Material Convention."

(2) Section 69 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

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

(3) Section 69 of the principal Act is amended by repealing subsection (4), and substituting the following subsection:

"(4) In this section, relevant date,—

"(a) in relation to terrorist bombing or financing of terrorism, means 5 December 2002; and

"(b) in relation to a nuclear material offence, the date on which this section enters into force in relation to that offence."

16. New Schedules 2A and 2B inserted

The principal Act is amended by inserting, after Schedule 2, the Schedules 2A and 2B set out in the Schedule.

17. Schedule 3 amended

Schedule 3 of the principal Act is amended by adding the following paragraph:

"(9) Convention on the Physical Protection of Nuclear Material, done at New York and Vienna, 3 March 1980."

Consequential amendment to Mutual Assistance in Criminal Matters Act 1992

18. Schedule amended to refer to Nuclear Material Convention

The Schedule of the Mutual Assistance in Criminal Matters Act 1992 is amended by inserting, in its appropriate numerical order, the following row:

27. Convention on the Physical Protection of Nuclear Materials done at Vienna on 26 October 1979.	An offence against the following section of the Terrorism Suppression Act 2002:	
	<i>section</i>	<i>subject matter</i>
	13C	offences involving the physical protection of nuclear materials

Schedule

New Schedule 2A and 2B inserted⁵¹

⁵¹ Schedule 2A, containing the text of the Convention on the Physical Protection of Nuclear Material (Vienna, 3 March 1980), and Schedule 2B, containing the text of the Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal, 1 March 1991), have been omitted from the present publication.

LXXXII. NICARAGUA⁵²

1. PENAL CODE

Article 499

Persons are guilty of terrorism and shall be subject to a non-commutable sentence of six months' to two years' imprisonment who, with the aim of disrupting public order and provoking or causing unrest in the country:

- (a) Use weapons, explosive or incendiary devices or materials, asphyxiating or poisonous gases or tear gas in places of assembly, churches, public buildings, private homes, streets or similar places;
- (b) Import, sell, manufacture, store, ship or transport such weapons, devices or explosive materials, or who incite, advise, direct or facilitate such import, sale, manufacture, storage, shipment, transport or use;
- (c) Sabotage or carry out acts intended to result in sabotage of goods, facilities and machinery belonging to the State, to private individuals or to a public utility of any kind; and
- (d) Threaten harm to institutions, officials or individuals by means of correspondence, radio, telephone, telegraph, leaflets, images, drawings on walls or in other locations or by any similar means.

Article 500

If the perpetrator of the terrorist offence cannot be discovered, the promoters or instigators shall be held liable.

2. POLITICAL CONSTITUTION OF NICARAGUA

Article 42

Safe haven and asylum are solely for the protection of persons who are persecuted because of their struggle for democracy, peace, justice and human rights.

⁵² Transmitted to the Secretariat by that Government on 17 May 2002 (S/2002/582, enclosure) and 31 March 2003 (S/2003/490, enclosure). Information was also provided in respect of Act No. 314 (General Act on Banks, non-Banking Financial Institutions and Financial Groups) and Act No. 316 (Act on the Superintendency of Banks and Other Financial Institutions) and the Code of Criminal Procedure.

LXXXIII. NIGER⁵³

ELEMENTS DU DISPOSITIF LEGISLATIF ET REGLEMENTAIRE DU NIGER

Le Code pénal et le Code de procédure pénale sont les textes que le Niger vient d'adopter sous forme de lois, respectivement les 5 et 7 mai 2003.

Le Code pénal nigérien prévoit des peines d'emprisonnement pour les personnes qui ont pris part à des activités dans le but de commettre des crimes sur le territoire du Niger.

En outre, le Code de procédure pénale prévoit des mesures appropriées concernant la compétence des juridictions nationales, en cas d'actes de terrorisme dans les articles 673 (alinéas 1, 2, 3 et 4), 679 et 680.

LXXXIV. NIGERIA⁵⁴

SUMMARY OF LEGISLATION OF NIGERIA RELATED TO TERRORISM

The legislation in force in Nigeria against the supply of weapons to terrorists are the Public Order Act and the Fire Arms Act. Under the former Act, recruitment into terrorist groups is contrary to public order. The penalty is a fine of N5,000.00 or imprisonment for 2 years or both such fine and imprisonment in the case of a person who is proved to have taken part in the organization or management of an association or in organizing, tracing, or equipping any person referred to in paragraph (a) and (b) of subsection 1 of section 6 of the Act. In the case of a person who is proved to have undertaken or been engaged in being organized, trained or equipped, be liable to a fine of N1,000 or imprisonment for six months or to both such fine and imprisonment.

The Fire Arms Act, on the other band, prohibits any person or group of persons from acquiring a prohibited firearm. No firearms can be imported or acquired without the knowledge and permission of the President or his authorized representative. Weapons, which fall under the category of "Prohibited firearms", under part 1 of the schedule to the Firearms Act, CAP 146 are the following:

⁵³ Transmitted to the Secretariat by that Government on 22 January 2002 (S/2002/94, annex) and 3 June 2003 (S/2003/631, enclosure).

⁵⁴ Transmitted to the Secretariat by that Government on 14 January 2002 (S/2002/69, enclosure) and 7 March 2003 (S/2003/308, enclosure). Information was also provided in respect of the National Drug Law Enforcement Agency Act, Exchange Control (Anti Sabotage) Act and Money Laundering Act.

1. Artillery
2. Apparatus for the discharge of any explosives or gas diffusing projectile
3. Rocket weapons
4. Bombs and grenade
5. Machine guns and machine pistols
6. Military Rifles, namely those of calibers of 62 mm, 9mm, 300 inches and 30.3 inches
7. Revolvers and pistols whether rifled or unrifled (including flit-lock pistols and cap pistols)
8. Any other firearm not specified in part II or part III of this schedule.

The prohibition of the acquisition of firearms and explosives are implemented by the provision of sanctions under section 28 of the Firearms Act, which stipulates a sentence of up to 10 years for contravention of the Act. Sections 18 to 22 of the Act deal with and control the importation and exportation of weapons.

Nigeria had earlier enacted laws and regulations on explosive substances. For example, the Explosive Act CAP 117 of Laws of the Federal Republic of Nigeria stipulates, in section 13, that no person shall import explosives save under the Act, no person shall buy, sell or otherwise dispose of explosive, save under and in accordance with a license granted by the relevant authorities.

In Nigeria, it is a serious offence for any person to attempt to destroy any property or building by explosives or to put an explosive substance in any place for whatever reason. A person found guilty of such an offence is liable to 14 years imprisonment with hard labour.

Another law enacted by Nigeria which also has provisions for the prevention and suppression of terrorist acts is the Manufacture of Spirits Regulation (Excise Control of Distillation) Act.

The principal law in force on immigration issue generally is the Immigration Act CAP.171 Law of the Federal Republic of Nigeria. The Act has two (2) subsidiary Regulations to wit: Immigration Regulation and Immigration (Control of Aliens) Regulations. The procedure for grant of refugee status is governed by the aforesaid Act and Regulations.

LXXXV. NORWAY⁵⁵

SUMMARY OF LEGISLATION OF NORWAY RELATED TO TERRORISM

Norway adopted on 5 October 2001 a Provisional Ordinance in order to implement Security Council resolution 1373 (2001)⁵⁶. The Provisional Ordinance, in Sections 2 and 3, made it a serious criminal offence to finance directly or indirectly terrorist acts and require the Norwegian authorities to immediately freeze any assets or funds belonging to any person or entity suspected of such acts.

Other relevant Norwegian laws include the General Civil Penal Code (hereinafter referred to as the "Penal Code"), the Criminal Procedure Act, the Security Act, the Immigration Act, the Financial Institutions Act and other relevant legislation as well as supplementary regulations⁵⁷. Some of these provisions are explained in further detail below⁵⁸.

The obligation to criminalize the financing of terrorism has been replaced by the new Sections 147 (a) and (b) of the Penal Code. A person who finances terrorist acts will in principle be considered to be an accomplice with regard to the terrorist act itself (the term "*accomplice*" is defined in the new Section 147 (a). According to the new Section 147 (a), such a person is liable to imprisonment for a term not exceeding 21 years. In those cases where Section 147 (a) is not applicable, the new Section 147 (b) overlaps and expands the criminal liability for funding terrorism.

Section 147 (b), first paragraph, attaches criminal liability to those who obtain or collect funds or other financial assets in order that these financial assets

⁵⁵ Transmitted to the Secretariat by that Government on 26 November 2001 (S/2001/1138, enclosure), 8 July 2002 (S/2002/791, enclosure) and 12 February 2003 (S/2003/265, enclosure).

⁵⁶ According to the Norwegian Constitution, a Provisional Ordinance has the same legal status as an Act passed by the Parliament. In order to replace the Provisional Ordinance and establish permanent legislation the Parliament passed a bill on 17 June 2002 amending a number of acts so as to establish legislative measures against acts of terrorism and the financing of terrorism.

⁵⁷ The Norwegian National Security Commission, which assessed whether the Norwegian legislation is adequate for preventing and prosecuting terrorist acts in Norway or against Norwegian interests, established in 1993 that Norwegian criminal legislation must be "presumed to include concrete penal provisions that cover any kind of act a terrorist could conceivably commit."

⁵⁸ It should be noted that Norwegian criminal law is in general characterized by moderate maximum penalties, in harmony with Nordic legal tradition. Unless otherwise expressly stated, imprisonment may be imposed for a term of from 14 days to 15 years (cf. Section 17 of the Penal Code). Imprisonment may never exceed 21 years, no matter how grave the felony. Norway is, however, considering revising its maximum penalty. In a green Paper presented by the Government in June 2002, it is proposed to increase the maximum penalty from 21 years to 30 years of imprisonment.

should be used, in full or in part, to finance terrorist acts or any other contravention of the provisions of the new section 147 (a).

Norwegian penal provisions, which attach criminal liability to acts committed as part of terrorist acts, indirectly, prohibit recruitment of terrorist groups. The provisions of the Provisional Ordinance also have this effect. However, the Penal Code also contains a broad range of provisions that more directly target participation in terrorist activity. The Penal Code Section 104 (a) attaches criminal liability to any person who forms or takes part in a private organization of a military character or who supports any such organization. If the organization or its members control supplies of arms and explosives, the penalty shall be imprisonment for a term not exceeding six years. A similar provision is to be found in the Penal Code section 330.

Most of the provisions of the Penal Code are given such a broad wording that they also cover terrorist acts, for example Chapter 22 dealing with Felonies against another person's life, body and health. The provisions that are mentioned in the following are examples showing that terrorist acts are punishable as serious criminal offences (unless otherwise explicitly stated, all the references are to be Penal Code).

Section 148 provides that any person who wilfully causes any fire, collapse, explosion, flood, maritime damage, railway accident or aircraft accident which may easily result in loss of human life or extensive destruction of another person's property, shall be liable to imprisonment for a term of not less than two years and not more than 21 years. If the felony leads to any person's death or to serious bodily injury, the term of imprisonment shall be no less than five years. Any person who tries to hinder the prevention of any such act as referred to in Section 148 shall, according to Section 149, be liable to imprisonment for a term of not less than one year and not more than 15 years. Any person who brings about any such danger as is mentioned in Section 148 shall, according to Section 150, be liable to imprisonment for a term not exceeding six years, or 12 years if an accident is caused.

According to Section 151 (a), any person who on board a ship or aircraft by violence, threats or otherwise unlawfully and forcibly takes control of the vessel or aircraft or otherwise interferes with its sailing or flying, shall be liable to imprisonment for a term of not less than two years and not more than 21 years. The same penalty applies to any person who by similar means unlawfully and forcibly takes control over any installation or construction on the continental shelf. Any attempt may be liable to the same penalty as a completed felony.

Section 151 (b) provides that any person who by destroying, damaging or putting out of action any data collection or any installation for supplying power, broadcasting, telecommunication or transport causes comprehensive disturbance in the public administration or in community life in general is liable to imprisonment for a term not exceeding ten years. According to Section 152, any person who adds noxious substances to reservoirs or drinking water is liable to imprisonment

for a term not exceeding five years, and up to 21 years if general danger is thereby caused to human life or health.

Section 152 (a) covers the unlawful handling of plutonium or uranium, and is part of the implementation of the Vienna Convention on the Physical Protection of Nuclear Material of 1979. Any person who commits such a felony is liable to imprisonment for a term not exceeding four years.

Section 152 (b) deals with various kinds of environmental crime, including methods that can be used by terrorists, for instance pollution of air, water or soil. If any person's death or considerable harm to body or health has resulted there from, imprisonment for a term not exceeding 15 years may be imposed. The provision is supplemented by Section 153, which covers poisoning of products intended for general use or sale. If the product cannot be used for the purpose intended without causing death, injury to health or general danger, the perpetrator is liable to imprisonment for a term not exceeding 21 years.

Unlawful production or possession of bacteriological substances or weapons is covered by Section 153 (a), and may lead to imprisonment for a term not exceeding ten years. Spreading of a dangerous contagious disease is punished in the same way, by Section 154.

Any person who conspires with anyone with the intent to commit or be accessory to any of the felonies referred to in Sections 148, 151 (a), 152, 153 or 154 is liable to imprisonment for a term not exceeding ten years (Section 159). Section 160 is also especially relevant in the fight against terrorism by stipulating that any person who publicly gives or offers instruction in the use of explosives or poison as a means of committing felonies is liable to imprisonment for a term not exceeding ten years.

The Penal Code is applicable to all acts committed within the realm, whether committed by a Norwegian national or a foreign national. A terrorist act may be prosecuted in Norway even if its effect only occurred or was only intended to be produced abroad. The Norwegian Penal Code is also applicable, *inter alia*, to all acts committed on installations or constructions placed on the Norwegian continental shelf and used for exploration or storage of submarine natural resources, on any Norwegian vessel, and on any Norwegian aircraft outside Norwegian jurisdiction.

Those who finance, plan, facilitate or commit terrorist acts from Norwegian territory may be extradited according to the Norwegian Extradition Act, provided the act in question is punishable by deprivation of liberty for a maximum period of more than one year. It may follow from international agreements that extradition may take place even if this condition has not been met. Acts of terrorism are not regarded as political offences under Norwegian law.

Regarding the obligation to suppress the supply of weapons to terrorists, several provisions are relevant. The Norwegian Export Control Act prescribes a licence for all trade in weapons and military equipment. Such a licence is not granted if it is deemed possible that weapons might fall into the hands of terrorist groups or be used in armed conflicts between belligerent groups.

LXXXVI. OMAN⁵⁹

SUMMARY OF LEGISLATION OF OMAN RELATED TO TERRORISM

A number of acts and activities that may be classified as terrorist acts are criminalized by articles 131, 132 and 134 of the Omani Penal Code, article 31 of the Alien Residence Law and article 28 of the Weapons and Ammunition Law. National legislation provides that any person who participates in the financing, arrangement, preparation, perpetration or supporting of terrorist acts shall be brought to justice and that such acts constitute criminal offences. This is evidenced by the fact that article 132 of the Omani Penal Code, referred to above, deals with this issue and provides more severe penalties for the perpetration of terrorist acts, ranging from seven years' to life imprisonment or even execution, owing to the legislator's realization that such acts constitute serious criminal offences.

(a) Omani Penal Code promulgated by Royal Decree 7/71 and amendments thereto

Article 48: Any foreigner sentenced for a terrorist offence shall also be sentenced to exile from Omani soil under a special provision of the judgement.

If sentenced to disciplinary action for a serious or less serious offence he may be sentenced to exile if his offence is discreditable or constitutes a breach of national security or public morals or if it is established that he is a habitual criminal.

The judge may hand down a sentence of permanent exile or exile for a period varying between 3 and 15 years.

Article 52: In the event of conviction, the judge may rule confiscation of items seized that were used or intended for use in the perpetration of the crime and items acquired unlawfully through or as a result of the crime, without prejudice to the right of innocent third parties.

⁵⁹ Transmitted to the Secretariat by that Government on 15 January and 18 June 2002 (S/2002/87, enclosure and Add.1, enclosure), 25 July 2003 (S/2003/780, enclosure) and 1 June 2004.

Article 53: In any case, items made, acquired or used unlawfully shall be confiscated, even if these do not belong to the defendant or the person convicted and even if prosecution does not lead to conviction.

Article 54: If items that should be confiscated are not seized, the defendant or person convicted shall be granted a respite to deliver them, under penalty of payment of twice their value, as determined by the judge independently or on the basis of an expert opinion. The value shall be collected in the manner in which a fine is collected.

Article 93: Any person who furnishes any of the elements constituting or contributing directly to perpetration of a crime or incites thereto shall be considered a perpetrator.

“Incitement” means inducing or attempting to induce by whatsoever means a third party to perpetrate a crime. If the incitement does not produce any result the penalty shall be reduced by the proportion defined in paragraphs 2, 3 and 4 of article 96.

Article 95: Any person who commits one of the following acts shall be considered an accessory to a serious or less serious offence:

1. Provides assistance to the perpetrator in the preparation of the means or perpetration of the crime, strengthens his resolve or advises him on its perpetration;
2. Conspires with the perpetrator or accessory prior to the perpetration of the crime and participates in the suppression of the traces, in the concealment or disposal of items resulting thereof or in the concealment one or more than one perpetrator from justice;
3. Has knowledge of the criminal reputation of those who customarily commit highway robbery or acts of violence against national security or public safety or against persons or property and offers them food, shelter, refuge or a meeting place.

Article 96: An accessory without whose assistance the crime would not have been perpetrated shall be liable to punishment as if he himself were the perpetrator.

Other accessories shall be liable to life imprisonment or to a term of 7 to 15 years' imprisonment if the perpetrator is sentenced to death.

If the perpetrator is sentenced to life imprisonment, accessories shall be sentenced to a term of 5 to 10 years' imprisonment.

In other cases, accessories shall receive reduced sentences equal to five-sixths or two-thirds of the sentence of the perpetrator.

Article 97: With the exception of the cases provided for in article 95, paragraphs 2 and 3, any person who conceals or helps a person to disappear in the knowledge that he has committed an offence or who knowingly conceals or disposes of items acquired through criminal acts shall be considered not an accessory to the offence but a principal perpetrator of an independent offence punishable by three months' to two years' imprisonment.

Article 131: Any person who heads an armed group that customarily engages in sabotage, robbery or slaughter or who assumes a leadership function in such a group shall be liable to the death penalty:

1. On the sole grounds of acting to disrupt public safety;
2. On the sole grounds of attacking or resisting the forces taking action against persons who commit offences against national security.

The remaining members of a group formed with the objective mentioned in the preceding two paragraphs shall be liable for up to 15 years' imprisonment unless action by any one member has resulted in an offence calling for a more severe penalty.

Article 132: Any person who commits a terrorist act with the objective of inducing terror by means of explosives, poisonous, flammable or pestilential materials or any other means liable to cause a public danger shall be liable to a minimum of seven years' imprisonment.

Conspiracy to commit an act of terrorism shall be punishable by a minimum of 10 years' imprisonment.

If the act leads to the destruction of a public building or institution or a ship or aircraft or any installation pertaining to communications or transport, the perpetrator shall be liable to life imprisonment.

He shall be liable to the death sentence if the act leads to loss of human life or the destruction of a building or an inhabited part thereof.

Article 134: Subject to the provisions of the Law on Societies and Associations, promulgated on 1 January 1972, it is forbidden to form associations, political parties and organizations with aims opposed to the constitutional, social or economic structures in Oman.

It is also forbidden to establish in Omani territory a branch of any foreign political party the aims of which are opposed to the structures referred to in the preceding paragraph.

If such a body or a branch thereof is established contrary to the provisions of the preceding two paragraphs it shall be dissolved, its assets shall be confiscated, its founders and organizers shall be liable to 3 to 10 years' imprisonment and its members shall be liable to one to three years' imprisonment.

Article 149: Any person who commits an attack in Omani territory against the life, safety or liberty of a foreign head of State shall be liable to the death penalty and if the attack is not life-threatening to 3 to 15 years' imprisonment.

Article 199: "Forgery" means the deliberate distortion of the accuracy of facts and data the authentication of which is sought through a document or any other written instrument constituting a document where such distortion may result in a material, moral or social benefit for oneself or damage to a third party.

Article 200: Any person who knowingly uses a forged instrument shall be liable to the penalties to which a forger is liable.

Article 201: If a forgery is perpetrated or a forged instrument used with the intention of establishing the truth the sentence shall be reduced pursuant to article 109 of this Law.

(b) Weapons and Ammunition Law, promulgated by Royal Decree No. 36/90

Article 28: Any person having a permit to possess, import, export, trade in or repair weapons or ammunition shall be required to protect them, to take reasonable precautions to prevent them from being lost or stolen and to prevent anyone not lawfully entitled to possess them from obtaining them at any time. He shall also be required to report immediately to the nearest police station any loss, theft or destruction thereof and to exhibit his permit and such weapons and ammunition to police officers on request.

LXXXVII. PAKISTAN⁶⁰

SUMMARY OF LEGISLATION OF PAKISTAN RELATED TO TERRORISM

In 1997, the Anti-Terrorism Act was adopted with the aim of preventing terrorist acts, sectarian violence and in order to ensure speedy trials of those involved in heinous offences. In August 2001, the Act was further amended to enlarge its scope.

⁶⁰ Transmitted to the Secretariat by that Government on 27 December 2001 (S/2001/1310, enclosure), 11 July 2002 (S/2002/797, enclosure) and 25 February 2003 (S/2003/307, enclosure). Information was also provided in respect of the Extradition Act, 1972, and the Surrender of Illicit Arms Act 1991.

Under the amended Act, terrorism is a punishable offence and abetting terrorism, including membership, recruitment, and support for terrorist groups, is an offence.

The following acts of terrorism have been criminalized in the Act:

Section 6

- (1) In this Act, “terrorism” means the use or threat of action where:
 - (a) the action falls within the meaning of sub-section(2), and
 - (b) the use of threat is designed to coerce and intimidate, to overawe the Government, public, or a section of the public, community, or sect, or create a sense of fear or insecurity in society; or
 - (c) the use of threat is made for the purpose of advancing a religious, sectarian or ethnic cause.
- (2) An “action” shall fall within the meaning of sub-section (1), if it:
 - (a) involves doing anything that causes death;
 - (b) involves grievous violence against a person or grievous bodily injury or harm to a person;
 - (c) involves grievous damage to property;
 - (d) involves the doing of anything that is likely to cause death or endangers a person’s life;
 - (e) involves kidnapping for ransom, hostage-taking or hijacking;
 - (f) incites hatred and contempt on religious, sectarian or ethnic basis to stir up violence or cause internal disturbance;
 - (g) involves stoning, brick-batting or any other form of mischief to spread panic;
 - (h) involves firing on religious congregations, mosques, ‘iniambargahs’, churches, temples and all other places of worship, or random firing to spread panic, or involves any forcible takeover of mosques or other places of worship;
 - (i) creates a serious risk to safety for the public or a section of the public, or is designed to frighten the general public and thereby prevent them from coming out and carrying on their lawful trade and daily business, and disrupting civic life;

(j) involves the burning of vehicles or any other serious form of arson;

(k) involves extortion of money (“bhatta”) or property;

(l) is designed to seriously interfere with or seriously disrupt a communications system or public utility service;

(m) involves serious coercion or intimidation of a public servant in order to force him to discharge or to refrain from discharging his lawful duties; or

(n) involves serious violence against a member of the police force, armed forces, civil armed forces, or a public servant.

(3) The use or threat of use of any action falling within sub-section (2) which involves the use of firearms, explosives or any other weapon is terrorism, whether or not sub-section 1(c) is satisfied.

(4) In this section “action” includes an act or a series of acts.

(5) In this Act, terrorism includes any act done for the benefit of a proscribed organization.

(6) A person who commits an offence under this section or any other provision of this Act, shall be guilty of an act of terrorism.

(7) In this Act, a “terrorist” means:

(a) a person who has committed an offence of terrorism under this Act, and is or has been concerned in the commission, preparation or instigation of acts of terrorism:

(b) a person who is or has been, whether before or after the coming into force of this act, concerned in the commission, preparation or instigation of acts of terrorism, shall also be included in the meaning given in clause (a) above.

In accordance with Section 11A, an organization is considered to be involved in terrorism if it:

(a) commits or participates in acts of terrorism;

(b) prepares for terrorism;

(c) promotes or encourages terrorism;

(d) supports and assists any organization concerned with terrorism;

- (e) aids and assists in the incitement of hatred and contempt on religious, sectarian or ethnic lines that stir up disorder;
- (f) fails to expel from its ranks or ostracize those who commit acts of terrorism and presents them as heroic persons; or
- (g) is otherwise involved in terrorism.

Section 11B allows the Federal Government to proscribe an organization concerned with terrorism.

Section 11D allows the Federal Government to place an organization under observation where it has reason to believe that it is concerned with terrorism.

The Act also contains the following provisions for suppressing the financing of terrorism:

Section 2(aa) gives a definition of “terrorist property”.

Section 11E(2) requires a proscribed organization to submit all accounts of its income and expenditure for its political and social welfare activities and disclose all funding sources to the competent authority designated by the Federal Government.

Section 11F(5) makes it an offence for a person to solicit, collect or raise funds for a proscribed organization.

Section 11H provides as follows:

- (1) A person commits an offence if he:
 - (a) invites another to provide money or other property; and
 - (b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purpose of terrorism.
- (2) A person commits an offence if he:
 - (a) receives money or other property, and
 - (b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.
- (3) A person commits an offence if he:
 - (a) provides money or other property, and

(b) knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.

(4) In this Section a reference to a provision of money or other property is a reference to its being given, lent or otherwise made available, whether or not for consideration.

Section 11I provides as follows:

A person commits an offence if:

- (1) he uses money or other property for the purposes of terrorism; or
- (2) he:
 - (a) possesses money or other property; and
 - (b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.

Section 11J provides as follows:

A person commits an offence if he:

- (a) enters into or becomes involved in an arrangement as a result of which money or other property is made available or is to be made available to another person, and
- (b) has reasonable cause to suspect that it will or may be used for the purposes of terrorism.

Section 11K provides as follows:

(1) A person commits an offence if he enters into or becomes involved in any arrangement which facilitates the retention or control, by or on behalf of another person, of terrorist property:

- (a) by concealment;
- (b) by removal from the jurisdiction;
- (c) by transfer to nominees, or
- (d) in any other way.

(2) A defence for a person charged with an offence under sub-section (1) is to prove that he did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.

Section 110 of the Act contains the provisions for provisional seizure of assets likely to be used in the commission of offences relating to terrorism and its financing. It also contains the provisions for forfeiture of assets after the conviction of an offence related to terrorism.

LXXXVIII. PANAMA⁶¹

SUMMARY OF LEGISLATION OF PANAMA RELATED TO TERRORISM

(a) Penal Code

The following penalties for terrorist activities and the supply of weapons to terrorists are contained in Section III, entitled "Offences against the international community", of the Penal Code established by Act No. 18 of 22 September 1982:

Article 311

Anyone who participates in the destruction, in whole or in part, of a specific group of human beings, on grounds of their nationality, race or religious or political beliefs, shall be subject to 15 to 20 years' imprisonment.

The same penalty shall apply to anyone who, in order to destroy, in whole or in part, a specific group of persons and for the reasons described in the previous paragraph, commits any of the following acts:

1. Causes bodily or mental harm to members of those groups;
2. Places such groups at risk.

Article 312

Anyone who recruits persons, stockpiles weapons or carries out other hostile acts not approved by the Government and undertaken within the territory of the Republic or abroad against another State, thereby exposing Panama to the risk of war or the breaking-off of international relations, shall be subject to three to six years' imprisonment.

⁶¹ Transmitted to the Secretariat by that Government on 16 January 2002 (S/2002/76, appendix) 14 October 2002 (S/2002/1184, appendix), and 7 July 2003 (S/2003/701, appendix).

If, as a consequence of the above-mentioned acts, war is declared on the Republic, the penalty shall be 10 to 15 years' imprisonment.

Article 242

When three or more persons associate together for the purpose of committing offences, each of them shall be punished, for that act alone, by imprisonment for one to three years.

The penalty shall be increased by one fourth for those who instigate, lead or direct the unlawful association.

Moreover, articles 243 to 245 of chapter IV of the Penal Code establish penalties for piracy against a ship or the persons on board. It also applies to anyone who assists those committing an act of piracy to hand over a ship, its cargo or items belonging to the crew; anyone who by threat or force attempts to prevent the commander or crew from defending the ship against hijackers; anyone who equips a vessel for use in acts of piracy; and anyone who knowingly deals with or assist hijackers and who by force or threat seizes control of an aircraft. A penalty is established for anyone who by force or threat seizes control of an aircraft.

Article 184 (a) of the Penal Code, contained in title IV on offences against property, in Chapter I (Theft) provides penalties of three to six years' imprisonment for anyone who seizes an automobile, maritime vessel, aircraft or river vessel, and of 5 to 10 years' imprisonment if the offence is committed by two or more persons or if the intention of the offence is to remove the vehicle outside the national territory.

Article 238 of chapter II of the Penal Code (Offences against means of transportation and communication) stipulates that a sentence of 1 to 6 years' imprisonment will be imposed on anyone who performs any action endangering the safety of means of land or maritime transportation. If such an act results in a collision, derailment, shipwreck, beaching, plane crash or other serious accident, the penalty will be 6 to 10 years' imprisonment. If the disaster causes harm to someone, the penalty will be 6 to 15 years' imprisonment; if it causes someone's death, the penalty shall be 8 to 18 years' imprisonment.

In title IV of the Penal Code, on offences against property, chapter VIII (Damage) stipulates that penalties shall be imposed on anyone who destroys, renders unusable, breaks or in any way damages movable or immovable property belonging to another person and that an aggravated penalty of 6 months' to two years' imprisonment and a fine of 50 to 100 days will be imposed if the offence involves "destruction of or serious damage to residences or individual offices in public buildings or buildings intended for public use or for any form of worship, in military buildings or installations, ships or aircraft owned by the State, public monuments or cemeteries, or property of scientific, cultural, historic or artistic value" (article 201, paragraph 3).

With respect to the offences of extortion and kidnapping, article 188 (a) of chapter III of the Penal Code states that anyone who abducts a person in order to obtain as ransom from the abductee or anyone else, money, property or documents with any kind of legal effect for himself or for other persons designated by him will be subject to 5 to 12 years' imprisonment. It also describes several different situations. In the first, anyone who kidnaps a public servant or a person enjoying immunity recognized under international law is deemed to have committed an offence and is liable to the appropriate penalty. In the second situation, anyone who abducts a guest of the Panamanian Government or of any public entity or a person attending a meeting, symposium, seminar or other event organized by any State body is deemed to have committed an offence and is liable to the appropriate penalty.

Articles 314 to 316 of chapter III of the Penal Code (Offences against the international community) provide penalties for violation of the immunity of the head or a representative of a foreign State and offences against the dignity or office of such persons, when they are on Panamanian territory. Offences against representatives of foreign States accredited to the Government of Panama are also punishable by the same penalties imposed for such crimes when they are committed against Panamanian public servants. Article 132, paragraph 8, of the Penal Code describes this as an aggravating circumstance to the offence of homicide, which in turn incurs a sentence of 12 to 20 years' imprisonment.

Article 151 of chapter III of the Penal Code (Crimes against individual freedom) provides that a sentence of 6 months' to 3 years' imprisonment will be imposed on anyone who unlawfully deprives another person of his or her freedom. If the offence under article 151 is committed using threats, cruelty or deceit, or with intent to obtain revenge or profit, or if the offence results in serious damage to the health or property of the victim, such action will be regarded as an aggravating circumstance and the sentence will be 2 to 6 years' imprisonment.

Title VII of the Penal Code (Offences against collective security), and specifically chapter I (Fire, flood and other offences endangering the public), provides in article 232 that a sentence of 3 to 8 years' imprisonment will be imposed on anyone who through fire or explosion creates a public danger to property or persons. There are two aggravating circumstances for this offence: the first provides for a penalty of 4 to 12 years' imprisonment in the event of fire, explosion or destruction of property of scientific, artistic, historic, religious, military or economic interest or of interest to public security, or in the event that someone is in danger or dies; the second provides a penalty of 8 to 18 years' imprisonment if the action is the immediate cause of someone's death.

In the same way, article 237 provides a sentence of 2 to 6 years' imprisonment for anyone who provides, manufactures, acquires, steals or possesses bombs or explosive, flammable, asphyxiating or toxic substances or materials designed for use in an attack on the security of the State.

(b) Act No. 41 of 2 October 2000

Act No. 41 on capital laundering, which defines terrorism as an underlying crime, provides, in its final provisions, for the seizure of money, assets, securities or other economic resources connected with the offence of capital laundering.

(c) Decree Law No. 16 of 30 June 1960

Article 37 of Decree Law No. 16, as replaced by article 10 of Act No. 6 of 5 March 1980, establishes restrictions on immigration to Panama. Paragraphs (g) and (h) establish the following provisions for controlling the entry of paramilitaries into the country and their subsequent establishment therein:

Article 37

Aliens in any of the following circumstances may not immigrate to Panama:

(g) Aliens belonging to parties, groups or organizations that aim to destroy the established political and social order;

(h) Anarchists, terrorists and other persons who advocate the use of force and violence against the established authorities in order to sow confusion and spread chaos.

Thus, persons who finance, plan or perpetrate terrorist acts, pledge support for such acts or offer protection to terrorists, may be refused entry into Panamanian territory.

(d) Decree No. 354

The use of weapons, ammunition and explosives is regulated by Decree No. 354 of 29 December 1948.

(e) Judicial Code

Panama applies a principle of double incrimination with regard to extradition. In order for extradition to be carried out, the offence must be a crime under the legislation of both countries, as stated in Article 2500 of the Judicial Code.

Panama will not refuse to extradite alleged terrorists who claim political motives. Article 2504, paragraph 7, of the Judicial Code provides as follows:

Article 2504

Extradition shall not be granted in the following cases:

If, in the opinion of the Ministry of Foreign Affairs, the person or persons in question are being prosecuted for political offences or their extradition is being requested for reasons that are primarily political. The kidnapping, homicide or assassination of a Head of State or of any person in exercise of public authority at the time of such crime shall not be deemed a political offence.

LXXXIX. PARAGUAY⁶²

SUMMARY OF LEGISLATION OF PARAGUAY RELATED TO TERRORISM

In Paraguay, provision or collection of funds in order to carry out terrorist acts is not a separate crime. However, the Penal Code and legislation cover conduct directly related to such acts. The following articles of the Penal Code are relevant:

Article 196 – (Money Laundering);

Article 237 – (Incitement to commit punishable acts);

Article 238 – (Justification of the offence);

Article 239 – (Criminal association);

Article 263 – (Production of counterfeit currency);

Article 264 – (Circulation of counterfeit currency);

Article 265 – (Production and circulation of counterfeit official stamps);

Article 266 – (Preparation for the production of counterfeit currency and stamps)

The Aviation Code in force in Paraguay by virtue of Act 469/57, in chapter II on (aviation) crimes, does not define a punishable offence specifically related to the commission of acts of terrorism against civil aviation. However,

⁶² Transmitted to the Secretariat by that Government on 24 December 2001 (S/2001/1293, enclosure), 11 July 2002 (S/2002/878, enclosure) and 3 July 2003 (S/2003/700, appendix). Information was also provided in respect of Migration Act 978/96, Code of Penal Procedure, Act 1015/97 on preventing and penalizing unlawful acts to launder money or property.

chapter IV, article 11, paragraph 1, of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, ratified by Act 252/71, defines what is meant by unlawful seizure of aircraft. Article 1 of the Convention for the Suppression of the Unlawful Seizure of Aircraft, ratified by Act 290/71, makes it an offence unlawfully to seize an aircraft in flight, and article 2 requires the Contracting States to make the offence punishable by severe penalties. Article 1 of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, ratified by Act 425/73, defines various offences against civil aviation, and article 3 requires Contracting States to make them punishable by severe penalties.

The Penal Code, title III, chapter III, "Offences against the safety of persons in transit", sets penalties for a number of aviation offences, incorporating in domestic law the offences defined in the above-mentioned international conventions. The following articles are relevant:

Article 213 – (Attacks against civil air and maritime traffic);

Article 214 – (Dangerous interference with air, maritime and rail traffic);

Article 215 – (Endangering air, maritime and rail traffic).

XC. PERU⁶³

SUMMARY OF LEGISLATION OF PERU RELATED TO TERRORISM

(a) Decree Law No. 25475 of 5 May 1992

Decree Law No. 25475 punishes crimes of terrorism, including the financing of acts of terrorism, and establishes procedures for investigation and prosecution.

In accordance with Article 2, a terrorist act is an action carried out by one or more persons for the purpose of provoking, creating or maintaining a state of anxiety, alarm or fear in the population or a sector thereof, with a view to changing the power structure by installing a form of a totalitarian government. Such acts are considered to be multiple offences because, through a single action, they injure or harm several legal rights protected and regulated by the Constitution and by the criminal laws in force.

⁶³ Transmitted to the Secretariat by that Government on 9 January 2002 (S/2002/52, enclosure), 24 September 2002 (S/2002/1085, annex) and 12 August 2003 (S/2003/896, enclosure).

Under Article 3, a terrorist group is a group of people who associate for a specific purpose, guided by a philosophy or ideology, and which is duly organized and structured under the direction of a leader, chief or head and in which each member is assigned previously delegated and defined functions, for the purpose of carrying out terrorist acts.

Article 4, concerning collaboration, provides that:

“Anyone who wilfully secures, gathers, collects or supplies any goods or means or in any manner engages in acts such as to further the commission of offences referred to by this Decree Law or furthers the goals of a terrorist group, shall be punished by a term of imprisonment of no less than 20 years”.

The following constitute acts of collaboration:

- (a) The supplying of documents or information on persons, assets, installations, public or private buildings or anything else that specifically assists or facilitates the activities of terrorist groups or elements.
- (b) The transfer or use of any type of lodging or other means susceptible of serving to conceal persons or store weapons, explosives, propaganda, provisions, medicines or other items connected with terrorist groups or with their victims.
- (c) The intentional transport of persons belonging to terrorist groups or connected with their criminal activities and the rendering of any kind of assistance to help them to flee.
- (d) The organization of courses or the managing of centres for the indoctrination and instruction of terrorist groups, operating under any cover.
- (e) The manufacture, acquisition, possession, theft, storage or supplying of arms, ammunition or explosive, asphyxiating, inflammable, toxic or any other type of substances or objects that might cause death or injury. The possession or concealment of arms, ammunition or explosives belonging to the armed forces or the National Police of Peru constitutes an aggravating circumstance.
- (f) Any form of economic assistance, aid or mediation provided or done voluntarily for the purpose of financing the activities of terrorist groups or elements.”

Under Article 5, the perpetrator is liable to punishment by virtue of the mere fact of belonging to a terrorist group. In this Article, no distinction is made between national or foreign groups.

Article 7 condemns statements in favour of terrorism. It also establishes that Peruvian citizens who advocate terrorist acts outside the territory of the Republic shall be punishable not only by imprisonment but also by the loss of Peruvian citizenship⁶⁴.

(b) Procedural Act No. 27379 of 20 December 2000

Procedural Act No. 27379 provides for special restrictions on rights during preliminary investigations.

Under Article 1 of the Act, restrictions of rights in the course of preliminary judicial investigations may be imposed in the case of investigations of the offences of terrorism provided for in Decree Law No. 25475.

Under Article 2, the provincial prosecutor may, in the event of a clear emergency, seek from the criminal court judge a number of restrictions, including the lifting of bank secrecy and tax confidentiality.

(c) Penal Code

Article 279 establishes penalties for the illegal possession and manufacture of arms, ammunition and explosives; inflammable, asphyxiating or toxic substances; substances or materials intended for their preparation. The penalty ranges from 6 to 15 years' imprisonment.

Article 297 stipulates that "the punishment shall be life imprisonment when.... the perpetrator uses narcotrafficking to finance the activities of terrorist groups."

Article 338 defines the perpetration, within the territory of the Republic, of any act intended to change the political structure of a foreign State through violence as an "offence jeopardizing the foreign relations of the State". Such an offence (conspiring against a foreign State) is punishable by imprisonment for up to five years. Consequently, if terrorists act within the national territory in order to carry out acts of terrorism in other countries, their acts will be covered by these provisions.

⁶⁴ In addition, Decree Law No. 25880 provides penalties for statements in favour of terrorism by teachers or professors, with a view to preventing them from influencing their students.

(d) Decree Law 25659 of 12 August 1992

Decree Law No. 25659 provides regulations on the crime of high treason. This offence is an aggravated form of terrorism.

Article 1 stipulates as follows:

The crime of high treason is constituted by the commission of the acts provided for in article 2 of Decree Law No. 25475, when the following modalities are employed:

- (a) The use of 'car bombs' or similar devices, explosives, weapons of war or the like, causing death to individuals, injury to their physical integrity or mental health or damage to public or private property or likely in any other manner to cause serious danger to the population;
- (b) The unlawful possession or storage of explosives, ammonium nitrate or components entering into the manufacture thereof or the voluntary provision of inputs or components capable of being used in the manufacture of explosives for use in the acts referred to in the preceding subparagraph.

Article 2 stipulates that:

High treason is committed by:

- (a) A person who holds a leadership position of a terrorist organization, be it as leader, head or the like;
- (b) A member of an armed group, gang, death squad or similar group of a terrorist organization, being charged with the elimination of persons;
- (c) A person who provides or spreads reports, data, plans, projects or other documentation or allows terrorists access to buildings or premises in his charge or care in order to promote the results referred to in subparagraphs (a) and (b) of the foregoing article.

Article 3 stipulates that the applicable penalty for the crime of high treason is life imprisonment, as established in subparagraph (a) of Decree Law No. 25475. This penalty is applicable in cases where the perpetrator belongs to the leadership of a terrorist organization, be it as leader, head, chief, secretary or in any other similar capacity, at the national level, there being no distinction as to the function he performs in the organization. The same applies if the perpetrator is a member of an armed group, gang, death squad or the like, of a terrorist organization, entrusted with the physical elimination of defenceless persons or groups of persons, irrespective of the means employed.

XCI. PHILIPPINES⁶⁵

SUMMARY OF LEGISLATION OF THE PHILIPPINES RELATED TO TERRORISM

Although there is no specific law against terrorism, the Revised Penal Code (Act No. 3815) of the Philippines covers all terrorist activities or those criminal acts that tend to create or sow common danger or a state of terror on the general public to achieve a pre-determined purpose or objective, such as air hijacking, sabotage, abductions, kidnappings, bombings, slaying or assassination, arson, armed attack or threats.

The following provisions of the Revised Penal Code address and provide penalties for terrorism and acts arising as a consequence thereof:

- Article 122 and 123 (Piracy)
- Articles 248 (Murder) and 249 (Homicide)
- Articles 262-266 (Physical injuries)
- Article 267 (Kidnapping and Serious Illegal Detention)
- Articles 293-302 (Robbery)

The following domestic laws also punish certain acts of terrorism, and addresses terrorist threats in the country:

- Republic Act No. 6235 dated 19 June 1971 entitled "An Act Prohibiting Certain Acts Inimical to Civil Aviation";
- Presidential Decree No. 532 dated 8 August 1974 entitled "The Anti-Piracy/Anti-Robbery Law of 1974", an amendment to Article 122 (Piracy and Mutiny on the High Seas or in Philippine Waters) of the Revised Penal Code;
- Executive Order No. 246 dated 18 May 1995 reconstituting the National Action Committee on Anti-Hijacking (updating Executive Orders No. 393 dated 24 January 1990 and No. 452 dated 5 April 1991) as the National Action Committee on Anti-Hijacking and Anti-Terrorism (NACAHT);

⁶⁵ Transmitted to the Secretariat by that Government on 21 December 2001 (S/2001/1290, enclosure), 8 February 2002 (S/2001/1290/Add.1, enclosure), 5 July 2002 (S/2002/785, enclosure), and 2 October 2003 (S/2003/979, enclosure).

- Administrative Order No. 344 creating the National Organizing Committee for the World Forum to combat international drug trafficking, money laundering, terrorism and organized crime;
- Executive Order No. 30 dated 30 September 1998 providing logistical support to NACAHT.

In addition, the Philippines Anti-Money Laundering Act of 2001 (Republic Act 9160)⁶⁶ was enacted to help prevent the flow of funds to terrorist groups through greater transparency and accountability in the banking and financial sectors of the economy. It is aimed at combating transnational crimes such as terrorism, money laundering and cross-border securities fraud. The Act provides the authority to freeze accounts and assets at banks and financial institutions.

Moreover, there are two pending bills at the Philippine Senate that seek to address domestic and international terrorism and provide severe penalties for such acts: Senate Bill No. 264, entitled "An Act to Protect the State Against Aliens and Organizations Engaged in International Terrorism (Amending the Philippine Immigration Act of 1940), and Senate Bill No. 1353, entitled, "The Anti Terrorism Act".

XCII. POLAND⁶⁷

1. SUMMARY OF LEGISLATION OF POLAND RELATED TO TERRORISM

(a) The Constitution

In accordance with Article 91 of the Constitution, ratified international treaties, including all anti-terrorist conventions and protocols to which Poland is party, enjoy a privileged position of the sources of law in Poland. They are applied in the same way as domestic law and have priority over executive acts and administrative measures. In case of discrepancies between a treaty and international law, the priority of the former is indisputable.

⁶⁶ The Anti-Money Laundering Act took effect on 7 October 2001.

⁶⁷ Transmitted to the Secretariat by that Government on 21 December 2001 (S/2001/1275, enclosure), 14 June 2002 (S/2002/677, enclosure) and 30 January 2003 (S/2003/271, enclosure). Information was also provided in respect of the Penal Proceeding Code, Law of 21 May 1999 on arms and munitions, Law of 22 June 2001 concerning the implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons, Law of 29 November 2000 on external trade in goods, technologies and services of strategic importance for both state security and the keeping of the international peace and security.

(b) Penal Code

Article 120 makes it unlawful to use weapons of mass destruction prohibited by international law.

Article 121 makes it unlawful to manufacture, collect, acquire, sell, store, transport or transmit weapons of mass destruction or develop them.

Article 134 stipulates that a person who commits an attempt on the life of the President of the Republic of Poland, shall be sentenced to imprisonment for a time not shorter than 12 years, for 25 years or for life.

Article 136 makes it unlawful to commit an active assault against or insult accredited diplomatic personnel or person entitled to similar protection by virtue of laws, agreements and generally accepted international customs.

Article 140 makes it unlawful to commit violent assault against a unit of the Armed Forces of the Republic of Poland, destroy or damage an object or facility with defence significance.

Article 148 applies to crimes against life and health.

Article 163 makes illegal for any person to cause event which poses threat to life or health of many persons or to property on a large scale, in the form of:

- 1) fire,
- 2) destruction of a building, deluge, landslide, or avalanche,
- 3) explosion of explosive or flammable materials or other violent release of energy, proliferation of poisonous, toxic or blistering substances,
- 4) violent release of nuclear energy or release of ionizing radiation,

Article 165 declares it illegal for any person to cause an event which poses threat to the life or health of many people or to property on a large scale by:

- 1) causing epidemiological threat or proliferation of contagious disease or epidemic,
- 2) manufacturing or introducing to trade substances harmful to health, food or other articles of common use or pharmaceutical means which do not meet quality standards in force,
- 3) causing damage to or immobilisation of a facility in public use, in particular of a facility supplying water, light, heat, gas,

- 4) disturbing, hindering or otherwise affecting automatic processing, collecting or transfer of information, and
- 5) acting otherwise in especially dangerous circumstances.

Article 166 makes it unlawful for any person to use violence against a person or threat of direct use of such violence, take over the control of a vessel or an aircraft.

Article 167 makes it unlawful to place on a vessel or an aircraft any device or substance posing threat to safety of persons or property with significant value. Furthermore, it is also illegal to destroy, damage or make unserviceable navigation equipment or to prevent its use if this may pose threat to the safety of people.

Article 171 makes it unlawful for any person, without required permission, to process, collect, possess, use or trade explosive substances or equipment, radioactive material, facility releasing ionising radiation or other object or substance that may pose threat to the life or health of many people or property on a large scale.

Article 172 declares it illegal to hinder the action undertaken with the aim to prevent danger to the life or health of many people or to property at a large scale.

Articles 173 to 175 apply to crimes against transportation safety.

Article 258 makes it illegal for any person to participate in an organised group or association whose aim is to commit crimes.

2. ACT OF 16 NOVEMBER 2000: COUNTERACTING INTRODUCTION OF PROPERTY VALUES DERIVED FROM ILLEGAL OR UNDISCLOSED SOURCES INTO FINANCIAL CIRCULATION AND COUNTERACTING THE FINANCING OF TERRORISM.

CHAPTER 1

...

Article 2

Whenever this Act refers to:

...

(7) act of terrorism - it shall mean crimes against peace, mankind and war crimes, offences against public safety and offences set forth in Article 134 and 136 of the Penal Code.

XIII. PORTUGAL⁶⁸

SUMMARY OF LEGISLATION OF PORTUGAL RELATED TO TERRORISM

Article 300 (1) of the Portuguese Penal Code foresees the punishment by 5 to 15 years of imprisonment of “whoever promotes or establishes a terrorist group, organization or association, adheres thereto or supports it.” This provision encompasses all forms of support, both active or passive, to terrorist groups or organizations, namely the recruitment into terrorist organizations and obtaining weapons for terrorist purposes. It also criminalizes the conduct of those who finance terrorist groups or organizations.

Article 300 (2) defines a terrorist group, organization or association as “any group of two or more persons who, acting in coordination, aim at jeopardizing national integrity or national independence, preventing, altering or subverting the functioning of States institutions provided for in the Constitution, forcing public authority to practice an act, abstain from practicing it or tolerate its practice, or yet at intimating certain persons, groups of persons or the general population through the practice of crimes:

- a) Against life, physical integrity or personal freedom;
- b) Against the safety of transportation and communication, including telegraphic, telephonic, radio or TV communication;
- c) Of deliberate creation of common danger, through fire, dissemination of radioactive substances or toxic or suffocating gases, flood or avalanche, collapse of building, contamination of food and water for human consumption or diffusion of disease, plague or harmful plant or animal;
- d) Of sabotage;
- e) Which imply the usage of nuclear energy, firearms, explosive substances or devices, firebugs of any kind, trapped parcels or letters.”

Article 275(1) punishes with imprisonment between two and five years the import, manufacture, obtaining through transformation, storage, purchase, sale, transfer or acquisition of any title or by any means, transportation, distribution, detention, usage or possession of a weapon classified as war material, prohibited firearm or arm aimed at projecting toxic, suffocating, radioactive or corrosive

⁶⁸ Transmitted to the Secretariat by that Government on 18 January 2002 (S/2002/120, enclosure), 18 March 2002 (S/2002/120/Add.1, enclosure), 17 October 2002 (S/2002/1190, enclosure) and 18 September 2003 (S/2003/1018, enclosure). Information was also provided in respect of Decree Law 325/95, Act 5/2002 of 11 January 2002 and Act 10/2002 of 11 February 2002.

substances, or an explosive or radioactive device or substance, or substance used in the manufacture of toxic or suffocating gases, in violation of legal conditions or contrary to the prescriptions of the competent authority.

Articles 4 to 7 apply in general to acts that occur in Portuguese territory and, in the absence of an international treaty or convention stipulating otherwise, to acts that occur outside national boundaries, *inter alia*, in the case of crimes of terrorism, terrorist organization, crimes against State security or against the rule of law.

Article 174(4) allows criminal police to pursue “searches and personal searches” in cases of violent or highly organized criminality, *inter alia* crimes of terrorism, thus waiving the need of these to be previously authorized, or presided over, by a judicial entity.

Article 187 provides for the “admissibility of telephone tapping” in the collection of evidence. Tapping requires a judicial order and can be determined only in the case of crimes expressly enunciated in this Article, which includes the crime of terrorism.

XCIV. QATAR⁶⁹

SUMMARY OF LEGISLATION OF QATAR RELATED TO TERRORISM

Article 84 of the Penal Code of 1971 provides that: “Whosoever founds or participates in the founding of, runs, or participates to any extent in the running of, an illegal organization shall be punished by a term of imprisonment not exceeding seven years”.

Article 85 provides as follows: “Any person not covered by the above Article who provides either financial or moral assistance in promoting an illegal organization, while knowing or having reason to believe there is an illegal organization, shall be punished by a term of imprisonment of not more than one year and by a fine not exceeding 1,000 Rials, or by both penalties.”

The Penal Code defines the scope of its applicability as regards persons in Articles 4-8 of the second section.

⁶⁹ Transmitted to the Secretariat by that Government on 4 January 2002 (S/2002/26, enclosure) and 21 October 2002 (S/2002/1211, enclosure). Information was also provided in respect of Law No 9 of 1987 on combating narcotic drugs and dangerous psychotropic substances; Law No. 8 of 1998 on private organizations and institutions; Law No. 15 of 2002 on civil aviation; Law No. 28 of 2002 on combating money-laundering.

Article 6 provides for the punishment of any citizen of Qatar who commits a crime outside Qatar provided for by the law.

As regards acts committed abroad by a resident or foreigner, Qatar courts are concerned with such matters only insofar as they are linked to another crime committed in the State or if they are directed against the State of Qatar or relate to its currency, stamps or seals.

Measures that prevent terrorists from obtaining weapons within or outside Qatar are contained in Law No. 14 of 1999 on arms, munitions and explosives. This Law criminalizes a large number of acts that it considers terrorist acts and includes a set of harsh rules and penalties, the maximum being the death penalty, to prevent terrorists from being supplied with arms.

Article 20 of the Law prohibits the import or export of, or trade in, arms without a licence and prohibits the issuing of a licence for bringing such arms or munitions into, or taking them out of, the State of Qatar.

Article 21 of the Law lays down strict conditions which must be satisfied in requesting authorization to import or export arms or trade in arms.

XCV. REPUBLIC OF KOREA⁷⁰

SUMMARY OF LEGISLATION OF THE REPUBLIC OF KOREA RELATED TO TERRORISM

The following provisions of existing legislation are of relevance for preventing and suppressing the acts of terrorism.

The Criminal Act declares the following terror-related activities as a crime:

- assault against foreign sovereigns (Article 107);
- formation of criminal groups (Article 114);
- obstruction of performance of official duties (Articles 136 and 144);
- destruction of public goods (Articles 141 and 367);
- setting fire to public structures (Article 165);
- illegal use of explosives (Article 119);
- obstruction of train and vessel traffic (Article 186);

⁷⁰ Transmitted to the Secretariat by that Government on 26 December 2001 (S/2001/1283, enclosure), 19 June 2002 (S/2002/692, annex) and 29 May 2003 (S/2003/633, enclosure). Information was also provided in respect of the Criminal Extradition Act, the Proceeds of Crime Act of 2001 and the Statute on Immigration Control.

- obstruction of use of drinking water (Article 192);
- coercion by taking hostages, injury to hostages, and murder of hostages (Article 324);
- violence (Article 260);
- inflicting bodily harm and violence (Article 257);
- murder (Article 250);
- false arrest and illegal confinement (Article 276).

In accordance with Articles 30 to 32, any activities aimed at providing funds for these crimes shall be punished as an act of complicity in a crime.

Article 2 of the Criminal Act provides that the Republic of Korea exercises jurisdiction over all criminal activities committed in the territory of the Republic of Korea. In this regard, in case that part or all of a crime or its result is connected to the territory of the Republic of Korea, the Republic of Korea exercises criminal jurisdiction over it. Therefore, all kinds of terror-related activities such as planning, financing, facilitation, and execution inside the territory of the Republic of Korea can be prosecuted and punished.

Article 3 of the Criminal Act provides that this law applies to a citizen who has committed a crime outside the territory of the Republic of Korea.

Article 4 of the Criminal Act stipulates that this law applies to a foreigner who commits a crime against the Republic of Korea or the Korean people outside the territory of the Republic of Korea.

In addition, the Act concerning Punishment of Violent Actions, makes it a crime to form criminal groups and to participate in fund-raising activities for criminal groups (Article 4); as well as assisting criminal groups (Article 5);

Under paragraph 2 of Article 5 of this Act, the financing of terrorism intended to supply funds to a criminal organization shall be punished as a crime.

The Act on the Aggravated Punishment of Specific Crimes provides for a crime of kidnapping and inducement (Article 5-2).

The Act on the Control of Firearms, Knives, Explosives, criminalizes non-licensed manufacture, sale and trade of firearms (Article 70).

The Aviation Act covers criminal activities incurring peril on a plane (Articles 156-158);

The Safety of Aircraft Operation Act makes it a crime to hijack a plane (Articles 8-12).

However, the Republic of Korea does not have jurisdiction over terrorist offences committed by foreigners outside its territory against other States and their nationals; the Republic of Korea, therefore, cannot prosecute them.

XCVI. REPUBLIC OF MOLDOVA⁷¹

SUMMARY OF LEGISLATION OF THE REPUBLIC OF MOLDOVA RELATED TO TERRORISM

(a) Law No. 539-XV of 12 December 2000 on Combating Terrorism

The Law on combating terrorism is based on the following notions:

“Terrorism” means carrying out explosions, arson or other actions which create danger to human lives or cause considerable material damage, or provoke other grave social consequences aimed at violating public security, intimidating a population or adversely influencing public authorities or individuals to make certain decisions, as well as threatening to carry out these actions with the same purposes.

“Terrorist activity” means actions which include:

- planning, preparing, attempting to commit and carrying out a terrorist act;
- instigation of a terrorist act, use of violence against individuals and entities, destruction of material objects for terrorist means;
- establishing an illegally armed force, a criminal community (organization), an organized team with the purpose of carrying out terrorist acts, as well as participation in such acts;
- recruiting, equipping, training and using terrorists;
- financing a terrorist organization or a terrorist group, or providing them with other assistance.

“International terrorist activity” means terrorist actions committed by:

- a terrorist, a group of terrorists or a terrorist organization in the territory of two or more States, causing damage to the interests of these States;
- citizens of one State against citizens of another State or in the territory of the latter State;

⁷¹ Transmitted to the Secretariat by that Government on 31 December 2001 (S/2002/33, enclosure) and 5 September 2002 (S/2002/1044, enclosure). Information was also provided in respect of the following legislation: Law No 45-XIII of 12 April 1994 on intelligence investigation activity; Law No. 618-XIII of 31 October 1995 on state security; Law No. 619-XIII of 31 October 1995 on state security services; Law No. 633-XV of 15 November 2001 on preventing and combating of money laundering.

- a terrorist of one State whose victims are citizens of the same State or of different States, but the act was committed outside of the territory of these States.

“Crimes with a terrorist character” are the following:

- A crime accompanied by an attempt to illegally hijack an aircraft;
- A crime directed against the safety of civil aviation;
- A dangerous crime which constitutes an attempt to take away the life, integrity or liberty of internationally protected persons, including diplomatic agents;
- A crime aimed at taking hostages, kidnapping or illegally sequestering persons;
- A crime carried out through the use of bombs, grenades, missiles, machine guns, transported by parcels which place persons in danger;
- An attempt to carry out one of the above-mentioned crimes, or complicity in the offence in the crime.

“Terrorist” means a person who is involved in a terrorist activity in any form.

“Terrorist group” means two or more persons associated with each other for the purpose of committing a terrorist activity.

“Terrorist organization” means an organization created with the purpose of committing a terrorist activity or an organization which admits resorting to terrorism. An organization is considered terrorist if at least one of its structural subdivisions carries out a terrorist activity.

“Combating terrorism” means activities aimed at preventing, tracing out and stopping terrorist activities and attenuating its consequences.

“Anti-terrorist operation” means special measures aimed at stopping a terrorist act in order to ensure the safety of persons, neutralizing terrorists and attenuating its consequences.

“Zone of conduct of an anti-terrorist operation” means certain sectors of a locality, a vehicle, a building, a construction, or other premises and their surrounding territory, where an anti-terrorist operation is conducted on the perimeter.

“Taking hostages” means a forced holding by a terrorist or a group of terrorists of some persons in order to force individuals, entities or public authorities to fulfil their demands.

Combating terrorism in the Republic of Moldova is based on the following principles:

- legality;**
- priority to the measures of preventing terrorism;**
- inevitability of punishment for commitment of a terrorist act;**
- combining public and undercover methods of combating terrorism;**
- use of a complex of judicial, political, socio-economic and prophylactic measures;**
- priority to protection of the rights of persons who are in danger because of a terrorist act, minimizing loss of human life;**
- minimal yielding in negotiations with terrorists;**
- coordinated conduct of all forces and means involved in anti-terrorist operations;**
- minimum publicity of technical procedures, ways of conduct of anti-terrorist operations and its participants.**

(b) Penal Code of 12 December 2001

Article 63 of the Penal Code stipulates that terrorism represents a criminal activity of some persons or some groups of persons aimed at modifying in the Republic of Moldova or in other States legally constituted political and socio-economic structures by threatening to use violence or through resorting to violence against a population or individuals, and which jeopardizes fundamental human rights, particularly the rights to life, physical integrity, and individual freedoms.

Furthermore, Article 63-1 makes it a criminal offense to collect funds or other means to be used for carrying out terrorist acts. The penalty under this article is imprisonment for a term from 10 to 25 years with confiscation of the means designated or used for the crime.

XCVII. ROMANIA⁷²

1. GOVERNMENT EMERGENCY ORDINANCE NO. 141/2001

Article 1

- (1) The following shall be considered as terrorist acts:
- Homicide offenses as described in articles 174 to 176 of the Penal Code, assault and battery, aggravated assault as described in articles 181 and 182 of the Penal Code, illegal deprivation of liberty as described in article 189 of the Penal Code;
 - Offenses covered by articles 106 to 109 of Government Ordinance No. 29/1997 concerning the Air Code.
 - Offences involving destruction as described in articles 217 and 218 of the Penal Code;
 - Offenses violating regulations governing arms and ammunition, the regulations governing nuclear and other radioactive materials and the regulations governing explosives, as described in articles 279 and 280 of the Penal Code, committed for the purpose of creating a serious breach of the peace through intimidation, terror and/or triggering panic.
- (2) The punishment for the offences described in paragraph 1 above shall exceed the maximum penalty prescribed by law by five years, but not the overall maximum.
- (3) Attempts to commit such offences shall also be punishable.
- (4) The production or acquisition of the means or instruments for committing the offences described in paragraph 1, or the planning of measures for their perpetration, shall also be considered as an attempt.

Article 2

- (1) The introduction or release into the atmosphere, soil, sub-soil or water of products, substances, materials, micro-organisms or toxins harmful to human or animal health or to the environment, as well as threats involving bombs or other explosive material, shall be considered as terrorist acts if they create a serious breach of the peace through intimidation, terror or triggering of panic and shall be punishable by 5 to 20 years' imprisonment and forfeiture of certain rights.

⁷² Transmitted to the Secretariat by that Government on 27 December 2001 (S/2001/1339, enclosure), 27 August 2002 (S/2002/949, enclosure) and 13 October 2003 (S/2003/1015, enclosure). Information was also provided in respect of Law No. 17/1996 on firearms and munitions, Law 126/1995 on explosive materials; Government Ordinance No. 158/1999 on the regime of export and import of strategic goods.

(2) Attempts to commit such offences shall also be punishable.

(3) The production or acquisition of the means or instruments for committing the offences described in paragraph 1, or the planning of measures for their perpetration, shall also be considered an attempt.

Article 3

Plotting to commit terrorist acts shall be punishable by 3 to 15 years' imprisonment and forfeiture of certain rights.

Article 4

Threatening a person or community, by any means, with the use or diffusion of products, substances, materials, micro-organisms or toxins harmful to human or animal health or to the environment, is an offence punishable by six months to five years of detention.

Article 5

The issuing of false alarms to a person, to the public, to the specialized emergency services or to the law enforcement forces, whether in writing, by telephone or by any other remote means of transmission, concerning the diffusion or use of products, substances, materials, micro-organisms or toxins described in article 4 shall be punishable by imprisonment for a term of three months to three years or by a fine.

2. GOVERNMENT EMERGENCY ORDINANCE NO. 159/2001

Article 15 provides for the criminal liability of natural persons as follows:

“The provision or collection of funds, whether directly or indirectly, by a person who is aware that the funds will be used wholly or partly for the purpose of committing terrorist acts is an offence punishable by 5 to 20 years' imprisonment and forfeiture of certain rights.

Fund-raising with a view to financing terrorist acts shall carry the same penalty.

Attempts to commit such offenses shall be punishable.

Funds provided or collected with a view to committing terrorist acts, or raised for the purpose of financing terrorist acts, shall be frozen.”

Article 13(1) provides as follows:

“Fund-raising by a juridical person for the purpose of financing terrorist acts, or provision of funds with a view to the commission of such acts, shall constitute a violation punishable by a fine of 500,000,000 to 1,000,000,000 lei.”

Article 13 (3) stipulates that the funds described in Article 13(1) shall be seized.

XCVIII. RUSSIAN FEDERATION⁷³

SUMMARY OF LEGISLATION OF THE RUSSIAN FEDERATION RELATED TO TERRORISM

(a) The Penal Code

The Penal Code establishes the following offences as offences of a terrorist nature: terrorism (article 205), hostage-taking (article 206), hijacking of an aircraft, sea vessel or railway train (article 211), organization of an illegal armed unit or participation in such a unit (article 208), attempts on the life of a State or public figure (article 277) and attacks on persons or agencies enjoying international protection (article 360).⁷⁴

Persons guilty of providing or collecting funds for the commission of terrorist acts bear criminal liability for the crimes committed by the terrorists, as accessories to such offences, in the manner specified in articles 32 to 34 of the Penal Code. In accordance with section 5 of article 33 of the Penal Code, they are

⁷³ Transmitted to the Secretariat by that Government on 27 December 2001 (S/2001/1284, enclosure), 15 January 2002 (S/2001/1284/Add.1, enclosure), 23 July 2002 (S/2002/887, enclosure), and 11 August 2003 (S/2003/839, enclosure). Information was also provided on the Federal Act of 25 July 1998 “On Measures to Combat Terrorism”, Federal Act of 28 July 1996 “On refugees”, Federal Act No. 150 of 13 October 1996 “On weapons”, Federal Act No. 128 of 8 August 2001 “On the licensing of individual types of activity”, Decision No. 814 of the Government of the Russian Federation of 21 July 1998 “On measures to regulate the circulation of civilian and service weapons and ammunition therefore in the territory of the Russian Federation”, Decision No. 1314 of the Government of the Russian Federation of 15 October 1997 “On confirmation of the rules governing the circulation of offensive small arms and other weapons, ammunition and cartridges therefore, and steel weapons in State paramilitary organizations”, the Instruction “On the licensing of activities relating to the storage, transport and destruction of chemical weapons and the handling of toxic chemicals and waste formed during the destruction of chemical weapons” (confirmed by Decision No. 199 of the Government of the Russian Federation of 19 March 2001) and Order No. 288 of the Ministry of Internal Affairs of the Russian Federation of 12 April 1999 “On measures to implement the Decision of the Government of the Russian Federation”.

⁷⁴ For the texts of these and other pertinent articles of the Penal Code, see: United Nations Legislative Series, National Laws and Regulations on the Prevention and Suppression of International Terrorism, Part I (ST/LEG/SER.B/22), pp. 331-347.

considered as accomplices and are responsible for the commission of specific offences under the same article in the special section of the Penal Code as the perpetrator of the terrorist act. The extent of their liability is determined by the nature and extent of the actual participation by each person in the commission of the offence (section 1 of article 34 of the Penal Code).

Persons who supply weapons to terrorists are liable under article 222 of the Penal Code on "Illegal acquisition, transfer, sale, storage, transport or carrying of weapons, basic parts thereof, ammunition, explosives and explosive devices". Organizations engaged in similar activities are liable to liquidation, in accordance with article 25 of the Federal Act "On measures to combat terrorism".

Article 255 of the Penal Code establishes liability for the manufacture, acquisition or sale of chemical, biological or other types of weapons of mass destruction prohibited by the international agreements of the Russian Federation.

Article 12, section 1, of the Penal Code establishes that citizens of the Russian Federation and stateless persons who habitually reside in the Russian Federation who have committed offences outside the Russian Federation are liable to prosecution under the Penal Code if the acts committed by them are offences in the State in whose territory they were committed and if the persons have not been convicted in the foreign State.

Foreign nationals and stateless persons not habitually residing in the Russian Federation who have committed an offence outside the Russian Federation are liable to prosecution under the Penal Code of the Russian Federation if the offence is directed against the interests of the Russian Federation or if the case is covered by an international agreement of the Russian Federation, if the persons have not been convicted in the foreign State and are prosecuted in the Russian Federation (article 12, section 3, of the Penal Code).

Pursuant to subparagraph 1 (a) of its resolution, the State Duma of the Russian Federation (Parliament) on 28 June 2002 adopted Federal Act No. 97528-3 "On the introduction of amendments and additions to the Penal Code of the Russian Federation". This Act establishes increased liability for the recruitment and training of terrorists and the financing of terrorist activities and organizations.

(b) Decree No. 393 of The President of The Russian Federation of 17 April 2002 "On Measures To Implement United Nations Security Council Resolutions 1388 (2002) of 15 January 2002 and 1390 (2002) of 16 January 2002"

Decree No. 393 prohibits the supply, sale and transfer from the territory of the Russian Federation, or by its nationals outside its territory, to members of the al-Qa'idah organization and the Taliban movement and other persons, groups, companies and organizations connected with them, of manufactured articles for military use, dual-use goods and technology, spare parts, assembled units and auxiliary equipment for such articles and goods, and prohibits the provision of technical advice and assistance related to military activities in this field.

XCIX. RWANDA⁷⁵

ELEMENTS DU DISPOSITIF LEGISLATIF ET REGLEMENTAIRE DU RWANDA

Le Code Pénal institué par le décret-loi No. 21/77 du 18 août 1977 en son article 164 punit de la peine de mort tout individu qui aura recouru au terrorisme, à la force armée ou à toute autre violence en vue de porter atteinte aux pouvoirs établis et aux principes constitutionnels. Les auteurs en sont poursuivis, et le complot ayant pour but ces crimes est aussi réprimé d'un emprisonnement à perpétuité pourvu qu'un acte préparatoire soit posé.

En son article 154, 5° le Code Pénal réprime tout individu qui aura établi ou entretenu avec un État, un parti, une association, une institution étrangers ou une personne travaillant pour leur compte, des relations ayant pour but la communication des secrets d'État.

Il en est de même des articles réprimant les bandes hostiles visant à s'emparer des deniers publics, soit pour envahir des postes, magasins, arsenaux, ports, avions, bateaux, bâtiments ou autres propriétés de l'État ou soit pour faire attaque ou résistance envers la force publique (art. 170 à 173).

Les activités suivantes constituent des infractions :

- L'entretien de quelconques relations avec les partis, les associations ou institutions terroristes (art. 154, 5°);
- Le recours au terrorisme (art. 164);
- Le fait de porter atteinte aux pouvoirs étatiques établis (art. 164);
- Le complot en soi (art. 165);
- La création, l'organisation, la provocation et la direction des bandes hostiles ou des malfaiteurs (art. 170 à 173, 281 et 283 du Code pénal).

Les peines pour ces infractions varient entre le minimum de cinq ans de prison et la peine de mort.

Le Code Pénal réprime sévèrement les infractions contre les personnes et les propriétés lorsqu'elles sont commises en utilisant les actes de terrorisme. Cela se traduit par la peine de mort qui réprime la plupart des infractions en la matière.

⁷⁵ Transmitted to the Secretariat by that Government on 9 September 2002 (S/2002/1028, enclosure) and 3 July 2003 (S/2003/702, enclosure). Information was also provided in respect of Loi No 17/99 du 16 août 1999 portant sur l'immigration et l'émigration and Loi No. 34/2001 du 5 juillet 2001 sur les réfugiés.

Pour éviter que les recrutements, collectes de fonds et demandes d'aide ne soient opérés par des individus ou entités à des fins terroristes, des mesures législatives et pratiques suivantes ont été prises.

L'article 155 du Code Pénal punit toute personne qui aura établi ou entretenu des relations coupables avec un gouvernement ou une institution étrangère ou avec leurs agents.

L'article 163 du Code Pénal punit celui qui par dons, rémunérations, promesses, menaces, abus d'autorité ou de pouvoir, aura recruté des hommes ou provoqué ou recueilli des engagements d'hommes au profit d'une force armée autre que les armées régulières des États. En son alinéa 2, cet article punit quiconque aura accepté d'être engagé ou recruté au profit d'une force armée autre que les armées régulières des États.

C. SAINT KITTS AND NEVIS⁷⁶

ANTI - TERRORISM ACT, 2002

A BILL to give effect to the several United Nations Conventions and Protocols on the suppression and elimination of international terrorism; and to provide for related or incidental matters.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the National Assembly of Saint Christopher and Nevis, and with the authority of the same as follows:

PART I - PRELIMINARY

1. This Act may be cited as the Anti-Terrorism Act, 2002.

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

"act" and *"action"* include omission;

"article" includes a substance;

"authorized officer" means a police officer; a customs officer; or an immigration officer;

"border area" has the meaning given by section....;

⁷⁶ Transmitted to the Secretariat by that Government on 2 October 2002 (S/2002/1151, enclosure). Information was also provided in respect of the Firearms Act, 1967, the Proceeds of Crime Act, 2000; the Financial Intelligence Act, 2000 and the Immigration Act, 2002.

"captain" means a master of a ship or commander of an aircraft;

"cash" means

- (a) coins and notes in any currency;
- (b) postal orders;
- (c) cheques of any kind, including travelers' cheques;
- (d) banker's drafts;
- (e) bearer bonds and bearer shares;
- (f) any kind of monetary instrument specified as such by the Minister responsible for finance;

found at any place in Saint Christopher and Nevis;

"conduct" includes acts, omissions and statements;

"court" includes the High Court;

"criminal conduct" means conduct which constitutes one or more criminal offences under the law of Saint Christopher and Nevis, or conduct which is or corresponds to conduct which, if it all took place in Saint Christopher and Nevis, would constitute one or more criminal offences under the law of Saint Christopher and Nevis;

"criminal investigation" means an investigation of any criminal conduct, including an investigation of alleged or suspected criminal conduct, and an investigation of whether criminal conduct has taken place;

"driver", in relation to a vehicle which has been left on any road, means the person who was driving it when it was left there;

"dwelling" means

- (a) a building or part of a building used as a dwelling; or
- (b) a vehicle that is habitually stationary and used as a dwelling;

"examining officer" means a police officer, an immigration officer, or a customs officer;

"forfeiture order" means an order made under section 34;

"forfeited property" means property to which a forfeiture order applies;

"information" includes documents, and, in relation to a disclosure authorized by this Act, anything that falls to be treated as information for the purpose of the disclosure;

"interest",

(a) in relation to land, means any legal estate and equitable interest or power;

(b) in relation to property, other than land, includes any right, including a right to possession of the property;

"Minister" means the Minister responsible for national security;

"parking" means leaving a vehicle or permitting it to remain at rest;

"part", in relation to property, includes a portion;

"port" includes an airport and a hover port;

"premises" include any place and, in particular,

(a) a vehicle;

(b) an offshore installation; and

(c) a tent or movable structure;

"property", regardless of where it is situated, includes

(a) money;

(b) any form of property, real or personal, heritable or movable;

(c) anything in action or other intangible or incorporeal property;

(d) any interest a person holds or has in the property;

"property obtained through terrorism" has the meaning given by section 50;

"property earmarked as terrorist property" has the meaning given by section 51;

"public place" means a place to which members of the public have or are permitted to have access, whether or not for payment;

"Registrar" means the Registrar of the High Court;

"road" has the meaning assigned to it by section 2 of the Roads Act;⁷⁷

"ship" includes a hovercraft;

"terrorist", for the purposes of Part VII, means a person who

(a) has committed an offence under sections 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 29, or 30;

(b) is or has been concerned in the commission, preparation or instigation of acts of terrorism; and the reference to a person who has been concerned in the commission, preparation or instigation of acts of terrorism includes a reference to a person who has been, whether before or after the passing of this Act, concerned in the commission, preparation or instigation of acts of terrorism within the meaning of this definition;

"terrorist activity" means an action that takes place either within or outside of Saint Christopher and Nevis that

(a) is an offence under any of the United Nations Anti-terrorism Conventions and Protocols specified in subsection (2) of this section; or

(b) is taken or threatened for political, religious, or ideological purposes and threatens the public or national security by

(i) killing;

(ii) seriously harming or endangering any person,

(iii) causing substantial property damage that is likely to seriously harm people; or

(iv) interfering with or disrupting an essential service, activity or system;

(v) and terrorism shall be construed accordingly;

"terrorist cash" means cash which

(a) is intended to be used for terrorist purposes;

(b) consists of resources of a group which is a designated terrorist group;

⁷⁷ Cap. 268.

- (c) is, or represents, cash obtained through terrorism; or
- (d) is marked as terrorist property;

"terrorist group" means a group of persons designated as a terrorist group under section 3 of this Act whose activities meet the definition of terrorist activity;

"terrorist investigation" means the investigation of

- (a) the commission, preparation or instigation of acts of terrorism;
- (b) an act which appears to have been done for the purpose of terrorism;
- (c) the resources of a terrorist group;
- (d) the possibility of making an Order under section 3. (1); or
- (e) the commission, preparation or instigation, of an offence under this Act;

"terrorist property" means

- (a) money or other property which is likely to be used for the purposes of terrorism;
- (b) any resources of a designated terrorist group which is applied or made available, or is to be applied or made available, for use by the terrorist group;
- (c) proceeds of acts carried out for the purposes of terrorism;

and for the purposes of this definition a reference to proceeds of an act includes a reference to any property which wholly or partly, and directly or indirectly, represents the proceeds of the act, including payments or other rewards in connection with its commission;

"traffic sign" has the meaning assigned to it by section 2 of the Motor and Road Safety Act;⁷⁸

"vehicle" has the meaning assigned to it by the section 2 of the Motor and Road Safety Act;

"weapon" means.....

⁷⁸ Cap. 270.

(2) The Conventions and Protocols referred to in the definition of terrorist activity in subsection (1) are the following:

(a) Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on December 16, 1970;

(b) Convention for Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971;

(c) 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 December 14, 1973;

(d) International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979;

(e) Convention on the Physical Protection of Nuclear Material, done at Vienna and New York on March 3, 1980;

(f) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on February 24, 1988;

(g) Convention for Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988;

(h) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on March 10, 1988;

(i) International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997; and

(j) International Convention for the Suppression on the Financing of Terrorism, adopted by the General Assembly of the United Nations on December 9, 1999.

(3) For the purposes of this Act, proceedings for an offence are instituted

(a) when a summons or warrant is issued under the Magistrates Code of Procedure Act in respect of the offence;

(b) when a person is charged with an offence after being taken into custody without a warrant;

(c) when an indictment is filed by virtue of section 20 of the Criminal Procedure Act;⁷⁹

and where the application of this subsection would result in there being more than one time for the institution of proceedings, then proceedings shall be taken to be instituted at the earliest of any of those times.

(4) For the purposes of this Act, proceedings for an offence are concluded

(a) when a forfeiture order has been made in the proceedings and effect has been given to it in respect of all the forfeited property; or

(b) when no forfeiture order has been made in the proceedings and there is no further possibility of one being made as a result of an appeal, disregarding any power of the court to grant leave to appeal out of time.

PART II - TERRORIST GROUPS ETC.

DESIGNATION OF TERRORIST GROUPS

Designation of terrorist groups

3. (1) For the purposes of this Act, the Minister may, acting on the advice of the Attorney-General, by Order, designate any person or group of persons, whose activities fall within the definition of terrorist activity, as a terrorist or terrorist group.
- (2) The Minister, acting on the advice of the Attorney-General, may, in accordance with the provisions of this Act, and from time to time, add or remove any person or group of persons from the list of designated terrorists or terrorist groups made under subsection (1).

Removal of a terrorist group from the list

4. (1) An application may be made to the Minister for the exercise of his powers under section 3. (2), and the application may be made by the designated person or designated groups of persons, or a person affected by the group's designation.
- (2) The Minister shall, by regulations made under this Act, prescribe the procedure for applications required to be made under this section.

⁷⁹ Cap. 20.

Appeal against Minister's decision

5. (1) Where an application made under section 4 is refused by the Minister, the applicant may appeal to the High Court.

(2) The judge shall allow the appeal if he considers that the decision of the Minister was flawed when the decision is considered in the light of the principles applicable on an application for judicial review.

(3) Where the judge allows an appeal under this section by or in respect of a terrorist or a terrorist group, he may make an order to that effect.

(4) Where an order is made under subsection (3) the Minister shall, as soon as reasonably practicable, lay before the National Assembly a draft of an Order made under section 3 (2) removing the person or group from the list, and thereafter the Minister shall have the Order gazetted in the Official Gazette.

Appeal to the Court of Appeal

6. (1) A party to an appeal determined by the High Court in accordance with the provisions of section 5 may bring a further appeal on a question of law to the Court of Appeal.

(2) An appeal under subsection (1) may be brought only with the permission of the High Court, or where the High Court refuses to give the permission, with the permission of the Court of Appeal.

(3) An order made pursuant to the provisions of section 5. (4) shall not require the Minister to take any action until the final determination or disposal of an appeal under this section.

Effect of appeal on conviction

7. (1) This section applies where
 - (a) an appeal made under section 5 is allowed in respect of a designated terrorist group;
 - (b) an Order is made under section 3. (2) in respect of a designated terrorist group in accordance with an order of the High Court made under section 5. (3);
 - (c) a person is convicted of an offence in respect of the terrorist group under section 9, 10, 11, 12, 13, 14, 15, 17, or 25; and
 - (d) the activity to which the charge refers took place on or after the date of the refusal to remove a name of a group from the list of

designated terrorist groups against which the appeal made under section 5 is brought.

(2) Where a person referred to in subsection (1)(c) is convicted of an offence on indictment, he may, within a period of twenty eight days beginning with the date on which the Order referred to in subsection (1) (b) comes into force, appeal against the conviction to the Court of Appeal, and that Court shall hear the appeal on its own merits.

(3) Where a person referred to in subsection (1)(c) is convicted of an offence by a Magistrate Court, he may, within a period of twenty one days beginning with the date on which the Order referred to in subsection (1)(b) comes into force, appeal against the conviction to the High Court, and that Court shall hear the appeal on its own merits.

Certain evidence not to be admissible

8. (1) The following shall not be admissible as evidence in proceedings for an offence under sections 9, 10, 11, 13, 14, 15, 16, 17, or 18, that is to say,

(a) evidence of anything done in relation to an application made to the Minister under section 4;

(b) evidence of anything done in relation to proceedings under sections 5 and 6; and

(c) any document submitted for purposes of proceedings mentioned in paragraphs (a) and (b).

(2) Notwithstanding the provisions of subsection (1), that subsection shall not prevent evidence from being adduced on behalf of the accused person.

OFFENCES UNDER THIS PART

Offence of belonging to a terrorist group

9. (1) A person who belongs or professes to belong to a designated terrorist group commits an offence and is liable.

(a) on conviction on indictment, to imprisonment for a term not exceeding ten years, or a fine or both;

(b) summary conviction, to imprisonment for a term not exceeding six months, or a fine or both;

(2) It is a defence for a person charged with an offence under subsection (1) to prove that

(a) the designated terrorist group was not a designated group on the last occasion on which he became a member or began to profess to be a member; and

(b) he has not taken part in the activities of the terrorist group at any time while it was a designated terrorist group.

Offence of supporting a terrorist group etc.

10. (1) A person commits an offence if he or she

(b)⁸⁰ invites support for a terrorist group, and the support is, or is not restricted to, the provision of money or property or other property within the meaning of section 13;

(c) arranges, manages or assists in arranging or managing a meeting which he knows is to support a terrorist group,

(i) further the activities of a terrorist group, or

(ii) be addressed by a person who belongs or professes to belong to a terrorist group;

(c) addresses a meeting and the purpose of the address is to encourage support for a terrorist group or to further its activities.

(2) Where a person is charged of an offence under subsection (1)(c), it is a defence for him to prove that he had no reasonable cause to believe that the address would support or further the activities of a terrorist group.

(3) A person convicted of an offence under this section is liable,

(a) on conviction on indictment, to imprisonment for a term not exceeding ten years or to a fine, or both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine, or both.

(4) In this section "meeting" means a meeting of three or more persons, whether or not the public are admitted.

Wearing a Uniform Etc. of a Terrorist Group

11. (1) A person who, in a public place, wears an item of clothing, or wears, carries, or displays an article, in a way or in circumstances that

⁸⁰ Formatting matches that of Government submission.

arouse reasonable suspicion that he is a member or supporter of a designated terrorist group commits an offence and is liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding seven thousand dollars or both.

(2) A police officer may arrest a person without a warrant if the officer has reasonable grounds to suspect that the person has committed an offence under this section.

PART III - TERRORIST FINANCING

OFFENCES

Offence of Fund-raising for Terrorist Activities, etc.

12. (1) A person commits an offence if he or she
- (a) invites another person, directly or indirectly, to provide property; and
 - (b) intends that the property is to be used, or has reasonable cause to suspect that property is to be used, for the purposes of terrorism;
 - (c) solicits support for, or gives support to, a terrorist or terrorist group;
 - (d) solicits support for, or gives support to, a terrorist or terrorist group.
- (2) For the purposes of subsection (1)(c), an offer to provide, or the provision of, forged or falsified travel documents to a terrorist or member of a terrorist group constitutes giving of support to a terrorist or terrorist group.
- (3) A person who receives property, directly or indirectly, and intends that the property is to be used, or has reasonable cause to suspect that the property is to be used, for the purposes of terrorism commits an offence.
- (4) A person commits an offence if he or she
- (a) provides or collects funds, directly or indirectly, knowing or having reasonable cause to suspect that the funds are to be used, in whole or in part, for the purpose of carrying out a terrorist activity; or
 - (b) deals in any property, directly or indirectly, knowing or having reasonable cause to suspect that the property is owned or controlled by or on behalf of a person or group engaged in terrorist activities;

(c) knowingly enters into, or facilitates, directly or indirectly, any transaction in respect of property referred to in paragraph (b); or

(d) provides financial or other services in respect of property referred to in paragraph (b) at the direction of a terrorist or terrorist group.

(5) A person who acts reasonably in taking or omitting to take measures not to contravene the provisions of subsection (1) shall not be liable in any civil action from having taken or omitted to have taken those measures if the person proves that he took all reasonable measures to satisfy himself that the relevant property was owned or controlled by or on behalf of a person or group of persons engaged in terrorist activities.

(6) A person convicted of an offence under this section is liable,

(a) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine, or both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine, or both.

Use and possession of property for terrorist purposes

13. (1) A person commits an offence if he or she

(a) uses property, directly or indirectly, in whole or in part, for the purposes of engaging in, or facilitating, terrorism; or

(b) possesses property and intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of engaging in, or facilitating, terrorism.

(2) A person convicted of an offence under this section is liable

(a) on conviction on indictment, to imprisonment to a term not exceeding fourteen years or to a fine, or both; or

(c) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding seven thousand dollars, or both.⁸¹

⁸¹ Formatting conforms with that of Government submission.

Entering into funding arrangements for terrorist purposes

14. (1) A person commits an offence if that person enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available, and the person knows or has reasonable cause to suspect that the money or other property is to be used for terrorist purposes.
- (2) A person who is charged of an offence under this section is liable,
- (a) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine, or both; or
- (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding seven thousand dollars, or both.

Engaging in money laundering for terrorist purposes

15. (1) A person commits an offence if he or she enters into or becomes concerned in an arrangement which facilitates the retention or control by or on behalf of another person of terrorist property
- (a) by concealment;
- (b) by removal from the jurisdiction;
- (c) by transfer to nominees; or
- (d) in any other way.
- (2) A person who is charged of an offence under this section is liable,
- (a) on conviction on indictment, to imprisonment to a term not exceeding fourteen years or to a fine, or both; or
- (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding seven thousand dollars, or both.

Jurisdiction to hear terrorist financing committed overseas

16. (1) A person who does anything outside Saint Christopher and Nevis, and the action of that person would have constituted the commission of an offence under section 12, 13, 14, or 15 if the action had been done in Saint Christopher and Nevis commits an offence, and may, if the person is found in Saint Christopher and Nevis, be prosecuted.

(2) The power to prosecute a person under subsection (1) shall be exercised without prejudice to the provisions of the Extradition Act.⁸²

(3) For the purposes of this section, section 15 (1)(b) shall be read as if for "jurisdiction" there were substituted "a jurisdiction".

Duty to disclosure information relating to a person who has committed a terrorist financing offence

17. (1) A person who believes or suspects that another person has committed an offence under section 12, 13, 14, or 15, and bases his belief or suspicion on information that comes to his attention in the course of a trade, profession, business, or employment shall, as soon as reasonably practicable, disclose his belief or suspicion, and the information on which it is based to a police officer, except that this subsection shall not apply to information which comes to a person in the course of a business in the regulated sector.

(2) A person who fails to comply with subsection (1) commits an offence and is liable,

(a) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine, or both; or

(b) on summary conviction, to improvement to a term not exceeding six months or to a fine not exceeding seven thousand dollars, or both.

(3) It shall be a defence for a person charged with an offence under subsection (2)

(a) to prove that he had a reasonable excuse for not making the disclosure; or

(b) if he is in employment where there are established procedures for the making of the disclosures specified in subsection (1) to prove that he disclosed the matters specified in that subsection in accordance with the procedure.

(4) A professional legal adviser shall not be required by subsection (1) to disclose

(a) information; or

(b) a belief or suspicion based on information; which he obtains in privileged circumstances.

⁸² Act No. 32 of 1976.

(5) For the purposes of subsection (4), information is obtained by a professional legal adviser in privileged circumstances if it comes to him, otherwise than with a view to furthering a criminal purpose,

(a) from a client or a client's representative, in connection with the provision of legal advice by the adviser to the client;

(b) from a person seeking legal advice from the adviser or from the person's representative; or

(c) from any person, for the purpose of actual or contemplated legal proceedings.

(6) A person commits an offence if that person

(a) knows or suspects, or has reasonable grounds to know or suspect, that another person has committed an offence under section 12, 13, 14, or 15, and the information or other matter

(i) on which his knowledge or suspicion is based; or

(ii) which gives reasonable grounds for the knowledge or suspicion,

came to him in course of business in the regulated sector; and

(b) does not disclose the information or other matter to a police officer or a nominated officer as soon as is practicable after it comes to him.

(7) It shall be a defence for a person charged with an offence under subsection (6) to prove that

(a) he had a reasonable excuse for not disclosing the information or other matter; or

(b) he is a professional legal adviser and that the information or other matter came to him in privileged circumstances.

(8) The court shall, in deciding whether a person committed an offence under subsection (6), consider whether the person followed any relevant guidance which was, at the time concerned,

(a) issued by a supervisory authority or any other appropriate body;

(b) approved by the Ministry responsible for finance; and

(c) published in a manner approved as appropriate to bring the guidance at the attention of persons likely to be affected by it.

(9) A person who commits an offence under subsection (6) shall be liable.

(a) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or both; or

(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding five thousand dollars, or both.

(10) A disclosure to a nominated officer referred to in subsection (6) is a disclosure which is made

(a) to a person nominated by the alleged offender's employer to receive disclosures under this section; and

(b) in the course of the alleged offender's employment and in accordance with the procedure established by the employer for the purpose.

(11) Information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him by

(a) a client or client's representative in connection with the giving by the adviser of legal advice to the client; or

(b) a person or person's representative seeking legal advice; or

(c) a person in connection with the legal proceedings or contemplated legal proceedings;

except that this subsection shall not apply to information or other matter which is communicated or given with a view to furthering a criminal purpose.

(12) For the purposes of subsection (8)(a) appropriate body is any body which regulates or is representative of any trade, profession, business, or employment carried on by the alleged offender.

(13) Notwithstanding any law to the contrary, a disclosure which is made in accordance with the provisions of this section shall not be taken to be a breach of any restriction on the disclosure of information imposed by any law or otherwise.

(14) For the purposes of subsection (6) a person shall be deemed to have committed the offence provided for in that subsection if the person

- (a) has taken an action or been in possession of a thing; and
- (b) would have committed the offence if he had been in Saint Christopher and Nevis at the time when he took the action or was in possession of the thing.

Discretionary disclosure of information relating to a person who has committed a terrorist financing offence

18. (1) A person may disclose to a police officer a suspicion or belief that money or other property is terrorist property or is derived from terrorist property, and any matter or information on which the suspicion is based.
- (2) A person may make a disclosure to a police officer in the circumstances specified in section 17. (1) and (2).
- (3) Subsections (1) and (2) shall have effect notwithstanding any restriction on the disclosure of information imposed by statute or otherwise.
- (4) Subsections (1) and (2) shall have effect in relation to a person who is in employment where there are established procedures for making the type of disclosures specified in subsection (1) and section 17. (1) as if any reference to disclosure to a police officer included a reference to disclosure in accordance with the procedure.

Disclosure of information relating to property owned or controlled by a terrorist

19. (1) Subsection (2) of this section applies to a person who is a citizen of Saint Christopher and Nevis but is outside Saint Christopher and Nevis.
- (2) A person referred to in subsection (1) who
- (a) has possession, custody or control of property that belongs to a terrorist or a designated terrorist group owned or controlled by a terrorist; or
 - (b) has information about a transaction or proposed transaction in respect of the property referred to in paragraph (a);
- shall immediately inform the Chief of Police, or such other person as the Minister may designate, of that fact or information and provide such further information relating to the property, or transaction or proposed transaction, as the Chief of Police or designated person may require.
- (3) A person shall forthwith disclose to the Financial Intelligence Unit
- (a) the existence of any property in his possession or control, which is to his knowledge, owned or controlled by or on behalf of a terrorist or terrorist group;

(b) any information regarding a transaction or proposed transaction in respect of any property referred to in paragraph (a)

(4) A financial institution shall report, every three months, to the Financial Intelligence Unit and the Financial Services Commission that

(a) it is not in possession or control of any property owned or controlled by or on behalf of a terrorist or terrorist group;

(b) it is in possession or control of any property referred to in paragraph (a), and in that case it shall give the particulars relating to the persons, accounts, transactions involved, and the total value of the property.

(5) A person who contravenes subsection (2) commits an offence and is liable,

(a) on summary conviction, to a fine not exceeding thirty thousand dollars or to imprisonment for a term not exceeding one year, or both;

(b) on conviction on indictment, to a fine not exceeding sixty thousand dollars or to imprisonment for a term not exceeding three years, or both.

(6) A person who contravenes subsection (3) or (4) commits an offence and is liable,

(a) on summary conviction, to a fine not exceeding forty thousand dollars or to imprisonment for a term not exceeding three years, or both;

(b) on conviction on indictment, to a fine not exceeding ninety thousand dollars or to imprisonment for a term not exceeding 15 years, or both.

(7) No civil or criminal proceedings shall lie against any person for making a disclosure or report, in good faith, under this section.

COOPERATION WITH POLICE, AND DEFENCES

Cooperation with police

20. (1) A person who is acting with the express consent of the police shall not be charged of any offence specified in section 12, 13, 14 or 15.

(2) A person who involves himself in a transaction or arrangement relating to money or other property which he suspects to be terrorist

property and discloses to a police officer his suspicion or belief and the information on which his suspicion or belief is based shall not be charged of any offence specified in section 12, 13, 14, or 15.

- (3) Subsection (2) shall only apply to a person who makes a disclosure
- (a) after he has become concerned in the transaction or arrangement concerned;
 - (b) on his own initiative; and
 - (c) as soon as is reasonably practicable.
- (4) Subsection (2) shall not apply to a person who continues his involvement in the transaction or arrangement to which the disclosure relates after a police officer has forbidden him to continue his involvement.
- (5) In this section, a reference to a transaction or arrangement relating to property includes a reference to use or possession.

Defense to offences under sections 12.(1)&(3), 13, 14 and 15

21. (1) It shall be a defence to a person charged with an offence under section 12, (2) & (3), 13, 14, or 15 to prove that he intended to make a disclosure provided for in section 17. (2) and (3), and that there is reasonable excuse for his failure to do so.
- (2) This section shall have effect in relation to a person who is in employment where there are established procedures for making the type of disclosures specified in subsection (1) and section 17.(1) as if any reference to disclosure to a police officer included a reference to disclosure in accordance with the procedure.

PART IV - TERRORIST OFFENCES

Participating etc. in terrorist activities

22. (1) A person commits an offence if he or she knowingly
- (a) participates in, contributes to, or facilitates the activities of a terrorist group; or
 - (b) aids or abets a terrorist group to facilitate the activities of the terrorist group.
- (2) A person who is convicted of an offence under

(a) subsection (1)(a) is liable to imprisonment for a term not exceeding ten years;

(b) subsection (1)(b) is liable to imprisonment for a term not exceeding fourteen years.

Recruiting persons into a terrorist group

23. A person who knowingly recruits another person into a terrorist group, for the purpose of enhancing the ability of the terrorist group to aid, abet, or commit any offence, commits an offence, and is liable, on conviction, to imprisonment for a term not exceeding ten years.

Instructing a person to carry out a terrorist activity

24. (1) A person commits an offence if he or she

(a) instructs another person to carry out a terrorist activity on behalf of a terrorist group;

(d) knowingly harbours or conceals a terrorist;⁸³

(c) commits an indictable offence under any enactment for the benefit of, or at the direction of, or in association with, a terrorist group.

(2) A person who is convicted of an offence under

(a) subsection (1)(a) and (c) is liable to imprisonment for a term not exceeding life sentence;

(b) subsection (1)(b) is liable to imprisonment for a term not exceeding ten years.

Training of terrorists

25. (1) A person commits an offence if that person knowingly agrees to provide instructions or training, or provides instructions or training

(a) in the making or use of any weapon;

(b) carrying out terrorist activities; and

(c) in the practice of military exercises or movements, to a terrorist or a person engaging in, or preparing to engage in, terrorism.

⁸³ Formatting conforms with that of Government submission.

(2) A person who receives instructions or training referred to in subsection (1) commits an offence.

(3) A person who invites another person to receive instructions or training and the receipt would constitute an offence under subsection (2) but for the fact that it is to take place outside Saint Christopher and Nevis commits an offence.

(4) It shall be a defence for a person charged with an offence under this section in relation to instruction or training to prove that his action or involvement was wholly for a purpose other than assisting, preparing for or participating in terrorism.

(5) A person who is convicted of an offence under this section shall be liable,

(a) on conviction on indictment, to imprisonment for a term not exceeding ten years or to a fine of or both; or

(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding seven thousand dollars, or both.

(6) A court by or before which a person is convicted of an offence under this section may order the forfeiture of anything which the court considers to have been in the person's possession for purposes connected with the offence.

(7) The court shall, before making an order under subsection (6), give an opportunity to be heard to any person, other than the convicted person, who claims to be the owner of or otherwise interested in anything which can be forfeited under that subsection.

(8) An order made under subsection (6) shall not come into force until there is no further possibility of the order being varied, or set aside, on appeal.

(9) For the purposes of subsections (1) and (3),

(a) a reference to the provision of instruction includes a reference to making it available either generally or to one or more specific persons; and

(c) an invitation to receive instruction or training may be either general or addressed to one or more specific persons.⁸⁴

⁸⁴ Formatting conforms with that of Government submission.

Directing terrorist group

26. A person who directs, at any level, the activities of a terrorist group commits an offence, and is liable, on conviction on indictment to imprisonment for life.

Possession of articles for terrorist purposes

27. (1) A person who possesses an article in circumstances that give rise to reasonable suspicion that the possession of the article is for a purpose connected with the commission, preparation, or instigation of an act of terrorism commits an offence, and is liable,

(a) on conviction on indictment, to imprisonment for a term not exceeding ten years or to a fine of or both; or

(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding seven thousand dollars, or both.

(2) It shall be a defence for a person charged with an offence under this section to prove that his possession of the article was not for a purpose connected with the commission, preparation, or instigation of an act of terrorism.

(3) In any proceedings for an offence under this section, if it is proved that an article was on premises

(a) at the same time as the accused; or

(b) of which the accused was the occupier or which he habitually used otherwise than as a member of the public;

the court may assume that the accused possessed the article, unless he proves that he did not know of its presence on the premises or that he had no control over it.

Intelligence gathering for terrorist activity

28. (1) A person who gathers intelligence in Saint Christopher and Nevis for the purpose of using the intelligence to contribute to, facilitate, aid or abet the activities of a terrorist group commits an indictable offence, and is liable, on conviction, to a penalty not exceeding life imprisonment.

(2) A person who collects, makes, or possesses, a document or record of information likely to be useful to a person committing or preparing an act of terrorism commits an offence, and is liable,

(a) an conviction on indictment, to imprisonment for a term not exceeding ten years or a fine of or both; or

(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding seven thousand dollars, or both.

(3) It shall be a defence for a person charged with an offence under subsection (2) to prove that he had reasonable excuse for his action or possession.

(4) A court by or before which a person is convicted of an offence under this section may order the forfeiture of any document or record containing the kind of information mentioned in subsection (2).

(5) The court shall, before making an order under subsection (4), give an opportunity to be heard to any person, other than the convicted person, who claims to be the owner of or otherwise interested in anything which can be forfeited under that subsection.

(6) An order made under subsection (4) shall not come into force until there is no further possibility of the order being varied, or set aside, on appeal.

(7) In this section "record" includes a photographic or electronic record.

Preparatory acts offence

29. A person who knowingly prepares to commit any offence specified in sections 9, 10, 12, 13, 14, 15, 22, 23, 25, 26, 27, 28, 30, or 31, commits an offence, and is liable,

(a) on conviction on indictment, to imprisonment for a term not exceeding ten years or a fine of, or both; or

(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding seven thousand dollars, or both.

Inciting terrorism abroad

30. (1) A person who incites another person to commit an act of terrorism wholly or partly outside Saint Christopher and Nevis, and the act would, if committed in Saint Christopher and Nevis, constitute any one of the offences specified in subsection (2) commits an offence.

(2) The offences referred to in subsection (1) are the following:

- (a) murder;
- (b) wounding with intent;
- (c) poisoning with intent;
- (d) causing explosions; and
- (e) endangering life by damaging property.

(2)⁸⁵ A person who, in Saint Christopher and Nevis,

(a) knowingly promotes or facilitates the doing of any act in a foreign State for the purpose of achieving any of the following objectives, whether or not the objectives are achieved or not,

(i) the overthrow, by force or violence, of the government of that foreign State;

(ii) causing by force or violence, the public in that foreign State to be in fear of death or bodily injury;

(iii) causing death of, or bodily injury to, a person who is the head of that foreign State, or holds or performs any of the duties of, a public office of that foreign State;

(iv) unlawfully destroying or damaging any property belonging to the government of that foreign State;

(b) accumulates, stockpiles or otherwise keeps, any weapons for the purposes of doing any act referred to in paragraph (a);

(c) trains or drills, or participates in the training or drilling, of any other person in the use of weapons or in the practice of military exercises or movements to prepare that person to do any act referred to in paragraph (a);

(d) allows himself to be trained or drilled, in the use of weapons or in the practice of military exercises or movements for the purpose of doing any act referred to in paragraph (a);

(e) gives any money or goods to, or performs services for, any other person or body or association of persons for the purpose of promoting or supporting the doing of any act referred to in paragraph (a);

⁸⁵ Formatting conforms with that of Government submission.

(f) receives or solicits money or goods, or the performance of services for the purpose of promoting or supporting the doing of any act referred to in paragraph (a);

commits an offence, and shall be liable, on conviction, to imprisonment for a term not exceeding ten years.

(3) A person who is convicted of an offence under subsection (1) is liable to a penalty to which he would be liable on conviction of the offence specified in subsection (2) which corresponds to the act which he incited.

(4) For the purposes of subsection (1), it is immaterial whether or not the person incited is in Saint Christopher and Nevis at the time of the incitement.

(5) A person who

(a) being the owner, occupier, lessee or person in charge of a building, premises, room, or place, knowingly permits a meeting of persons to be held in that building, premises, room, or place;

(b) being the owner, charterer, lessee, operator, agent, or master of vessel or the owner, charterer, lessee, operator, agent, or pilot in charge of an aircraft knowingly permits that vessel or aircraft to be used;

for the purpose of committing an offence under subsection (3), or promoting or supporting the commission of an offence under that subsection commits an offence, and shall be liable, on conviction, to imprisonment for a term not exceeding fifteen years.

(7) Nothing in this section imposes criminal liability on any person acting on behalf of, or holding office under, the Crown.

Terrorist bombing and provision of weapons to terrorists

31. (1) A person who does anything outside Saint Christopher and Nevis as an act of terrorism or for the purposes of terrorism, and the act would, if done in Saint Christopher and Nevis, constitute one of the offences specified in subsection (2) commits an offence.

(2) The offences referred to in subsection (1) are the following:

(a) causing explosions; and

(b) using any other weapon illegally.

(3) A person who knowingly offers to provide or provides any weapon to a terrorist, terrorist group, or member of a terrorist group, or any other person for use by, or for the benefit of, a terrorist group or a member of a terrorist group commits an offence and shall be liable, on conviction, to imprisonment for life.

(4) A person who is convicted of an offence under subsection (1) is liable to a penalty to which he would be liable on conviction of the offence specified in subsection (2) which corresponds to the act which he did.

PART V - FREEZING OF TERRORIST PROPERTY

RESTRAINT ORDERS

Application for, and contents of a restraint order, etc.

32. (1) The High Court may, upon application by a police officer, grant a restraint order where
- (a) proceedings are or have been instituted in Saint Christopher and Nevis for an offence under section 12, 13, 14, or 15;
 - (b) proceedings have not been concluded;
 - (c) a forfeiture order has been made in the proceedings.
- (2) Notwithstanding subsection (1), the High Court may grant a restraint order where
- (a) the court is satisfied that a person is to be charged in Saint Christopher and Nevis with an offence under section 12, 13, 14, or 15;
 - (b) an application for a restraint order is made to the court by a police officer; and
 - (c) it appears to the court that a forfeiture order may be made in the proceedings.
- (3) A restraint order shall prohibit a person to whom notice is given, subject to any conditions and exceptions specified in the order, from dealing with any property in respect of which a forfeiture order has been or is likely to be made in the proceedings referred to in subsection (1) or (2).
- (4) An application for a restraint order may be made to a judge in chambers without notice.

(5) The court shall, on granting a restraint order, make provision in the order for notice to be given to any person affected by the order.

(6) A restraint order may be discharged or varied by the court on the application of a person affected by the order, and in particular, the order shall be discharged.

(a) in the case of an order made under subsection (2), if the proceedings in respect of the offence are not instituted within such time as the court considers reasonable;

(b) in any case, if the proceedings for the offence have been concluded.

Seizure of property subject to a restraint order

33. (1) A police officer may seize any property which is subject to a restraint order for the purpose of preventing the property from being removed from Saint Christopher and Nevis.

(2) Property seized under this section shall be dealt with in accordance with the directions of the High Court.

FORFEITURE ORDERS

Forfeiture orders in relation to offences under sections 12, 13, 14, and 15

34. (1) A court by or before which a person is convicted of an offence under section 12, 13, 14, or 15 may grant a forfeiture order in accordance with the provisions of this section.

(2) Where a person is convicted of an offence under section 12. (1) or (2), or 13, the court may order the forfeiture of any property which,

(a) at the time of the offence, he had in his possession or under his control; and

(b) at that time, he intended should be used, or had reasonable cause to suspect that it might be used, for terrorist purposes.

(3) Where a person is convicted of an offence under section 12. (3), the court may order the forfeiture of any property which,

(a) at the time of the offence, he had in his possession or under his control; and

(b) at that time, he knew or had reasonable cause to suspect that it would or might be used, for terrorist purposes.

(4) Where a person is convicted of an offence under section 14, the court may order the forfeiture of any property

(a) to which the arrangement in question related; and

(b) to which at the time of the offence, he knew or had reasonable cause to suspect that it would or might be used, for terrorist purposes.

(5) Where a person is convicted of an offence under section 15, the court may order the forfeiture of any property to which the arrangement in question related.

(6) Where a person is convicted of an offence under section 12, 13, 14, or 15, the court may order the forfeiture of any property to which wholly or partly, and directly or indirectly is received by any person as a payment or other reward in connection with the offence.

(7) Where a person, other than the convicted person, claims to be the owner of or otherwise interested in anything which can be forfeited under this section, the court shall give him an opportunity to be heard before making the order.

Implementation of a forfeiture order

35. (1) Where a court grants a forfeiture order under section 34 the court may make such other provisions as appear to the court to be necessary for giving effect to the order, and may, in particular,

(a) require that any of the forfeited property be paid or handed over to the Registrar;

(b) direct that any of the forfeited property, other than money and land, be sold or otherwise disposed of in such manner as the court may direct and the proceeds of sale, if any, to be paid to the Registrar;

(c) appoint a receiver to take possession, subject to such conditions and exceptions as may be specified by the Court, of any forfeited property, to realize it in such manner as the court may direct and to pay the proceeds to the Registrar;

(d) direct that a specified part of any forfeited money, or of the proceeds of the sale, disposal or realization of any forfeited property, be paid to the Registrar.

(2) A forfeiture order shall not come into force until there is no further possibility that the order may be varied or set aside on appeal.

(3) A receiver appointed under subsection (1) shall be entitled to be paid remuneration and expenses by the Registrar out of the proceeds of the property realized by the receiver in accordance with this section.

(4) A receiver appointed under subsection (1) shall not be liable to any person in respect of any loss or damage resulting from action

(a) he takes in relation to property that is not forfeited property, but which he reasonably believes to be forfeited property;

(b) he would be entitled to take if the property were forfeited property; and

(c) he reasonably believes he is entitled to take because of his belief that the property is forfeited property.

(5) Subsection (4) shall not apply in so far as the loss or damage is caused by the receiver's negligence.

(6) For the purposes of subsection (1)(b) and (d), a reference to the proceeds of sale, disposal or realization of property is a reference to the proceeds after deduction of the costs of sale, disposal or realization of property.

SEIZURE AND DETENTION OF TERRORIST CASH ETC.

Seizure of cash

36. (1) An authorized officer may seize any cash if he has reasonable grounds for suspecting that the cash is terrorist cash.

(2) An authorized officer may also seize cash part of which he has reasonable grounds for suspecting to be terrorist cash if it is not reasonably practicable to seize only that part.

Detention of seized cash

37. (1) An authorized officer may, as long as he continues to have reasonable grounds for his suspicion, detain cash seized by him under section 36, initially, for a period of forty eight hours.

(2) The period referred to in subsection (1) may be extended by an order made by a Magistrates' Court upon an application by an authorized officer, except that the order shall not authorize the detention of any of the cash.

(a) beyond a period of three months beginning with the date of the order; and

- (b) in the case of a further order under this section beyond a period of two years beginning with the date of the first order.
- (3) An order made under subsection (2) shall provide for notice to be given to the persons affected by it.
- (4) The court shall not make an order under subsection (2) unless it is satisfied that one of the following conditions is met:
- (a) that there are reasonable grounds for suspecting that the cash is intended to be used for the purposes of terrorism and that either
 - (i) its continued detention is justified while its intended use is further investigated or consideration is given to bringing, in Saint Christopher and Nevis or elsewhere, proceedings against any person for an offence with which the cash is connected,
 - (ii) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded;
 - (b) that there are reasonable grounds for suspecting that the cash consists of resources of a designated terrorist group and that either
 - (i) its continued detention is justified while its intended use is further investigated or consideration is given to bringing, in Saint Christopher and Nevis or elsewhere, proceedings against any person for an offence with which the cash is connected,
 - (ii) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded;
 - (c) that there are reasonable grounds for suspecting that the cash is property earmarked as terrorist property and that either
 - (i) its continued detention is justified while its derivation is further investigated or consideration is given to bringing, in Saint Christopher and Nevis or elsewhere, proceedings against any person for an offence with which the cash is connected,
 - (ii) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

Detained cash to be kept on account

38. (1) Where cash is detained under this Part for more than forty eight hours, the cash shall be deposited and held on an interest-bearing account, and the interest accruing on it shall be added to it on its forfeiture or release.
- (2) Where cash is seized by virtue of the provisions of section 36. (2), the authorized officer shall, on paying it into the account, release so much of the cash then held in the account as is not attributable to terrorist cash.
- (3) Subsection (1) shall not apply where the cash is required as evidence of an offence or evidence in proceedings under this Part.

Release of detained cash

39. (1) This section applies while any cash is detained under this Part.
- (2) A Magistrates' Court may direct the release of the whole or part of the cash if the court is satisfied, on an application by a person from whom the cash was seized, that the conditions set out in section 37. (4) for the detention of the cash are no longer met in relation to the cash to be released.
- (3) An authorized officer may, after notifying the Magistrates' Court under whose order cash is being detained, release the whole or part of the cash if the officer is satisfied that the detention of the cash to be released is no longer justified.
- (4) Notwithstanding subsections (2) and (3), cash shall not be released if
- (a) an application for the forfeiture of the cash is made in accordance with the provisions of section 37 or an application for the release of the cash is made in accordance with the provisions of section 40, until proceedings in respect of the application, including proceedings on appeal, are concluded;
 - (b) proceedings, in Saint Christopher and Nevis or elsewhere, are commenced against any person for an offence with which the cash is connected, until the proceedings are concluded.

Forfeiture of detained cash

40. (1) An authorized officer may, while cash is detained under this Part, make an application to a Magistrates' Court for the forfeiture of the whole or part of the cash that is reasonably believed to be terrorist cash.

(2) The court may make an order for the forfeiture of the cash or part of the cash if the court is satisfied that the cash or part of it is terrorist cash.

(3) Where property earmarked as terrorist property belongs to joint tenants, one of whom is an excepted joint owner, the order shall not apply to the property which, in the opinion of the court, is attributable to the excepted joint owner's share.

(4) An excepted joint owner is a joint tenant who obtained the property in circumstances in which it would not, as against him, be ear-marked, and references to his share of the earmarked property are to so much of the property as would have been his if the joint tenancy had been severed.

Appeal against a forfeiture order

41. (1) A party to proceedings in which an order is made under section 40 who is aggrieved by the order may appeal to the High Court, and the appeal shall be by way of rehearing.

(2) Where a forfeiture order is made on the basis that a group of persons is a designated terrorist group, then the affected group may appeal against the order if

(a) an appeal made pursuant to the provisions of section 5 to have the terrorist group removed from the list is allowed;

(b) an order is made under section 3.(2) in respect of the terrorist group in accordance with an order made under section 5;

(c) the forfeited cash was seized under this Part on or before the date of the refusal by the Minister to remove the terrorist group from the list against which decision an appeal is brought under section 5.

(3) An appeal made pursuant to the provisions of

(a) subsection (1) shall be made within a period of thirty days beginning on the day on which the order is made;

(b) subsection (2) shall be made before the end of a period of thirty days beginning with the date on which the order made under section 3.(2) comes into force.

(4) The High Court may, upon hearing the appeal referred to it under this section, make any order it thinks appropriate, and may if it upholds the appeal order the release of the cash.

Application of forfeited cash

42. Cash that is forfeited under the provisions of this Part, and any accrued interest on it, shall be paid into the Consolidated Fund after

- (a) a period of seven days, if an appeal is not made under section 41; or
- (b) the appeal is determined or otherwise disposed of, in case an appeal is made under section 41.

FREEZING ORDERS

Making of freezing orders

43. (1) If the Minister reasonably believes that

- (a) action to the detriment of Saint Christopher and Nevis's economy has been or is likely to be taken by any person;
- (b) action constituting a threat to the life or property of one or more nationals of Saint Christopher and Nevis or residents of Saint Christopher and Nevis has been or is likely to be taken by any person;
- (c) any person is believed to have taken or to be likely to take the action and that the person is
 - (i) the government of a country or territory outside Saint Christopher and Nevis; or
 - (ii) a resident of a country or territory outside Saint Christopher and Nevis;

he may, by Order, make a freezing order prohibiting any person named in the Order from making available funds to or for the benefit of any person specified in the Order.

(2) The Minister shall, when making the freezing order, provide in the order as to

- (a) persons who are prohibited in Saint Christopher and Nevis; and
- (b) persons who are prohibited and are living elsewhere who are nationals of Saint Christopher and Nevis.

(3) The Minister may also specify in the order the persons to whom or for whose benefit the funds are not to be made available on the basis of the belief formed by him by virtue of the provisions of subsection (1).

(4) A person may be specified under subsection (3) by being named in the order, or by falling within a description of persons set out in the order, except that in the case of a description, the description shall be such that a reasonable person would know whether he fell within it.

(5) In this section "funds" mean financial assets and economic benefits of any kind.

Procedure for making a freezing order

44. The Minister shall, as soon as possible after making a freezing order under section 43 lay the Order before the National Assembly, and the Order shall have effect as provided by section 46.

Contents of a freezing order

45. The Minister shall, by regulations made under this Act, make provision for the contents of a freezing order.

Duration of the order

46. (1) Subject to this section, a freezing order shall cease to have effect at the end of a period of two years starting with the day on which it is made.

(2) A freezing order shall cease to have effect at the end of the relevant period unless before the end of that period the order is approved by resolution of the National Assembly.

(3) In this section relevant period means a period of twenty eight days starting with the day on which the order is made, and in calculating the period no account shall be taken of any time during which the National Assembly is dissolved.

Review of freezing order

47. The Minister may, from time to time, review a freezing order made under section 43, and may amend the order if he thinks it reasonable to do.

COMPENSATION

Relief to persons deprived of their cash unlawfully

48. (1) A person who claims that any cash detained by virtue of the provisions of this Part belongs to him may apply to a Magistrates' Court cash for the cash to be released to him.

(2) The application may be made in the course of proceedings under section 37, or section 40, or at any other time.

(4)⁸⁶ Where it appears to the court that

- (a) the applicant was deprived of the cash-claimed, or of property which it represents, by criminal conduct;
- (b) the property he was deprived of was not, immediately before he was deprived of it, property obtained by or in return for criminal conduct and no did it then represent such property; and
- (c) the cash belongs to him;

the court may order the cash to be released to the claimant.

Compensation

49. (1) A person who has or had an interest in any property which was subject to an order, and

- (a) a restraint order is discharged under section 32.(6);
- (b) a restraint order or forfeiture order was made in or in relation to proceedings for an offence under section 12, 13, 14, or 15 which
 - (i) do not result in conviction for an offence under any of those sections;
 - (ii) result in conviction for an offence under any of those sections in respect of which the person convicted is subsequently pardoned;
 - (iii) result in conviction for an offence under any of those sections which is subsequently quashed;

may apply to the High Court for compensation to be paid to him in accordance with the provisions of this section.

(2) The High Court may make an order for compensation to be paid to the applicant referred to in subsection (1) if the court is satisfied that

- (a) there was a serious default on the part of the person concerned in the investigation or prosecution of the offence;
- (b) the person in default was or was acting as a member of the Police Force, or was a staff of the Director of Public Prosecution;

⁸⁶ Formatting conforms with that of Government submission.

(c) the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of the forfeiture order or restraint order;

(d) it is appropriate, having regard to all the circumstances, to make an order for compensation to be paid.

(3) The High Court shall not make an order under subsection (1) where it appears to the court that proceedings for the offence would have been instituted even if the serious default had not occurred.

(5)⁸⁷ Where no forfeiture order is made in respect of any cash detained under this Part, the person to whom the cash belongs or from whom it was seized may apply to the Magistrate's Court for compensation.

(6) Where cash, while being detained for any period after the initial detention of the cash for forty eight hours, was not held on an interest bearing account the court may, upon application, make an order for an amount of compensation to be paid to the applicant.

(7) The amount of compensation to be paid under subsection (5) is the amount the court thinks would have been earned in interest in the period in question if the cash had been held on an interest bearing account.

(8) Where the court, taking into account any interest to be paid under this Part or any amount to be paid under subsection (5), is satisfied that the applicant has suffered loss as a result of the detention of the cash and that the circumstances are exceptional the court may make an order for compensation to be paid to the applicant.

(9) The amount of compensation to be made under subsection is the amount the court thinks to be reasonable, having regard to the loss suffered and any other relevant circumstances.

(10) Subsections (4), (5), (6), (7), and (8) shall not apply where the court makes an order under section 41.

PROPERTY EARMARKED AS TERRORIST PROPERTY

Property obtained through terrorism

50. (1) For the purposes of this Part, a person obtains property through terrorism if the person obtains property by or in return for acts of terrorism, or acts carried out for purposes of terrorism.

⁸⁷ Formatting conforms with that of Government submission.

(2) In deciding whether property is obtained through terrorism

(a) it is immaterial whether or not any money, goods, or services were provided in order to put the person in question in a position to carry out the acts;

(b) it is not necessary to show that the act was of a particular kind if it is shown that the property was obtained through acts of one of a number of kinds, each of which would have been an act of terrorism, or an act carried out for the purposes of terrorism.

Property earmarked as terrorist property

51. (1) For the purposes of this Part, property obtained through terrorism is earmarked as terrorist property.

(2) Where property that is obtained through terrorism is disposed of it is earmarked as terrorist property only if it is held by a person into whose hands it may be followed.

(3) Earmarked property may be followed into the hands of a person who obtained it on disposal

(a) by the person who obtained the property through terrorism; or

(b) by a person into whose hands it may, by virtue of this subsection, be followed.

Tracing of property

52. (1) Where property that is obtained through terrorism, (in this subsection called the original property), is or has been earmarked as terrorist property, the property that represents the original property shall also be earmarked as terrorist property.

(2) If a person enters into a transaction by which

(a) he disposes of earmarked property, whether original property or property which, by virtue of subsection (1), represents the original property;

(b) he obtains other property in place of it;

the other property that is obtained represents the original property.

(3) If a person disposes of earmarked property which represents the original property, the property disposed of may be followed into the hands of the person who obtains the property, and the property shall continue to represent the original property.

Mixing of property

53. For the purposes of this Part, if a person's property which is earmarked as terrorist property is mixed with other property, whether the person's property or another person's property, the portion of the mixed property that is attributable to the property earmarked as terrorist property shall represent the property obtained through terrorism.

Property consisting of profits

54. Where a person who has property earmarked as terrorist property obtains other property consisting of profits accruing in respect of the earmarked property, that other property shall be treated as representing the property obtained through terrorism.

General exceptions to earmarked property

55. (1) Where a person disposes of property earmarked as terrorist property, and the person who obtains it on disposal does so in good faith, for value and without notice that the property was earmarked, the property may not be followed into that person's hands, and accordingly, the property shall cease to be earmarked.

(2) If

(a) in pursuance of a judgment in civil proceedings, whether in or outside Saint Christopher and Nevis, the defendant makes a payment to the claimant or the claimant otherwise obtains property from the defendant;

(b) the claimant's claim is based on the defendant's criminal conduct; and

(c) apart from this subsection, the sum received, or the property obtained, by the claimant would be earmarked as terrorist property;

the property shall cease to be earmarked.

PART VI-TERRORIST INVESTIGATIONS

CORDONED AREAS

Cordoned areas

56. (1) Any area may, in writing, be designated a cordoned area by a police officer, not below the rank of Superintendent of police, for the purposes of a terrorist investigation.

(2) A police officer who makes a designation under subsection (1) shall arrange for the demarcation of the cordoned area, as soon as is reasonably practicable,

(3) Notwithstanding subsection (1), a police officer below the rank of superintendent may, if he considers it necessary by reason of urgency, make a designation required to be made under subsection (1).

(4) Where a police officer makes a designation under subsection (3), the police officer shall, as soon as is reasonably practicable,

(a) make a written record of the time at which the designation was made; and

(b) ensure that a police officer of at least the rank of superintendent is informed.

(5) A police officer who is informed of a designation in accordance with the provisions of subsection (4)(b) may confirm the designation or cancel it with effect from such time as he may direct, and shall, if he cancels the designation, make a written record of the cancellation and the reason for the cancellation.

Duration of designation

57. (1) Subject to subsection (2) a designation made under section shall have effect during the period beginning at the time when it is made and ending at a time specified in the designation, except that the time specified in the designation shall not exceed fourteen days.

(2) The period during which a designation shall have effect may be extended, in writing, and it shall be specified in the extension the additional period during which the designation shall have effect, except that the designation shall not have effect after the end of a period of twenty eight days beginning with the day on which it was made.

Police powers in relation to a cordoned area

58. (1) A police officer may

(a) order a person in a cordoned area to leave it immediately;

(b) order a person immediately to leave premises which are wholly or partly in or adjacent to a cordoned area;

(c) order the driver or person in charge of a vehicle in a cordoned area to move it from the cordoned area immediately;

(d) arrange for the movement of the vehicle from a cordoned areas;

(e) arrange for the movement of the vehicle within a cordoned area;

(f) prohibit or restrict access to a cordoned area by pedestrians or vehicles.

(2) A person who refuses or fails to comply with an order, prohibition, or restriction imposed by virtue of subsection (1) commits an offence, except that it shall be a defence for the accused person to prove that he had reasonable excuse for his failure.

(3) A person who is convicted of an offence under subsection (2) is liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine of four thousand dollars, or both.

SEARCH WARRANTS

Searches

59. (1) A police officer may, for the purposes of a terrorist investigation, apply to a court for the issue of a warrant authorizing the police officer

(a) to enter the premises specified in the warrant;

(b) to search the premises and any person found on the premises; and

(c) to seize and retain any relevant material which is found as a result of the search carried out under paragraph (b).

(2) For the purposes of subsection (1)(c) material is relevant if the police officer has reasonable grounds to believe that

(a) it is likely to be of substantial value, whether by itself or together with other material, to a terrorist investigation; and

(b) it must be seized in order to prevent it from being concealed, lost, damaged, altered, or destroyed.

(3) A warrant granted under this section shall not authorize

(a) the seizure and retention of items which are subject to legal privilege;

(b) a police officer to require a person to remove any clothing in public except for headgear, footwear, an outer coat, a jacket, or gloves.

(3) Subject to section 60, the court may grant a warrant if it satisfied that

(a) the warrant is sought for the purposes of a terrorist investigation;

(b) there are reasonable grounds for believing that there is material on premises specified in the application which is likely to be of substantial value, whether by itself or together with other material, to a terrorist investigation;

(c) the issue of a warrant is likely to be necessary in the circumstances of the case.

Grant of warrant other grounds

60. (1) This section shall apply where an application is made under section 59 and the

(a) application for the warrant is made by a police officer of at least the rank of inspector;

(b) application for the warrant does not relate to residential premises;

(c) court to which the application for the warrant is made is not satisfied of the matter referred to in section 59. (4)(c).

(2) The court may grant the warrant if it is satisfied of the matters referred to in section 59. (4)(a) and (b).

(3) Where an application for the issue of a warrant made under section 59 is granted under this section, the powers conferred by section 59. (1)(a) and (b) shall be exercised within a period of twenty four hours beginning from the time when the warrant is issued or granted.

(4) For the purposes of subsection (1), "residential premises" means any premises which the police officer making the application has reasonable grounds to believe that they are used wholly or mainly as a dwelling.

Searching premises in a cordoned area

61. (1) Subject to subsection (2), a police officer of at least the rank of superintendent may, by a written authority signed by him, authorize a search of specified premises which are wholly or partly within a cordoned area.

(2) A police officer below the rank referred to in subsection (1) may give an authorization under this section if he considers it necessary by reason of urgency.

(3) An authorization given under this section shall authorize any police officer

(a) to enter the premises specified in the warrant;

(b) to search the premises and any person found on the premises; and

(c) to seize and retain any relevant material, within the meaning of section, which is found as a result of the search carried out under paragraph (b).

(4) The powers conferred by subsection (3)(a) and (b) may be exercised on one or more occasions, and at any time during the period when the designation of the cordoned area under this Act is still in force.

(5) An authorization given under this section shall not authorize

(a) the seizure and retention of items which subject to legal privilege;

(b) a police officer to require a person to remove any clothing in public except for headgear, footwear, an outer coat, a jacket, or gloves.

(6) An authorization required to be given under this section shall not be given unless the officer giving it has reasonable grounds for believing that there is material to be found on the premises which is likely to be of substantial value, whether by itself or together with other material, to a terrorist investigation.

(7) A person who willfully obstructs a search required to be carried out under this section commits an offence, and is liable, on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding five thousand dollars, or both.

INTERCEPTION OF COMMUNICATION AND COLLECTION OF INFORMATION

Prevention etc. of electronic crimes

62. (1) The Chief of Police shall, after consultation with the Minister responsible for National Security and the Attorney-General, take appropriate action to develop a National Network of Electronic Crime

Task Force for the purpose of preventing, detecting, and investigating various forms of electronic crimes, including potential terrorist attacks against critical infrastructure and financial payment systems.

(2) For the purposes of subsection (1), the Electronic Crimes Task Force may, in accordance with regulations made in that behalf under this Act, intercept wire, oral, or electronic communications relating to terrorism.

(3) For the purpose of enabling the law enforcement officers to investigate terrorist offences efficiently, a wiretap authorization referred to in subsection (2) shall be valid for a period of one year.

(4) Notwithstanding subsection (2) and (3), the use of electronic surveillance against any criminal organization or group shall be subject to the approval of the High Court.

Investigation of terrorist offences

63. (1) Where a police officer is of the opinion that there is a person with information relevant to an on going investigation of a terrorist offence he may, with the approval of the Attorney-General, apply to the court, in chambers, to summon that person to appear before a judge and give the information.

(2) A police officer may, for the purpose of investigating a terrorist offence and with the consent of the Attorney-General, apply ex parte to the High Court for an order to gather information.

(3) A judge to whom an application is made under this section may grant the relevant orders if he is satisfied that the approval or consent of the Attorney-General has been obtained under subsection (1) or (2), as the case may be and

(a) that there are reasonable grounds to believe that

(i) an offence under this Act has been committed, and

(ii) information concerning the offence, or information that may reveal the whereabouts of a person suspected of having committed the offence, is likely to be obtained as a result of the order; or

(b) that

(i) there are reasonable grounds to believe that an offence under this Act will be committed;

(ii) there are reasonable grounds to believe that a person has direct and material information that relates to an offence referred to in subparagraph (i), or that may reveal the whereabouts of a person who the police officer suspects will commit the offence referred to in this paragraph;

(iii) reasonable attempts have been made to obtain the information referred to subparagraph (ii) from the person referred to in that subparagraph.

- (4) An order made under subsection (3) may
- (a) order the examination, on oath or not, of a person named in the order;
 - (b) order the person to attend at a place named in the order;
 - (c) order the person to bring to the examination any document or thing in his possession or control, and produce it to the court;
 - (d) include any other terms and conditions as the judge sees fit, including terms and conditions for the protection of the interests of the person named in the order and of third parties or for the protection of any on going investigation.

PRODUCTION OF, AND ACCESS TO, CERTAIN MATERIALS

An order for production and access to material

64. (1) A police officer may, for the purpose of a terrorist investigation, apply to a court for an order requiring a specified person.
- (a) to produce to the police officer, within a specified period, for seizure and retention any material which he has in his possession, custody or power and to which the application relates;
 - (b) to give the police officer access to any material referred to in paragraph (a), within a specified period;
 - (c) to state, to the best of his knowledge and belief, the location of material to which the application relates if it is not in, and it will not come into, his possession, custody or power within the period specified under paragraph (a) or (b).
- (2) An application for an order under this section shall relate to a particular material or a material of a particular description, which consists of or includes excluded material or special procedure material.

- (3) For the purposes of this section,
- (a) an order may specify a person only if it appears to the court that the person may be having in his possession, custody or power any of the material to which the application relates; and
 - (b) a period specified in the order shall be the period of seven days beginning with the date of the order unless it appears to the court that a different period would be appropriate in the particular circumstances of the application.
- (4) Where the court makes an order under subsection (1)(b) in relation to a material on any premises, the court may, on the application of the police officer, order any person who appears to the court to be entitled to grant entry to the premises to allow the police officer to enter the premises to obtain access to the material.

Factors to be taken into account by the court before making an order

65. (1) The court may grant an order under section 64 if it is satisfied that
- (a) the material to which the application relates consists of or includes excluded material or special procedure material;
 - (b) it does not include items subject to legal privilege;
 - (c) the conditions specified in subsection (2) are satisfied in respect of that material.
- (2) The conditions referred to in subsection (1) are that
- (a) the order is sought for the purposes of a terrorist investigation, and there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or together with other material, to the terrorist investigation;
 - (b) there are reasonable grounds for believing that it is in the public interest that the material should be produced or access to it should be given having regard
 - (i) to the benefit likely to accrue to the terrorist investigation if the material is obtained, and
 - (ii) to the circumstances under which the person concerned has any of the material in his possession, custody or power.

Production order in relation to a material etc.

66. (1) An order made under section 64 may be made in relation to
- (a) material consisting of or including excluded or special procedure material which is expected to come into existence within a period of twenty eight days beginning with the date of the order;
 - (b) a person whom the court thinks is likely to have any of the material, to which the application relates, in his possession, custody or power.
- (2) Where an order made under section 64 is made in compliance with the provisions of subsection (1), section 64.(2) shall apply with the following modifications:
- (a) the order shall require the specified person to notify a named police officer as soon as is reasonably practicable after any material to which the application relates comes into his possession, custody or power;
 - (b) the reference in section 64. (2)(a) to material which the specified person has in his possession, custody or power shall be taken as reference to the material referred to in paragraph (a) of this subsection which comes into his possession, custody or power; and
 - (c) the reference in section 64. (2)(c) to the specified period shall be taken as reference to the period of twenty eight days beginning with the date of the order.

Effect of order

67. (1) An order made under section 64 shall
- (a) not confer any right to production of, or access to, items subject to legal privilege; and
 - (b) have effect notwithstanding any restriction on the disclosure of information imposed by statute or otherwise.
- (2) Where material to which an application made under section 41 relates consist of information contained in a computer
- (a) an order made under section 64.(1)(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
 - (b) an order made under section 64.(1)(b) shall have effect as an order to give access to the material in a form in which it is visible.

Production order in relation to Government departments

68. (1) An order made under section 64 may be made in relation to material in the possession, custody or power of a government department, and where such an order is made by virtue of this section the order
- (a) shall be served as if the proceedings were civil proceedings against the department; and
 - (b) may require any officer of the department, whether named in the order or not, who may for the time being have in his possession, custody or power the material concerned, to comply with the order.
- (2) In this section, "government department" means an authorized government department for the purposes of the Crown Proceedings Act.

Search warrant for special procedure material

69. (1) A police officer may, for the purposes of a terrorist investigation, apply to the court for the issue of a warrant authorizing the police officer to
- (a) to enter the premises specified in the warrant;
 - (b) to search the premises and any person found on the premises; and
 - (c) to seize and retain any relevant material which is found as a result of the search carried out under paragraph (b).
- (2) A warrant granted under this section shall not authorize
- (a) the seizure and retention of items which are subject to legal privilege;
 - (b) a police officer to require a person to remove any clothing in public except for headgear, footwear, an outer coat, a jacket, or gloves.
- (3) For the purposes of subsection (1)(c) material is relevant if the police officer has reasonable grounds to believe that the material is likely to be of substantial value, whether by itself or together with other material, to a terrorist investigation.

Grant of search warrant under section 69

70. (1) A court may grant a search warrant under section 69 if the court is satisfied that an order made under section 41 in relation to material on the premises specified in the application has not been complied with.

(2) The court may also grant a search warrant under section 69 if the court is satisfied that there are reasonable grounds to believe that

(a) there is material on premises specified in the application which consists of or includes excluded material or special procedure material but does not include items subject to legal privilege; and

(b) the conditions specified in subsection (3) are satisfied.

(3) The conditions referred to in subsection (2)(b) are that

(a) the warrant is sought for the purposes of terrorist investigation, and the material is likely to be of substantial value, whether by itself or together with other material, to a terrorist investigation;

(b) it is not appropriate to make an order under section 69 in relation to the material because

(i) it is not practicable to communicate with any person entitled to produce the material,

(ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated, or

(iii) a terrorist investigation may be seriously prejudiced unless a police officer can secure immediate access to the material.

ACCESS TO FINANCIAL INFORMATION

An order for access to customer information

71. (1) A police officer may, for the purpose of a terrorist investigation, apply to the High Court for an order requiring a specified relevant business to provide to the police officer, named in the order, customer information relating to a customer specified in the order.

(2) The High Court may grant the order referred to in subsection (1) if it is satisfied that

(a) the order is sought for the purpose of a terrorist investigation;

(b) the tracing of terrorist property is desirable for the purposes of the investigation; and

(c) the order will enhance the effectiveness of the investigation.

(3) The information shall be provided

(a) in such manner and within such time as the police officer may specify; and

(b) notwithstanding any restriction on the disclosure of information imposed by any legislation or otherwise.

(4) Provision may be made by regulations made under this Act respecting the procedure to be followed in making an application under this section.

Failure to comply with an order

72. (1) A relevant business which fails to comply with an order made under section 71 commits an offence, and shall be liable, on summary conviction, to a fine not exceeding fifty thousand dollars.

(2) It shall be a defence for a relevant business which is charged with an offence under subsection (1) to prove that

(a) the information required was not in the business' possession; or

(b) it was not reasonably practicable for the relevant business to comply with the order.

Self-incrimination

73. Customer information provided by virtue of the provisions of section 71 shall not be admissible in evidence in criminal proceedings against the relevant business or any of its officers or employees, except that this section shall not apply to proceedings for an offence instituted under section 72.

Meaning of customer

74. (1) For the purposes of sections 71, 72 and 73, "customer information" means, subject to subsection (2),

(a) information as to whether a business relationship exists or existed between a regulated business activity and a particular person, "a customer";

(b) a customer account number;

(c) a customer's full-name;

(d) a customer's date of birth;

- (e) a customer's address or former address;
- (f) the date on which a business relationship between a regulated business activity and a customer begins and ends;
- (g) any evidence of a customer's identity obtained by a relevant business in pursuance of or for the purposes of any legislation relating to money laundering; and
- (h) the identity of a person sharing an account with a customer.

(2) The Minister may, by Order, provide for a class of information to be or to cease to be customer information for the purposes of this section.

(3) For the purposes of this section, there is a business relationship between a relevant business and a person only if

- (a) there is an arrangement between them designed to facilitate the carrying out of frequent or regular transactions between them;
- (b) the total amount of payments to be made is neither known nor capable of being ascertained when the arrangement is made.

ACCOUNT MONITORING ORDERS

Account monitoring Orders

75. (1) The High Court may, upon an application made by the Director of Public Prosecutions or a police officer authorized by the Director of Public Prosecutions in that behalf, make an account monitoring order if the court is satisfied that
- (a) the order is sought for the purpose of a terrorist investigation;
 - (b) the tracing of terrorist property is desirable for the purposes of the investigation; and
 - (c) the order will enhance the effectiveness of the investigation.
- (2) An application for an account monitoring order may be made *ex parte* to a judge in chambers.
- (3) The application referred to in subsection (1) shall contain information to the effect that the order is sought against a relevant business specified in the application in relation to information which

(a) relates to an account or accounts held at the relevant business by the person specified in the application, whether solely or jointly with another; and

(b) is of the description so specified.

(4) Information relating to

(a) all accounts held by the person specified in the application for an account monitoring order at the relevant business so specified;

(b) a particular description, or particular descriptions, of accounts so held; or

(c) a particular account, or particular accounts, so held; may be specified in the application for an account monitoring order.

(5) The description of information specified in an application for an account monitoring order may be varied by the person who made the application in accordance with the directions of the court.

(6) An account monitoring order may be varied or discharged upon an application made to the High Court by the person who applied for the order, or a person who is affected by the order.

(7) The High Court may, upon receipt of the application, vary or discharge the order.

(8) An account monitoring order is an order that the relevant business specified in the order must

(a) for the period specified in the order;

(b) in the manner so specified;

(c) at or by the times so specified; and

(d) at the place or places so specified;

provide information of the description specified in the order to a police officer.

(9) The period stated in an account monitoring order shall not exceed ninety days beginning with the day on which the order is made.

(10) The Minister may, by regulations made under this Act, make provision with respect to the practice and procedure to be followed in connection with proceedings relating to account monitoring orders.

Effect of account and monitoring orders statements made by relevant business

76. (1) An account monitoring order shall have effect in spite of any restrictions on the disclosure of information imposed by legislation or otherwise.
- (2) A statement made by a relevant business in response to an account monitoring order shall not be used in evidence against the relevant business in criminal proceedings.
- (3) Subsection (2) shall not apply
- (a) in the case of proceedings for contempt of court;
 - (b) in the case of proceedings instituted by virtue of section 34 where a relevant business has been convicted of an offence under section 12, 13, 14, or 15;
 - (c) on a prosecution for an offence where, in giving evidence, a relevant business makes a statement that is inconsistent with the statement referred to in subsection (2).
- (4) A statement may not be used by virtue of subsection (3) provisions of subsection (3)(c) unless evidence relating to the statement is adduced, or a question relating to that statement is asked, by or on behalf of the regulated business activity in the proceedings arising out of the prosecution.

OFFENCES IN RESPECT OF UNAUTHORIZED DISCLOSURE OF INFORMATION

Offence of unauthorized communication of information

77. (1) A person who is bound by secrecy commits an offence if he unlawfully communicates any special operational information relating to a terrorist investigation to an unauthorized person.
- (2) A person who is convicted of an offence under this section is liable to imprisonment for a term not exceeding ten years.

Offence of unauthorized disclosure of information

78. (1) A person who knows or has reasonable cause to suspect that a police officer is conducting or proposes to conduct a terrorist investigation commits an offence if the person
- (a) discloses to another person anything which is likely to prejudice the investigation; or

- (b) interferes with material which is likely to be relevant to the investigation.
- (2) A person who knows or has reasonable cause to suspect that a disclosure of information has been or will be made under section 17, 18 or 19 commits an offence if the person
- (a) discloses to another person anything which is likely to prejudice an investigation resulting from the disclosure under that section; or
 - (b) interferes with material which is likely to be relevant to an investigation resulting from the disclosure under that section.
- (3) It shall be a defence for a person charged with an offence under subsection (1) or (2) to prove that
- (a) he did not know and had no reasonable cause to suspect that the disclosure or interference was likely to affect a terrorist investigation; or
 - (b) he had reasonable excuse for the disclosure or interference.
- (4) Subsections (1) and (2) shall not apply to a disclosure made by a professional legal adviser
- (a) to his client or to his client's representative in connection with the provision of legal advice by the adviser to the client and not with a view to furthering a criminal purpose; or
 - (b) to any person for the purpose of actual or contemplated legal proceedings and not with a view to furthering a criminal purpose.
- (2)⁸⁸ A person who is convicted of an offence under this section shall be liable,
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding seven thousand;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine not exceeding thirty thousand dollars, or both.
- (3) For the purposes of this section,
- (a) a reference to conducting a terrorist investigation includes a reference to taking part in the conduct of, or assisting, a terrorist investigation;

⁸⁸ Formatting conforms with Government submission.

(b) a person interferes with a material if he falsifies it, conceals it, destroys or disposes of it, or he causes or permits another person to do any of those things.

PART VII - COUNTER-TERRORIST POWERS

SUSPECTED TERRORISTS

Arrest without warrant

79. (1) A police officer may, without a warrant, arrest a person whom he reasonably suspects to be a terrorist.
- (2) Where a person is arrested under this section the provisions of sections 92, 93, 94, 95, 96,97,98,99, 100, 101 and 102 shall apply.
- (3) Subject to subsection (4), a person detained by virtue of the provisions of this section shall, unless detained under some other power, be released not later than forty eight hours beginning
- (a) with the time of his arrest under this section;
 - (b) if he was being detained under section 86 when he was arrested under this section, with the time when his examination under that section began.
- (3) If on a review of a person's detention under sections 99,100, 101 and 102, the police officer does not authorize continued detention, the person shall, unless detained under some other power, be released.

Search of premises

80. (1) A Magistrate Court may, upon the application of a police officer, issue a search warrant in relation to specified premises of the court if satisfied that there are reasonable grounds for suspecting that a person whom the police officer reasonably suspects to be a terrorist is to be found there.
- (2) A warrant issued under this section shall authorize any police officer to enter and search the premises specified in the warrant for the purpose of arresting the person referred to in subsection (1).

Search of persons

81. (1) A police officer may stop and search a person whom he reasonably suspects to be a terrorist to discover whether he has in his possession anything which may constitute evidence that he is a terrorist.

(2) A police officer may search a person arrested under section 79 to discover whether he has in his possession anything which may constitute evidence that he is a terrorist.

(3) A search of a person under this section shall be carried out by someone of the same sex.

(4) A police officer may seize and retain anything which he discovers in the course of a search of a person under subsection (1) or (2) and which he reasonably suspects may constitute evidence that the person is a terrorist.

Stopping and searching vehicles and pedestrians

82. (1) A police officer of at least the rank of Inspector may, in writing, authorise a police officer of a lower rank to stop a vehicle in an area or at a place specified in the authorization and search

(a) the vehicle;

(b) the driver of the vehicle;

(c) a passenger in the vehicle;

(d) anything in or on the vehicle or carried by the driver or a passenger.

(2) A police officer of at least the rank of Inspector may, in writing, authorise a police officer of a lower rank to stop a pedestrian in an area or at a place specified in the authorisation and search the pedestrian and anything carried by him.

(3) An authorization under this section shall only be given if the police officer giving it considers it expedient for the prevention of acts of terrorism.

(4) A power conferred by an authorization given under this section may be exercised

(a) only for the purpose of searching for articles of a kind which could be used in connection with terrorism;

(b) whether or not the police officer has grounds for suspecting the presence of articles of that kind.

(5) A police officer may seize and retain an article which he discovers in the course of a search carried out by virtue of subsection (1) or (2) and which he reasonably suspects is intended to be used in connection with acts of terrorism.

(6) Where a police officer proposes to search a person or vehicle by virtue of the provisions of subsection (1) or (2) he may detain the person or vehicle for such time as is reasonably required to permit the search to be carried out at or near the place where the person or vehicle is stopped.

(7) Where a vehicle or pedestrian is stopped by virtue of this section, and the driver of the vehicle or pedestrian requests for a written statement to be given to him to the effect that the vehicle was stopped, or that he was stopped, as the case may be, the statement shall be provided.

(8) A request referred to in subsection (7) shall be made within a period of twelve months beginning with the date on which the vehicle or pedestrian was stopped.

(9) Subject to subsections (10), (11) and (12), an authorization given under this section shall have effect from the time the authorization is given up to the time or date specified in the authorization, except that the time or date specified in the authorization shall not go beyond a period of twenty eight days beginning with the day on which the authorization was given.

(10) The person who gives an authorization under this section shall inform the Attorney-General as soon as is reasonably practicable, and if the authorization is not confirmed by the Attorney-General within a period of forty eight hours beginning with the day when it was given it shall cease to have effect at the end of that period, except that its ceasing to have effect shall not affect the lawfulness of anything done in reliance on it before the end of that period.

(11) The Attorney-General may,

(a) where he confirms an authorization, substitute an earlier date or time for the date or time specified under subsection (9);

(b) where he cancels an authorization, cancel the authorization with effect from a specified time.

(12) An authorization may be renewed in writing by a person who gave it or by a person who could have given it, and subsections (9), (10), and (11) shall apply as if a new authorization were given on each occasion on which the authorization is renewed.

Parking of vehicles

83. (1) A police officer of at least the rank of Inspector may, in writing, authorize a police officer of a lower rank to prohibit or restrict the parking of vehicles on a road specified in the authorization.

(2) An authorization under this section shall only be given if the police officer giving it considers it expedient for the prevention of acts of terrorism.

(3) A power conferred by an authorization given under this section shall be exercised by placing a traffic sign on the road concerned.

(4) A police officer exercising the power conferred by an authorization given under this section may suspend a parking place, and where a parking place is suspended under this subsection the suspension shall be treated as a restriction imposed under subsection (1).

(5) Subject to subsection (6), an authorization given under this section shall have effect during the period specified in the authorization, except that the period specified in the authorization shall not exceed twenty eight days.

(6) An authorization may be renewed in writing by a person who gave it or by a person who could have given it, and subsection (5) shall apply as if a new authorization were given on each occasion on which the authorization is renewed.

Offences

84. (1) A person who

(a) fails or refuses to stop a vehicle when required to do so by a police officer, acting in accordance with the provisions of section 82;

(b) fails or refuses to stop when required to do so by a police officer, acting in accordance with the provisions of section 82;

(c) willfully obstructs a police officer in the exercise of the power conferred by an authorization given pursuant to the provisions of section 82;

commits an offence and shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding seven thousand dollars, or both.

(2) A person who parks a vehicle in contravention of a prohibition or restriction imposed by virtue of the provisions of section 83 commits an offence, and shall be liable, on summary conviction, to a fine not exceeding five thousand dollars.

(3) A driver or other person in charge of a vehicle that is parked in contravention of a prohibition or restriction imposed by virtue of the provisions of section 83 who refuses or fails to move the vehicle when

ordered to do so by a police officer commits an offence, except that it shall be a defence for the driver or the other person charged with an offence under this subsection to prove that he had a reasonable excuse for refusing or failing to move the vehicle.

(4) A person convicted of an offence under subsection (3) shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding seven thousand dollars, or both.

PORT AND BORDER CONTROLS

Questioning persons who are at a port or in a border area

85. (1) An examining officer may, for the purpose of determining whether a person appears to be a terrorist, question the person
- (a) if the person is at a port or in a border area, and the examining officer believes that the person's presence at the port or in the border area is connected with his entering or leaving Saint Christopher and Nevis;
 - (b) if the person is on a ship or aircraft that arrives in Saint Christopher and Nevis;
- (2) The examining officer may exercise the powers conferred on him by subsection (1) whether or not he has reasonable grounds for suspecting that a person is a terrorist.
- (3) A person who is questioned under the provisions of subsection (1) shall
- (a) give the examining officer any information in his possession which the officer requests;
 - (b) give the examining officer, on request, either a valid passport which includes a photograph or other document that establishes his identity;
 - (c) declare whether he has with him documents of a kind specified by the examining officer;
 - (d) give the examining officer, on request, any document which he has with him and which is of a kind specified by the officer.

Stopping of persons and vehicles for questioning etc.

86. (1) An examining officer may, for the purposes of exercising the powers conferred on him by section 85,
- (a) stop a person or a vehicle;
 - (b) detain a person.
- (2) An examining officer may, for the purpose of detaining a person under this section, authorize the person's removal from the ship, aircraft or vehicle.
- (3) Where a person is detained under this section the provisions of sections 92, 93, 94, 95, 96 and 97 shall apply, unless detained under some other power, be released not later than the end of the period on of nine hours beginning with the time when his examination began.

Searches

87. (1) An examining officer may, for the purpose of satisfying himself whether there are any persons whom he may wish to question by virtue of section 85,
- (a) search a ship or aircraft;
 - (b) search for anything on a ship or aircraft;
 - (c) search anything which he reasonably believes has been, or is about to be, on a ship or aircraft.
- (2) An examining officer who questions a person by virtue of the provisions of section 85 may, for the purpose of determining whether he is a terrorist,
- (a) search the person;
 - (b) search anything which he has with him, or which belongs to him, and which is on a ship or aircraft;
 - (c) search anything which he has with him, or which belongs to him, and which the examining officer reasonably believes has been, or is about to be, on a ship or aircraft;
 - (d) search a ship or aircraft for anything falling within paragraph (b).

(3) Where an examining officer questions a person in a border area in accordance with the provisions of section 85 he may, in addition to the matters specified in subsection (2),

(a) search a vehicle;

(b) search anything on or in the vehicle;

(c) search anything which he reasonably believes has been, or is about to be, in or on the vehicle.

(4) A search of a person under this section shall be carried out by someone of the same sex.

Examination of goods

88. (1) An examining officer may examine any goods which have arrived in or are about to leave Saint Christopher and Nevis on a ship, aircraft or vehicle for the purpose of determining whether such goods have been used in the preparation, instigation or commission of acts of terrorism.

(2) An examining officer may, for the purpose of exercising the powers conferred on him by subsection (1), board a ship, or aircraft, or enter a vehicle.

(3) In this section, "goods" include property of any description, and a container.

Detention of property

89. (1) An examining officer may detain anything specified in subsection (2)

(a) for the purpose of examination, for a period not exceeding seven days beginning with the day on which the detention commences;

(b) while he believes that the thing may be needed for use as evidence in criminal proceedings; or

(c) while he believes that the thing may be needed in connection with a decision by the Minister whether to make a deportation order under the Immigration Act.

(2) The things that may be detained by virtue of subsection (1) are the following:

(a) anything which is given to the examining officer in accordance with section 85.(3)(d);

(b) anything which is searched or found on a search under the provisions of section 87;

(c) anything which is examined under the provisions of section 88.

Provision of passenger information

90. (1) An examining officer may request the owner or agent of a ship or aircraft to which this section applies to provide specified information, and the owner or agent shall comply with the request as soon as is reasonably practicable.

(2) A request referred to in subsection (1) may relate to

(a) a particular ship or aircraft;

(b) all ships or aircraft of the owner or agent to which this section applies; or

(c) specified ships or aircraft.

(3) Information referred to in this section may be specified in a request only if it is of a kind prescribed by the Minister, by Order, and which relate to passengers, crew, or vehicles belonging to passengers or crew

(4) A passenger or member of the crew on a ship or aircraft shall give the captain any information required for the purposes of enabling the owners or agents to comply with the provisions of this section.

(5) Subsections (1) and (4) shall not require the provision of information which is required to be provided by virtue of the provisions of the Immigration Act.

(6) This section applies to a ship or aircraft which arrives or is expected to arrive in Saint Christopher and Nevis.

Failure to comply with sections 85, 86, 87, 88 and 89

91. (1) A person who

(a) willfully fails or refuses to comply with a duty imposed under or by virtue of the provisions of section 85, 86, 87, 88, or 89;

(b) willfully contravenes a prohibition imposed by virtue of the provisions of section 85, 86, 87, 88 or 89;

(c) willfully obstructs, or seeks to frustrate, a search or examination required by virtue of the provisions of section 85, 86, 87, 88 or 89;

commits an offence and shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding seven thousand dollars or both.

DETENTION AND TREATMENT OF DETAINEES⁸⁹

CI. SANTA LUCIA⁹⁰

1. PENAL CODE

Section 147 (a)

Such criminal act as is mentioned in section 148, 151 (a), 151 (b) first paragraph, cf. third paragraph, 152 second paragraph, 152 (a) second paragraph, 152 (b), 153 first to third paragraphs, 153 (a), 154, 223 second paragraph, 224, 225 first or second paragraph, 231, cf. 232, or 233 is considered to be a terrorist act and is punishable by imprisonment for a term not exceeding 21 years when such act has been committed with the intention of:

⁸⁹ Articles 92 to 108, which make up this subsection, have been omitted from the present publication for technical reasons.

⁹⁰ Transmitted to the Secretariat by that Government on 2 October 2002 (S/2002/1135, enclosure). Information was also provided in respect of the following legislation: Proceeds of Crime Act No 10 of 1993; the Money Laundering (Prevention) Act No. 36 of 1999; the Exchange Control Ordinance Chap 180 of the Revised Laws of Saint Lucia; the Registered Agents and Trustee Licensing Act No. 37 of 1999; the International Insurance Act No. 38 of 1999; the International Business Companies Act No. 40 of 1999; the International Banks Act No. 43 of 1999; the International Mutual Funds Act No. 44 of 1999; the Money Laundering (Prevention) (Amendment) Act No. 3 of 2001; the Customs (Control and Management) Act No. 23 of 1990; the Mutual Legal Assistance in Criminal Matters Act No. 10 of 1996; the Firearms Act No. 11 of 2001; the Explosives Ordinance Chap. 53 of the Revised Laws of Saint Lucia; the Explosives Order Statutory Instrument No. 35 of 1973; the Regional Security System Act No. 30 of 2000; the Immigration Act No. 20 of 2001; the Undesirable Aliens Expulsion Ordinance Chap 80 of the Revised Laws of Saint Lucia 1957; the Extradition Act No. 12 of 1986; the Civil Aviation (Montreal Convention) Act No. 15 of 1986; the Civil Aviation (Tokyo Convention) Act No. 13 of 1986; the Hijacking act No. 14 of 1986; the Mutual Legal Assistance (Extension and Application to the USA) Regulations No. 112 of 1999; the Immigration Ordinance Chap 76 of the Revised Laws of Saint Lucia 1957; the Passports Act No. 13 of 1991; the Saint Lucia Air and Sea Ports Authority (SLASPA) Act No. 101 of 1983; the Civil Aviation Act No. 1 of 1992; the Civil Aviation (Air Navigation) Regulations No. 93 of 1997; the Shipping Act No. 11 of 1994.

(a) seriously disrupting a function of vital importance to society, such as legislative, executive or judicial authority, power supply, safe supply of food or water, the bank or monetary system or emergency medical services or disease control;

(b) seriously intimidating a population, or

(c) unduly compelling public authorities or an intergovernmental organization to perform, tolerate or abstain from performing any act of crucial importance for the country or organization, or for another country or another intergovernmental organization.

The penalty may not be set below the minimum penalty prescribed in the penal provisions mentioned in the first sentence.

Any person who, with such intent as is mentioned in the first paragraph, threatens to commit such criminal act as is mentioned in the first paragraph under such circumstances that the threat is likely to provoke intense fear is liable to imprisonment for a term not exceeding 12 years. If the threat has such consequences as are mentioned in the first paragraph (a), (b) or (c), imprisonment for a term not exceeding 21 years may be imposed. Accomplices shall be liable to the same penalty.

Any person who plans or prepares such terrorist act as is mentioned in the first paragraph by conspiring with another person for the purpose of committing such an act shall be liable to imprisonment for a term not exceeding 12 years.

Section 147 (b)

Any person who obtains or collects funds or other financial assets with the intention that the financial assets should be used, in full or in part, to finance terrorist acts or any other contravention of the provisions of section 147 shall be liable to imprisonment for a term not exceeding 10 years.

Any person who makes funds or financial assets, or bank services or other financial services, available to any of the following is liable to the same penalty

a) a person or entity that commits or attempts to commit such criminal act as is mentioned in section 147 (a);

b) any entity owned by such person is mentioned in (a) or over which that person has control, or

c) any person or entity that acts on behalf of or at the direction of such person or entity as is mentioned in (a) or (b).

Accomplices shall be liable to the same penalty.

Section 148

Any person who causes any fire, collapse, explosion, flood, maritime damage, railway accident or aircraft accident which may easily result in loss of human life or extensive destruction of another person's property, or who is accessory thereto, shall be liable to imprisonment for a term of not less than two years and not more than 21 years, but not less than five years if as a result of the felony any person dies or is seriously injured in body or health.

The same penalty may apply to an attempt as to a completed felony.

Section 151 (a)

Any person who on board a ship or aircraft by violence, threats or otherwise unlawfully and forcibly takes control of the vessel or aircraft or otherwise interferes with its sailing or flying shall be liable to imprisonment for a term of not less than two years and not more than 21 years. The same penalty shall apply to any person who by similar means unlawfully and forcibly takes control over any installation or construction on the continental shelf. Under especially extenuating circumstances the penalty may be reduced below the prescribed minimum

Accomplices shall be liable to the same penalty.

An attempt may be liable to the same penalty as a completed felony.

Section 151 (b)

Any person who by destroying, damaging, or putting out of action any data collection or any installation for supplying power, broadcasting, telecommunication, or transport causes comprehensive disturbance in the public administration or in community life in general shall be liable to imprisonment for a term not exceeding 10 years.

Negligent acts of the kind mentioned in the first paragraph shall be punishable by fines or imprisonment for a term not exceeding one year.

Accomplices shall be liable to the same penalty.

Section 152

Any person who unlawfully adds noxious substances to reservoirs or water-courses from which drinking-water is supplied to people or livestock, or who is accessory thereto, shall be liable to imprisonment for a term not exceeding five years.

If general danger is thereby caused to human life or health, the penalty shall be imprisonment for a term not exceeding 21 years, and if any person's death or serious injury to body or health results, imprisonment for a term of not less than one year and not more than 21 years.

Negligent acts of the kind mentioned in the preceding paragraph shall be punishable by fines or imprisonment for a term not exceeding one year.

Section 152 (a)

Any person who without lawful permission receives, possesses, uses, transfers, alters, disposes of or distributes any material consisting of or containing plutonium or uranium and thereby causes a risk of damage to any person's body, health, property or living environment, or who is accessory thereto, shall be liable to fines or imprisonment for a term of not less than two years and not more than 21 years, but not less than five years if as a result of the felony any person dies or is seriously injured in body or health.

Section 152 (b)

Any person shall be liable to imprisonment for a term not exceeding 10 years who willfully or by gross negligence:

- (1) pollutes air, water, or soil so that considerable harm or the threat of such harm is inflicted on the environment in an area, or
- (2) stores, leaves or empties waste or other substances with imminent risk of such consequences as are mentioned in item (1).

If any person's death or considerable harm to body or health has resulted therefrom, imprisonment for a term not exceeding 15 years may be imposed.

Any person shall be liable to imprisonment for a term not exceeding six years who willfully or by gross negligence:

- (1) diminishes a natural population of protected living organisms which nationally or internationally are threatened by extinction, or
- (2) inflicts considerable harm on an area that is protected by a decision pursuant to chapter II of the Nature Conservation Act, or section 7 of the Wildlife Act, or pursuant to section 4 of the Act relating to Svalbard, section 2 of the Act relating to Jan Mayen or section 2 of the Act relating to Bouvet Island, Peter I's Island and Dronning Maud's Land, etc., or
- (3) inflicts considerable harm on a cultural environment of particular national or international importance. An accomplice shall be liable to the same penalty as is otherwise specified in this section.

Section 153 (a)

Any person shall be liable to imprisonment for a term not exceeding 10 years who develops, produces, stores or otherwise obtains or possesses:

- (1) bacteriological or other biological substances or toxins regardless of their origin or method of production, of such a kind and in such quantities that they are not justified for preventive, protective or other peaceful purposes, or
- (2) weapons, equipment or means of dissemination made for using such substances or toxins as are mentioned in item 1 for hostile purposes or in armed conflict.

Accomplices shall be liable to the same penalty.

Section 154

Any person who causes or is accessory to causing the introduction or general spreading of a dangerous contagious disease among people, livestock, or plants shall be liable to imprisonment for a term not exceeding 10 years. Under especially extenuating circumstances fines may be imposed.

If such an act as is mentioned in the first paragraph has caused a person's death or serious injury to his body or health, the penalty shall be imprisonment for a term of not less than five years and not more than 21 years.

Section 223

Any person who unlawfully deprives another person of his liberty or is accessory to such deprivation of liberty shall be liable to imprisonment for a term not exceeding five years.

If the deprivation of liberty has lasted for more than one month or has caused any person abnormal suffering or serious injury to body or health or has resulted in the death of any person, imprisonment for a term of not less than one year shall be imposed.

Section 224

Any person shall be liable to imprisonment for a term not exceeding 10 years who by force, threats, or underhand conduct unlawfully brings anyone into his own or another person's power with the intention of reducing him to a state of helplessness, enlisting him in foreign military service, or taking him into captivity or other state of dependence in a foreign country, or transporting him to a foreign country for indecent purposes, or who is accessory thereto.

Section 225

Any person who causes or is accessory to causing another person to be enslaved shall be liable to imprisonment for a term of not less than five years and not more than 21 years.

Any person who engages in or is accessory to slave-trading or the transporting of slaves or persons destined for slave-trading shall be liable to the same penalty.

Any person who enters into an association with another person for the purpose of carrying out or aiding or abetting any act referred to in this section shall be liable to imprisonment for a term not exceeding 10 years.

Section 231

Any person who causes or is accessory to causing serious injury to the body or health of another person is guilty of occasioning grievous bodily harm and shall be liable to imprisonment for a term of not less than two years. If the act is premeditated, imprisonment for a term not exceeding 21 years may be imposed if the felony results in a person's death.

Section 232

If any felony mentioned in section 228 to 231 is committed with intent in a specially painful manner or by means of poison or other substances which are highly dangerous to health, or with a knife or other specially dangerous instrument, or under other especially aggravating circumstances, a sentence of imprisonment shall always be imposed, and for a felony against section 231 a term of imprisonment not exceeding 21 years may be imposed in every case and otherwise the penalty may be increased by up to three years. The penalty prescribed in section 228, first paragraph, may, however, only be increased by up to six months' imprisonment, while at the same time fines may still be imposed. In deciding whether other especially aggravating circumstances exist, special regard shall be paid to whether the offence has been committed against a defenceless person, whether there was a racial motive, whether it was unprovoked, whether it was committed by several persons jointly, and whether it constitutes ill treatment.

Section 233

Any person who causes another person's death, or is accessory thereto, is guilty of homicide and shall be liable to imprisonment for a term of not less than six years.

If the offender has acted with premeditation or has committed the homicide in order to facilitate or conceal another felony or to evade the penalty for such felony, imprisonment for a term not exceeding 21 years may be imposed. The same applies in cases of repeated offences and also when there are especially aggravating circumstances.

2. CRIMINAL PROCEDURE ACT

CHAPTER 15(b) FREEZING PROPERTY

Section 2002 (d)

When any person is suspected with just cause of contravening or attempting to contravene the provisions of section 147 (a) or 147 (b) of the Penal Code, the chief or the deputy chief of the Police Security Service or a public prosecutor may decide to freeze any property belonging to:

- a) the suspect,
- b) any entity owned by the suspect or over which he has control, or
- c) any person or entity that acts on behalf of or at the direction of the suspect or such entity as is mentioned in (a) or (b).

A decision may not be made to freeze property that is necessary for the maintenance of the person who is the subject of the decision, his household or any person he is supporting.

The decision to freeze property shall be in writing and shall identify the suspect and provide a brief account of the grounds for the decision.

3. AMENDMENTS TO THE FINANCIAL INSTITUTIONS ACT

The Act of 10 June 1988 No. 40 relating to financial institutions has been amended as follows:

Section 2-17, third paragraph, first sentence, shall read:

If a financial institution suspects that a transaction is linked to the proceeds of a criminal act, or to any matter punishable under the provisions of section 147 (a) or 147 (b) of the Penal Code, it is obliged to carry out further investigations in order to confirm or dispel the suspicion.

CII. SAINT VINCENT AND THE GRENADINES ⁹¹

1. HIJACKING ACT⁹²

CHAPTER 127

HIJACKING ACT

Arrangement of sections

1. Short title.
2. Interpretation.
3. Violence against passengers and crew.
4. Extradition.
5. Aircraft operated by joint or international organization.
6. Prosecutions.

AN ACT to give effect to the Convention for the Suppression of Unlawful Seizure of Aircraft and for purposes connected therewith.

Commencement: 1st November 1977

Short title

1. This Act may be cited as the Hijacking Act.

Hijacking

2. (1) A person on board an aircraft in flight who unlawfully, by the use of force or by threats of any kind, seizes the aircraft or exercises control of it, commits the offence of hijacking, whatever his nationality, whatever the state in which the aircraft is registered and whether the aircraft is in Saint Vincent and the Grenadines or elsewhere, but subject to subsection (2).

(2) If-

- (a) the aircraft is used in military, customs or police service; or

⁹¹ Transmitted to the Secretariat by that Government on 3 June 2002 (S/2002/646, enclosure) and on 15 April 2003 (S/2003/495, enclosure). Information was also provided in respect of the following: the Firearms Act 1995, Cap.275; the Immigration (Restriction) Act, Cap. 75; the Expulsion of Undesirable Alien Act, Cap 77; the Fugitive Offenders Act, 1989; the International Banks Act 1996; the Financial Intelligence Unit Act, 2001; and the Proceeds of Crime and Money Laundering (Prevention) Act, 2001.

⁹² Act 29 of 1977, as amended by S.R.O. 38 of 1980, Act 21 of 1988 and Act 23 of 1988.

(b) both the place of take-off and the place of landing are in the territory of the state in which the aircraft is registered,

subsection (1) does not apply unless –

(i) the person seizing or exercising control of the aircraft is a citizen of Saint Vincent and the Grenadines; or

(ii) his act is committed in Saint Vincent and the Grenadines; or

(iii) the aircraft is registered in Saint Vincent and the Grenadines or is used in the military or customs service of Saint Vincent and the Grenadines or in the service of any police force in Saint Vincent and the Grenadines.

(3) Any person who –

(a) commits the offence of hijacking; or

(b) in Saint Vincent and the Grenadines induces or assists the commission elsewhere of an act which would, but for subsection (2), be the offence of hijacking,

is guilty of an offence and liable to imprisonment for life.

(4) For the purposes of this section, the period during which an aircraft is in flight shall be deemed to include any period from when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation and, in the event of a forced landing, any period until some competent authority takes over responsibility for the aircraft and for persons and property on board.

(5) For the purposes of this section, the territorial waters of any state shall be treated as part of its territory.

(6) In this section, “military service” includes naval and air force service.

Violence against passengers and crew

3. Without prejudice to section 4 of the Civil Aviation (Tokyo Convention) Act, where a person (of whatever nationality) does on board any aircraft (wherever registered) and while outside Saint Vincent and the Grenadines any act which, if done in Saint Vincent and the Grenadines, would constitute the offence of murder, attempted murder, manslaughter, assault or an offence under any of sections 173, 174, 175, 176, 177, 180, 183 of the Criminal Code and aiding, abetting, counselling, procuring, attempting or conspiring to commit an offence under any

of those sections, his act shall constitute that offence if it is done in connection with the offence of hijacking committed or attempted by him on board that aircraft.

Extradition

Cap 126

4. For the purposes of the Fugitive Offenders Act, an act, wherever committed, which –

(a) is an offence under this Act, or would be an offence but for section 2 (2); and

(b) is an offence against the law of any state to which that Act applies by reason of section 4 thereof,

shall be deemed to be an offence committed within the jurisdiction of that state.

Aircraft operated by joint or international organization

5. If the Governor-General, by order made under this section, declares –

(a) that any two or more states named in such order have established an organisation or agency which operates aircraft; and

(b) that one of those states has been designated as exercising, for aircraft so operated, the power of the state of registration,

the state so declared in terms of paragraph (b) shall be deemed for the purposes of this Act to be the state in which any aircraft so operated is registered, but in relation to such an aircraft section 2 (2) (b) shall have effect as if it referred to the territory of any one of the states named in the order.

Prosecutions

6. Proceedings for an offence under this Act shall not be instituted in Saint Vincent and the Grenadines except by, or with the consent of, the Director of Public Prosecutions.

2. EXTRADITION (HIJACKING) ORDER, 1979⁹³

STATUTORY RULES AND ORDERS
1979, NO. 46

IN EXERCISE of the powers conferred by section 4 of the Hijacking Act, 1977, the Governor hereby makes the following Order: —

THE EXTRADITION (HIJACKING) ORDER, 1979

1. *Citation.*

This Order may be cited as the Extradition (Hijacking) Order, 1979.

2. *Interpretation.*

In this Order references to the Extradition Acts and to the Act of 1870 are, respectively, references to the Extradition Acts 1870 to 1933 of the United Kingdom and to the Extradition Act 1870 of the United Kingdom, as amended or extended by any subsequent enactment.

3. *Application of the Extradition Acts.*

(1) The Extradition Acts shall apply in the case of a State mentioned in Schedule 2⁹⁴ to this Order under and in accordance with the extradition treaties described in the second column of that Schedule as supplemented by paragraphs 1 and 4 of Articles 8 of the Convention set out in Schedule 1⁹⁵ to this Order which entered into force for those States on the dates specified in the third column of Schedule 2 to this Order.

(2) The Extradition Acts shall apply in the case of the States mentioned in Part I of Schedule 3⁹⁶ to this Order (being States in respect of which the said Convention entered into force on the dates specified in the second column of that Schedule) subject to the conditions contained in, and in accordance with, Part II of that Schedule.

[...]

⁹³ Gazette 18th September, 1979.

⁹⁴ Schedule 2, containing the list of foreign States which are Parties to the Convention and with which extradition treaties are in force, has been omitted from the present publication.

⁹⁵ Schedule 1, containing the text of the Convention for the Suppression of Unlawful Seizure of Aircraft, has been omitted from the present publication.

⁹⁶ Part 1 of Schedule 3, containing the list of foreign States which are Parties to the Convention and with which no extradition treaties are in force, has been omitted from the present publication.

SCHEDULE 3

[...]

PART II

APPLICATION OF THE EXTRADITION ACTS IN THE CASE OF THE STATES MENTIONED IN PART I

1. The Extradition Acts shall have effect as if the only extradition crimes within the meaning of the Act of 1870 were offences under the Hijacking Act, 1977, and attempts to commit such offences.

2. The Extradition Acts shall only apply where the case is such that paragraphs 2 and 4 of Article 8 of the Convention apply.

3. No proceedings shall be taken on an application by information or complaint for a provisional warrant of arrest (that is to say a warrant issued under section 8 of the Act of 1870 otherwise than in pursuance of sub-paragraph 1 of the first paragraph thereof), and no such warrant shall be issued, unless the application is made with the consent of the Director of Public Prosecutions signified by his written consent in the form set out in Part III of this Schedule or in a form to the like effect; but, subject as aforesaid, the signification of consent shall not affect the provisions of the said section 8.

4. Without prejudice to sections 3, 9 and 11 of the Act of 1870, the fugitive criminal shall not be surrendered if—

(a) it appears to the Director of Public Prosecutions, to the magistrate hearing the case in pursuance of section 9 of that Act or to the High Court on an application for a writ of habeas corpus—

(i) that the request for his surrender (though purporting to be made on account of such an offence as is mentioned in paragraph 1 above) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions, or

(ii) that he might, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions, or

(iii) that if charged with the offence of which he is accused he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction, or

(b) it appears to the Director of Public Prosecutions or to the High Court on an application or a writ of habeas corpus that –

(i) by reason of the passage of time since the fugitive criminal is alleged to have committed the offence of which he is accused or to have become unlawfully at large, or

(ii) because the accusation against him is not made in good faith in the interests of justice,

would, having regard to all the circumstances, be unjust or oppressive to render him.

5. **(1) Without prejudice to his so deciding on other grounds, the Director of Public Prosecutions may, in the circumstances mentioned in the following sub-paragraph, decide not to give his consent or issue a warrant or make an order, respectively, –**

(a) for the purposes of paragraph 3 above, or

(b) under section 7 of the Act of 1870 requiring the issue of a warrant of arrest, or

(c) under section 11 of the Act of 1870 ordering the fugitive criminal to be surrendered.

(2) The circumstances referred to in the preceding sub-paragraph are –

(a) that the Director of Public Prosecutions is not satisfied that provision is made by the law of the State requesting surrender under which a person accused or convicted in Saint Vincent of the like offence as that which the fugitive criminal is accused or convicted might be surrendered to Saint Vincent if found in that State, or

(b) that under the law of the State requesting surrender the fugitive criminal is liable to the death penalty for the offence of which he is accused, or

(c) that the fugitive criminal is a citizen of the United Kingdom and Colonies.

PART III

FORM OF CONSENT OF DIRECTOR OF PUBLIC PROSECUTIONS TO APPLICATION FOR A PROVISIONAL WARRANT OF ARREST

Whereas (name)....., a person recognized by the Government as a diplomatic representative of (country)....., has requested consent to application being made for the issue of a provisional warrant for the arrest of (name)....., late of (country)....., who is [accused] [convicted] of the commission of an offence, within the jurisdiction of the said State, being an offence which, if committed in Saint Vincent, would be an offence under the Hijacking Act, 1977.

Now, I (name), Director of Public Prosecutions, do hereby signify to you my consent to the said application being made.

Given under my hand this day of , 19

(Signature)

Director of Public Prosecutions

Made this 31st day of August, 1979.

SYDMEY DOUGLAS GUNMUNRO,
Governor

3. MARITIME SECURITY ACT, 2002

AN ACT to give effect to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 1988 which supplements that Convention and for purposes connected therewith.

[12th February, 2002]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same, as follows:

Short title and commencement

1. This Act may be cited as the Maritime Security Act, 2002 and shall come into force on such date as the Governor-General may appoint by proclamation published in the Gazette.

Interpretation

2. (1) In this Act, unless the context otherwise requires, “act of violence” means –

(a) any act done in Saint Vincent and the Grenadines which constitutes the offence of unlawful use of firearms at another person, murder of any degree, manslaughter or culpable homicide, intentionally causing grievous bodily harm or assault occasioning actual bodily harm punishable under the Criminal Code; and

(b) any act done outside Saint Vincent and the Grenadines which, if done in Saint Vincent and the Grenadines, would constitute such an offence as is mentioned in paragraph (a);

“Convention” means the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, signed at Rome on March 10, 1988 the text of which is set out in the First Schedule;

“fixed platform” means –

(a) any offshore installation which is not a ship and

(b) any other artificial island, installation or structure which –

(i) permanently rests on, or is permanently attached to, the seabed,

(ii) is maintained for the purposes of the exploration or exploitation of resources or for other economic purposes, and

(iii) is not connected with dry land by a permanent structure providing access at all times and for all purposes;

“Protocol” means the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, signed at Rome on March 10, 1988 the text of which is set out in the Second Schedule;

“Ship” means any vessel (including hovercraft, submersible craft and other floating craft) other than one which –

(a) permanently rests on, or is permanently attached to, the seabed, or

(b) has been withdrawn from navigation or laid up;

“unlawfully” –

(a) in relation to the commission of an act in Saint Vincent and the Grenadines, means an offence that is (apart from this Act) constituted under any law in force in Saint Vincent and the Grenadines; and

(b) in relation to the commission of an act outside Saint Vincent and the Grenadines, means the commission of an act that would (apart from this Act) have been an offence under any law in force in Saint Vincent and the Grenadines had it been committed in Saint Vincent and the Grenadines.

Hijacking of ships

3. (1) A person who unlawfully and intentionally, by the use of force or threats of any kind, seizes a ship or exercises control of it, commits the offence of hijacking a ship, whatever his nationality and whether the ship is in Saint Vincent and the Grenadines or elsewhere, but subject to subsection (2) below.
- (2) Subsection (1) above does not apply in relation to a warship or any other owned or operated by a State when being used as a naval auxiliary or for customs or police purposes unless –
- (a) the person seizing or exercising control of the ship is a citizen of Saint Vincent and the Grenadines, or
 - (b) his act is committed in Saint Vincent and the Grenadines, or
 - (c) the ship is owned or operated by Saint Vincent and the Grenadines and is being used in the naval or customs service of Saint Vincent and the Grenadines or in the service of any police force in Saint Vincent and the Grenadines.
- (3) A person guilty of the offence of hijacking a ship is liable on conviction to imprisonment for life.

Seizing or exercising control of fixed platforms

4. (1) A person who unlawfully and intentionally, by the use of force or by threat of any kind, seizes a fixed platform or exercises control of it, commits an offence, whatever his nationality and whether the fixed platform is in Saint Vincent and the Grenadines or elsewhere.
- (2) A person guilty of an offence under this section is liable on conviction to imprisonment for life.

Destroying ships or fixed platforms or endangering their safety

5. (1) Subject to subsection (5) below, a person commits an offence if he unlawfully and intentionally –
- (a) destroys a ship or a fixed platform,
 - (b) damages a ship, its cargo or a fixed platform so as to endanger, or to be likely to endanger, the safe navigation of the ship, or as the case may be, the safety of the platform, or

(c) commits on board a ship or on a fixed platform an act of violence which is likely to endanger the safe navigation of the ship, or as the case may be, the safety of the platform.

(2) Subject to subsection (5) below, a person commits an offence if he unlawfully and intentionally places, or causes to be placed, on a ship or fixed platform any device or substance which –

(a) in the case of a ship, is likely to destroy the ship or is likely so to damage it or its cargo as to endanger its safe navigation, or

(b) in the case of a fixed platform, is likely to destroy the fixed platform or so to damage it as to endanger its safety.

(3) Nothing in subsection (2) above is to be construed as limiting the circumstances in which the commission of any act –

(a) may constitute an offence under subsection (1) above, or

(b) may constitute attempting or conspiring to commit, or aiding, abetting, counselling, procuring or inciting, or being art and part in, the commission of such an offence.

(4) Except as provided by subsection (5) below, subsections (1) and (2) above apply whether any such act as is mentioned in those subsections is committed in Saint Vincent and the Grenadines or elsewhere and whatever the nationality of the person committing the act.

(5) Subsections (1) and (2) above do not apply in relation to any act committed in relation to a warship or any other ship owned or operated by a State when being used as a naval auxiliary or for customs or police purposes unless –

(a) the person committing the act is a citizen of Saint Vincent and the Grenadines, or

(b) his act is committed in Saint Vincent and the Grenadines, or

(c) the ship is used in the naval or customs service of Saint Vincent and the Grenadines or in the service of any police force in Saint Vincent and the Grenadines.

(6) A person guilty of an offence under this section is liable on conviction to imprisonment for life.

Other acts endangering or likely to endanger safe navigation

6. (1) Subject to subsection (6) below, it is an offence for any person unlawfully and intentionally –

(a) to destroy or damage any property to which this subsection applies, or

(b) seriously to interfere with the operation of any such property,

where the destruction, damage or interference is likely to endanger the safe navigation of any ship.

(2) Subsection (1) above applies to any property used for the provision of maritime navigation facilities, including any land, building or ship so used, and including any apparatus or equipment so used, whether it is on board a ship or elsewhere.

(3) Subject to subsection (6) below, it is also an offence for any person intentionally to communicate any information which he knows to be false in a material particular, where the communication of the information endangers the safe navigation of any ship.

(4) It is a defence for a person charged with an offence under subsection (3) above to prove that, when he communicated the information, he was lawfully employed to perform duties which consisted of or included the communication of information and that he communicated the information in good faith in performance of those duties.

(5) Except as provided by subsection (6) below, subsections (1) and (3) above apply whether any such act as is mentioned in those subsections is committed in Saint Vincent and the Grenadines or elsewhere and whatever the nationality of the person committing the act.

(6) For the purposes of subsections (1) and (3) above any danger, or the likelihood of danger, to the safe navigation of a warship or any other ship owned or operated by a State when being used as a naval auxiliary or for customs or police purposes is to be disregarded unless –

(a) the person committing the act is a Saint Vincent and the Grenadines national, or

(b) his act is committed in Saint Vincent and the Grenadines, or

(c) the ship is used in the naval or customs service of Saint Vincent and the Grenadines or in the service of any police force in Saint and the Grenadines.

(7) A person guilty of an offence under this section is liable on Ancillary conviction to imprisonment for life.

Ancillary offences

7. (1) A person also commits an offence under this Act if he unlawfully and intentionally –

(a) attempts to commit any of the offences set forth in sections 3, 4, 5 and 6 above; or

(b) abets the commission of any of the offences set forth in sections 3, 4, 5 and 6 above or is otherwise an accomplice of a person who commits any of those offences; or

(c) threatens, with or without a condition, aimed at compelling another person to do or refrain from doing any act, to commit any of the offences set forth in sections 3, 4, 5 and 6 above, if that threat is likely to endanger the safe navigation of a ship.

(2) A person guilty of an offence under this section is liable on conviction to imprisonment for life.

Master's power of delivery

8. (1) If the master of a ship, wherever that ship may be, and whatever the State (if any) in which it may be registered, has reasonable grounds to believe that any person on board the ship has committed any offence under section 3, 5, 6 or 7 of this Act, in relation to any ship other than a warship or other ship owned or operated by a State when being used as a naval auxiliary or for customs or police purposes, he may deliver that person to an appropriate officer in Saint Vincent and the Grenadines or any other Convention country.

(2) Where the master of a ship intends to deliver any person in Saint Vincent and the Grenadines or any other Convention country in accordance with subsection (1) above he shall give notification to an appropriate officer in that country –

(a) of his intention to deliver that person to an appropriate officer in that country; and

(b) of his reasons for intending to do so.

(3) Any notification under subsection (2) above must be given –

(a) before the ship in question has entered the territorial sea of the country concerned; or

(b) if in the circumstances it is not reasonably practicable to comply with paragraph (a) above, as soon as reasonably practicable after the ship has entered that territorial sea.

(4) Where the master of a ship delivers any person to an appropriate officer in any country under subsection (1) above he shall –

(a) make to an appropriate officer in that country such oral or written statements relating to the alleged offence as that officer may reasonably require; and

(b) deliver to an appropriate officer in that country such other evidence relating to the alleged offence as in the master's possession.

(5) The master of a ship who without reasonable excuse fails to comply with subsection (2) or (4) above is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) It is a defence for a master of a ship charged with an offence under subsection (5) above of failing to comply with subsection (2) above to show that he believed on reasonable grounds that the giving of the notification required by subsection (2) above would endanger the safety of the ship and, except where the country concerned is Saint Vincent and the Grenadines, that either –

(a) he notified some other competent authority in the country concerned within the time required by subsection (3) above, or

(b) he believed on reasonable grounds that the giving of notification to any competent authority in that country would endanger the safety of the ship.

(7) In this section –

“appropriate officer” means –

(a) in relation to Saint Vincent and the Grenadines, a member of the Royal Saint Vincent and the Grenadines Police Force, Coast Guard or an Immigration Officer, and

(b) in relation to any other Convention country, an officer having functions corresponding to the functions in Saint Vincent and the Grenadines either of a member of the Royal Saint Vincent and the Grenadines Police Force or of an Immigration Officer.

“Convention country” means a country in which the Convention is for the time being in force; and the Governor-General may by order in Council certify that any country specified in the Order is for the time being a Convention country and any such Order in Council for the time being in force shall be conclusive evidence that the country in question is for the time being a Convention country, and

“master” has the same meaning as in the Merchant Shipping Act 1985⁹⁷

⁹⁷ Cap. 364 of 1990 Rev.

9. No prosecution shall be instituted under this Act without the written consent of the Minister of National security.⁹⁸

4. PROTECTION OF AIRCRAFT AND AIRPORTS ACT, 2002⁹⁹

AN ACT to provide for the implementation of the provisions of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971 and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, 1988 and for purposes connected therewith.

[29th January, 2002]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same as follows:-

Short title and commencement

1. This Act may be cited as the Protection of Aircraft and Airports Act, 2002 and shall come into force on such date as the Governor General may appoint by proclamation published in the Gazette.

Interpretation

2. (1) In this Act, unless the context otherwise requires, "act of violence" means

(a) any act done in Saint Vincent and the Grenadines which constitutes the offence of unlawful use of firearms at another person, murder of any degree, manslaughter or culpable homicide, intentionally causing grievous bodily harm or assault occasioning actual bodily harm punishable under the Criminal Code; and

(b) any act done in Saint Vincent and the Grenadines which constitutes the offence of unlawful use of firearms at another person, murder of any degree, manslaughter or culpable homicide, intentionally causing grievous bodily harm or assault occasioning actual bodily harm punishable under the Criminal Code; and

"the Convention" means the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23rd September, 1971 the text of which is set out in the First Schedule;

⁹⁸ The text of the First and Second Schedules have been omitted from the present publication but are available for consultation with the Codification Division, Office of Legal Affairs.

⁹⁹ Act No. 2 of 2002.

“landing” includes alighting on water;

“military service” includes naval and or air force service;

“the Protocol” means the Protocol for the Suppression of Unlawful Acts of Violence at Airports serving Civil Aviation signed at Montreal on 24th February, 1988 the text of which is set out in the Second Schedule;

“unlawfully” –

(a) in relation to the commission of an act in Saint Vincent and the Grenadines, means an offence that is (apart from this Act) constituted under any law in force in Saint Vincent and the Grenadines; and

(b) in relation to the commission of an act outside Saint Vincent and the Grenadines, means the commission of an act that would (apart from this Act) have been an offence under any law in force in Saint Vincent and the Grenadines had it been committed in Saint Vincent and the Grenadines.

(2) For the purposes of this Act –

(a) the period during which an aircraft is in flight shall be deemed to include any period from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation, and, in the case of a forced landing, any period until the competent authorities take over responsibility for the aircraft and for persons and property on board; and

(b) an aircraft shall be taken to be in service during the whole of the period which begins with the pre-flight preparation of the aircraft for a flight and ends twenty-four hours after the aircraft lands having completed that flight, and also at any time (not falling within that period) while, in accordance with paragraph (a) the aircraft is in flight.

Destroying damaging or endangering safety or aircraft

3. (1) Subject to subsection (3), any person who unlawfully and intentionally –

(a) destroys an aircraft in service or so damages such aircraft as to render it incapable of flight or as to be likely to endanger its safety in flight; or

(c) commits on board an aircraft in flight any act of violence which is likely to endanger the safety of the aircraft,

shall be guilty of an offence under this Act.

(2) Subject to subsection (4), any person who unlawfully and intentionally places or causes to be placed on an aircraft in service any device or substance which is likely to destroy the aircraft or is likely so to damage it as to render it incapable of flight or as to be likely to endanger its safety in flight shall be guilty of an offence under this Act; but nothing in this subsection shall be construed as limiting the circumstances in which the commission of any act-

(a) may constitute an offence under subsection (1); or

(b) may constitute attempting or conspiring to commit or abetting the commission of such offence.

(3) Except as provided by subsection (4), subsections (1) and (2) apply whether any such act therein mentioned is committed in Saint Vincent and the Grenadines or elsewhere, whatever the nationality or citizenship of the person committing the act or whatever the State in which the aircraft is registered.

(4) Subsections (1) and (2) do not apply to any act committed in relation to an aircraft used in military, customs or police service unless –

(a) the act is committed in or over Saint Vincent and the Grenadines; or

(b) where the act is committed outside Saint Vincent and the Grenadines, the person committing the act is a citizen of Saint Vincent and the Grenadines.

Other acts endangering or likely to endanger the safety of aircraft

4. (1) Subject to subsections (5) and (6), any person who unlawfully and intentionally destroys or damages any property to which this section applies or interferes with the operation of such property, where the destruction, damage or interference is likely to endanger the safety of aircraft in flight, shall be guilty of an offence under this Act.

(2) Subsection (1) applies to any property used for the provision of air navigation facilities including any land, building or ship so used, and includes any apparatus or equipment so used, whether it is on board an aircraft or elsewhere.

(3) Subject to subsections (4) and (5), any person who intentionally communicates any information which is false, misleading or deceptive in a material particular, where the communication of the information endangers the safety of an aircraft in flight or is likely to endanger the

safety of an aircraft in flight, shall be guilty of an offence under this Act.

(4) It shall be a defence for a person charged with an offence under subsection (3) to prove –

(a) that he believed, and had reasonable grounds for believing, that the information was true; or

(b) that, when he communicated the information, he was lawfully employed to perform duties which consisted of or included the communication of information and that he communicated the information in good faith in the performance of those duties.

(5) Subsections (1) and (3) do not apply to the commission of any act unless either the act is committed in Saint Vincent and the Grenadines, or where the act is committed outside Saint Vincent and the Grenadines –

(a) the person committing the act is a citizen of Saint Vincent and the Grenadines; or

(b) the commission of the act endangers or is likely to endanger the safety in flight of a civil aircraft registered in Saint Vincent and the Grenadines or chartered by demise to a lessee whose principal place of business, or (if he has no place of business) whose permanent residence is in Saint Vincent and the Grenadines; or

(c) the act is committed on board a civil aircraft which is registered or so chartered in Saint Vincent and the Grenadines; or

(d) the act is committed on board a civil aircraft which lands in Saint Vincent and the Grenadines with the person who committed the act still on board.

(6) Subsection (1) also does not apply to any act committed outside Saint Vincent and the Grenadines and so committed in relation to property which is situated outside Saint Vincent and the Grenadines and is not used for the provision of air navigation facilities in connection with international air navigation, unless the person committing the act is a citizen of Saint Vincent and the Grenadines.

(7) In this section, “civil aircraft” means any aircraft other than an aircraft used in military, customs or police service.

Acts of violence at airports serving international civil aviation

5. (1) Any person who unlawfully and intentionally, using any device, substance or weapon –

(a) performs an act of violence against a person at an airport

serving international civil aviation which causes or is likely to cause serious injury or death; or

(b) destroys or seriously damages the facilities of an airport serving international civil aviation or an aircraft not in service located thereon or disrupts the service of the airport

where such an act endangers or is likely to endanger safety at that airport shall be guilty of an offence under this Act.

(2) Subsection (1) applies whether any such act therein mentioned is committed in Saint Vincent and the Grenadines or elsewhere, whatever the nationality or citizenship of the person committing the act or whatever the State in which the aircraft is registered.

Abetting commission of acts outside of Saint Vincent and the Grenadines

6. Any person in Saint Vincent and the Grenadines who abets the commission outside Saint Vincent and the Grenadines of any act which

(a) would, but for subsection (4) of section 3, be an offence under that section; or

(b) would, but for subsection (5) and (6) of section 4, be an offence under that section,

shall be guilty of an offence under this Act.

Penalty

7. Any person guilty of an offence under this Act shall be liable on conviction to imprisonment for life.

Consent to prosecution

8. No prosecution shall be instituted under this Act without the written consent of the Minister of National Security.

Extradition

9. (1) All offences under this Act and attempts to commit such offences shall be deemed to be included in the descriptions of relevant offences set out in the First Schedule to the Fugitive Offenders Act

(2) Notwithstanding anything contained in sections 3 and 4 of the Fugitive Offenders Act, the Fugitive Offenders Act shall apply to:

(a) all countries State Parties to the Convention in respect of offences to which the Convention relates; and

(b) all countries State Parties to the Convention and the Protocol in respect of offences to which the Convention and the Protocol relate.

(3) For the purposes of the Fugitive Offenders Act, any act, wherever committed, which –

(a) is an offence under this Act or an attempt to commit such an offence, or would be such an offence or attempt, but for subsection (4) of section 3, or subsection (5) or (6) of section 4; and

(b) is an offence against the law of any country State Party to the Convention or the Convention and the Protocol,

shall be deemed to be an offence committed within the jurisdiction of that country.¹⁰⁰

5. ACT AGAINST THE TAKING OF HOSTAGES, 2002¹⁰¹

AN ACT for the implementation of the provisions of the International Convention Against the Taking of Hostages, 1979.

[4th June, 2002]

BE IT ENACTED by the Queen’s Most Excellent Majesty by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same, as follows:

¹⁰⁰ The First and Second Schedules, containing the text of the Convention for the Suppression of Unlawful Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation and the 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 23 September 1971, respectively, have been omitted from the present publication.

¹⁰¹ Act No. 32 of 2002.

Short title

1. This Act may be cited as the Act Against the Taking of Hostages, 2002

Interpretation

2. In this Act unless the context otherwise requires

“a third party” includes a State, an international inter-governmental Organisation, a natural or juridical person, or any group of persons;

“Convention” means the International Convention against the Taking of Hostages, adopted in New York on 17 December, 1979 the text of which is set out in the First Schedule;

“hostage” means any person or persons held against their will by another person or persons;

“nearest appropriate diplomatic representative” shall include the nearest appropriate representative of the national State of the suspect, the nearest appropriate representative of a State which may effect communication with that representative, or the nearest appropriate representative of the suspect’s habitual or ordinary residence if he is a stateless person.

Offences

3. (1) Every person who confines, imprisons, forcibly seizes or detains another person, and who threatens the death of, injury to, or the continued detention of that person in order to compel a third party to commit any act or omission or cause to be committed any act or omission as an explicit or implicit condition for the release of that person commits an act of hostage taking.

- (2) Every person

- (a) who commits an act of hostage taking; or

- (b) who attempts to commit an act of hostage taking; or

- (c) who participates as an accomplice of anyone who commits or attempts to commit an act of hostage taking;

shall be guilty of an offence, and liable to imprisonment for life.

Jurisdiction

4. Notwithstanding anything in this or any other Act, offences listed under section 3 of this Act shall be deemed to have been committed in Saint Vincent and the Grenadines when

(a) the act is committed in the territory of Saint Vincent and the Grenadines, including on board ships and aircraft registered, licensed, or otherwise subject to the jurisdiction of Saint Vincent and the Grenadines;

(b) regardless of where the act was committed, the person who committed the offence is

(i) a citizen of Saint Vincent and the Grenadines; or

(ii) a stateless person having his habitual or ordinary residence in Saint Vincent and the Grenadines;

(c) regardless of where the act was committed, the act was intended to induce

(i) the Government of Saint Vincent and the Grenadines, or any of its constituent parts; or

(ii) any natural or juridical citizen of Saint Vincent and the Grenadines,

to commit or cause to be committed any act or omission;

(d) regardless of where the act was committed, a person taken hostage is a citizen of Saint Vincent and the Grenadines;

(e) regardless of where the act was committed, the person who committed the act is, after the commission thereof, present in the territory of Saint Vincent and the Grenadines.

Suspect's rights

5. (1) Every person suspected of being guilty of any of the offences Suspect's Rights described in section 3 of this Act shall be entitled

(a) to communicate without delay with his nearest appropriate diplomatic representative; and

(b) to be visited by that representative.

(2) Nothing in subsection (1) or (3) shall prejudice the right of the suspect to communicate with, and be visited by the International Committee of the Red Cross, when it has been invited to do so by his national State, or State of habitual residence when he is a stateless person.

(3) Nothing in this Act shall impair the suspect's enjoyment of all other rights and guarantees available.

Notification requirements

6. (1) The result of all prosecutions under this Act shall be communicated to the Secretary General of the United Nations.

(2) If any person has been taken into custody or subject to similar measures in contemplation of prosecution or extradition for any of the offences set out in this Act, the following parties shall be notified either directly or through the Secretary General of the United Nations:

- (a) the State where the offence was committed;
- (b) the State against which compulsion has been directed or attempted;
- (c) the State of which the natural or juridical person against whom compulsion has been directed or attempted is a national;
- (d) the State of which the hostage is a national or in the territory of which he has his habitual residence;
- (e) the State of which the alleged offender is a national or, if he is a stateless person, in the territory of which he has his habitual residence;
- (f) the international intergovernmental Organisation against which compulsion has been directed or attempted;
- (g) all other States concerned.

Extradition

7. (1) Offences under this Act shall be deemed to be included in the descriptions of relevant offences set out in the First Schedule to the Fugitive Offenders Act.

(2) Notwithstanding anything contained in sections 3 and 4 of the Fugitive Offenders Act, the Fugitive Offenders Act shall apply to all countries State Parties to the Convention in respect of offences to which the Convention relates.

(3) For the purposes of the Fugitive Offenders Act any offence described in this Act, wherever committed, which is an offence against the law of any country State Party to the Convention shall be deemed to be an offence committed within the jurisdiction of that country.

Scope of Application

8. Nothing in this Act shall affect any existing or future laws in Saint Vincent and the Grenadines relating to offences described herein where the alleged offender is found in the territory of Saint Vincent and the Grenadines and the offences have taken place wholly in its territory with the hostage and the alleged offender being nationals of Saint Vincent and the Grenadines.¹⁰²

6. UNITED NATIONS (ANTI-TERRORISM MEASURES), 2002¹⁰³

SAINT VINCENT AND THE GRENADINES

1. ASSENT

AN ACT for the implementation of the provisions of the International Convention for the Suppression of the Financing of Terrorism, 1999 and to provide for measures to combat terrorism

[By Proclamation]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same, as follows:

Short title and commencement

1. This Act may be cited as the United Nations (Anti-Terrorism Measures) Act, 2002 and shall come into force on a date that the Governor General may appoint by proclamation published in the Gazette.

Interpretation

2. In this Act unless the context otherwise requires –

“Commissioner” means the Commissioner of Police;

¹⁰² The First Schedule, containing the text of the International Convention Against the Taking of Hostages, 1979, has been omitted from the present publication.

¹⁰³ Act No. 34 of 2002.

“Convention” means the International Convention for the Suppression of the Financing of Terrorism, adopted in New York on 9 December, 1999 the text of which is set out in the First Schedule;

“funds” means assets of every kind as defined in Article 1 of the Convention;

“Minister” means the Minister responsible for National Security;

“proceeds” means any funds derived from or obtained, directly or indirectly, through the commission of an offence under this Act;

“terrorist” means any person who –

- (a) commits, or attempts to commit, any terrorist act; or
- (b) participates in or facilitates the terrorist act;

“terrorist act” means the use or threat of action which constitutes –

- (a) an offence within the scope of and as defined in one of the treaties listed in the Second Schedule; 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;

“terrorist property” means money or other property however acquired which is likely to be used for the purposes of committing a terrorist act and includes proceeds of acts carried out for the purposes of a terrorist act;

Other terms used but not specifically defined in this Act, which have been defined in the Convention, have the same meaning as in the Convention.

Prohibition against provision or collection of funds for terrorist acts

3. (1) Any person in Saint Vincent and the Grenadines or any citizen of Saint Vincent and the Grenadines outside Saint Vincent and the Grenadines who by any means, directly or indirectly, unlawfully and willfully provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out a terrorist act or to facilitate the commission of any terrorist act commits an offence.

(2) For an act to constitute an offence under subsection (1), it shall not be necessary that the funds were actually used to carry out a terrorist act.

(3) Any person in Saint Vincent and the Grenadines or any citizen of Saint Vincent and the Grenadines outside Saint Vincent and the Grenadines who

- (a) attempts to commit an offence as set forth in subsection (1); or
- (b) participates as an accomplice of anyone who commits or attempts to commit an offence as set forth in subsection (1); or
- (c) organizes or directs others to commit or attempt to commit an offence as set forth in subsection (1);

shall likewise be guilty of an offence.

(4) Any person in Saint Vincent and the Grenadines or any citizen of Saint Vincent and the Grenadines outside Saint Vincent and the Grenadines who intentionally contributes to the commission of one or more offences set forth in subsection (1) or (3) by a group of persons acting with a common purpose either:

- (a) with the aim of furthering the criminal activity or criminal purpose of the group; or
- (b) in the knowledge of the intention of the group to commit an offence as set forth in subsection (1) or (3);

shall likewise be guilty of an offence.

Prohibition against provision of resources and services for benefit of terrorists

4. Any person in Saint Vincent and the Grenadines or any citizen of Saint Vincent and the Grenadines outside Saint Vincent and the Grenadines who makes any funds, financial assets, economic resources or financial or other related services available, directly or indirectly, for the benefit of –

- (a) any terrorist;
- (b) an entity owned or controlled by any terrorist;
- (c) any person or entity acting on behalf of or at the direction of any terrorist or any entity owned or controlled by any terrorist

commits an offence.

Prohibition against dealing with property of terrorist

5. Any person in Saint Vincent and the Grenadines or any citizen of Saint Vincent and the Grenadines outside Saint Vincent and the Grenadines who –

(a) deals, directly or indirectly, in any property that is owned or controlled by or on behalf of any terrorist or any entity owned or controlled by any terrorist, including funds derived or generated from property owned or controlled, directly or indirectly, by any terrorist or any entity owned or controlled by any terrorist;

(b) enters into or facilitates, directly or indirectly, any financial transaction related to a dealing in property referred to in paragraph (a), or;

(c) provides any financial services or any other related services in respect of any property referred to in paragraph (a), to or for the benefit of, or on the direction or order of, any terrorist or any entity controlled by any terrorist

commits an offence.

Prohibition against supporting terrorists in other ways

6. Any person in Saint Vincent and the Grenadines or any citizen of Saint Vincent and the Grenadines outside Saint Vincent and the Grenadines who provides any form of support, active or passive, to any terrorist or any entity owned or controlled by any terrorist or to any terrorist or to any entity acting on behalf of or at the direction of any terrorist –

(a) by recruiting or assisting in the recruitment of persons; or

(b) by supplying or assisting in the supply of weapons

commits an offence.

Penalties

7. A person guilty of an offence under sections 3, 4, 5 or 6 of this Act shall be liable –

(a) on conviction on indictment, to imprisonment for a term not exceeding twenty years, to an unlimited fine or both; or

(b) on summary conviction, to imprisonment for a term not exceeding five years, to a fine not exceeding \$500,000 or both.

Forfeiture of terrorist property

8. (1) The court by or before which a person is convicted of an offence under sections 3, 4, 5, or 6 of this Act may order the forfeiture of any money or other property –
- (a) which at the time of the offence, the convicted person had in his possession or under his control, and
 - (b) which, at that time, such person intended should be used, or knew or had reasonable cause to suspect would or might be used, for the purposes of a terrorist act.
- (2) where a person other than a convicted person claims to be the owner of or otherwise interested in any money or property which can be forfeited by an order under this section, the court shall give him an opportunity to be heard before making an order.

Jurisdiction

9. Notwithstanding anything in this or in any other Act, offences listed in sections 3, 4, 5 and 6 of this Act shall be deemed to have been committed in Saint Vincent and the Grenadines when
- (a) the offence is committed in the territory of Saint Vincent and the Grenadines, including on board ships and aircraft registered, licensed, or otherwise subject to the jurisdiction of Saint Vincent and the Grenadines;
 - (b) regardless of where the offence was committed, the person who committed the offence is
 - (i) a citizen of Saint Vincent and the Grenadines; or
 - (ii) a stateless person having his habitual or ordinary residence in Saint Vincent and the Grenadines;
 - (c) regardless of where the offence was committed, the offence was directed towards or resulted in the carrying out of a terrorist act –
 - (i) in the territory of or against a national of Saint Vincent and the Grenadines; or
 - (ii) against a State or government facility of Saint Vincent and the Grenadines abroad, including its diplomatic or consular premises; or
 - (iii) in an attempt to compel Saint Vincent and the Grenadines to do or abstain from doing any act;

(d) regardless of where the offence was committed, the person who committed the offence is, after the commission thereof, present in the territory of Saint Vincent and the Grenadines.

Duty to provide information

10. Every person in Saint Vincent and the Grenadines and any citizen of Saint Vincent and the Grenadines outside Saint Vincent and the Grenadines who -

(a) has possession, custody or control of any property belonging to any terrorist or any entity owned or controlled by any terrorist; or

(b) has information about any transaction or proposed transaction in respect of any property belonging to any terrorist or any entity owned or controlled by any terrorist,

shall immediately inform the Commissioner or such other person as the Minister may designate of the fact or information and provide such further information relating to the property, or transaction or proposed transaction, as the Commissioner or designated person may require.

Duty to investigate and rights of the alleged offender

11. (1) Upon receiving information that a committed or who has committed or who is alleged to have committed any offence under this Act may be present in Saint Vincent and the Grenadines, the Commissioner shall take all measures necessary under the laws of Saint Vincent and the Grenadines to investigate the facts contained in the information and upon being satisfied that the circumstances so warrant the Commissioner shall take all appropriate measures to ensure the presence of such person in Saint Vincent and the Grenadines for the purpose of prosecution or extradition.

(2) Every alleged offender in respect of whom measures referred to in subsection (1) are being taken shall be entitled

(a) to communicate without delay with his nearest appropriate diplomatic representative; and

(b) to be visited by that representative.

(3) Nothing in subsection (2) shall prejudice the right of the alleged offender to communicate with, and be visited by the International Committee of the Red Cross, when it has been invited to do so by his national State, or State of habitual residence when he is stateless person.

(4) Nothing in this Act shall impair the alleged offender's enjoyment of all other rights and guarantees available.

Notification requirements

12. (1) The result of all prosecutions under this Act shall be communicated to the Secretary General of the United Nations.
- (2) If any person has been taken into custody or subject to similar measures in contemplation of prosecution or extradition for any of the offences set out in this Act, the following parties shall either directly or through the Secretary General of the United Nations, of the fact that such person is in custody and of the circumstances which warrant that person's detention:
- (a) the State in the territory of which committed;
 - (b) the State of registration of the vessel or aircraft on board which the offence was committed;
 - (c) the State of which the alleged offender was a national or a habitual resident in the case of a stateless person;
 - (d) the State against which the offence was directed or on whose territory or against whose national the terrorist act was carried out;
 - (e) the State against whose State or government facility abroad, including diplomatic or consular premises of that State, the offence was directed or the terrorist act was carried out,
 - (f) the State against which compulsion had been directed or attempted by the commission of the offence or the carrying out of the terrorist act, to get that State to do or abstain from doing any act;
 - (g) the State whose Government was operating any aircraft on board which the offence was committed.
- (3) Upon the completion of the investigation for any of the offences set out in this Act, the above-mentioned State Parties shall also be notified about the findings of the investigation and the intention of the Government of Saint Vincent and the Grenadines to exercise its jurisdiction.
13. (1) In this section "cash" means –
- (a) coins and notes in any currency,

- (b) postal orders,
- (c) travellers' cheques,
- (d) bankers' drafts, and
- (e) such other kinds of monetary instruments as the Minister of Finance may specify by order.

(2) Any member of the Royal Saint Vincent and the Grenadines Police Force, any customs officer, or any immigration officer may seize and detain any cash to which this section applies if he has reasonable grounds for suspecting that -

- (a) it is intended to be used for the purposes of a terrorist act,
- (b) it is terrorist property within the meaning given in section 2 of this Act.

(3) This section applies to cash which -

- (a) is being imported into or exported from Saint Vincent and the Grenadines,
- (b) is brought to any place in Saint Vincent and the Grenadines for the purpose of being exported from Saint Vincent and the Grenadines,

(4) Subject to subsection (5), cash seized under this section shall be released not later than the end of the period of 3 working days beginning with the time when it is seized.

(5) Where an order is made under section 14 in relation to cash seized, it may be detained during the period specified in this order.

Continued detention

14. (1) The Commissioner, Chief Immigration Officer of the Comptroller of Customs may apply to a magistrates' court for an order under this section in relation to cash seized under section 13.

(2) An order under this section -

- (a) shall authorise the further detention under section 13 of the cash to which it relates for a period specified in the order,

(b) shall specify a period which ends not later than the end of the period of three months beginning with the date of the order, and

(c) shall require notice to be given to the person from whom the cash was seized and to any other person who is affected by and specified in the order,

(3) An application for an order under this section may be granted only if the court is satisfied –

(a) that there are reasonable grounds to suspect that the cash is cash of a kind mentioned in section 13 (2) (a) or (b), and

(b) that the continued detention of the cash is justified pending completion of an investigation of its origin or derivation or pending a determination whether to institute criminal proceedings (whether in Saint Vincent and the Grenadines or elsewhere) which relate to the cash.

(4) More than one order may be made under this section in relation to particular cash; but cash shall not be detained by virtue of an order under this section after the end of the period of two years beginning with the date when the first order under this section was made in relation to it.

Detained cash

15. (1) Cash detained under section 13 by virtue of an order section 14 shall, unless required as evidence of an offence, be held in an interest bearing account; and the interest accruing on the cash shall be added to it on its release or forfeiture.

(2) Any person may apply to a magistrate's court for a direction that cash detained under section 14 be released.

(3) A magistrate's court shall grant an application under subsection (2) if it is satisfied –

(a) that section 14 (3) (a) or (b) no longer applies, or

(b) that the detention of the cash is for any other reason no longer justified.

(4) Cash detained under section 14 shall not be released under this section –

(a) while proceedings on an application for its forfeiture under section 16 have not been concluded, or

(b) while proceedings whether in Saint Vincent and the Grenadines or elsewhere, which relate to the cash have not been concluded.

Forfeiture of detained cash

16. (1) The Attorney General or the Director of Public Prosecutions may apply to a Judge in chambers of the High Court for an order forfeiting cash being detained under section 13 by virtue of an order under section 14:
- (2) The Judge in chambers may grant an application only if he is reasonably satisfied that the cash is of a kind mentioned in section 13 (2) (a) or (b).
- (3) Before making an order under this section, the Judge in chambers must give an opportunity to be heard by any person –
- (a) who is not a party to the proceedings, and
 - (b) who claims to be the owner of or otherwise interested in any of the cash which can be forfeited under this section.

Restraint orders

17. (1) The High Court may make a restraint order to prohibit persons from dealing with funds and other financial assets or economic resources of:
- (a) persons who commit, or attempt to commit, a terrorist act or participate in or facilitate the commission of a terrorist act;
 - (b) entities owned or controlled directly or indirectly by persons referred to at (a) above;
 - (c) persons and entities acting on behalf of, or at the direction of persons referred to at (a) above or entities referred to at (b) above.
- (2) The High Court may also make a restraint order to prohibit persons from dealing with funds derived or generated from property owned or controlled directly or indirectly by persons referred to in subsection (1) (a) above or their associated persons and entities.
- (3) A restraint order –
- (a) may be made only on an application by the Attorney General or the Director of Public Prosecutions;
 - (b) may be made on an ex parte application to a Judge in chambers; and

(c) shall provide for notice to be given to persons affected by the order,

(4) A restraint order –

(a) may, on the application of any person affected by the order, be discharged or varied in relation to any funds or financial assets; and

(b) shall be discharged when proceeding for offences under this Act are concluded,.

(5) For the purposes of this section, dealing with funds or financial assets held by any person or entity includes (without prejudice to the generality of the expression):

(a) making any payment to any person from such funds or assets; and

(b) removing such funds or assets from Saint Vincent and the Grenadines.

Extradition

18. (1) Offences under this Act shall be deemed to be included in the description of relevant offences set out in the First Schedule to the Fugitive Offenders Act.

(2) Notwithstanding anything contained in section 3 and 4 of the Fugitive Offenders Act, the Fugitive Offenders Act shall apply to all countries State Parties to the Convention in respect of offences to which the Convention relates.

(3) For the purposes of the Fugitive Offender Act any offence described in this Act, wherever committed, which is an offence against the law of any State Party to the Convention shall be deemed to be an offence committed within the jurisdiction of that country.

Mutual Legal Assistance

19. (1) In connection with criminal investigations or criminal or extradition proceedings in respect of offences under this Act, fullest measure of assistance shall be provided to other States Parties to the Convention in accordance with the Mutual Assistance in Criminal Matters Act, 1993.

(2) A request for mutual legal assistance under subsection (1) shall not be refused on the ground of bank secrecy or on the sole ground that it concerns a political offence.¹⁰⁴

¹⁰⁴ The First Schedule, containing the International Convention for the Suppression of the Financing of Terrorism, 1999, has been omitted from the present publication.

CHII. SAMOA¹⁰⁵

SUMMARY OF LEGISLATION OF SAMOA RELATED TO TERRORISM

(a) Prevention and Suppression of Terrorism Act 2001

The Prevention and Suppression of Terrorism Bill 2001, makes it an offence, punishable by imprisonment from 5 to 15 years, to finance or assist in the financing of terrorist acts.

The Act empowers the Supreme Court to order the freezing of funds, where such funds have been found to be collected for the purpose of committing or financing a terrorist act. The Attorney General may also apply to the Supreme Court to freeze funds that are suspected of being collected for the purpose of committing terrorist acts.

(b) Other legislation

Any terrorist act that may endanger an aircraft is an offence under the Civil Aviation Act 1998. This Act also prohibits the taking of firearms, explosives and other arms on to an aircraft.

Terrorism activity including proceeds obtained directly or indirectly from terrorist activity is covered under the Money Laundering Prevention Act 2000. Financial institutions are required under the terms of the legislation to report any suspicious transactions. The Act addresses, among other things, the disclosure, reporting, penalties, freezing and forfeiture of properties, mutual assistance with foreign States and extradition and rendition of fugitive offenders. The Act also enables the Supreme Court of Samoa to freeze any assets that are alleged to be the proceeds of crime.

The Crimes Ordinance 1961 covers many offences that would fall under the definition of terrorism and provides penalties ranging from monetary fines to life imprisonment to capital punishment. Under the Criminal Procedure Act 1972, any person may apply to the Court for a seizure warrant over any property that is believed to be evidence of any offence that may have been committed.

In respect of providing assistance with criminal investigations or proceedings relating to the financing or supporting terrorist acts, the Extradition Act 1974 provides for the arrest and return of any person in Samoa who is accused of an extradition offence to an extradition country, or of any person who is alleged to be unlawfully at large after conviction of an extradition offence. The authorities in Samoa may arrest and return the offender should the act of terrorism be an "extradition offence" of the requesting State.

¹⁰⁵ Transmitted to the Secretariat by that Government on 13 February 2002 (S/2002/173, enclosure). Information was also provided in respect of the Arms Ordinance 1960; the Police Offences Ordinance, 1961; the Immigration Act, 1966; and the Permit and Passport Act, 1978.

CIV. SAO TOME AND PRINCIPE¹⁰⁶

SUMMARY OF LEGISLATION OF SAO TOME AND PRINCIPE RELATED TO TERRORISM

(a) Criminal Code

There is no specific criminal provision against financing of terrorism or against recruitment of terrorism. However, article 263 of the Criminal Code covers “criminal association”. It also punishes as accomplices those who supply arms, munitions or any other means. It thus appears to be broad enough to cover also the activity of providing financial assistance to a terrorist organization as well as recruitment.

As to the supply of arms to terrorists, article 253 of the Criminal Code punishes the manufacturing, import and trade in arms and explosives to be used against people or buildings. The same article punishes those who trade or provide arms without the necessary administrative authorization.

CV. SAUDI ARABIA¹⁰⁷

SUMMARY OF LEGISLATION OF SAUDI ARABIA RELATED TO TERRORISM

(a) Islamic Shariah

It is a basic principle of the Islamic Shariah that whatever leads to the forbidden is itself forbidden. Terrorist acts are forbidden and are among the most serious crimes in the Shariah texts. Therefore, in accordance with the norms of the Islamic Shariah, anything that is conducive to or that facilitates the commission of such acts is also forbidden, and this includes the provision or collection of funds to be used for terrorist acts. Indeed, the penalty for those who contribute to a terrorist act by providing or collecting the necessary funds can be the same as that applied to the perpetrator of the terrorist act itself.

¹⁰⁶ Transmitted to the Secretariat by that Government on 13 May 2003 (S/2003/568, appendix). Information was also provided indicating that the Government of Sao Tome and Principe was in the process of drafting special legislation against terrorism, which will criminalise the activities proscribed in the twelve multilateral conventions on terrorism.

¹⁰⁷ Transmitted to the Secretariat by that Government on 26 December 2001 (S/2001/1294, enclosure), on 10 July 2002 (S/2002/869, enclosure) and on 23 May 2003 (S/2003/583, enclosure). Information was also provided in respect of the Basic Law of Government (Constitution); the Penal Code; the Fund-raising for Charitable Purposes Regulations, 1976; the Arms and Ammunition Statute, 1981; the Residence Statute; and the Travel Documents Statute.

In 1999, the Kingdom's Council of Senior Religious Scholars issued a statement on terrorism in which it declared that bloodshed, the violation of honour, the theft of private and public property, the bombing of dwellings and vehicles and the destruction of installations are, by the consensus of Muslims, legally forbidden because they violate the sanctity of the innocent, destroy property, security and stability and take the lives of peaceable human beings in their homes and at their work. It stated that the occurrence of such acts in certain countries is unmitigated sedition and criminality that is rejected by the Shariah and by nature itself.

In the Islamic Shariah, which the Kingdom applies and from which it derives its statutes, crimes of terrorism are included among the crimes of *hirabah*. The severest of penalties are applied to these crimes in the Islamic Shariah, as set forth in the Holy Koran [Koran 5:33]. The crimes of *hirabah* include the killing and terrorization of innocent people, spreading evil on earth (*al-ifsad fi al-ard*), theft, looting and highway robbery. The financing of terrorism falls into the category of "spreading evil on earth" (*al-ifsad fi al-ard*). This may incur the non-discretionary *hadd* penalty for *hirabah* (brigandage), which can sometimes mean the application of the death penalty.

(b) Other legislation

In accordance with the statutes in force in the Kingdom, the courts have jurisdiction to decide all cases relating to terrorism and, in accordance with its Statute, the Commission for Investigation and Public Prosecution investigates such crimes and prosecutes them in the courts.

Should a citizen of Saudi Arabia commit terrorist acts outside its territory and should he currently be present outside the country, the Kingdom would seek his extradition for trial in accordance with the relevant bilateral, regional or international agreements. Should such a person be present in Saudi Arabia, he would be brought to trial when it is determined that he had committed acts of terrorism under the statute in force in the country.

In the case of a resident who commits acts of terrorism outside the country, the Kingdom would not seek to bring him to trial since he is not a citizen of the country. In the event that a resident commits a crime outside the country, returns to the country and is sought by the other State, Saudi Arabia would consider extraditing him to the requesting State in accordance with existing agreements between it and that State.

The Kingdom has not refused to extradite persons accused of committing terrorist acts, particularly since it is party to the Arab Convention for the Suppression of Terrorism, the Convention of the Organization of the Islamic Conference on Combating International Terrorism and the Arab Convention on Judicial Cooperation. It is also party to a number of bilateral agreements. However, it might refuse extradition if the case is under investigation, a judicial sentence has been rendered in respect of it or there is a conflict with the principle

of sovereignty. Saudi Arabia might also refuse to extradite if a final judgement has been handed down that is enforceable or is in conflict with the principle of sovereignty.

The provisions of paragraph (a) of article 2 of the Arab Convention for the Suppression of Terrorism concerning armed struggle against foreign occupation and aggression for liberation and self-determination are in accord with principles of international law, as reaffirmed by the United Nations, on the occasion of its fiftieth anniversary, in General Assembly resolution 50/6 of 24 October 1995, which contains a reference to the right of peoples under colonial and other forms of alien domination or foreign occupation to self-determination, independence and the establishment of legitimacy. Thus no exception exists, inasmuch as what is involved is the right of peoples to engage in armed struggle for self-determination.

CVI. SENEGAL¹⁰⁸

ELEMENTS DU DISPOSITIF LEGISLATIF ET REGLEMENTAIRE DU SENEGAL

Les actes de terrorisme s'analysent en infractions définies dans le Code pénal et certaines lois éparses non consignées dans ledit code.

Ces infractions peuvent constituer des atteintes à la vie (meurtres, assassinats, empoisonnement ...), à l'intégrité de la personne (enlèvement, séquestration, destruction, détournement ...) ainsi que l'association de malfaiteurs (vol, extorsions de fonds ...).

La fabrication, la vente et le transport de machines, engins ou substances explosives ainsi que la détention et le port d'armes à feu prohibées constituent également des infractions au regard de la législation sénégalaise.

S'agissant de crimes, la tentative est toujours punissable. Pour les délits, elle l'est, si la loi le prévoit.

Il reste au Sénégal à sa doter d'une législation spécifique au terrorisme, en aggravant les infractions ci-dessus lorsqu'elles sont commises dans une entreprise terroriste.

Recrutement de membres de groupes terroristes

En dépit de la ferme volonté des autorités sénégalaises de combattre le terrorisme sous toutes ses formes, le Sénégal ne dispose pas, à ce jour, d'une législation spécifique pour réprimer le recrutement de membres de groupes terroristes. Cependant, certaines dispositions contenues dans le Code pénal, bien que réprimant des actes criminels de droit commun, peuvent servir de base légale à

¹⁰⁸ Submitted by that Government on 27 December 2001 (S/2002/51, enclosure), on 18 October 2002 (S/2002/1212, annex) and on 11 November 2003 (S/2003/1104, enclosure).

la poursuite d'activités de recrutement de membres de groupes terroristes. Il en est ainsi du délit d'association de malfaiteurs.

L'article 238 du Code pénal dispose que toute association formée quelle que soit sa durée ou le nombre de ses membres, toute entente établie dans le but de préparer un ou plusieurs crimes contre les personnes ou les propriétés, constitue un crime.

L'alinéa 1 de l'article 239 du Code pénal dit qu'«est punie de peine criminelle, toute personne qui sera affiliée à une association formée ou aura participé à une entente établie dans le but de préparer ou de commettre un ou plusieurs crimes contre les personnes ou les propriétés».

L'article 240 du même Code dispose que «sera punie de peine criminelle toute personne qui aura sciemment et volontairement favorisé les auteurs de crime d'association de malfaiteurs en leur fournissant les instruments du crime, les moyens de correspondance ou les lieux de réunion».

L'article 45 du Code pénal dispose que les complices d'un crime ou délit seront punis des mêmes peines que celles de leurs auteurs et coauteurs.

Les modalités de la complicité sont déterminées par l'article 46 du Code pénal qui dispose en son alinéa 2 que: «Sont complices ceux qui auront procuré des armes, des instruments ou tout autre moyen qui aura servi à l'action».

En ce qui concerne les activités frauduleuses de recrutement et de collecte de fonds, les services des ministères des forces armées, des finances et de l'intérieur, chargés de la sécurité intérieure et extérieure, du renseignement ainsi que de la surveillance de la circulation financière en assurent la prévention.

Criminalisation des activités de fourniture et collecte de fonds à des fins liées au terrorisme

Il n'existe pas au Sénégal de lois spécifiques permettant de qualifier de telles activités.

Cependant, certaines dispositions du Code pénal, notamment l'article 80, peuvent servir de base à une criminalisation de ces actes.

Les principales dispositions de l'article 80 du Code pénal sont les suivantes:

«Les autres manoeuvres et actes de nature à compromettre la sécurité publique ou à occasionner des troubles politiques graves, à enfreindre les lois du pays, sont punis d'un emprisonnement de trois ans au moins et de cinq ans au plus et d'une amende de 100,000 à 1,500,000 francs CFA.

Les coupables pourront en outre être frappés d'interdiction de séjour.»¹⁰⁹

Compétence des tribunaux sénégalais pour connaître des actes criminels

Le ressortissant sénégalais qui a commis en dehors du territoire de la République un fait de crime ou de délit prévu par la loi sénégalaise peut être poursuivi et jugé par les juridictions sénégalaises.

Pour une personne qui réside habituellement au Sénégal, les articles 35 et 43 du Code de procédure pénale donnent compétence aux juridictions sénégalaises chaque fois que cette personne est soupçonnée d'avoir participé à une infraction.

Pour un acte commis en dehors du Sénégal par un étranger se trouvant actuellement au Sénégal, la réponse a été donnée ci-dessus [par. 1, al. d)].

Le Code de procédure pénale en ses articles 665, 666, 667, 668, 669 évoque les crimes et délits commis à l'étranger aussi bien par des Sénégalais que par des étrangers.

Article 665:

«Quiconque s'est, sur le territoire de la République, rendu complice d'un crime ou d'un délit commis à l'étranger, peut être poursuivi et jugé si le fait est prévu à la fois par la loi sénégalaise et la loi étrangère».

Cette disposition pose le principe de la double incrimination. Pour que des faits commis à l'étranger soient poursuivis au Sénégal, il faudra qu'ils soient à la fois passibles de poursuites au Sénégal et dans le pays étranger.

L'article 668 du Code de procédure pénale dispose: «est réputée être commise sur le territoire de la République toute infraction dont un acte caractérisant un de ses éléments constitutifs a été accompli au Sénégal».

C'est dans ce cadre qu'on peut poursuivre «ceux qui, seiemment, auront recelé, en tout ou en partie, des choses enlevées, détournées, à l'aide d'un crime ou d'un délit (art. 430 du Code pénal)».

L'article 431 du Code pénal poursuit «dans le cas où une peine criminelle est applicables aux faits recelés, le receleur sera puni de la peine attachée par la loi au crime et aux circonstances de celui-ci».

La loi distingue le concours réel du concours idéal d'infractions.

¹⁰⁹ N.B. L'ancien texte punissait aussi «les autres manoeuvres et actes de nature à jeter le discrédit sur les institutions publiques ou leur fonctionnement». Cette incrimination, s'étant révélée incompatible avec les libertés démocratiques, a été supprimée par la loi du 29 janvier 1999. En réalité, le législateur a voulu ainsi, en 1999, rayer de l'ordre juridique sénégalais le délit d'opinion.

Il y a concours idéal lorsque les mêmes faits sont susceptibles de plusieurs qualifications différentes. Dans ce cas, les poursuites peuvent être déclenchées sous l'empire de toutes ces qualifications possibles. Mais les juridictions de jugement ne retiendront que la qualification la mieux adaptée aux faits.

Dans le concours réel d'infractions, différentes infractions sont commises par une ou plusieurs personnes avec chacune sa propre qualification.

Dans cette hypothèse, les poursuites se feront sur le fondement juridique attaché à chaque infraction.

CVII. SEYCHELLES¹¹⁰

SUMMARY OF LEGISLATION OF THE SEYCHELLES RELATED TO TERRORISM

(a) Penal Code

Criminal acts that may be committed by terrorists are criminal offences in Seychelles and are severely punished. Under the Penal Code, provision is made for the following offences –

- Possession of a firearm or other offensive weapon, ammunition, incendiary material or explosive – seven (7) years;
- Murder – imprisonment for life;
- Attempt to murder – imprisonment for life;
- Suicide pact (manslaughter) – imprisonment for life;
- Attempt to injure by explosive substance – fourteen (14) years;

¹¹⁰ Transmitted to the Secretariat by that Government on 31 March 2003 (S/2003/435, annex and enclosure). Information was also provided in respect of the following: the Anti-Money Laundering Act, 1996; the Central Bank Act, Cap 26; the Financial Institutions Act, Cap 79; the International Business Companies Act, 1994; the International Trust Act, 1994; the Seychelles International Business Authority Act, 1994; the Exchange Control Act, Cap 76; the Immigration Decree, Cap 93; the Passport Act, Cap 155; the Mutual Legal Assistance Act, 1995; the Extradition Act, 1991; the Criminal Procedure Code, Cap 54; the Firearms and Ammunition Act, Cap 80; the Explosives Act, Cap 77; the Foreign Earnings (Regulation) Act, Cap 84A; the Public Order Act, Cap 194; and the Control and Protection of Clients Accounts Act, Cap 44.

- Maliciously administering poison with intent to harm – fourteen (14) years;
- Unlawful wounding or unlawfully with intent to injure or annoy any person causes any poison or other noxious thing to be administered or taken by a person – seven (7) years;
- Dealing in poisonous substance in a negligent manner – six months or a fine of RS 1,000;
- Kidnapping – seven (7) years;
- Kidnapping or abducting in order to murder – ten (10) years;
- Hijacking – imprisonment for life.

Section 84 of the Penal Code (Cap 158) provides an offence for possession or control of any firearm or other offensive weapon, or any ammunition, incendiary material or explosive in circumstances which raise a reasonable presumption that such firearm, offensive weapon, ammunition, incendiary material or explosive is intended to be used in a manner or for a purpose prejudicial to public order.

An offence is also committed by any person “who consorts with or is found in the company of another person who in contravention of subsection (1) ... in circumstances which raise a reasonable presumption that he intends to act or has recently acted with such other person in a manner and for a purpose prejudicial to public order”.

Further, an offence is committed by any person “who...knowingly negotiates, procures arrangements for, or is in any way concerned in or assists in the delivery to any person to any other person of any firearm or other offensive weapon, or any ammunition, incendiary material or explosive, whether by way of sale, hire, gift, loan, or otherwise in circumstances which raised a reasonable presumption that he knew or believed that such firearm offensive weapon, ammunition, incendiary material or explosive was intended or likely to be used by any person in a manner or for a purpose prejudicial to public order”.

Any person guilty of these offences is liable to imprisonment for seven or five years.

(b) Other legislation

The Public Order Act prohibits the holding of public meetings or public processions without a permit from the Commissioner of Police. The Act further prohibits any quasi-military organization (an association of persons organized or trained or equipped for the purpose of enabling them to be employed in such a

manner that such employment usurps or tends or appears to usurp the functions of the police or of the armed forces of the Republic) and any person who takes part in the control or management of such an organization or in so organizing or training shall be guilty of an offence and is liable to a fine of five thousand rupees and up to imprisonment for five years.

CVIII. SINGAPORE¹¹¹

SUMMARY OF LEGISLATION OF SINGAPORE RELATED TO TERRORISM

(a) United Nations Act and United Nations (Anti-Terrorism Measures) Regulations 2001

Any person living in Singapore is covered by the provisions of the United Nations Act and the United Nations (Anti-Terrorism Measures) Regulations 2001. Any person present in Singapore who is financing terrorist activities outside Singapore would be guilty of an offence under the Regulations.

Regulation 5 of the Regulations 2001 provides that no person in Singapore and no citizen of Singapore outside Singapore shall (a) provide funds to any person by any means, directly or indirectly, or (b) collect funds for any person by any means, directly or indirectly, if he knows or has reasonable grounds to believe that the funds will be used to commit any terrorist act or facilitate the commission of any terrorist act.

Regulation 4(1) defines the term “funds” as including (but not confined to) cheques, bank deposits and other financial resources.

The term “terrorist act” has also been given a comprehensive definition (in regulation 4(1)) so as to ensure that all terrorist acts will indeed fall within the ambit of the Regulations.

The term “person” in the Regulations includes any company or association or body of persons, corporate or unincorporate (as provided in section 2 of the Interpretation Act).

The Regulations were amended (with effect from 12 March 2002) and three new provisions were added. Regulation 7A provides that no person in Singapore and no citizen of Singapore outside Singapore shall, directly or

¹¹¹ Transmitted to the Secretariat by that Government on 20 December 2001 (S/2001/1234, enclosure), on 17 June 2002 (S/2002/690, enclosure) and on 14 February 2003 (S/2003/480, enclosure). Information was also provided in respect of the following: the Arms and Explosives Act; the Arms Offences Act; the Extradition Act; the Banishment Act; Societies Act; and Charities (Fund-Raising Appeals for Foreign Charitable Purposes) Regulations.

indirectly, export, sell, supply or ship any arms and related material, wherever situated, to any terrorist.

Regulation 7B provides that no owner or master of a Singapore ship and no operator of an aircraft registered in Singapore shall directly or indirectly carry or cause or permit to be carried any arms and related material wherever situated, for any terrorist.

Regulation 7C provides that no person in Singapore and no citizen of Singapore outside Singapore shall, directly or indirectly, provide any terrorist with technical advice, assistance or training related to military activities.

Regulation 9 provides that no person in Singapore and no citizen of Singapore outside Singapore shall knowingly do anything that causes, assists or promotes, or is intended to cause, assist or promote, any act or thing prohibited by regulation 5 (and regulations 6, 7 and 8).

The financing of terrorist acts is subject to the penalties in the United Nations Act. The penalties provided for in the Act reflect the fact that the Government of Singapore regards these offences as serious.

(b) Internal Security Act

Section 5 of the Internal Security Act provides that if the members or adherents of any association of persons, whether incorporated or not, are organized or trained or equipped either for the purpose of enabling them to be employed for the use or display of physical force in promoting any political or other object, or in such a manner as to arouse reasonable apprehension that they are organized or trained or equipped for that purpose, then any member or adherent of such association shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year or to both; and any person who promotes or conspires with another to promote, or who takes part in the control or management of, the association, or in so organizing or training as aforesaid any member or adherent thereof, shall be guilty of an offence under this Part and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 5 years or to both. The High Court may order any property held by such an association to be forfeited to the Government.

Section 8 of the Act provides that if the President is satisfied with respect to any person that, with a view to preventing that person from acting in any manner prejudicial to the security of Singapore or any part thereof or to the maintenance of public order or essential services therein, it is necessary to do so, the Minister for Home Affairs shall make an order directing that such person be detained for any period not exceeding two years. The Act provides for detention without trial of persons whose activities threaten the internal security of Singapore, and this measure is used in circumstances where it is not practical to deal with threats posed by terrorists under the normal parameters of criminal law.

(c) Penal Code

There is no offence per se of “committing a terrorist act” in the Penal Code. However, the planning, preparation or perpetration of terrorist acts would involve offences such as murder, causing hurt, hijacking, kidnapping etc, all of which are offences under Singapore law. The abetment of such offences by aiding, instigation or conspiracy is also an offence under Singapore law.

Singapore law prescribes capital punishment for murder and kidnapping and severe penalties for serious offences (including caning for many violent offences).

Singapore does not regard acts of terrorism as offences of a “political character”. The Extradition Act would be invoked to extradite an alleged terrorist, for offences that fall under the Extradition Act, to foreign States with which Singapore has extradition treaties or to Commonwealth countries, pursuant to the relevant Commonwealth schemes in relation to the extradition of fugitives. There has been no case where a court in Singapore has held that an offence committed for purposes of terrorism is an offence of a “political character”.

CIX. SLOVENIA¹¹²

SUMMARY OF LEGISLATION OF SLOVENIA RELATED TO TERRORISM

The Penal Code (Uradni list Republike Slovenije Nos. 63/94, 70/94 – amendment and 23/99 (Official Gazette of the Republic of Slovenia)) incriminates internal terrorism in article 355 and international terrorism in article 388:

Internal Terrorism

Article 355

Whoever with the intention of jeopardising the constitutional order or security of the Republic of Slovenia, causes an explosion or fire, or commits any other act of violence endangering public safety, or

¹¹² Transmitted to the Secretariat by that Government on 24 December 2001 (S/2001/1277, enclosure and Corr.1) and on 12 July 2002 (S/2002/863, enclosure). Information was also provided in respect of the following: the Restricted Measures Act (Uradni list Republike Slovenije No. 35/01); the Prevention of Money Laundering Act, 1995; the Money Laundering Act, 2001; the Code of Criminal Procedure; the Societies Act (Uradni list Republike Slovenije Nos 60/95, 49/98); the Foundations Act (Uradni list Republike Slovenije Nos 60/95); the Social Security Act (Uradni list Republike Slovenije Nos 54/92, 56/92, 13/93, 42/93, 42/94, 1/99, 41/99); the Institutes Act; Sports Act; Political Parties Act; the Weapons Act; and the Act Governing State Border Control.

threatens the use of nuclear materials or means of mass slaughter, thereby arousing fright and uncertainty among people, shall be punished to imprisonment for not less than three years.

International Terrorism

Article 388

(1) Whoever, with the intent of inflicting damage on a foreign country or an international organisation, kidnaps a person or commits some other act of violence, or causes an explosion or a fire, or endangers human life or property of substantial value by acts or means capable of causing danger to public, shall be sentenced to imprisonment for not less than one and not more than ten years.

(2) Whoever, with the intention of compelling a legal person, international organisation or state to perform or omit to perform a certain act, threatens to endanger or harm human life or property of substantial value by the use of nuclear force or other means of mass extermination shall be sentenced to imprisonment of not less than one year.

(3) If the criminal offence under the first and the second paragraphs of the present article entails the death of one or more persons, the perpetrator shall be sentenced to imprisonment for not less than five years.

(4) If the perpetrator, in the committing of a criminal offence under the first or second paragraphs of the present article, deliberately takes the lives of one or more persons, he shall be sentenced to imprisonment for not less than ten years or to thirty years.

The Penal Code also contains incriminations of other criminal offences, defined in international instruments in the field of terrorism. For example, article 144 defines the crime of kidnapping, article 330 hijacking, article 353 violence against the highest representatives of the State, article 389 endangering of persons under international protection and article 390 taking of hostages.

The Penal Code, in the Chapter “Criminal Offence and Criminal Liability” of the General Provisions, also incriminates collaboration, soliciting or supporting in the committing a criminal offence.

If two or more persons are engaged jointly in committing a criminal offence by collaborating in the execution thereof or by the performance of any act representing a decisive part of the committing of the offence in question (collaboration), each of these persons shall be punished according to the limits set down in the statutes for the offence in question.

Anybody who intentionally solicits another person to commit a criminal offence shall be punished as if he himself had committed it. Anybody who intentionally solicits another person to commit a criminal offence for which the sentence of three years' imprisonment or a heavier sentence may be imposed under the statute, shall be punished for the criminal attempt even if the committing of such an offence had never been attempted.

Article 297 of the Penal Code incriminates the criminal offence of criminal association. Whoever establishes a group for the purposes of perpetrating criminal offences for which a punishment exceeding five years of imprisonment may be applied, is sentenced to imprisonment not exceeding three years. Whoever joins such a group is sentenced to imprisonment not exceeding one year. The punishment must be remitted for the founder or a member of the above group who prevents the committing of a criminal offence or provides timely information about it or discloses the organisation and its leaders. The intention to commit a criminal offence suffices for the punishment of the founder or a member of the above organization even if the criminal offences have not been committed.

Related offences

Article 309 of the Penal Code incriminates the manufacturing and acquiring of weapons and other means intended for committing a criminal offence. Whoever manufactures, acquires or keeps weapons, explosive materials or poisons which he knows to be intended for the committing of a criminal offence, or whoever provides another person with access to the same, is sentenced to imprisonment not exceeding three years.

Article 310 defines the criminal offence of illegal manufacture of and trade in (acquiring, keeping, bartering, importing or exporting) weapons or explosive materials, the trade in which is completely prohibited or limited for individuals. The sentence set down for the basic criminal offence is imprisonment for not less than six months and not more than five years. If the offence involves a large quantity of or very valuable weapons or explosive materials, the perpetrator shall be sentenced to imprisonment for not less than one and not more than ten years.

Territorial application

Under the terms of article 120, paragraph 1, the Penal Code applies to anybody committing a crime on the territory of the Republic of Slovenia. Moreover, in terms of article 123, paragraph 2, the Penal Code is applicable also to any foreigner who has committed a criminal offence against a foreigner country or against a foreign citizen if he has been apprehended in Slovenia and has not been extradited to a foreign country.

CX. SOUTH AFRICA¹¹³

SUMMARY OF LEGISLATION OF SOUTH AFRICA RELATED TO TERRORISM

(a) Internal Security Act 1982 (Act No. 74 of 1982)

Section 54 (1) of the Act provides that:

Any person who with intent to –

- (a) overthrow or endanger the State authority in the Republic;
- (b) achieve, bring about or promote any constitutional, political, industrial, social or economic aim or change in the Republic; or
- (c) induce the Government of the Republic to do or to abstain from doing any act or to adopt or to abandon a particular standpoint;

in the Republic or elsewhere –

- (i) commits an act of violence or threatens or attempts to do so;

¹¹³ Transmitted to the Secretariat by that Government on 24 December 2001 (S/2001/1281, enclosure), on 8 July 2002 (S/2002/792, enclosure) and on 30 January 2003 (S/2003/272, enclosure). Information was also provided in respect of the following: the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998); the Aliens Control Act, 1991 (Act No. 96 of 1991); the International Air Service Act, 1993 (Act No. 60 of 1993); the Civil Aviation Offences Act, 1972 (Act No. 10 of 1972); the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993); the Armaments Development and Production Act, 1968 (Act No. 57 of 1968); the Arms and Ammunition Act, 1969 (Act No. 75 of 1969); the Intimidation Act, 1982 (Act No. 72 of 1982); the State of Emergency Act, 1997 (Act No. 64 of 1997); the Explosives Act, 1956 (Act No. 26 of 1956); the Judicial Matters Amendment Act, 1998 (Act No. 34 of 1998), (paramilitary training); the Criminal Procedure Act, 1977 (Act No. 51 of 1977); the Merchant Shipping Act, 1957 (Act No. 57 of 1951); the Nuclear Energy Act, 1999 (Act No. 46 of 1999); the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993); the Defence Act, 1957 (Act No. 44 of 1957); the National Key Points Act, 1980 (Act No. 102 of 1980); the Protection of Information Act, 1982 (Act No. 84 of 1982); the Civil Protection Act, 1977 (Act No. 67 of 1977) the Regulation of Gatherings Act, 1993 (Act No. 205 of 1993); the Films and Publications Act, 1996 (Act No. 65 of 1996) (hate and war speech); the Riotous Assemblies Act, 1956 (Act No. 17 of 1956); the Interception and Monitoring Prohibition Act, 1992 (Act No. 127 of 1992); the Firearms Control Act, 2000 (Act No. 60 of 2000); the Extradition Act, 1962; Financial Intelligence Centre Act, 2001; the Non-profit Organisations Act, 1997 (Act 71 of 1997); and the Income Tax Act, 1962 (Act 58 of 1962).

(ii) performs any act which is aimed at causing, bringing about, promoting or contributing towards such act or threat of violence, or attempts, consents or takes any steps to perform such act;

(iii) conspires with any other person to commit, bring about or perform any act or threat referred to in paragraph (i) or act referred to in paragraph (ii), or to aid in the commission, bringing about or performance thereof; or

(iv) incites, instigates, commands, aids, advises, encourages or procures any other person to commit, bring about or perform such act or threat,

shall be guilty of the offence of terrorism and liable on conviction to the penalties provided for by law for the offence of treason.

The application of section 54 of the Internal Security Act is restricted in two important aspects. First, it is aimed at criminalizing terrorist acts directed against the constitutional order of the Republic of South Africa. Secondly, the Act only relates to an act of violence and therefore does not address other forms of terrorism, such as bio-terrorism and cyber terrorism or the funding of terrorism.

(b) Regulation of Foreign Military Assistance Act 1998 (Act No. 15 of 1998)

The Act prohibits any person within South Africa and elsewhere from rendering any foreign military assistance to any person unless he or she has been granted authorisation by the National Conventional Arms Control Committee (NCACC), in consultation with the Minister of Defence. The NCACC is a Ministerial controlling committee that was established by an August 1995 Cabinet decision to oversee South Africa's conventional arms control policies and related arms transactions, in consultation with the Minister of Defence.

The Act provides that any person who contravenes a provision of the Act (i.e. by providing unauthorised military assistance) shall be guilty of an offence and liable on conviction to a fine or to imprisonment or both.

Foreign Military Assistance is broadly defined and includes military or military-related services, attempts, encouragement, incitement or solicitation. Regulated services include advice or training, personnel, financial, logistical, intelligence or operational support; personnel recruitment; medical or para-medical services; security services; any action aimed at overthrowing a State or undermining its constitutional order or any other action.

In its consideration of applications related to foreign military assistance, the NCACC is guided by the Act. Any person wishing to obtain authorisation, or seeking to obtain approval of an agreement or arrangement for the rendering of foreign military assistance, needs to submit an application to the NCACC. In this

regard, the Act contains criteria for the granting or refusal of such authorisations and approvals, stipulating that these may not be granted if, amongst others, the authorisation or approval would “be in conflict with the Republic’s obligations in terms of international law” (Section 7(1)(a)) or if it would “support or encourage terrorism in any manner” (Section 7(1)(d)).

(c) The Second Criminal Law Amendment Act, 1992 (Act No. 126 of 1992)

This Act, together with and the Regulation of Foreign Military Assistance Act, 1998 (Act No. 15 of 1998), controls the establishment in South African territory of para-military groups. Section 13 of the Second Criminal Law Amendment Act prohibits the organizing, training, equipping or arming of any organization if the purpose of that organization is to usurp some or all of the functions of either the South African Police Service or the South African National Defence Force. Any person who contravenes the provisions of this section shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 10 years

(d) Territorial application

As a general principle, South African law does not establish extra-territorial jurisdiction. However, extra-territorial jurisdiction is provided for in specific legislation, which would apply to South African nationals outside South African territory or foreign nationals currently in South Africa. Legislation, which provides for extra-territorial jurisdiction relevant to the combating of terrorist acts, includes:

- The Regulation of Foreign Military Assistance Act, 1998, which provides that no person may “within the Republic or elsewhere” render foreign military assistance.
- The Civil Aviation Offences Act, 1972, (Act No. 10 of 1972) which provides in section 3 that South African courts shall have jurisdiction over crimes committed on board South African aircraft anywhere in the world. In addition the courts will have jurisdiction over crimes committed on board any other aircraft if the aircraft lands in South Africa and the perpetrator is still on board or if the lessee of an aircraft has his principle place of business in the Republic or if the perpetrator is present in the Republic.
- The Prevention of Organized Crime Act, 1998 which provides in section 2 for the jurisdiction of the courts over a person who “within the Republic or elsewhere” commits an offence relating to racketeering activities (which is defined as the planned, ongoing, continuous or repeated involvement in any [serious] offence listed in the schedule to the Act).

– The Internal Security Act, 1982 which provides in section 54 for jurisdiction of the Courts over a person "... in the Republic or elsewhere ..." who committed an act of terrorism against the constitutional sovereignty of the Republic.

CXI. SPAIN¹¹⁴

SUMMARY OF LEGISLATION OF SPAIN RELATED TO TERRORISM

The Spanish Penal Code, which was approved pursuant to Organic Law 10/1995 of 23 November 1995, punishes any act of collaboration with armed groups or terrorist organizations or groups (article 576). The recruitment of members would constitute a form of collaboration.

In addition, Organic Law 7/2000, of 23 December 2000 provides for special measures in cases involving persons under 18 years of age who commit terrorist offences.

Article 573 of the Penal Code provides penalties for the storing of weapons or munitions and the possession or storage of explosive, flammable, incendiary or asphyxiating substances or devices or components thereof, as well as their manufacture, trafficking, transport or supply, in any form, and the mere placement or use of such substances or of other means or contrivances for achieving the same purpose by persons acting at the service of or in collaboration with armed groups, organizations, or terrorist groups.

Article 575 of the Penal Code¹¹⁵ deals with fund-raising and the financing of terrorism in general. Anyone who attempts a crime against property in order to obtain funds for the armed groups, organizations or terrorist groups, or to further their purposes shall be punished with a penalty at the level next highest to the one prescribed for the offence committed, without prejudice to the enforcement of such penalties as are applicable under the article for acts of collaboration.

¹¹⁴ Transmitted to the Secretariat by that Government on 21 December 2001 (S/2001/1246, enclosure), on 26 June 2002 (S/2002/778, enclosure) and on 30 May 2003 (S/2003/628, appendix). Information was also provided in respect of the following: legislation concerning steps to prevent procurement of weapons; the Law 5/1984 of 26 March 1984, on the right of asylum and the status of refugees, as amended by Law 9/1994 of 19 May 1994; the law on the rights and freedoms of foreigners in Spain and their social integration (Organic Law 4/00 of 11 January 2000, amended by Organic Law 8/00 of 22 December 2000); the passive extradition law of 21 March 1985; and prevention of money laundering (Law 19/1993, of 28 December 1993).

¹¹⁵ As amended by Organic Law 7/2000 of 22 December 2000.

In Article 576:

“1. The performance, requesting or facilitation of any act of collaboration with the activities or purposes of an armed group or terrorist organization or group shall be punishable by imprisonment of five to ten years and fines equivalent to 18 to 24 months.

“2. ‘Acts of collaboration’ shall be understood to mean the supply of information on or the surveillance of persons, goods or facilities; the building, fitting-out, transfer or use of lodging or storage facilities; the concealment or movement of persons linked to armed groups or terrorist organizations or groups; the organization of training sessions or attendance at such sessions; and, in general, any other equivalent form of cooperation, assistance or complicity, economic or otherwise, with the activities of the aforementioned armed groups or terrorist organizations or groups.”

Article 579 of the Penal Code¹¹⁶ establishes in paragraph 1 that provocation, conspiracy and proposition to commit the crimes set forth in articles 571 to 578 – crimes of terrorism – are punishable by a sanction which is one or two degrees lower than that corresponding, respectively.

Article 16, paragraph 1 of the Penal Code (Organic Law 10/1995 of 23 November 1995) defines as an attempt to commit a criminal offence every direct and exterior act of initiation of the commission of the crime which implies the performance of all or part of the acts that should objectively lead to the production of the pursued result, but which result is not finally produced by conditions independent from the will of the offender. Article 62 of the Code provides that an attempt to commit an offence is punishable by a sanction which is one or two degrees lower than the prescribed penalty for a consummated crime, to the extent deemed appropriate, with due regard to the danger inherent in the attempt and the degree of execution reached.

The Organic Law on the Safeguarding of Public Security (Organic Law 1/1992 of 23 February 1992) establishes strict guidelines for preventive action and vigilance with respect to the manufacture and repair of weapons, imitations and reproductions thereof and their basic components; explosives, cartridges and pyrotechnic devices; and the circulation, storage and merchandising, acquisition, sale, possession and use of such items.

The Penal Code establishes severe penalties for all terrorist offences which are proportional to the seriousness of the offence committed. Terrorist offences are specifically defined and harsher penalties are prescribed for them than for ordinary offences that are not committed for terrorist purposes. For example:

¹¹⁶ Ibid.

- Murder: 15 to 20 years
- Murder for terrorist ends: 20 to 30 years

Under the Penal Code, in all cases of offences linked with terrorist activities, a sentence handed down by foreign judges or courts is brought in line with the equivalent sentence that would be applied by Spanish judges and courts, when the aggravating circumstance of repeat offences exists (article 580).

Prosecution of terrorist offences may be carried out through either ordinary or summary proceedings, depending on the penalty stipulated for the act. In either case, the guarantees set forth in article 24 of the Constitution are provided, namely, effective protection, a judge presiding over ordinary proceedings as established by law, right to legal counsel and assistance, public trial without undue delay and with guarantees, use of means of proof for the defence, right not to incriminate oneself and not to confess guilt, and right to the presumption of innocence.

Territorial application

The Organic Law of the judiciary branch (Organic Law 6/1965 of 1 July 1965) establishes that Spanish courts are competent to take cognizance of acts that constitute terrorist offences under Spanish law which are committed by Spanish nationals and foreigners outside the national territory.

The Organic Law of the judiciary branch assigns responsibility for considering terrorist offences to a judicial body which has competence throughout the national territory, i.e., the Audiencia Nacional. Article 23, paragraph 4 of Organic Law 6/1985 of 1 July 1985, on the judiciary, gives Spanish judges and tribunals jurisdiction over acts committed by Spanish nationals or foreigners outside Spain that are categorized as acts of terrorism under Spanish law.

The commission of the crime abroad does not rule out punishment for the crime in Spain, provided that the initiation of the commission of the crime occurred in Spain. In the case where an attempt or a conspiracy of two or more persons to commit a crime also occurs in Spain or in the case of provocation, conspiracy or proposition to commit a crime (principle of territoriality in respect of the competence of the Spanish judiciary, as set forth in article 23, paragraph 1 of Organic Law 6/1985, on the judiciary).

Procedure

Procedural legislation provides for certain steps to be taken in connection with the investigation of terrorist offences covered by article 55 of the Spanish Constitution. Under article 55, an organic law may stipulate how and in what cases – with the requisite court order and adequate parliamentary oversight – the rights referred to in article 17, paragraph.2 (maximum duration of preventive detention) and article 18, paragraphs 2 and 3 (inviolability of domicile and secrecy

of communications) may be suspended for certain persons in connection with investigations pertaining to the action of armed bands or terrorists.

Thus, the legislation on penal procedures provides:

Detention by the police may be extended 48 hours beyond the initial 72 hours, provided that such extension is requested in a formal, well-founded communication within the first 48 hours of detention and that it is authorized by the judge within the next 24 hours (article 520 bis of the criminal prosecution act).

Detainees may be kept incommunicado, by court order (article 520 bis).

Police authorities may detain suspected terrorists in whatever place or domicile they may be hiding or taking refuge and, in connection with the detention, they may conduct searches in those places and seize the effects and instruments they may find there which might be linked to the offence committed (article 553 of the criminal prosecution act).

Eavesdropping is allowed when ordered by the Minister of the Interior or, in his absence, by the Director of State Security. The relevant order must be immediately transmitted in writing to the competent judge, who must either revoke or confirm it within a maximum period of 72 hours, clearly stating the reasons for his decision (article 579, paragraph 4).

CXII. SRI LANKA¹¹⁷

SUMMARY OF LEGISLATION OF SRI LANKA RELATED TO TERRORISM

The United Nations Act (No. 45 of 1968) provides that if the Security Council of the United Nations, acting under Article 41 of the Charter of the United Nations, calls upon the Government of Sri Lanka to apply any measures necessary to give effect to any decision of that Council, the Minister in charge of the subject of Foreign Affairs may, by regulations, make such provisions as appear to him necessary or expedient to enable those measures to be effectively applied. These

¹¹⁷ Transmitted to the Secretariat by that Government on 26 December 2001 (S/2001/1282, enclosure), on 15 July 2002 (S/2002/861, enclosure) and on 13 August 2003 (S/2003/840, enclosure). Information was also provided in respect of the Suppression of Terrorist Bombings Act No. 11 of 1999 and Prevention of Terrorism Act, No. 48 of 1979 (for texts and other texts of legislation on terrorism, see *National Laws and Regulations on the Prevention and Suppression of International Terrorism, Part I, United Nations Legislative Series ST/LEG/SER.B/22*). Information was also provided in respect of the following: the Firearms Ordinance for the regulation of the use of firearms and the Offensive Weapons Act; the Immigrants & Emigrants Act; the Exchange Control Act; the Criminal Procedure Code; and the Mutual Legal Assistance in Criminal Matters Act.

would include provision for trial, conviction and punishment of persons offending against such regulations.

Accordingly, the Minister of Foreign Affairs by Regulation dated 11 October, 2001 and published in the Government Gazette (Extra-ordinary No. 1206/14 dated 16th October, 2001), cited as the United Nations Regulation No. 1 of 2001, made provision for giving legal effect in Sri Lanka to the terms of Security Council Resolution 1373 (2001).

In terms of this Regulation, any act which is directly or indirectly connected with the collection of funds or making available of such funds (for any terrorist organization), is made an offence under the law of Sri Lanka and any such funds or other financial assets are liable to be frozen with immediate effect.

Any person who contravenes these provisions shall be guilty of an offence under the Regulation and upon conviction by the High Court holden in Colombo, is liable to imprisonment of either description for a period not less than 5 years and not exceeding 10 years (Clauses 6 and 7)

Upon the conviction of a person for an offence under this Regulation, any funds or other financial assets or resources of such persons shall, by reason of such conviction, be forfeited to the State (Clause 8)

The provisions of the Regulation further cast a duty upon any person who has knowledge or reasonable cause to believe that any person has committed an offence under the Regulation or is making preparations or attempting to commit an offence or has in his possession any information relating to the movements or whereabouts of any person who has committed or is making preparations or is attempting to commit an offence, to report the same to a police officer. Any person who fails to so report commits an offence thereby and shall, on conviction by the High Court be liable to imprisonment of either description for a period not less than two years and not exceeding seven years.

In addition, no person shall make available any funds, financial assets or economic resources for the benefit of any organization or person who commits, attempts to commit, participates in or facilitates the commission of any terrorist act. Any person who violates these provisions would be liable to imprisonment upon conviction by the High Court for a period not less than 5 years and not exceeding 10 years.

The Regulation also makes it an offence for any person to fail to report information in his possession with regard to the movement or whereabouts of any person who has committed or is making preparations or is attempting to commit a terrorist offence. The penalty for such failure to report is imprisonment upon conviction by the High Court for a period not less than two years and not exceeding seven years.

CXIII. SUDAN¹¹⁸

SUMMARY OF LEGISLATION OF THE SUDAN RELATED TO TERRORISM

(a) Terrorism (Combating) Act 2000

The Sudan promulgated the Terrorism (Combating) Act of 2000, Chapter II of which contains provisions relating to terrorist offences, the direction of terrorism organizations and the criminalization of acts such as the hijacking of aircraft and means of sea, river or land conveyance; the detention of or causing of injury to persons; and environmental offences.

Under the Act, the following are considered terrorist offences subject to the application of the Act even if perpetrated for political motives: (i) murder; (ii) theft accompanied by coercion against individuals, authorities or means of conveyance or communication; (iii) acts of sabotage against public property or property earmarked for public use, even if owned in the Sudan by another State; (iv) the crimes of manufacture, smuggling or possession of arms, munitions, explosives or other materials prepared for the commission of terrorist offences.

The Act also provides that any act causing physical damage to the environment or jeopardizing the lives of persons shall be deemed a terrorist act and shall be punishable, upon a verdict of guilty, by imprisonment for a term not exceeding 20 years and a fine.

Moreover, the Act specifically and categorically prohibits engaging in terrorism within Sudanese territory or directing, instigating, attempting, participating in or facilitating, by word, deed or publication, in any manner whatsoever, the direction of an organized network used for committing any terrorist offence or offences in such a way that its operation poses a threat to persons, property or the public tranquillity, irrespective of whether such network operates within or outside the Sudan.

The Act also provides that it is applicable to any person suspected of committing, attempting to commit or inciting a terrorist offence either within or outside the Sudan. It also applies to any person who commits, attempts to commit or abets the commission of a terrorist offence against any alien in the Sudan or

¹¹⁸ Transmitted to the Secretariat by that Government on 27 December 2001 (S/2001/1317, enclosure), on 25 July 2002 (S/2002/865, enclosure) and on 11 August 2003 (S/2003/837, enclosure). Information was also provided in respect of the following: the Banking Regulation Act, 1991; the Arms, Ammunition and Explosives Act, 1986; the Customs Act, 1986; the Narcotic Drugs and Psychotropic Substances, Act 1994; the Sudanese Regulation of Asylum Act (Asylum (Control) Act); the Passport and Migration Act, 1993; the Extradition and Return of Offenders and Wanted Persons Act, 2000; the Passport and Migration Act, 1993; the Civil Aviation Act, 1999; the Evidence Act, 2000; and the Legal Representation Act, 1993.

legally resident there and to any person suspected of committing, attempting to commit or inciting a terrorist offence, provided that the terrorist act is punishable under both Sudanese law and the law of the State in which it was committed and that State agrees to the application of the Terrorism (Combating) Act in the Sudan.

The Act further makes it compulsory to deport any alien convicted of committing, attempting to commit, inciting or providing financing or technical assistance for a terrorist offence, who must be expelled from the country or extradited in accordance with the law to any country injured by the terrorist offence. It also gives the authorities the power to expel any alien concerning whom there is evidence that he entered the country for the purpose of committing a terrorist offence, within a period not exceeding two weeks.

The Act provides a number of penalties for terrorist offences, including the seizure and confiscation of money, property and equipment used in terrorist offences; termination of residence and deportation, in the case of aliens; punishments including imprisonment for a term of as much as 20 years or life, depending on the magnitude of the offence committed, a fine, or both; and in some cases, execution..

Chapter IV of the Act deals with general provisions on the seizure of property and equipment used in terrorist offences, including the confiscation of real estate and other property, equipment, arms, means of conveyance or other things proved to have been used in committing or attempting to commit, or in facilitating or assisting in the commission of, terrorist offences or in concealing those who plot, perpetrate, instigate or encourage such offences, etc., in addition to any other penalty imposed by the competent court.

It also deals with the seizure of terrorists' assets and of any property, real estate, equipment or funds owned by them and their deprivation of any benefit or utilization of any other resources, funds or property, whether in the Sudan or abroad.

(b) Penal Code

The Penal Code of 1991 criminalizes terrorism and terrorist organizations, inasmuch as article 65 of the Code provides that anyone who establishes or directs an organization that plans to commit any crime or anyone who wilfully participates in or assists such an organization, whether operative in the Sudan or outside, shall be punished by imprisonment. If the crime planned by the organization is that of waging war or looting or is an offence punishable by death, or terrorism involving a threat to the public or the public authority, the penalty shall be imprisonment for a term not exceeding 10 years and may also be punished by a fine.

In addition, article 144 of the Code provides as follows:

“(i) The perpetrator of the crime of terrorism is one who:

“a. Addresses to any person a threat to harm him or to harm any other person important to him for the purpose of intimidating him or inducing him to do what he need not do according to law or not to do what he is permitted to do by law;

“b. Makes a movement or exhibits readiness to act, intending thereby to use unlawful force or knowing that he is thus likely to make any person present believe that he is about to use such force against him;

“(ii) The crime of terrorism shall be punishable by imprisonment for a term not exceeding six months or a fine or both.”

(c) National Security Act 1999 as amended in 2001

The National Security Act of 1999, as amended in 2001, provides the death penalty or life imprisonment for any member who intentionally commits or refrains from an act for the purpose of imperilling the internal or exterior security of the country (article 44), and a penalty of imprisonment for a term no greater than 10 years or a fine or both for unlawfully having at one's disposal, or permitting another to have at his disposal, any weapons, munitions or matériel.

CXIV. SWEDEN¹¹⁹

SUMMARY OF LEGISLATION OF SWEDEN RELATED TO TERRORISM

(a) International conventions

Sweden has ratified all the international criminal law conventions for the suppression of terrorism. Thus, Sweden has ratified and implemented all the conventions and protocols listed in the annex to the International Convention for the Suppression of the Financing of Terrorism. It has also ratified the International Convention for the Suppression of the Financing of Terrorism. All acts which constitute an offence within the scope of and defined in the international criminal law conventions for the suppression of terrorism are therefore classed as crimes in Sweden.

¹¹⁹ Transmitted to the Secretariat by that Government on 20 December 2001 (S/2001/1233, enclosure) and on 19 June 2002 (S/2002/691, enclosure). Information was also provided in respect of the Aliens Act (1989) and the Special Control of Foreigners Act.

(b) Penal Code

Swedish legislation, however, contains no reference to specific criminal offences for terrorist acts. Persons committing terrorist acts are punished under the general provisions in the Swedish Penal Code. Terrorist acts punishable as crimes include murder, kidnapping, arson, aggravated criminal damage involving danger to someone's life, sabotage, hijacking, maritime or air traffic sabotage, airport sabotage and spreading poison or contagious substances. All these crimes are punishable by life imprisonment.

Under chapter 23, section 2, a person who, with the intention of committing or promoting a crime, presents or receives money or anything else as pre-payment or payment for a crime shall in certain designated cases be sentenced for preparation of the crime unless he or she is found guilty of having attempted to commit or having committed a crime. In certain designated cases a sentence shall also be imposed for conspiracy to commit a crime. Conspiracy is defined as a decision to act in collusion with another person, or an offer to undertake or execute a crime or the attempt to incite another person to do so.

However, if the terrorist act is found to have been attempted or completed, a person financing the crime will be sentenced for aiding or instigating the preparatory or completed act. Under chapter 23, section 4, punishment shall be imposed not only on the person who committed the crime but also on anyone who furthered it by advice or deed (e.g., financing). A person not regarded as the perpetrator shall, if he or she induced another person to commit the act, be sentenced for instigation of the crime or for aiding and abetting the crime. Each accomplice shall be judged according to the intent or the negligence attributable to him or her.

If financing an act of terrorism that has been completed or reached the level of attempt, the maximum sentence is imprisonment for life.

If financing an act of terrorism that has not been completed or reached the level of attempt, the maximum sentence shall be less than the highest limit applicable to the completed crime.

Under chapter 23, section 1, the penalty for an attempt to commit such crimes shall not be greater than what is applicable to a completed crime and not less than imprisonment if the lowest punishment for the completed crime is imprisonment for two years or more.

Under chapter 23, section 2, a person who procures, constructs, gives, receives, keeps, conveys or engages in any other similar activity with poisons, explosives, weapons, picklocks, falsification tools or other such means with the intention of committing or promoting a crime shall in certain designated cases be sentenced for preparation of a crime unless he or she is found guilty of having attempted to commit or committed the crime. In certain designated cases a sentence shall also be imposed for conspiracy. Conspiracy is defined as a decision

to act in collusion with another person, or an offer to undertake or execute a crime, or the attempt to incite another person to do so.

Punishment for preparation or conspiracy shall, under chapter 23, section 2, be less than the highest limit applicable to the completed crime.

CXV. SWITZERLAND¹²⁰

1. ELEMENTS DU DISPOSITIF LEGISLATIF ET REGLEMENTAIRE DE LA SUISSE

(a) Code pénal

En droit suisse, de nombreuses normes pénales sont applicables aux actes terroristes et à leur financement. Il s'agit, à titre d'exemple, des dispositions relatives aux infractions suivantes: assassinat (art. 112 CP), prise d'otage (art. 185 CP), emploi d'explosifs avec dessein délictueux (art. 224 CP), propagation d'une maladie à l'homme (art. 231 CP). Pour toutes ces infractions, des peines de prison sont prévues. De lourdes peines sont prévues en particulier lorsque l'acte criminel met en danger la vie et l'intégrité corporelle de plusieurs personnes ou cause d'importants dommages. Sont punissables l'instigation, la complicité et la tentative. Si le droit pénal suisse ne contient pas de dispositions spécifiques sur la lutte contre le terrorisme, ces normes constituent néanmoins, dans l'immédiat, un cadre suffisant pour répondre aux besoins de la lutte contre cette forme de criminalité.

Les actes préparatoires de certaines infractions sont également réprimés (art. 260 *bis* CP), et cela avant même que l'exécution d'un acte terroriste planifié n'ait commencé. Cette norme permet de mettre fin aux activités préparatoires d'un acte terroriste et notamment à son financement. Elle prévoit une peine pouvant aller jusqu'à cinq ans de prison.

Le caractère répréhensible de certains actes est également étendu à l'appartenance et au soutien d'une organisation criminelle, notamment terroriste (art. 260 *ter* CP). La peine maximum prévue pour cette infraction est de cinq ans de prison.

La politique suisse en matière de lutte contre le terrorisme n'est en rien entravée par l'absence, dans son code pénal, d'une norme définissant expressément l'infraction terroriste. En effet, comme nous l'avons expliqué ci-dessus, les infractions commises dans un contexte terroriste peuvent d'ores et déjà

¹²⁰ Submitted by that Government on 19 December 2001 (S/2001/1224, appendix), 11 July 2002 (S/2002/868, attachment) and on 12 September 2003 (S/2003/976, enclosure). Information was also submitted in respect of the Anti-Money-Laundering Act (AMLA), the Federal Act on Judicial Cooperation in Criminal Matters, and the Asylum Law.

être sanctionnées par des peines sévères. De plus, du fait des circonstances de leur adoption et de leur formulation, les articles 260 *bis* CPS (punissabilité des actes préparatoires) et 260 *ter* CPS (punissabilité de la participation ou du soutien à une organisation criminelle) sont conçus pour être appliqués à des infractions perpétrées dans un contexte terroriste. Ces dispositions permettent d'engager des poursuites pénales avant même que l'acte terroriste proprement dit ait été perpétré; elles permettent également de viser les différents membres et soutiens d'une organisation terroriste.

L'article 260 *bis* du Code pénal suisse (CPS) en vigueur punit d'une peine privative de liberté pouvant aller jusqu'à cinq ans la préparation, selon un plan, de certaines infractions graves. Sont concernées des infractions qui, typiquement, pourraient être perpétrées dans un contexte terroriste : meurtre, assassinat, lésions corporelles graves, brigandage, séquestration et enlèvement, prise d'otage, incendie intentionnel et génocide.

L'article 260 *ter* du CPS actuel punit d'une peine privative de liberté pouvant aller jusqu'à cinq ans la participation ou le soutien à une organisation qui a pour but de commettre des actes de violence criminels ou de se procurer des revenus par des moyens criminels. Tombent, entre autres, sous le coup de cette disposition, les organisations terroristes qui cherchent à commettre des actes de violence criminels contre des biens ou des personnes.

Le nouvel article 260 *quinquies* CPS, adopté par le Parlement le 21 mars 2003 et qui entrera en vigueur le 1er octobre 2003, prévoit une peine privative de liberté pouvant aller jusqu'à cinq ans pour toute personne qui réunit ou met à disposition des fonds dans le dessein de financer un acte de violence criminel visant à intimider une population ou à contraindre un État ou une organisation internationale à accomplir ou à s'abstenir d'accomplir un acte quelconque.

En Suisse, la préparation d'une infraction terroriste, la participation ou le soutien à une organisation terroriste et le financement d'actes de terrorisme sont, dans tous les cas, des infractions punissables en tant que telles, même si aucun acte terroriste n'a encore été commis ni tenté. Les actes des personnes impliquées sont ainsi punissables, que ceux-ci soient projetés ou destinés à être commis sur le territoire suisse ou sur celui d'un autre État, ou encore contre des ressortissants étrangers.

Recrutement

Le recrutement est punissable en Suisse :

- a) Lorsque les recruteurs utilisent des moyens de contrainte pour inciter des personnes à s'engager dans un groupe (art. 271 CP);
- b) Ou s'il est en lien avec des actes préparatoires délictueux suffisamment concrets (art. 260 *bis* CP);

- c) En vertu du soutien à une organisation criminelle (art. 260 ter CP);
- d) Lorsqu'en particulier des armes à feu et de la munition sont vendues, louées, données, laissées à la disposition d'un tiers ou procurées en sachant qu'elles doivent servir à la commission d'un délit ou d'un crime (art. 260 *quater* CP).

Le principe de la poursuite d'office ainsi que le principe de la légalité garantissent la poursuite effective des infractions. Pour ce qui est des infractions terroristes, il s'agit de crimes, dont certains sont punissables de la prison à vie.

Financement du terrorisme

L'ordre juridique suisse contient un éventail de dispositions permettant de lutter et de punir efficacement le financement du terrorisme, y compris les actes préparatoires (art. 260 *bis* CP). Au besoin, il est possible de geler rapidement des avoirs financiers. Selon le cas, des mesures de séquestre peuvent être décidées en vue d'une confiscation ultérieure, à la condition toutefois qu'une procédure pénale soit introduite. Toutes les valeurs patrimoniales qui sont le résultat d'une infraction ou qui étaient destinées à décider ou à récompenser l'auteur d'une infraction peuvent être confisquées (art. 59, chiffre 1 CP). La possibilité existe en outre d'ordonner une mesure de séquestre en vue de la confiscation auprès d'un tiers (art. 59, chiffre 1, al. 2 CP) et ce, également auprès de personnes morales. Il existe des possibilités de séquestre et de confiscation particulièrement larges à l'égard des valeurs patrimoniales du crime organisé. Le juge peut prononcer la confiscation de toutes les valeurs sur lesquelles une organisation criminelle exerce un pouvoir de disposition (art. 59, chiffre 3 et 260 *ter* CP) et cela même indépendamment de la preuve de la provenance criminelle. S'agissant des valeurs patrimoniales d'une personne qui a participé ou apporté son soutien à une organisation criminelle, le pouvoir de disposition de l'organisation est présumé jusqu'à preuve du contraire.

La législation en vigueur punit la collecte ou la fourniture intentionnelle de fonds pour l'exécution d'actes de terrorisme tombant sous certaines infractions énumérées ici. Tant que l'acte principal n'a pas été accompli, l'auteur ou la personne qui a participé au financement peut être poursuivi pour tentative, instigation ou complicité. Le fait d'organiser le financement d'un acte terroriste peut constituer un acte préparatoire d'un acte criminel en vertu de l'article 260 *bis* CP. Dans ce cas, une peine maximum de cinq ans de prison est prévue.

L'article 260 *ter* CP est également applicable lorsque l'association de personnes constitue une organisation criminelle. Cela étant, il n'est pas nécessaire que la poursuite du but terroriste se soit déjà manifestée dans les actes perpétrés. L'article 260 *ter* CP entre avant tout en ligne de compte là où aucune relation de causalité entre l'acte de soutien (financement) et l'infraction envisagée ne peut être établie. Une peine maximum de cinq ans de prison est prévue.

(b) Autres actes législatifs comprenant des dispositions pénales applicables à des actes de terrorisme

- Loi sur la lutte contre le blanchiment d’argent dans le secteur financier¹²¹
- Ordonnance de la Commission fédérale des maisons de jeu du 28 février 2000 concernant les obligations de diligence des maisons de jeu en matière de lutte contre le blanchiment d’argent¹²²
- Ordonnance de l’Office fédéral des assurances privées du 30 août 1999 en matière de lutte contre le blanchiment d’argent¹²³
- Ordonnance du 25 novembre 1998 de l’Autorité de contrôle en matière de lutte contre le blanchiment d’argent concernant les obligations de diligence des intermédiaires financiers qui lui sont directement soumis¹²⁴
- Ordonnance du 20 août 1998 sur le registre de l’Autorité de contrôle en matière de blanchiment d’argent¹²⁵
- Ordonnance du 16 mars 1998 sur le Bureau de communication en matière de blanchiment d’argent¹²⁶
- Loi instituant des mesures visant au maintien de la sûreté intérieure¹²⁷
- Ordonnance du 2 octobre 2000 instituant des mesures à l’encontre des Taliban¹²⁸
- Autres ordonnances mettant en oeuvre les sanctions non militaires du Conseil de sécurité de l’ONU¹²⁹
- Loi sur le matériel de guerre¹³⁰
- Ordonnance sur le matériel de guerre¹³¹

¹²¹ http://www.admin.ch/ch/f/rs/c955_0.html.

¹²² http://www.admin.ch/ch/f/rs/c955_021.html.

¹²³ http://www.admin.ch/ch/f/rs/c955_032.html.

¹²⁴ http://www.admin.ch/ch/f/rs/c955_033_2.html.

¹²⁵ http://www.admin.ch/ch/f/rs/c955_18.html.

¹²⁶ http://www.admin.ch/ch/f/rs/c955_23.html.

¹²⁷ <http://www.bk.admin.ch/ch/f/rs/c120.html>.

¹²⁸ http://www.admin.ch/ch/f/rs/c946_203.html.

¹²⁹ <http://www.admin.ch/ch/f/rs/94.html#946.20>.

¹³⁰ http://www.admin.ch/ch/f/rs/c514_51.html.

¹³¹ http://www.admin.ch/ch/f/rs/c514_511.html.

- Loi sur le contrôle des biens utilisables à des fins civiles et militaires et des biens militaires spécifiques¹³²
- Ordonnance sur l'exportation, l'importation et le transit des biens utilisables à des fins civiles et militaires et des biens militaires spécifiques¹³³
- Loi sur l'utilisation pacifique de l'énergie atomique¹³⁴
- Ordonnance sur l'énergie atomique¹³⁵
- Loi sur le commerce des toxiques¹³⁶
- Ordonnance sur les toxiques¹³⁷
- Loi sur radioprotection¹³⁸
- Ordonnance sur la radioprotection¹³⁹
- Loi sur les explosifs¹⁴⁰
- Ordonnance sur les explosifs¹⁴¹
- Loi sur les armes¹⁴²
- Ordonnance sur les armes¹⁴³
- Loi sur l'entraide internationale en matière pénale¹⁴⁴
- Ordonnance sur l'entraide internationale en matière pénale¹⁴⁵
- Loi sur l'asile¹⁴⁶
- Loi sur le séjour et l'établissement des étrangers¹⁴⁷

¹³² http://www.admin.ch/ch/f/rs/c946_202.html.

¹³³ http://www.admin.ch/ch/f/rs/c946_202_1.html.

¹³⁴ http://www.admin.ch/ch/f/rs/c732_0.html.

¹³⁵ http://www.admin.ch/ch/f/rs/c732_011.html.

¹³⁶ http://www.admin.ch/ch/f/rs/c813_0.html.

¹³⁷ http://www.admin.ch/ch/f/rs/c813_01.html.

¹³⁸ http://www.admin.ch/ch/f/rs/c814_50.html.

¹³⁹ http://www.admin.ch/ch/f/rs/c814_501.html.

¹⁴⁰ http://www.admin.ch/ch/f/rs/c941_41.html.

¹⁴¹ http://www.admin.ch/ch/f/rs/c941_411.html.

¹⁴² http://www.admin.ch/ch/f/rs/c514_54.html.

¹⁴³ http://www.admin.ch/ch/f/rs/c514_541.html.

¹⁴⁴ http://www.admin.ch/ch/f/rs/c351_1.html.

¹⁴⁵ http://www.admin.ch/ch/f/rs/c351_11.html.

¹⁴⁶ http://www.admin.ch/ch/f/rs/c142_31.html.

- Loi sur la coopération avec la Cour pénale internationale¹⁴⁸
- Arrêté fédéral relatif à la coopération avec les tribunaux internationaux chargés de poursuivre les violations graves du droit international humanitaire.¹⁴⁹

(c) Constitution fédérale

Relations avec l'étranger (art. 184, al. 3)

Lorsque la sauvegarde des intérêts du pays l'exige, le Conseil fédéral peut adopter les ordonnances et prendre les décisions nécessaires. Les ordonnances doivent être limitées dans le temps.

2. DISPOSITIONS DU CODE PENAL APPLICABLES A DES ACTES DE TERRORISME¹⁵⁰

Le droit pénal suisse ne contient pas de dispositions spécifiques sur le terrorisme. Cependant, les articles suivants permettent de poursuivre efficacement tout individu engagé dans des actes terroristes. Dans plusieurs de ces articles, la peine prévue est la réclusion à vie.

Non seulement la perpétration d'actes terroristes est punissable mais également la préparation, l'instigation, la complicité et la tentative.

Crimes ou délits commis en Suisse (art. 3 du Code pénal)

1. Le présent code est applicable à quiconque aura commis un crime ou un délit en Suisse. Si, à raison de cette infraction, l'auteur a subi totalement ou partiellement une peine à l'étranger, le juge suisse imputera la peine subie sur la peine à prononcer.

2. L'étranger poursuivi à l'étranger à la requête de l'autorité suisse ne pourra plus être puni en Suisse pour le même acte: si le tribunal étranger l'a acquitté par un jugement passé en force; s'il a subi la peine prononcée contre lui à l'étranger, si cette peine lui a été remise ou si elle est prescrite. S'il n'a pas subi cette peine, elle sera exécutée en Suisse; s'il n'en a subi qu'une partie à l'étranger, le reste sera exécuté en Suisse.

¹⁴⁷ http://www.admin.ch/ch/f/rs/c142_20.html.

¹⁴⁸ <http://www.admin.ch/ch/f/ff/2001/539.pdf>.

¹⁴⁹ http://www.admin.ch/ch/f/rs/c351_20.html.

¹⁵⁰ http://www.admin.ch/ch/f/rs/c311_0.html.

Crimes ou délits commis à l'étranger contre un Suisse (art. 5 du Code pénal)

1. Le présent code est applicable à quiconque aura commis à l'étranger un crime ou un délit contre un Suisse, pourvu que l'acte soit réprimé aussi dans l'État où il a été commis, si l'auteur se trouve en Suisse et n'est pas extradé à l'étranger, ou s'il est extradé à la Confédération à raison de cette infraction. La loi étrangère sera toutefois applicable si elle est plus favorable à l'inculpé.

2. L'auteur ne pourra plus être puni à raison de son acte s'il a subi la peine prononcée contre lui à l'étranger, si cette peine lui a été remise ou si elle est prescrite.

3. S'il n'a pas subi à l'étranger la peine prononcée contre lui, elle sera exécutée en Suisse; s'il n'a subi à l'étranger qu'une partie de cette peine, le reste sera exécuté en Suisse.

Crimes ou délits commis à l'étranger par un Suisse (art. 6 du Code pénal)

1. Le présent code est applicable à tout Suisse qui aura commis à l'étranger un crime ou un délit pouvant d'après le droit suisse donner lieu à extradition, si l'acte est réprimé aussi dans l'État où il a été commis et si l'auteur se trouve en Suisse ou s'il est extradé à la Confédération à raison de son infraction. La loi étrangère sera toutefois applicable si elle est plus favorable à l'inculpé.

2. L'auteur ne pourra plus être puni en Suisse: s'il a été acquitté à l'étranger pour le même acte par un jugement passé en force; s'il a subi la peine prononcée contre lui à l'étranger, si cette peine lui a été remise ou si elle est prescrite.

3. S'il n'a subi à l'étranger qu'une partie de la peine prononcée contre lui, cette partie sera imputée sur la peine à prononcer.

Crimes ou délits commis à l'étranger (art. 6 bis du Code pénal)

1. Le présent code est applicable à quiconque aura commis à l'étranger un crime ou un délit que la Confédération, en vertu d'un traité international, s'est engagé à poursuivre, si l'acte est réprimé aussi dans l'État où il a été commis et si l'auteur se trouve en Suisse et n'est pas extradé à l'étranger. La loi étrangère sera toutefois applicable si elle est plus favorable à l'inculpé.

2. L'auteur ne pourra plus être puni en Suisse: s'il a été acquitté dans l'État où l'acte a été commis, pour le même acte par un jugement passé en force; s'il a subi la peine prononcée contre lui à l'étranger, si cette peine lui a été remise ou si elle est prescrite; s'il n'a subi à l'étranger qu'une partie de la peine prononcée contre lui, cette partie sera imputée sur la peine à prononcer.

Imprescriptibilité (art. 75 bis)

Sont imprescriptibles :

1. Les crimes tendant à exterminer ou à opprimer un groupe de population en raison de sa nationalité, de sa race, de sa confession ou de son appartenance ethnique, sociale ou politique;
2. Les crimes graves prévus par les Conventions de Genève du 12 août 1949 et par les autres accords internationaux concernant la protection des victimes de la guerre, auxquels la Suisse est partie, lorsque l'infraction considérée en l'espèce présente une gravité particulière à cause des conditions dans lesquelles elle a été commise;
3. Les crimes perpétrés en vue d'exercer une contrainte ou une extorsion et qui mettent en danger ou menacent de mettre en danger la vie et l'intégrité corporelle de personnes, notamment par l'utilisation de moyens d'extermination massifs, par le déclenchement d'une catastrophe ou par une prise d'otage.

Le juge peut atténuer librement la peine dans le cas où l'action pénale serait prescrite en application des articles 70 à 72.

Article 100 quater (punissabilité de l'entreprise)

1. Un crime ou un délit qui est commis au sein d'une entreprise dans l'exercice d'activités commerciales conformes à ses buts est imputé à l'entreprise s'il ne peut être inputé à aucune personne physique déterminée en raison du manque d'organisation de l'entreprise. Dans ce cas, l'entreprise est punie d'une amende de cinq millions de francs au plus.
2. En cas d'infraction prévue aux art. 260 *ter*, 260 *quinquies*, 305 *bis*, 322 *ter*, 322 *quinquies* ou 322 *septies*, l'entreprise est punie indépendamment de la punissabilité des personnes physiques s'il doit lui être reproché de ne pas avoir pris toutes les mesures d'organisation raisonnables et nécessaires pour empêcher une telle infraction.
3. Le juge fixe l'amende en particulier d'après la gravité de l'infraction, du manque d'organisation et du dommage causé, et d'après la capacité économique de l'entreprise.
4. Sont des entreprises au sens du présent article :
 - a) Les personnes morales de droit privé;
 - b) Les personnes morales de droit public, à l'exception des corporations territoriales;

- c) les sociétés;
- d) Les entreprises en raison individuelle.

Article 100 quinquies (procédure pénale)

1. En cas de procédure pénale dirigée contre l'entreprise, cette dernière est représentée par une seule personne, qui doit être autorisée à représenter l'entreprise en matière civile sans aucune restriction. Si, au terme d'un délai raisonnable, l'entreprise ne nomme pas un tel représentant, l'autorité d'instruction ou le juge désigne celle qui, parmi les personnes ayant la capacité de représenter l'entreprise sur le plan civil, représente cette dernière dans la procédure pénale.

2. La personne qui représente l'entreprise dans la procédure pénale possède les droits et les obligations d'un prévenu. Les autres représentants visés à l'alinéa 1 n'ont pas l'obligation de déposer en justice.

3. Si une enquête pénale est ouverte pour les mêmes faits ou pour des faits connexes à l'encontre de la personne qui représente l'entreprise dans la procédure pénale, l'entreprise désigne un autre représentant. Si nécessaire, l'autorité d'instruction ou le juge désigne un autre représentant au sens de l'alinéa 1 ou, à défaut, un tiers qualifié.

Infraction contre la vie, particulièrement meurtre et assassinat

Article 111

Celui qui aura intentionnellement tué une personne sera puni de la réclusion pour cinq ans au moins, en tant que les conditions prévues aux articles suivants ne seront pas réalisées.

Article 112

Si le délinquant a tué avec une absence particulière de scrupules, notamment si son mobile, son but ou sa façon d'agir est particulièrement odieux, il sera puni de la réclusion à vie ou de la réclusion pour 10 ans au moins.

Lésions corporelles graves (art. 122)

Celui qui, intentionnellement, aura blessé une personne de façon à mettre sa vie en danger,

Celui qui, intentionnellement, aura mutilé le corps d'une personne, un de ses membres ou un de ses organes importants ou causé à une personne une incapacité de travail, une infirmité ou une maladie mentale permanentes, ou aura défiguré une personne d'une façon grave et permanente,

Celui qui, intentionnellement, aura fait subir à une personne toute autre atteinte grave à l'intégrité corporelle ou à la santé physique ou mentale, sera puni de la réclusion pour 10 ans au plus ou de l'emprisonnement pour six mois à cinq ans.

Brigandage (art. 140)

1. Celui qui aura commis un vol en usant de violence à l'égard d'une personne, en la menaçant d'un danger imminent pour la vie ou l'intégrité corporelle ou en la mettant hors d'état de résister sera puni de la réclusion pour dix ans au plus ou de l'emprisonnement pour six mois au moins.

2. Celui qui, pris en flagrant délit de vol, aura commis un des actes de contrainte mentionnés au premier alinéa dans le but de garder la chose volée encourra la même peine.

3. Le brigandage sera puni de la réclusion ou de l'emprisonnement pour un an au moins, si son auteur s'est muni d'une arme à feu ou d'une autre arme dangereuse.

4. Le brigandage sera puni de la réclusion pour deux ans au moins, si son auteur l'a commis en qualité d'affilié à une bande formée pour commettre des brigandages ou des vols, si de toute autre manière la façon d'agir dénote qu'il est particulièrement dangereux.

5. La peine sera la réclusion pour cinq ans au moins, si l'auteur a mis la victime en danger de mort, lui a fait subir une lésion corporelle grave, ou l'a traitée avec cruauté.

Domages à la propriété (art. 144)

1. Celui qui aura endommagé, détruit ou mis hors d'usage une chose appartenant à autrui ou frappée d'un droit d'usage ou d'usufruit au bénéfice d'autrui sera, sur plainte, puni de l'emprisonnement ou de l'amende.

2. Si l'auteur a commis le dommage à la propriété à l'occasion d'un attroupement formé en public, la poursuite aura lieu d'office.

3. Si l'auteur a causé un dommage considérable, le juge pourra prononcer la réclusion pour cinq ans au plus. La poursuite aura lieu d'office.

Détérioration de données (art. 144 bis)

1. Celui qui, sans droit, aura modifié, effacé, ou mis hors d'usage des données enregistrées ou transmises électroniquement ou selon un mode similaire sera, sur plainte, puni de l'emprisonnement ou de l'amende. Si l'auteur a causé un dommage considérable, le juge pourra prononcer la réclusion pour cinq ans au plus. La poursuite aura lieu d'office.

2. Celui qui aura fabriqué, importé, mis en circulation, promu, offert ou d'une quelconque manière rendu accessibles des logiciels dont il savait ou devait présumer qu'ils devaient être utilisés dans le but de commettre une infraction visée au chiffre 1, ou qui aura fourni des indications en vue de leur fabrication, sera puni de l'emprisonnement ou de l'amende. Si l'auteur fait métier de tels actes, le juge pourra prononcer la réclusion pour cinq ans au plus.

Extorsion et chantage (art. 156)

1. Celui qui, dans le dessein de se procurer ou de procurer à un tiers un enrichissement illégitime, aura déterminé une personne à des actes préjudiciables à ses intérêts pécuniaires ou à ceux d'un tiers, en usant de violence ou en la menaçant d'un dommage sérieux, sera puni de la réclusion pour cinq ans au plus ou de l'emprisonnement.

2. Si l'auteur fait métier de l'extorsion ou s'il a poursuivi à répétées reprises ses agissements contre la victime, la peine sera la réclusion pour dix ans au plus.

3. Si l'auteur a exercé des violences sur une personne ou s'il l'a menacée d'un danger imminent pour la vie ou l'intégrité corporelle, la peine sera celle prévue à l'article 140.

4. Si l'auteur a menacé de mettre en danger la vie ou l'intégrité corporelle d'un grand nombre de personnes ou de causer de graves dommages à des choses d'un intérêt public important, la peine sera la réclusion.

Menaces (art. 180)

Celui qui, par une menace grave, aura alarmé ou effrayé une personne sera, sur plainte, puni de l'emprisonnement ou de l'amende.

Contrainte (art. 181)

Celui qui, en usant de violence envers une personne ou en la menaçant d'un dommage sérieux, ou en l'entravant de quelque autre manière dans sa liberté d'action, l'aura obligée à faire, à ne pas faire ou à laisser faire un acte sera puni de l'emprisonnement ou de l'amende.

Séquestration et enlèvement (Article 183)

1. Celui qui, sans droit, aura arrêté une personne, l'aura retenue prisonnière, ou l'aura, de toute autre manière, privée de sa liberté, celui qui, en usant de violence, de ruse ou de menace, aura enlevé une personne, sera puni de la réclusion pour cinq ans au plus ou de l'emprisonnement.

2. Encourra la même peine celui qui aura enlevé une personne incapable de discernement ou de résistance ou âgée de moins de seize ans.

Article 184

La séquestration et l'enlèvement seront punis de la réclusion, si l'auteur a cherché à obtenir rançon, s'il a traité la victime avec cruauté, si la privation de liberté a duré plus de dix jours ou si la santé de la victime a été sérieusement mise en danger.

Prise d'otage (art. 185)

1. Celui qui aura séquestré, enlevé une personne ou de toute autre façon s'en sera rendu maître, pour contraindre un tiers à faire, à ne pas faire ou à laisser faire un acte, celui qui, aux mêmes fins, aura profité d'une prise d'otage commise par autrui, sera puni de la réclusion.
2. La peine sera la réclusion pour trois ans au moins, si l'auteur a menacé de tuer la victime, de lui causer des lésions corporelles graves ou de la traiter avec cruauté.
3. Dans les cas particulièrement graves, notamment lorsque l'acte a été dirigé contre un grand nombre de personnes, le juge pourra prononcer la réclusion à vie.
4. Lorsque l'auteur a renoncé à la contrainte et libéré la victime, la peine pourra être atténuée (art. 65).
5. Est également punissable celui qui aura commis l'infraction à l'étranger, s'il est arrêté en Suisse et n'est pas extradé. L'article 6, chiffre 2, est applicable.

Incendie intentionnel (art. 221)

1. Celui qui, intentionnellement, aura causé un incendie et aura ainsi porté préjudice à autrui ou fait naître un danger collectif sera puni de la réclusion.
2. La peine sera la réclusion pour trois ans au moins si le délinquant a sciemment mis en danger la vie ou l'intégrité corporelle des personnes.
3. Le juge pourra prononcer l'emprisonnement si le dommage est de peu d'importance.

Explosion (art. 223)

1. Celui qui, intentionnellement, aura causé une explosion de gaz, de benzine, de pétrole ou de substances analogues et aura par là sciemment mis en danger la vie ou l'intégrité corporelle des personnes ou la propriété d'autrui sera puni de la réclusion. Le juge pourra prononcer l'emprisonnement si le dommage est de peu d'importance.

2. La peine sera l'emprisonnement ou l'amende si le délinquant a agi par négligence.

Emploi, avec dessein délictueux, d'explosifs ou de gaz toxiques (art. 224)

1. Celui qui, intentionnellement et dans un dessein délictueux, aura, au moyen d'explosifs ou de gaz toxiques, exposé à un danger la vie ou l'intégrité corporelle des personnes, ou la propriété d'autrui, sera puni de la réclusion.
2. Le juge pourra prononcer l'emprisonnement si le délinquant n'a exposé que la propriété à un danger de peu d'importance.

Fabrication, dissimulation et transport d'explosifs ou de gaz toxiques (art. 226)

1. Celui qui aura fabriqué des explosifs ou des gaz toxiques, sachant ou devant présumer qu'ils étaient destinés à un emploi délictueux, sera puni de la réclusion pour dix ans au plus ou de l'emprisonnement pour six mois au moins.
2. Celui qui se sera procuré soit des explosifs, soit des gaz toxiques, soit des substances propres à leur fabrication, ou qui les aura transmis à autrui, reçus d'autrui, conservés, dissimulés ou transportés, sachant ou devant présumer qu'ils étaient destinés à un emploi délictueux, sera puni de la réclusion pour cinq ans au plus ou de l'emprisonnement pour un mois au moins.
3. Celui qui, sachant ou devant présumer qu'une personne se propose de faire un emploi délictueux d'explosifs ou de gaz toxiques, lui aura fourni des indications pour les fabriquer sera puni de la réclusion pour cinq ans au plus ou de l'emprisonnement pour un mois au moins.

Inondation, écroulement (art. 227)

1. Celui qui, intentionnellement, aura causé une inondation, l'écroulement d'une construction ou un éboulement et aura par là sciemment mis en danger la vie ou l'intégrité corporelle des personnes ou la propriété d'autrui sera puni de la réclusion. Le juge pourra prononcer l'emprisonnement si le dommage est de peu d'importance.
2. La peine sera l'emprisonnement ou l'amende si le délinquant a agi par négligence.

Dommages aux installations électriques, travaux hydrauliques et ouvrages de protection (art. 228)

1. Celui qui, intentionnellement, aura détruit ou endommagé des installations électriques, des travaux hydrauliques, notamment des jetées, des barrages, des digues ou des écluses, des ouvrages de protection contre les forces naturelles, par exemple contre les éboulements ou les avalanches, et aura par là sciemment mis en danger la vie ou l'intégrité corporelle des personnes ou la

propriété d'autrui sera puni de la réclusion. Le juge pourra prononcer l'emprisonnement si le dommage est de peu d'importance.

2. La peine sera l'emprisonnement ou l'amende si le délinquant a agi par négligence.

Propagation d'une maladie à l'homme (art. 231)

1. Celui qui, intentionnellement, aura propagé une maladie de l'homme dangereuse et transmissible sera puni de l'emprisonnement d'un mois à cinq ans. La peine sera la réclusion pour cinq ans au plus si le délinquant a agi par bassesse de caractère.

2. La peine sera l'emprisonnement ou l'amende si le délinquant a agi par négligence.

Entrave à la circulation publique (art. 237)

1. Celui qui, intentionnellement, aura empêché, troublé ou mis en danger la circulation publique, notamment la circulation sur la voie publique, par eau ou dans les airs, et aura par là sciemment mis en danger la vie ou l'intégrité corporelle des personnes sera puni de l'emprisonnement. Le juge pourra prononcer la réclusion pour 10 ans au plus si le délinquant a sciemment mis en danger la vie ou l'intégrité corporelle d'un grand nombre de personnes.

2. La peine sera l'emprisonnement ou l'amende si le délinquant a agi par négligence.

Entrave au service des chemins de fer (art. 238)

1. Celui qui, intentionnellement, aura empêché, troublé ou mis en danger le service des chemins de fer et aura par là sciemment mis en danger la vie ou l'intégrité corporelle des personnes ou la propriété d'autrui, celui notamment qui aura fait naître le danger d'un déraillement ou d'une collision sera puni de la réclusion ou de l'emprisonnement.

2. La peine sera l'emprisonnement ou l'amende si le délinquant a agi par négligence et par là mis en danger sérieux la vie ou l'intégrité corporelle de personnes ou la propriété d'autrui.

Menaces alarmant la population (art. 258)

Celui qui aura jeté l'alarme dans la population par la menace ou l'annonce fallacieuse d'un danger pour la vie, la santé ou la propriété sera puni de la réclusion pour trois ans au plus ou de l'emprisonnement.

Provocation publique au crime ou à la violence (art. 259)

1. Celui qui aura provoqué publiquement un crime sera puni de la réclusion pour trois ans au plus ou de l'emprisonnement.
2. Celui qui aura provoqué publiquement un délit impliquant la violence contre autrui ou contre des biens, sera puni de l'emprisonnement ou de l'amende.

Actes préparatoires délictueux (art. 260 bis)

1. Sera puni de la réclusion pour cinq ans au plus ou de l'emprisonnement celui qui aura pris, conformément à un plan, des dispositions concrètes d'ordre technique ou organisationnel, dont la nature et l'ampleur indiquent qu'il s'apprêtait à passer à l'exécution de l'un des actes suivants :

- Art. 111 Meurtre
- Art. 112 Assassinat
- Art. 122 Lésions corporelles graves
- Art. 140 Brigandage
- Art. 183 Séquestration et enlèvement
- Art. 185 Prise d'otage
- Art. 221 Incendie intentionnel
- Art. 264 Génocide

2. Celui qui, de son propre mouvement, aura renoncé à poursuivre jusqu'au bout son activité préparatoire, sera exempté de toute peine.

3. Est également punissable celui qui commet les actes préparatoires à l'étranger lorsque les infractions doivent être commises en Suisse. L'article 3, chiffre 1, 2e alinéa, est applicable.

Organisation criminelle (art. 260 ter)

1. Celui qui aura participé à une organisation qui tient sa structure et son effectif secrets et qui poursuit le but de commettre des actes de violence criminels ou de se procurer des revenus par des moyens criminels, celui qui aura soutenu une telle organisation dans son activité criminelle, sera puni de la réclusion pour cinq ans au plus ou de l'emprisonnement.

2. Le juge pourra atténuer librement la peine (art. 66) à l'égard de celui qui se sera efforcé d'empêcher la poursuite de l'activité criminelle de l'organisation.

3. Est également punissable celui qui aura commis l'infraction à l'étranger si l'organisation exerce ou doit exercer son activité criminelle en tout ou en partie en Suisse. L'article 3, chiffre 1, 2e alinéa, est applicable.

Mise en danger de la sécurité publique au moyen d'armes (art. 260 quater)

Celui qui aura vendu, loué, donné ou laissé à la disposition d'un tiers une arme à feu, une arme prohibée par la loi, un élément essentiel d'arme, des accessoires d'armes, des munitions ou des éléments de munitions, ou en aura fait le courtage, alors qu'il savait ou devait présumer qu'ils serviraient à la commission d'un délit ou d'un crime, sera puni de l'emprisonnement pour cinq ans au plus ou de l'amende, pour autant qu'il ne remplisse pas les éléments constitutifs d'une infraction plus grave.

Article 260 quinquies (financement du terrorisme)

1. Celui qui, dans le dessein de financer un acte de violence criminelle visant à intimider une population ou à contraindre un État ou une organisation internationale à accomplir ou à s'abstenir d'accomplir un acte quelconque, réunit ou met à disposition des fonds, sera puni de la réclusion pour cinq ans au plus ou de l'emprisonnement.

2. Si l'auteur n'a fait que s'accommoder de l'éventualité que les fonds en question servent à financer un acte terroriste, il n'est pas punissable au sens de la présente disposition.

3. L'acte n'est pas considéré comme financement du terrorisme lorsqu'il vise à instaurer ou à rétablir un régime démocratique ou un État de droit, ou encore à permettre l'exercice des droits de l'homme ou la sauvegarde de ceux-ci.

4. L'alinéa 1 ne s'applique pas si le financement est destiné à soutenir des actes qui ne sont pas en contradiction avec les règles du droit international applicable en cas de conflit armé.

Atteintes à l'indépendance et à la sécurité de la Suisse

Article 265

Celui qui aura commis un acte tendant à modifier par la violence la constitution fédérale ou la constitution d'un canton, à renverser par la violence les autorités politiques instituées par la constitution, ou à les mettre par la violence dans l'impossibilité d'exercer leur pouvoir, ou à détacher par la violence une partie du territoire suisse d'avec la Confédération ou une partie du territoire cantonal d'avec un canton, sera puni de la réclusion ou de l'emprisonnement pour un à cinq ans.

Article 266

1. Celui qui aura commis un acte tendant à porter atteinte à l'indépendance de la Confédération ou à mettre en danger cette indépendance, ou à provoquer de la part d'une puissance étrangère, dans les affaires de la Confédération, une immixtion de nature à mettre en danger l'indépendance de la Confédération, sera puni de la réclusion ou de l'emprisonnement pour un à cinq ans.
2. Celui qui aura noué des intelligences avec le gouvernement d'un État étranger ou avec un de ses agents dans le dessein de provoquer une guerre contre la Confédération sera puni de la réclusion pour trois ans au moins. Dans les cas graves, le juge pourra prononcer la réclusion à vie.

Article 266 bis

1. Celui qui, à l'effet de provoquer ou de soutenir des entreprises ou menées de l'étranger contre la sécurité de la Suisse, sera entré en rapport avec un État étranger, ou avec des partis étrangers, ou avec d'autres organisations à l'étranger, ou avec leurs agents, ou aura lancé ou propagé des informations inexacts ou tendancieuses, sera puni de l'emprisonnement pour cinq ans au plus.
2. Dans les cas graves, le juge pourra prononcer la réclusion.

Article 275 ter

Celui qui aura fondé un groupement qui vise ou dont l'activité consiste à accomplir des actes réprimés par les art. 265, 266, 266 bis, 271 à 274, 275 et 275 bis, celui qui aura adhéré à un tel groupement ou se sera associé à ses menées, celui qui aura provoqué à la fondation d'un tel groupement ou se sera conformé à ses instructions, sera puni de l'emprisonnement.

Actes exécutés sans droit pour un État étranger (art. 271)

1. Celui qui, sans y être autorisé, aura procédé sur le territoire suisse pour un État étranger à des actes qui relèvent des pouvoirs publics, celui qui aura procédé à de tels actes pour un parti étranger ou une autre organisation de l'étranger, celui qui aura favorisé de tels actes, sera puni de l'emprisonnement et, dans les cas graves, de la réclusion.
2. Celui qui, en usant de violence, ruse ou menace, aura entraîné une personne à l'étranger pour la livrer à une autorité, à un parti ou à une autre organisation de l'étranger, ou pour mettre sa vie ou son intégrité corporelle en danger, sera puni de la réclusion.
3. Celui qui aura préparé un tel enlèvement sera puni de la réclusion ou de l'emprisonnement.

Défaut de vigilance (art. 305 ter du Code pénal)

1. Celui qui, dans l'exercice de sa profession, aura accepté, gardé en dépôt ou aidé à placer ou à transférer des valeurs patrimoniales appartenant à un tiers et qui aura omis de vérifier l'identité de l'ayant droit économique avec la vigilance que requièrent les circonstances, sera puni de l'emprisonnement pour une année au plus, des arrêts ou de l'amende.
2. Les personnes visées par le 1er alinéa ont le droit de communiquer aux autorités suisses de poursuite pénale et aux autorités fédérales désignées par la loi les indices fondant le soupçon que des valeurs patrimoniales proviennent d'un crime.

**3. LOI FEDERALE CONCERNANT LA MODIFICATION DU CODE
PENAL ET DE LA LOI FEDERALE SUR LA SURVEILLANCE DE LA
CORRESPONDANCE PAR POSTE ET TELECOMMUNICATION
(FINANCEMENT DU TERRORISME) – MODIFICATION DU 21
MARS 2003**

L'Assemblée fédérale de la Confédération suisse, vu le message du Conseil fédéral du 26 juin 2002¹⁵¹, arrête:

I

Les actes législatifs mentionnés ci-après sont modifiés comme suit:

I. CODE PÉNAL¹⁵²

*Art. 27bis, al. 2, let. b*¹⁵³

2. L'al. 1 n'est pas applicable si le juge constate que:
 - b. à défaut du témoignage, un homicide au sens des art. 111 à 113 ou un autre crime réprimé par une peine minimale de trois ans de réclusion ou un délit au sens des art. 187, 189 à 191, 197, ch. 3,

¹⁵¹ FF 2002 5014.

¹⁵² RS 311.0.

¹⁵³ A l'entrée en vigueur de la modification du 13 décembre 2002 (FF 2002 7658), l'art. 28a, al. 2, let. b, aura la teneur suivante:

b. à défaut du témoignage, un homicide au sens des art. 111 à 113 ou un autre crime réprimé par une peine privative de liberté de trois ans au moins ou encore un délit au sens des art. 187, 189 à 191, 197, ch. 3, 260ter, 260quinquies, 305bis, 305ter et 322ter à 322septies du présent code, et de l'art. 19, ch. 2, de la loi fédérale du 3 octobre 1951 sur les stupéfiants ne peuvent être élucidés ou que la personne inculpée d'un tel acte ne peut être arrêtée.

260ter, 260quinquies, 305bis, 305ter et 322ter à 322septies du présent code, et de l'art. 19, ch. 2, de la loi fédérale du 3 octobre 1951 sur les stupéfiants¹⁵⁴ ne peuvent être élucidés ou que la personne inculpée d'un tel acte ne peut être arrêtée.

Titre précédant l'art. 100quater

Titre sixième - Responsabilité de l'entreprise

Art. 100quater

1. Un crime ou un délit qui est commis au sein d'une entreprise dans l'exercice d'activités commerciales conformes à ses buts est imputé à l'entreprise s'il ne peut être imputé à aucune personne physique déterminée en raison du manque d'organisation de l'entreprise. Dans ce cas, l'entreprise est punie d'une amende de cinq millions de francs au plus.
2. En cas d'infraction prévue aux art. 260ter, 260quinquies, 305bis, 322ter, 322quinquies ou 322septies, l'entreprise est punie indépendamment de la punissabilité des personnes physiques s'il doit lui être reproché de ne pas avoir pris toutes les mesures d'organisation raisonnables et nécessaires pour empêcher une telle infraction¹⁵⁵.
3. Le juge fixe l'amende en particulier d'après la gravité de l'infraction, du manque d'organisation et du dommage causé, et d'après la capacité économique de l'entreprise.
4. Sont des entreprises au sens du présent article:
 - a. les personnes morales de droit privé;
 - b. les personnes morales de droit public, à l'exception des corporations territoriales;
 - c. les sociétés;
 - d. les entreprises en raison individuelle.

¹⁵⁴ RS 812.121.

¹⁵⁵ A l'entrée en vigueur de la modification du 13 décembre 2002 (FF 2002 7658), l'art. 102, al. 2, aura la teneur suivante:

2. En cas d'infraction prévue aux art. 260ter, 260quinquies, 305bis, 322ter, 322quinquies ou 322septies, l'entreprise est punie indépendamment de la punissabilité des personnes physiques s'il doit lui être reproché de ne pas avoir pris toutes les mesures d'organisation raisonnables et nécessaires pour empêcher une telle infraction.

Art. 100quinquies

1. En cas de procédure pénale dirigée contre l'entreprise, cette dernière est représentée par une seule personne, qui doit être autorisée à représenter l'entreprise en matière civile sans aucune restriction. Si, au terme d'un délai raisonnable, l'entreprise ne nomme pas un tel représentant, l'autorité d'instruction ou le juge désigne celle qui, parmi les personnes ayant la capacité de représenter l'entreprise sur le plan civil, représente cette dernière dans la procédure pénale.
2. La personne qui représente l'entreprise dans la procédure pénale possède les droits et les obligations d'un prévenu. Les autres représentants visés à l'al. 1 n'ont pas l'obligation de déposer en justice.
3. Si une enquête pénale est ouverte pour les mêmes faits ou pour des faits connexes à l'encontre de la personne qui représente l'entreprise dans la procédure pénale, l'entreprise désigne un autre représentant. Si nécessaire, l'autorité d'instruction ou le juge désigne un autre représentant au sens de l'al. 1 ou, à défaut, un tiers qualifié.

Art. 260quinquies

1. Celui qui, dans le dessein de financer un acte de violence criminelle visant à intimider une population ou à contraindre un Etat ou une organisation internationale à accomplir ou à s'abstenir d'accomplir un acte quelconque, réunit ou met à disposition des fonds, sera puni de la réclusion pour cinq ans au plus ou de l'emprisonnement.¹⁵⁶
2. Si l'auteur n'a fait que s'accommoder de l'éventualité que les fonds en question servent à financer un acte terroriste, il n'est pas punissable au sens de la présente disposition.
3. L'acte n'est pas considéré comme financement du terrorisme lorsqu'il vise à instaurer ou à rétablir un régime démocratique ou un Etat de droit, ou encore à permettre l'exercice des droits de l'homme ou la sauvegarde de ceux-ci.

¹⁵⁶A l'entrée en vigueur de la modification du 13 décembre 2002 (FF 2002 7658), l'art. 260quinquies, al. 1, aura la teneur suivante:

1. Celui qui, dans le dessein de financer un acte de violence criminelle visant à intimider une population ou à contraindre un Etat ou une organisation internationale à accomplir ou à s'abstenir d'accomplir un acte quelconque, réunit ou met à disposition des fonds, sera puni d'une peine privative de liberté de cinq ans au plus ou d'une peine pécuniaire.

4. L'al. 1 ne s'applique pas si le financement est destiné à soutenir des actes qui ne sont pas en contradiction avec les règles du droit international applicable en cas de conflit armé.

*Art. 340bis, titre marginal et al. 1, phrase introductive*¹⁵⁷

1. Sont également soumis à la juridiction fédérale les infractions aux art. 260ter, 260quinquies, 305bis, 305ter et 322ter à 322septies ainsi que les crimes qui sont le fait d'une organisation criminelle au sens de l'art. 260ter: ...

2. LOI FEDERALE DU 6 OCTOBRE 2000 SUR LA SURVEILLANCE DE LA CORRESPONDANCE PAR POSTE ET TELECOMMUNICATION¹⁵⁸

Art. 3, al. 2, let. a et b

2. Une surveillance peut être ordonnée aux fins de poursuivre les actes punissables visés par:

a. les art. 111 à 113, 115, 119, ch. 2, 122, 127, 138, 140, 143, 144bis, ch. 1, al. 2, 146 à 148, 156, 160, 161, 180, 181, 183, 185, 187, ch. 1, 188, ch. 1, 189, al. 1 et 3, 190, al. 1 et 3, 191, 192, al. 1, 195 à 197, 221, al. 1 et 2, 223, ch. 1, 224, al. 1, 226, 227, ch. 1, al. 1, 228, ch. I, al. 1 à 4, 231, ch. 1, 232, ch. 1, 233, ch. 1, 234, al. 1, 237, ch. 1, 238, al. 1, 240, al. 1, 241, al. 1, 244, 251, ch. 1, 258, 259 al. 1, 260bis à 260quinquies, 264 à 266, 277, ch. 1, 285, 301, 310, 312, 314, 322ter, 322quater et 322septies du code pénal (CP)¹⁵⁹;

b. les art. 62, al. 1 et 3, 63, ch. 1, al. 1 et 3, et ch. 2, 64, ch. 1, al. 1, et ch. 2, 74, 86, 86a, 87, 89, al. 1, 91, 93, ch. 2, 102, 103, ch. 1, 104, al. 2, 105, 106, al. 1 et 2, 108 à 113, 115 à 117, 119, 121, 130, ch. 1 et 2, 132, 135, al. 1, 2 et 4, 137a, 137b, 139–142, 149, al. 1, 150, al. 1, 151a, 151c, 153 à 156, 160, al. 1 et 2, 161, ch. 1, al. 1 et 3, 162, al. 1 et 3, 164, 165, ch. 1, al. 1 et 3, 166, ch. 1, al. 1 à 4, 167, ch. I, 168, ch. 1, 169, al. 1, 169a, ch. 1, al. 1, et ch. 2, 170, al. 1, 171a, al. 1, 171b, 172, ch. 1, et 177 du code pénal militaire du 13 juin 1927 (CPM)¹⁶⁰;

¹⁵⁷ A l'entrée en vigueur de la modification du 13 décembre 2002 (FF 2002 7658), l'art. 337, titre marginal et al. 1, phrase introductive, auront la teneur de l'art. 340bis de la présente modification.

¹⁵⁸ RS 780.1.

¹⁵⁹ RS 311.0.

¹⁶⁰ RS 321.0.

Art. 15, al. 5bis

5bis Les fournisseurs de services doivent être en mesure de fournir durant au moins deux ans après l'ouverture d'une relation commerciale dans le domaine de la téléphonie mobile avec leurs clients n'ayant pas souscrit d'abonnement les renseignements relatifs à cette relation prévus à l'art. 14. 6

II

- 1 La présente loi est sujette au référendum.
- 2 Le Conseil fédéral fixe la date de l'entrée en vigueur.

Conseil des Etats, 21 mars 2003

Conseil national, 21 mars 2003

Le président: Gian-Reto Plattner
Le secrétaire: Christoph Lanz

Le président: Yves Christen
Le secrétaire: Christophe Thomann

Expiration du délai référendaire et entrée en vigueur

Pour autant que le délai référendaire expirant le 10 juillet 2003¹⁶¹ n'ait pas été utilisé, à l'exception du ch. 2, art. 15, al. 5bis (loi fédérale du 6 octobre 2000 sur la surveillance de la correspondance par poste et télécommunication), la présente loi entre en vigueur le 1er octobre 2003.

25 juin 2003

Au nom du Conseil fédéral suisse::

Le président de la Confédération, Pascal Couchepin
La chancelière de la Confédération, Annemarie Huber-Hotz

4. ORDONNANCE INTERDISANT LE GROUP «AL-QAIDA» ET LES ORGANISATIONS APPARENTÉES¹⁶²

du 7 novembre 2001

Le Conseil fédéral suisse,

vu les art. 184, al. 3, et 185, al. 3, de la Constitution¹⁶³,

arrête:

¹⁶¹ Le délai référendaire a expiré le 10 juillet 2003 sans avoir été utilisé (Chancellerie fédérale), FF 2003 2532.

¹⁶² Nouvelle teneur selon le ch. II de l'O du 1^{er} mai 2002 (RO 2002 1646).

¹⁶³ RS 101.

Art. 1 Interdiction du groupe

1. Le groupe «Al-Qaïda» est interdit.
2. L'interdiction s'étend aux groupes de couverture, à ceux qui émanent d'«Al-Qaïda» et aux organisations ou groupes dont les dirigeants, les buts et les moyens sont identiques à ceux d'«Al-Qaïda», ou qui agissent sur son ordre.¹⁶⁴

Art. 2 Dispositions pénales

1. Quiconque s'associe sur le territoire suisse à un groupe interdit au sens de l'art. 1, met à sa disposition des ressources humaines ou matérielles, organise des actions de propagande en faveur du groupe ou de ses objectifs, recrute des adeptes ou encourage ses activités de toute autre manière sera puni de l'emprisonnement ou de l'amende, sous réserve de dispositions pénales plus sévères.¹⁶⁵
2. Est aussi punissable quiconque commet l'infraction à l'étranger, s'il est arrêté en Suisse et n'est pas extradé. L'art. 6, ch. 2, du code pénal¹⁶⁶ est applicable.

Art. 3 Confiscation de valeurs patrimoniales

Les dispositions générales du code pénal¹⁶⁷, en particulier l'art. 59, ch. 3 et 4, sont applicables.

Art. 4 Communication des décisions

Les autorités compétentes communiquent au Ministère public de la Confédération et à l'Office fédéral de la police, en expédition intégrale, sans retard ni frais, tous les jugements, prononcés administratifs et ordonnances de non-lieu.

Art. 5 Entrée en vigueur et durée de validité

1. La présente ordonnance entre en vigueur le 8 novembre 2001 et a effet jusqu'au 31 décembre 2003.
2. Sa durée de validité est prorogée jusqu'au 31 décembre 2005.¹⁶⁸

¹⁶⁴ RO 2002 376.

¹⁶⁵ RO 2002 376.

¹⁶⁶ RS 311.0.

¹⁶⁷ RS 311.0.

¹⁶⁸ Introduit par le ch. 1 de l'O du 5 déc. 2003 (RO 2003 4485).

**5. ORDONNANCE INSTITUANT DES MESURES A L'ENCONTRE
DE PERSONNES ET ENTITES LIEES A OUSSAMA BEN LADEN,
AU GROUPE « AL QAIDA » OU AUX TALIBAN¹⁶⁹**

du 2 octobre 2000

Le Conseil fédéral suisse,

vu l'art. 2 de la loi fédérale du 22 mars 2002 sur l'application de sanctions internationales (loi sur les embargos)¹⁷⁰,

arrête:

Art. 1¹⁷¹ Interdiction de fournir de l'équipement militaire et des biens similaires

1. La fourniture, la vente et le courtage d'armements de toute sorte, y compris d'armes et de munitions, de véhicules et d'équipement militaires, de matériels paramilitaires de même que leurs accessoires et pièces de rechange aux personnes physiques et morales, aux groupes ou aux entités cités à l'annexe 2 sont interdits.¹⁷²

2. ...¹⁷³

3. La fourniture, la vente et le courtage de conseils techniques et de moyens d'assistance ou d'entraînement liés aux activités militaires aux personnes physiques et morales, aux groupes ou aux entités cités à l'annexe 2 sont interdits.¹⁷⁴

4. Les al. 1 et 3 ne s'appliquent que dans la mesure où la loi du 13 décembre 1996 sur le contrôle des biens¹⁷⁵, la loi fédérale du 13 décembre 1996 sur le matériel de guerre¹⁷⁶ ainsi que leurs ordonnances d'application ne sont pas applicables.

Art. 1a¹⁷⁷

Art. 2¹⁷⁸

¹⁶⁹ Nouvelle teneur selon le ch. I de l'O du 1er mai 2002 (RO 2002 1646).

¹⁷⁰ RS 946.231.

¹⁷¹ Nouvelle teneur selon le ch. I de l'O du 11 avril 2001 (RO 2001 1353).

¹⁷² Nouvelle teneur selon le ch. I de l'O du 1er mai 2002 (RO 2002 1646).

¹⁷³ Abrogé par le ch. I de l'O du 1er mai 2002 (RO 2002 1646).

¹⁷⁴ Nouvelle teneur selon le ch. I de l'O du 1er mai 2002 (RO 2002 1646).

¹⁷⁵ RS 946.202.

¹⁷⁶ RS 514.51.

¹⁷⁷ Introduit par le ch. I de l'O du 11 avril 2001 (RO 2001 1353). Abrogé par le ch. I de l'O du 1er mai 2002 (RO 2002 1646).

¹⁷⁸ Abrogé par le ch. I de l'O du 1er mai 2002 (RO 2002 1646).

*Art. 2a et 2b*¹⁷⁹

Art. 3 Gel des avoirs et trafic des paiements

1. Les avoirs appartenant aux personnes physiques et morales, aux groupes ou aux entités cités à l'annexe 2 ou contrôlés par ces derniers sont gelés.¹⁸⁰
2. Il est interdit de fournir des fonds aux personnes physiques et morales, aux groupes ou aux entités cités à l'annexe 2 ou d'en mettre, directement ou indirectement, à leur disposition.¹⁸¹
3. Le Secrétariat d'Etat à l'économie (seco) peut exempter les paiements liés à des projets en faveur de la démocratisation ou à des activités humanitaires des interdictions prescrites aux al. 1 et 2.
4. Des versements prélevés sur des comptes bloqués et des transferts de biens en capital gelés peuvent être autorisés à titre exceptionnel s'ils servent à protéger des intérêts suisses ou à prévenir des cas de rigueur. Le seco se prononce sur ces exceptions après avoir consulté la Direction politique du Département fédéral des affaires étrangères (DFAE) et l'Administration fédérale des finances.¹⁸²

Art. 4 Déclaration obligatoire

1. Quiconque détient ou gère des avoirs dont il faut admettre qu'ils tombent sous le coup du gel des avoirs défini à l'art. 3, al. 1, doit les déclarer sans délai au seco.
2. Sur la déclaration doivent figurer le nom du bénéficiaire, l'objet et le montant des avoirs gelés.

*Art. 4a*¹⁸³ *Entrée en Suisse et transit*

1. L'entrée en Suisse et le transit par la Suisse sont interdits aux personnes physiques citées à l'annexe 2.¹⁸⁴
2. L'Office fédéral de l'immigration, de l'intégration et de l'émigration (IMES)¹⁸⁵ peut, en conformité avec les décisions du Conseil de sécurité des Nations Unies ou pour la protection d'intérêts suisses, accorder des dérogations.

¹⁷⁹ Introduits par le ch. I de l'O du 11 avril 2001 (RO 2001 1353). Abrogés par le ch. I de l'O du 1er mai 2002 (RO 2002 1646).

¹⁸⁰ Nouvelle teneur selon le ch. I de l'O du 1er mai 2002 (RO 2002 1646).

¹⁸¹ Nouvelle teneur selon le ch. I de l'O du 1er mai 2002 (RO 2002 1646).

¹⁸² Nouvelle teneur selon le ch. I de l'O du 30 nov. 2001 (RO 2002 155).

¹⁸³ Introduit par le ch. I de l'O du 11 avril 2001 (RO 2001 1353).

¹⁸⁴ Nouvelle teneur selon le ch. I de l'O du 1er mai 2002 (RO 2002 1646).

¹⁸⁵ La désignation de l'unité administrative a été adaptée selon l'art. 4a de l'O du 15 juin 1998 sur les publications officielles (RS 170.512.1).

Art. 5 Définitions

Au sens de la présente ordonnance, on entend par:

- a. *Taliban*: les «Taliban», «Talebans» ou «Mouvement Islamique Taliban», y compris les sociétés, entreprises, établissements et corporations qui sont leur propriété ou qu'ils contrôlent;
- b.¹⁸⁶ *Avoirs*: tous les actifs financiers, y compris le numéraire, les chèques, les créances monétaires, les lettres de change, les mandats ou autres moyens de paiement, les dépôts, les créances et reconnaissances de dette, les titres et titres de dette, les certificats de titres, les obligations, les titres de créances, les options, les lettres de gage, les dérivés; les recettes d'intérêts, les dividendes ou autres revenus ou plus-values engendrés par des biens en capital; les crédits, les droits à des compensations, les cautions, les garanties d'exécution de contrats ou autres engagements financiers; les accreditifs, les connaissements, les contrats d'assurance, les documents de titrisation de parts à des fonds ou à d'autres ressources financières et tout autre instrument de financement des exportations;
- c. *Gel des avoirs*: le fait d'empêcher toute action permettant la gestion ou l'utilisation des avoirs, à l'exception des actions administratives normales effectuées par des instituts financiers.

Art. 5a¹⁸⁷ Contrôles

1. Le seco procède aux contrôles.
2. Le contrôle à la frontière incombe à l'Administration fédérale des douanes.

Art. 6¹⁸⁸ Dispositions pénales

1. Quiconque aura violé les dispositions des art. 1, 3 et 4a sera puni conformément à l'art. 9 de la loi sur les embargos.
2. Quiconque aura violé les dispositions de l'art. 4 sera puni conformément à l'art. 10 de la loi sur les embargos.
3. Le seco est chargé de la poursuite et du jugement des infractions au sens des art. 9 et 10 de la loi sur les embargos; il peut ordonner des saisies ou des confiscations.

¹⁸⁶ Nouvelle teneur selon le ch. I de l'O du 30 nov. 2001 (RO 2002 155).

¹⁸⁷ Introduit par le ch. I de l'O du 30 oct. 2002, en vigueur depuis le 1er janv. 2003 (RO 2002 3955).

¹⁸⁸ Nouvelle teneur selon le ch. I de l'O du 30 oct. 2002, en vigueur depuis le 1er janv. 2003 (RO 2002 3955).

4. Les art. 11 et 14, al. 2, de la loi sur les embargos sont réservés.

Art. 7 à 10¹⁸⁹

Art. 11¹⁹⁰ Entrée en vigueur

La présente ordonnance entre en vigueur le 3 octobre 2000.

Annexe 1¹⁹¹

Annexe 2¹⁹²

(art. 1, 3, al. 1 et 2, 4 et 4a)

Personnes physiques et morales, groupes et entités soumis aux mesures prévues aux art. 1, 3, 4 et 4a

Annexe 3¹⁹³

CXVI. SYRIAN ARAB REPUBLIC¹⁹⁴

SUMMARY OF LEGISLATION OF THE SYRIAN ARAB REPUBLIC RELATED TO TERRORISM

Article 304 of the Penal Code promulgated by legislative decree No. 148 of 22 June 1949 defines terrorist acts, and its article 305 establishes a harsh criminal penalty for those who commit such acts. Article 304 defines the concept of terrorist acts as follows:

¹⁸⁹ Abrogés par le ch. I de l'O du 30 oct. 2002 (RO 2002 3955).

¹⁹⁰ Nouvelle teneur selon le ch. I de l'O du 30 oct. 2002, en vigueur depuis le 1er janv. 2003 (RO 2002 3955).

¹⁹¹ Abrogée par le ch. III al. 1 de l'O du 1er mai 2002 (RO 2002 1646).

¹⁹² Non publiée au RO, cette annexe ne figure pas dans le présent recueil. Le tiré à part peut être obtenu auprès du seo, secteur Politique de contrôle à l'exportation et sanctions, Belpstrasse 18, 3003 Berne. L'annexe peut également être consultée à l'adresse Internet qui suit: <http://www.seco.admin.ch>, accessible par: Politique économique extérieure, Sanctions/Embargos, Sanctions de la Suisse. Seule la version imprimée fait foi (voir RO 2004 337).

¹⁹³ Introduite par le ch. II al. 2 de l'O du 11 avril 2001 (RO 2001 1353). Abrogée par le ch. III al. 1 de l'O du 1er mai 2002 (RO 2002 1646).

¹⁹⁴ Transmitted to the Secretariat by that Government on 13 December 2001 (S/2001/1204, enclosure), on 9 September 2002 (S/2002/1046, enclosure), on 9 July 2003 (S/2003/725, enclosure) and on 1 June 2004. Information was also provided in respect of the following: Law No. 93 of 1958 concerning charitable and social associations operating in Syria; Legislative Decree No. 115 of 5 October 1953, which contains the Military Service Law; and Legislative Decree No. 51 of 24 September 2001, containing the Arms and Ammunition Law.

“Terrorist acts” means all acts intended to create a state of fear which are committed by means such as explosives, inflammable materials, poisonous or burning products or epidemic or microbial agents likely to cause public danger.

The Code characterizes terrorist acts as grave crimes for which the penalty ranges from 10 years to death.

Article 305 establishes the penalties to be imposed on their perpetrators provides as follows:

1. Conspiracy aimed at the perpetration of a terrorist act or acts is punishable by a 10 to 20 years’ term.
2. Any terrorist act entails a penalty of 15 to 20 years’ hard labour.
3. Such an act entails the death penalty if the act results in the destruction, even partial, of a public building, industrial establishment, ship or installation of any kind or the disruption of means of information, communication or transport, or if the act causes the death of a person.

In the nature of things, whoever makes funds available to perpetrators of such acts is regarded as an accessory to the crime and is penalized as such.

Article 306 provides as follows:

1. Any and all associations established for the purpose of changing the economic or social character of the State or the basic conditions of society using any of the means indicated in article 304 shall be dissolved and their members shall be sentenced to a term of hard labour.
2. In respect of founders and directors, such penalty shall be not less than seven years.
3. Exculpating or mitigating excuses allowable to conspirators under article 262 apply in the case of perpetrators of the offence defined above.

Nationals or any persons or entities in Syrian territory are thus forbidden to make available, directly or indirectly, any funds, financial assets, economic resources or financial services to persons committing terrorist acts.

The Code imposes on perpetrators of these terrorist offences harsh penalties that range from 10 years’ imprisonment to hard labour for life. It also imposes the death penalty in the event that any such terrorist act should cause the destruction, even if only partial, of a public building, industrial establishment, ship or other installation, or the disruption of means of information, communication or transport, or if the act causes the death of a person.

Article 280 provides that anyone who, within Syrian territory and without the approval of the Government, recruits soldiers to fight for a foreign State shall be punished by a term of imprisonment.

Article 298 contains the following:

Any aggression either aimed at stirring up civil war or sectarian fighting through arming Syrians or inducing them to take up arms against each other or involving incitement to kill and plunder in any locality or localities shall be punishable by hard labour for life, and by death if the aggression takes place.

Article 299 provides as follows:

“Anyone who heads or assumes any position or leadership of any nature whatsoever in an armed band, either for the purpose of invading a town or locality or destroying property belonging to the State or to a group of people or for the purpose of attacking or resisting the public force [acting] against the perpetrators of such offences shall be punished by hard labour for life.

Article 300 provides further clarification concerning the penalty for participation in armed bands, as follows:

The penalty for participating in armed bands created for the purpose of committing any of the offences provided for in articles 298 and 299 (relating to sedition and gangs) shall be hard labour for life.

Article 304 defines the nature of terrorist acts as follows: “Terrorist acts” means all acts intended to create a state of fear which are committed by means such as explosives, inflammable materials, poisonous or burning products or epidemic or microbial agents likely to cause public danger.

Article 305, which defines conspiracies, establishes the penalties to be imposed on their perpetrators as follows:

Paragraph 1. Conspiracy aimed at the perpetration of a terrorist [act or] acts is punishable by a term of hard labour.

Paragraph 2. It entails the death penalty if the terrorist act results in the destruction, even partial, of a building, industrial establishment, ship or installation of any kind or the disruption of means of information, communication or transport, or if the act causes the death of a person.

Article 306, on associations, provides as follows:

1. Any and all associations established for the purpose of changing the economic or social character of the State or the basic conditions of

society using any of the means indicated in article 304 (i.e., terrorist acts) shall be dissolved and their members shall be sentenced to a term of hard labour.

Article 212 considers an accomplice to the crime as liable, like the principal, to the penalty specified for that crime in the Code. The article further provides for the aggravation of the penalty in accordance with the provisions of article 247 in the case of a person who organizes participation in the crime or directs the action of accomplices therein.

Under article 212 of the General Penal Code, anyone who finances terrorist acts is deemed an accessory to the crime and is liable to the penalty provided for such crime in the Code.

The penalty for acts of terrorism ranges from 15 to 20 years' hard labour, according to article 305/3 of the Penal Code, or even, pursuant to paragraph 3 of the same article, the death penalty if the terrorist act results in the destruction, even partial, of a public building or an industrial establishment, ship or installation of any kind or the disruption of means of information, communication or transport, or if the act causes the death of a person.

Concerning attempts, article 199 provides as follows:

1. Any attempt to commit an offence that has commenced, with acts aimed directly at its perpetration, shall be considered the same as the offence itself unless its completion is prevented by circumstances other than those outside the will of the perpetrator.
2. The penalties specified in the Code may, however, be reduced as follows: the death penalty may be commuted to hard labour for life or a term of 10 to 20 years' hard labour. Or it may be commuted to a term of not less than seven years' hard labour. A sentence of life imprisonment may be commuted to a term of not less than seven years' imprisonment. Any other penalty may be lowered by one half to two thirds.
3. Anyone who commences an act and desists therefrom by choice shall be punished only for those acts committed by him which in themselves constitute offences."

Article 200 provides as follows:

If all the acts aimed at the commission of a felony have been carried out but have not come to fruition owing to circumstances independent of the will of the perpetrator, the penalty may be reduced as follows: the death penalty may be replaced by hard labour for life or a term of 12 to 20 years' hard labour; hard labour for life may be commuted to a term of 10 to 20 years' hard labour; life imprisonment

may be replaced by a term of imprisonment ranging from 10 to 20 years; and any other penalty may be reduced to one half. The penalties stated in this article may be reduced to two thirds if the perpetrator has, solely by his own will, prevented his act from having its effect.”

The Penal Code also defines the territorial scope for the implementation of the criminal law. Article 15 of the Code provides as follows:

1. Syrian law shall apply to all crimes committed on Syrian soil.
2. A crime shall be considered as being committed on Syrian soil:
 - (a) If one of the elements constituting a crime, or an act inseparable from a crime, or a principal or subsidiary act of collaboration took place on Syrian soil;
 - (b) If the outcome of the crime occurred or was expected to occur on Syrian soil.

The Penal Code punishes any criminal act of whatever kind committed in the territory of the Syrian Arab Republic, whether the crime was committed in totality in the territory of the State or one of the elements of the crime, or a principal or a subsidiary act of collaboration, occurred in the territory of the State.

Article 20 of the Code provides as follows:

Syrian law shall apply to any Syrian person who, when outside Syrian territory, commits, instigates or is involved in a crime or misdemeanour punishable under Syrian law. The same shall apply even if the accused person loses his Syrian nationality or acquires it after the commission of the crime or misdemeanour.

Article 21 provides as follows:

Syrian law shall apply outside Syrian territory:

1. To crimes committed by Syrian officials during or on the occasion of their exercise of their functions;
2. To crimes committed by officials of the foreign service and to Syrian consuls who do not enjoy immunity conferred on them by international public law.

Thus the scope of the law extends to any Syrian wherever he may be, provided he is acting in his personal capacity.

CXVII. TAJIKISTAN¹⁹⁵

SUMMARY OF LEGISLATION OF TAJIKISTAN RELATED TO TERRORISM

(a) Decree No. 707 of 1997

In order to ensure the protection of the constitutional system of the Republic of Tajikistan and of human and civil rights and freedoms, taking into account the upsurge in terrorism and with a view to its suppression, the programme for intensifying efforts to combat terrorism for the period 1998-2000 was elaborated and approved by Decree No. 707 of the President of the Republic of 21 April 1997, ensuring the coordination of activities for that purpose by law enforcement and other State agencies. In particular, in the section concerning the suppression of the financing of terrorism, paragraph 3, subparagraph 3, of the Decree states that "Measures shall be taken to identify and suppress the channels of international communication of terrorist groups operating in the Republic of Tajikistan, their financing and deliveries of weapons from abroad".

(b) Act "On combating terrorism" 1999

The Act "On combating terrorism" was adopted in November 1999, in accordance with subparagraph 3 of Decree No. 707. Under article 10 of the Act, knowingly financing or otherwise assisting a terrorist organization or terrorist group is regarded as terrorist activity. Persons who are guilty, directly or indirectly, of providing or collecting funds for the commission of terrorist acts are criminally liable for offences committed by terrorists as accomplices to those offences, as provided in articles 35 to 37 of the Criminal Code of the Republic of Tajikistan.

In accordance with the same article 10, recruitment to terrorist groups, the supply of weapons to terrorists, and the training and use of terrorists are deemed to be terrorist activities and are regarded as complicity in the terrorist offences committed. Persons guilty of recruiting terrorists may be prosecuted under articles 179, "Terrorism", and 187, "Organization of a criminal association", of the Criminal Code.

In accordance with article 26 of the Act "On combating terrorism", persons who engage in terrorist activity, provide assistance to terrorists or terrorist organizations, or champion their activities are held liable under article 179 of the Criminal Code.

¹⁹⁵ Transmitted to the Secretariat by that Government on 28 March 2002 (S/2002/358, enclosure) and on 20 January 2003 (S/2003/147, enclosure). Information was also provided in respect of the Act "On weapons", the Act "On the National Bank of Tajikistan", and the Act "On refugees".

(c) Criminal Code

Persons who supply weapons to terrorists are liable under article 195, “Illegal acquisition, transfer, sale, possession, transport or bearing of weapons, ammunition, explosives and explosive devices”, of the Criminal Code.

In accordance with article 36, paragraph 1, of the Criminal Code, a person who organizes, instigates or abets an offence is deemed an accomplice to that offence, alongside the perpetrator. Pursuant to article 37, paragraph 1, of the Criminal Code, the liability of the accomplices to an offence is determined by the nature and degree of the actual participation of each of them in its commission, and they are liable for committing specific offences under the same article of the Special Section of the Criminal Code as perpetrators of terrorist acts.

The very fact of collecting funds for the commission of such offences is thus sufficient grounds for the criminal prosecution of the guilty party.

In accordance with article 185 of the Criminal Code, the establishment of an illegal armed unit (association, detachment, militia or other group) and leadership of or participation in such a unit are punishable by imprisonment for five to eight years.

Territorial application

The basic legal measure to prevent the use of the territory of Tajikistan for the perpetration of terrorist acts in other States is the Penal Code. The provisions of article 14, defining the extent of operation of the law, establish responsibility for a crime which:

- as begun, continued or completed in the territory of the Republic of Tajikistan (part two, paragraph (a));
- was committed in the territory of the Republic of Tajikistan, but the criminal outcome took place outside Tajikistan (part two, paragraph (b));
- was committed in complicity with persons engaged in criminal activity in the territory of another State (part two, paragraph (d)).

Part three, article 14, of the Penal Code provides that the criminal legislation of the Republic of Tajikistan has effect regardless of the laws of the place where a crime was committed in the case of acts endangering the public which are perpetrated on board an aircraft or a ship legally travelling under the flag or distinguishing signs of the Republic of Tajikistan.

At the same time, part two, article 16, of the Penal Code provides that foreign nationals and stateless persons who have committed a crime outside the Republic of Tajikistan and are present in its territory may be extradited to a foreign State for the purposes of criminal prosecution or to serve a sentence in accordance

with an inter-State treaty. This situation makes it impossible for persons who have committed a crime in the territory of another State to go into hiding in the territory of the Republic of Tajikistan.

Pursuant to article 15, of the Penal Code, nationals of the Republic of Tajikistan, and also stateless persons who reside permanently therein, are liable under the Code for crimes committed in the territory of another State if they have not been sentenced in another State for that crime.

Pursuant to part two, article 15, of the Penal Code, foreign nationals and stateless persons who do not reside permanently in the Republic of Tajikistan are liable under the Code for crimes committed outside Tajikistan in the following cases:

- (a) If they committed a crime envisaged under the norms of international law recognized by the Republic of Tajikistan or under inter-State treaties and agreements;
- (b) If they committed a particularly grave or a grave crime (the commission of terrorist acts falls within the category of particularly grave crimes, under article 18 of the Penal Code) against nationals of Tajikistan or the interests of the Republic of Tajikistan.

Pursuant to part three of article 15, these rules apply if foreign nationals and stateless persons who do not reside permanently in the Republic of Tajikistan have not been sentenced in another State.

CXVIII. THAILAND¹⁹⁶

SUMMARY OF LEGISLATION OF THAILAND RELATED TO TERRORISM

(a) Penal Code

The amendments to section 135 of the Penal Code entered into force after their publication in the Royal Gazette on 11 August 2003. They became law by Emergency Decree, as stipulated in section 218 of Thailand's Constitution. Section 135/1 provides:

¹⁹⁶ Transmitted to the Secretariat by that Government on 2 January 2002 (S/2002/10, enclosure), on 23 July 2002 (S/2002/882, enclosure), and on 18 September 2003 (S/2003/915, enclosure). Information was also provided in respect of amendments to the Anti-Money Laundering Act B.E.2542 (1999) which entered into force after their publication in the Royal Gazette on 11 August 2003. They became laws by Emergency Decree, as stipulated in Section 218 of Thailand's Constitution.

Whoever commits any of the following criminal offences:

1. an act of violence or any act to cause death or serious injury to the life and freedom of an individual;
2. an act causing serious damage to a public transportation system, a telecommunication system, or an infrastructure facility of public use,
3. an act causing damage to property belonging to a State or an individual, or the environment, resulting or likely to result in major economic loss,

if the commission of the offence is intended to threaten or coerce the Royal Thai Government, or any foreign government, or an international organization, to do or abstain from doing any act which causes serious damages, or is intended to raise unrest so as to intimidate a population, that person is said to commit a terrorist act and shall be punished with death, imprisonment for life, or imprisonment of three to twenty years and fine of sixty thousand to one million baht.

Any demonstration, gathering, protest, objection or movement that calls for the government's assistance or for fair treatment, as an exercise of their freedom under the Thai Constitution, shall not be regarded as a terrorist offence.

Section 135/2:

Whoever

1. threatens to commit a terrorist act by demonstrating behaviour which leads to a reasonable belief that the person will do as threatened;
2. collects forces or arms, provides or compiles any assets, gives or receives training relating to terrorism, makes preparations or conspires to commit a terrorist act or commits any offence which is part of the plot to commit a terrorist act, or instigate the people to partake in committing a terrorist act or does any act to conceal the knowledge of the commission of a terrorist act,

shall be punished with imprisonment of two to ten years and fine of forty thousand to two hundred thousand baht.

Section 135/3:

Whoever being a supporter to commit any offence mentioned in Section 135/1 or 135/2, shall be liable to the same punishment as a principal in such offence.

Section 135/4:

A person who is a member of a group designated by a United Nations Security Council resolution or declaration as a group committing an act of terrorism, which resolution or declaration has been endorsed by the Royal Thai Government, shall be liable to imprisonment not exceeding seven years and to fine not exceeding one hundred forty thousand baht.

Section 7:

Whoever commits the following offences outside the Kingdom shall be punished in the Kingdom, namely:

1. Offences relating to the Security of the Kingdom as provided in Section 107 to 129;
 - i. Offences relating to terrorism as provided in Section 135/1, 135/2, 135/3, and 135/4;
2. Offences relating to Counterfeiting and Alteration as provided in Sections 240 to 249, Section 256, Section 257, and Section 266/3 and 266/4;
3. Offence relating to Robbery as provided in Section 339, and Offence relating to Gang-Robbery as provided in Section 340. which is committed on the high seas.

(b) The Amendment to Section 3 of the Anti-Money Laundering Act B.E. 2342 (1999)

The Amendment to section 3 added terrorist-related offences as stipulated under sections 135/1, 135/2, 135/3, and 135/4 of the Penal Code as section 3 (8) of the Anti-Money Laundering Act 1999.

CXIX. TONGA¹⁹⁷

SUMMARY OF LEGISLATION OF TONGA RELATED TO TERRORISM

The Criminal Offences (Amendment) Act 2002 makes the act of terrorism an offence.

An “act of terrorism” is defined as an act which “may seriously damage a country or an international organisation”; and also includes an act intended or can be reasonably regarded as having been intended to seriously intimidate a population; involves or causes an attack upon a person’s life which causes death; an attack upon the physical integrity of a person; the kidnapping of a person; extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property, likely to endanger human life or result in major economic loss; the seizure of an aircraft, a ship or other means of public or goods transport; the release of dangerous substances, or causing of fires, explosions or floods, the effect of which is to endanger human life; or interference with or disruption of the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life.

The reference to “a country” includes the Kingdom of Tonga, and any country outside of Tonga.

Section 78B defines an act of terrorism to include:

(a) involves or causes:

(vi) the manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons as well as research into, and development of biological and chemical weapons.

Section 78B(c) provides that an “act of terrorism” means an act which involves or causes (i) an attack upon a person’s life which causes death; (ii) an attack upon the physical integrity of a person; or (iii) the kidnapping of a person.

Under Section 78C of the Act, the Court may in addition to any penalty imposed under section 78A, (i.e. liable upon conviction to imprisonment not exceeding 25 years), order the forfeiture of:

¹⁹⁷ Transmitted to the Secretariat by that Government on 9 December 2002 (S/2002/1363, annex) and on 20 June 2003 (S/2003/676, annex). Information was also provided in respect of the following: Mutual Assistance in Criminal Matters Act, 2000; Money laundering and Proceeds of Crime Act, 2000; Extradition Act, Cap.22; Arms and Ammunition Act (Cap.39); Shipping Act, Cap.139; Passport Act, Cap.61; Immigration Act, Cap.62; Nationality Act, Cap.5; Charitable Trusts Act, 1993; Companies Act, 1995.

- (a) any cash, with any accrued interest or terrorist property;
- (b) any article, substance, device or material by means of which the offence was committed; and
- (c) any vehicle used in the commission of the offence.

Section 78A, covers “[e]very person who does an act of terrorism or threatens to or to further an act of terrorism commits an offence”.

The Criminal Offences (Amendment) Act 2002 provides for punishment for the offence of an act of terrorism if found liable upon conviction to a term of imprisonment not to exceed 25 years. This is the maximum term of imprisonment under this Act whereas the maximum term of imprisonment for other criminal offences is one that is not to exceed 15 years.

Part II of the Criminal Offences Act (Cap. 18) deals with, *inter alia*, abetment, harbouring criminals and conspiracy.

Section 8 of the Act reads as follows:

Every person who directly or indirectly commands, incites, encourages or procures the commission of an offence by any other person and every person who knowingly does any act for the purpose of facilitating the commission of an offence by any other person is an abettor and shall (unless otherwise expressly specified by any enactment)

- (a) where the offence is actually committed in pursuance or during the continuance of such abetment be liable to the same punishment as if he himself had actually committed that offence; and
- (b) where the offence is not actually committed shall be liable where the offence abetted was murder to imprisonment for life or any less period and in the case of abetment of any other offence to imprisonment for a period not exceeding one half of the longest period to which a person committing that offence might be sentenced or to a fine not exceeding one half of the maximum fine which a person committing that offence might be sentenced to pay.

Section 12 of the Act reads as follows:

Every person who counsels, incites or procures another to commit an offence is a party to every offence which that other commits in consequence of such counselling, inciting or procuring and which the person counselling, inciting or procuring knew or ought to have known would be likely to be committed in consequence of such counselling, inciting or procuring.

Section 13 of the Act reads as follows:

Every person who knowing or having reason to believe that any person has:

- (a) committed an offence; or
- (b) been charged by an prosecuting authority with any offence; or
- (c) been issued with a summons by any court in respect of any offence; or
- (d) been remanded for or is awaiting trial in any court in respect of any offence; or
- (e) been convicted of any offence;

does without lawful authority or reasonable excuse any act with intent to impede his apprehension, prosecution or the execution of the sentence is guilty of an offence and is liable on conviction to indictment to imprisonment for any period not exceeding 3 years.

Section 15 of the Act reads as follows:

- (1) If 2 or more persons agree to act together with a common purpose in order to commit or abet an offence whether with or without any previous concert or deliberation each of them is guilty of conspiracy to commit or abet that offence as the case may be.
- (2) If 2 or more persons are guilty of conspiracy to commit or abet any offence each of them shall in case the offence is committed be liable to be punished as if he had actually committed that offence or shall in case the offence is not committed be punished as if he had abetted that offence.

CXX. TUNISIA¹⁹⁸

ELEMENTS DU DISPOSITIF LEGISLATIF ET REGLEMENTAIRE DE LA TUNISIE

S'agissant des actes terroristes qui ont de graves conséquences pour la sécurité des individus, des groupes ou des biens, la législation pénale tunisienne considère ces actes comme des infractions graves passibles des peines les plus lourdes.

Des articles ont été intégrés dans le Code pénal qui ont trait à la description des infractions qualifiées de terroristes (art. 52 *bis* du Code pénal) et qui décrivent les peines prévues pour ces infractions qui concernaient l'attaque contre la sûreté extérieure ou intérieure de l'État et l'atteinte à l'ordre public, y compris la participation des perturbateurs et les infractions portant atteinte aux personnes ou aux biens.

Description des infractions terroristes

La législation tunisienne énonce qu'est qualifiée de terroriste toute infraction en relation avec une entreprise individuelle ou collective ayant pour but de porter atteinte aux personnes ou aux biens, par l'intimidation ou la terreur. Sont traités de la même manière les actes d'incitation à la haine ou au fanatisme racial ou religieux. L'auteur d'une infraction terroriste encourt la peine prévue pour l'infraction elle-même ainsi que l'application de la surveillance administrative pour une période de cinq ans. Les peines ne se confondent pas.

L'article 52 *bis* du Code pénal prévoit ce qui suit :

L'auteur d'une infraction qualifiée de terroriste encourt la peine prévue pour l'infraction elle-même. La peine ne peut être réduite à moins de sa moitié.

Est qualifiée de terroriste, toute infraction en relation avec une entreprise individuelle ou collective ayant pour but de porter atteinte aux personnes ou aux biens, par l'intimidation ou la terreur. Sont traités de la même manière, les actes d'incitation à la haine ou au fanatisme racial ou religieux quels que soient les moyens utilisés.

L'application de la surveillance administrative pour une période de cinq ans est obligatoire. Les peines ne se confondent pas.

¹⁹⁸ Submitted by that Government on 26 December 2001 (S/2001/1316, enclosure), on 30 August 2002 (S/2002/1024, enclosure) and on 15 September 2003 (S/2003/1034, enclosure). Information was also provided in respect of draft legislation on money laundering and the financing of terrorism.

Sont également appliquées les dispositions de l'article 134 du présent code.

Les infractions visées dans le Code pénal peuvent être qualifiées de terroristes si elles répondent aux critères définis dans l'article 52 bis.

Articles relatifs aux attentats contre la sûreté extérieure de l'État

Article 61

Sera coupable d'atteinte à la sûreté extérieure de l'État et puni des peines portées à l'article 62, tout Tunisien ou tout étranger:

1. Qui aura, par des actes hostiles, non approuvés par le Gouvernement, exposé la Tunisie à une déclaration de guerre;
2. Qui aura, par des actes non approuvés par le Gouvernement, exposé les Tunisiens à subir des représailles;
3. Qui, en temps de paix, enrôlera des soldats pour le compte d'une puissance étrangère, en territoire tunisien;
4. Qui, en temps de guerre, entretiendra, sans autorisation du Gouvernement, une correspondance ou des relations avec les sujets ou les agents d'une puissance ennemie;
5. Qui, en temps de guerre, au mépris des prohibitions édictées, fera, directement ou par intermédiaire, des actes de commerce avec les sujets ou les agents d'une puissance ennemie.

Article 62

Seront punies d'un emprisonnement de douze ans, les atteintes à la sûreté extérieure de l'État, si elles sont commises en temps de guerre, et de cinq ans si elles sont commises en temps de paix, la tentative est punissable et l'article 53 en pourra être appliqué; et dans tous les cas, il peut être fait application des peines accessoires édictées par l'article 5 du présent Code pour cinq ans au moins et vingt ans au plus.

Article 72

Est puni de mort, l'attentat ayant pour but de changer la forme du Gouvernement ou d'exciter les habitants à s'armer les uns contre les autres ou de porter le désordre, le meurtre et le pillage sur le territoire tunisien.

Article 74

Est puni de mort, quiconque rassemble et arme des bandes ou se met à la tête de bandes dans le but, soit de piller les deniers de l'État ou des particuliers, soit de s'emparer de propriétés mobilières ou immobilières ou de les détruire, soit, enfin, d'attaquer la force publique agissant contre les auteurs de ces attentats ou de lui faire résistance.

Article 75

Sont punis de vingt ans d'emprisonnement et d'une amende de deux cent mille dinars, ceux qui, connaissant le but et le caractère desdites bandes, ont consenti à en faire partie ou leur ont, sans contrainte, fourni des armes, logements, lieux de retrait ou de réunion.

Article 76

Est puni de mort, quiconque a incendié ou détruit, à l'aide d'un explosif, des édifices, des magasins de munitions ou d'autres propriétés appartenant à l'État.

Article 77

Si une bande, armée ou non, commet des violences contre les personnes ou contre les propriétés, chacun de ses membres est puni de dix ans d'emprisonnement.

Article 78

Si une bande, armée ou non, fait irruption dans une propriété elose, dans le dessein d'exercer des violences, chacun des membres de cette bande est puni d'un emprisonnement de trois ans.

Articles relatifs aux attaques contre les pouvoirs publics

– Association de saboteurs

Article 131

Toute bande formée, quels que soient sa durée et le nombre de ses membres, toute entente établie dans le but de préparer ou de commettre un attentat contre les personnes ou les propriétés constituent une infraction contre la paix publique.

Article 132

Est puni de six ans d'emprisonnement celui qui s'est affilié à une bande ou a participé à une entente de l'espèce prévue à l'article précédent. La peine est de douze ans pour les chefs de ladite bande.

Article 133

Est puni des peines prévues au paragraphe premier de l'article précédent, celui qui a sciemment et volontairement fourni un lieu de réunion ou une contribution pécuniaire aux membres d'une bande de malfaiteurs, ou les a aidés à disposer du produit de leurs méfaits, ou leur a fourni le logement ou un lieu de retraite.

La peine est de douze ans pour les chefs de ladite bande.

Articles relatifs aux crimes contre les individus

—L'homicide volontaire

Article 201

Est puni de mort, celui qui commet volontairement et avec préméditation un homicide par quelque moyen que ce soit.

Article 205

Est puni d'emprisonnement à vie le coupable de meurtre dans tous les cas non prévus par les articles ci-dessus.

Article 208

Le coupable est puni de vingt ans d'emprisonnement si les coups portés ou les blessures faites volontairement, mais sans intention de donner la mort, l'ont pourtant occasionnée. En cas de préméditation, la peine est celle de l'emprisonnement à vie.

Article 209

Les individus qui ont participé à une rixe au cours de laquelle ont été exercées des violences ayant entraîné la mort dans les conditions prévues à l'article précédent encourent, pour ce seul fait, un emprisonnement de deux ans, sans préjudice des peines portées contre l'auteur des violences.

– *Violences et menaces*

Article 218

Tout individu qui, volontairement, fait des blessures, porte des coups, ou commet toute autre violence ou voie de fait ne rentrant pas dans les prévisions de l'article 319, est puni d'un emprisonnement d'un an et d'une amende de mille dinars.

Si l'auteur de l'agression est un descendant ou conjoint de la victime, la peine est de deux ans d'emprisonnement et de deux mille dinars (2 000 D) d'amende.

S'il y a eu préméditation, la peine est de trois ans d'emprisonnement et de trois mille dinars (3 000 D) d'amende.

Le désistement de l'ascendant ou du conjoint victime arrête les poursuites, le procès ou l'exécution de la peine. La tentative est punissable.

Article 219

Quand les violences ci-dessus exprimées ont été suivies de mutilation, perte de l'usage d'un membre, défiguration, infirmité ou incapacité permanente dont le taux ne dépasse pas 20 %, le coupable est puni de cinq ans d'emprisonnement.

La peine sera de dix ans de prison s'il est résulté de ces sortes de violence une incapacité dont le taux dépasse 20 %.

La peine est portée à douze ans d'emprisonnement si le coupable est un descendant de la victime, quel que soit le taux de l'incapacité, même en cas de désistement.

Article 220

Les individus ayant participé à une rixe au cours de laquelle ont été portés des coups et blessures de la nature de ceux prévus aux articles 218 et 219 encourent un emprisonnement de six mois pour ce seul fait et sans préjudice des peines prévues aux dits articles contre l'auteur des coups.

- *Les enlèvements et détournements*

Article 237

Est puni de dix ans de prison, celui qui aura, par fraude, violence ou menace, enlevé ou fait enlever un individu, ou l'aura entraîné, détourné, déplacé, ou l'aura fait entraîner ou détourner ou déplacer des lieux où il était.

Le maximum de la peine est porté à vingt ans de prison si la personne ainsi enlevée ou détournée est un fonctionnaire ou un membre du corps diplomatique ou consulaire ou un membre de sa famille. Cette dernière peine sera appliquée, quelle que soit la qualité de l'individu, si celui-ci a été enlevé ou détourné pour répondre du versement d'une rançon ou de l'exécution d'un ordre ou d'une condition.

La peine est portée à l'emprisonnement à vie si l'enlèvement ou le détournement a été effectué à main armée, ou à l'aide d'un faux uniforme, ou sous une fausse identité, ou sur un faux ordre de l'autorité publique, ou s'il en est résulté une incapacité corporelle ou une maladie.

Ces infractions comportent la peine de mort si elles ont été accomplies ou suivies de mort.

Articles relatifs aux attaques contre les biens

Article 304

Quiconque volontairement et autrement que par une explosion ou un incendie a causé un dommage à la propriété immobilière ou mobilière d'autrui est puni de l'emprisonnement pendant trois ans et d'une amende de deux mille dinars.

Si les détériorations sont de nature à compromettre la solidité ou l'existence de la chose, la peine est de cinq ans d'emprisonnement et de trois mille dinars d'amende.

La tentative est punissable.

Article 306

La peine encourue est celle de vingt ans de prison si la dégradation ou la destruction est commise au moyen d'un engin explosif, sans préjudice des peines de l'homicide si ladite dégradation ou destruction a déterminé mort d'homme.

Est puni de douze ans de prison, le simple dépôt, dans une intention criminelle, sur la voie publique ou dans un lieu habité, d'un engin explosif.

Article 306 bis

Sera punie d'un emprisonnement de dix ans, toute personne qui, par violence ou menace, s'empare ou exerce le contrôle d'un véhicule terrestre maritime ou aérien.

La peine sera celle de vingt ans de prison s'il est résulté de ces faits des blessures ou maladies. La peine sera l'emprisonnement à vie s'il est résulté la mort d'une personne ou de plusieurs personnes sans préjudice, s'il y a lieu, de l'application des articles 28, 201, 203 et 204 du présent Code.

Article 307

Est puni de l'emprisonnement à vie celui qui aura mis volontairement le feu, directement ou indirectement, à des édifices, navires, bateaux, magasins, chantiers habités ou servant à l'habitation, et généralement aux lieux habités ou servant à l'habitation ainsi qu'aux wagons et voitures contenant des personnes ou faisant partie d'un convoi en contenant, qu'ils appartiennent ou non à l'auteur de l'incendie.

Est puni de l'emprisonnement pendant douze ans, celui qui aura mis volontairement le feu, directement ou indirectement, soit à des pailles ou récoltes en tas ou en meules, soit à des bois disposés en tas ou en stères, soit à des voitures ou wagons ne faisant pas partie d'un convoi contenant des personnes, soit à tous autres objets mobiliers, si ces objets ne lui appartiennent pas.

La peine sera la mort si l'incendie a déterminé mort d'homme.

Article 308

La peine encourue est celle de vingt ans d'emprisonnement si les bâtiments incendiés n'étaient pas habités ou ne servaient pas d'habitation, elle est réduite à dix ans si l'auteur du crime est propriétaire du bâtiment incendié.

Violations relatives à la santé publique

Article 310

Est puni de l'emprisonnement pendant un an, celui qui dépose sciemment des substances nuisibles ou vénéneuses dans toute eau servant à la boisson de l'homme ou des animaux, sans préjudice de l'application, s'il y a lieu, des dispositions des articles 215, 218 et 219 du présent code et du décret du 15 décembre 1896. La tentative est punissable.

Mesures adoptées contre la haine

La législation tunisienne comporte également des dispositions visant à lutter contre la haine :

D'après l'article 8 de la Constitution tunisienne, les partis sont tenus de rejeter toutes les formes de violence, d'extrémisme, de racisme et de discrimination, et aucun d'entre eux ne peut fonder ses principes, ses objectifs, ses activités ou ses programmes sur une religion, une langue, une race, une ethnie ou une région.

La législation tunisienne érige en infractions pénales l'appel à la haine entre les races ou les religions et la propagation d'idées fondées sur la discrimination raciale. Le Code pour la protection de l'enfant (art. 1, 19 et 20), le Code de la presse [art. 44 (nouveau) et 54, al. 4) (nouveau)], la loi sur l'organisation des partis politiques (art. 2 et 3) et la loi sur le système éducatif (art. 1) contiennent des dispositions expresses à ce sujet.

En règle générale, la législation tunisienne ne se contente pas de réprimer les actes de terrorisme et de violence sous toutes leurs formes. Elle vise également à débarrasser la société tunisienne de toutes les formes de haine et à éliminer toutes les doctrines prônant la discrimination et l'exclusion de l'autre.

Mesures adoptées pour empêcher le financement des actes de terrorisme par d'organisations caritatives ou religieuses

La Tunisie s'est employée à réglementer le phénomène associatif en ce qui concerne la création d'associations, le suivi de leurs activités et les conditions de leur dissolution – en toute clarté et transparence – en établissant pour ces activités un cadre législatif et institutionnel propre à empêcher que cet espace ne soit exploité par des milieux ou des éléments terroristes.

Dans ce cadre, la Tunisie soumet la création et la constitution d'associations de quelque sorte que ce soit à des conditions essentielles liées aux principes généraux énoncés dans le Code des obligations et des contrats et aux dispositions de la loi No 154 sur les associations en date du 7 novembre 1959, ainsi qu'à des mesures administratives bien définies en l'absence desquelles aucune association ne peut être légalement constituée. Ces mesures portent sur le domaine d'activité de l'association concernée, l'identification de ses fondateurs et de ses adhérents et la définition détaillée de ses ressources (origine, montant, propriétaires, bénéficiaires, etc.).

Le législateur tunisien a en outre défini des mesures concernant la constitution d'organisations non gouvernementales étrangères dans le cadre de la loi fondamentale No 80 du 26 juillet 1993, réglementé les modalités d'acquisition des biens nécessaires à leurs activités conformément à la législation en vigueur ainsi que l'utilisation de ces biens et la perception de dons, legs et subventions, et défini les conditions d'implantation de leurs dirigeants, de leur personnel et de leurs activités sur le territoire tunisien.

Mesures adoptées pour empêcher le recrutement de terroristes

Les actes qui consistent à recruter et à entraîner des individus aux fins de la commission d'actes de terrorisme ont été érigés en infractions et sont considérés comme des éléments constitutifs et non pas secondaires du terrorisme.

À ce propos, la Tunisie s'emploie à isoler les groupes extrémistes et à les empêcher de gagner certains cercles à leur cause, sous le prétexte de défendre les valeurs humanitaires. À cette fin, elle a adopté une approche plurielle, à la fois économique, sociale, éducative et autre, qui vise à supprimer les facteurs qui sont à l'origine du terrorisme et qui contribuent à son essor, comme la marginalisation, l'exclusion, l'extrémisme et la pauvreté, et ainsi à ôter aux groupes terroristes la possibilité d'exploiter la situation économique de certains groupes de jeunes sans emploi et appartenant aux catégories défavorisées de la population pour les leurrer et les embrigader.

En ce qui concerne les dispositions du Code de procédure pénale interdisant l'utilisation du territoire tunisien pour commettre des attentats terroristes en dehors du territoire tunisien :

Se référer à la réponse relative à l'alinéa e) ainsi qu'à l'article 61 du Code pénal relatif aux atteintes à la sécurité extérieure de l'État et à l'article 131 relatif aux bandes organisées :

Article 61 bis:

Sera coupable d'atteinte à la sûreté extérieure de l'État et puni des peines portées à l'article 62, tout tunisien ou étranger :

1. Qui aura entrepris, par quelque moyen que ce soit, de porter atteinte à l'intégrité du territoire tunisien;
2. Qui entretiendra, avec les agents d'une puissance étrangère, des intelligences ayant pour objet ou ayant eu pour effet de nuire à la situation militaire ou diplomatique de la Tunisie.

Application territoriale

Les dispositions du Code pénal tunisien s'appliquent à tous les actes terroristes commis dans le pays. Cela concerne notamment quiconque, par des actes hostiles, expose la Tunisie à une déclaration de guerre ou expose les Tunisiens à subir des représailles. En outre, les tribunaux tunisiens peuvent poursuivre tout Tunisien qui commet, hors du territoire tunisien, une des infractions qualifiées de terroristes.

En ce qui concerne les dispositions pénalisant les actes terroristes commis dans d'autres pays :

Se référer à l'article 61 du Code pénal. Quant à l'article 62 *bis*, il stipule ce qui suit : « les peines prévues dans ce chapitre s'étendent aux actes commis contre une puissance liée à la Tunisie par un traité d'alliance ou une convention internationale en tenant lieu ».

Compétence des tribunaux tunisiens dans les affaires impliquant des personnes se trouvant en Tunisie et accusées d'avoir commis des actes terroristes en dehors du territoire tunisien :

Article 305 du Code de procédure pénale

Tout citoyen tunisien qui, hors du territoire de la République, s'est rendu coupable d'un crime ou d'un délit puni par la loi tunisienne peut être poursuivi et jugé par les juridictions tunisiennes, à moins qu'il ne soit reconnu que la loi étrangère ne réprime pas ladite infraction ou que l'inculpé justifie qu'il a été jugé définitivement à l'étranger et, en cas de condamnation, qu'il a subi ou prescrit sa peine ou obtenu sa grâce.

Les dispositions de l'alinéa précédent sont applicables à l'auteur du fait qui n'a acquis la qualité de citoyen tunisien que postérieurement au fait qui lui est imputé.

Peut être également poursuivi et jugé par les tribunaux tunisiens tout Tunisien qui commet en dehors du territoire tunisien l'une des infractions mentionnées à l'article 52 *bis* du Code pénal, alors même que lesdites infractions ne sont pas punissables au regard de la législation de l'État où elles ont été commises.

Article 307

Tout étranger qui, hors du territoire de la République, s'est rendu coupable soit comme auteur, soit comme complice, d'un crime ou d'un délit attentatoire à la sûreté de l'État ou de contrefaçon du sceau de l'État ou de monnaies nationales ayant cours peut être poursuivi et jugé d'après les dispositions des lois tunisiennes s'il est arrêté en Tunisie ou si le Gouvernement obtient son extradition.

Article 307 bis

Quiconque, hors du territoire tunisien, s'est rendu coupable, soit comme auteur principal, soit comme complice, d'un crime ou d'un délit peut être poursuivi et jugé lorsque la victime est de nationalité tunisienne. Les poursuites ne peuvent être engagées qu'à la requête du Ministère public, sur plainte de la partie lésée ou de ses héritiers. Aucune poursuite ne peut être intentée si l'inculpé rapporte la preuve qu'il a été définitivement jugé à l'étranger et, en cas de condamnation à une peine, que cette dernière a été exécutée, qu'elle est atteinte par la prescription extinctive, ou qu'il a bénéficié d'une mesure de grâce ou d'une amnistie.

CXXI. TURKEY¹⁹⁹

SUMMARY OF LEGISLATION OF TURKEY RELATED TO TERRORISM

(a) Penal Code

According to article 5 of the Turkish Penal Code, sentences pronounced for those who commit the crimes mentioned in various articles of the Turkish Penal Code are aggravated by one-half for both the freedom-restricting and monetary sanctions, when those crimes are committed for terrorist purposes.

Article 314 provides for prison sentences up to one year for supplying food and shelter, weapons or ammunition to organizations established with the purpose of committing crimes.

Article 168: "Whoever establishes armed societies and bands or undertakes the duty of chieftain or command or any particular duty in such societies or bands, with the purpose of committing the crimes defined in articles 125, 131, 146, 147, 149 and 156, shall be punished by heavy imprisonment for not less than fifteen years. Other members of such society or band shall be punished by heavy imprisonment for ten to fifteen years."

Article 169: "Whoever, in circumstances other than prescribed in Articles 64 and 65, knowingly gives shelter, assistance, provisions, arms or ammunition to such a society or a band, or facilitates their actions, shall be punished by heavy imprisonment for three to five years."

(b) Law on the Prevention of Money Laundering No: 4208

According to the definition in article 2 of the Law on the Prevention of Money Laundering, dirty money means money and legal instruments, property and proceeds derived from any activity in:

- The Law No. 1918 on the Prevention and Follow-up of Smuggling
- The Law No. 6136 on Firearms and Knives

¹⁹⁹ Transmitted to the Secretariat by that Government on 27 December 2001 (S/2001/1304, enclosure), on 16 August 2002 (S/2002/948, enclosure) and on 25 August 2003 (S/2003/856, enclosure). Information was also provided in respect of the following: Regulation on the Implementation of Law on the Prevention of Money Laundering No:4208; the Code of Criminal Procedure; Law Nr. 6136 on the Firearms, Knives and other Similar Tools; Law Nr. 2860 on the Collection of Charitable Donations; Law Nr. 3763 on the Control of Private Industrial Enterprises Producing War Weapons, Vehicles, Equipment and Ammunition; the Law Nr. 2845 on the Establishment and Trial Procedures of State Security Courts; the Law Nr. 2935 on State Emergency.

- The Law No. 2238 on the Removal, Preservation and Transplantation of Organs and Tissues
- The Law No. 2863 on the Protection of Cultural and National Values
- Subparagraph (b) of Article 359 of the Law No. 213 on Taxation
- Procedures**
- Turkish Penal Code (TPC) Articles 125-173 – Felonies Against the State
- TPC – Article 179 – Felonies Against Personal Liberty
- TPC – Article 192 – Blackmail and Extortion
- TPC – Article 264 – Illegal Production of Arms and Explosives
- TPC – Article 316 – Counterfeiting of Currency, Public Bonds and Valuable Seals
- TPC – Article 317 – Undermining the Value of Money
- TPC – Article 318 – Importation, Purchase, Acceptance or Possession Forged Currency
- TPC – Article 319 – Causing the Depreciation of Turkish or Foreign Currency or Endangering the Credibility of Turkey or another country by Counterfeiting
- TPC – Article 322 – Counterfeiting or Damaging Valuable Seals
- TPC – Article 325 – Counterfeiting Public Transportation Tickets
- TPC – Article 332 – Forging, Altering or Importing Valuable Seals
- TPC – Article 333 – Misuse of Counterfeiting of Official Seals and Other Instruments Used in Validation
- TPC – Article 335 – Sale, Purchase or Acquisition of Forged Articles
- TPC – Article 339 – Forgery on Official Documents by Public Officials
- TPC – Article 341 – Forgery on Copies of Official Documents by Public Officials
- TPC – Article 342 – Forgery by Other People on Official Documents
- TPC – Article 345 – Forgery on Private Documents
- TPC – Article 350 – Forgery on Identification Cards, Identity Papers, Passports and Permits
- TPC – Article 403 – Manufacturing, Importing, Exporting, Sale, Purchase, Acquisition and Transportation of Drugs: Organizing a Group or Using Children or Persons Who Do Not Carry Criminal Liability for These Purposes
- TPC – Article 404 – Consuming Drugs or Facilitating the Consumption of Drugs
- TPC – Article 406 – Commission of These Offences by Doctors, Veterinarians, Pharmacists, Dentists, Midwives or Nurses
- TPC – Article 435 – Instigating Minors Under the Age of 15 to Prostitution
- TPC – Article 436 – Forcing to Prostitution
- TPC – Article 495 – Pillage
- TPC – Article 496 – Compelling a Person to Deliver, Sign or Destroy a Valid Document by the Use of Force, Violence or Threat
- TPC – Article 497 – Commission of the Offence Mentioned in Article 496 by Using Arms
- TPC – Article 498 – Forcing a Person to Give or Send Money or Other Valuables by Threatening or by Presenting a Forged Government Order

- TPC – Article 499 – Kidnapping
- TPC – Article 500 – Conveying Correspondence with regard to the Offence in Article 499
- TPC – Article 504 – Fraud
- TPC – Article 506 – Fraudulent Bankruptcy

Article 7: "... If dirty money is derived from offences of terrorism or from smuggling of substances or materials whose export or import is prohibited or if the offence is committed in order to obtain financial sources for the commission of terrorist offences, the term of imprisonment referred to in the paragraph above shall not be less than four years".

(c) Law on the Prevention of Benefit-Oriented Criminal Organizations, No: 4422

Article I: Those who set up or manage or act on behalf of or wittingly serve such organizations in order to directly or indirectly take control of the management and administration of an institution, establishment or enterprise; in order to take control of or influence public services, media, proceedings of bids, concessions and licenses; in order to cause scarcity or to increase or decrease prices; in order to ensure unfair gains; in order to gain votes in elections or to prevent elections by using or threatening to use force; in order to compel persons to be dependent on themselves; in order to commit crimes by implicitly or explicitly intimidating and cowing people in collaboration with the other members of the organization shall be sentenced to heavy imprisonment for three to six years.

As distinct from the crimes listed above, being a member of such an organization constitutes a crime subject to heavy imprisonment for two to four years.

If this organization is armed, the sentence shall be increased from one third to half. If arms and explosives have been prepared or possessed to achieve the organization's aims, the organization shall be deemed to be armed, no matter whether an armed activity has taken place or not.

If the offender is a government official or a civil servant, then the sentence shall be increased from half to double.

The article shall also apply to the open or clandestine organizations the purposes of which are the same as those of organizations described above and that use methods of intimidation, frightening or menacing.

Making the propaganda of such organizations through all written, audio or virtual media means is also a punishable crime under this article.

Article 6: Without prejudice to the provisions of the Law 4208 (Law on the Prevention of Money Laundering), a decision may be taken during investigations to confiscate all movable or immovable assets of persons who are

strongly suspected of having committed crimes mentioned under article 1 of the present law and to prohibit totally or partially their exercise over rights and claims, including rented vaults, in banks or non-banking institutions and other real or corporate bodies; to invest such assets a depository location; and to take additional measures for the administration of property, commercial papers, cash or other values.

Investigations and examinations concerning the case and proceedings to determine or appraise the amount or value of the property stated in the paragraph above shall be carried out by the Financial Crimes Investigation Board of the Ministry of Finance both domestically and abroad upon the request of the Public Prosecutor.

When it is apparent that the property mentioned in the first paragraph is legitimate, then the decision of seizure shall not be taken and if a decision of seizure has already been taken, it shall be nullified.

In case that the accused be found guilty, the property pertaining to this case shall be confiscated

According to article 16 of the above-mentioned law, this measure is also applied for offences falling within the scope of the Law on Fight Against Terrorism.²⁰⁰

²⁰⁰ The text of the Law on Fight Against Terrorism is reproduced in Part I of National Laws and Regulations on the Prevention and Suppression of International Terrorism, United Nations Legislative Series (ST/LEG/SER.B/22).

CXXII. TURKMENISTAN²⁰¹

SUMMARY OF LEGISLATION OF TURKMENISTAN RELATED TO TERRORISM

(a) Constitutional provisions

Under article 6 of the Constitution of Turkmenistan, the legislation of Turkmenistan recognizes the supremacy of generally accepted rules of international law. In that connection, the provisions of international treaties to which Turkmenistan is a party have direct force of law.

(b) Criminal Code

The Criminal Code of Turkmenistan provides for criminal liability in respect of terrorism and this also applies to any actions connected with the preparation and conduct of terrorist acts.

Article 271. Terrorism

1. Terrorism, that is, causing an explosion or fire or other acts that jeopardize human life, cause significant property damage or have other dangerous consequences for society, where those acts are committed to violate public security, cause panic or influence decision-making by government authorities, including the threat to commit such acts for those purposes, shall be punishable by imprisonment for 5 to 10 years.

²⁰¹ Transmitted to the Secretariat by that Government on 21 May 2002 (S/2002/580, enclosure), on 15 January 2003 (S/2003/129, enclosure) and on 4 September 2003 (S/2003/868, enclosure). Information was also provided in respect of other provisions of the Criminal Code, including: article 9, extradition; article 167, War propaganda; article 168, Genocide; article 169, Mercenarism; article 171, Treason; article 172., Espionage; article 179, Divulging State secrets; article 180, Loss of documents containing State secrets; article 242, Legalization of monetary assets or other property obtained illegally; article 273, Organization of an illegal armed unit or participation therein; article 274, Banditry; article 275, Organization of a criminal association or participation therein; article 287, Illegal acquisition, sale, possession, transport, sending or bearing of weapons, ammunition, explosives or explosive devices; article 288, Illegal manufacture of weapons; and article 254, Smuggling. Information was also provided in respect of the following: the Act on Commercial banks and banking activities; the Turkmenistan Civil Code of Saparmurat Turkmenbashi of 17 July 1998; the Act on Refugees of 12 July 1997; the Act on the legal status of foreign nationals in Turkmenistan of 8 October 1993; and Act of Turkmenistan on the Procedure for the departure from and entry into Turkmenistan of Turkmen Citizens of 15 June 1995.

2. Those same acts, when committed:
 - (a) Repeatedly;
 - (b) With the use of firearms;
 - (c) By a group of people on the basis of prior agreement,

shall be punishable by imprisonment for 8 to 15 years.

3. If the acts described in paragraphs 1 and 2 of this article cause death or are committed by an organized group or a criminal organization, they shall be punishable by imprisonment for 10 to 25 years.

Note: A person who has participated in the preparation of an act of terrorism is exempted from criminal liability if he has provided a timely warning to the authorities or by some other means has helped to prevent an act of terrorism and if he has not committed other offences.

Article 272. Provision of deliberately false information about a terrorist act

The provision of deliberately false information about an imminent explosion or act of arson or other actions that create the danger of loss of life, extensive property damage or other dangerous consequences for society shall be punishable by corrective labour for up to two years or imprisonment for up to two years.

Article 273. Organization of an illegal armed unit or participation therein

1. The establishment of an armed unit not provided for in the legislation of Turkmenistan and the leadership of such a unit shall be punishable by imprisonment for 3 to 8 years.
2. Participation in an illegal armed unit shall be punishable by imprisonment for up to five years.

Note: A person who ceases voluntarily to participate in an illegal armed unit and surrenders his weapon is exempted from criminal liability provided that he has not committed other offences.

The Criminal Code also provides for criminal liability for the commission of acts in Turkmenistan that are in and of themselves not criminal but are linked to acts committed or intended to be committed outside Turkmenistan that are of a criminal or even terrorist nature. Such liability is provided for in article 275 of the Criminal Code (on the organization of a criminal association or participation in a criminal association). Liability is engaged at the time when the acts in question begin.

The Code also covers the types of complicity (article 33), on the basis of which it is necessary to identify all participants in a crime, i.e. the organizer, the instigator and the accomplice. If investigation reveals a source of financing (collection of funds), that has a bearing on the categorization of the act.

The Code also establishes criminal liability for: banditry (article 274), organization of a criminal association or participation in such an association (article 275), hijacking or seizing an aircraft, boat or railway rolling stock (article 277), robbery (article 231), extortion (article 232), kidnapping (article 126), seizure of hostages (article 130), and sabotage (article 173).

Article 7. Criminal law in respect of persons who have committed crimes in the territory of Turkmenistan:

(1) Persons who have committed crimes in the territory of Turkmenistan shall be subject to liability under Turkmenistan's criminal law.

(2) Crimes committed within Turkmenistan's territorial waters or airspace shall be considered as having been committed in the territory of Turkmenistan. The Criminal Code shall also apply to crimes committed on the continental shelf and in the maritime economic zone of Turkmenistan.

(3) Persons who have committed crimes on board a vessel registered in a port of Turkmenistan and situated in the water or airspace beyond its borders shall be liable under Turkmenistan's criminal law, unless otherwise provided for under an international treaty to which Turkmenistan is a party.

(4) When a crime is committed in the territory of two or more States, liability shall be incurred under Turkmenistan's criminal law if the crime is halted or suppressed in the territory of Turkmenistan.

(5) The question of the criminal liability of diplomatic representatives of foreign States and other persons who invoke immunity when such persons commit a crime in the territory of Turkmenistan shall be resolved on the basis of the norms of international law and the international treaties to which Turkmenistan is a party.

Article 8. Criminal law in respect of persons who have committed crimes outside Turkmenistan

(1) Citizens of Turkmenistan and also persons permanently residing in Turkmenistan without citizenship who have committed a crime provided for under Turkmenistan's criminal law outside Turkmenistan shall be subject to liability under the criminal legislation of Turkmenistan if liability for the act committed is provided for under the criminal law of

the State in whose territory it was committed and if these persons have not been convicted in a foreign State. Punishment exceeding the maximum punishment provided for under the law in force in the place where the crime was committed may not be imposed.

(2) Foreign nationals and stateless persons who are not permanently residing in Turkmenistan shall be subject to liability under the criminal law of Turkmenistan for a crime committed outside Turkmenistan if the crime was directed against Turkmenistan or its citizens and also in the cases provided for under international treaties to which Turkmenistan is a party if they have not been convicted in a foreign State and have been charged with criminal liability in the territory of Turkmenistan.

CXXIII. UGANDA²⁰²

SUMMARY OF LEGISLATION OF UGANDA RELATED TO TERRORISM

The Anti-Terrorism Act No 14/2002, which came into force on 7th June 2002, applies to, inter alia, all financial institutions and their intermediaries in Uganda. Whilst the Act confers no specific powers or obligations on supervisory and other financial sector authorities to combat (the financing of) terrorism in Uganda, it criminalizes terrorism and its financing. Financial institutions are thus enjoined together with law enforcement authorities in Uganda to monitor compliance with the anti-terrorism legislation in Uganda. Financial institutions are required to adhere to and follow anti-money laundering guidelines which are aimed at combating money laundering and terrorism as a predicate offence thereof.

Section 10 of the Act provides:

Any person who aids or abets or finances or harbours or in any other way renders support to any person, knowing or having reason to believe that the support will be applied or used for or in connection with the preparation or commission or instigation of acts of terrorism, commits an offence and shall, on conviction, be sentenced to death.

²⁰² Transmitted to the Secretariat by that Government on 29 April 2002 (S/2002/517, enclosure) and on 20 October 2003 (S/2003/1041, enclosure). Information was also provided in respect of other legislation, including the Penal Code of the Laws of Uganda, Cap. 106.

Section 17 of the Act provides:

(1) A person who:

(a) solicits or invites any other person to give, lend or otherwise make available, whether for consideration or not, any money or other property; or

(b) receives accepts from any other person, whether for consideration or not, any money or other property,

Intending that it shall be applied or used for commission of or in furtherance of or in connection with acts of terrorism, or having reasonable cause to suspect that it may be so used or applied, commits an offence.

(2) A person who:

(a) gives, lends or otherwise makes available to any other person, whether for consideration or not, any money or other property; or

(b) enters into or otherwise concerned in an arrangement by which money or other property is or is to be made available to another person,

Knowing or having reasonable cause to suspect that it will or may be applied or used as mentioned in subsection (1), commits an offence.

Section 18 lays down the offence committed by persons who make contributions to resources of terrorist organizations while section 19 deals with the offence of assisting in the retention and control of terrorist funds.

The penalties for these offences are:

- Forfeiture of the money or property,
- Imprisonment not exceeding ten years and
- A large punitive fine.

Section 7 of the Act is concerned with the prevention of terrorists obtaining weapons within or outside its territory in particular small arms or light weapons. Section 9 specifically caters for the offences relating to the supply of weapons to terrorists while section 10 deals with issues relating to those who support and abet terrorism. Section 11 addresses recruitment of terrorists and establishment of terrorist organizations and section 12 is devoted to the offence of misprision of terrorism. Section 13 lays down the offence committed by persons who neglect to prevent acts of terrorism. This offence attracts a sentence of five years on conviction with hefty and punitive fine.

Section 16 permits and provides for the forfeiture (upon applying for and obtaining a court order) of terrorist assets.

The sentence prescribed for supply of weaponry or explosives is death on conviction. So is the sentence for recruiting, financing, and harbouring terrorists. Misprision of terrorism carries a life sentence under the Act.

The law also has in the second schedule a list of terrorist organizations, which the Minister for Internal affairs can update from time to time. This list is to be updated to include the lists that have been adopted under the various United Nations Security Council Resolutions.

Moreover, it is an offence under the laws of Uganda to be a member, whether passive or active, of a terrorist organization and conviction for this offence attracts a sentence of ten years imprisonment.

CXXIV. UKRAINE²⁰³

SUMMARY OF LEGISLATION OF UKRAINE RELATED TO TERRORISM

The wilful provision or collection of funds for terrorist formations is criminalized under article 258 of the Criminal Code of Ukraine. According to the fourth part of that article, the creation of a terrorist group or terrorist organization, the leadership of such a group or organization or participation in its activities, or the provision of material, organizational or other support for the creation or

²⁰³ Transmitted to the Secretariat by that Government on 26 December 2001 (S/2001/1330, enclosure) and on 3 September 2002 (S/2002/1030, enclosure). Information was also provided in respect of the Code of Criminal Procedure of Ukraine; the Act "on the procedure for cancelling the liability of taxpayers with respect to budgetary and State funds earmarked for special purposes"; the Act "on revisions to the Act 'on the State Tax Service of Ukraine'"; the Act "on the legal status of aliens"; Act "on citizenship of Ukraine"; the Act "on immigration"; the Ukrainian Act "on organizational and legal principles for combating organized crime"; the Ukrainian Code on Administrative Offences; the Act of Ukraine "on refugees"; the Act "on insurance"; the Act "on the procedure for discharge of taxpayers' obligations towards budgetary and State special-purpose funds"; the Act "on general military service"; the Act "on the Security Service of Ukraine"; the Act "on the intelligence services of Ukraine"; the Act "on operational and search activities"; the Act "on the intelligence bodies of Ukraine"; the Act "on local State administrations"; the Act "on criminal investigation activities"; Act "on the Security Council of Ukraine"; the Act "on nuclear energy use and radiation safety"; the Act "on regulations governing garrison and guard service in the armed forces of Ukraine"; the Act "on the legal regime in an emergency situation"; the Act "on the defence of Ukraine" in the version of 5 October 2000; the Act "on the physical defence of nuclear facilities, nuclear materials, radioactive wastes and other sources of ionizing radiation"; the Merchant Shipping Code; the Act "on the State Tax Service of Ukraine"; the Act on "the Border Troops of Ukraine".

activities of a terrorist group or terrorist organization is punishable by imprisonment for a term of from 8 to 15 years.

The concepts “terrorist group” and “terrorist organization” coincide in their content with the definitions of “criminal group” and “criminal organization” which are given in article 28 of the Criminal Code of Ukraine.

Article 258 also establishes criminal liability for “ ... material, organizational or other assistance for the formation or activities of a terrorist group or organization”. The penalty for the creation of a terrorist group or of a terrorist organization, the leadership of such a group or organization or participation in it, as well as material, organizational or other support for the creation or activity of a terrorist group or a terrorist organization is a term of imprisonment of between 8 and 15 years.

In addition, article 258 establishes criminal liability for the commission of a terrorist act, in other words, the use of weapons, the causing of an explosion, arson or other acts endangering the life or health of people or causing substantive damage to property or other serious consequences, if such actions were committed for the purpose of impairing public safety, intimidating the population, provoking a military conflict or international complications, or for the purpose of influencing the taking of decisions, or of exerting influence over whether action is taken or not taken by State or local self-government bodies, by officials of those bodies, by citizens' associations, by legal persons, or of drawing the attention of the public to certain political, religious or other views of a guilty party (terrorist), and also of threatening the commission of such acts for the same purpose, for which the penalty is a term of imprisonment of between 5 and 10 years.

The penalty for the same actions committed repeatedly or by prior agreement among a group of persons, or if such actions result in substantial damage to property or in other serious consequences, is a term of imprisonment of between 7 and 12 years.

The penalty for the actions established in parts 1 and 2 of that article, if they result in the loss of human life, is a term of imprisonment of between 10 and 15 years, or life imprisonment.

A person, other than an organizer or leader, shall be exempted from criminal liability for an action provided for under paragraph 4 of that article if such person voluntarily reports such action to a law enforcement body and assists in terminating the existence or activity of a terrorist group or organization or in the exposure of crimes committed in connection with the creation or activity of such a group or organization, if such person's actions do not include elements of another crime.

The Code also provides for other standards whereby the criminal liability of a person involved in a terrorist act may be established (article 255, “Creation of a criminal organization”; article 256, “Assisting participants in

criminal organizations and disclosure of their criminal activity”; article 260, “Creation of militarized or armed groupings not envisaged by the law”; and article 209, “Legalization (laundering) of financial resources or other property acquired by criminal means”).

The Criminal Code also provides for criminal liability for the establishment of illegal paramilitary formations (formations with an organizational structure of a military type, i.e. single command, subordination and discipline, and in which military, combat or physical training is carried out) or armed formations:

- (i) The establishment of illegal paramilitary formations or participation in their activities is punishable by imprisonment for a period of 2 to 5 years;
- (ii) The establishment of illegal armed formations or participation in their activities is punishable by imprisonment for a period of 3 to 8 years;
- (iii) The leadership of such formations, their financing and the provision to them of weapons, ammunition, explosives or military hardware are punishable by imprisonment for a period of 5 to 10 years;
- (iv) Participation within such formations in attacks on enterprises, establishments, organizations or the public is punishable by imprisonment for a period of 7 to 12 years;
- (v) In the event that the actions indicated above give rise to casualties or other serious consequences, they are punishable by imprisonment for a period of 10 to 15 years.

Criminal liability for the actions indicated above is waived for former members of such formations if they voluntarily leave the formations and inform the State or local authorities of the existence of the formations.

Pursuant to article 8 of the Criminal Code, the application of the law extends to foreigners and stateless persons not permanently resident in Ukraine who have committed a crime beyond its borders. These persons incur criminal liability for the commission of crimes under national legislation in the cases provided for by Ukraine’s international obligations. In addition, article 7 provides for the criminal liability of Ukrainian nationals and stateless persons permanently resident in Ukraine for crimes committed beyond the borders of the State.

Thus, when evidence is obtained that acts committed in Ukraine or beyond its borders which are not regarded as in essence criminal (for example, collecting funds or donations) are aimed at the attainment of terrorist objectives, criminal proceedings may be instituted under article 258 of the criminal code of Ukraine against the person who committed them.

CXXV. UNITED ARAB EMIRATES²⁰⁴

SUMMARY OF LEGISLATION OF THE UNITED ARAB EMIRATES RELATED TO TERRORISM

(a) Constitutional and other relevant provisions

According to the Constitution of the United Arab Emirates, the international instruments to which the State is a party are binding on the federal authorities as soon as they are ratified. In addition, all State institutions, including the courts, are bound in many cases to apply the provisions of the international instruments even if domestic legislation has not been adopted to that effect. That is true of the Arab Convention for the Suppression of Terrorism.

The international instruments relating to terrorism ratified by the United Arab Emirates have been promulgated by federal decrees published in the *Official Gazette*. They are thus an integral part of domestic law, which all the parties concerned, each in their area of competence, undertake to apply.

The United Arab Emirates has acceded to the following conventions, which have been referred to the national courts for implementation:

1. The 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft;
2. The 1970 Convention for the Suppression of Unlawful Seizure of Aircraft;
3. The 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;
4. The 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;
5. The 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection.

²⁰⁴ Transmitted to the Secretariat by that Government on 4 March 2002 (S/2002/239, enclosure) and on 3 March 2003 (S/2003/280, enclosure). Information was also provided in respect of the following: the Federal Penal Code (Law No. 3 of 1987; the Firearms, Ammunition and Explosives Law (Law No. 11 of 1976); the Federal Law No. 6 of 1973; and the Federal Law (Law No. 11 of 1976).

The Arab Convention for the Suppression of Terrorism, which has been ratified by the United Arab Emirates, contains the following provisions in article 3, paragraph 1, subparagraph 1:

States parties undertake:

To prevent the use of their territories in any way whatsoever for the planning, organization, execution or commission of terrorist crimes or for participation in such crimes, including by adopting measures to prevent terrorist elements from infiltrating, seeking refuge or residing in their territories, either individually or collectively, and from being trained, armed or financed therein.

Likewise, part two, article 4, stipulates that:

States parties shall undertake to exchange information on the sources of financing of terrorist groups and of their leaders and members and that, at the practical level, the security services should coordinate their respective efforts to prevent the mobilization of funds by groups or individuals with a view to their use in terrorist acts.

(b) Federal Penal Code (Law No. 3 of 1987)

Article 21 of the Federal Criminal Code (Act No. 3 of 1987) penalizes any person who is present in the country after having committed or been a party to an international crime; this includes acts of international terrorism. The article also makes provision penalizing any person of foreign nationality who commits such acts.

CXXVI. UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND²⁰⁵

SUMMARY OF LEGISLATION OF THE UNITED KINGDOM RELATED TO TERRORISM

Under the United Kingdom's immigration control mechanisms, including the Immigration Acts, the Home Secretary has a personal power to exclude people from the United Kingdom. This power is usually exercised under one of three justifications – national security, public order or foreign relations. Anyone excluded because of possible terrorist links/involvement would fall into the national security category. The power is used sparingly, but regularly.

As far as removal is concerned, the Immigration Act 1971 (as amended) makes provision for the deportation of those whose presence in the United Kingdom is deemed not to be conducive to the public good. There is a right of appeal against any decision of this sort, and a special body, the Special Immigration Appeals Commission, set up to deal with security cases, which hears the appeal. The difficulty with removal is that Article 3 of the European Convention on Human Rights prevents removal to countries where there is a real risk of torture, or inhuman or degrading treatment. This has meant that very few people are removed on national security grounds.

The Anti-Terrorism, Crime and Security Act, which received royal assent on 14 December 2001, provides that, where removal from the United Kingdom is not a realistic possibility, those involved in terrorist activities may be detained indefinitely in the United Kingdom. This procedure involves a five-year derogation from Article 5 of the European Convention on Human Rights.

From an immigration point of view, the Anti-Terrorism, Crime and Security Act enables the state to detain people indefinitely, where the Home Secretary has certified that they are a threat to United Kingdom national security and are suspected international terrorists, and where they cannot be removed to another country.

²⁰⁵ Transmitted to the Secretariat by that Government on 19 December 2001 (S/2001/1232, enclosure), on 19 June 2002 (S/2002/787, enclosure) and on 14 February 2003 (S/2003/264, enclosure). Information was provided concerning the Criminal Justice (Terrorism and Conspiracy) Act, 1998 and the Terrorism Act, 2000 (for text, see ST/LEG/SER.B/22). Information was also provided in respect of the following: the Firearms Act, 1968; the Firearms (Amendment) Act, 1997; the Immigration Act, 1971; the Customs and Excise Management Act, 1979; the Extradition Act, 1989; and the Export of Goods (Control) Order 1994.

CXXVII. UNITED STATES OF AMERICA²⁰⁶

SUMMARY OF LEGISLATION OF THE UNITED STATES OF AMERICA RELATED TO TERRORISM

(a) Antiterrorism and Effective Death Penalty Act 1996; Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (the “USA PATRIOT Act”)²⁰⁷; Immigration and Nationality Act and related legislation.

There are several sources of legal authority for the U.S. Government to rely upon in imposing civil and criminal penalties for the provision and collection of funds to provide support to terrorists. These include both laws prohibiting material or other support to terrorists and their supporters, and money laundering laws addressing a variety of criminal activity, including the unlawful movement of money without proper reports.

Providing “material support” to terrorists or terrorist organizations has been prohibited as a crime since the enactment of the Antiterrorism and Effective Death Penalty Act of 1996. As a result of the October 26, 2001 enactment of the antiterrorism bill known as the “USA PATRIOT Act”, there is now specific authority to forfeit terrorist assets as well, thus providing a direct means to deprive terrorists of their funds.

U.S. law makes it a crime to provide material support or resources within the U.S. to a person intending that the support or resources will be used, or is in preparation for, the commission of a wide variety of specified terrorism-related crimes.²⁰⁸ “Material support or resources” is very broadly defined and means “currency or other financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.”²⁰⁹

Property provided as “material support” to a terrorist in violation of 18 U.S.C. § 2339A is subject to forfeiture if it is involved in a transaction or attempted transaction in violation of 18 U.S.C. § 1956-57, or if it is the proceeds of a section 2339A offence.²¹⁰

²⁰⁶ Transmitted to the Secretariat by that Government on 19 December 2001 (S/2001/1220, annex) and on 14 June 2002 (S/2002/674, enclosure). Information was also provided in respect of other legislation, including money laundering statutes and the Gun Control Act of 1968 (GCA), 18 U.S.C.

²⁰⁷ Public Law 107-56 (26 October 2001).

²⁰⁸ 18 U.S.C. § 2339A.

²⁰⁹ *Ibid.*

²¹⁰ 18 U.S.C. § 981(a)(1)(A) would authorize forfeiture for the transaction offence, and 18 U.S.C. § 981(a)(1)(C) would authorize forfeiture for the proceeds offence.

18 U.S.C. § 2339B makes it a federal crime to knowingly provide or attempt or conspire to provide material support or resources to a designated foreign terrorist organization.²¹¹ U.S. jurisdiction is extraterritorial and the statute specifically contemplates the movement of material support or resources from the U.S. to a foreign terrorist organization outside the U.S.

A foreign terrorist organization is designated as such by the Secretary of State, in consultation with the Attorney General and the Secretary of the Treasury. A Foreign Terrorist Organization (FTO) may be designated pursuant to section 219 of the Immigration and Nationality Act (INA)²¹² (as amended by the Antiterrorism and Effective Death Penalty Act of 1996). When a financial institution becomes aware that it has possession of, or control over, any funds in which a Foreign Terrorist Organization, or its agent, has an interest, it shall retain possession or control over the funds, and report the existence of such funds to the Secretary of the Treasury. Failure to do so may result in civil penalties. Providing prohibited “material support” is punishable criminally by 15 years imprisonment and/or a fine of up to \$250,000 for individuals and \$500,000 for organizations.

For the purposes of designation of foreign terrorist organizations in connection with 18 U.S.C. § 2339B, a foreign terrorist organization is (1) a foreign organization, (2) that engages in terrorist activity, which (3) threatens the security of United States nationals or the security of the United States, as prescribed pursuant to 219 of the INA.

Any United States-based fund-raising activity on behalf of a terrorist organization, even those organizations whose acts of terrorism did not target the United States, would likely easily meet the threshold level of threat to the security of United States nationals or the security of the United States, as prescribed pursuant to 219 of the INA. In addition, the provisions of 18 U.S.C. § 2339A, described below, and the provisions of the International Emergency Economic Powers Act (IEEPA), also described below, are available to prevent and punish acts committed by terrorist organizations operating from the United States.

Section 2339A enables the United States to prosecute those who provide, or attempt or conspire to provide, material support or resources for use in the commission of a wide variety of crimes, including terrorist related crimes. Those who conceal or disguise the nature, location, source of ownership of materials for use in the commission of a crime and those who aid in the escape of those committing such crimes can also be prosecuted. Charges under § 2339A may be brought whether or not a designated foreign terrorist organization is involved in the violation. (Penalties for each violation can include criminal fines and incarceration of up to fifteen years or life.)

²¹¹ 18 U.S.C. § 2339B. Penalties for each violation can include criminal fines and incarceration of up to fifteen years.

²¹² 8 U.S.C. § 1189.

Providing or collecting funds for the use of terrorists or terrorist organizations is also a violation of the law.²¹³ Transactions need not be entirely domestic, but rather can be, and in some cases must be, international to meet the elements of the violation.²¹⁴

In addition to the substantial terms of incarceration and the criminal and civil fines imposed for the above violations, the code also authorizes the U.S. to seize and forfeit funds and other assets involved in violations of §§ 1956, 1957, 2339A, and 2339B and funds or assets in which terrorists or terrorist organizations have an interest.²¹⁵ The code also includes numerous crimes that may be charged against individuals who act from the U.S. against the citizens of another country or against the interests or facilities of another country, regardless of whether those citizens, facilities or interests are located within the U.S. or within that other country.²¹⁶

Also, the 50 states each have criminal codes that may enable them to punish people who conspire within their borders to commit serious, terrorist-related crimes beyond the borders of the U.S.

U.S. legislation contains provisions prohibiting admission of foreign nationals who have engaged in terrorist activity. It provides for removal of such persons if they are in the U.S. Also, foreign nationals who are closely associated with or who support terrorist activity can also be denied admission or removed in certain circumstances (e.g. foreign nationals who act as representatives of foreign terrorist organizations or of certain groups that publicly endorse acts of terrorism).

For immigration purposes, the “terrorist activity” definition includes any unlawful act involving: hijacking; sabotage; detention under threat for the purpose of coercion (of a government or an individual); violent attack on an internationally

²¹³ 18 U.S.C. §§ 1956 and 1957

²¹⁴ Penalties for each violation can include enhanced criminal fines and incarceration of up to twenty years. Section 1957 makes it a crime to engage in a monetary transaction in property derived from specified unlawful activity, such as 18 U.S.C. §§ 2339A and/or 2339B. Transactions under § 1957 need not be entirely domestic, but can be, and in some cases must be, international to meet the elements of the violation. Penalties for each violation can include criminal fines and incarceration of up to ten years.

²¹⁵ 18 U.S.C. §§ 981 and 982. While the terrorist financing statutes at 18 U.S.C. §§ 2339A and 2339B each authorize imposition of a period of 15 years incarceration for each violation, under the Sentencing Guidelines, a multiple count conviction could result in a sentence of considerably more time than 15 years.

²¹⁶ For example, 18 U.S.C. § 956 makes it a crime to conspire to kill, maim, or injure persons or damage property in a foreign country; 18 U.S.C. § 2332b makes it a crime to engage in acts of terrorism transcending national boundaries; 18 U.S.C. § 2332a(b) makes it a crime for a national of the United States to use certain weapons of mass destruction outside the United States; 18 U.S.C. § 1116 the murder or manslaughter of foreign officials, official guests, or internationally protected persons a crime; 18 U.S.C. § 1119 makes a foreign murder of a U.S. national a crime; 18 U.S.C. § 32 makes it a crime to destroy aircraft or aircraft facilities within or outside the U.S.; and finally, 49 U.S.C. §§ 46502 - 46507 make it a crime to engage in aircraft piracy or carry a weapon or explosive on an aircraft.

protected person; assassination; the use of biological, chemical, or nuclear weapons; or the use of explosives, firearms, or any other weapon or dangerous device with the intent to cause harm to individuals or damage to property. The attempt or conspiracy to commit these acts is also included as “terrorist activity.”

The law defines “engage in terrorist activity” broadly to include committing, inciting, preparing or planning a terrorist activity; gathering target information; soliciting funds or resources for terrorist activity or a terrorist organization; soliciting an individual to engage in terrorist activity or to join a terrorist organization; and affording material support (e.g. a safe house, transportation, communications, funds, funds transfer), false documentation or identification, weapons, or training for the commission of terrorist activity to a person who has committed terrorist activity, or to a terrorist organization.

Conspiracy and other laws make it illegal to solicit a person to commit a terrorist act or other crime. Recruiting for membership in a terrorist organization is grounds for denying a visa. A foreign national who enters the United States and is later found in violation of these prohibitions is subject to deportation.²¹⁷

There are additional terrorism-related grounds for denying admission to the U.S. Terrorists are ineligible, for example, for temporary protected status, and asylum and refugee status. There are also provisions in the U.S. Criminal Code, and the Immigration and Nationality Act, to prosecute those who harbour or smuggle alien terrorists, or who provide them with material support (including immigration or other identity documents). In addition, foreign nationals who provide material assistance to, or solicit it for, certain designated terrorist organizations are inadmissible to the United States or may be deported if previously admitted.

The provisions of the criminal code directed against terrorist acts are among the most serious offences under United States law. Not only do they carry substantial penalties, including life imprisonment or, in certain circumstances, the death penalty, but many of them also include extraterritorial jurisdiction that make them applicable to “acts committed outside the United States by a person who is a citizen of, or habitually resident in, the United States (whether that person is currently present in the United States or not);” and “acts committed outside the United States by a foreign national who is currently in the United States”.²¹⁸

²¹⁷ §212(a)(3)(B)(iv)(V) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182.

²¹⁸ See, for example, 18 U.S.C. §§ 32 (relating to the destruction of aircraft), 37 (relating to violence at international airports), 351 (relating to congressional or Cabinet officer assassination), 831 (relating to prohibited transactions involving nuclear materials), 844(f) or (i) (relating to destruction by explosives or fire of government property or property affecting interstate or foreign commerce), 875 (relating to interstate communications), 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), 1111 (relating to murder), 1114 (relating to murder of United States law enforcement officials), 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), 1201 (relating to kidnapping), 1203 (relating to hostage taking), 751 (relating to Presidential assassination), 2280 (relating to violence against maritime navigation), 2281

The USA PATRIOT Act²¹⁹ provides for broad investigative and information sharing between law enforcement and intelligence agencies with respect to terrorist financing. It expands the scope of U.S. regulations against money laundering by requiring securities brokers and dealers to file suspicious activity reports and gives new power to act against money laundering havens. The PATRIOT Act also expands the President's powers to confiscate property under the International Emergency Economic Powers Act (IEEPA) when the U.S. is engaged in armed hostilities or has been attacked.

(b) International Emergency Economic Powers Act

The International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1706 (IEEPA), authorizes the President to exercise broad emergency powers when he has declared a national emergency to deal with a threat to the national security, foreign policy, or economy of the United States. Pursuant to IEEPA, the President issued Executive Orders 12947 of January 23, 1995, and 13099 of August 20, 1998 (both entitled "Prohibiting Transactions that Threaten to Disrupt the Middle East Peace Process"), and Executive Order 13224 of September 23, 2001 ("Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"), which designated terrorist groups and individuals, and delegated authority to, as appropriate, the Secretary of State or the Secretary of the Treasury, in consultation with each other and the Attorney General, to designate further entities and individuals (persons), including, among others, persons providing financial, material, or technological support for, or services in support of, terrorist acts or for other designated persons, as well as persons the Secretary of the Treasury determines are owned or controlled by, or act for or on behalf of other designated persons. The Executive orders block the assets of and prohibit transactions with designated persons. Knowing violation of these prohibitions is a federal crime, and civil remedies are also provided.

(c) Arms Export Control Act and other statutory authority of the Department of Commerce and the Nuclear Regulatory Commission

U.S. law contains criminal prohibitions on the acquisition, transfer and exportation of certain firearms.²²⁰ Numerous state and local laws also apply.

The U.S. Government requires licences for the export of defence articles (which includes technical data) and defence services pursuant to the Arms Export

(relating to violence against maritime fixed platforms), 2332 (relating to terrorist acts abroad against United States nationals), 2332a (relating to use of weapons of mass destruction), 2332b (relating to international terrorist acts transcending national boundaries), or 2339A (relating to providing material support to terrorists).

²¹⁹ "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Acts of 2001," Pub. L. No. 107-56, H.R. 3162, 107th Congress (2001).

²²⁰ Title 18 of the U.S.C. (Chapter 44 – Firearms) 18 U.S.C. §§ 921, et seq.

Control Act (AECA),²²¹ which counters the illicit transfer of U.S.-origin defence items to any unauthorized person. Violations of the AECA or its implementing regulations can result in civil and criminal penalties.

The U.S. Government also applies controls to exports and re-exports of sensitive U.S.-origin dual-use items and nuclear-related items pursuant to the statutory authorities of the Department of Commerce and the Nuclear Regulatory Commission. The Department of the Treasury administers and enforces economic sanctions against designated terrorists and those determined to be linked to such terrorists. These sanctions prohibit any transactions or dealings in property or interests in property of terrorism-related entities or individuals, including the exportation or re-exportation of any goods or technology either from the U.S. or by U.S. persons. Violations of these laws or their implementing regulations can result in civil or criminal penalties.

Terrorist acts are among the most serious offences under U.S. law. Violent, terrorist-related crimes generally carry substantially higher criminal penalties and can lead to imposition of the death penalty, or life imprisonment.²²²

Depending on the defendant's acts, his criminal history, and his willingness to cooperate with authorities, there is a range of sentences from which the sentencing judge may select. In recent years, the death penalty has not been imposed in a federal international terrorism prosecution.

CXXVIII. URUGUAY²²³

SUMMARY OF LEGISLATION OF URUGUAY RELATED TO TERRORISM

(a) Constitutional provisions

Under articles 38 and 39 of the Constitution, unlawful associations do not enjoy constitutional protection.

²²¹ 22 U.S.C. § 2778 and the International Traffic in Arms Regulations (ITAR).

²²² E.g., 18 U.S.C. §§ 2332a and 2332b.

²²³ Transmitted to the Secretariat by that Government on 19 December 2001 (S/2001/1235, annex) and on 12 June 2002 (S/2002/676, enclosure). Information was also provided in respect of other legislation, including: Acts Nos. 10,415 of 13 February 1943 and 14,157 of 21 February 1974 on the supply of arms through legal trade; Decree No. 652170, which regulates the bearing of arms; and Acts Nos. 17,300 of 22 March 2001 and 17,343 of 25 May 2001 with regard to the illicit arms trade.

(b) Penal Code and other relevant provisions

Under Uruguayan law, recruitment to terrorist groups and the supply of arms may be forms of criminal complicity. Moreover, all such activities would doubtless fall within the specific definition of association with criminal intent (Penal Code, article 150, amended by Act No. 16,707 of 12 June 1995), which carries a penalty of up to five and, in some cases, eight years' imprisonment; this is particularly important in cases involving the receiving or concealment of money or securities deriving from a terrorist act. This crime of association (which is a form of conspiracy crime) is aggravated and its penalty increased by up to half if the association took the form of an armed group or included more than 10 members, if the guilty person was the chief or instigator of such a group or if the group included any member of the police (Penal Code, article 151).

The offence of "association with criminal intent" (article 150, Penal Code) was amended in the Civil Security Act, which defined it as a "conspiracy crime".

Article 150 actually referred to the criminal *cuadrilla*, meaning, in eighteenth and nineteenth century Spain, a gang of bandits with at least four members, who associated for the purpose of committing multiple crimes.

The Security and Public Order Act No. 14,068 of 1972, reduced the number of active participants by using the words "those who", allowing for the possibility of only two participants in the commission of an offence. But the plural was retained for the offences: an association existed if at least two persons associated for the purpose of committing various offences.

The Security Act No. 16,707 of 1995 uses the wording "those who" (only two needed) associate for the purpose of committing "one or more offences". The objective could now be a single offence. An association exists if two persons associate for the purpose of committing a single offence. Therefore, associating for the purpose of committing an offence is an offence of association with criminal intent.

This implies a substantial change in the regime of article 7 of the Penal Code, which provides that "a conspiracy exists when two or more persons agree on the commission of an offence", and that a conspiracy is punishable only when the law specifically provides for that possibility.

Since agreement between two persons for the purpose of committing a single offence now constitutes an offence of association with criminal intent, it is always punishable as an offence against public order.

Association for the purpose of committing an offence may refer to any kind of offence, naturally including acts of terrorism.

This is what comparative law calls a “conspiracy crime”, and what Uruguay calls an offence of association with criminal intent.

In addition, article 1(1) of Act No. 9,936 of 18 June 1940, defines unlawful associations as “those which disseminate ideas contrary to the democratic republican form of government adopted in article 72 (1) of the Constitution”.

Terrorism as such is not defined as a separate offence, although there are a number of activities that are considered to be terrorist acts: the taking of hostages, the assassination of foreign ambassadors or heads of State, multiple homicides, the use of destructive force, arson, bombs, attacks on aircraft, ships and public works, etc.

The provisions of the Penal Code, Act 16,707 of 12 June 1995 and Act 17,343 of 25 May 2001 are applicable to activities committed by criminals acting from our territory against third States or against foreign citizens. The first issue raises a classic case in criminal law, the offence committed at a distance. The applicable rule according to the majority theory is that of ubiquity, such that both the country where the act is committed and that where it is consummated are both competent to judge the case. If the extradition is not in order, the rule is to punish such acts within our country provided that the offenders were detained within Uruguayan territory, without prejudice to cases coming under worldwide jurisdiction (cf. article 10, Penal Code).

The procedure for prosecuting offences committed abroad follows the general rules contained in articles 9, 10 and 11 of the Penal Code.

Terrorism is under universal jurisdiction and persons who commit such acts can be prosecuted in Uruguay (article 10, paragraph 7); since it is not considered a political offence, such persons are subject to extradition, both active and passive.

CXXIX. UZBEKISTAN²²⁴

SUMMARY OF LEGISLATION OF UZBEKISTAN RELATED TO TERRORISM

(a) Constitutional provisions

Under the Constitution of 8 December 1992, the Constitutional Court of the Republic of Uzbekistan interprets the law, on the basis of the Act of 30 August 1995 on the Constitutional Court of the Republic of Uzbekistan.

(b) Act of the Republic of Uzbekistan on the War against Terrorism 2000

The Act of 15 December 2000 on combating terrorism establishes the liability of individuals and organizations for participation in terrorist activities.

Under article 5 of the Act, prevention of terrorist activities involves a set of political, socio-economic, legal and other precautionary measures on the part of State authorities, local government bodies of citizens and public associations, as well as enterprises, institutions and organizations. Pursuant to this article, the following activities are prohibited:

- (i) Advocacy of terrorism;
- (ii) Establishment and functioning of terrorist groups and organizations; accreditation, registration and functioning of any legal

²²⁴ Transmitted to the Secretariat by that Government on 27 December 2001 (S/2002/4, enclosure), on 26 August 2002 (S/2002/974, enclosure) and on 19 August 2003 (S/2003/833, enclosure). Information was also provided in respect of other legislation, including the following: Act of the Republic of Uzbekistan on the State Customs Service, laundering; the Act on non-State non-profit organizations; Act on freedom of conscience and religious organizations; and the Civil Code. Information was also provided in respect of other provisions of criminal legislation: Chapter 8 - Crimes against the peace and security of mankind: article 154 (Mercenarism), article 156 (Incitement to national, racial or religious hatred); Chapter 9 - Crimes against the Republic of Uzbekistan: article 158 (Attacks against the President of the Republic of Uzbekistan), article 159 (Attacks against the constitutional order of the Republic of Uzbekistan) and article 161 (Sabotage); and Chapter 17 - Crimes against public security: article 242 (Organization of a criminal association), article 243 (Legalization of the proceeds of criminal activities), article 244-1 (Preparation and distribution of materials containing a threat to public security and public order), article 244-2 (Creation or direction of or participation in religious extremist, separatist, fundamentalist or other banned organizations), article 247 (Illegal possession of firearms, ammunition, explosive substances or explosive devices), article 251 (Illegal possession of virulent or toxic substances), article 252 (Illegal possession of radioactive materials), and article 255-1 (Preparation, manufacture, stockpiling, acquisition, transmission, maintenance, illegal possession and other activities involving bacteriological, chemical and other types of weapons of mass destruction).

entities, divisions (branches) and representations (including foreign and international organizations) involved in terrorist activities;

(iii) Entry into the Republic of Uzbekistan of foreign nationals and stateless persons involved in terrorist activities;

(iv) Concealment of information or facts concerning planned or committed terrorist acts.

The Act provides for measures and powers to counter the forces of international terrorism. In the context of the Act, recommendations were elaborated and submitted to the competent departmental units with the view to identifying persons involved in terrorist activities, with an enumeration of their characteristics. Measures are also in effect to avert, detect and intercept attempts to effect the illegal transport at crossing points on the State frontier of the Republic of Uzbekistan of narcotic drugs, psychotropic and explosive substances, explosive devices, munitions, weapons and ammunition, nuclear, biological, chemical or other types of weapons of mass destruction, or materials and equipment which could be used in committing terrorist acts, and additional powers are exercised in accordance with the legislation;

Activities are regulated by intergovernmental and interdepartmental agreements on matters related to the war against illicit narcotic drugs, psychotropic substances and precursors, and other violations of customs laws.

Under Article 8, the State bodies engaged in combating terrorism are:

- The National Security Service;
- The Ministry of Internal Affairs;
- The Committee on the Protection of the State Border;
- The State Customs Committee;
- The Ministry of Defence;
- The Ministry of Emergency Situations.

The National Security Service coordinates the activities of the State bodies involved in combating terrorism and ensures that they work together to prevent, detect and halt terrorist activity and minimize its effects.

Articles 9 to 14 of the Act define the powers of the bodies in article 8. They provide as follows:

Article 9. Counter-terrorism powers of the National Security Service of the Republic of Uzbekistan

The National Security Service of the Republic of Uzbekistan shall:

Conduct efforts to combat terrorism, including international terrorism, by preventing, detecting and interdicting terrorist activities;

Collect and analyse information on the activities of terrorists, terrorist groups and terrorist organizations, assess the threats posed by them to national security and provide the relevant ministries, State committees and departments with the necessary information;

Provide protection for particularly important or classified sites in the Republic of Uzbekistan and also for State establishments situated outside the territory of the Republic of Uzbekistan, the staff of such establishments and members of their families;

Ensure the safety and protection of the President of the Republic of Uzbekistan and of the heads of foreign States and Governments and the directors of international organizations during their stay in the territory of the Republic of Uzbekistan;

Cooperate with its counterparts in foreign States and international organizations in combating international terrorism;

Organize the work of counter-terrorist units to detect, neutralize and eliminate terrorist groups and organizations.

Exercise other powers in accordance with the law.

Article 10. Counter-terrorism powers of the Ministry of Internal Affairs of the Republic of Uzbekistan

The Ministry of Internal Affairs of the Republic of Uzbekistan shall:

Conduct efforts to combat terrorism by preventing, detecting and interdicting terrorist activities and minimizing their consequences;

Ensure the protection and security of particularly important classified or other sites;

Provide the relevant State or governmental bodies with information concerning individuals, groups and organizations linked with terrorist activities;

Exercise other powers in accordance with the law.

Article 11. Counter-terrorism powers of the State Committee on the Protection of the State Border of the Republic of Uzbekistan

The State Committee on the Protection of the State Border of the Republic of Uzbekistan shall:

Ensure the protection and defence of the State border from incursion by terrorists into the territory of the Republic of Uzbekistan;

Take action to detect and intercept the unlawful transfer across the State border of the Republic of Uzbekistan of arms, ammunition, explosives or radioactive, biological, chemical or other poisonous substances, objects or materials that may be used for the purposes of committing a terrorist act;

Neutralize or, where resistance is shown, take action to eliminate terrorists in border areas or border zones;

Exercise other powers in accordance with the law.

Article 12. Counter-terrorism powers of the State Customs Committee of the Republic of Uzbekistan

The State Customs Committee of the Republic of Uzbekistan shall:

Take action to prevent, detect and intercept the unlawful transfer through crossing points of the State border of the Republic of Uzbekistan of narcotic or psychotropic substances, explosives, explosive devices, armaments, arms and ammunition, nuclear, biological, chemical or other kinds of weapons of mass destruction or materials and equipment that may be used for terrorist activities;

Exercise other powers in accordance with the law.

Article 13. Counter-terrorism powers of the Ministry of Defence of the Republic of Uzbekistan

The Ministry of Defence of the Republic of Uzbekistan shall:

Ensure the security of the airspace of the Republic of Uzbekistan and defend and protect the administrative, industrial and economic centres and regions of the country and important military and other sites from aerial attack;

Ensure the protection and defence of military sites under its control;

Participate in counter-terrorist operations;

Exercise other powers in accordance with the law.

Article 14. Counter-terrorism powers of the Ministry of Emergency Situations of the Republic of Uzbekistan

The Ministry of Emergency Situations of the Republic of Uzbekistan shall:

Coordinate on-site activities of ministries, State committees, departments and bodies, adopt measures to protect the population from emergency situations, ensure the reliable functioning of particularly important classified and other sites that might be targeted by terrorists and also eliminate the effects of terrorist activities;

Exercise other powers in accordance with the law.

Under article 29 of the Act, the financial penalties consist of confiscation and transfer to the State of the assets of an organization recognized as a terrorist organization, regardless of its status. The confiscation of assets is possible only after a given organization has been recognized as a terrorist organization by a court of the Republic of Uzbekistan.

The legislation in force does not provide for any other financial penalties against individuals or legal entities for offences related to terrorist actions.

The courts of the Republic of Uzbekistan, in accordance with the requirements of articles 11 and 12 of the criminal legislation, are authorized within their areas of competence to bring to trial, as appropriate, the following persons:

- (i) Those who have committed offences in the territory of the Republic, if the offence was begun, completed or interrupted in the territory of Uzbekistan;
- (ii) Those who have committed offences beyond the borders of Uzbekistan, when the result of the criminal action takes place outside the country;
- (iii) Those who have committed offences in the territory of Uzbekistan, when the result of the criminal action takes place in the country's territory.

The liability of foreign nationals who have committed offences in the territory of the Republic of Uzbekistan is established on the basis of the norms of international law.

(c) Criminal Code

The Criminal Code of 22 September 1994 contains a series of articles that establish liability both directly for terrorism (article 155 “Terrorism”) and for offences which contribute to the preparation and perpetration of terrorist acts, including: smuggling of various types of weapons and their ammunition (article 246 “Smuggling”); and actions related to the illegal circulation of weapons (article 247 “Illegal procurement of firearms, ammunition, explosive substances or explosive devices”, article 248 on “Illegal possession of weapons, ammunition, explosive substances or explosive devices”, and article 249 on “Negligent storage of firearms and ammunition”).

Article 155, “Terrorism”, defines terrorism and provides for the corresponding punitive measures: from eight to 20 years of imprisonment, and as an exceptional measure, the death penalty.

The term “terrorism” refers to violence, the use of force, other actions creating a danger to persons or property, or the threat of such actions, undertaken with a view to forcing a State body, an international organization or their officials, individuals or legal entities to carry out, or to refrain from carrying out, any activity with the aim of complicating international relations, violating sovereignty and territorial integrity, undermining State security, provoking war or armed conflict, destabilizing the social and political situation or alarming the population, but also activities aimed at maintaining the existence, functioning or financing of a terrorist organization, the preparation and commission of terrorist acts, as well as the direct or indirect provision or collection of any funds, resources or other services for terrorist organizations or persons who assist or participate in terrorist activities.

Terrorism poses a direct threat to the social relationships underpinning international security, and also threatens the life and health of citizens, their property and system of government.

The perpetrators of terrorism may be nationals of the Republic of Uzbekistan, foreign nationals or stateless persons 16 years or over.

Article 242 of the Criminal Code also establishes liability for the organization of criminal associations, i.e., the establishment or leadership of a criminal association or its subdivisions, as well as activities aimed at supporting their existence and functioning. This offence poses a threat to the social relationships underpinning public security. The offender may be any person aged 16 years or over who organizes criminal associations or leads subgroups of such criminal associations, or any other person who is engaged in activities aimed at creating the conditions for such associations to exist and operate.

The provisions of the international conventions on civil aviation safety which Uzbekistan has ratified are regulated by the Aviation Code of Uzbekistan and by chapter XVIII of the Criminal Code, on “Crimes against the safety of

traffic and the operation of transport”, and, more precisely, article 204, on “The hijacking or seizure of railway rolling stock or air, seagoing or river craft”, article 265, on “Violation of international aviation rules”, article 266, on “Violation of the rules governing the safety of traffic and the operation of means of transport” and article 245, on “Hostage-taking”.

Article 245 of the Criminal Code, entitled “Hostage taking” refers to the offence of taking or holding a person hostage with a view to coercing the State, an international organization or an individual or legal entity into taking or refraining from taking any action or meeting any condition for the freedom of the hostage, unless the provisions of articles 155 and 165 of the Criminal Code apply.

This type of offence poses a direct threat to the social relationships underpinning public security. The offenders may be nationals of Uzbekistan, foreign nationals or stateless persons aged 16 years or over.

Article 254 of the Criminal Code, entitled “Illegal handling of radioactive materials”, refers to the illegal acquisition, storage, use, transfer or destruction of radioactive materials, i.e., sources of ionizing radiation, radioactive substances or nuclear materials in any physical state, as an installation or product, or in any other form, resulting in moderate or serious bodily harm.

This offence poses a direct threat to the social relationships underpinning public security. The instruments used are radioactive materials, radioactive substances or nuclear materials. The offender may be any person aged 16 years or over.

Article 255 of the Criminal Code, entitled “Violation of the rules for the operation of nuclear installations” refers to a violation of the rules for the operation of nuclear power facilities, resulting in moderate or serious bodily harm.

This offence poses a direct threat to the social relationships underpinning public security. The offender may be any person of sound mind aged 16 years or over.

Article 255 of the Criminal Code, entitled “Development, production, accumulation, acquisition, transfer, storage, illegal seizure and other acts in relation to bacteriological, chemical and other types of weapons of mass destruction” refers to the development, production, accumulation, acquisition, transfer, storage, illegal seizure and other acts in relation to bacteriological (biological), chemical and other types of weapons of mass destruction that are prohibited by the international treaties to which the Republic of Uzbekistan is a party.

Article 256 of the Criminal Code, entitled “Violation of safety regulations during research work”, refers to the violation of safety regulations during scientific research or experimental work, resulting in moderate or grave bodily harm.

This offence poses a direct threat to the social relationships underpinning public security. The offender may be any person of sound mind aged 16 years or over.

Nationals of the Republic of Uzbekistan and stateless persons permanently residing in Uzbekistan who commit offences in the territory of another State are liable to prosecution under the Criminal Code of Uzbekistan if they have not been punished under a verdict issued by a court of the State in the territory of which the offence was committed.

A national of Uzbekistan cannot be extradited for an offence committed in the territory of a foreign State, unless otherwise provided under international treaties or agreements.

Foreign nationals and stateless persons not residing permanently in Uzbekistan can be tried under the Criminal Code of the Republic of Uzbekistan for offences committed outside the country only in cases for which provision is made in international agreements or treaties.

(d) Code of Criminal Procedure

The procedure for the freezing (seizure) of bank accounts and deposits is regulated by the Code of Criminal Procedure of the Republic in accordance with article 290 (Seizure of property).

Under article 211, paragraphs 1 and 5 of the Code of Criminal Procedure, when issuing a verdict in a criminal case (including cases of offences related to terrorist actions), the court shall resolve questions related to material evidence in accordance with the following rules:

- (i) Weapons belonging to the suspect, the accused or the defendant that were used in the offence shall be subject to confiscation and shall be transferred to the appropriate institutions or destroyed;
- (ii) Money and other assets which have been acquired by criminal means shall be used to provide restitution for material damage caused by the offence, on the basis of a court order; where it has not been established that anyone has suffered material damage, such assets shall be turned over to the State.

CXXX. VANUATU²²⁵

SUMMARY OF LEGISLATION OF VANUATU RELATED TO TERRORISM

(a) The Financial Institutions Act No. 2 of 1999, Anti-terrorism regulations Order No. 9 of 2002

The Financial Institutions Act No. 2 of 1999 Anti-terrorism regulations Order No. 9 of 2002 requires domestic banks to freeze accounts of terrorist entities. A terrorist entity is any Taliban, Al-Qaida or other entity designated by the 1267 Committee, the Security Council or declared by the Reserve Bank. The bank must immediately give written notice of the account to the Reserve Bank of Vanuatu and to the Financial Intelligence Unit (FIU). It must then close the account within 24 hours of giving this notice. These regulations came into effect on 2 April 2002 and made as regulations the contents of the Reserve Bank's directive of 18 March 2002.

(b) The Financial Transactions Reporting Act No. 33 of 2000, Anti-terrorism regulations Order No. 10 of 2002

The Financial Transactions Reporting Act No. 33 of 2000 Anti-terrorism regulations Order No. 10 of 2002 deems suspicious all transactions or proposed transactions by terrorist entities, thus requiring a suspicious transaction report to be made to the FIU. A terrorist entity is any Taliban, Al-Qaida or other entity designated by the United Nations Security Council Resolution 1267 (1999) Committee or the Security Council.

The regulations also provide that if any entity conducts a transaction or seeks to conduct a transaction that the financial institution reasonably suspects involves funds that are being, likely to be or have been used by a terrorist entity, for terrorism or for acts of terrorism, then this is deemed suspicious and a report must be made to the FIU.

These regulations also prescribe that any entity that by non-formal means transfers, remits, exchanges or otherwise deals with money or money's worth or value for the purposes of remittance, transfer or payment to places outside of Vanuatu is a financial institution and so must comply with the Financial Transactions Reporting Act.

²²⁵ Transmitted to the Secretariat by that Government on 18 April 2003 (S/2003/497, enclosure). Information was also provided in respect of other legislation, including the Proceeds of Crime Act No.13 of 2002 and Mutual Assistance in Criminal Matters No.14 of 2002.

Any information received by the FIU by way of a suspicious transaction report or otherwise, that relates to a terrorist entity or person suspected of being involved with terrorism will be shared immediately with foreign counterparts.

(c) The Immigration Act (CAP. 66) Anti-terrorism regulations Order No. 7 of 2002

The Immigration Act (CAP. 66) Anti-terrorism regulations Order No. 7 of 2002 prohibits the entering of Vanuatu, including its territorial waters, of individuals who are or are reasonably suspected of being terrorist entities, or are or are reasonably suspected of being members of a terrorist entity.

These regulations also state that an individual must not be granted asylum in Vanuatu if he/she is or is reasonably suspected of being a terrorist entity, or is reasonably suspected of being a member of a terrorist entity, or has engaged or is reasonably suspected of having engaged in an act of terrorism, or has funded, directly or indirectly, or is reasonably suspected of having funded, directly or indirectly, terrorism or acts of terrorism.

A terrorist entity means the Taliban, Al-Qaida or any other entity (defined as an individual, body corporate, an unincorporated association or organization, or any other body) designated from time to time by the United Nations Security Council Resolution 1267 (1999) Committee, or by under one or more other resolutions of the United Nations Security Council.

(d) The Explosives Act (CAP. 6) Anti-terrorism regulations Order No. 6 of 2002

The Explosives Act (CAP. 6) Anti-terrorism regulations Order No. 6 of 2002 prohibits persons from exporting from Vanuatu explosives or components of explosives to any terrorist entity. "Terrorist entity" is defined as the Taliban, Al-Qaida or any other entity designated by the 1267 Committee or by or under one of more other resolutions of the United Nations Security Council. These regulations came into force on 2 April 2002.

Vanuatu does not yet have legislation specifically prohibiting the supply of weapons to terrorists. However, under section 9 of the Firearms Act [CAP. 6], the licensing officer must not grant a firearm licence to any person who is for any reason unfit to be entrusted with a firearm. If a person was on one of the United Nations lists of terrorist persons that would be a sufficient reason to not grant that person with a firearm licence.

(e) United Nations Act No. 1 of 2002 in November 2002

The Vanuatu Parliament enacted the United Nations Act No. 1 of 2002 in November 2002. This Act has been in force since 3 February 2003.

The Act gives the Prime Minister power to make orders to enable Vanuatu to fulfil the obligations undertaken by it under Article 41 of the Charter of the United Nations.

An order (subsidiary legislation) has been prepared to give effect to resolutions 1267 (1999), 1333 (2000) and 1373 (2001) of the United Nations Security Council. In the order, "Specified entity" is defined as every Al-Qaida entity, the Taliban, every Taliban entity and Usama Bin Laden. Under the order, the collecting or providing of funds for specified entities is prohibited by persons in Vanuatu or by Vanuatu citizens.

The order prohibits dealing with property of, or derived or generated from property of, specified entities.

The order requires that persons in possession or control of property that the person suspects on reasonable grounds is property that is or may be owned or controlled by, or on behalf of, a specified entity must report it to the Attorney General.

Persons in Vanuatu and Vanuatu citizens are prohibited from making property, or financial or other related services, available to specified entities.

It is government policy to refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts. The order that has been prepared pursuant to the United Nations Act (and which has yet to be brought into force) prohibits persons in Vanuatu and Vanuatu citizens in any place outside Vanuatu from recruiting other persons as a member of a group or organization, knowing that the group or organization is a specified entity.

"Specified entity" is defined as every Al-Qaida entity, the Taliban, every Taliban entity and Usama bin Laden.

CXXXI. VENEZUELA²²⁶

SUMMARY OF LEGISLATION OF VENEZUELA RELATED TO TERRORISM

(a) Constitutional provisions

The Constitution of the Bolivarian Republic of Venezuela, as the supreme legal instrument, provides in article 23 that: "The treaties, covenants and conventions relating to human rights signed and ratified by Venezuela have constitutional force and shall prevail in the internal order to the extent that they comprise standards on the enjoyment and exercise of human rights more favourable than those established in the Constitution and in the legislation of the Republic, and shall be immediately and directly applicable by the courts and other governmental bodies."

Article 154 of the Constitution sets forth the procedure to be followed in connection with international treaties signed by the Republic and provides that treaties adopted by the Republic must be approved by the National Assembly and subsequently by the President of the Republic in order to be ratified. Upon ratification, an international treaty automatically becomes a law within the current Venezuelan legal framework, ratification being the process whereby the State, under its domestic law, establishes the requirements to undertake binding international obligations.

(b) Penal provisions

The legal provisions currently in force in Venezuela do not establish terrorism as an independent offence; however, the National Assembly approved the Act against Organized Crime at first reading (6 September 2001) the purpose of which is to prevent, investigate, prosecute and punish offences committed by organized crime, to establish the offences that are deemed to be characteristic of, or specific to, such criminal organizations and define the membership of organized criminal associations.

Article 9 of the Act provides that anyone belonging to and/or acting in the service of, or collaborating with, armed gangs, organizations or groups

²²⁶ Transmitted to the Secretariat by that Government on 20 November 2001 (S/2001/1137, enclosure), on 26 December 2001 (S/2001/1289, appendix) and on 24 July 2002 (S/2002/790, enclosure). Information was also provided in respect of other legislation, including the following: the Arms and Explosives Act published in *Gaceta Oficial* No. 19.900, dated 12 June 1939; the Act approving the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials of 14 November 1997 Convention which was published in *Gaceta Oficial* No. 37.357 of 4 January 2002; the General Act on Banks and Other Financial Institutions; the Organic Law on Narcotic Drugs and Psychotropic Substances; and the Aliens Act of 17 July 1937.

engaged in organized crime the purpose of which is to subvert the constitutional order and the democratic institutions or to seriously impair public peace and to cause criminal damage, disasters or fire, or to explode mines, bombs or other explosive devices established in the Penal Code and in the Act, respectively, shall be punished by a term of imprisonment of between 10 and 15 years.

In the same context, on 29 November 2001, the National Assembly approved at first reading the draft special law against terrorist acts the purpose of which is to prevent and punish acts that may be regarded as being of terrorist nature. To that end, it imposes a term of imprisonment of between 15 and 25 years penal servitude on any person committing the acts established therein as terrorism. It also imposes a term of between 20 and 30 years penal servitude on anyone taking part in and financing terrorist acts through the process of laundering the proceeds of illicit drug trafficking.

In accordance with the provisions of article 4.2 of the Venezuelan Penal Code:

The following shall be subject to judicial process in Venezuela and shall be punished in accordance with the criminal law:

1. Venezuelans who, in a foreign country, are accused of treason against the Republic and who commit acts against one another that are punishable under its laws.
2. Foreign subjects or citizens who, in a foreign country, commit any offence against the security of the Republic or against any of its nationals.

Thus, Venezuelan courts are competent to investigate, prosecute and, where appropriate, try any offence committed outside Venezuelan territory against the Republic; such acts clearly include terrorist acts or preparations for terrorist acts.

In accordance with article 6 of the Code:

“The extradition of a Venezuelan may not be granted on any grounds; but he must be tried in Venezuela, at the request of the aggrieved party or of the Public Prosecutor’s Office, if the crime of which he is accused is punishable under Venezuelan law.

“The extradition of an alien may not be granted for political offences or for breaches of law relating to such offences, or for any action not established as an offence by Venezuelan law.

“The extradition of an alien for ordinary crimes may be granted only by the competent authority, in accordance with the procedures and requirements established for that purpose by the international treaties signed by Venezuela and which are in force or, failing that, by Venezuelan legislation ...”

CXXXII. VIET NAM²²⁷

SUMMARY OF LEGISLATION OF VIET NAM RELATED TO TERRORISM

(a) Penal Code 1999

The Vietnamese Penal Code provides as follows:

Article 84 Terrorism

1. Those who intend to oppose the people's administration and infringe upon the life of officials, public employees or citizens shall be sentenced to between 12 and 20 years imprisonment, life-imprisonment or capital punishment.
2. In the case of committing offences by infringing upon physical freedom and/or health, the offenders shall be sentenced between 5 and 15 years imprisonment.
3. In the case of committing offences by threatening to infringe upon the life or committing other acts of mental intimidation, the offenders shall be sentenced to between 2 and 7 years imprisonment.
4. Those who terrorize foreigners in order to cause difficulties to the Socialist Republic of Viet Nam in its international relations shall be punished in accordance with the provisions of this article.

Although the Penal Code does not have a specific provision on financing of terrorism, an act of providing funds and facilities for the commission of the

²²⁷ Transmitted to the Secretariat by that Government on 5 February 2002 (S/2002/148, enclosure) and on 14 January 2003 (S/2003/128, enclosure). Information was also provided in respect of other legislation, including the Anti-Drug Law. Information was also provided in respect of other provisions of the Penal Code, including the following: Violent rebellion (article 82); banditry (article 83); Sabotaging the material-technical foundations of the Socialist Republic of Viet Nam (article 85); Kidnapping for appropriation of properties (article 134); Hijacking aircrafts or ships (article 221); the illicit manufacture, stockpile, transportation, trafficking or seizure of military weapons and equipment (article 230); illicit manufacture, stockpile, transportation, trafficking or seizure of explosives (article 232); illicit manufacture, stockpile, transportation, trafficking or seizure of rudimentary weapons and supportive tools (article 233); violations of rules in the management of weapons, explosives and supportive tools (article 234); negligence in the management of weapons, explosives and supportive tools, that causes serious consequences (article 235); illicit manufacture, stockpile, transportation, use, trafficking or seizure of radioactive materials (article 236); violations of rules of managing radioactive materials (article 237); illicit manufacture, stockpile, transportation, use or trafficking of flammable and toxic materials (article 238).

crime of terrorism may be prosecuted under article 84 (terrorism). Under article 17 (preparation for committing offences), acts of “seeking to acquire, or preparing tools, means or other conditions” for the commission of an offence of terrorism may be prosecuted. In addition, pending the preparation for the commission of an act of terrorism, if the offender commits other independent offences, he may be prosecuted for such offences.

CXXXIII. YEMEN²²⁸

SUMMARY OF LEGISLATION OF YEMEN RELATED TO TERRORISM

(a) Constitution

Article 36 of the Constitution of the Republic of Yemen provides as follows:

The State is the authority that establishes the armed forces, the police, the security forces and any other forces. Such forces belong to the people as a whole, and no body, individual, group, organization or political party may establish forces or military or paramilitary formations for any purpose and under any name whatsoever. The Ministry of Defence is the body legally authorized to recruit individuals.

(b) Act No. 66 of 1991, on political organizations and parties

Article 8, paragraph 6, provides against the following:

- (a) Establishment of military or paramilitary formations or assistance in their establishment;**
- (b) The use, threat of use or incitement to use violence in any form;**
- (c) The inclusion in the programmes, publications or printed materials [of an organization] of any incitement to violence or the creation of open or secret military or paramilitary formations.**

²²⁸ Transmitted to the Secretariat by that Government on 4 March 2002 (S/2002/240, enclosure) and on 17 October 2002 (S/2002/1213, enclosure). Information was also provided in respect of other legislation, including Act No.1 of 2001 regulating the establishment of domestic associations and institutions; Act No. 66 of 1991, on political organizations and parties; the Banking Act (Act No. 38 of 1998); Act No. 40 of 1992 on the bearing of and trade in firearms and ammunition; Act No. 47 of 1991 concerning the entry and sojourn of aliens; the Central Bank Act (Act No. 14 of 2000); the Financial Code (Act No. 8 of 1990); the Commercial Code (Act No. 32 of 1991); the Civil Code (Act No. 14 of 2002); the Exchange Act (Act No. 20 of 1995).

(c) Act No. 24 of 1998, on the combating of the offences of kidnapping and armed interception

The Act provides a number of penalties, including the death penalty in case of the person who heads a band for kidnapping, armed interception or the looting of public or private property.

It calls for a penalty of 12 to 15 years' imprisonment for anyone who kidnaps a person, increased to 20 years if the kidnapping involves a female or a youth.

It provides for a penalty of 10 to 15 years' imprisonment for anyone who seeks, in a foreign country or a band, to commit any act of kidnapping, armed interception or looting of public or private property.

The Act further establishes a penalty of 10 to 12 years' imprisonment for anyone who hijacks any means of air, land or sea transport, the penalty being increased to 15 years if any person is injured as a result of the hijacking.

In cases where persons are taken hostage for the purpose of exerting pressure on public authorities or obtaining a benefit or advantage, the Act provides for a penalty of 10 to 12 years' imprisonment.

In the case of assault by any person on any individual charged with combating the crimes of kidnapping, hijacking, armed interception or looting during the performance of that individual's duty, the penalty is from 7 to 10 years' imprisonment, the said penalty being increased to 15 years if the assault results in bodily injury.

The penalty provided by the Act for assisting a kidnapper or hijacker or for concealing a kidnapped person or objects hijacked or seized is 5 to 8 years' imprisonment.

(d) Code of Criminal Procedure (Act No. 13 of 1994)

Article 17 (2) provides that "The Code of Criminal Procedure applies to citizens as well as to nationals of foreign States and stateless persons". The article states that Yemeni law applies to aliens resident in Yemen, as mentioned in the preceding article.

Article 234

1. Jurisdiction shall be determined locally by the place where the offence took place, the place in which the accused is resident or the place in which he was apprehended. The jurisdiction of the court before which the action was first instituted shall remain unchanged.

2. In the case of an attempt, the offence shall be deemed to have been committed in every place where an attempt at perpetration was made.

Article 236

1. If an offence to which the provisions of Yemeni law apply occurs outside the country and the perpetrator does not have a known place of residence in the Republic and has not been apprehended there, a criminal action shall be instituted against him before the courts of the capital;
2. If the offence is committed partly outside the Republic and partly within, the court within whose jurisdiction the place where the acts were perpetrated within the Republic is located shall be competent locally.

Article 246

The Yemeni courts are competent to try any Yemeni who has committed, outside the territory of the State, an act considered an offence under Yemeni law, provided that he has returned to the Republic and that the act is punishable under the law of the State in which it was committed.

Article 247

The Yemeni courts are competent to try any person who commits, outside the territory of the State, an offence prejudicial to the security of the State, as provided in book two, chapter I, of the Penal Code, or the crime of imitating or falsifying seals of the State or of any public agency or of counterfeiting a national currency in lawful circulation, exporting such currency or obtaining it for the purpose of circulating it or operating with it.

