

Terrorism Suppression Amendment Bill

Government Bill

As reported from the Foreign Affairs, Defence and
Trade Committee

Commentary

Recommendation

The Foreign Affairs, Defence and Trade Committee has examined the Terrorism Suppression Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The Terrorism Suppression Amendment Bill makes amendments to the Terrorism Suppression Act 2002. The bill is designed to enhance New Zealand's compliance with international counter-terrorism obligations, by amending a number of provisions including those covering the designation of United Nations listed terrorist entities, the extension of national terrorist designations after three years, the freezing of the assets of a designated entity, and new offences involving nuclear materials.

Designation of United Nations listed terrorist entities

While recommending that those clauses of the bill regarding the automatic designation of individuals and entities on the United Nations terrorist list should be enacted as proposed, we also recommend that the Minister of Foreign Affairs, when exercising his or her authority under clause 3(3) of the United Nations Sanctions (Afghanistan) Regulations 2001 to publish any name on the United Nations terrorist list, should include in such publication information

as to how the designated person or group can seek their removal from the United Nations list.

As a party to the United Nations Charter, New Zealand is legally obliged to give effect to mandatory resolutions adopted by the United Nations Security Council under Chapter VII of the Charter. The Security Council has adopted a number of mandatory resolutions relating to Osama bin Laden, Al Qaeda, and the Taliban. In accordance with these resolutions, the Security Council maintains a list of Al Qaeda- and Taliban-related individuals and entities against which New Zealand is required to impose sanctions. This list is commonly known as the United Nations terrorist list. The definitions of “designated terrorist entity” and “United Nations listed terrorist entity” and related provisions which remove from the Act the separate process for designating United Nations listed individuals and entities are designed to allow the automatic designation under New Zealand law of all individuals and entities on the United Nations terrorist list, and to ensure that those designations remain in force until such time as the individuals and entities are removed from the list.

In the course of our examination, we considered whether the bill should provide a mechanism for delisting, for the purposes of New Zealand law, a person or group whose inclusion on the United Nations list could be proven to be unjustified. However, this would risk a direct conflict between New Zealand’s international legal obligations and its domestic law. In a case of an obvious error in designation, it would be preferable for the Government to seek the removal of the person or group from the United Nations list, and to rely in the interim on the fact that under section 67 of the Act no proceedings for any offence under the Act may be instituted except with the consent of the Attorney-General.

It is also appropriate to ensure that, should the United Nations list any individual who is resident in or a national of New Zealand, or any group whose members have New Zealand nationality or residency, information is made available about the process for seeking a de-listing, either directly or with the assistance of the Government if it considers this appropriate. When exercising his or her authority to publish the names of those listed by the Security Council under clause 3(3) of the United Nations Sanctions (Afghanistan) Regulations 2001, we recommend that the Minister of Foreign Affairs should include information about how a person or group included on the list can challenge the designation either by petitioning the

Government to make the case for de-listing with the United Nations Security Council or by petitioning the Security Council directly. This would be consistent with section 26 of the Act, which currently requires information on review and revocation to be included in the notice given to a designated entity on designation.

Designation of non-United Nations-listed terrorist entities

We do not recommend any changes to the provisions in the bill concerning the initial designation of non-United Nations-listed terrorist entities. In the course of discussion however, some committee members commented on the fact that no designations of non-United Nations-list terrorist entities have yet been made, and contrasted this situation with those in Australia and Canada. The committee noted however that, unlike New Zealand where designation under the Act results both in an assets freeze and in criminalising certain activities, Australia and Canada have separate processes for designating terrorist entities for asset freeze purposes and for criminalising terrorist activities by proscribing or listing terrorist entities under their respective criminal codes.

Extension of national designations

While recommending that those clauses of the bill regarding the extension of designations for non-United Nations-list terrorist entities should be enacted largely as proposed, we recognise the concern raised in a number of submissions about the concentration of responsibility in a single individual if decisions to extend such designations after three years are made by the Prime Minister rather than the High Court. We consider that such decisions, like initial decisions to designate, involve judgements about national security that are more properly made by the Executive than the High Court. However, to ensure transparency, we recommend that clause 21 should include in section 35 of the Act a requirement that, after making an order to renew a designation under subsections (2) or (3), the Prime Minister must report to the Intelligence and Security Committee on the proposed renewal.

Freezing of assets and forfeiture regime

We recommend that clause 10 and related consequential amendments be removed from the bill. Clause 10 creates a specific prohibition against dealing with the property of a designated terrorist entity.

It is intended to strengthen and clarify provisions for imposing an asset freeze on designated terrorists.

The intention of the provision is to help implement New Zealand's international obligations under the United Nations Security Council resolutions requiring that the assets of individuals and groups designated as terrorists be frozen without delay. We have reconsidered the relevant international obligations in the light of public submissions on this issue. We were particularly concerned that clause 10 creates a prohibition against dealing with property but provides no sanction for the breach of it. Unsanctioned duties are uncommon in New Zealand statute law and the uncertain status of proposed new section 10A is not good legislative practice.

Section 9 of the Act prohibits dealing with property owned or controlled by a designated entity. "Deal with" is defined broadly and includes using the property in any way, and also allowing the property to be used or dealt with by anyone. Therefore, the effect of the current offence provisions is in fact to "freeze" the assets anyway, as they prohibit dealing with the property and allowing others to deal with it. This approach is consistent with that taken in Australia, which uses the Australian Charter of the United Nations Act 1945 and associated regulations to freeze the assets as required.

Given these considerations, we believe the proposed amendment to the Act contained in clause 10 is not necessary and should be removed from the bill.

New offences involving nuclear material

We recommend that additional words from the Convention on the Physical Protection of Nuclear Material be incorporated into the bill, to restrict the new offence provided for in clause 13(3) to interference with "the operation of" a nuclear facility and to acts where the intention is to cause death or serious injury or substantial damage to property or the environment "by exposure to radiation or release of radioactive substances".

We also recommend that changes be made to the bill to incorporate definitions of "nuclear facility" that meet the requirements of both the Nuclear Terrorism Convention and the Convention on the Physical Protection of Nuclear Material.

We were concerned that the proposed new offence of committing an act against a nuclear facility in clause 13(3) was too broad, and could

apply, for example, to protest action against ships transporting radioactive waste through the Tasman Sea. To address this issue, we recommend incorporating additional words from the Convention on the Physical Protection of Nuclear Material, which would restrict the new offence provision to interference with “the operation of” a nuclear facility, and to acts where the intention is to cause death or serious injury or substantial damage to property or to the environment “by exposure to radiation or release of radioactive substances”.

We consider that the proposed definition of “nuclear facility” in clause 5 requires further consideration. The definition is relevant to offence provisions required to implement both the Nuclear Terrorism Convention and the Convention on the Physical Protection of Nuclear Material. As the two conventions have slightly different focuses, their definitions of “nuclear facility” differ slightly. The definition included in clause 5 of the bill is substantially the same as that contained in the Nuclear Terrorism Convention, but does not cover facilities in which nuclear material is used, handled, or disposed of, as required by the Convention on the Physical Protection of Nuclear Material. Therefore the definition in the bill needs to be expanded to include these elements.

Use of classified security information in court

A number of submitters raised concerns about the protected use of classified security information in court proceedings under section 38 of the Act. Particular concerns related to procedural fairness and the human rights of designated persons, and whether these rights should be overridden by the need to protect New Zealand’s national security.

The procedures in the bill governing the use of classified security information in court seek to strike an appropriate balance between due process and other human rights of the person subject to designation on the one hand, and the need to protect New Zealand’s national security and international relations on the other. We agree that processes involving special advocates and security-cleared counsel would add additional elements of protection but consider that the inclusion of such procedures in the Act should not be considered in isolation.

We note that the Immigration Bill, which is currently before the Transport and Industrial Relations Committee, has a number of clauses relating to the use of classified information in decisions to be

made under the proposed new Immigration Act, and includes provision for the use of special advocates.

We recommend that if the Immigration Act as finally enacted makes special provision for the use of classified information in decisions under that Act, consideration should be given to the application of those procedures to decisions made under the Terrorism Suppression Act. This may require consequential amendments to the Terrorism Suppression Act.

National Party minority view

The National Party members, while supporting the bill, express strong doubts as to whether its enactment will result in a more vigilant stance against the risk of terrorism by the New Zealand authorities. Since the 2005 review of key clauses to the bill, National members have expressed deep concern that while New Zealand has upheld its obligations under UN 1267 to designate as terrorist entities in New Zealand those entities that have been previously identified as Al Qaeda-or Taliban-related entities by the Security Council, the Prime Minister has yet to designate a single terrorist entity under UN 1373 (i.e. non-Al Qaeda-or Taliban-related terrorist groups designated at the initiative of member nations). At the same time Australia has designated 88 and Canada over 50 terrorist entities under similar legislation.

The Terrorism Suppression Act 2002 provides an important toolkit for authorities to proactively protect New Zealanders against the threat of terrorism. The availability of that toolkit requires the exercise of a subjective judgement that a sufficient threat exists for the civil liberties of designated persons to be overridden in the interests of the security of the public. The National members are satisfied that this responsibility should reside with the Prime Minister—normally the Minister for the Security Intelligence Service—who is regularly briefed by security officials.

The fact that no terrorist designations have occurred at all under UN 1373 is a cause of profound concern to the National members of the committee. As stated above, 88 entities have been designated in Australia during the same period. Given our geographical proximity and relatively open borders, it is simply not credible to National members that New Zealand could have made no UN 1373 designations over a period when Australia has designated 88. Close questioning of officials led to a complete lack of any credible explanation

of the fact that the Prime Minister has made no UN 1373 designations.

Clearly, counter-terrorism initiatives are being pursued with significantly differing degrees of force and diligence as between this country and Australia. National members are forced to the conclusion that New Zealand has been seriously negligent in this respect and, whilst supporting this bill, draw the attention of New Zealanders to the fact, in the hands of the same decision makers, it will change nothing.

Green Party minority view

The Green member holds that several measures in the bill detrimentally affect the civil liberties of New Zealanders, a view that was backed by several submitters to the select committee.

The Green member opposed the removal of the “avoidance of doubt” clause in section 8 of the Terrorism Suppression Act, which allows collecting funds “for the purpose of advocating democratic government or the protection of human rights.” This is important as New Zealanders often aid liberation movements, like Nelson Mandela’s African National Congress, that are largely engaged in peaceful struggles for the rights of their people, but may also be engaged in some level of armed action or sabotage that could be defined as terrorism under the Terrorism Suppression Act. The “avoidance of doubt” clause helps prevent good-hearted New Zealanders aiding democracy and human rights from being turned into criminals.

The Green member supports the New Zealand Law Society submission that a new crime, engaging in a terrorist act, should not be added to our statute books. Such terrorist behaviour is already covered by a range of offences, such as murder and kidnapping, each with heavy maximum penalties. The new terrorism offence could cause confusion among prosecutors, as to which charge to lay—engaging in a terrorist act or the underlying offence—which could result in inconsistent sentencing and potentially double jeopardy.

The Green member agrees with Greenpeace that an additional problem with a new terrorism offence is that under the current definition in the Act, terrorism can apply to people who have no intention of harming people or destroying property. To narrow the definition he supports the Greenpeace proposal for a “terrorist act” to only cover

“serious disruption to an infrastructure facility” if there is “the intention of endangering human life”.

The Green member believes that recognised international human rights standards apply to the designation of all terrorist entities, including those coming from the United Nations Security Council. Automatic listing of Security Council designated entities could lead to injustice, in view of the recognised flaws in the Security Council designation process. The existing provisions in the Act should remain in place: namely, that United Nations Security Council information on terrorist entity designations will be regarded as “sufficient evidence”, “in the absence of evidence to the contrary”.

The Green member believes it is wrong to give the Executive branch of the State the entire power to both make terrorist entity designations and review them after three years. The Prime Minister is responsible for the first designation, after consultation with the Attorney-General and the Minister of Foreign Affairs, and is now to be responsible for the renewal of designations. Given that arguments over terrorist designations can be politically charged, the Green member supports retaining a non-political agency, the High Court, as the body to review terrorist designations after three years. He agrees with the Human Rights Commission that the logistics of High Court procedures for reviewing designations can be investigated further, rather than removing the High Court from this role, as the bill does.

The Green member supports the provision implementing the Nuclear Terrorism Convention and the Convention on the Physical Protection of Nuclear Material.

Appendix

Committee process

The Terrorism Suppression Amendment Bill was referred to the committee on 21 March 2007. The closing date for submissions was 18 May 2007. We received and considered 35 submissions from interested groups and individuals. We heard 14 submissions.

We received advice from the Ministry of Justice and the Ministry of Foreign Affairs and Trade, and considered Crown Law advice provided to the Ministry of Foreign Affairs and Trade.

Committee membership

Dianne Yates (Chairperson)

Dr Wayne Mapp (Deputy Chairperson)

Taito Phillip Field

Tim Groser

John Hayes

Keith Locke

Hon Murray McCully

H V Ross Robertson

Hon Paul Swain

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (majority)

Subject to this Act,

Text struck out by a majority

New (majority)

Subject to this Act,

Text inserted by a majority

<Subject to this Act,>

Words struck out by a majority

<Subject to this Act,>

Words inserted by a majority

Rt Hon Winston Peters

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Contents

	Page
1 Title	3
2 Commencement	3
3 Principal Act amended	3
Part 1	
Amendments to principal Act	
4 New section 3 substituted	4
3 Purpose of this Act	4
5 Interpretation	4
6 New heading and section 6A inserted	6
<i>Terrorist act</i>	
6A Terrorist act	6
7 Financing of terrorism	6
8 Prohibition on dealing with property of, or derived or generated from property of, terrorist and associated entities	6
9 Prohibition on making property, or financial or related services, available to terrorist and associated entities	7
11 Recruiting members of terrorist groups	8
12 Participating in terrorist groups	8
13 Offences involving physical protection of nuclear material	8
14 New heading and section 13E inserted	8
<i>Offences involving radioactive material and radioactive devices</i>	
13E Offences involving radioactive material and radioactive devices	9
15 Offences also apply in certain cases outside New Zealand	9
16 Offences also apply to acts outside New Zealand if alleged offender is in New Zealand and is not extradited	9
17 Further provisions relating to final designation	10
18 Content of notice to designated entity	10
19 Content of notice to public and others	10
20 United Nations Security Council information	10
21 New section 35 substituted	10

Terrorism Suppression Amendment

	35	Designations under section 22 to expire after 3 years unless renewed by Prime Minister	10
22		New section 38 substituted	11
	38	Procedure in proceedings involving classified security information	11
23		Ancillary general practices and procedures to protect classified security information	12
24		Appeal against decision on application under section 35	12
25		Suspicion that property owned or controlled by designated entities, etc, to be reported	12
26		Detention of goods suspected to be terrorist property	13
27		Return of goods detained under section 47A	13
28		Direction that Official Assignee take control of property	13
29		Variation, revocation, or expiry of direction	13
30		Court may grant relief to third party	13
31		Forfeiture of property by the High Court	13
32		Appeal against decision on application under section 55	14
33		Discharge of order under section 55 on appeal or by quashing of related order under section 35(2)	14
34		Certificates as to States Parties under Conventions	14
35		New section 63 substituted	14
	63	Application of sections 64 and 65	14
36		New section 64 substituted	15
	64	Attorney-General to indicate to relevant States Parties whether New Zealand to exercise jurisdiction	15
37		New section 65 substituted	15
	65	Attorney-General to notify relevant States Parties if person taken into custody	15
38		Offences deemed to be included in extradition treaties	16
39		Review of operation of certain provisions of this Act	16
40		Transitional provision relating to entity designated under section 20 or 22	16
41		Schedule 2A amended	16
42		New Schedule 2C inserted	16
43		Schedule 3 amended	16
44		New Schedules 4A to 4C inserted	16
45		Schedule 5 amended	17

Part 2		
Amendments to other Acts		
<i>Amendments to Terrorism Suppression Amendment Act 2005</i>		
46	Amendments to Terrorism Suppression Amendment Act 2005	17
<i>Amendment to Mutual Assistance in Criminal Matters Act 1992</i>		
47	Schedule amended to refer to Nuclear Terrorism Convention	17
Schedule 1		
Schedule heading		
Schedule 2		
New Schedule 2C inserted		
Schedule 3		
New clause 10 added to Schedule 3		
Schedule 4		
New Schedules 4A to 4C inserted		
Schedule 5		
Amendment to Schedule of Mutual Assistance in Criminal Matters Act 1992		

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Terrorism Suppression Amendment Act **2007**.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent. 5
- 3 Principal Act amended**
This Act amends the Terrorism Suppression Act 2002.

Part 1 Amendments to principal Act

- 4 New section 3 substituted**
Section 3 is repealed and the following section substituted:
- “3 Purpose of this Act** 5
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— 10
- “(i) the Bombings Convention; and
- “(ii) the Financing Convention; and
- “(iii) the Anti-terrorism Resolution; and
- “(iv) the Nuclear Material Convention; and
- “(v) the Plastic Explosives Convention; and 15
- “(vi) the Nuclear Terrorism Convention; and
- “(c) to make further provision to implement, in part, the Afghanistan Sanctions Resolutions.”
- 5 Interpretation** 20
- (1) Section 4<(1)> is amended by repealing the definition of **deal with** and inserting the following definitions in their appropriate alphabetical order:
- “**Afghanistan Sanctions Resolutions** means Resolution 1267 (1999) of the Security Council of the United Nations, adopted under Chapter VII of the United Nations Charter on 15 October 1999 and its successor resolutions, including Resolution 1333 (2000) of 19 December 2000 and Resolution 1390 (2002) of 16 January 2002 25
- “**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 30
- “(b) includes allowing the property to be used or dealt with, or facilitating the use of it or dealing with it 35
- “**designated terrorist entity** means an entity—
- “(a) for the time being designated under section 20 or 22 as a terrorist entity or associated entity; or

“(b) that is a United Nations listed terrorist entity

“**nuclear facility** means—

“(a) a nuclear reactor, including a reactor installed in or on any vessel, vehicle, aircraft, or space object for use as an energy source in order to propel the vessel, vehicle, aircraft, or space object or for any other purpose; or

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Struck out (majority)

“(b) a plant or conveyance being used for the production, storage, processing, or transport of radioactive material

New (majority)

“(b) a plant or conveyance—

“(i) being used for the production, storage, processing, or transport of radioactive material; or

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“(ii) in which radioactive material is being used, handled, or disposed of in circumstances where damage to or interference with the operation of the plant or conveyance could lead to the release of significant amounts of radiation or radioactive substances

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

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

“**radioactive device** means—

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“(a) a nuclear weapon or other nuclear explosive device; or

“(b) a radioactive material dispersal device; or

“(c) a radiation-emitting device

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

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- “**Resolution 1333** means Resolution 1333 (2000) of the Security Council of the United Nations, adopted under Chapter VII of the United Nations Charter on 19 December 2000, a copy of the English text of which is set out in **Schedule 4B**
- “**Resolution 1390** means Resolution 1390 (2002) of the Security Council of the United Nations, adopted under Chapter VII of the United Nations Charter on 16 January 2002, a copy of the English text of which is set out in **Schedule 4C** 5
- “**United Nations listed terrorist entity** means a specified entity within the meaning of regulation 3(1) of the United Nations Sanctions (Afghanistan) Regulations 2001”. 10
- 6 New heading and section 6A inserted**
- The following heading and section are inserted after the Part 2 heading:
- “Terrorist act”* 15
- “6A Terrorist act**
- “(1) A person commits an offence who engages in a terrorist act.
- “(2) A person who commits a terrorist act is liable on conviction on indictment to imprisonment for life or a lesser term.”
- 7 Financing of terrorism** 20
- Section 8(2) is repealed.
- 8 Prohibition on dealing with property of, or derived or generated from property of, terrorist and associated entities**
- (1) The heading to section 9 is amended by omitting “**terrorist and associated entities**” and substituting “**designated terrorist entity**”. 25
- (2) Section 9(1) is amended by omitting “an entity for the time being designated under this Act as a terrorist entity or as an associated entity” and substituting “a designated terrorist entity”. 30
- (3) Section 9(2) is repealed and the following subsection substituted:
- “(2) For the purposes of **subsection (1) <and section 10A>**, examples of a reasonable excuse for dealing with property referred to in those provisions are— 35

- “(a) where the dealing with the property comprises an act that does no more than satisfy essential human needs of (or a dependant of) an individual designated under this Act:
- “(b) where a financial institution acts to freeze assets of a designated terrorist entity.” 5
- (4) Section 9(5) is repealed.
- (5) Section 9(6) is amended by omitting “in subsection (5)” and substituting “in the definition of **deal with** in section 4”.
- 9 Prohibition on making property, or financial or related services, available to terrorist and associated entities** 10
- (1) The heading to section 10 is amended by omitting “**terrorist and associated entities**” and substituting “**designated terrorist entity**”.
- (2) Section 10(1) is amended by omitting “an entity for the time being designated under this Act as a terrorist entity or as an associated entity” and substituting “a designated terrorist entity”. 15
- (3) Section 10(2) is repealed.
- Struck out (majority)**
- 10 New heading and section 10A inserted** 20
- The following heading and section are inserted after section 10:
- “No dealing with property while entity designated terrorist entity*
- “10A No dealing with property of designated terrorist entity** 25
- “(1) While an entity is a designated terrorist entity, a person must not, without reasonable excuse, deal with any property—
- “(a) owned or controlled, directly or indirectly, by the entity; or
- “(b) derived or generated from any property of the kind specified in **paragraph (a)**. 30
- “(2) **Subsection (1)** applies to the entity itself, as well as any other person.”

- 11 Recruiting members of terrorist groups**
Section 12(1)(a) is repealed and the following paragraph substituted:
“(a) a designated terrorist entity; or”.
- 12 Participating in terrorist groups** 5
(1) Section 13(1) is amended by inserting “or being reckless as to whether” after “knowing that”.
(2) Section 13(1)(a) is repealed and the following paragraph substituted:
“(a) a designated terrorist entity; or” 10
- 13 Offences involving physical protection of nuclear material**
(1) Section 13C(1)(a) is amended by adding the following subparagraph:
“(iii) that causes, or is likely to cause, substantial damage to the environment; or” 15
(2) Section 13C(1)(e)(ii) is amended by adding “or to the environment” after “substantial damage to property”.
(3) Section 13C(1) is amended by adding “; or” and also the following paragraph: 20
“(g) without lawful authority, commits an act, or threatens to commit an act against a nuclear facility, or interferes with <the operation of> a nuclear facility with intent to cause, or being reckless as to whether it causes<,> death<,> <or> serious injury<,> <to any person> or substantial damage to property or to the environment <by exposure to radiation or release of radioactive substances>.” 25
- 14 New heading and section 13E inserted** 30
The following heading and section are inserted after section 13D:

“Offences involving radioactive material and radioactive devices

- “13E Offences involving radioactive material and radioactive devices**
- “(1) A person commits an offence who— 5
- “(a) makes or possesses a radioactive device or possesses radioactive material with intent to cause death or <serious> injury to any person or substantial damage to <any> property or to the environment; or
- “(b) uses radioactive material or a radioactive device or uses or damages a nuclear facility in a manner that releases or risks the release of radioactive material— 10
- “(i) with intent to cause death or <serious> injury to any person or substantial damage to property or to the environment; or 15
- “(ii) with intent to compel any person, international organisation, or State to do, or refrain from doing an act; or
- “(c) threatens to commit an offence set out in **paragraph (b)**; or
- “(d) unlawfully and intentionally demands radioactive material by threat, in circumstances that indicate the credibility of the threat; or 20
- “(e) by use of force,—
- “(i) uses or threatens to use radioactive material or a radioactive device; or 25
- “(ii) uses or damages or threatens to use or damage a nuclear facility.
- “(2) A person who commits an offence against **subsection (1)** is liable on conviction on indictment to imprisonment for a term not exceeding 10 years, or a fine not exceeding \$500,000, or both.” 30
- 15 Offences also apply in certain cases outside New Zealand**
Section 14(1) is amended by omitting “and 13B to 13D” and substituting “and 13B to **13E**”.
- 16 Offences also apply to acts outside New Zealand if alleged offender is in New Zealand and is not extradited** 35
Section 18 is amended by inserting “a nuclear terrorism offence,” after “financing of terrorism,”.

- 17 Further provisions relating to final designation**
 Section 23 is amended—
- (a) by repealing paragraph (g); and
 - (b) by omitting from paragraph (h) “(and without limiting section 35(1) or section 36(1))”.
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- 18 Content of notice to designated entity**
- (1) Section 26 is amended by inserting the following paragraph after paragraph (b):
 - “(ba) must state that any person who deals with the entity’s property may be liable to prosecution for an offence under section 9:”.
 - (2) Section 26(c) is amended by omitting “extended” and substituting “renewed under **section 35**”.
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- 19 Content of notice to public and others**
- (1) Section 27(2) is amended by inserting the following paragraph after paragraph (b):
 - “(ba) must state that any person who deals with the entity’s property may be liable to prosecution for an offence under section 9:”.
 - (2) Section 27(2)(c) is amended by omitting “extended” and substituting “renewed under **section 35**”.
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- 20 United Nations Security Council information**
 Section 31 is repealed.
- 21 New section 35 substituted**
 Sections 35 to 37 are repealed and the following section is substituted:
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- “35 Designations under section 22 to expire after 3 years unless renewed by Prime Minister**
- “(1) A designation under section 22 expires 3 years after the date on which it takes effect, unless it is earlier—
 - “(a) revoked under section 34; or
 - “(b) renewed by an order under **subsection (2) or (3)**.
 - “(2) The Prime Minister may order that a designation made under section 22 remain in force for a further 3 years after the making of the order if the Prime Minister is satisfied that there
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are still reasonable grounds as set out in section 22 for an entity to be designated under that section.

- “(3) Before the expiry of an order under **subsection (2)**, the Prime Minister may make another order renewing the designation concerned for a further 3 years.

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New (majority)

- “(3A) After making an order under **subsection (2) or (3)**, the Prime Minister must report to the Intelligence and Security Committee on the renewal of the designation.

- “(4) The Prime Minister may make any number of orders under **subsection (3)** in respect of the same designation.”

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22 New section 38 substituted

Sections 38 and 39 are repealed and the following section is substituted:

“38 Procedure in proceedings involving classified security information

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- “(1) This section applies to any proceedings in a court arising out of, or relating to, the making of a designation under this Act.

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

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- “(3) If information presented, or proposed to be presented, by the Crown includes classified security information,—

- “(a) except where proceedings are before the Court of Appeal, the proceedings must be heard and determined by the Chief High Court Judge, or by 1 or more Judges nominated by the Chief High Court Judge, or both; and

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

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- “(i) the designated entity concerned; and

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

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- “(iii) members of the public.
- “(4) Without limiting **subsection (3)**, if the designated entity concerned participates in proceedings,—
- “(a) the Court must approve a summary of the information of the kind referred to in section 32(2) that is presented by the Attorney-General except to the extent that a summary of any particular part of the information would itself involve disclosure that would be likely to prejudice the interests referred to in section 32(3); and
- “(b) on being approved by the Court a copy of the statement must be given to the entity concerned.
- “(5) Nothing in this section limits section 27 of the Crown Proceedings Act 1950 or any rule of law that authorises or requires the withholding of a document or the refusal to answer a question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.
- “(6) **Subsections (2) to (5)** apply despite any enactment or rule of law to the contrary.”
- 23 Ancillary general practices and procedures to protect classified security information**
- (1) Section 40(1) is amended—
- (a) by omitting “sections 38 and 39” and substituting “section 38”; and
- (b) by omitting “those sections relate” and substituting “that section relates”.
- (2) Section 40(2)(a) is amended by omitting “to which sections 38 and 39 relate” and substituting “to which section 38 relates”.
- 24 Appeal against decision on application under section 35**
- Section 41 is repealed.
- 25 Suspicions that property owned or controlled by designated entities, etc, to be reported**
- (1) The heading to section 43 is amended by omitting “**designated entities, etc,**”, and substituting “**designated terrorist entities**”.

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- (2) Section 43(1) is amended by omitting “an entity designated under this Act as a terrorist or associated entity” and substituting “a designated terrorist entity”.
- 26 Detention of goods suspected to be terrorist property**
- (1) Section 47A(1)(c)(ii) is amended by omitting “an entity designated under section 20 or section 22 of this Act as a terrorist or associated entity” and substituting “a designated terrorist entity”. 5
- (2) Section 47A(1)(d)(ii) is repealed and the following subparagraph substituted: 10
- “(ii) that the entity is an entity that carries out, or participates in the carrying out of, 1 or more terrorist acts.”
- 27 Return of goods detained under section 47A**
- Section 47D(3)(b) is amended by omitting “an entity designated under section 20 or section 22 as a terrorist or associated entity” and substituting “a designated terrorist entity”. 15
- 28 Direction that Official Assignee take control of property**
- Section 48(1) is amended by inserting “or is a United Nations listed terrorist entity” after “if an entity is subject to a designation under section 22”. 20
- 29 Variation, revocation, or expiry of direction**
- Section 50(3) is amended by inserting the following paragraph after paragraph (a):
- “(ab) on the entity ceasing to be a United Nations listed terrorist entity; or”. 25
- 30 Court may grant relief to third party**
- Section 54(3) is amended by omitting “concerned” in both places where it occurs and substituting in each case “as a designated terrorist entity”. 30
- 31 Forfeiture of property by the High Court**
- (1) Section 55(1)(a) is amended by inserting “or is a United Nations listed terrorist entity” after “designation under section 22”.

- (2) Section 55(2) is repealed and the following subsection substituted:
- “(2) However, an order of that kind may only be made if the Court considers it appropriate that the specified property not remain subject to the prohibition in section 9, but be forfeited to the Crown.” 5
- 32 Appeal against decision on application under section 55**
Section 58(2) is amended by omitting “38 to 40” and substituting “38 and 40”.
- 33 Discharge of order under section 55 on appeal or by quashing of related order under section 35(2)** 10
- (1) The heading to section 59 is amended by omitting “or by quashing of related order under section 35(2)”.
- (2) Section 59 is amended by repealing subsection (1).
- (3) Section 59(2) is amended by omitting “extended” and substituting “renewed”. 15
- (4) Section 59(3) is amended by omitting “as provided in subsection (1) or”.
- (5) Section 59(5) is amended by omitting “in either of the ways referred to in subsection (3)”. 20
- 34 Certificates as to States Parties under Conventions**
Section 62 is amended by inserting “the Nuclear Terrorism Convention,” after “the Nuclear Material Convention”.
- 35 New section 63 substituted** 25
Section 63 is repealed and the following section substituted:
- “63 Application of sections 64 and 65**
- “(1) *<Sections 64 and 65>* **<Sections 64 and 65>** apply whenever the Attorney-General receives information that there may be present in New Zealand a person who has committed, or is alleged to have committed, an offence referred to in article 2 of the Bombings Convention, or article 2 of the Financing Convention, or article 7 of the Nuclear Material Convention, or article 2 of the Nuclear Terrorism Convention, as the case requires. 30
- “(2) In *<sections 64 and 65>* **<sections 64 and 65>**, **relevant States Parties** means— 35

- “(a) any States Parties that have established jurisdiction in accordance with article 6(1) or (2) of the Bombings Convention, or article 7(1) or (2) of the Financing Convention, or article 8 of the Nuclear Material Convention, or article 8 of the Nuclear Terrorism Convention; and 5
- “(b) any other interested States Parties the Attorney-General considers it advisable to inform or notify.”
- 36 New section 64 substituted** 10
Section 64 is repealed and the following section substituted:
- “64 Attorney-General to indicate to relevant States Parties whether New Zealand to exercise jurisdiction** 15
When an investigation has been undertaken under New Zealand law of the facts contained in the information (being the investigation contemplated by article 7(1) of the Bombings Convention, or article 9(1) of the Financing Convention, or article 9 of the Nuclear Material Convention, or article 10 of the Nuclear Terrorism Convention, as the case requires, the Attorney-General must—
- “(a) inform the relevant States Parties promptly of the findings of the investigation; and 20
- “(b) indicate promptly to the relevant States Parties whether New Zealand intends to exercise jurisdiction.”
- 37 New section 65 substituted** 25
Section 65 is repealed and the following section substituted:
- “65 Attorney-General to notify relevant States Parties if person taken into custody** 30
If the measures taken under New Zealand law to ensure the person’s presence for the purpose of prosecution or extradition (being the measures contemplated by article 7 of the Bombings Convention, or article 9 of the Financing Convention, or article 9 of the Nuclear Material Convention, or article 10 of the Nuclear Terrorism Convention, as the case requires) include taking the person into custody, the Attorney-General must, immediately after the person is taken into custody, 35
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.”

- 38 Offences deemed to be included in extradition treaties**
- (1) Section 69(1) is amended by inserting “or nuclear terrorism offence” after “any nuclear material offence”. 5
- (2) Section 69(1) is amended by adding “; or” and also the following paragraph: 5
“(d) the Nuclear Terrorism Convention.”
- (3) Section 69(3) is amended by omitting “or a nuclear material offence” in each place where it appears and substituting in each case “a nuclear material offence, or a nuclear terrorism offence”. 10
- (4) Section 69(4) is amended by adding “; and” and also the following paragraph: 15
“(c) in relation to a nuclear terrorism offence, the date on which this section enters into force in relation to that offence.”
- 39 Review of operation of certain provisions of this Act**
The heading above section 70 and section 70 are repealed.
- 40 Transitional provision relating to entity designated under section 20 or 22**
Every designation of an entity under section 20 or 22 of the principal Act before the commencement this Act is deemed to be revoked under section 34 of the principal Act. 20
- 41 Schedule 2A amended**
Schedule 2A is amended in the manner set out in Schedule 1 <of this Act>. 25
- 42 New Schedule 2C inserted**
The Schedule 2C set out in Schedule 2 of this Act is inserted after Schedule 2B.
- 43 Schedule 3 amended**
Schedule 3 is amended by adding the clause set out in Schedule 3 of this Act. 30
- 44 New Schedules 4A to 4C inserted**
The Schedules 4A to 4C set out in Schedule 4 of this Act are inserted after Schedule 4.

45 Schedule 5 amended

⟨Paragraph 1 of⟩ Schedule 5 is amended by omitting ⟨*from paragraph 1*⟩ “designated entity” and substituting “designated terrorist entity”.

Part 2

5

Amendments to other Acts*Amendments to Terrorism Suppression Amendment Act 2005***46 Amendments to Terrorism Suppression Amendment Act 2005**

- (1) This section amends the Terrorism Suppression Amendment Act 2005. 10
- (2) The heading to Part 2 is amended by omitting “**Extension of existing designations and**”.
- (3) Section 6 and the heading above section 6 are repealed.
- (4) The heading above section 7 is repealed. 15

*Amendment⟨s⟩ to Mutual Assistance in Criminal Matters Act 1992***47 Schedule amended to refer to Nuclear Terrorism Convention**

- (1) This section amends the Mutual Assistance in Criminal Matters Act 1992. 20
- (2) The Schedule is amended by inserting, in its appropriate numerical order, the item set out in Schedule 5 of this Act.

Schedule 1

Schedule heading

Amendment to the Convention on the Physical Protection of Nuclear Material

1. The Title of the Convention on the Physical Protection of Nuclear Material adopted on 26 October 1979 (hereinafter referred to as “the Convention”) is replaced by the following title:

CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL AND NUCLEAR FACILITIES
2. The Preamble of the Convention is replaced by the following text:

The States Parties to this Convention,

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

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

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

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

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

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

Desiring to avert the potential dangers posed by illicit trafficking, the unlawful taking and use of nuclear material and the sabotage of nuclear material and nuclear facilities, and noting that physical protection against such acts has become a matter of increased national and international concern, 5

Deeply concerned by the worldwide escalation of acts of terrorism in all its forms and manifestations, and by the threats posed by international terrorism and organized crime, 10

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

Desiring through this Convention to contribute to strengthening worldwide the physical protection of nuclear material and nuclear facilities used for peaceful purposes, 15

Convinced that offences relating to nuclear material and nuclear facilities are a matter of grave concern and that there is an urgent need to adopt appropriate and effective measures, or to strengthen existing measures, to ensure the prevention, detection and punishment of such offences, 20

Desiring to strengthen further international co-operation to establish, in conformity with the national law of each State Party and with this Convention, effective measures for the physical protection of nuclear material and nuclear facilities, 25

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

Recognizing that there are internationally formulated physical protection recommendations that are updated from time to time which can provide guidance on contemporary means of achieving effective levels of physical protection, 30

Recognizing also that effective physical protection of nuclear material and nuclear facilities used for military purposes is a responsibility of the State possessing such nuclear material and nuclear facilities, and understanding that such material and facilities are and will continue to be accorded stringent physical protection, 5

Have agreed as follows:

3. In Article 1 of the Convention, after paragraph (c), two new paragraphs are added as follows:
 - (d) “nuclear facility” means a facility (including associated buildings and equipment) in which nuclear material is produced, processed, used, handled, stored or disposed of, if damage to or interference with such facility could lead to the release of significant amounts of radiation or radioactive material; 10
15
 - (e) “sabotage” means any deliberate act directed against a nuclear facility or nuclear material in use, storage or transport which could directly or indirectly endanger the health and safety of personnel, the public or the environment by exposure to radiation or release of radioactive substances. 20

4. After Article 1 of the Convention, a new Article 1A is added as follows:

Article 1A

The purposes of this Convention are to achieve and maintain worldwide effective physical protection of nuclear material used for peaceful purposes and of nuclear facilities used for peaceful purposes; to prevent and combat offences relating to such material and facilities worldwide; as well as to facilitate co-operation among States Parties to those ends. 25
30

5. Article 2 of the Convention is replaced by the following text:

-
1. This Convention shall apply to nuclear material used for peaceful purposes in use, storage and transport and to nuclear facilities used for peaceful purposes, provided, however, that articles 3 and 4 and paragraph 4 of article 5 of this Convention shall only apply to such nuclear material while in international nuclear transport. 5
 2. The responsibility for the establishment, implementation and maintenance of a physical protection regime within a State Party rests entirely with that State. 10
 3. Apart from the commitments expressly undertaken by States Parties under this Convention, nothing in this Convention shall be interpreted as affecting the sovereign rights of a State.
 4.
 - (a) Nothing in this Convention shall affect other rights, obligations and responsibilities of States Parties under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law. 15
 - (b) The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention. 20
 - (c) Nothing in this Convention shall be construed as a lawful authorization to use or threaten to use force against nuclear material or nuclear facilities used for peaceful purposes. 25
 - (d) Nothing in this Convention condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws. 30
 5. This Convention shall not apply to nuclear material used or retained for military purposes or to a nuclear facility containing such material. 35

6. After Article 2 of the Convention, a new Article 2A is added as follows:

Article 2A

- | | | |
|----|--|----|
| 1. | Each State Party shall establish, implement and maintain an appropriate physical protection regime applicable to nuclear material and nuclear facilities under its jurisdiction, with the aim of: | 5 |
| | (a) protecting against theft and other unlawful taking of nuclear material in use, storage and transport; | 10 |
| | (b) ensuring the implementation of rapid and comprehensive measures to locate and, where appropriate, recover missing or stolen nuclear material; when the material is located outside its territory, that State Party shall act in accordance with article 5; | 15 |
| | (c) protecting nuclear material and nuclear facilities against sabotage; and | |
| | (d) mitigating or minimizing the radiological consequences of sabotage. | 20 |
| 2. | In implementing paragraph 1, each State Party shall: | |
| | (a) establish and maintain a legislative and regulatory framework to govern physical protection; | |
| | (b) establish or designate a competent authority or authorities responsible for the implementation of the legislative and regulatory framework; and | 25 |
| | (c) take other appropriate measures necessary for the physical protection of nuclear material and nuclear facilities. | |
| 3. | In implementing the obligations under paragraphs 1 and 2, each State Party shall, without prejudice to any other provisions of this Convention, apply insofar as is reasonable and practicable the following Fundamental Principles of Physical Protection of Nuclear Material and Nuclear Facilities. | 30 |
| | | 35 |

Fundamental Principle A: Responsibility of the State

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

Fundamental Principle B: Responsibilities During International Transport 5

The responsibility of a State for ensuring that nuclear material is adequately protected extends to the international transport thereof, until that responsibility is properly transferred to another State, as appropriate. 10

Fundamental Principle C: Legislative and Regulatory Framework

The State is responsible for establishing and maintaining a legislative and regulatory framework to govern physical protection. This framework should provide for the establishment of applicable physical protection requirements and include a system of evaluation and licensing or other procedures to grant authorization. This framework should include a system of inspection of nuclear facilities and transport to verify compliance with applicable requirements and conditions of the license or other authorizing document, and to establish a means to enforce applicable requirements and conditions, including effective sanctions. 15 20

Fundamental Principle D: Competent Authority

The State should establish or designate a competent authority which is responsible for the implementation of the legislative and regulatory framework, and is provided with adequate authority, competence and financial and human resources to fulfill its assigned responsibilities. The State should take steps to ensure an effective independence between the functions of the State's competent authority and those of any other body in charge of the promotion or utilization of nuclear energy. 25 30

Fundamental Principle E: Responsibility of the License Holders

The responsibilities for implementing the various elements of physical protection within a State should be clearly identified. The State should ensure that the prime responsibility for the implementation of physical protection of nuclear material or of nuclear facilities rests with the holders of the relevant licenses or of other authorizing documents (e.g., operators or shippers). 5

Fundamental Principle F: Security Culture

All organizations involved in implementing physical protection should give due priority to the security culture, to its development and maintenance necessary to ensure its effective implementation in the entire organization. 10

Fundamental Principle G: Threat

The State's physical protection should be based on the State's current evaluation of the threat. 15

Fundamental Principle H: Graded Approach

Physical protection requirements should be based on a graded approach, taking into account the current evaluation of the threat, the relative attractiveness, the nature of the material and potential consequences associated with the unauthorized removal of nuclear material and with the sabotage against nuclear material or nuclear facilities. 20

Fundamental Principle I: Defence in Depth

The State's requirements for physical protection should reflect a concept of several layers and methods of protection (structural or other technical, personnel and organizational) that have to be overcome or circumvented by an adversary in order to achieve his objectives. 25

Fundamental Principle J: Quality Assurance

A quality assurance policy and quality assurance programmes should be established and implemented with a view to providing confidence that specified requirements for all activities important to physical protection are satisfied. 30

Fundamental Principle K: Contingency Plans

- Contingency (emergency) plans to respond to unauthorized removal of nuclear material or sabotage of nuclear facilities or nuclear material, or attempts thereof, should be prepared and appropriately exercised by all license holders and authorities concerned. 5
- Fundamental Principle L: Confidentiality*
- The State should establish requirements for protecting the confidentiality of information, the unauthorized disclosure of which could compromise the physical protection of nuclear material and nuclear facilities. 10
4. (a) The provisions of this article shall not apply to any nuclear material which the State Party reasonably decides does not need to be subject to the physical protection regime established pursuant to paragraph 1, taking into account the nature of the material, its quantity and relative attractiveness and the potential radiological and other consequences associated with any unauthorized act directed against it and the current evaluation of the threat against it. 15
20
- (b) Nuclear material which is not subject to the provisions of this article pursuant to subparagraph (a) should be protected in accordance with prudent management practice.
7. Article 5 of the Convention is replaced by the following text: 25
1. States Parties shall identify and make known to each other directly or through the International Atomic Energy Agency their point of contact in relation to matters within the scope of this Convention.
2. In the case of theft, robbery or any other unlawful taking of nuclear material or credible threat thereof, States Parties shall, in accordance with their national law, provide co-operation and assistance to the maximum feasible extent in the recovery and protection of such material to any State that so requests. In particular: 30
35

- (a) a State Party shall take appropriate steps to inform as soon as possible other States, which appear to it to be concerned, of any theft, robbery or other unlawful taking of nuclear material or credible threat thereof, and to inform, where appropriate, the International Atomic Energy Agency and other relevant international organizations; 5
- (b) in doing so, as appropriate, the States Parties concerned shall exchange information with each other, the International Atomic Energy Agency and other relevant international organizations with a view to protecting threatened nuclear material, verifying the integrity of the shipping container or recovering unlawfully taken nuclear material and shall: 10
- (i) co-ordinate their efforts through diplomatic and other agreed channels; 15
- (ii) render assistance, if requested; 20
- (iii) ensure the return of recovered nuclear material stolen or missing as a consequence of the above-mentioned events. 20

The means of implementation of this co-operation shall be determined by the States Parties concerned.

3. In the case of a credible threat of sabotage of nuclear material or a nuclear facility or in the case of sabotage thereof, States Parties shall, to the maximum feasible extent, in accordance with their national law and consistent with their relevant obligations under international law, cooperate as follows: 25
- (a) if a State Party has knowledge of a credible threat of sabotage of nuclear material or a nuclear facility in another State, the former shall decide on appropriate steps to be taken in order to inform that State as soon as possible and, where appropriate, the International Atomic Energy Agency and other relevant international organizations of that threat, with a view to preventing the sabotage; 30 35

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- (b) in the case of sabotage of nuclear material or a nuclear facility in a State Party and if in its view other States are likely to be radiologically affected, the former, without prejudice to its other obligations under international law, shall take appropriate steps to inform as soon as possible the State or the States which are likely to be radiologically affected and to inform, where appropriate, the International Atomic Energy Agency and other relevant international organizations, with a view to minimizing or mitigating the radiological consequences thereof; 5 10
- (c) if in the context of sub-paragraphs (a) and (b), a State Party requests assistance, each State Party to which a request for assistance is directed shall promptly decide and notify the requesting State Party, directly or through the International Atomic Energy Agency, whether it is in a position to render the assistance requested and the scope and terms of the assistance that may be rendered; 15 20
- (d) co-ordination of the co-operation under sub-paragraphs (a) to (c) shall be through diplomatic or other agreed channels. The means of implementation of this cooperation shall be determined bilaterally or multilaterally by the States Parties concerned. 25
4. States Parties shall co-operate and consult, as appropriate, with each other directly or through the International Atomic Energy Agency and other relevant international organizations, with a view to obtaining guidance on the design, maintenance and improvement of systems of physical protection of nuclear material in international transport. 30

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5. A State Party may consult and co-operate, as appropriate, with other States Parties directly or through the International Atomic Energy Agency and other relevant international organizations, with a view to obtaining their guidance on the design, maintenance and improvement of its national system of physical protection of nuclear material in domestic use, storage and transport and of nuclear facilities. 5
8. Article 6 of the Convention is replaced by the following text:
1. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations or to States that are not parties to this Convention in confidence, steps shall be taken to ensure that the confidentiality of such information is protected. A State Party that has received information in confidence from another State Party may provide this information to third parties only with the consent of that other State Party. 10 15 20
2. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or the physical protection of nuclear material or nuclear facilities. 25
9. Paragraph 1 of Article 7 of the Convention is replaced by the following text: 30
1. The intentional commission of:
- (a) an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property or to the environment; 35

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- (b) a theft or robbery of nuclear material;
- (c) an embezzlement or fraudulent obtaining of nuclear material;
- (d) an act which constitutes the carrying, sending, or moving of nuclear material into or out of a State without lawful authority; 5
- (e) an act directed against a nuclear facility, or an act interfering with the operation of a nuclear facility, where the offender intentionally causes, or where he knows that the act is likely to cause, death or serious injury to any person or substantial damage to property or to the environment by exposure to radiation or release of radioactive substances, unless the act is undertaken in conformity with the national law of the State Party in the territory of which the nuclear facility is situated; 10 15
- (f) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation; 20
- (g) a threat:
- (i) to use nuclear material to cause death or serious injury to any person or substantial damage to property or to the environment or to commit the offence described in sub-paragraph (e), or 25
- (ii) to commit an offence described in sub-paragraphs (b) and (e) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act; 30
- (h) an attempt to commit any offence described in sub-paragraphs (a) to (e);
- (i) an act which constitutes participation in any offence described in sub-paragraphs (a) to (h); 35
- (j) an act of any person who organizes or directs others to commit an offence described in sub-paragraphs (a) to (h); and

- (k) an act which contributes to the commission of any offence described in sub-paragraphs (a) to (h) by a group of persons acting with a common purpose; such act shall be intentional and shall either: 5
- (i) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence described in sub-paragraphs (a) to (g), or 10
- (ii) be made in the knowledge of the intention of the group to commit an offence described in sub-paragraphs (a) to (g) shall be made a punishable offence by each State Party under its national law. 15
10. After Article 11 of the Convention, two new articles, Article 11A and Article 11B, are added as follows:
- Article 11A
- None of the offences set forth in article 7 shall be regarded for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives. 20
- Article 11B
- Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 7 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons. 25 30 35

11. After Article 13 of the Convention, a new Article 13A is added as follows:
- Article 13A
- Nothing in this Convention shall affect the transfer of nuclear technology for peaceful purposes that is undertaken to strengthen the physical protection of nuclear material and nuclear facilities. 5
12. Paragraph 3 of Article 14 of the Convention is replaced by the following text:
3. Where an offence involves nuclear material in domestic use, storage or transport, and both the alleged offender and the nuclear material remain in the territory of the State Party in which the offence was committed, or where an offence involves a nuclear facility and the alleged offender remains in the territory of the State Party in which the offence was committed, nothing in this Convention shall be interpreted as requiring that State Party to provide information concerning criminal proceedings arising out of such an offence. 10
15
13. Article 16 of the Convention is replaced by the following text: 20
1. A conference of States Parties shall be convened by the depositary five years after the entry into force of the Amendment adopted on 8 July 2005 to review the implementation of this Convention and its adequacy as concerns the preamble, the whole of the operative part and the annexes in the light of the then prevailing situation. 25
2. At intervals of not less than five years thereafter, the majority of States Parties may obtain, by submitting a proposal to this effect to the depositary, the convening of further conferences with the same objective. 30
14. Footnote ^{b/} of Annex II of the Convention is replaced by the following text: 35
- ^{b/} Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 1 gray/hour (100 rads/hour) at one metre unshielded. 40

15. Footnote ^{e/} of Annex II of the Convention is replaced by the following text:

^{e/} Other fuel which by virtue of its original fissile material content is classified as Category I and II before irradiation may be reduced one category level while the radiation level from the fuel exceeds 1 gray/hour (100 rads/hour) at one metre unshielded.

5

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Schedule 2
New Schedule 2C inserted

s 42

Schedule 2C
Nuclear Terrorism Convention

<s 4(1)>

International Convention for the Suppression of Acts of Nuclear Terrorism 5

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States, 10

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

Recognizing the right of all States to develop and apply nuclear energy for peaceful purposes and their legitimate interests in the potential benefits to be derived from the peaceful application of nuclear energy, 15

Bearing in mind the Convention on the Physical Protection of Nuclear Material of 1980,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations, 20

Recalling the Declaration on Measures to Eliminate International Terrorism annexed to General Assembly resolution 49/60 of 9 December 1994, in which, inter alia, the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States, 25

Noting that the Declaration also encouraged States to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter, 30

Schedule 2C—*continued*

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

Recalling also that, pursuant to General Assembly resolution 51/210, an ad hoc committee was established to elaborate, inter alia, an international convention for the suppression of acts of nuclear terrorism to supplement related existing international instruments, 5

Noting that acts of nuclear terrorism may result in the gravest consequences and may pose a threat to international peace and security,

Noting also that existing multilateral legal provisions do not adequately address those attacks, 10

Being convinced of the urgent need to enhance international cooperation between States in devising and adopting effective and practical measures for the prevention of such acts of terrorism and for the prosecution and punishment of their perpetrators, 15

Noting that the activities of military forces of States are governed by rules of international law outside of the framework of this Convention and that the exclusion of certain actions from the coverage of this Convention does not condone or make lawful otherwise unlawful acts, or preclude prosecution under other laws, 20

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. “Radioactive material” means nuclear material and other radioactive substances which contain nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionizing radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, owing to their radiological or fissile properties, cause death, serious bodily injury or substantial damage to property or to the environment. 25 30

Schedule 2C—*continued*

2. “Nuclear material” means plutonium, except that with isotopic concentration exceeding 80 per cent in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore residue; or any material containing one or more of the foregoing; 5
Whereby “uranium enriched in the isotope 235 or 233” means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature. 10
3. “Nuclear facility” means: 15
- (a) Any nuclear reactor, including reactors installed on vessels, vehicles, aircraft or space objects for use as an energy source in order to propel such vessels, vehicles, aircraft or space objects or for any other purpose; 15
- (b) Any plant or conveyance being used for the production, storage, processing or transport of radioactive material. 20
4. “Device” means: 20
- (a) Any nuclear explosive device; or
- (b) Any radioactive material dispersal or radiation-emitting device which may, owing to its radiological properties, cause death, serious bodily injury or substantial damage to property or to the environment. 25
5. “State or government facility” includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of a Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties. 30
6. “Military forces of a State” means the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security and persons acting in support of those armed forces who are under their formal command, control and responsibility. 35

Schedule 2C—*continued***Article 2**

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally:
 - (a) Possesses radioactive material or makes or possesses a device: 5
 - (i) With the intent to cause death or serious bodily injury; or
 - (ii) With the intent to cause substantial damage to property or to the environment;
 - (b) Uses in any way radioactive material or a device, or uses or damages a nuclear facility in a manner which releases or risks the release of radioactive material: 10
 - (i) With the intent to cause death or serious bodily injury; or
 - (ii) With the intent to cause substantial damage to property or to the environment; or 15
 - (iii) With the intent to compel a natural or legal person, an international organization or a State to do or refrain from doing an act.
2. Any person also commits an offence if that person: 20
 - (a) Threatens, under circumstances which indicate the credibility of the threat, to commit an offence as set forth in paragraph 1 (b) of the present article; or
 - (b) Demands unlawfully and intentionally radioactive material, a device or a nuclear facility by threat, under circumstances which indicate the credibility of the threat, or by use of force. 25
3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article. 30
4. Any person also commits an offence if that person:
 - (a) Participates as an accomplice in an offence as set forth in paragraph 1, 2 or 3 of the present article; or
 - (b) Organizes or directs others to commit an offence as set forth in paragraph 1, 2 or 3 of the present article; or 35

Schedule 2C—*continued*

- (c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1, 2 or 3 of the present article by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned. 5

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis under article 9, paragraph 1 or 2, to exercise jurisdiction, except that the provisions of articles 7, 12, 14, 15, 16 and 17 shall, as appropriate, apply in those cases. 10
15

Article 4

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law. 20
2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention. 25
3. The provisions of paragraph 2 of the present article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws. 30
4. This Convention does not address, nor can it be interpreted as addressing, in any way, the issue of the legality of the use or threat of use of nuclear weapons by States.

Schedule 2C—*continued***Article 5**

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

- (a) To establish as criminal offences under its national law the offences set forth in article 2;
- (b) To make those offences punishable by appropriate penalties which take into account the grave nature of these offences. 5

Article 6

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature. 10 15

Article 7

- 1. States Parties shall cooperate by:
 - (a) Taking all practicable measures, including, if necessary, adapting their national law, to prevent and counter preparations in their respective territories for the commission within or outside their territories of the offences set forth in article 2, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or knowingly provide technical assistance or information or engage in the perpetration of those offences; 20 25

Schedule 2C—*continued*

- (b) Exchanging accurate and verified information in accordance with their national law and in the manner and subject to the conditions specified herein, and coordinating administrative and other measures taken as appropriate to detect, prevent, suppress and investigate the offences set forth in article 2 and also in order to institute criminal proceedings against persons alleged to have committed those crimes. In particular, a State Party shall take appropriate measures in order to inform without delay the other States referred to in article 9 in respect of the commission of the offences set forth in article 2 as well as preparations to commit such offences about which it has learned, and also to inform, where appropriate, international organizations. 5
2. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected. 10
3. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or the physical protection of nuclear material. 15
4. States Parties shall inform the Secretary-General of the United Nations of their competent authorities and liaison points responsible for sending and receiving the information referred to in the present article. The Secretary-General of the United Nations shall communicate such information regarding competent authorities and liaison points to all States Parties and the International Atomic Energy Agency. Such authorities and liaison points must be accessible on a continuous basis. 20
- 35

Schedule 2C—*continued***Article 8**

For purposes of preventing offences under this Convention, States Parties shall make every effort to adopt appropriate measures to ensure the protection of radioactive material, taking into account relevant recommendations and functions of the International Atomic Energy Agency. 5

Article 9

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when: 10
 - (a) The offence is committed in the territory of that State; or
 - (b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or 15
 - (c) The offence is committed by a national of that State.
2. A State Party may also establish its jurisdiction over any such offence when:
 - (a) The offence is committed against a national of that State; or 20
 - (b) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or 25
 - (c) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or
 - (d) The offence is committed in an attempt to compel that State to do or abstain from doing any act; or 30
 - (e) The offence is committed on board an aircraft which is operated by the Government of that State.

Schedule 2C—*continued*

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established under its national law in accordance with paragraph 2 of the present article. Should any change take place, the State Party concerned shall immediately notify the Secretary-General. 5
4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2 of the present article. 10
5. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its national law. 15

Article 10

1. Upon receiving information that an offence set forth in article 2 has been committed or is being committed in the territory of a State Party or that a person who has committed or who is alleged to have committed such an offence may be present in its territory, the State Party concerned shall take such measures as may be necessary under its national law to investigate the facts contained in the information. 20
2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its national law so as to ensure that person's presence for the purpose of prosecution or extradition. 25
3. Any person regarding whom the measures referred to in paragraph 2 of the present article are being taken shall be entitled: 30
 - (a) To communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides; 35

Schedule 2C—*continued*

- (b) To be visited by a representative of that State;
- (c) To be informed of that person's rights under subparagraphs (a) and (b).
4. The rights referred to in paragraph 3 of the present article shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended. 5
10
5. The provisions of paragraphs 3 and 4 of the present article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 9, paragraph 1 (c) or 2 (c), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender. 15
6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 9, paragraphs 1 and 2, and, if it considers it advisable, any other interested States Parties, of the fact that that person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 of the present article shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction. 20
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Schedule 2C—*continued***Article 11**

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 9 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State. 5 10
2. Whenever a State Party is permitted under its national law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1 of the present article. 15 20

Article 12

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights. 25

Article 13

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them. 30 35

Schedule 2C—*continued*

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State. 5
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State. 10
4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 9, paragraphs 1 and 2. 15
5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention. 20

Article 14

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1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings. 30
2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their national law. 35

Schedule 2C—continued**Article 15**

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives. 5

Article 16 10

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons. 15

Article 17 20

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of testimony, identification or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention may be transferred if the following conditions are met: 25
 - (a) The person freely gives his or her informed consent; and
 - (b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate. 30

Schedule 2C—*continued*

2. For the purposes of the present article:
- (a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred; 5
 - (b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States; 10
 - (c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person; 15
 - (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.
3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred. 20
25

Article 18

1. Upon seizing or otherwise taking control of radioactive material, devices or nuclear facilities, following the commission of an offence set forth in article 2, the State Party in possession of such items shall: 30
- (a) Take steps to render harmless the radioactive material, device or nuclear facility;
 - (b) Ensure that any nuclear material is held in accordance with applicable International Atomic Energy Agency safeguards; and 35

Schedule 2C—*continued*

- (c) Have regard to physical protection recommendations and health and safety standards published by the International Atomic Energy Agency.
2. Upon the completion of any proceedings connected with an offence set forth in article 2, or sooner if required by international law, any radioactive material, device or nuclear facility shall be returned, after consultations (in particular, regarding modalities of return and storage) with the States Parties concerned to the State Party to which it belongs, to the State Party of which the natural or legal person owning such radioactive material, device or facility is a national or resident, or to the State Party from whose territory it was stolen or otherwise unlawfully obtained. 5 10
3. (a) Where a State Party is prohibited by national or international law from returning or accepting such radioactive material, device or nuclear facility or where the States Parties concerned so agree, subject to paragraph 3(b) of the present article, the State Party in possession of the radioactive material, devices or nuclear facilities shall continue to take the steps described in paragraph 1 of the present article; such radioactive material, devices or nuclear facilities shall be used only for peaceful purposes; 15 20
- (b) Where it is not lawful for the State Party in possession of the radioactive material, devices or nuclear facilities to possess them, that State shall ensure that they are placed as soon as possible in the possession of a State for which such possession is lawful and which, where appropriate, has provided assurances consistent with the requirements of paragraph 1 of the present article in consultation with that State, for the purpose of rendering it harmless; such radioactive material, devices or nuclear facilities shall be used only for peaceful purposes. 25 30

Schedule 2C—*continued*

4. If the radioactive material, devices or nuclear facilities referred to in paragraphs 1 and 2 of the present article do not belong to any of the States Parties or to a national or resident of a State Party or was not stolen or otherwise unlawfully obtained from the territory of a State Party, or if no State is willing to receive such items pursuant to paragraph 3 of the present article, a separate decision concerning its disposition shall, subject to paragraph 3 (b) of the present article, be taken after consultations between the States concerned and any relevant international organizations. 5
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5. For the purposes of paragraphs 1, 2, 3 and 4 of the present article, the State Party in possession of the radioactive material, device or nuclear facility may request the assistance and cooperation of other States Parties, in particular the States Parties concerned, and any relevant international organizations, in particular the International Atomic Energy Agency. States Parties and the relevant international organizations are encouraged to provide assistance pursuant to this paragraph to the maximum extent possible. 15
6. The States Parties involved in the disposition or retention of the radioactive material, device or nuclear facility pursuant to the present article shall inform the Director General of the International Atomic Energy Agency of the manner in which such an item was disposed of or retained. The Director General of the International Atomic Energy Agency shall transmit the information to the other States Parties. 20
25
7. In the event of any dissemination in connection with an offence set forth in article 2, nothing in the present article shall affect in any way the rules of international law governing liability for nuclear damage, or other rules of international law. 30

Article 19

The State Party where the alleged offender is prosecuted shall, in accordance with its national law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties. 35

Schedule 2C—*continued***Article 20**

States Parties shall conduct consultations with one another directly or through the Secretary-General of the United Nations, with the assistance of international organizations as necessary, to ensure effective implementation of this Convention.

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Article 21

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

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Article 22

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

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Article 23

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

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Schedule 2C—*continued*

3. Any State which has made a reservation in accordance with paragraph 2 of the present article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 24

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1. This Convention shall be open for signature by all States from 14 September 2005 until 31 December 2006 at United Nations Headquarters in New York.
2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. 10
3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations. 15

Article 25

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations. 20
2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession. 25

Article 26

1. A State Party may propose an amendment to this Convention. The proposed amendment shall be submitted to the depositary, who circulates it immediately to all States Parties. 30

Schedule 2C—*continued*

2. If the majority of the States Parties request the depositary to convene a conference to consider the proposed amendments, the depositary shall invite all States Parties to attend such a conference to begin no sooner than three months after the invitations are issued. 5
3. The conference shall make every effort to ensure amendments are adopted by consensus. Should this not be possible, amendments shall be adopted by a two-thirds majority of all States Parties. Any amendment adopted at the conference shall be promptly circulated by the depositary to all States Parties. 10
4. The amendment adopted pursuant to paragraph 3 of the present article shall enter into force for each State Party that deposits its instrument of ratification, acceptance, accession or approval of the amendment on the thirtieth day after the date on which two thirds of the States Parties have deposited their relevant instrument. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day after the date on which that State deposits its relevant instrument. 15

Article 27

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1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.
2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations. 25

Article 28

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States. 30

Schedule 2C—*continued*

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on 14 September 2005.

Schedule 3

s 43

New clause 10 added to Schedule 3

- 10 Convention for the Suppression of Acts of Nuclear Terrorism, adopted by the General Assembly of the United Nations at New York on 13 April 2005.
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s 44

Schedule 4
New Schedules 4A to 4C inserted

s 4(1)

Schedule 4A
United Nations Security Council Resolution 1267
(1999)

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Resolution 1267 (1999)

**Adopted by the Security Council at its 4051st meeting on
15 October 1999**

The Security Council,

Reaffirming its previous resolutions, in particular resolutions 1189 (1998) of 13 August 1998, 1193 (1998) of 28 August 1998 and 1214 (1998) of 8 December 1998, and the statements of its President on the situation in Afghanistan, 10

Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and national unity of Afghanistan, and its respect for Afghanistan's cultural and historical heritage, 15

Reiterating its deep concern over the continuing violations of international humanitarian law and of human rights, particularly discrimination against women and girls, and over the significant rise in the illicit production of opium, and stressing that the capture by the Taliban of the Consulate-General of the Islamic Republic of Iran and the murder of Iranian diplomats and a journalist in Mazar-e-Sharif constituted flagrant violations of established international law, 20

Recalling the relevant international counter-terrorism conventions and in particular the obligations of parties to those conventions to extradite or prosecute terrorists, 25

Strongly condemning the continuing use of Afghan territory, especially areas controlled by the Taliban, for the sheltering and training of terrorists and planning of terrorist acts, and reaffirming its conviction that the suppression of international terrorism is essential for the maintenance of international peace and security, 30

Schedule 4A—*continued*

Deploring the fact that the Taliban continues to provide safe haven to Usama bin Laden and to allow him and others associated with him to operate a network of terrorist training camps from Taliban-controlled territory and to use Afghanistan as a base from which to sponsor international terrorist operations, 5

Noting the indictment of Usama bin Laden and his associates by the United States of America for, *inter alia*, the 7 August 1998 bombings of the United States embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania and for conspiring to kill American nationals outside the United States, and noting also the request of the United States of America to the Taliban to surrender them for trial (S/1999/1021), 10

Determining that the failure of the Taliban authorities to respond to the demands in paragraph 13 of resolution 1214 (1998) constitutes a threat to international peace and security, 15

Stressing its determination to ensure respect for its resolutions,

Acting under Chapter VII of the Charter of the United Nations,

1. *Insists* that the Afghan faction known as the Taliban, which also calls itself the Islamic Emirate of Afghanistan, comply promptly with its previous resolutions and in particular cease the provision of sanctuary and training for international terrorists and their organizations, take appropriate effective measures to ensure that the territory under its control is not used for terrorist installations and camps, or for the preparation or organization of terrorist acts against other States or their citizens, and cooperate with efforts to bring indicted terrorists to justice; 20
25

2. *Demands* that the Taliban turn over Usama bin Laden without further delay to appropriate authorities in a country where he has been indicted, or to appropriate authorities in a country where he will be returned to such a country, or to appropriate authorities in a country where he will be arrested and effectively brought to justice; 30

Schedule 4A—*continued*

3. *Decides* that on 14 November 1999 all States shall impose the measures set out in paragraph 4 below, unless the Council has previously decided, on the basis of a report of the Secretary-General, that the Taliban has fully complied with the obligation set out in paragraph 2 above; 5
4. *Decides further* that, in order to enforce paragraph 2 above, all States shall:
- (a) Deny permission for any aircraft to take off from or land in their territory if it is owned, leased or operated by or on behalf of the Taliban as designated by the Committee established by paragraph 6 below, unless the particular flight has been approved in advance by the Committee on the grounds of humanitarian need, including religious obligation such as the performance of the Hajj; 10 15
- (b) Freeze funds and other financial resources, including funds derived or generated from property owned or controlled directly or indirectly by the Taliban, or by any undertaking owned or controlled by the Taliban, as designated by the Committee established by paragraph 6 below, and ensure that neither they nor any other funds or financial resources so designated are made available, by their nationals or by any persons within their territory, to or for the benefit of the Taliban or any undertaking owned or controlled, directly or indirectly, by the Taliban, except as may be authorized by the Committee on a case-by-case basis on the grounds of humanitarian need; 20 25
5. *Urges* all States to cooperate with efforts to fulfil the demand in paragraph 2 above, and to consider further measures against Usama bin Laden and his associates; 30
6. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council consisting of all the members of the Council to undertake the following tasks and to report on its work to the Council with its observations and recommendations: 35

Schedule 4A—*continued*

- (a) To seek from all States further information regarding the action taken by them with a view to effectively implementing the measures imposed by paragraph 4 above;
- (b) To consider information brought to its attention by States concerning violations of the measures imposed by paragraph 4 above and to recommend appropriate measures in response thereto; 5
- (c) To make periodic reports to the Council on the impact, including the humanitarian implications, of the measures imposed by paragraph 4 above; 10
- (d) To make periodic reports to the Council on information submitted to it regarding alleged violations of the measures imposed by paragraph 4 above, identifying where possible persons or entities reported to be engaged in such violations; 15
- (e) To designate the aircraft and funds or other financial resources referred to in paragraph 4 above in order to facilitate the implementation of the measures imposed by that paragraph; 20
- (f) To consider requests for exemptions from the measures imposed by paragraph 4 above as provided in that paragraph, and to decide on the granting of an exemption to these measures in respect of the payment by the International Air Transport Association (IATA) to the aeronautical authority of Afghanistan on behalf of international airlines for air traffic control services; 25
- (g) To examine the reports submitted pursuant to paragraph 9 below; 30
7. *Calls upon* all States to act strictly in accordance with the provisions of this resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to the date of coming into force of the measures imposed by paragraph 4 above; 35

Schedule 4A—*continued*

8. *Calls upon* States to bring proceedings against persons and entities within their jurisdiction that violate the measures imposed by paragraph 4 above and to impose appropriate penalties;
9. *Calls upon* all States to cooperate fully with the Committee established by paragraph 6 above in the fulfilment of its tasks, including supplying such information as may be required by the Committee in pursuance of this resolution; 5
10. *Requests* all States to report to the Committee established by paragraph 6 above within 30 days of the coming into force of the measures imposed by paragraph 4 above on the steps they have taken with a view to effectively implementing paragraph 4 above; 10
11. *Requests* the Secretary-General to provide all necessary assistance to the Committee established by paragraph 6 above and to make the necessary arrangements in the Secretariat for this purpose; 15
12. *Requests* the Committee established by paragraph 6 above to determine appropriate arrangements, on the basis of recommendations of the Secretariat, with competent international organizations, neighbouring and other States, and parties concerned with a view to improving the monitoring of the implementation of the measures imposed by paragraph 4 above; 20
13. *Requests* the Secretariat to submit for consideration by the Committee established by paragraph 6 above information received from Governments and public sources on possible violations of the measures imposed by paragraph 4 above; 25
14. *Decides* to terminate the measures imposed by paragraph 4 above once the Secretary-General reports to the Security Council that the Taliban has fulfilled the obligation set out in paragraph 2 above; 30
15. *Expresses* its readiness to consider the imposition of further measures, in accordance with its responsibility under the Charter of the United Nations, with the aim of achieving the full implementation of this resolution; 35

Schedule 4A—*continued*

16. *Decides* to remain actively seized of the matter.
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s 4(1)

Schedule 4B
United Nations Security Council Resolution 1333
(2000)

Resolution 1333 (2000)

Adopted by the Security Council at its 4251st meeting, on 19 December 2000 5

The Security Council,

Reaffirming its previous resolutions, in particular resolution 1267 (1999) of 15 October 1999 and the statements of its President on the situation in Afghanistan, 10

Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and national unity of Afghanistan, and its respect for Afghanistan's cultural and historical heritage,

Recognizing the critical humanitarian needs of the Afghan people,

Supporting the efforts of the Personal Representative of the Secretary-General for Afghanistan to advance a peace process through political negotiations between the Afghan parties aimed at the establishment of a broad-based, multi-ethnic, and fully representative government, and *calling for* the warring factions to cooperate fully with those efforts to conclude a ceasefire and begin discussions leading to a political settlement, by moving forward promptly in the process of dialogue to which they have committed themselves, 15
20

Noting the December 2000 meeting of the Afghan Support Group which emphasized that the situation in Afghanistan is a complex one that requires a comprehensive, integrated approach to a peace process and issues of narcotics trafficking, terrorism, human rights, and international humanitarian and development aid, 25

Recalling the relevant international counter-terrorism conventions and in particular the obligations of parties to those conventions to extradite or prosecute terrorists, 30

Schedule 4B—*continued*

- Strongly condemning* the continuing use of the areas of Afghanistan under the control of the Afghan faction known as Taliban, which also calls itself the Islamic Emirate of Afghanistan (hereinafter known as the Taliban), for the sheltering and training of terrorists and planning of terrorist acts, and *reaffirming* its conviction that the suppression of international terrorism is essential for the maintenance of international peace and security, 5
- Noting* the importance of the Taliban acting in accordance with the 1961 Single Convention, the 1971 Convention on Psychotropic Substances, and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, and the commitments of the 1998 Twentieth Special Session of the General Assembly on Narcotic Drugs, including to work closely with the United Nations Drug Control Programme, 10
- Noting* that the Taliban benefits directly from the cultivation of illicit opium by imposing a tax on its production and indirectly benefits from the processing and trafficking of such opium, and *recognizing* that these substantial resources strengthen the Taliban's capacity to harbour terrorists, 15
- Deploring* the fact that the Taliban continues to provide safehaven to Usama bin Laden and to allow him and others associated with him to operate a network of terrorist training camps from Taliban-controlled territory and to use Afghanistan as a base from which to sponsor international terrorist operations, 20
- Noting* the indictment of Usama bin Laden and his associates by the United States of America for, inter alia, the 7 August 1998 bombings of the United States embassies in Nairobi, Kenya and Dar es Salaam, Tanzania and for conspiring to kill American nationals outside the United States, and *noting also* the request of the United States of America to the Taliban to surrender them for trial (S/1999/1021), 25 30
- Reiterating* its deep concern over the continuing violations of international humanitarian law and of human rights, particularly discrimination against women and girls, and over the significant rise in the illicit production of opium,

Schedule 4B—*continued*

- Stressing* that the capture by the Taliban of the Consulate-General of the Islamic Republic of Iran and the murder of Iranian diplomats and a journalist in Mazar-e-Sharif constituted flagrant violations of established international law,
- Determining* that the failure of the Taliban authorities to respond to the demands in paragraph 13 of resolution 1214 (1998) and in paragraph 2 of resolution 1267 (1999) constitutes a threat to international peace and security, 5
- Stressing* its determination to ensure respect for its resolutions,
- Reaffirming* the necessity for sanctions to contain adequate and effective exemptions to avoid adverse humanitarian consequences on the people of Afghanistan, and that they be structured in a way that will not impede, thwart or delay the work of international humanitarian assistance organizations or governmental relief agencies providing humanitarian assistance to the civilian population in the country, 10 15
- Underlining* the responsibility of the Taliban for the well-being of the population in the areas of Afghanistan under its control, and in this context *calling on* the Taliban to ensure the safe and unhindered access of relief personnel and aid to all those in need in the territory under their control, 20
- Recalling* the relevant principles contained in the Convention on the Safety of United Nations and Associated Personnel adopted by the General Assembly in its resolution 49/59 of 9 December 1994,
- Acting* under Chapter VII of the Charter of the United Nations, 25
1. *Demands* that the Taliban comply with resolution 1267 (1999) and, in particular, cease the provision of sanctuary and training for international terrorists and their organizations, take appropriate effective measures to ensure that the territory under its control is not used for terrorist installations and camps, or for the preparation or organization of terrorist acts against other States or their citizens, and cooperate with international efforts to bring indicted terrorists to justice; 30

Schedule 4B—*continued*

2. *Demands also* that the Taliban comply without further delay with the demand of the Security Council in paragraph 2 of resolution 1267 (1999) that requires the Taliban to turn over Usama bin Laden to appropriate authorities in a country where he has been indicted, or to appropriate authorities in a country where he will be returned to such a country, or to appropriate authorities in a country where he will be arrested and effectively brought to justice; 5
3. *Demands further* that the Taliban should act swiftly to close all camps where terrorists are trained within the territory under its control, and *calls* for the confirmation of such closures by the United Nations, inter alia, through information made available to the United Nations by Member States in accordance with paragraph 19 below and through such other means as are necessary to assure compliance with this resolution; 10
15
4. *Reminds* all States of their obligation to implement strictly the measures imposed by paragraph 4 of resolution 1267 (1999);
5. *Decides* that all States shall: 20
- (a) Prevent the direct or indirect supply, sale and transfer to the territory of Afghanistan under Taliban control as designated by the Committee established pursuant to resolution 1267 (1999), hereinafter known as the Committee, by their nationals or from their territories, or using their flag vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned; 25
30
- (b) Prevent the direct or indirect sale, supply and transfer to the territory of Afghanistan under Taliban control, as designated by the Committee, by their nationals or from their territories, of technical advice, assistance, or training related to the military activities of the armed personnel under the control of the Taliban; 35

Schedule 4B—*continued*

- (c) Withdraw any of their officials, agents, advisers, and military personnel employed by contract or other arrangement present in Afghanistan to advise the Taliban on military or related security matters, and urge other nationals in this context to leave the country; 5
6. *Decides* that the measures imposed by paragraph 5 above shall not apply to supplies of non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance or training, as approved in advance by the Committee, and *affirms* that the measures imposed by paragraph 5 above do not apply to protective clothing, including flak jackets and military helmets, exported to Afghanistan by United Nations personnel, representatives of the media, and humanitarian workers for their personal use only; 10
15
7. *Urges* all States that maintain diplomatic relations with the Taliban to reduce significantly the number and level of the staff at Taliban missions and posts and restrict or control the movement within their territory of all such staff who remain; 20
in the case of Taliban missions to international organizations, the host State may, as it deems necessary, consult the organization concerned on the measures required to implement this paragraph;
8. *Decides* that all States shall take further measures: 25
- (a) To close immediately and completely all Taliban offices in their territories;
- (b) To close immediately all offices of Ariana Afghan Airlines in their territories;

Schedule 4B—*continued*

- (c) To freeze without delay funds and other financial assets of Usama bin Laden and individuals and entities associated with him as designated by the Committee, including those in the Al-Qaida organization, and including funds derived or generated from property owned or controlled directly or indirectly by Usama bin Laden and individuals and entities associated with him, and to ensure that neither they nor any other funds or financial resources are made available, by their nationals or by any persons within their territory, directly or indirectly for the benefit of Usama bin Laden, his associates or any entities owned or controlled, directly or indirectly, by Usama bin Laden or individuals and entities associated with him including the Al-Qaida organization and *requests* the Committee to maintain an updated list, based on information provided by States and regional organizations, of the individuals and entities designated as being associated with Usama bin Laden, including those in the Al-Qaida organization; 5
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9. *Demands* that the Taliban, as well as others, halt all illegal drugs activities and work to virtually eliminate the illicit cultivation of opium poppy, the proceeds of which finance Taliban terrorist activities;
10. *Decides* that all States shall prevent the sale, supply or transfer, by their nationals or from their territories, of the chemical acetic anhydride to any person in the territory of Afghanistan under Taliban control as designated by the Committee or to any person for the purpose of any activity carried on in, or operated from, the territory under Taliban control as designated by the Committee; 25
30

Schedule 4B—*continued*

11. *Decides also* that all States are required to deny any aircraft permission to take off from, land in or over-fly their territories if that aircraft has taken off from, or is destined to land at, a place in the territory of Afghanistan designated by the Committee as being under Taliban control, unless the particular flight has been approved in advance by the Committee on the grounds of humanitarian need, including religious obligations such as the performance of the Hajj, or on the grounds that the flight promotes discussion of a peaceful resolution of the conflict in Afghanistan, or is likely to promote Taliban compliance with this resolution or with resolution 1267 (1999); 5
10
12. *Decides further* that the Committee shall maintain a list of approved organizations and governmental relief agencies which are providing humanitarian assistance to Afghanistan, including the United Nations and its agencies, governmental relief agencies providing humanitarian assistance, the International Committee of the Red Cross and non-governmental organizations as appropriate, that the prohibition imposed by paragraph 11 above shall not apply to humanitarian flights operated by, or on behalf of, organizations and governmental relief agencies on the list approved by the Committee, that the Committee shall keep the list under regular review, adding new organizations and governmental relief agencies as appropriate and that the Committee shall remove organizations and governmental agencies from the list if it decides that they are operating, or are likely to operate, flights for other than humanitarian purposes, and shall notify such organizations and governmental agencies immediately that any flights operated by them, or on their behalf, are thereby subject to the provisions of paragraph 11 above; 15
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13. *Calls upon* the Taliban to ensure the safe and unhindered access of relief personnel and aid to all those in need in the territory under their control, and underlines that the Taliban must provide guarantees for the safety, security and freedom of movement for United Nations and associated humanitarian relief personnel; 35

Schedule 4B—*continued*

14. *Urges* States to take steps to restrict the entry into or transit through their territory of all senior officials of the rank of Deputy Minister or higher in the Taliban, the equivalent rank of armed personnel under the control of the Taliban, and other senior advisers and dignitaries of the Taliban, unless those officials are travelling for humanitarian purposes, including religious obligation such as the performance of the Hajj, or where the travel promotes discussion of a peaceful resolution of the conflict in Afghanistan or involves compliance with this resolution or resolution 1267 (1999); 5
10
15. *Requests* the Secretary-General in consultation with the Committee:
- (a) To appoint a committee of experts to make recommendations to the Council within sixty days of the adoption of this resolution regarding how the arms embargo and the closure of terrorist training camps demanded in paragraphs 3 and 5 above can be monitored, including inter alia the use of information obtained by Member States through their national means and provided by them to the Secretary-General; 15
20
- (b) To consult with relevant Member States to put into effect the measures imposed by this resolution and resolution 1267 (1999) and report the results of such consultations to the Council; 25
- (c) To report on the implementation of the existing measures, assess problems in enforcing these measures, make recommendations for strengthening enforcement, and evaluate actions of the Taliban to come into compliance; 30
- (d) To review the humanitarian implications of the measures imposed by this resolution and resolution 1267 (1999), and to report back to the Council within 90 days of the adoption of this resolution with an assessment and recommendations, to report at regular intervals thereafter on any humanitarian implications and to present a comprehensive report on this issue and any recommendations no later than 30 days prior to the expiration of these measures; 35

Schedule 4B—*continued*

16. *Requests* the Committee to fulfil its mandate by undertaking the following tasks in addition to those set out in resolution 1267 (1999):
- (a) To establish and maintain updated lists based on information provided by States, regional, and international organizations of all points of entry and landing areas for aircraft within the territory of Afghanistan under control by the Taliban and to notify Member States of the contents of such lists; 5
 - (b) To establish and maintain updated lists, based on information provided by States and regional organizations, of individuals and entities designated as being associated with Usama bin Laden, in accordance with paragraph 8 (c) above; 10
 - (c) To give consideration to, and decide upon, requests for the exceptions set out in paragraphs 6 and 11 above; 15
 - (d) To establish no later than one month after the adoption of this resolution and maintain an updated list of approved organizations and governmental relief agencies which are providing humanitarian assistance to Afghanistan, in accordance with paragraph 12 above; 20
 - (e) To make relevant information regarding implementation of these measures publicly available through appropriate media, including through the improved use of information technology; 25
 - (f) To consider, where and when appropriate, a visit to countries in the region by the Chairman of the Committee and such other members as may be required to enhance the full and effective implementation of the measures imposed by this resolution and resolution 1267 (1999) with a view to urging States to comply with relevant Council resolutions; 30
 - (g) To make periodic reports to the Council on information submitted to it regarding this resolution and resolution 1267 (1999), including possible violations of the measures reported to the Committee and recommendations for strengthening the effectiveness of these measures; 35
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Schedule 4B—*continued*

17. *Calls upon* all States and all international and regional organizations, including the United Nations and its specialized agencies, to act strictly in accordance with the provisions of this resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to the date of coming into force of the measures imposed by paragraphs 5, 8, 10 and 11 above; 5
18. *Calls upon* States to bring proceedings against persons and entities within their jurisdiction that violate the measures imposed by paragraphs 5, 8, 10 and 11 above and to impose appropriate penalties; 10
19. *Calls upon* all States to cooperate fully with the Committee in the fulfilment of its tasks, including supplying such information as may be required by the Committee in pursuance of this resolution; 15
20. *Requests* all States to report to the Committee within 30 days of the coming into force of the measures imposed by paragraphs 5, 8, 10 and 11 above on the steps they have taken with a view to effectively implementing this resolution; 20
21. *Requests* the Secretariat to submit for consideration by the Committee information received from Governments and public sources on possible violations of the measures imposed by paragraphs 5, 8, 10 and 11 above;
22. *Decides* that the measures imposed by paragraphs 5, 8, 10 and 11 above shall come into force at 00.01 Eastern Standard Time, one month after the adoption of this resolution; 25
23. *Further decides* that the measures imposed by paragraphs 5, 8, 10 and 11 above are established for twelve months and that, at the end of this period, the Council will decide whether the Taliban has complied with paragraphs 1, 2 and 3 above, and, accordingly, whether to extend these measures for a further period with the same conditions; 30

Schedule 4B—*continued*

24. *Decides* if the Taliban comply with the conditions of paragraphs 1, 2 and 3 above, before the twelve-month period has elapsed, the Security Council shall terminate the measures imposed by paragraphs 5, 8, 10 and 11 above;
25. *Expresses* its readiness to consider the imposition of further measures, in accordance with its responsibility under the Charter of the United Nations, with the aim of achieving full implementation of this resolution and resolution 1267 (1999), inter alia, taking into account the impact assessment referred to in paragraph 15 (d) with a view to enhancing the effectiveness of sanctions and avoiding humanitarian consequences; 5
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26. *Decides* to remain actively seized of the matter.
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Schedule 4C s 4(1)
United Nations Security Council Resolution
1390 (2002)

Resolution 1390 (2002)

Adopted by the Security Council at its 4452nd meeting, on 16 January 2002 5

The Security Council,

Recalling its resolutions 1267 (1999) of 15 October 1999, 1333 (2000) of 19 December 2000 and 1363 (2001) of 30 July 2001,

Reaffirming its previous resolutions on Afghanistan, in particular resolutions 1378 (2001) of 14 November 2001 and 1383 (2001) of 6 December 2001, 10

Reaffirming also its resolutions 1368 (2001) of 12 September 2001 and 1373 (2001) of 28 September 2001, and *reiterating* its support for international efforts to root out terrorism, in accordance with the Charter of the United Nations, 15

Reaffirming its unequivocal condemnation of the terrorist attacks which took place in New York, Washington and Pennsylvania on 11 September 2001, expressing its determination to prevent all such acts, *noting* the continued activities of Usama bin Laden and the Al-Qaida network in supporting international terrorism, and expressing its determination to root out this network, 20

Noting the indictments of Usama bin Laden and his associates by the United States of America for, inter alia, the 7 August 1998 bombings of the United States embassies in Nairobi, Kenya and Dar es Salaam, Tanzania, 25

Determining that the Taliban have failed to respond to the demands in paragraph 13 of resolution 1214 (1998) of 8 December 1998, paragraph 2 of resolution 1267 (1999) and paragraphs 1, 2 and 3 of resolution 1333 (2000), 30

Condemning the Taliban for allowing Afghanistan to be used as a base for terrorists training and activities, including the export of terrorism by the Al-Qaida network and other terrorist groups as well as for using foreign mercenaries in hostile actions in the territory of Afghanistan, 35

Schedule 4C—*continued*

Condemning the Al-Qaida network and other associated terrorist groups, for the multiple criminal, terrorist acts, aimed at causing the deaths of numerous innocent civilians, and the destruction of property,

Reaffirming further that acts of international terrorism constitute a threat to international peace and security, 5

Acting under Chapter VII of the Charter of the United Nations,

1. *Decides* to continue the measures imposed by paragraph 8 (c) of resolution 1333 (2000) and *takes note* of the continued application of the measures imposed by paragraph 4 (b) of resolution 1267 (1999), in accordance with paragraph 2 below, and *decides* to terminate the measures imposed in paragraph 4 (a) of resolution 1267 (1999); 10
2. *Decides* that all States shall take the following measures with respect to Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them, as referred to in the list created pursuant to resolutions 1267 (1999) and 1333 (2000) to be updated regularly by the Committee established pursuant to resolution 1267 (1999) hereinafter referred to as “the Committee”; 15
 - (a) Freeze without delay the funds and other financial assets or economic resources of these individuals, groups, undertakings and entities, including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly, for such persons’ benefit, by their nationals or by any persons within their territory; 25 30

Schedule 4C—*continued*

- (b) Prevent the entry into or the transit through their territories of these individuals, provided that nothing in this paragraph shall oblige any State to deny entry into or require the departure from its territories of its own nationals and this paragraph shall not apply where entry or transit is necessary for the fulfilment of a judicial process or the Committee determines on a case by case basis only that entry or transit is justified; 5
- (c) Prevent the direct or indirect supply, sale and transfer, to these individuals, groups, undertakings and entities from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned and technical advice, assistance, or training related to military activities; 10 15
3. *Decides* that the measures referred to in paragraphs 1 and 2 above will be reviewed in 12 months and that at the end of this period the Council will either allow these measures to continue or decide to improve them, in keeping with the principles and purposes of this resolution; 20
4. *Recalls* the obligation placed upon all Member States to implement in full resolution 1373 (2001), including with regard to any member of the Taliban and the Al-Qaida organization, and any individuals, groups, undertakings and entities associated with the Taliban and the Al-Qaida organization, who have participated in the financing, planning, facilitating and preparation or perpetration of terrorist acts or in supporting terrorist acts; 25 30
5. *Requests* the Committee to undertake the following tasks and to report on its work to the Council with its observations and recommendations;
- (a) to update regularly the list referred to in paragraph 2 above, on the basis of relevant information provided by Member States and regional organizations; 35

Schedule 4C—*continued*

- (b) to seek from all States information regarding the action taken by them to implement effectively the measures referred to in paragraph 2 above, and thereafter to request from them whatever further information the Committee may consider necessary; 5
- (c) to make periodic reports to the Council on information submitted to the Committee regarding the implementation of this resolution;
- (d) to promulgate expeditiously such guidelines and criteria as may be necessary to facilitate the implementation of the measures referred to in paragraph 2 above; 10
- (e) to make information it considers relevant, including the list referred to in paragraph 2 above, publicly available through appropriate media; 15
- (f) to cooperate with other relevant Security Council Sanctions Committees and with the Committee established pursuant to paragraph 6 of its resolution 1373 (2001);
6. *Requests* all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement the measures referred to in paragraph 2 above; 20
7. *Urges* all States, relevant United Nations bodies, and, as appropriate, other organizations and interested parties to cooperate fully with the Committee and with the Monitoring Group referred to in paragraph 9 below; 25
8. *Urges* all States to take immediate steps to enforce and strengthen through legislative enactments or administrative measures, where appropriate, the measures imposed under domestic laws or regulations against their nationals and other individuals or entities operating on their territory, to prevent and punish violations of the measures referred to in paragraph 2 of this resolution, and to inform the Committee of the adoption of such measures, and *invites* States to report the results of all related investigations or enforcement actions to the Committee unless to do so would compromise the investigation or enforcement actions; 30
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Schedule 4C—*continued*

9. *Requests* the Secretary-General to assign the Monitoring Group established pursuant to paragraph 4 (a) of resolution 1363 (2001), whose mandate expires on 19 January 2002, to monitor, for a period of 12 months, the implementation of the measures referred to in paragraph 2 of this resolution; 5
 10. *Requests* the Monitoring Group to report to the Committee by 31 March 2002 and thereafter every 4 months;
 11. *Decides* to remain actively seized of the matter.
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Schedule 5
Amendment to Schedule of Mutual Assistance in
Criminal Matters Act 1992

30	The Convention for the Suppression of Acts of Nuclear Terrorism, adopted by the General Assembly of the United Nations at New York on 13 April 2005	An offence against the following section of the Terrorism Suppression Act 2002	5						
		<table border="0"> <tr> <td style="text-align: right; padding-right: 10px;"><i>section</i></td> <td style="padding-right: 10px;"><i>subject matter</i></td> <td></td> </tr> <tr> <td style="text-align: right;">13E</td> <td>offences involving radioactive material and radioactive devices</td> <td style="text-align: right; vertical-align: top;">10</td> </tr> </table>	<i>section</i>	<i>subject matter</i>		13E	offences involving radioactive material and radioactive devices	10	
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Legislative history

21 March 2007	Introduction (Bill 105–1)
29 March 2007	First reading and referral to Foreign Affairs, Defence and Trade Committee
