

Counter-Terrorism Bill

Government Bill

Explanatory note

General policy statement

The Terrorism Suppression Act 2002 comprised a range of measures required to meet New Zealand's obligations at international law, specifically in relation to the International Convention on the Suppression of Terrorist Bombing, the International Convention on the Suppression of the Financing of Terrorism, and Resolution 1373 adopted by the United Nations Security Council on 28 September 2001 following the 11 September 2001 attacks on the United States. This second Counter-Terrorism Bill contains supplementary powers in the form of new terrorism-related offences and penalties, and a range of investigative measures designed to combat terrorism and address miscellaneous problems encountered by agencies in the investigation and enforcement of offences.

Terrorism-related offences and penalties

The Bill implements in domestic law the requirements of 2 international Conventions (the Convention on the Physical Protection of Nuclear Material, and the Convention on the Marking of Plastic Explosives for the Purpose of Detection) by providing for:

- offences involving the use and movement of unmarked plastic explosives:
- offences involving the physical protection of nuclear material:
- extra-territorial jurisdiction, extradition, and mutual assistance requirements in respect of those offences.

The Bill also creates the following new offences and penalties, which are not all terrorism-specific, but are necessary to ensure that the criminal law caters adequately for the whole range of offending likely to be committed by terrorists:

- infecting animals with disease (maximum penalty 10 years' imprisonment):
- contamination of food, crops, water, or other products intended for human consumption (maximum penalty 10 years' imprisonment):
- threatening or falsely communicating information about harm to persons or property (maximum penalty 7 years' imprisonment):
- harbouring or concealing terrorists (maximum penalty 7 years' imprisonment):
- dealing with radioactive material (maximum penalty 10 years' imprisonment):
- terrorism will be an aggravating factor for sentencing purposes under the Sentencing Act 2002.

Evidence of private communications lawfully intercepted

The Police may obtain interception warrants under 2 Acts, the Crimes Act 1961 (for specified offences) and the Misuse of Drugs Amendment Act 1978 (for some drug offences). Both Acts provide that evidence of an offence against one Act, that is obtained fortuitously in the course of interceptions authorised by a warrant issued under the other Act, is admissible if a warrant could have been issued under the first Act. In *R v Aranui* (1999) 16 CRNZ 304, the Court of Appeal's interpretation of these provisions prevented the admission of such evidence. This Bill will overturn *Aranui*, to ensure that evidence of a private communication lawfully intercepted under an interception warrant will be admissible in court if it discloses evidence of any offence for which an interception warrant may be issued. The Bill will enhance the ability of the Police to prosecute serious crime by ensuring the admissibility of relevant evidence that is lawfully obtained by means of an interception warrant.

Tracking devices

Currently, section 13 of the Misuse of Drugs Amendment Act 1978 provides for the use of tracking devices by Police and Customs in the investigation of drug dealing offences. The use of tracking devices to investigate other offences is unregulated, except to the extent that the law relating to trespass, criminal damage, privacy, and search and seizure may apply. The admissibility of evidence obtained by the use of a tracking device may be challenged if section 13 does not apply. The Bill repeals section 13 of the Misuse of Drugs Amendment Act 1978 and provides a general regime whereby authorised public officers may apply to a District Court Judge or a 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. The Bill ensures that the use of tracking devices by the State is proportionate, taking into account the property and privacy rights of citizens and the need for effective law enforcement. The Bill also ensures the admissibility of evidence legitimately obtained by the use of tracking devices.

Assistance in accessing computer data

While it is an offence to obstruct the Police in the execution of a search warrant, no person is required to assist the Police, who must rely on the use of force to obtain access to material that is the subject of the warrant. The Bill will enable a constable executing a search warrant to 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. A specified person must have a sufficient connection with the computer, by being either the owner or lessee of the computer, or in possession or control of the computer, or an employee of such a person. A specified person must also have relevant knowledge of the computer or computer network, or of measures applied to protect the data. This will ensure the effectiveness of search warrants in relation to computer-held data.

Property of designated or suspected terrorists

The Terrorism Suppression Act 2002 contains provisions that have the effect of freezing the property of designated terrorist entities, by making it an offence for any person to deal in the property of such entities, or to provide them with property or services, without lawful

justification or reasonable excuse, for example, except to the extent necessary to satisfy essential human needs. This Bill provides that:

- the Customs may detain property intercepted crossing the New Zealand border if there is good cause to suspect that it is owned or controlled, directly or indirectly, by a designated terrorist entity:
- the Customs may detain cash and/or cash equivalents (eg, gemstones, precious metals, travellers' cheques) crossing the border if there is good cause to suspect that it is owned or controlled, directly or indirectly, by an entity eligible for designation as a terrorist.

These property detention powers are for the limited purpose of allowing the Customs to ascertain whether the suspected terrorist entity has already been designated or, in the view of the Prime Minister, should be designated. Safeguards around the powers include:

- a maximum detention period of 7 days unless extended by court order for up to a further 14 days:
- a right for the person from whom property has been detained to be notified of, and appear and be heard on, any application for extension of the detention period:
- a requirement on the Customs to provide any such person with sufficient cash to provide themselves or any dependants with the necessities of life.

New Zealand Security Intelligence Service Act 1969

The Bill amends the definitions of **security** and **terrorism** in the New Zealand Security Intelligence Service Act 1969 to make them consistent with the Terrorism Suppression Act 2002.

Clause by clause analysis

The Parts of this Bill appear in alphabetical order of the Acts they amend.

Clause 1 relates to the Bill's Title.

Clause 2 is a commencement provision. It—

- contains references to all provisions providing for amendments to commence otherwise than on the day of assent; and

- provides that the commencement for all other amendments is the day after assent.

Part 1

Amendments to Crimes Act 1961

Clause 4 amends section 7A of the principal Act. Extraterritorial jurisdiction is extended in certain circumstances to include offences committed outside New Zealand to include any offence committed by New Zealand nationals in the course of carrying out a terrorist act, as that term is defined in section 5(1) of the Terrorism Suppression Act 2002 (for example, if the perpetrator or victim is a New Zealand citizen or resident). Offences against *new sections 298A and 298B* are inserted.

Clause 5 amends section 7B of the principal Act by inserting reference to *new sections 298A and 298B* so that the Attorney-General's consent will also be required before proceedings may be commenced in relation to these offences. This section is further amended by adding a new subsection (2) which provide that the Attorney-General's consent is required before proceedings for an offence against the principal Act committed in the course of carrying out a terrorist act may be commenced.

Clause 6 inserts *new sections 298A and 298B* into the principal Act. The clause creates 2 new offences. *New section 298A* creates an offence of infecting animals with disease or sickness, either directly or indirectly, and *new section 298B* creates an offence of contaminating food, crops, water, or other products intended for human consumption. Both offences have a maximum penalty of 10 years imprisonment.

Clause 7 inserts *new section 307A* into the principal Act. This new section creates an offence of threatening to do any act that would cause harm to persons or property, or communicating information about harm to persons or property. It is a requirement of the offence that there must be an intention to cause significant disruption to commercial or government interests. An offence may not be inferred, however, merely because a person engages in any protest, advocacy, or dissent, or engages in various types of industrial action. The maximum penalty for the offence is 7 years imprisonment.

Clause 8 inserts a *new section 312N* into the principal Act. This provides that evidence fortuitously discovered in the course of a lawful interception is admissible if the offence is one of the offences

for which an interception warrant may be issued regardless of which Act the warrant is issued under.

Part 2

Amendments to Terrorism Suppression Act 2002

Amendments to principal Act

Clause 10 amends section 3(b) of the principal Act, which relates to the purposes of the Act. One of the purposes of the Act is to make provision to implement in New Zealand law New Zealand's obligations under certain conventions. The Nuclear Material Convention and the Plastic Explosives Convention (as they are defined in amended section 4 of the principal Act) are added to the list of conventions.

Clause 11 amends section 4 of the principal Act by inserting new definitions relating to the Nuclear Material Convention and the Plastic Explosives Convention.

Clause 12 inserts *new sections 13A to 13D* into the principal Act.

New section 13A creates an offence of harbouring or concealing terrorists. The maximum penalty for the offence is 7 years imprisonment.

New sections 13B and 13C create 2 offences relating to the use and movement of unmarked plastic explosives. The maximum penalties for the offences relating to unmarked plastic explosives are \$500,000 or up to 10 years' imprisonment.

New section 13D creates an offence relating to the importation, acquisition, possession, or control of radioactive material. The maximum penalty for the offence is 10 years, imprisonment.

Clause 13 amends section 14 of the principal Act, which relates to extraterritorial jurisdiction. Section 14(1) currently provides that sections 7 to 13 of the principal Act apply in respect of acts that occurred wholly outside New Zealand as provided in sections 15 to 18. The amendment inserts a reference to *new sections 13B to 13D* (which create new offences relating to nuclear material and an offence relating to the importation, acquisition, possession, or control of radioactive material).

Clause 14 substitutes in the principal Act a *new section 18*. Section 18 has been redrafted to include a nuclear material offence (as defined in section 4 of the principal Act, as amended by *clause 21*) as one of the offences where proceedings may be brought in New

Zealand if the acts alleged to constitute the offence occurred wholly outside New Zealand, but the alleged offender is present in New Zealand and not extradited.

Clause 15 inserts into the principal Act *new sections 47A to 47G*.

New section 47A is to facilitate investigation of the goods and entity concerned, and appropriate law enforcement actions being taken, in or outside New Zealand. It empowers the seizure and detention of goods—

- that are being, or are intended to be, exported from, or imported into, New Zealand; and
- that are suspected to be—
 - property of any kind owned or controlled, directly or indirectly, by an entity designated under the principal Act as a terrorist or associated entity; or
 - cash or cash equivalents owned or controlled, directly or indirectly, by an entity eligible for designation under the principal Act as a terrorist or associated entity.

New section 47B relates to the return of cash necessary to satisfy essential human needs.

New section 47C contains further provisions about detention of goods under *new section 47A*.

New section 47D relates to the return of goods detained under *new section 47A*. The goods must be returned as soon as practicable after the expiry of the investigation period (that is, the period of 7 days after the date on which they were they were seized and detained) unless—

- all relevant investigations are completed earlier and show that the goods are not terrorist property (in which case the goods must be returned as soon as practicable); or
- before that time, the Customs is advised by or on behalf of the Prime Minister that the goods are terrorist property (in which case the Customs may continue to detain the goods pending a direction under section 48 of the principal Act that the Official Assignee take custody and control of them).

New section 47E provides for the High Court to extend, by up to a further 14 days, the 7-day period referred to in *new section 47D*.

New section 47F relates to custody of goods detained under *new section 47A* that are a craft, vehicle, or animal.

New section 47G creates offences of dealing in specified ways with goods—

- detained under *new section 47A*; and
- in the custody of a person under *new section 47F*.

Clause 16 amends section 63 of the principal Act to include a reference to an offence referred to in article 9 of the Nuclear Material Convention as one to which sections 64 and 65 of the principal Act apply. Those sections relate to the investigation and prosecution of offences against the principal Act or referred to in the listed Conventions.

Clauses 17 and 18 make consequential amendments to sections 64 and 65 of the principal Act.

Clause 19 makes a consequential amendment to section 67(3) of the principal Act.

Clause 20 amends section 69 of the principal Act, which relates to offences deemed to be included in extradition treaties. Reference to nuclear material offences is included as one of the offences that is deemed to be included in extradition treaties. The definition of **relevant date** in subsection (4) is amended to refer to 5 December 2002, which is the date that the international conventions on the Suppression of Terrorist Bombing and on the Suppression of Terrorist Financing entered into force for New Zealand. The Nuclear Material Convention will come into force once this Bill has been passed and New Zealand's instrument of accession is deposited with the United Nations.

Clause 21 inserts into the principal Act *new schedules 2A and 2B*. These set out the texts of the Nuclear Material Convention and the Plastic Explosives Convention.

Clause 22 amends Schedule 3 of the principal Act to add a reference to the Nuclear Material Convention.

*Consequential amendment to Mutual Assistance in Criminal
Matters Act 1992*

Clause 23 makes a consequential amendment to the Schedule of the Mutual Assistance in Criminal Matters Act 1992 to refer to the Nuclear Material Convention, which contains an express obligation to provide assistance in criminal matters to other States Parties.

Part 3 Amendment to other Acts

Misuse of Drugs Amendment Act 1978

Clause 25 repeals section 13 of the principal Act, which relates to tracking devices. This is consequential on the new tracking device provisions inserted in the Summary Proceedings Act 1957 by *clause 34*, which will apply to offences under the principal Act as well as to offences under other Acts.

Clause 26 substitutes a *new section 26* in the principal Act. This relates to evidence fortuitously discovered in the course of a lawful interception and mirrors *new section 312N* of the Crimes Act 1961. Evidence is admissible under the principal Act even if it is discovered as a result of an interception warrant granted under another Act.

New Zealand Security Intelligence Service Act 1969

Clause 28 amends section 2(1) of the principal Act by—

- extending the definition of **security** to include the prevention of any terrorist act; and
- replacing the definition of **terrorism** with a definition of **terrorist act** to align the principal Act with the Terrorism Suppression Act 2002.

Sentencing Act 2002

Clauses 30 and 31 amend sections 9(1) and 104 of the principal Act. A *new subparagraph (ha)* is inserted into section 9(1), which provides that if the offence was committed as part of, or involves, a terrorist act, then this is an aggravating factor when sentencing. A *new subparagraph (ea)* is inserted into section 104 to list a terrorist act as one of the factors justifying a minimum period of 17 years imprisonment or more in murder cases.

Summary Proceedings Act 1957

Clause 33 inserts a *new section 198B* into the principal Act. This new section imposes a duty to assist a constable where assistance is required to access a computer network in executing a search warrant. The assistance, however, is limited to that required to enable the Police to search for information referred to in the search warrant and the assistant is not required to locate the material for the Police or to provide it in any particular form. It is an offence to fail to provide

assistance, which is punishable by 3 months imprisonment or a fine not exceeding \$2,000.

Clause 34 inserts *new sections 200A to 200I* into the principal Act. These provisions relate to tracking devices.

New section 200A is an interpretation section.

Under *new section 200B*, an application for a tracking device warrant may be made to a judge by an authorised public officer. A tracking device warrant may be issued by the judge if the judge is satisfied of the following matters:

- that there are reasonable grounds to suspect that an offence has been, is being, or will be committed; and
- that information that is relevant to the commission of the offence, including the whereabouts of any person, can be obtained through the use of a tracking device; and
- that it is in the public interest to issue a warrant. In deciding the public interest, the judge must take 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.

New section 200C provides for the issuing of a tracking device warrant. Further warrants may be applied for in respect of the same offence.

New section 200D provides that a tracking device warrant authorises the installation, maintenance, removal, and monitoring of a tracking device by an authorised public officer. It also provides that, for the purposes of installing, maintaining, removing, or monitoring a tracking device, an authorised public officer may, if necessary, enter a premises specified in the warrant by force, break open or interfere with any thing, and temporarily remove any thing.

New section 200E provides that, unless renewed, the tracking device warrant expires after the time specified in the warrant. However, the warrant can only be valid for a maximum of 60 days.

New section 200F relates to the renewal of a warrant. The judge must be satisfied of the same matters as when the warrant was originally issued.

New section 200G provides that a tracking device may be used without a warrant if there is no time to apply for a warrant. The authorised public officer must reasonably believe that a judge would

grant a warrant if there were time to apply for one. However, within 72 hours of the tracking device being placed, the authorised public officer must do one of the following 3 things:

- apply for a tracking device warrant if the officer wants to continue to monitor the device;
- if a warrant is not issued for any reason, then the officer must apply to a Judge for a warrant to remove the device;
- if the officer wants to leave the device in place, then an application to a Judge for directions must be made.

The section also provides that a report must be made to a District Court Judge relating to the use of the tracking device within 72 hours.

New section 200H provides for the issuing of a warrant to remove a tracking device after expiry of a warrant. In order to remove the tracking device, the warrant authorises the authorised public officer to, if necessary, enter by force onto any premises specified in the warrant, break open or interfere with any thing, and temporarily remove any thing.

New section 200I requires the Chief Executives of government agencies who are issued tracking device warrants to provide details relating to the use of those warrants in their annual report.

Regulatory impact and compliance cost statement

Statement of the public policy objective

The safety and security of New Zealand and its citizens, and to some extent New Zealand's international reputation, depend on the implementation of a range of effective measures to combat the global threat of terrorism.

Statement of the problem and the need for action

This Bill contains new terrorism-related offences and penalties, some of which are required to implement in domestic law the UN Conventions on Nuclear Material and Plastic Explosives, and others which are necessary to ensure that the criminal law caters adequately for the whole range of offending likely to be committed by terrorists. It also includes a range of investigative measures designed to combat terrorism and address miscellaneous problems encountered by agencies in the investigation and enforcement of offences.

Statement of options for achieving the desired objective

Offences, penalties, and investigative powers can only be implemented by passing legislation. No other options were identified that could feasibly achieve the desired objective.

Statement of the net benefit of this proposal

Benefits

The benefits are unquantifiable, but include:

- the safety and security of New Zealand and its citizens:
- maintaining New Zealand's international reputation by being seen to co-operate fully in global attempts to combat terrorism:
- setting in place the measures necessary for New Zealand to implement in domestic law the UN Conventions on the Physical Protection of Nuclear Material and on the Marking of Plastic Explosives for the Purpose of Detection:
- effective domestic law enforcement.

Costs

In relation to tracking devices, the requirement on enforcement agencies to apply for a warrant may have minor implications for court resources.

Compliance costs

There are not expected to be any business compliance costs. The only area in relation to which this might arise is the power that will be given to the police to require assistance in accessing computer data from the owner or lessee of a computer, or a person in possession or control of a computer, or an employee of such a person. However, the assistance requirement is limited to that which is reasonable and necessary.

Consultation

The following agencies have been consulted:

Crown Law Office

Department for Courts

Department of Internal Affairs

Department of Labour

Department of Prime Minister and Cabinet
Environmental Risk Management Authority
Government Communications Security Bureau
Inland Revenue Department
Institute of Geological and Nuclear Sciences
Maritime Safety Authority
Ministry for the Environment
Ministry of Agriculture and Forestry
Ministry of Defence
Ministry of Foreign Affairs and Trade
Ministry of Health
New Zealand Customs Service
New Zealand Defence Force
New Zealand Police
New Zealand Security Intelligence Service
Privacy Commissioner
Serious Fraud Office
States Services Commission
The Treasury

Hon Phil Goff

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The Parliament of New Zealand enacts as follows:

1 Title

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

2 Commencement

- (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. 5

- (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.
- (3) The rest of this Act comes into force on the day after the date on which it receives the Royal assent. 5

Part 1

Amendments to Crimes Act 1961

- 3 Crimes Act 1961 called principal Act in this Part**
 In this Part, the Crimes Act 1961¹ is called “the principal Act”. 10
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 15
- (b) by omitting the words “or section 257A”, and substituting the words “section 257A, section 298A, and section 298B”. 20
- 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”. 25
- (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 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.” 30

6 New sections 298A and 298B inserted

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

“298A Infecting animals with disease or sickness

- “(1) Every one is liable to imprisonment for a term not exceeding 5
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 speci-
fied in **subsection (2)** either—
- “(a) with the intent of causing any of those outcomes; or 10
“(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 popu- 15
lation; or
“(b) anything likely to result in major damage to the national
economy of New Zealand.

“298B Contaminating food, crops, water, or other products

- Every one is liable to imprisonment for a term not exceeding 20
10 years who, without lawful justification or reasonable
excuse, contaminates food, crops, water, or any other pro-
ducts, knowing, or being reckless as to whether the food,
crops, water, or products were intended for human consump-
tion and—
- “(a) with intent to cause harm to a person; or 25
“(b) being reckless as to whether a person may be harmed;
or
“(c) with intent or being reckless as to whether major econo-
mic loss is caused to any person; or
“(d) with intent or being reckless as to whether major dam- 30
age to the national economy of New Zealand.”

7 New section 307A

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

“307A Threatening to do harm to persons or property 35

- “(1) Every one who intends to cause significant disruption to com-
mercial interests or government interests is liable to imprison-
ment 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.
- “(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 **subsection (1)**.” 5
- 8 New section 312N substituted** 10
- The principal Act is amended by repealing section 312N, and substituting the following section:
- “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 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: 15
- “(a) a specified offence, or a conspiracy to commit such an offence; or 20
- “(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).” 25

Part 2

Amendments to Terrorism Suppression Act 2002

Amendments to principal Act 30

- 9 Terrorism Suppression Act 2002 called principal Act in this Part**
- In this Part, the Terrorism Suppression Act 2002² is called “the principal Act”. 35

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.”

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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

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

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“**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

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“**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**

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“**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

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“**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**

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

- (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 5
 - “(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— 10
- “(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: 15
 - “(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 20
 - “(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** 25
- “(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— 30
 - “(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 35
 - “(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 40

- “(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— 5
 “(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. 10
- “(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* 15
- 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.” 20
- 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**”. 25
- 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** 30
 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.” 35

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 5

- “(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— 10

“(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— 15

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

“(ii) are being, or have been, imported into New Zealand; and 20

“(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 25

“(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 30

“(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 35

“cash equivalents includes (without limitation) bearer bonds, gemstones, money orders, postal notes, precious metals, and travellers cheques. 40

- “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** 5
- “(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**. 10
- “(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— 15
- “(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)**: 20
- “(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— 25
- “(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. 30
- “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— 35
- “(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: 5
- “(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 10
- “(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. 15
- “(3) The person from whom the goods were seized is entitled to appear and be heard on the application.
- “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— 20
- “(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. 25
- “(3) A person to whom **subsection (2)** applies must also— 30
- “(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 35
- “(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. 5

“(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. 10

“(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. 15

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 20

(1) Section 63(1) of the principal Act is amended by adding the words “or, as the case requires, article 9 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 of the Nuclear Material Convention”. 25

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”. 30

18 Attorney-General to notify relevant States Parties if person taken into custody 35

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**”.

5

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.”

10

15

20

(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.”

25

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

30

“(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.”

35

- 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: 5
“(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* 10
- 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: 15
- | | | |
|--|---|----|
| 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: | 20 |
| | <i>section subject-matter</i>
13C offences involving the physical protection of nuclear materials | |
- Part 3**
- Amendments to other Acts** 25
- 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 1978³ is called “the principal Act”. 30
- 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: 35

- “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: 5
- “(a) a drug dealing offence; or
 “(b) a prescribed cannabis offence; or 10
 “(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.” 15

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 1969⁴ is called “the principal Act”. 20

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 25
 (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”. 30
- (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”. 35

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

In sections 30 and 31, the Sentencing Act 2002⁵ is called “the principal Act”. 5

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):”. 10

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: 15

“(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** 20

In sections 33 and 34, the Summary Proceedings Act 1957⁶ 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: 25

“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. 30

- “(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.
- “(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 200I 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 200I**,—
- “**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.
- “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.
- “(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,

- 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. 5
- “(3) The application must be made in writing and on oath and must set out the following particulars: 10
- “(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 may assess the degree to which privacy or property rights are likely to be intruded on; and 15
- “(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.
- “**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 sees fit. 20
- “(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. 25
- “(3) Further 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. 30
- “**200D Effect of tracking device warrant**
- “(1) A tracking device warrant authorises 1 or more authorised public officers to whom it is directed,—
- “(a) to install, maintain, or remove a tracking device in or on any thing; and 35
- “(b) to monitor, or to have monitored, a tracking device installed in or on any thing.
- “(2) For the purposes of installing, maintaining, removing, or monitoring a tracking device, a tracking device warrant authorises

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: 5

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

“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. 10

“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— 15

“(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. 20

“(4) A Judge may grant the application and renew a tracking device 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 warrant may be renewed under this section for a period of not more than 60 days. 25

“(6) The period for which a tracking device 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 warrant may be renewed 1 or more times.

“200G **Use of tracking device without warrant** 30

“(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. 35

- “(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; 5
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 10
- “(c) if the authorised public officer wants to leave the tracking device in place then that officer must apply to a Judge for directions.
- “(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. 15
- “(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. 20 25
- “(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. 30
- “(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. 35
- “200H **Warrant for removal of tracking device after expiry of warrant**
- “(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 40

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.

- “(2) A warrant issued under this section authorises the 1 or more authorised public officers to remove the tracking device and, in so doing, to do any of the following at any time if necessary: 5
- “(a) to enter, by force, onto any premises specified in the warrant: 5
- “(b) to break open or interfere with any thing: 10
- “(c) to temporarily remove any thing from any place where it is found and to return the thing to that place. 10
- “(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. 15

“200I **Government agency 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**, 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: 20

- “(a) the number of warrants issued under **section 200C**; and 25
- “(b) the number of renewals of warrants granted under **section 200C**; and 25
- “(c) the average duration of warrants (including renewals); and 25
- “(d) the number of times a tracking device was used without a warrant under **subsection 200G**.” 30

Schedule
New Schedules 2A and 2B inserted

Schedule 2A
Convention on the Physical Protection of Nuclear
Material

5

Signed at New York and 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,

10

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.

15

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,

20

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

25

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.

30

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; 5
- 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; 10
- 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. 15

ARTICLE 2

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- 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. 25
- 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. 30

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 35

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

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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. 10
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. 15
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. 20
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 1 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. 25
6. The responsibility for obtaining assurances referred to in paragraph 1 may be transferred, by mutual agreement, to the State Party involved in the transport as the importing State. 30
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. 35

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. 5
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: 10
 - 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: 15
 - 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: 20
 - i. co-ordinate their efforts through diplomatic and other agreed channels: 25
 - 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. 30
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. 35

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. 5 10
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. 15

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; 20
 - b. a theft or robbery of nuclear material;
 - c. an embezzlement or fraudulent obtaining of nuclear material; 25
 - 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 30
 - 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; 35

Schedule 2A—continued

- f. an attempt to commit any offence described in paragraphs (a), (b) or (c); and
 - 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. 5
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: 10
- 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. 15
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. 20
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.
4. In addition to the States Parties mentioned in paragraphs 1 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. 25

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. 30 35

Schedule 2A—continued**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. 5

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. 10
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. 15
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. 20
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. 25

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. 30

Schedule 2A—continued**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. 5
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. 10

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. 15
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. 20
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. 25

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. 35

Schedule 2A—continued

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

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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. 10
2. Any dispute of this character which cannot be settled in the manner prescribed in paragraph 1 shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In case of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority. 15
20
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. 25
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. 30

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. 35

Schedule 2A—continued

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. 5
 - 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. 10
 - 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 15
 - d. Such an organization shall not hold any vote additional to those of its Member States. 20
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. 25
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. 30

Schedule 2A—continued**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. 5
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. 10 15 20

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. 25

ARTICLE 22

- The depositary shall promptly notify all States of:
- a. each signature of this Convention; 30
 - 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; 35
 - e. the entry into force of this Convention;

Schedule 2A—continued

- 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. 5

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Convention, 10
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: 5
 - 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; 10
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. 15
20
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; 25
 - 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; 30
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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.

5

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. 5
- 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. 10
- 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. 15

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Schedule 2B—continued**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. 5
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. 10
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. 15
6. “Producer State” means any State in whose territory explosives are manufactured. 20

Article 2

Each State Party shall take the necessary and effective measures to prohibit and prevent the manufacture in its territory of unmarked explosives. 25

Article 3

1. Each State Party shall take the necessary and effective measures to prohibit and prevent the movement into or out of its territory of unmarked explosives.
2. The preceding paragraph shall not apply in respect of movements for purposes not inconsistent with the objectives of this Convention, by authorities of a State Party performing military or police functions, of unmarked explosives under the control of that State Party in accordance with paragraph 1 of Article IV. 30

Schedule 2B—continued**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. 5
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. 10
15
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. 20
25
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. 30

Schedule 2B—continued

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. 5
- [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. 10

Article 5

15

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. 20
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. 25
3. Members of the Commission shall serve for a period of three years and shall be eligible for re-appointment.
4. Sessions of the Commission shall be convened, at least once a year at the Headquarters of the International Civil Aviation Organization, or at such places and times as may be directed or approved by the Council. 30
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. 35

Schedule 2B—continued

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. 5
- [4.] The Council may, on the recommendation of the Commission, propose to States Parties amendments to the Technical Annex to this Convention. 10

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. 15
20
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. 25
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. 30
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Schedule 2B—continued

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. 5
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. 10

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. 15

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. 20
25

Article 10

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

Schedule 2B—continued**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. 5
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. 10
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. 15

Article 12

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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. 25

30

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 Depository. When depositing its instrument of ratification, acceptance, approval or accession, each State shall declare whether or not it is a producer State. 5
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 Depository, 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. 10
15
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. 20
5. As soon as this Convention comes into force, it shall be registered by the Depository 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). 25

Article 14

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

1. each signature of this Convention and date thereof; 30
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; 35
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. 5
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. 10

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; 5
 - a. are formulated with a binder material; and
 - b. are, as a mixture, malleable or flexible at normal room temperature. 10
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: 15
 - 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; 20
 - 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. 25 30
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 cyclotrimethylene-trinitramine (RDX) 35

Schedule 2B—continued**PART 2: DETECTION AGENTS**

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Table:

<i>Name of detection agent</i>	<i>Molecular formula</i>	<i>Molecular weight</i>	<i>Minimum concentration</i>	
Ethylene glycol dinitrate (EGDN)	C ₂ H ₄ (NO ₃) ₂	152	0.2% by mass	10
2,3-Dimethyl-2,3-dinitro butane (DMNB)	C ₆ H ₁₂ (NO ₂) ₂	176	0.1% by mass	15
para-Mononitrotoluene (p-MNT)	C ₇ H ₇ NO ₂	137	0.5% by mass	
ortho-Mononitrotoluene (o-MNT)	C ₇ H ₇ NO ₂	137	0.5% by mass	20

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

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