Counter-Terrorism 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 Counter-Terrorism Bill and recommends by majority that it be passed with the amendments shown.

Background

The Counter-Terrorism Bill supplements the Terrorism Suppression Act 2002. The Act contains the provisions required to implement in New Zealand law the International Convention on the Suppression of Terrorist Bombings, the International Convention on the Suppression of the Financing of Terrorism, and some of the provisions required to implement Resolution 1373 adopted by the United Nations Security Council on 28 September 2001, following the 11 September 2001 terrorist attacks on the United States of America.

The bill amends the Crimes Act 1961, the Terrorism Suppression Act 2002, and a number of other Acts, in order to:

- implement in domestic law the requirements of the Convention on the Marking of Plastic Explosives for the Purpose of Identification and the Convention on the Physical Protection of Nuclear Materials;
- implement in domestic law the remaining obligations from United Nations Security Council Resolution 1373;

- enhance the ability of government agencies to respond to terrorist threats through investigative powers and legislative provisions identified as necessary from an inter-agency review of domestic legislation. These powers and provisions cover different types of offences that could be committed or threatened by a terrorist or other individual.

This commentary outlines our consideration of the major issues raised in relation to the bill, and the amendments the majority of us recommend.

Approach to new provisions in the bill

We considered whether the provisions in the bill should be terrorism-specific, so they do not unwittingly capture other activity, or whether they should be of general application. The committee was presented with evidence from some submitters, including an article by Professor Matthew Palmer, arguing that terrorist acts are no different from normal crimes such as murder or bombing, except for the political, ideological, or religious motive behind the terrorist act. Professor Palmer argues that there are no good policy grounds to justify a separate, parallel regime of counter-terrorism law. He argues that factors unduly inhibiting to effective law enforcement should be amended in general, and that offenders should be treated the same regardless of whether their acts are committed for criminal or ideological/terrorist reasons.

The majority agree that terrorism should be addressed within the existing scope of criminal law wherever feasible and that amendments required to combat terrorism may be equally justifiable for the investigation and prosecution of other serious offending. For this reason, we have adopted a broad approach to most of the provisions of the bill. However, as an exception to this approach, provisions that implement New Zealand's international obligations under the 12 terrorism-related conventions that New Zealand is, or will become party to, are referenced to terrorism. Although earlier legislation implemented these conventions without reference to terrorism, it is clear that the type of conduct referred to, such as hijacking, is terrorist in nature. In addition, the designation process and terrorist offence provisions in the Terrorism Suppression Act were considered necessary for compliance with the Bombings and Financing Conventions, as well as Security Council Resolution 1373.

Consideration given to dividing the bill into terrorism and non-terrorism specific bills

Consideration was given to dividing the bill into two separate bills—one to include all the terrorism specific provisions and another to include all the remaining non-terrorism specific provisions. After seeking advice from the Minister of Justice on this matter, the majority agree that the non-terrorism specific provisions should remain within the bill.

The Minister told us that it is accepted that there are strong links between terrorist activity and other organised crime, such as arms smuggling and drug importation. However, these activities are not always associated with terrorism and terrorist acts are essentially the same as ordinary criminal offences committed with a different motive. The investigative powers contained in the bill are critical to allowing police to identify terrorist activity effectively. Therefore, we do not believe it is possible to make this distinction in legislating for investigation of these activities. We note that a wide range of public submissions was received on the bill, including submissions from legal experts and civil liberties groups.

We accept that defeating terrorism requires not just legal changes specifically relating to terrorism, but also to interception, search, and tracking powers. However, these latter provisions as drafted in the bill apply to crimes other than terrorism.

It is important the Government ensures that the public and submitters are fully informed of the scope of bills, so that select committees can fulfill their role. This could be achieved by ensuring that the title of the bill and the explanatory note, particularly the introduction, give a clearer indication of the full scope of the bill.

Definition of ‘terrorist act’

We considered the definition of ‘terrorist act’ in the Terrorism Suppression Act in the light of submitters’ concerns that the definition has the potential to be applied to legitimate protest activity. As noted above, a definition of ‘terrorist act’ is necessary for the implementation of the international instruments in New Zealand domestic law.

A terrorist act, as defined in section 5(2) of the Terrorism Suppression Act, is an act:

- carried out to advance an ideological, political, or religious cause, and;

- that is intended to induce civilian terror, or unduly compel a government or international organisation to do or not do something, and;
- that is intended to cause one or more of the following outcomes:
  a) death or serious bodily injury to at least one person;
  b) serious risk to the health or safety of a population;
  c) serious interference with or disruption to infrastructure that is likely to endanger human life;
  d) destruction or damage to property of great importance, or major economic loss, or major environmental damage, if likely to result in one of the first three outcomes;
  e) introduction or release of a disease-bearing organism that is likely to devastate the national economy.

Section 5(5) of the Act states:

To avoid doubt, the fact that a person engages in any protest, advocacy, or dissent, or engages in any strike, lockout, or other industrial action, is not, by itself, a sufficient basis for inferring that the person (has terrorist intent).

Submitters suggested examples that could potentially be caught by the definition contained in the Act, but none met all three of the required components. Causing major economic loss or damage to property of great importance in the course of protest action is not sufficient by itself. Although the protest action is very likely conducted for ideological or political purposes, with a view to changing government or corporate practice, for the definition to apply, further elements would be required. The action would also have to be likely to result in danger to human life, or the health and safety of a population, or damage to infrastructure that is likely to endanger human life and be 'undue'. In this regard, the Court is required to take an interpretation that is consistent with the New Zealand Bill of Rights Act 1990 that will protect rights, such as the freedom of speech and association, to the greatest extent possible. There is no intent for the definition of 'terrorist act' to capture cases of civil disobedience, because civil disobedience is not normally intended to cause one of the listed outcomes, which are very serious. The fact that such an outcome may occur, perhaps accidentally, is not enough because the definition requires intent to be proved.

Section 5(5) of the Act does not, and is not intended to, protect industrial or other protest action that is intended to go to the extreme

lengths that intends outcomes such as danger to human life, serious risk to the health and safety of a population, or devastation of the national economy. This explains the drafting of section 5(5). Protest action, 'by itself', is not sufficient proof of terrorist intent. However, when there is additional evidence that protest action was intended to cause one of the outcomes listed above, and if the other two parts of the definition are also satisfied, that may suffice. In other words, the right to protest is not a right to indulge in unrestrained criminal activity. It has always been the case that those who exceed their democratic right to protest by committing violent acts or damaging property, for example, can face criminal charges. Even under the Bill of Rights Act the rights to freedom of expression and association are not absolute. Therefore, the majority do not believe that any amendment to the definition of 'terrorist act' is necessary in this regard.

Amendment to allow changes to designated entities

We recommend amending the designation process in the Terrorism Suppression Act to enable changes to be made to the details of an already-designated entity in accordance with updated information issued by the United Nations, without affecting the original period of designation. The committee established by the United Nations Security Council under Resolution 1267 has subsequently approved a number of amendments to the list of individuals and organisations already designated as terrorist entities. The changes include amending the spelling of names, new aliases in relation to existing names, and changing entity details such as date of birth. The current provisions of the Act do not allow New Zealand to update its list to reflect the amendments made by the committee. We believe it is important, given the importance of the list of designated entities, that New Zealand is able to accurately incorporate the names and details issued by the United Nations. We note that this does not in any way affect the time taken to make non-United Nations designations of entities.

Adequacy of existing legislation for biosecurity threats

We do not agree with the suggestion that current legislation sufficiently provides for biosecurity threats. As noted above, an interagency review of domestic legislation, including consultation with the Ministry of Agriculture and Forestry, Ministry for the Environment, Ministry of Health, and the Department of Prime Minister and

Cabinet, was conducted after the 11 September terrorist attacks. This review illustrated a clear need to focus on the threat posed to New Zealand, as a farming and exporting nation, from the introduction of biosecurity threats, such as Bovine Spongiform Encephalopathy (BSE) or foot and mouth disease. Although there are offences in the Biosecurity Act 1993 and the Hazardous Substances and New Organisms Act 1996 that may apply, these Acts are primarily focused on regulation and on unauthorised possession or release of unwanted organisms or hazardous substances. Further, the penalties under these Acts do not adequately reflect the criminality of the conduct that has been identified as the main threat.

We note that existing offences in sections 200 and 201 of the Crimes Act 1961, relating to contaminating products intended for human consumption, are only applicable to substances administered to a person, or disease or sickness 'caused or produced'. The new offences in the bill address contamination earlier in the chain of events, and address a much broader threat than danger just to individual persons, or damage to property. We note that the wording of these provisions is consistent with other legislation in the biosecurity area.

Scope of new offences in the Crimes Act 1961

We recommend amending new section 298A of the Crimes Act in clause 6 of the bill so that it requires both serious risk to the health and safety of an animal population, and major damage to the national economy. The amendment is more consistent in seeking to address the problem of the damage that could result from the introduction of foot and mouth disease to New Zealand, as a farming and exporting nation.

We also considered the use of 'recklessness' in new sections 298A and 298B. Although recklessness may appear inconsistent with the offence of infecting persons with disease, because it provides for a lower standard for animals and products than persons, the focus of these provisions is not only on protecting animals and property but on New Zealand's economy, reputation, and the health and safety of the population. Such conduct would have the effect of terrorising the population. We are advised that it may also be difficult to prove intent in respect of highly infectious substances. Therefore, we consider that defendants should not be able to escape liability if they deliberately run an unreasonable risk, which is the definition of 'recklessness'.

Threatening harm to persons or property

We recommend that new section 307A(1) be amended, but that section 307A(2) remain as drafted, consistent with section 5(5) of the Terrorism Suppression Act. Although several criminal provisions already exist, such as in the Summary Offences Act 1981 and Hazardous Substances and New Organisms Act 1996, these provisions are targeted at low-level 'nuisance' behaviour, with appropriate low-level penalties. Increasing the penalties for these offences would have the effect of dramatically increasing the liability for this kind of behaviour. There are also some Crimes Act offences that may be applicable. New section 307A, on the other hand, is an aggravated offence that is focused on terrorist-type threats of false communications that cause significant disruption to the population or commercial or government interests. We believe that this provision is necessary in order to adequately capture these elements.

We note that part of new section 307A was mistakenly omitted in the original drafting of the bill. The new section was intended to read, 'communicates information about harm to persons or property that is known or believed to be false.' We recommend a change to this wording that requires that any person committing the offence communicate information of a type specified which they believe to be false. This amendment should provide the proposed new section with greater specificity and make the application of this provision clear. This will address the concerns of submitters.

Evidence of intercepted private communications

The majority recommend that an interception warrant be available for terrorism-related offences, or conspiracy to commit such offences, as provided for in clauses 8 and 26 of the bill. A terrorism-related offence is defined as an offence under section 7 (terrorist bombing), section 8 (financing terrorism), section 9 (dealing with the property of a terrorist or associated entity), section 10 (making property or financial services available to a terrorist or associated entity), section 12 (recruiting members of terrorist groups), section 13 (participating in terrorist groups) and new section 13A (relating to harbouring or concealing terrorists) of the Terrorism Suppression Act.

Under current provisions it is not possible to get an interception warrant in relation to the majority of terrorism offences. The term 'serious violent offence' may capture terrorist bombing, which is an offence under section 7 of the Terrorism Suppression Act, but it is

unlikely that any other terrorism offences would be captured because they do not need to be linked to a specific serious violent offence. The other eligible offences under the Crimes Act must be committed by a member of an organised criminal enterprise and it is unlikely that a terrorist group would fit this definition. Nor are the drug dealing offences under the Misuse of Drugs Amendment Act likely to be applicable. Although there is no international requirement for an interception power in relation to terrorist offences, it may be argued that such a power is necessary to give effect to the spirit of these international obligations, by providing for the effective investigation of such offences. Interception of private communications may also be necessary to prove certain elements of terrorist offences, such as knowledge that an entity was designated.

Provisions required to implement the Convention on the Physical Protection of Nuclear Materials

New section 13C of the Terrorism Suppression Act inserted by clause 12 of the bill contains the legislative changes that are necessary to implement the Nuclear Materials Convention in domestic law. The Convention applies to the international transport of nuclear material used for peaceful purposes and, with some exceptions, the domestic use, storage, and transport of such material. The purpose of new section 13C is to implement Article 7 of the Convention, which requires the creation of certain offences relating to ‘nuclear material’.

We do not agree that the term ‘lawful authority’ should be omitted in order to make it an offence to arrive in New Zealand carrying nuclear weapons or that any further amendments are necessary. Removing this term would result in an offence that is much wider than is required by the Convention. The offence currently applies to ‘nuclear material’ as defined in the Convention, which essentially refers to those isotopes of uranium and plutonium that more easily undergo the process of nuclear fission. ‘Nuclear material’ cannot of itself be categorised or used as a nuclear weapon because it requires explosive technology. Unlawful possession of nuclear material is encompassed by offences in the Hazardous Substances and New Organisms Act. The New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987 contains its own regime relating to ‘nuclear explosive devices’ as defined in section 2, including an offence that prohibits the possession of ‘nuclear exploding devices’ by New Zealand citizens and residents.

New Zealand Customs Service's power to detain terrorist property

We recommend that there be a requirement in new section 47E that the New Zealand Customs Service take all reasonable steps to ensure that not less than 24 hours' notice of the hearing of an application under this provision is given to the person from whom property has been seized. We also recommend that references to 'lawful search' in clause 15 be amended to refer to 'search' only, in order to be consistent with other legislation.

The Terrorism Suppression Act contains provisions that have the effect of freezing the property of designated terrorist entities by making it an offence to 'deal with' that property. However, it remains possible for a designated terrorist entity to arrange for property to be carried across the border, because it is questionable whether property crossing the border constitutes 'dealing'. The amendments in the bill address this issue in relation to all property.

Not all entities suspected of terrorist involvement will have been designated. Although ideally the designation process would always be used, emergency situations may occur where the New Zealand Customs Service identifies funds crossing the border that it suspects are terrorist property, but it has no power to intervene because the entity has not been designated. Designation may take a number of hours by which time the funds (particularly if they are in the possession of a person who cannot be detained) will have left the Customs-controlled area. Highly mobile forms of property, such as cash, gemstones, and precious metals, are of particular concern as they can be readily transacted on the black market and are difficult to trace.

There is no justification for distinguishing the proceeds of terrorist crime from the proceeds of any other kind of serious crime. All tainted property can already be seized by order of the court under the Proceeds of Crime Act 1991. The same policy has been consistently applied to the proceeds of serious criminal offending generally. However, the existing and proposed 'tainted property' provisions relate to crime already committed or attempted, except for funds allocated for terrorist financing as required by the Financing Convention. The provisions in clause 15 will apply to property that, although it is the property of designated or suspected terrorists, cannot necessarily be linked to the commission of a particular crime. This provision is essential because the serious consequences of terrorism justify earlier, preventative intervention. We believe the

requirement for the New Zealand Customs Service to take all reasonable steps is important, as it may not be possible to identify the owner of property or locate a person who is overseas.

Requirements to assist in computer access

Privilege against self-incrimination

We recommend amending clause 33 by inserting new subsection (2A) into new section 198B of the Summary Proceedings Act 1957 to explicitly preserve the right against self-incrimination. Whether a broadly worded statutory provision requiring the supply of information, and making no reference to the privilege against self-incrimination, overrides this privilege is a question of its construction. A Court must be satisfied that a statutory power of questioning was meant to exclude the privilege. We are advised that this conclusion is unlikely to be reached unless it is either explicitly provided for, or is a necessary implication of the provision. Our recommended amendments make it clear that a person is required to provide information that is reasonable and necessary to allow the police to access data held in, or accessible from, a computer in particular circumstances, but that does not itself tend to incriminate the person. We note that there are several other instances of statutory obligations on citizens to assist police or other agents.

Definition of 'specified person'

We considered whether the definition of a 'specified person', who may be required to provide information or assistance to the police under new section 198B, is too broad. New section 198B requires a 'specified person' to have 'relevant knowledge'. In this instance, 'relevant knowledge' is limited to the knowledge that would enable the police to access data held in, or accessible from, a computer that is on the premises named in the warrant. Any person who does not have this knowledge is outside the scope of this section. We do not propose any changes to this definition.

Tracking devices

Section 13 of the Misuse of Drugs Act 1978 currently provides for the use of tracking devices by police and the New Zealand Customs Service in the investigation of drug-dealing offences. The use of tracking devices to investigate other offences is unregulated, except for existing law relating to trespass, criminal damage, privacy, and

search and seizure. Clause 34 repeals section 13 of the Misuse of Drugs Act and provides a general regime for authorised public officers to apply to a District Court Judge or High Court Judge for a warrant authorising the use of a tracking device. An emergency procedure is provided for circumstances where it is not reasonably practicable to obtain a tracking device warrant. We note that the bill governs the use of tracking devices only by enforcement agencies. In addition to the recommended amendments discussed below, we also recommend that provision be made for the security of documents associated with the application for a tracking device warrant.

Definition of tracking device

We recommend the definition of 'tracking device' be amended to ensure that it covers alarms that indicate the object has been opened or tampered with. This amendment is a response to concerns of the New Zealand Customs Service that the definition in the bill did not include this important aspect.

Agencies able to use tracking devices

We recommend omitting the term 'authorised public officer' from clause 34 and making specific reference to police and customs officers as agencies able to use tracking devices. We agree with submitters that the definition of 'authorised public officer' would allow any government agency that enforces the law to apply for a tracking device warrant. We note that only the police and customs use tracking devices and other agencies, such as the New Zealand Immigration Service, can seek police assistance if the use of a tracking device is deemed necessary. This is consistent with other powers, such as those contained in a search warrant issued under section 198 of the Summary Proceedings Act 1957.

Use of tracking device without a warrant

We recommend amending new section 200G to require a written report from a Customs or police officer on the exercise of the non-warrant power in all cases. Further, we recommend certain amendments to this section to protect officers acting in good faith, while ensuring that New Zealand Bill of Rights Act rights are preserved.

The majority do not agree with submitters who argue there is no justification for the use of tracking devices without warrant. There will inevitably be emergency situations where it is not practicable to

obtain a warrant in advance of attaching a tracking device. The officer must make a written report on the exercise of the emergency power within 72 hours of placing the device. In addition, if it is not earlier removed, the officer must, within 72 hours of placing the device, apply to a Judge for a warrant to continue monitoring, a warrant to remove the device, or directions to leave the device in place. Thus, in all cases, there is judicial involvement when a device is used, even if the judicial involvement in emergency situations is after the fact. We note that police and Customs officers are currently authorised to use tracking devices without warrant under section 13 of the Misuse of Drugs Amendment Act 1978 and that there are many examples of police powers to search without a warrant.

Powers of entry for use of tracking device

We recommend that the powers of entry in section 200D also apply to the emergency use of a tracking device without a warrant under section 200G. We agree that the power of entry for the purposes of installing, maintaining, removing or monitoring a tracking device should also apply to the use of a tracking device without a warrant.

Further consideration of offence for covert use of tracking device

We considered the recommendation of the Privacy Commissioner that the bill include a new offence provision that prohibits the covert use of tracking devices without the consent of the person concerned or the authority of a warrant. The majority do not agree that such an offence is appropriate in this bill. As noted above, the regime outlined in the bill governs only the use of tracking devices by enforcement agencies and does not regulate wider use. At this time, there is no evidence that the illegitimate use of tracking devices is a problem in New Zealand. Although the Privacy Commissioner notes similar provisions have been used in overseas jurisdictions, we are advised that not all overseas jurisdictions have such a provision. The majority are also greatly concerned that including such a provision without consultation could have unknown and detrimental implications. However, we do believe that such a provision requires further consideration. We urge the Government to consider the recommendation of the Privacy Commissioner in the near future.

Green minority view

The Green member believes it is wrong that general amendments to the Crimes Act, Summary Proceedings Act and Misuse of Drugs Act, with no specific reference to terrorism, are included in a 'counter-terrorism' bill. Their presence risks misleading the public as to the bill's nature, and also acts as a restraint on criticism of the bill, because people's aversion to be seen as soft on terrorism.

In his view the proposed new section 307A of the Crimes Act could lead to heavy penalties (up to seven years' jail) for protesters and strikers, because they often threaten to engage in actions, which cause 'major economic loss to one or more persons'. Disruptive civil disobedience has this effect, as do strikes. In fact, strikers act on the understanding that the more disruption they can effect in their work-place the more pressure there will be on their employer to offer a concession. The 'comfort clause' 307A(2), that a strike or protest 'by itself' is not criminal, does not stop strikers or protesters being prosecuted if they threaten major disruption.

The police could more easily misuse interception warrants for fishing expeditions under the new section 312N of the Crimes Act and the new section 26 of the Misuse of Drugs Act. Warrants could be gained for one purpose under either Act and then used to search for evidence on a wide range of offences.

The long-held common law privilege against self-incrimination is violated by the proposed new section 198B of the Summary Proceedings Act. Any police officer searching premises under warrant can demand, under penalty of three months' imprisonment, that the suspect to provide passwords and encryption keys to get into all the files on his or her computer. In the Green member's opinion, it is contradictory that the bill does allow a suspect to withhold 'information tending to incriminate' yet not apply that provision to information sitting on the suspect's computer.

The bill amends the Summary Proceedings Act to give police a general power, under warrant, to track the movements of people. The Green member believes the power given is too wide, covering any offence, and even when there is only a suspicion that the offence 'will be committed' at some future time. He is also concerned that tracking devices can be installed prior to any warrant application. The Green member and the Progressive member support the Privacy Commissioner's draft amendment to make it a crime for private citizens to use a tracking device without the consent of the person so

tracked. The Green member has heard no good reasons why the Privacy Commissioner's amendment should not be supported.

The Green member supports those amendments to the Terrorism Suppression Act bringing New Zealand into compliance with the Nuclear Materials Convention and the Plastic Explosives Convention. However, he opposes those amendments to the act, such as those relating to 'harbouring' which are based on a flawed terrorist designation process in the original Act. The designation process is done by a politician, not a judge, using an overly broad definition of terrorism, and even drawing on secret evidence that the person or organisation so designated is not allowed to see in any appeal process.

The Green member believes that the definition of terrorism could catch protest groups or strikers who, while not intending to endanger human life, engage in action (such as a strike in a hospital) that could result in the consequence 5(2)(c): 'serious interference with or disruption to infrastructure that is likely to endanger human life'. He believes it could also catch those New Zealand solidarity groups that actively support armed liberation movements overseas, (such as Nelson Mandela's African National Congress during the apartheid era). Such movements may disrupt infrastructure and endanger human life, but many New Zealanders may consider them to be freedom fighters rather than terrorists. The Green member also opposes giving Customs officers the right to seize material from people not yet designated as terrorists.

Appendix

Committee process

The Counter-Terrorism Bill was referred to the committee on 1 April 2003. The closing date for submissions was 9 May 2003. We received and considered 25 submissions from interested groups and individuals. We heard 11 submissions. Hearing of evidence took 2 hours 11 minutes and consideration took 3 hours and 20 minutes.

We received advice from the Ministry of Justice, and from the Attorney-General on the bill's compliance with the New Zealand Bill of Rights Act 1990.

Committee membership

Hon Peter Dunne (Chairperson, United Future)

Luamanuvao Winnie Laban (Deputy Chairperson, Labour)

Tim Barnett (Labour)

Martin Gallagher (Labour)

Keith Locke (Green)

Dr Wayne Mapp (National)

Ron Mark (New Zealand First)

Hon Matt Robson (Progressive)

Dr the Hon Lockwood Smith (National)

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
Struck out (unanimous) Subject to this Act,	Text struck out unanimously
New (majority) Subject to this Act,	Text inserted by a majority
New (unanimous) Subject to this Act,	Text inserted unanimously
〈*Subject to this Act,*〉	Words struck out by a majority
〈Subject to this Act,〉	Words inserted by a majority

Hon Phil Goff

Counter-Terrorism Bill

Government Bill

Contents

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Counter-Terrorism Act **2002**.

2 Commencement

Struck out (majority)

(1) **Sections 13, 15, 16, 17, 19, 20, 21, 22, and 23** come into force on a date to be appointed by the Governor-General by Order in Council.

(2) **Section 13B** of the Terrorism Suppression Act 2002, as inserted into that Act by **section 12**, comes into force on a date to be appointed by the Governor-General by Order in Council.

New (majority)

(1) **Sections 3 to 34** and the Schedule come into force on a date to be appointed by the Governor-General by Order in Council; and—

(a) one or more Orders in Council may appoint different dates for different provisions; and

(b) in the case of a provision inserting or substituting 2 or more provisions in an Act other than this Act, one or more Orders in Council may appoint different dates for different provisions inserted or substituted.

(3) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Part 1
Amendments to Crimes Act 1961

3 Crimes Act 1961 called principal Act in this Part

In this Part, the Crimes Act 1961[1] is called "the principal Act".

[1] 1961 No 43

4 Extraterritorial jurisdiction in respect of certain offences with transnational aspects

Section 7A(1) of the principal Act is amended—

(a) by inserting, after the words "proceedings may be brought for", the words "any offence against this Act committed in the course of carrying out a terrorist act (as defined in section 5(1) of the Terrorism Suppression Act 2002) or"; and

(b) by omitting the words "or section 257A", and substituting the words "section 257A, **section 298A, ⟨*and*⟩ ⟨or⟩ section 298B**".

5 Attorney-General's consent required where jurisdiction claimed under section 7A

(1) Section 7B(1) of the principal Act is amended by omitting the words "or section 257A" and substituting the words "section 257A, **section 298A, or section 298B**".

(2) Section 7B of the principal Act is amended by adding the following subsection:

"(3) Proceedings for an offence against this Act committed in the course of carrying out a terrorist act ⟨(as defined in section 5(1) of the Terrorism Suppression Act 2002)⟩ cannot be brought in a New Zealand court against a person without the Attorney-General's consent, if jurisdiction over the person is claimed solely by virtue of ⟨*this section*⟩ ⟨section 7A⟩."

6 New sections 298A and 298B inserted

The principal Act is amended by inserting, after section 298, the following sections:

Struck out (majority)

"298A **Infecting animals with disease or sickness**

"(1) Every one is liable to imprisonment for a term not exceeding 10 years who, without lawful justification or reasonable excuse, directly or indirectly causes or produces in an animal any disease or sickness resulting in any of the outcomes specified in **subsection (2)** either—

"(a) with the intent of causing any of those outcomes; or

"(b) being reckless as to whether any of those outcomes results.

"(2) The outcomes referred to in **subsection (2)** are—

"(a) a serious risk to the health or safety of an animal population; or

"(b) anything likely to result in major damage to the national economy of New Zealand.

New (majority)

"298A **Causing disease or sickness in animals**

"(1) Every one is liable to imprisonment for a term not exceeding 10 years who, without lawful justification or reasonable excuse, directly or indirectly causes or produces in an animal a disease or sickness that causes a situation of a kind described in **subsection (2)** to occur, either—

"(a) intending a situation of that kind to occur; or

"(b) being reckless as to whether a situation of that kind occurs.

"(2) A situation of a kind referred to in **subsection (1)** is a situation that—

"(a) constitutes a serious risk to the health or safety of an animal population; and

"(b) is likely, directly or indirectly, to cause major damage to the national economy of New Zealand.

"298B **Contaminating food, crops, water, or other products**

Struck out (majority)

Every one is liable to imprisonment for a term not exceeding 10 years who, without lawful justification or reasonable excuse, contaminates food, crops, water, or any other products, knowing, or being reckless as to whether the food, crops, water, or products were intended for human consumption and—

"(a) with intent to cause harm to a person; or

"(b) being reckless as to whether a person may be harmed; or

"(c) with intent or being reckless as to whether major economic loss is caused to any person; or

"(d) with intent or being reckless as to whether major damage to the national economy of New Zealand."

New (majority)

Every one is liable to imprisonment for a term not exceeding 10 years who contaminates food, crops, water, or any other

New (majority)

products, without lawful justification or reasonable excuse, and either knowing or being reckless as to whether the food, crops, water, or products are intended for human consumption, and—

"(a) intending to harm a person or reckless as to whether any person is harmed; or

"(b) intending to cause major economic loss to a person or reckless as to whether major economic loss is caused to any person; or

"(c) intending to cause major damage to the national economy of New Zealand or reckless as to whether major damage is caused to the national economy of New Zealand."

7 New section 307A 〈inserted〉

The principal Act is amended by inserting, after section 307, the following section:

"307A 〈***Threatening to do harm to persons***〉 〈**Threats of harm to people**〉 **or property**

Struck out (majority)

"(1) Every one who intends to cause significant disruption to commercial interests or government interests is liable to imprisonment for a term not exceeding 7 years if, without lawful justification or reasonable excuse, that person—

"(a) threatens to do an act to cause harm to persons or property:

"(b) communicates information about harm to persons or property.

New (majority)

"(1) Every one is liable to imprisonment for a term not exceeding 7 years if, without lawful justification or reasonable excuse, and intending to achieve the effect stated in **subsection (1A)**, he or she—

New (majority)

"(a) threatens to do an act likely to have one or more of the results described in **subsection (1B)**; or

"(b) communicates information—

"(i) that purports to be about an act likely to have one or more of the results described in **subsection (1B)**; and

"(ii) that he or she believes to be false.

"(1A) The effect is causing a significant disruption of one or more of the following things—

"(a) the activities of the civilian population of New Zealand:

"(b) something that is or forms part of an infrastructure facility in New Zealand:

"(c) civil administration in New Zealand (whether administration undertaken by the Government of New Zealand or by institutions such as local authorities, District Health Boards, or boards of trustees of schools):

"(d) commercial activity in New Zealand (whether commercial activity in general or commercial activity of a particular kind).

"(1B) The results are—

"(a) creating a risk to the health of one or more people:

"(b) causing major property damage:

"(c) causing major economic loss to one or more persons:

"(d) causing major damage to the national economy of New Zealand.

"(2) To avoid doubt, the fact that a person engages in any protest, advocacy, or dissent, or engages in any strike, lockout, or other industrial action, is not, by itself, a sufficient basis for inferring that a person has committed an offence ⟨*under*⟩ ⟨against⟩ **subsection (1)**."

New (majority)

7A Interpretation

Section 312A(1) of the principal Act is amended by adding the following definition

New (majority)

"**terrorist offence** means an offence against any of sections 7, 8, 9, 10, 12, 13, and **13A** of the Terrorism Suppression Act 2002."

7B New sections 312CC and 312CD inserted

The principal Act is amended by inserting, after section 312CB, the following sections:

"312CC **Application by police for warrant to intercept private communications relating to terrorist offences**

"(1) An application may be made to a Judge of the High Court for a warrant for any member of the police to intercept a private communication by means of a listening device if there are reasonable grounds for believing—

"(a) that a terrorist offence has been committed, or is being committed, or is about to be committed; and

"(b) if the offence has yet to be committed, that the use of a listening device to intercept private communications is likely to prevent its commission; and

"(c) that it is unlikely that without the granting of such a warrant the police investigation of the case can be brought to a successful conclusion or, as the case may be, the commission of the offence can be prevented.

"(2) The application must be made by a commissioned officer of the police, in writing and on oath, and must set out the following particulars:

"(a) a statement of the facts relied on to show that there are reasonable grounds for believing—

"(i) that a terrorist offence has been committed, or is being committed, or is about to be committed; and

"(ii) if the offence has yet to be committed, that the use of a listening device to intercept private communications is likely to prevent its commission; and

"(b) a description of how it is proposed to intercept private communications; and

"(c) either,—

New (majority)

"(i) if they are known, the name and address of the suspect the interception of whose private communications there are reasonable grounds for believing will assist the police investigation of the case or (as the case may be) prevent the commission of a terrorist offence; or

"(ii) if the name and address of the suspect are not known, a general description of the premises or place in respect of which it is proposed to intercept private communications, being premises or a place believed to be used for any purpose by a person—

"(A) who it is believed has committed, or is committing, or is about to commit, a terrorist offence; or

"(B) who it is believed was involved, or is involved, or will be involved, in the commission of the offence; and

"(d) a statement of the period for which the warrant is requested; and

"(e) whichever of the following is applicable:

"(i) both—

"(A) a general description of the investigative procedures and techniques that have been tried, but have failed to enable the police to conclude their investigation of the case successfully or (as the case may be) failed to help prevent the commission of the offence; and

"(B) a statement of why those procedures and techniques have failed:

"(ii) a statement of why it appears that investigative procedures and techniques other than the interception of private communications—

"(A) are unlikely to enable the police to conclude their investigation of the case successfully or (as the case may be) to help prevent the commission of the offence, or

New (majority)

"(B) are likely to be too dangerous to adopt in the particular case:

"(iii) a statement of why the case is considered so urgent that it would be impracticable for the police to carry out their investigation using only investigative procedures and techniques other than the interception of private communications.

"312CD **Matters of which Judge must be satisfied in respect of applications relating to terrorist offences**

"(1) A Judge may grant an interception warrant on an application under **section 312CC** if satisfied that it is in the best interests of the administration of justice to do so, and—

"(a) that there are reasonable grounds for believing,—

"(i) that a terrorist offence has been committed, or is being committed, or is about to be committed; and

"(ii) if the offence has yet to be committed, that the use of a listening device to intercept private communications is likely to prevent its commission; and

"(b) that there are reasonable grounds for believing—

"(i) that evidence relevant to the investigation of the case will be obtained through the use of a listening device to intercept private communications; or

"(ii) if the offence has yet to be committed, that evidence relevant to the prevention of the offence will be obtained through the use of a listening device to intercept private communications; and

"(c) whichever of the following is applicable:

"(i) that investigative procedures and techniques other than the interception of private communications have been tried, but have failed to enable the police to conclude their investigation of the case successfully or (as the case may be) failed to help prevent the commission of the offence; and

New (majority)

"(ii) that investigative procedures and techniques other than the interception of private communications—

"(A) are unlikely to enable the police to conclude their investigation of the case successfully or (as the case may be) to help prevent the commission of the offence, or

"(B) are likely to be too dangerous to adopt in the particular case:

"(iii) that the case is so urgent that it would be impracticable for the police to carry out their investigation using only investigative procedures and techniques other than the interception of private communications; and

"(d) that the private communications proposed to be intercepted are not likely to be privileged in proceedings in a court of law by virtue of Part III of the Evidence Amendment Act (No 2) 1980 or of any rule of law that confers privilege on communications of a professional character between a barrister or solicitor and a client.

"(2) In determining whether or not the granting of an interception warrant under **subsection (1)** is in the best interests of the administration of justice, the Judge must consider the extent to which the privacy of any person or persons would be likely to be interfered with by the interception of private communications under it.

"(3) **Subsection (2)** does not limit **subsection (1)**."

8 New section 312N substituted

The principal Act is amended by repealing section 312N, and substituting the following section:

Struck out (majority)

"312N **Inadmissibility of evidence of private communications lawfully intercepted**

Evidence of a private communication intercepted by means of a listening device or of its substance, meaning, or purport may

Struck out (majority)

not be given in any court unless the communication concerned was intercepted under an interception warrant or an emergency permit and discloses evidence relating to any 1 or more of the following offences:

"(a) a specified offence, or a conspiracy to commit such an offence; or

"(b) a serious violent offence, or a conspiracy to commit such an offence; or

"(c) a drug dealing offence or a prescribed cannabis offence (as those terms are defined in section 10 of the Misuse of Drugs Amendment Act 1978)."

New (majority)

"312N **Restriction on admissibility of evidence of private communications lawfully intercepted**

Even if the communication was intercepted under an interception warrant or an emergency permit, evidence of a private communication intercepted by means of a listening device, or of its substance, meaning, or purport, may not be given in any court unless the evidence relates to—

"(a) a specified offence; or

"(b) a conspiracy to commit a specified offence; or

"(c) a terrorist offence; or

"(d) a conspiracy to commit a terrorist offence; or

"(e) a serious violent offence; or

"(f) a conspiracy to commit a serious violent offence; or

"(g) a drug dealing offence (as that term is defined in section 10 of the Misuse of Drugs Amendment Act 1978); or

"(h) a prescribed cannabis offence (as that term is defined in section 10 of the Misuse of Drugs Amendment Act 1978); or

"(i) offences of 2 or more of those kinds."

Part 2
Amendments to Terrorism Suppression Act 2002

Amendments to principal Act

9 Terrorism Suppression Act 2002 called principal Act in this Part

In this Part, the Terrorism Suppression Act 2002[2] is called "the principal Act".

[2] 2002 No 34

10 Purpose of this Act

Section 3(b) of the principal Act is amended by adding the following subparagraphs:

"(iv) the Nuclear Material Convention; and

"(v) the Plastic Explosives Convention."

11 Interpretation

(1) Section 4 of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

"**duly authorised military device** means an explosive article, including, but not restricted to, a shell, bomb, projectile, mine, missile, rocket, shaped charge, grenade, and perforator, manufactured exclusively for lawful military or police purposes and authorised for those purposes by the Environmental Risk Management Authority

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

Struck out (unanimous)

"**marking** means introducing at manufacture into a plastic explosive a detection agent listed in Part 2 of the technical annex to the Plastic Explosives Convention

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

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

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

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

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

"**radioactive material** has the same meaning as in section 2(1) of the Radiation Protection Act 1965

New (unanimous)

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

(2) Section 4 of the principal Act is amended by adding the following subsection:

"(3) Terms and expressions used and not defined in this Act but defined in the Nuclear Material Convention, the Plastic Explosives Convention, or the Technical Annex to the Plastic Explosives Convention have the same meaning as in those Conventions and Annex, unless the context otherwise requires."

12 New headings and sections 13A to 13D inserted

The principal Act is amended by inserting, after section 13, the following heading and sections:

"*Harbouring or concealing terrorists*

"13A **Harbouring or concealing terrorists**

"(1) A person commits an offence who, with the intention of assisting another person to avoid arrest, escape lawful custody, or avoid conviction, harbours or conceals that person,—

"(a) knowing, or being reckless as to whether, that person intends to carry out a terrorist act; or

"(b) knowing, or being reckless as to whether, that person has carried out a terrorist act.

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

"*Offences relating to plastic explosives and nuclear materials*

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

"(1) A person commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding 10 years or a fine not exceeding $500,000, or both, who—

"(a) possesses, uses, or manufactures unmarked plastic explosives, knowing they are unmarked; or

"(b) imports or exports unmarked plastic explosives to or from New Zealand, knowing they are unmarked.

"(2) **Subsection (1)** does not apply in respect of unmarked plastic explosives (not being explosives to which **subsection (3)** applies) that were lawfully manufactured in, or imported into New Zealand before the date on which this offence comes into force and that may, subject to the Hazardous Substances and New Organisms Act 1996, be transported or possessed by—

"(a) a person who performs military or police functions during the period that begins with the entry into force of this section and ends 15 years later; or

"(b) any other person during the period that begins with the entry into force of this section and ends 3 years later.

"(3) Nothing in this section applies to unmarked plastic explosives—

"(a) that are manufactured or held in limited quantities for sole use in any of the following activities that are duly authorised by the Environmental Risk Management Authority:

"(i) research, development, or testing of new or modified explosives; or

"(ii) training in explosives detection or testing of explosives detection equipment; or

"(iii) forensic science activities; or

"(b) that are destined to be, and are incorporated as, an integral part of a duly authorised military device in New Zealand within 3 years after the date on which this section comes into force.

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

"(1) A person commits an offence who,—

"(a) without lawful authority, receives, possesses, uses, transfers, alters, disposes of, or disperses nuclear material, knowing it is nuclear material, and—

"(i) that causes death, injury, or disease to any person or substantial damage to property; or

"(ii) with intent to cause, or being reckless as to whether it causes death, injury, or disease to any person or substantial damage to property; or

"(b) commits theft, as defined in section 220 of the Crimes Act 1961, of nuclear material knowing that it was nuclear material; or

"(c) fraudulently obtains nuclear material, knowing that it was nuclear material; or

"(d) makes a demand for nuclear material by threat, or by use of force, or by any other form of intimidation with intent to steal it; or

"(e) with intent to intimidate, threatens to use nuclear material to cause—

"(i) death, injury, or disease to any person; or

"(ii) substantial damage to any property; or

"(f) with intent to compel any person, international organisation, or State to do, or refrain from doing, any act, threatens to steal nuclear material.

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

"*Importation, acquisition, possession, or control over radioactive material*

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

A person commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding 10 years

who imports, acquires, possesses, or has control over any radioactive material with intent to use it to commit an offence involving bodily injury, or the threat of violence, to any person."

13 Offences also apply in certain cases outside New Zealand

Section 14(1) of the principal Act is amended by inserting, after the words "sections 7 to 13", the words "and **13B to 13D**".

14 New section 18 substituted

The principal Act is amended by repealing section 18, and substituting the following section:

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

Even if the acts alleged to constitute the offence occurred wholly outside New Zealand, proceedings may be brought for terrorist bombing, financing of terrorism, or a nuclear material offence if the person to be charged has been found in New Zealand and has not been extradited."

New (majority)

14A New section 29A inserted

The principal Act is amended by inserting, after section 29, the following section:

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

"(1) If satisfied that an entity designated under section 22 should have a description other than that under which the entity was designated (or than the description stated in the most recent notice under this subsection relating to the entity), the Prime Minister may, by signing a written notice to that effect, state a new description for the entity.

"(2) The notice must identify the entity by reference to—

"(a) its most recent description; and

"(b) the notice in the *Gazette* in which that description was stated.

"(3) Sections 23(e) and 23(f) apply to the notice as if it were a designation under section 22; and section 28(2) applies accordingly.

New (majority)

"(4) The stating of the new description does not affect the designation of the entity and (in particular) does not affect the application of section 35(1) to it."

15 New heading and sections 47A to 47G inserted

(1) The principal Act is amended by inserting, after section 47, the following heading and sections:

"*Customs' powers in relation to certain property*

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

"(1) A Customs officer or authorised person may, without warrant, seize and detain goods if—

"(a) the goods came to his or her attention, or into his or her possession, during a ⟨*lawful*⟩ search, inspection, audit, or examination under—

"(i) the Customs and Excise Act 1996; or

"(ii) Part V of the Financial Transactions Reporting Act 1996 (which relates to reporting of imports and exports of cash); and

"(b) the goods are in New Zealand and he or she is satisfied that they either—

"(i) are being, or are intended to be, exported from New Zealand; or

"(ii) are being, or have been, imported into New Zealand; and

"(c) he or she has good cause to suspect—

"(i) that the goods are property of any kind owned or controlled, directly or indirectly, by an entity; and

"(ii) that the entity is an entity designated under section 20 or section 22 of this Act as a terrorist or associated entity; or

"(d) he or she has good cause to suspect—

"(i) that the goods are cash or cash equivalents owned or controlled, directly or indirectly, by an entity; and

"(ii) that the entity is an entity eligible for designation under section 20 or section 22 of this Act as a terrorist or associated entity.

"(2) In this section and **sections 47B to 47G**,—

"**authorised person, Chief Executive, the Customs, Customs officer** or **officer**, **exportation**, **goods**, and **importation** have the meanings given to them in section 2(1) of the Customs and Excise Act 1996

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

"47B **Return of cash necessary to satisfy essential human needs**

"(1) The power to detain goods under **section 47A** does not extend to, and the Customs must if practicable return immediately, cash seized under **section 47A** if the Customs is satisfied that the cash is (or that things for which it might be exchanged are) necessary to satisfy the essential human needs—

"(a) of (or of a dependant of) an individual from whom the cash has been seized; and

"(b) arising on, or within 7 days after, the date on which the detention would otherwise be effected.

"(2) Nothing in **subsection (1)** requires the Customs to return any cash that the Customs is satisfied is not necessary for the purpose specified in that subsection.

"(3) If the 7-day period referred to in **section 47D(1)(a)** is extended under **section 47E**, **subsection (1)** applies to the extension, and the reference in **subsection (1)(b)** to 7 days must be read as a reference to the number of days (not exceeding 21) of that 7-day period as extended.

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

"(1) Reasonable force may be used if it is necessary for any of the following purposes:

"(a) to seize goods under **section 47A**:

"(b) to detain goods under **section 47A**.

"(2) If the person from whom goods have been seized and detained under **section 47A** is identified but is not present when the seizure and detention occurs (for example, because the goods concerned are in mail or cargo or in unaccompanied baggage), the Customs must make all reasonable efforts to notify that person of the detention and seizure as soon as practicable.

"(3) Goods detained under **section 47A** must be taken to such place of security as a Customs officer or authorised person directs, and there detained, unless **section 47F** applies.

"(4) Section 175 of the Customs and Excise Act 1996 (which protects persons acting under authority of that Act) applies, with all necessary modifications, in relation to the exercise of a power under any of **sections 47A to 47F** of this Act.

"(5) Nothing in **section 47A** limits or affects powers under the following Acts:

"(a) Customs and Excise Act 1996:

"(b) Financial Transactions Reporting Act 1996:

"(c) Mutual Assistance in Criminal Matters Act 1992:

"(d) Proceeds of Crime Act 1991.

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

"(1) In this section, **investigation period**, in relation to goods seized and detained under **section 47A**,—

"(a) means the period of 7 days after the date on which the goods were seized and detained; and

"(b) includes any extension of that period granted by the High Court under **section 47E**.

"(2) Goods seized and detained under **section 47A** must be returned to the person from whom they were seized as soon as practicable after whichever of the following occurs first:

"(a) the completion of all relevant investigations, if they show either—

"(i) that the goods are not property of the kind referred to in **section 47A(1)(c)(i) or (d)(i)**; or

"(ii) that the entity is not an entity of the kind referred to in **section 47A(1)(c)(ii) or (d)(ii)**:

"(b) the expiry of the investigation period.

"(3) However, the Customs need not return the goods as provided in **subsection (2)**, and may continue to detain them pending a direction by the Prime Minister under section 48 that the Official Assignee take custody and control of them, if the Customs is advised by, or on behalf of, the Prime Minister—

"(a) that the goods are property of any kind owned or controlled, directly or indirectly, by an entity; and

"(b) that the entity is an entity designated under section 20 or section 22 as a terrorist or associated entity.

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

"(1) The 7-day period in **section 47D(1)(a)** may be extended (once only) by order of the High Court for a reasonable period up to a further 14 days if, on an application for the purpose made before the expiry of that 7-day period, that Court is satisfied—

"(a) that the good cause to suspect required by **section 47A(1)(c) or (d)** exists; and

"(b) that the extension to be granted is necessary to enable investigations in or outside New Zealand in relation to the goods or entity to be completed.

"(2) The application must be made in writing and served on the person from whom the goods were seized (if that person can be identified and located), and must include the following particulars:

"(a) a description of the goods detained:

"(b) the date on which the detention commenced:

"(c) a statement of the facts supporting the good cause to suspect required by **section 47A(1)(c) or (d)**; and

"(d) a statement of reasons why the extension sought is necessary to enable investigations in or outside New Zealand in relation to the goods or entity to be completed.

"(3) The person from whom the goods were seized is entitled to appear and be heard on the application.

New (majority)

"(4) The Customs must make all reasonable efforts to notify the person from whom the goods were seized, at least 24 hours before the hearing of the application, of the time and place of that hearing.

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

"(1) If goods detained under **section 47A** are a craft, vehicle, or animal, a Customs officer may leave those goods in the custody of either—

"(a) the person from whom the goods have been seized; or

"(b) any other person authorised by the Customs officer and who consents to having such custody.

"(2) Every person who has the custody of goods under **subsection (1)** must, until a final decision is made under **section 47D** as to whether or not they are to be returned, hold them in safekeeping, without charge to the Crown and in accordance with any reasonable conditions that may be imposed by the Customs.

"(3) A person to whom **subsection (2)** applies must also—

"(a) make the goods available to a Customs officer on request; and

"(b) not alter, or dispose of, or remove the goods from New Zealand, unless he or she is authorised to do so by a Customs officer; and

"(c) return the goods on demand to the custody of the Customs.

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

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

"(1) Every person commits an offence who, having custody of goods pursuant to **section 47F(1)**, acts in breach of any requirement of, or imposed pursuant to, **section 47F(2) or (3)**.

"(2) Every person who commits an offence against **subsection (1)** is liable on summary conviction to a fine not exceeding $5,000.

"(3) Every person commits an offence who, without the permission of the Chief Executive, takes or carries away or otherwise converts to his or her own use goods to which **section 47F(2) and (3)** applies.

"(4) Every person who commits an offence against **subsection (3)** is liable on summary conviction to imprisonment for a term not exceeding 12 months, or to a fine not exceeding an amount equal to 3 times the value of the goods to which the offence relates.

Compare: 1996 No 27 s 215".

(2) Sections 15 and 19 of the principal Act are consequentially amended by inserting, after the expression "section 47", the words "or **section 47G**".

16 Application of sections 64 and 65

(1) Section 63(1) of the principal Act is amended by adding the words "or, as the case requires, article ⟨9⟩ ⟨7⟩ of the Nuclear Material Convention".

(2) Section 63(2)(a) of the principal Act is amended by inserting, after the words "article 7(1) or (2) of the Financing Convention", the words "or, as the case requires, article ⟨9⟩ ⟨8⟩ of the Nuclear Material Convention".

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

Section 64 of the principal Act is amended by inserting, after the words "article 9(1) of the Financing Convention", the words "or, as the case requires, article 9 of the Nuclear Material Convention".

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

Section 65 of the principal Act is amended by inserting, after the words "article 9 of the Financing Convention", the words "or, as the case requires, article 9 of the Nuclear Material Convention".

19 Attorney-General's consent to prosecutions required

Section 67(3) of the principal Act is amended by adding the words "or **section 47G**".

20 Offences deemed to be included in extradition treaties

(1) Section 69 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

"(1) For the purposes of the Extradition Act 1999 and any Order in Council in force under section 15 or section 104 of that Act, terrorist bombing, financing of terrorism, and any nuclear material offence are each, if not already described in the treaty, deemed to be an offence described in any extradition treaty concluded before the relevant date and for the time being in force between New Zealand and any country that is a party to any of the following conventions, or to which any of the following conventions extends:

"(a) the Bombings Convention; or

"(b) the Financing Convention; or

"(c) the Nuclear Material Convention."

(2) Section 69 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

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

(3) Section 69 of the principal Act is amended by repealing subsection (4), and substituting the following subsection:

"(4) In this section, **relevant date**,—

"(a) in relation to terrorist bombing or financing of terrorism, means 5 December 2002; and

"(b) in relation to a nuclear material offence, the date on which this section enters into force in relation to that offence."

21 New Schedules 2A and 2B inserted

The principal Act is amended by inserting, after Schedule 2, the Schedules 2A and 2B set out in the Schedule.

22 Schedule 3 amended

Schedule 3 of the principal Act is amended by adding the following paragraph:

"(9) Convention on the Physical Protection of Nuclear Material, signed at New York and Vienna, 3 March 1980."

Consequential amendment to Mutual Assistance in Criminal Matters Act 1992

23 Schedule amended to refer to Nuclear Material Convention

The Schedule of the Mutual Assistance in Criminal Matters Act 1992 is amended by inserting, in its appropriate numerical order, the following row:

27	The Convention on the Physical Protection of Nuclear Materials done at Vienna on 26 October 1979.	An offence against the following section of the Terrorism Suppression Act 2002: *section* — *subject-matter* **13C** — offences involving the physical protection of nuclear materials

Part 3
Amendments to other Acts

Misuse of Drugs Amendment Act 1978

24 Misuse of Drugs Amendment Act 1978 called principal Act in sections 25 and 26

In sections 25 and 26, the Misuse of Drugs Amendment Act 1978[3] is called "the principal Act".

[3] 1978 No 65

25 Section 13 repealed

The principal Act is amended by repealing section 13.

26 New section 26 substituted

The principal Act is amended by repealing section 26, and substituting the following section:

Struck out (majority)

"26 **Inadmissibility of evidence of private communications lawfully intercepted**

Evidence of a private communication intercepted by means of a listening device or of its substance, meaning, or purport may not be given in any court unless the communication concerned was intercepted under an interception warrant or an emergency permit and discloses evidence relating to any 1 or more of the following offences:

"(a) a drug dealing offence; or

"(b) a prescribed cannabis offence; or

"(c) a specified offence (as defined in section 312A of the Crimes Act 1961), or a conspiracy to commit such an offence; or

"(d) a serious violent offence (as defined in section 312A of the Crimes Act 1961), or a conspiracy to commit such an offence."

New (majority)

"26 **Restriction on admissibility of evidence of private communications lawfully intercepted**

"(1) Even if the communication was intercepted under an interception warrant or an emergency permit, evidence of a private communication intercepted by means of a listening device, or of its substance, meaning, or purport, may not be given in any court unless the evidence relates to—

"(a) a specified offence; or
"(b) a conspiracy to commit a specified offence; or
"(c) a terrorist offence; or
"(d) a conspiracy to commit a terrorist offence; or
"(e) a serious violent offence; or
"(f) a conspiracy to commit a serious violent offence; or
"(g) a drug dealing offence; or
"(h) a prescribed cannabis offence; or
"(i) offences of 2 or more of those kinds.

"(2) In **subsection(1)**, **serious violent offence**, **specified offence**, and **terrorist offence** have the meanings given to those terms by section 312A of the Crimes Act 1961."

New Zealand Security Intelligence Service Act 1969

27 New Zealand Security Intelligence Service Act 1969 called principal Act in section 28

In section 28, the New Zealand Security Intelligence Service Act 1969[4] is called "the principal Act".

[4] 1969 No 24

28 Interpretation

(1) Section 2(1) of the principal Act is amended—

(a) by omitting from paragraph (a) of the definition of **security** the word "terrorism,"; and

(b) by adding to the definition of **security** the following paragraph:

"(d) the prevention of any terrorist act and of any activity relating to the carrying out or facilitating of any terrorist act".

(2) Section 2(1) of the principal Act is amended by repealing the definition of **terrorism**, and substituting the following definition:

"**terrorist act** has the same meaning as in section 5(1) of the Terrorism Suppression Act 2002".

Sentencing Act 2002

29 Sentencing Act 2002 called principal Act in sections 30 and 31

In sections 30 and 31, the Sentencing Act 2002[5] is called "the principal Act".

[5] 2002 No 9

30 Aggravating and mitigating factors

Section 9(1) of the principal Act is amended by inserting, after paragraph (h), the following paragraph:

"(ha) that the offence was committed as part of, or involves, a terrorist act (as defined in section 5(1) of the Terrorism Suppression Act 2002):".

31 Imposition of minimum period of imprisonment of 17 years or more

Section 104 of the principal Act is amended by inserting, after paragraph (e), the following paragraph:

"(ea) if the murder was committed as part of a terrorist act (as defined in section 5(1) of the Terrorism Suppression Act 2002); or".

Summary Proceedings Act 1957

32 Summary Proceedings Act 1957 called principal Act in sections 33 and 34

In sections 33 and 34, the Summary Proceedings Act 1957[6] is called "the principal Act".

[6] 1957 No 87

33 New section 198B inserted

The principal Act is amended by inserting, after section 198A, the following section:

"198B **Person with knowledge of computer or computer network to assist access**

"(1) A constable executing a search warrant may require a specified person to provide information or assistance that is reasonable and necessary to allow the constable to access data held in, or accessible from, a computer that is on premises named in the warrant.

"(2) A **specified person** is a person who—

"(a) is the owner or lessee of the computer, or is in possession or control of the computer, or is an employee of any of the above; and

"(c) has relevant knowledge of—

"(i) the computer or a computer network of which the computer forms a part; or

"(ii) measures applied to protect data held in, or accessible from, the computer.

New (majority)

"(2A) A person may not be required under **subsection (1)** to give any information tending to incriminate the person.

"(2B) **Subsection (2A)** does not prevent a constable from requiring a person to provide information that—

"(a) is reasonable and necessary to allow the constable to access data held in, or accessible from, a computer that—

"(i) is on premises named in the warrant concerned; and

"(ii) contains or may contain information tending to incriminate the person; but

"(b) does not itself tend to incriminate the person.

"(2C) **Subsection (2A)** does not prevent a constable from requiring a person to provide assistance that is reasonable and necessary to allow the constable to access data held in, or accessible from, a computer that—

"(a) is on premises named in the warrant concerned; and

"(b) contains or may contain information tending to incriminate the person.

"(3) Every person commits an offence and is liable on summary conviction to a term of imprisonment not exceeding 3 months

or a fine not exceeding $2,000 who fails to assist a constable when requested to do so under **subsection (1)**."

34 New heading and sections 200A to 200O inserted

The principal Act is amended by inserting, after section 200, the following heading and sections:

"*Tracking devices*

"200A **Interpretation**

For the purposes of this section and **sections 200B to** ⟨***2001***⟩ ⟨**2000**⟩,—

Struck out (majority)

"**authorised public officer** means a public officer of a government agency who has been appointed or designated to enforce any law and whose duties include the enforcement of any Act

"**tracking device** means a device that, when installed in or on any thing, may be used to help ascertain, by electronic or other means, the location of any thing or person.

New (majority)

"**authorised officer** means a person who is—

"(a) a member of the police; or

"(b) a customs officer within the meaning of the Customs and Excise Act 1996

"**parent agency**,—

"(a) in relation to an authorised officer who is a member of the police, means the New Zealand Police; and

"(b) in relation to an authorised officer who is a customs officer within the meaning of the Customs and Excise Act 1996, means the New Zealand Customs Service

"**tracking device** means a device that, when installed in or on a thing, may be used to help ascertain, by electronic or other means, either or both of the following:

"(a) the location of a thing or person:

New (majority)

"(b) whether a thing has been opened, tampered with, or in some other way dealt with

"**tracking device warrant** means a warrant under **section 200C(1)**.

"200B **Application for tracking device warrant**

"(1) An authorised ⟨*public*⟩ officer may apply ⟨*in accordance with this section*⟩ to a High Court Judge or a District Court Judge for a ⟨*warrant authorising the installation of a tracking device in or on a specified thing and the maintenance, monitoring, and removal of the tracking device*⟩ ⟨tracking device warrant⟩.

"(2) The application may not be made unless the officer believes—

"(a) that there are reasonable grounds to suspect that an offence has been, is being, or will be committed; and

"(b) that information that is relevant to the commission of the offence⟨, *including the whereabouts of any person,*⟩ ⟨ (whether or not including the whereabouts of any person)⟩ can be obtained through the use of a tracking device; and

"(c) that it is in the public interest to issue a warrant, taking into account the seriousness of the offence, the degree to which privacy or property rights are likely to be intruded upon, the usefulness of the information likely to be obtained, and whether it is reasonably practicable for the information to be obtained in another way.

"(3) The application must be made in writing and on oath and must set out the following particulars:

"(a) the facts relied on to show that the requirements in **subsection (2)** are met; and

"(b) any information that is necessary so that the ⟨*judge*⟩ ⟨Judge⟩ may assess the degree to which privacy or property rights are likely to be intruded on; and

"(c) the period for which a warrant is requested; and

"(d) the ⟨*names of the government agencies whose authorised public officer is to execute the warrant*⟩ ⟨name of the parent agency⟩.

"200C **Issue of tracking device warrant**

"(1) On an application under **section 200B**, a High Court Judge or a District Court Judge may issue a warrant under this section if he or she is satisfied that the matters specified in **section 200B(2)(a) to (c)** are met and may impose any terms and conditions that the ⟨*judge*⟩ ⟨Judge⟩ sees fit.

"(2) The warrant must be directed to an authorised ⟨*public*⟩ officer by name or generally to every authorised ⟨*public*⟩ officer of the ⟨*government agencies nominated in the application*⟩ ⟨parent agency concerned, and must—⟩

New (majority)

"(a) state the offence or offences in respect of which it is issued; and

"(b) state a period (not exceeding 60 days) for which it is valid; and

"(c) state the terms and conditions (if any) subject to which it is issued; and

"(d) specify the thing in or on which a tracking device may be attached.

"(3) Further ⟨tracking device⟩ warrants may⟨, *from time to time*,⟩ be issued ⟨*under this section*⟩ in respect of the same thing, or in respect of information relevant to the commission of the same offence.

"200D **Effect of tracking device warrant**

"(1) A tracking device warrant authorises ⟨*1 or more*⟩ ⟨the⟩ authorised ⟨*public*⟩ ⟨officer or⟩ officers to whom it is directed,—

"(a) to install, maintain, or remove a tracking device in or on ⟨*any thing*⟩ ⟨the thing specified⟩; and

"(b) to monitor⟨, *or to have monitored, a tracking device installed in or on any thing*⟩ ⟨the device or have it monitored⟩.

Struck out (majority)

"(2) For the purposes of installing, maintaining, removing, or monitoring a tracking device, a tracking device warrant authorises

Struck out (majority)

1 or more authorised public officers to whom it is directed to do any of the following at any time, if necessary—

"(a) to enter by force on to any premises specified in the warrant:

"(b) to break open or interfere with any thing:

"(c) to temporarily remove any thing from any place where it is found and to return the thing to that place.

New (majority)

"(2) If it is necessary to do so to install, maintain, remove, or monitor a tracking device, a tracking device warrant authorises one or more authorised officers to do any of the following things at any time, using any necessary force:

"(a) enter on to any premises specified in the warrant:

"(b) break open or interfere with any thing:

"(c) temporarily remove any thing from any place where it is found and to return the thing to that place.

Struck out (majority)

"200E **Duration of warrant**

Unless renewed under **section 200F**, a tracking device warrant expires at the end of the period (not exceeding 60 days) specified in the warrant.

New (majority)

"200E **Expiry of warrant**

"(1) Unless renewed under **section 200F**, a tracking device warrant expires at the end of the period stated in it.

"(2) If a tracking device remains in place after the expiry of the warrant authorising its installation, the authorised officer concerned must apply to a District Court Judge or a High Court Judge for a warrant under **section 200H** to remove the device; and the Judge may issue a warrant to remove the device subject to any terms and conditions the Judge sees fit.

New (majority)

"(3) A tracking device that remains in place after the expiry of the warrant authorising its installation must not be monitored; but its remaining in place does not constitute a trespass.

"200F **Renewal of warrant**

"(1) Any authorised ⟨*public*⟩ officer may apply for the renewal of a tracking device warrant that has not expired.

"(2) The application must be made—

"(a) to a District Court Judge, if the warrant was issued by a District Court Judge; and

"(b) to a High Court Judge, if the warrant was issued by a High Court Judge.

"(3) The application must be made in writing and on oath.

"(4) A Judge may grant the application and renew ⟨*a tracking device*⟩ ⟨the⟩ warrant if he or she is satisfied, at the time the application is made, of the matters specified in **section 200B(2)(a) to (c)**.

"(5) ⟨*A tracking device*⟩ ⟨The⟩ warrant may be renewed under this section for a period of not more than 60 days.

"(6) The period for which ⟨*a tracking device*⟩ ⟨the⟩ warrant is renewed must be written on the warrant, and (unless renewed again) the warrant expires at the end of that period.

"(7) ⟨*A tracking device*⟩ ⟨The⟩ warrant may be renewed ⟨*1 or more times*⟩ ⟨more than once⟩.

New (majority)

"(8) If (whether initially or on renewal or further renewal) the warrant was directed to an authorised officer by name, the Judge may amend it so that is directed, by name, to some other authorised officer of the parent agency.

"200G **Use of tracking device without warrant**

Struck out (majority)

"(1) An authorised public officer may place a tracking device in or on any thing and monitor that tracking device if it is not in all the circumstances reasonably practicable to obtain a tracking device warrant and if that officer believes on reasonable grounds that a Judge would issue a warrant under **section 200C** if time permitted.

New (majority)

"(1) An authorised officer may install, monitor, maintain, and remove a tracking device in or on any thing if—

"(a) it is not in all the circumstances reasonably practicable to obtain a tracking device warrant; and

"(b) the officer believes on reasonable grounds that a Judge would issue a tracking device warrant if time permitted.

"(1A) If it is necessary to do so to install, monitor, maintain, or remove the device, the officer may at any time do any of the following things, using any necessary force:

"(a) enter any premises:

"(b) break open or interfere with any thing:

"(c) temporarily remove any thing from any place where it is found and return the thing to that place.

Struck out (majority)

"(2) If, under **subsection (1)**, a tracking device is placed in or on any thing, then, within 72 hours of the device being placed,—

"(a) the authorised public officer must make an application for a tracking device warrant under **section 200B** if that officer wants to continue to monitor the tracking device; or

"(b) if a warrant is not issued either because the application is refused or for any other reason, then the authorised public officer must apply to a Judge for a warrant to remove the tracking device under **section 200H**; or

Struck out (majority)

"(c) if the authorised public officer wants to leave the tracking device in place then that officer must apply to a Judge for directions.

New (majority)

"(2) Unless the device has already been removed, the officer must within 72 hours of installing it—

"(a) apply for a tracking device warrant for it; or

"(b) apply to a Judge for a warrant under **section 200H** to remove it; or

"(c) if the officer wants to leave it in place without monitoring it, apply to a Judge for directions.

"(2A) Within 72 hours of being refused a tracking device warrant, the officer must either—

"(a) apply to a Judge for a warrant under **section 200H** to remove the device; or

"(b) if the officer wants to leave the device in place without monitoring it, apply to a Judge for directions.

Struck out (majority)

"(3) Any removal of a tracking device under this section does not constitute a trespass and any authorised public officer who does an act authorised by this section in good faith is protected from civil liability.

New (majority)

"(3) An authorised officer who acts in the exercise or intended exercise of a power conferred by this section is not under any civil or criminal liability in respect of the officer's actions (whether on the ground of lack of jurisdiction or mistake of law or fact, or on any other ground) unless the officer acts in bad faith or without reasonable care.

Struck out (majority)

"(4) If a warrant is not issued in respect of the tracking device under **section 200C**, the authorised public officer who placed the tracking device under **subsection (1)** must, within 72 hours of placing the tracking device, lodge a written report on the exercise of the power, and the circumstances in which it came to be exercised, with the Registrar of the Court to which the application for a warrant was made or, in any other case, the Registrar of a District Court.

"(5) The Registrar of the Court must, as soon as practicable, bring the report to the notice of a judge of that court.

"(6) If the Judge to whom the report is referred considers that the circumstances warrant it, he or she must refer a copy of the report to the Chief Executive of the government agency whose authorised public officer placed the tracking device with any recommendations he or she thinks fit.

"(7) The Judge may also refer a copy of his or her report to the Minister for the time being responsible for that government agency.

New (majority)

"200GA **Reports**

"(1) There must be lodged with every application under **paragraph (b) or paragraph (c) of section 200G(2) or under section 200G(2A)** a written report on the installation of the tracking device concerned, and the circumstances in which it came to be installed.

"(2) If a tracking device installed under **section 200G** is removed within 72 hours of being installed, an authorised officer of the parent agency concerned must lodge in a District Court or the High Court a written report on its installation, and the circumstances in which it came to be installed.

"(3) The Registrar of a court in which a report under **subsection (1) or subsection (2)** is lodged must promptly bring it to the notice of a Judge of the court.

"(4) If the Judge considers that the circumstances warrant it, the Judge may refer a copy of the report to the chief executive of

New (majority)

the parent agency of the authorised officer who installed the device, with any recommendations the Judge thinks fit.

"(5) The Judge may also refer a copy of the report to the Minister for the time being responsible for the agency.

"200H **Warrant for removal of tracking device 〈*after expiry of warrant*〉**

Struck out (majority)

"(1) If a tracking device remains in place after the expiry of a warrant, the authorised public officer must apply to the District Court or the High Court for a warrant to remove the tracking device and the Judge may issue a warrant for the removal of a tracking device subject to any terms and conditions the Judge sees fit.

New (majority)

"(1A) A District Court Judge or High Court Judge may issue a warrant for the removal of a tracking device, subject to any terms and conditions the Judge sees fit.

"(1B) A warrant under this section must be directed to an authorised officer by name or generally to every authorised officer of the parent agency concerned.

"(2) A warrant 〈*issued*〉 under this section authorises 〈*the 1 or more authorised public officers*〉 〈authorised officer or officers to whom it is directed〉 to remove the tracking device 〈concerned〉 and, in so doing, to do any of the following at any time if necessary〈, using any necessary force〉:

"(a) 〈*to*〉 enter〈, *by force, onto*〉 any premises specified in the warrant:

"(b) 〈*to*〉 break open or interfere with any thing:

"(c) 〈*to*〉 temporarily remove any thing from any place where it is found and to return the thing to that place.

Struck out (majority)

"(3) A tracking device that remains in place after the expiry of a warrant must not be monitored and the fact that the tracking device remains in place does not constitute a trespass.

"200I 〈*Government agency*〉 〈**Agencies**〉 **to give information to Parliament**

〈*The Chief Executive of any government agency whose authorised public officer applied for a tracking device warrant under* ***section 200A****, or placed a tracking device under section* ***200G****,*〉 〈The Commissioner of Police and the chief executive of the New Zealand Customs〉 must include in every annual report relating to that agency that is required by statute to be prepared by that chief executive the following information in respect of the period under review:

"(a) the number of warrants issued under **section 200C**; and

"(b) the number of renewals of warrants granted under **section 200C**; and

"(c) the average duration of warrants (including renewals); and

"(d) the number of times a tracking device was used without a warrant under **subsection 200G**; and

New (majority)

"(e) the number of applications for a warrant under **section 200H** that were refused; and

"(f) the number of warrants issued under **section 200H** (whether during the period under review or during the month before that period began) that were not executed within the month after they were issued.

"200J **Security of applications for tracking device warrants**

"(1) As soon as a Judge has determined an application for a tracking device warrant, the Registrar of the court concerned must—

"(a) place all documents relating to the application (except any warrant issued) in a packet; and

"(b) seal the packet; and

New (majority)

"(c) keep the packet in safe custody.

"(2) **Subsection (1)(c)** is subject to **sections 200K to 200O**.

"200K **Restriction on production of documents relating to application**

"(1) No party to any proceedings is entitled to demand the production of any documents held in safe custody under **section 200J**.

"(2) **Subsection (1)**—

"(a) is subject to **sections 200L to 200O**; but

"(b) otherwise overrides any enactment or rule of law or any rules of court entitling a party to any proceedings to demand the production of any documents.

"200L **Application for production of documents**

"(1) A party to proceedings who requires the production of a document held in safe custody under **section 200J(1)** may apply in writing to the Registrar who holds the document for its production.

"(2) Promptly after receiving the application, the Registrar must give written notice of it to—

"(a) the senior police officer in the district, if the document is or relates to an application for a tracking device warrant sought by a member of the police; or

"(b) the senior customs officer in the district, if the document is or relates to an application for a tracking device warrant sought by a customs officer.

"(3) If within 3 days after the notice was given the officer gives the Registrar written notice that he or she opposes the production of the document, the Registrar must refer the application to a Judge of the court concerned.

"(4) The Registrar must produce the document to the applicant if—

"(a) the officer does not within 3 days after the notice was given give the Registrar written notice that he or she opposes the production of the document; and

"(b) but for **section 200J(1)**, the applicant would be entitled to demand the production of the document.

New (majority)

"200M **Request for production made in course of proceedings**

"(1) A District Court Judge or a Judge of the High Court must adjudicate on an opposed request, made in the course of proceedings presided over by the Judge, for the production of a document held in safe custody under **section 200J(1)** as if it were an application referred under **section 200L(3)**; and **section 200N** applies accordingly with any necessary modifications.

"(2) If, in the course of any other proceedings, an opposed request for the production of a document held in safe custody under **section 200J(1)** is made, the presiding judicial officer must promptly refer the matter to a Judge for adjudication under **section 200N**.

"(3) The Judge to whom the matter must be referred is—

"(a) a District Court Judge if the document relates to a tracking device warrant issued by a District Court Judge; or

"(b) a Judge of the High Court if the document relates to a tracking device warrant issued by a Judge of the High Court.

"200N **Application referred to Judge**

"(1) An application for the production of a document held in safe custody under **section 200J** that is referred to a Judge under **section 200L(3) or section 200M(2)** must be dealt with in accordance with this section.

"(2) The applicant and the officer opposing production must be given an opportunity to be heard.

"(3) The Judge may order that all or a specified part of the document must not be produced if (and only if) the Judge—

"(a) is satisfied that information in the document identifies, or is likely to lead to the identification of,—

"(i) a person who gave information to the police, or to the New Zealand Customs Service; or

"(ii) a member of the police, or any customs officer, whose identity was concealed for the purpose of any relevant investigation and has not later been revealed; and

"(b) the Judge believes it in the public interest to do so.

New (majority)

"(4) Subject to any order under **subsection (3)**, the Judge must order the production of the document to the applicant if, but for **section 200J(1)**, the applicant would be entitled to demand the production of the document.

"200O **Judges entitled to inspect relevant documents**

A Judge presiding over proceedings in which the issue of a tracking device warrant is in issue may inspect any relevant document held under **section 200J(1)**."

Schedule
New Schedules 2A and 2B inserted

Schedule 2A
Convention on the Physical Protection of Nuclear Material

⟨*Signed at New York and*⟩ ⟨Done at⟩ Vienna, 3 March 1980

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 for facilitating international co-operation in the peaceful application of nuclear energy,

DESIRING to avert the potential dangers posed by the unlawful taking and use of nuclear material.

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

AWARE OF THE NEED for 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,

CONVINCED that this Convention should facilitate the safe transfer of nuclear material.

STRESSING also the importance of the physical protection of nuclear material in domestic use. storage and transport,

RECOGNIZING the importance of effective physical protection of nuclear material used for military purposes, and understanding that such material is and will continue to be accorded stringent physical protection.

HAVE AGREED as follows:

Schedule 2A—continued

ARTICLE 1

For the purposes of this Convention:

a. "nuclear material" means plutonium except that with isotopic concentration exceeding 80% in plutonium-238; uranium-233; uranium enriched in the isotopes 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-residue; any material containing one or more of the foregoing;

b. "uranium enriched in the isotope 235 or 233" means uranium containing the isotopes 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature;

c. "international nuclear transport" means the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the State where the shipment originates beginning with the departure from a facility of the shipper in that State and ending with the arrival at a facility of the receiver within the State of ultimate destination.

ARTICLE 2

1. This Convention shall apply to nuclear material used for peaceful purposes while in international nuclear transport.

2. With the exception of articles 3 and 4 and paragraph 3 of article 5, this Convention shall also apply to nuclear material used for peaceful purposes while in domestic use, storage and transport.

3. Apart from the commitments expressly undertaken by States Parties in the articles covered by paragraph 2 with respect to nuclear material used for peaceful purposes while in domestic use, storage and transport, nothing in this Convention shall be interpreted as affecting the sovereign rights of a State regarding the domestic use, storage and transport of such nuclear material.

ARTICLE 3

Each State Party shall take appropriate steps within the framework of its national law and consistent with international law to ensure as far as practicable that, during international nuclear transport, nuclear

Schedule 2A—continued

material within its territory, or on board a ship or aircraft under its jurisdiction insofar as such ship or aircraft is engaged in the transport to or from that State, is protected at the levels described in Annex 1.

ARTICLE 4

1. Each State Party shall not export or authorize the export of nuclear material unless the State Party has received assurances that such material will be protected during the international nuclear transport at the levels described in Annex 1.
2. Each State Party shall not import or authorize the import of nuclear material from a State not party to this Convention unless the State Party has received assurances that such material will during the international nuclear transport be protected at the levels described in Annex 1.
3. A State Party shall not allow the transit of its territory by land or internal waterways or through its airports or seaports of nuclear material between States that are not parties to this Convention unless the State Party has received assurances as far as practicable that this nuclear material will be protected during international nuclear transport at the levels described in Annex 1.
4. Each State Party shall apply within the framework of its national law the levels of physical protection described in Annex I to nuclear material being transported from a part of that State to another part of the same State through international waters or airspace.
5. The State Party responsible for receiving assurances that the nuclear material will be protected at the levels described in Annex I according to paragraphs I to 3 shall identify and inform in advance States which the nuclear material is expected to transit by land or internal waterways, or whose airports or seaports it is expected to enter.
6. The responsibility for obtaining assurances referred to in paragraph I may be transferred, by mutual agreement, to the State Party involved in the transport as the importing State.
7. Nothing in this article shall be interpreted as in any way affecting the territorial sovereignty and jurisdiction of a State, including that over its airspace and territorial sea.

Schedule 2A—continued
ARTICLE 5

1. States Parties shall identify and make known to each other directly or through the International Atomic Energy Agency their central authority and point of contact having responsibility for physical protection of nuclear material and for co-ordinating recovery and response operations in the event of any unauthorized removal, use or alteration of nuclear material or in the event of credible threat thereof.
2. In the case of theft, robbery or any other unlawful taking of nuclear material or of credible threat thereof, States Parties shall, in accordance with their national law, provide co-operation and assistance to the maximum feasible extent in the recovery and protection of such material to any State that so requests. In particular:
    a. each 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, international organizations:
    b. as appropriate, the States Parties concerned shall exchange information with each other or international organizations with a view to protecting threatened nuclear material, verifying the integrity of the shipping container, or recovering unlawfully taken nuclear material and shall:
        i. co-ordinate their efforts through diplomatic and other agreed channels:
        ii. render assistance, if requested;
        iii. ensure the return of nuclear material stolen or missing as a consequence of the above-mentioned events.

    The means of implementation of this co-operation shall be determined by the States Parties concerned.
3. States Parties shall co-operate and consult as appropriate, with each other directly or through 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.

Schedule 2A—continued
ARTICLE 6

1. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.
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.

ARTICLE 7

1. The intentional commission of:
   a. an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property;
   b. a theft or robbery of nuclear material;
   c. an embezzlement or fraudulent obtaining of nuclear material;
   d. an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;
   e. a threat:
      i. to use nuclear material to cause death or serious injury to any person or substantial property damage, or
      ii. to commit an offence described in sub-paragraph (b) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;

Schedule 2A—continued

f. an attempt to commit any offence described in paragraphs (a), (b) or (c); and

Struck out (majority)

g. an act which constitutes participation in any offence described in paragraphs (a) to (f) shall be made a punishable offence by each State Party under its national law.

New (majority)

g. an act which constitutes participation in any offence described in paragraphs (a) to (f)—

shall be made a punishable offence by each State Party under its national law.

2. Each State Party shall make the offences described in this article punishable by appropriate penalties which take into account their grave nature.

ARTICLE 8

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 7 in the following cases:
   a. when the offence is committed in the territory of that State or on board a ship or aircraft registered in that State;
   b. when the alleged offender is a national of that State.
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these offences in cases where the alleged offender is present in its territory and it does not extradite him pursuant to article 11 to any of the States mentioned in paragraph 1.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Schedule 2A—continued

4. In addition to the States Parties mentioned in paragraphs I and 2, each State Party may, consistent with international law, establish its jurisdiction over the offences set forth in article 7 when it is involved in international nuclear transport as the exporting or importing State.

ARTICLE 9

Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take appropriate measures, including detention, under its national law to ensure his presence for the purpose of prosecution or extradition. Measures taken according to this article shall be notified without delay to the States required to establish jurisdiction pursuant to article 8 and, where appropriate, all other States concerned.

ARTICLE 10

The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

ARTICLE 11

1. The offences in article 7 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include those offences as extraditable offences in every future extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

Schedule 2A—continued

4. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with paragraph I of article 8.

ARTICLE 12

Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 7 shall be guaranteed fair treatment at all stages of the proceedings.

ARTICLE 13

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article 7, including the supply of evidence at their disposal necessary for the proceedings. The law of the State requested shall apply in all cases.
2. The provisions of paragraph I shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

ARTICLE 14

1. Each State Party shall inform the depositary of its laws and regulations which give effect to this Convention. The depositary shall communicate such information periodically to all States Parties.
2. The State Party where an alleged offender is prosecuted shall, wherever practicable, first communicate the final outcome of the proceedings to the States directly concerned. The State Party shall also communicate the final outcome to the depositary who shall inform all States.

Schedule 2A—continued

3. Where an offence involves nuclear material used for peaceful purposes 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, nothing in this Convention shall be interpreted as requiring that State Party to provide information concerning criminal proceeding arising out of such an offence.

ARTICLE 15

The Annexes constitute an integral part of this Convention

ARTICLE 16

1. A conference of States Parties shall be convened by the depositary five years after the entry into force of this Convention to review the implementation of the Convention and its adequacy as concerns the preamble, the whole of the operative part and the annexes in the light of the then prevailing situation.
2. At intervals of not less than five years thereafter, the majority of States Parties may obtain, by submitting a proposal to this effect to the depositary, the convening of further conferences with the same objective.

ARTICLE 17

1. In the event of a dispute between two or more States Parties concerning the interpretation or application of this Convention, such States Parties shall consult with a view to the settlement of the dispute by negotiation, or by any other peaceful means of settling disputes acceptable to all parties to the dispute.

Schedule 2A—continued

2. Any dispute of this character which cannot be settled in the manner prescribed in paragraph I shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In case of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.
3. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2. The other States Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2, with respect to a State Party which has made a reservation to that procedure.
4. Any State Party which has made a reservation in accordance with paragraph 3 may at any time withdraw that reservation by notification to the depositary.

ARTICLE 18

1. This Convention shall be open for signature by all States at the Headquarters of the International Atomic Energy Agency in Vienna and at the Headquarters of the United Nations in New York from 3 March 1980 until its entry into force.
2. This Convention is subject to ratification, acceptance or approval by the signatory States.
3. After its entry into force, this Convention will be open for accession by all States.
    a. This Convention shall be open for signature or accession by international organizations and regional organizations of an integration or other nature, provided that any such organization is constituted by sovereign States and has competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention.

Schedule 2A—continued

b. In matters within their competence, such organizations shall, on their own behalf, exercise the rights and fulfill the responsibilities which this Convention attributes to States Parties.

c. When becoming party to this Convention such an organization shall communicate to the depositary a declaration indicating which States are members thereof and which articles of this Convention do not apply to it

d. Such an organization shall not hold any vote additional to those of its Member States.

4. Instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

ARTICLE 19

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty first instrument of ratification, acceptance or approval with the depositary.

2. For each State ratifying, accepting, approving or acceding to the Convention after the date of deposit of the twenty first instrument of ratification, acceptance or approval, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

ARTICLE 20

1. Without prejudice to article 16 a State Party may propose amendments to this Convention. The proposed amendment shall be submitted to the depositary who shall circulate it immediately to all States Parties. If a majority of States Parties request the depositary to convene a conference to consider the proposed amendments, the depositary shall invite all States Parties to attend such a conference to begin not sooner than thirty days after the invitations are issued. Any amendment adopted at the conference by a two-thirds majority of all States Parties shall be promptly circulated by the depositary to all States Parties.

Schedule 2A—continued

2. The amendment shall enter into force for each State Party that deposits its instrument of ratification, acceptance or approval of the amendment on the thirtieth day after the date on which two thirds of the States Parties have deposited their instruments of ratification, acceptance or approval with the depositary. Thereafter, the amendment shall enter into force for any other State Party on the day on which that State Party deposits its instrument of ratification, acceptance or approval of the amendment.

ARTICLE 21

1. Any State Party may denounce this Convention by written notification to the depositary.
2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the depositary.

ARTICLE 22

The depositary shall promptly notify all States of:

a. each signature of this Convention;

b. each deposit of an instrument of ratification, acceptance, approval or accession:

c. any reservation or withdrawal in accordance with article 17;

d. any communication made by an organization in accordance with paragraph 4(c) of article 18;

e. the entry into force of this Convention;

f. the entry into force of any amendment to this Convention; and

g. any denunciation made under article 21.

ARTICLE 23

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Director General of the International Atomic Energy Agency who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Convention,

opened for signature at Vienna and at New York on 3 March 1980.

Schedule 2A—continued

ANNEX 1

Levels of Physical Protection to be Applied in International Transport of Nuclear Material as Categorized in Annex II

1. Levels of physical protection for nuclear material during storage incidental to international nuclear transport include:
   a. For Category III materials, storage within an area to which access is controlled;
   b. For Category II materials, storage within an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control or any area with an equivalent level of physical protection;
2. For Category I material, storage within a protected area as defined for Category II above, to which, in addition, access is restricted to persons whose trustworthiness has been determined, and which is under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their object the detection and prevention of any assault, unauthorized access or unauthorized removal of material.
3. Levels of physical protection for nuclear material during international transport include:
   a. For Category II and III materials, transportation shall take place under special precautions including prior arrangements among sender, receiver, and carrier, and prior agreement between natural or legal persons subject to the jurisdiction and regulation of exporting and importing States, specifying time, place and procedures for transferring transport responsibility;
   b. For Category I materials, transportation shall take place under special precautions identified above for transportation of Category II and III materials, and in addition, under constant surveillance by escorts and under conditions which assure close communication with appropriate response forces;

Schedule 2A—continued

c. For natural uranium other than in the form of ore or ore-residue transportation protection for quantities exceeding 500 kilograms U shall include advance notification of shipment specifying mode of transport, expected time of arrival and confirmation of receipt of shipment.

Schedule 2A—continued
ANNEX 2

a. All plutonium except that with isotopic concentration exceeding 80% in plutonium-238.

b. Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 100 reds/hour at one metre unshielded.

c. Quantities not falling in Category III and natural uranium should be protected in accordance with prudent management practice,

d. Although this level of protection is recommended, it would be open to States, upon evaluation of the specific circumstances, to assign a different category of physical protection.

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

Struck out (majority)

Schedule 2B
Convention on the Marking of Plastic Explosives for the Purpose of Detection

⟨*SIGNED*⟩ ⟨DONE⟩ AT MONTREAL, ON 1 MARCH 1991

⟨*MONTREAL CONVENTION 1991*⟩

THE STATES PARTIES to this Convention,

CONSCIOUS of the implications of acts of terrorism for international security;

EXPRESSING deep concern regarding terrorist acts aimed at destruction of aircraft, other means of transportation and other targets;

CONCERNED that plastic explosives have been used for such terrorist acts;

CONSIDERING that the marking of such explosives for the purpose of detection would contribute significantly to the prevention of such unlawful acts;

RECOGNIZING that for the purpose of deterring such unlawful acts there is an urgent need for an international instrument obliging States to adopt appropriate measures to ensure that plastic explosives are duly marked;

CONSIDERING United Nations Security Council Resolution 635 of 14 June 1989, and United Nations General Assembly Resolution 44/29 of 4 December 1989 urging the International Civil Aviation Organization to intensify its work on devising an international regime for the marking of plastic or sheet explosives for the purpose of detection;

BEARING IN MIND Resolution A27-8 adopted unanimously by the 27th Session of the Assembly of the International Civil Aviation Organization which endorsed with the highest and overriding priority the preparation of a new international instrument regarding the marking of plastic or sheet explosives for detection;

NOTING with satisfaction the role played by the Council of the International Civil Aviation Organization in the preparation of the Convention as well as its willingness to assume functions related to its implementation;

Schedule 2B—continued

HAVE AGREED as follows:

Article 1

For the purposes of this Convention:

1. "Explosives" mean explosive products, commonly known as plastic explosives, including explosives in flexible or elastic sheet form, as described in the Technical Annex to this Convention.
2. "Detection agent" means a substance as described in the Technical Annex to this Convention which is introduced into an explosive to render it detectable.
3. "Marking" means introducing into an explosive a detection agent in accordance with the Technical Annex to this Convention.
4. "Manufacture" means any process, including reprocessing, that produces explosives.
5. "Duly authorized military devices" include, but are not restricted to, shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades and perforators manufactured exclusively for military or police purposes according to the laws and regulations of the State Party concerned.
6. "Producer State" means any State in whose territory explosives are manufactured.

Article 2

Each State Party shall take the necessary and effective measures to prohibit and prevent the manufacture in its territory of unmarked explosives.

Article 3

1. Each State Party shall take the necessary and effective measures to prohibit and prevent the movement into or out of its territory of unmarked explosives.

Schedule 2B—continued

2. The preceding paragraph shall not apply in respect of movements for purposes not inconsistent with the objectives of this Convention, by authorities of a State Party performing military or police functions, of unmarked explosives under the control of that State Party in accordance with paragraph 1 of Article IV.

Article 4

1. Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of unmarked explosives which have been manufactured in or brought into its territory prior to the entry into force of this Convention in respect of that State, so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.
2. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this Article not held by its authorities performing military or police functions are destroyed or consumed for purposes not inconsistent with the objectives of this Convention, marked or rendered permanently ineffective, within a period of three years from the entry into force of this Convention in respect of that State.
3. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this Article held by its authorities performing military or police functions and that are not incorporated as an integral part of duly authorized military devices are destroyed or consumed for purposes not inconsistent with the objectives of this Convention, marked or rendered permanently ineffective, within a period of fifteen years from the entry into force of this Convention in respect of that State.

Schedule 2B—continued

4. Each State Party shall take the necessary measures to ensure the destruction, as soon as possible, in its territory of unmarked explosives which may be discovered therein and which are not referred to in the preceding paragraphs of this Article, other than stocks of unmarked explosives held by its authorities performing military or police functions and incorporated as an integral part of duly authorized military devices at the date of the entry into force of this Convention in respect of that State.

5. Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of the explosives referred to in paragraph II of Part 1 of the Technical Annex to this Convention so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.

[6.] Each State Party shall take the necessary measures to ensure the destruction, as soon as possible, in its territory of unmarked explosives manufactured since the coming into force of this Convention in respect of that State that are not incorporated as specified in paragraph II (d) of Part 1 of the Technical Annex to this Convention and of unmarked explosives which no longer fall within the scope of any other subparagraphs of the said paragraph II.

Article 5

1. There is established by this Convention an International Explosives Technical Commission (hereinafter referred to as "the Commission") consisting of not less than fifteen nor more than nineteen members appointed by the Council of the International Civil Aviation Organization (hereinafter referred to as "the Council") from among persons nominated by States Parties to this Convention.

2. The members of the Commission shall be experts having direct and substantial experience in matters relating to the manufacture or detection of, or research in, explosives.

3. Members of the Commission shall serve for a period of three years and shall be eligible for re-appointment.

Schedule 2B—continued

4. Sessions of the Commission shall be convened, at least once a year at the Headquarters of the International Civil Aviation Organization, or at such places and times as may be directed or approved by the Council.

5. The Commission shall adopt its rules of procedure, subject to the approval of the Council.

Article 6

1. The Commission shall evaluate technical developments relating to the manufacture, marking and detection of explosives.

2. The Commission, through the Council, shall report its findings to the States Parties and international organizations concerned.

3. Whenever necessary, the Commission shall make recommendations to the Council for amendments to the Technical Annex to this Convention. The Commission shall endeavour to take its decisions on such recommendations by consensus. In the absence of consensus the Commission shall take such decisions by a two-thirds majority vote of its members.

[4.] The Council may, on the recommendation of the Commission, propose to States Parties amendments to the Technical Annex to this Convention.

Article 7

1. Any State Party may, within ninety days from the date of notification of a proposed amendment to the Technical Annex to this Convention, transmit to the Council its comments. The Council shall communicate these comments to the Commission as soon as possible for its consideration. The Council shall invite any State Party which comments on or objects to the proposed amendment to consult the Commission.

2. The Commission shall consider the views of States Parties made pursuant to the preceding paragraph and report to the Council. The Council, after consideration of the Commission's report, and taking into account the nature of the amendment and the comments of States Parties, including producer States, may propose the amendment to all States Parties for adoption.

Schedule 2B—continued

3. If a proposed amendment has not been objected to by five or more States Parties by means of written notification to the Council within ninety days from the date of notification of the amendment by the Council, it shall be deemed to have been adopted, and shall enter into force one hundred and eighty days thereafter or after such other period as specified in the proposed amendment for States Parties not having expressly objected thereto.
4. States Parties having expressly objected to the proposed amendment may, subsequently, by means of the deposit of an instrument of acceptance or approval, express their consent to be bound by the provisions of the amendment.
5. If five or more States Parties have objected to the proposed amendment, the Council shall refer it to the Commission for further consideration.
6. If the proposed amendment has not been adopted in accordance with paragraph 3 of this Article, the Council may also convene a conference of all States Parties.

Article 8

1. States Parties shall, if possible, transmit to the Council information that would assist the Commission in the discharge of its functions under paragraph 1 of Article VI.
2. States Parties shall keep the Council informed of measures they have taken to implement the provisions of this Convention. The Council shall communicate such information to all States Parties and international organizations concerned.

Article 9

The Council shall, in co-operation with States Parties and international organizations concerned, take appropriate measures to facilitate the implementation of this Convention, including the provision of technical assistance and measures for the exchange of information relating to technical developments in the marking and detection of explosives.

Schedule 2B—continued

Article 10

The Technical Annex to this Convention shall form an integral part of this Convention.

Article 11

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

Article 12

Except as provided in Article XI no reservation may be made to this Convention.

Article 13

1. This Convention shall be open for signature in Montreal on 1 March 1991 by States participating in the International Conference on Air Law held at Montreal from 12 February to 1 March 1991. After 1 March 1991 the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 3 of this Article. Any State which does not sign this Convention may accede to it at any time.

Schedule 2B—continued

2. This Convention shall be subject to ratification, acceptance, approval or accession by States. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary. When depositing its instrument of ratification, acceptance, approval or accession, each State shall declare whether or not it is a producer State.

3. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Depositary, provided that no fewer than five such States have declared pursuant to paragraph 2 of this Article that they are producer States. Should thirty-five such instruments be deposited prior to the deposit of their instruments by five producer States, this Convention shall enter into force on the sixtieth day following the date of deposit of the instrument of ratification, acceptance, approval or accession of the fifth producer State.

4. For other States, this Convention shall enter into force sixty days following the date of deposit of their instruments of ratification, acceptance, approval or accession.

5. As soon as this Convention comes into force, it shall be registered by the Depositary pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

Article 14

The Depositary shall promptly notify all signatories and States Parties of:

1. each signature of this Convention and date thereof;

2. each deposit of an instrument of ratification, acceptance, approval or accession and date thereof, giving special reference to whether the State has identified itself as a producer State;

3. the date of entry into force of this Convention;

4. the date of entry into force of any amendment to this Convention or its Technical Annex;

Schedule 2B—continued

5. any denunciation made under Article XV; and
6. any declaration made under paragraph 2 of Article XI.

Article 15

1. Any State Party may denounce this Convention by written notification to the Depositary.
2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their Governments, have signed this Convention.

DONE at Montreal, this first day of March, one thousand nine hundred and ninety-one, in one original, drawn up in five authentic texts in the English, French, Russian, Spanish and Arabic languages.

Schedule 2B—continued
TECHNICAL ANNEX
PART 1: DESCRIPTION OF EXPLOSIVES

1. The explosives referred to in paragraph 1 of Article 1 of this Convention are those that:

   . are formulated with one or more high explosives which in their pure form have a vapour pressure less than 10-4 Pa at a temperature of 25-C;

   a. are formulated with a binder material; and

   b. are, as a mixture, malleable or flexible at normal room temperature.

2. The following explosives, even though meeting the description of explosive in paragraph 1 of this Part, shall not be considered to be explosives as long as they continue to be held or used for the purposes specified below or remain incorporated as there specified, namely those explosive that:

   a. are manufactured, or held, in limited quantities solely for use in duly authorized research, development or testing of new or modified explosives;

   b. are manufactured, or held, in limited quantities solely for use in duly authorized training in explosives detection and/or development or testing of explosives detection equipment;

   c. are manufactured, or held, in limited quantities solely for duly authorized forensic science purposes; or

   d. are destined to be and are incorporated as an integral part of duly authorized military devices in the territory of the producer State within three years after the coming into force of this Convention in respect of that State. Such devices produced in this period of three years shall be deemed to be duly authorized military devices within paragraph 4 of Article 4 of this Convention.

3. In this Part:

   "duly authorized" in paragraph 2 (a), (b) and (c) means permitted according to the laws and regulations of the State Party concerned; and "high explosives" include but are not restricted to cyclotetramethylenetetranitramine (HMX), pentaerythritol tetranitrate (PETN) and cyclotrimethylenetrinitramine (RDX)

Schedule 2B—continued

PART 2: DETECTION AGENTS

The present version of the Conventions and Protocols might differ slightly from the consolidated official English versions which were - by end of November 2000 - not available to TPB in electronic form. Please contact the Codification Division of the UN Office of Legal Affairs (United Nations, Room S-3450 A, New York, N.Y. 10017, USA) for the official versions in English and other official UN languages.

Table:

Name of detection agent	*Molecular formula*	*Molecular weight*	*Minimum concentration*
Ethylene glycol dinitrate (EGDN)	C2H4(NO3)2	152	0.2% by mass
2,3-Dimethyl-2,3dinitro butane (DMNB)	C6H12(NO2)2	176	0.1% by mass
para-Mononitrotoluene (p-MNT)	C7H7NO2	137	0.5% by mass
ortho-Mononitrolouene (o-MNT)	C7H7NO2	137	0.5% by mass

Any explosive which, as a result of its normal formulation contains any of the designated dectection agents at or above the required minimum concentration level shall be deemed to be marked.

Struck out (majority)

Disclaimer

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