

CHAPTER 158

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FIRST SCHEDULE

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CHAPTER 158

ANTI-TERRORISM

An Act to implement the United Nations Convention respecting the Suppression of the Financing of Terrorism and the United Nations Security Council Resolution 1373 on terrorism; generally to make provision for preventing and combatting terrorism; and to amend the Constitution to the extent necessary to give effect to the provision respecting capital punishment. 2002-6.

[30th May, 2002] Commencement.

PART I

Preliminary

1. This Act may be cited as the *Anti-Terrorism Act*. Short title.

2. In this Act, Definitions.

"Convention" means the International Convention for the Suppression of the Financing of Terrorism adopted by the General Assembly of the United Nations on 9th December, 1999 set out in the *First Schedule*;

First Schedule.

"Commissioner" means the Commissioner of Police;

"Court" means the High Court;

"entity" means an incorporated or unincorporated body;

"freeze" means to restrain any funds or dealing in funds;

"funds" means

(a) assets of every kind, whether tangible or intangible, movable or immovable, however acquired; and

- (b) legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in such assets as bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit;

"proceeds" means any funds derived from or obtained, directly or indirectly, through the commission of an offence set out in section 3 or 4;

"State or government facility" means any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an inter-governmental organisation in connection with their official duties.

PART II

Terrorism

Offence of terrorism.

Second Schedule.

- 3.** (1) A person who in or outside Barbados carries out
- (a) an act that constitutes an offence under or defined in any of the Treaties listed in the *Second Schedule*; or
- (b) any other act
- (i) that has the purpose, by its nature or context, to intimidate the public or to compel a government or an international organisation to do or to refrain from doing any act; and
- (ii) that is intended to cause
- (A) death or serious bodily harm to a civilian or, in a situation of armed conflict, to any other person not taking an active part in the hostilities;

- (B) serious risk to the health or safety of the public or any segment of the public;
- (C) substantial property damage, whether to public or private property, where the damage involves a risk of the kind mentioned in sub-paragraph (B) or an interference or disruption of the kind mentioned in sub-paragraph (D); or
- (D) serious interference with or serious disruption of an essential service, facility or system, whether public or private, not being an interference or disruption resulting from lawful advocacy or from protest, dissent or stoppage of work and not involving a risk of the kind mentioned in sub-paragraph (B),

is guilty of the offence of terrorism and on conviction on indictment

- (c) where death ensues, and where that act would have constituted the offence of murder or treason prior to 30th May, 2002, shall be sentenced to death; or
- (d) in any other case, is liable to imprisonment for life.

(2) A person who

- (a) aids, abets, counsels, procures, incites or solicits the commission of an offence; or
- (b) conspires with another or others to commit an offence

under subsection (1) is liable on conviction on indictment to be punished as a principal offender under that subsection.

(3) For the avoidance of doubt, section 12(1) of the *Constitution* is amended by paragraph (c) of subsection (1) to the extent necessary to give effect to that paragraph.

Financing of Terrorism

Providing or
collecting
funds for
criminal
purposes.

4. (1) A person who in or outside Barbados directly or indirectly, unlawfully and wilfully,

(a) provides or collects funds; or

(b) provides financial services or makes such services available to persons

with the intention that the funds or services are to be used, or with the knowledge that the funds or services are to be used, in full or in part in order to carry out

Second
Schedule.

(i) an act that constitutes an offence under or defined in any of the Treaties listed in the *Second Schedule*; or

(ii) any other act

(A) that has the purpose, by its nature or context, to intimidate the public or to compel a government or an international organisation to do or to refrain from doing any act; and

(B) that is intended to cause

(aa) death or serious bodily harm to a civilian or, in a situation of armed conflict, to any other person not taking an active part in the hostilities;

(bb) the risk, damage, interference or disruption of the kind mentioned in sub-paragraph (B), (C) or (D) of section 3(1) as the case may be,

is guilty of an offence and is liable on conviction on indictment to imprisonment for a term of 25 years.

(2) For an act to constitute an offence under subsection (1), it is not necessary to prove that the funds or the financial services were actually used to carry out the offence.

- (3) A person who
- (a) aids, abets, counsels, procures, incites or solicits the commission of an offence; or
 - (b) conspires with another or others to commit an offence

under subsection (1), is liable on conviction on indictment to be punished as a principal offender under that subsection.

5. Where an offence referred to under section 3 or 4 is committed by a person responsible for the management or control of an entity located or registered in Barbados or in any other way organised under the laws of Barbados, that entity, in circumstances where the person committed the offence while acting in that capacity, is guilty of an offence and is liable on conviction on indictment to a fine of \$2 000 000 notwithstanding

Liability of a legal entity.

- (a) any criminal liability that may have been incurred by an individual that was directly involved in the commission of the offence; or
- (b) any civil or administrative sanction that may have been imposed by law.

PART III

Investigatory Provisions

6. (1) Where any person has reasonable grounds to suspect that funds or financial services are related to or are to be used to facilitate an offence under this Act, it shall be the duty of that person to report the matter to the Commissioner.

Investigation.

(2) Where information is received from any source in or outside Barbados that a person who has committed or who is alleged to have committed an offence under this Act may be present in Barbados, the Commissioner shall take such measures as may be necessary to investigate the facts contained in the information.

(3) Where on investigation it is found that the person referred to in subsection (2) is in Barbados, the Commissioner shall make a report to the Director of Public Prosecutions, who shall take such measures as are necessary to prosecute the offender as the circumstances warrant.

(4) Where any person referred to in subsection (1) fails to report as required under that subsection, that person is guilty of an offence and is liable on conviction on indictment to a fine of \$250 000 or to imprisonment for a term of 5 years.

Rights of an offender.

7. A person against whom measures referred to in section 6(2) or 6(3) are taken is entitled to

- (a) communicate without delay with the nearest appropriate representative of
 - (i) the State of which that person is a national;
 - (ii) the State which is otherwise entitled to protect that person's rights; or
 - (iii) where that person is a stateless person, the State in which that person ordinarily resides;
- (b) be visited by a representative of the relevant State referred to in paragraph (a); and
- (c) be informed of his rights referred to in paragraphs (a) and (b).

PART IV

Freezing or Forfeiture of Funds

Freezing of funds.

8. (1) Subject to subsection (4), the Court may, where it is satisfied on the application by the Director of Public Prosecutions that

- (a) a person has been charged or is about to be charged with an offence under section 3 or 4; or

-
- (b) a request has been made by the appropriate authority of another State, in accordance with section 16, in respect of a person
- (i) who has been charged or is about to be charged with an offence in respect of an act described in section 3 or 4; or
 - (ii) in respect of whom there is reasonable suspicion that the person has committed an offence referred to in subparagraph (i),

make an order, in this Part referred to as a "freezing order", freezing the funds in the possession of or under the control of that person.

(2) An application for a freezing order under subsection (1) may be made *ex parte* and shall be in writing and be accompanied by an affidavit stating

- (a) where the person referred to in subsection (1) has been charged, the offence for which he is charged;
- (b) where the person has not been charged, the grounds for
 - (i) believing that the person committed the offence; or
 - (ii) having a reasonable suspicion that the person committed the offence;
- (c) a description of the funds in respect of which the freezing order is sought;
- (d) the name and address of the person who is believed to be in possession of the funds; and
- (e) the grounds for believing that the funds are related to or are used to facilitate an offence referred to in subsection (1) and that the funds are subject to the effective control of the person.

(3) Where the Court makes an order under subsection (1), the Court shall require that

- (a) the order be published within such time and manner as the Court directs;
- (b) the applicant, within 21 days of the making of the order, serve notice of the order together with a copy of the order on any person who, in the opinion of the Court, appears to have an interest in the funds referred to in subsection (2); and
- (c) the person referred to in paragraph (b) or any other person that appears to have an interest in the funds be afforded an opportunity to be heard by the Court within such time as the Court determines,

unless in respect of paragraph (b) the Court is of the opinion that giving such notice would result in the disappearance, dissipation or reduction in the value of the funds.

(4) Where an application for a freezing order made under subsection (1) is made as a result of a request from another State, the Court shall not make the order unless it is satisfied that reciprocal arrangements exist between Barbados and that other State whereby that other State is empowered to make a similar order in respect of a request for a freezing order from Barbados.

(5) The Court may, in making an order under subsection (1), give directions with regard to

- (a) the duration of the freezing order; or
- (b) the disposal of the funds for the purpose of
 - (i) determining any dispute relating to the ownership of or other interest in the funds or any part thereof;
 - (ii) its proper administration during the period of the freezing order;
 - (iii) the payment of debts incurred in good faith prior to the making of the order;

- (iv) the payment of moneys to the person referred to in subsection (1) for the reasonable subsistence of that person and his family; or
- (v) the payment of the costs of the person referred to in subparagraph (iv) to defend criminal proceedings against him.

(6) Notwithstanding subsection (5), a freezing order made under this section shall cease to have effect at the end of the period of 6 months after the order was made where the person against whom the order was made has not been charged with an offence under this Act within that period.

(7) An order made under subsection (1) may be renewed for a period not exceeding 6 months in each particular case but in no case shall the entire period of the order exceed 18 months.

(8) A freezing order granted by the Court under this section shall not prejudice the rights of any third party acting in good faith.

(9) Where the Court makes an order for the administration of frozen funds the person charged with the administration of the funds is not liable for any loss or damage to the funds or for the costs of proceedings taken to establish a claim to the funds or to an interest in the funds unless the court in which the claim is made is of the opinion that the person has been guilty of negligence in respect of the taking of custody and control of the funds.

9. (1) Where a person is convicted of an offence under section 3 or 4, the Director of Public Prosecutions may apply to the Court for a forfeiture order against the funds that are the subject of the offence.

(2) The Court may upon application by the Director of Public Prosecutions forfeit any funds of or in the possession or under the control of any person who is convicted of an offence of terrorism or any funds of that person that are the subject of a freezing order, unless it is proved that the funds did not derive from the commission by that person of an offence under section 3 or 4.

(3) For the purposes of subsection (2), the burden of proof lies on the person who owns, or is in possession or control of, the funds.

(4) In determining whether or not any funds are derived from an offence under section 3 or 4, the standard of proof required for the purposes of subsection (2) is the same as in criminal proceedings, and for the purposes of subsection (3) is the same as in civil proceedings.

(5) In making a forfeiture order the Court may give directions

(a) for the purpose of determining any dispute as to the ownership of or other interest in the funds or any part thereof; and

(b) as to the disposal of the funds.

(6) Upon application to the Court by a person against whom a forfeiture order has been made under this section, the Court may order that an amount deemed by the Court to be the value of the funds so ordered to be forfeited be paid by that person to the Court and upon satisfactory payment of that sum by that person, the funds ordered to be forfeited shall be returned to him.

Sharing of
forfeited
funds.

10. (1) The Government of Barbados may, pursuant to an agreement with any other State, share with that State on a reciprocal basis the funds derived from forfeiture pursuant to this Act.

(2) Funds referred to under subsection (1) may be utilised by the Government of Barbados to compensate victims of the offences referred to under this Act.

PART V

Extradition

Extradition.

11. (1) Where a person who has committed or is alleged to have committed an offence under this Act is present in Barbados and it is not intended to extradite that person, the Director of Public Prosecutions shall prosecute the offender for the offence on the direction of the Attorney-General given under paragraph (b) of section 79A(2) of the *Constitution*.

(2) Notwithstanding the provisions of this Act, no person shall be extradited pursuant to this Act where the Government of Barbados has substantial grounds for believing that a request for extradition for an offence under this Act has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would be prejudicial to that person's rank or status for any of these reasons.

PART VI

Miscellaneous

12. Where a person is alleged to have committed an offence under this Act, proceedings in respect of that offence may be commenced in Barbados where the alleged offence Jurisdiction.

- (a) is committed by a national of Barbados;
- (b) was directed towards or resulted in the carrying out of an offence under this Act in Barbados or against a national of Barbados;
- (c) was directed towards or resulted in the carrying out of an offence under this Act against a State or government facility of Barbados outside Barbados;
- (d) was directed towards or resulted in the carrying out of an offence under this Act committed in an attempt to compel Barbados to do or refrain from doing any act;
- (e) was committed by a stateless person who is ordinarily resident in Barbados;
- (f) was committed on board an aircraft that
 - (i) is operated by the Government of Barbados or a national of Barbados; or

(ii) is registered in Barbados;

(g) was committed on board a vessel that is flying the flag of Barbados or is registered in Barbados; or

(h) threatens the national security of Barbados.

Notification
to the
appropriate
State
through
United
Nations.

13. Where a person is taken into custody as a result of an investigation undertaken under section 6, the Director of Public Prosecutions shall inform the Attorney-General, who shall

(a) notify, through the Secretary-General of the United Nations, the State which established jurisdiction in respect of an application brought under section 8 or 9, of the detention of that person and of the circumstances that warranted the detention; and

(b) communicate the final outcome of the proceedings to the Secretary-General for transmission of the information to the other State.

Conditions
for transfer
of persons
detained.

14. (1) Where a person is being detained or is serving a sentence of imprisonment in the territory of one State and his presence in another State is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences for the purposes of this Act, that person may be transferred if the following conditions are met:

(a) the person freely gives his informed consent; and

(b) the competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

(2) Unless the State from which a person is to be transferred pursuant to subsection (1) so agrees, that person shall not be prosecuted, detained or subjected to any other restriction of his personal liberty in the territory of the State to which the person is transferred in respect of any acts done or convictions received prior to his departure from the State from which that person was transferred.

(3) Where a person is transferred under subsection (1) from Barbados, the person transferred shall receive credit for service of the sentence being served in Barbados for the time spent in the custody of the State to which that person was transferred.

(4) Unless the Attorney-General otherwise directs, all expenses incurred in respect of any requests made under this section, must be paid by the State making the request.

15. The Attorney-General is the competent Authority in Barbados for the exchange of information relating to criminal investigations or extradition proceedings in respect of an offence under this Act.

Attorney-General to be the competent authority.

16. Section 27 of the *Mutual Assistance in Criminal Matters Act* applies to the procedure to be adopted in respect of a request made from another State for mutual assistance in obtaining a freezing or forfeiture order under this Act with such modifications as are necessary to give effect to such requests.

Application of Cap. 140A.

17. (1) The Attorney-General may, subject to affirmative resolution, make regulations to give effect to this Act.

Regulations, orders.

(2) The Attorney-General may by order amend

(a) the Annex to the Convention in accordance with the terms of Article 23 of the Convention; or

(b) the *Second Schedule*.

Second Schedule.

FIRST SCHEDULE

(Sections 2 and 17(2)(a))

*International Convention for the Suppression of the
Financing of Terrorism*

Preamble

The States Parties to this Convention,

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

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

Recalling the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations, contained in General Assembly resolution 50/6 of 24 October 1995,

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

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

Recalling General Assembly resolution 51/210 of 17 December 1996, paragraph 3, sub-paragraph (f), in which the Assembly called upon all States to take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and terrorist organisations, whether such financing is direct or indirect through organisations which also have or claim to have charitable, social or cultural goals or which are also engaged in unlawful activities such as illicit arms trafficking, drug dealing and racketeering, including the exploitation of persons for purposes of funding terrorist activities, and in particular to consider, where appropriate,

adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes without impeding in any way the freedom of legitimate capital movements and to intensify the exchange of information concerning international movements of such funds,

Recalling also General Assembly resolution 52/165 of 15 December 1997, in which the Assembly called upon States to consider, in particular, the implementation of the measures set out in paragraphs 3(a) to (f) of its resolution 51/210 of 17 December 1996,

Recalling further General Assembly resolution 53/108 of 8 December 1998, in which the Assembly decided that the *Ad Hoc* Committee established by General Assembly resolution 51/210 of 17 December 1996 should elaborate a draft international convention for the suppression of terrorist financing to supplement related existing international instruments,

Considering that the financing of terrorism is a matter of grave concern to the international community as a whole,

Noting that the number and seriousness of acts of international terrorism depend on the financing that terrorists may obtain,

Noting also that existing multilateral legal instruments do not expressly address such financing,

Being convinced of the urgent need to enhance international co-operation among States in devising and adopting effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators,

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. "Funds" means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit.

2. "State or governmental facility" means any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an inter-governmental organisation in connection with their official duties.

3. "Proceeds" means any funds derived from or obtained, directly or indirectly, through the commission of an offence set forth in Article 2.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

- (a) an act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or
 - (b) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act.
2. (a) on depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the annex may declare that, in the application of this Convention to the State Party, the treaty shall be deemed not to be included in the annex referred to in paragraph 1, sub-paragraph (a). The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the depositary of this fact;
- (b) when a State Party ceases to be a party to a treaty listed in the annex, it may make a declaration as provided for in this Article, with respect to that treaty.

3. For an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, sub-paragraph (a) or (b).

4. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this Article.

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5. Any person also commits an offence if that person:
- (a) participates as an accomplice in an offence as set forth in paragraph 1 or 4 of this Article;
 - (b) organises or directs others to commit an offence as set forth in paragraph 1 or 4 of this Article;
 - (c) contributes to the commission of one or more offences as set forth in paragraph 1 or 4 of this Article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
 - (i) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this Article;
 - or
 - (ii) be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this Article.

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender is a national of that State and is present in the territory of that State and no other State has a basis under Article 7, paragraph 1, or Article 7, paragraph 2, to exercise jurisdiction, except that the provisions of Articles 12 to 18 shall, as appropriate, apply in those cases.

Article 4

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

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

Article 5

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organised under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence set forth in Article 2. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

Article 6

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

Article 7

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 2 when:

- (a) the offence is committed in the territory of that State;
- (b) the offence is committed on board a vessel flying the flag of that State or an aircraft registered under the laws of that State at the time the offence is committed;
- (c) the offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

- (a) the offence was directed towards or resulted in the carrying out of an offence referred to in Article 2, paragraph 1, sub-paragraph (a) or (b), in the territory of or against a national of that State;
- (b) the offence was directed towards or resulted in the carrying out of an offence referred to in Article 2, paragraph 1, sub-paragraph (a) or (b), against a State or government facility of that State abroad, including diplomatic or consular premises of that State;
- (c) the offence was directed towards or resulted in an offence referred to in Article 2, paragraph 1, sub-paragraph (a) or (b), committed in an attempt to compel that State to do or abstain from doing any act;

- (d) the offence is committed by a stateless person who has his or her habitual residence in the territory of that State;
- (e) the offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties that have established their jurisdiction in accordance with paragraph 1 or 2.

5. When more than one State Party claims jurisdiction over the offences set forth in Article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.

6. Without prejudice to the norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 8

1. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing the offences set forth in Article 2 as well as the proceeds derived from such offences, for purposes of possible forfeiture.

2. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the forfeiture of funds used or allocated for the purpose of committing the offences set forth in Article 2 and the proceeds derived from such offences.

3. Each State Party concerned may give consideration to concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of the funds derived from the forfeitures referred to in this Article.

4. Each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this Article are utilised to compensate the victims of offences referred to in Article 2, paragraph 1, sub-paragraph (a) or (b), or their families.

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

Article 9

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence set forth in Article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:

- (a) communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;
- (b) be visited by a representative of that State;
- (c) be informed of that person's rights under sub-paragraphs (a) and (b).

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with Article 7, paragraph 1, sub-paragraph (b), or paragraph 2, sub-paragraph (b), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to the present Article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with Article 7, paragraph 1 or 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 10

1. The State Party in the territory of which the alleged offender is present shall, in cases to which Article 7 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

Article 11

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

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in Article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in Article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in Article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with Article 7, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in Article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

Article 12

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences set forth in Article 2, including assistance in obtaining evidence in their possession necessary for the proceedings.

2. States Parties may not refuse a request for mutual legal assistance on the ground of bank secrecy.

3. The requesting Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.

4. Each State Party may give consideration to establishing mechanisms to share with other States Parties information or evidence needed to establish criminal, civil or administrative liability pursuant to Article 5.

5. States Parties shall carry out their obligations under paragraphs 1 and 2 in conformity with any treaties or other arrangements on mutual legal assistance or information exchange that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 13

None of the offences set forth in Article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. Accordingly, States Parties may not refuse a request for extradition or for mutual legal assistance on the sole ground that it concerns a fiscal offence.

Article 14

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

Article 15

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

Article 16

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences set forth in Article 2 may be transferred if the following conditions are met:

- (a) the person freely gives his or her informed consent;
- (b) the competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of the present Article:

- (a) the State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorised by the State from which the person was transferred;
- (b) the State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

- (c) the State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;
- (d) the person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with the present Article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 17

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

Article 18

1. States Parties shall co-operate in the prevention of the offences set forth in Article 2 by taking all practicable measures, *inter alia*, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:

- (a) measures to prohibit in their territories illegal activities of persons and organisations that knowingly encourage, instigate, organise or engage in the commission of offences set forth in Article 2;
- (b) measures requiring financial institutions and other professions involved in financial transactions to utilise the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity. For this purpose, States Parties shall consider:

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- (i) adopting regulations prohibiting the opening of accounts the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;
 - (ii) with respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;
 - (iii) adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith;
 - (iv) requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic or international.

2. States Parties shall further co-operate in the prevention of offences set forth in Article 2 by considering:

- (a) measures for the supervision, including, for example, the licensing, of all money-transmission agencies;
- (b) feasible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

3. States Parties shall further co-operate in the prevention of the offences set forth in Article 2 by exchanging accurate and verified information in accordance with their domestic law and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences set forth in Article 2, in particular by:

- (a) establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in Article 2;

- (b) co-operating with one another in conducting inquiries, with respect to the offences set forth in Article 2, concerning:
 - (i) the identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;
 - (ii) the movement of funds relating to the commission of such offences.

4. States Parties may exchange information through the International Criminal Police Organisation (Interpol).

Article 19

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

Article 20

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

Article 21

Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of the United Nations, international humanitarian law and other relevant conventions.

Article 22

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

Article 23

1. The annex may be amended by the addition of relevant treaties that:
 - (a) are open to the participation of all States;

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- (b) have entered into force;
- (c) have been ratified, accepted, approved or acceded to by at least twenty-two States Parties to the present Convention.

2. After the entry into force of this Convention, any State Party may propose such an amendment. Any proposal for an amendment shall be communicated to the depositary in written form. The depositary shall notify proposals that meet the requirements of paragraph 1 to all States Parties and seek their views on whether the proposed amendment should be adopted.

3. The proposed amendment shall be deemed adopted unless one third of the States Parties object to it by a written notification not later than 180 days after its circulation.

4. The adopted amendment to the annex shall enter into force 30 days after the deposit of the twenty-second instrument of ratification, acceptance or approval of such amendment for all those States Parties having deposited such an instrument. For each State Party ratifying, accepting or approving the amendment after the deposit of the twenty-second instrument, the amendment shall enter into force on the thirtieth day after deposit by such State Party of its instrument of ratification, acceptance or approval.

Article 24

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organisation of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

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

Article 25

1. This Convention shall be open for signature by all States from 10 January 2000 to 31 December 2001 at United Nations Headquarters in New York.
2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.
3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 26

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

Article 27

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

Article 28

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

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on 10 January 2000.

Annex

- 1.** Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.
- 2.** Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.
- 3.** Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.
- 4.** International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
- 5.** Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.
- 6.** Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.
- 7.** Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.
- 8.** Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988.
- 9.** International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

SECOND SCHEDULE

(Sections 3, 4 and 17)

Treaties Respecting Terrorism

1. Convention for the Suppression of Unlawful Seizure of aircraft, done at the Hague on 16th December, 1970.
(Incorporated into the *Hijacking Act*, Cap. 135A)
2. Convention for the suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23rd September, 1971.
(Incorporated into the *Civil Aviation (Montreal Convention) Act*, Cap. 123A).
3. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14th December, 1973.
(Incorporated into the *Internationally Protected Persons Act*, Cap. 19).
4. International Convention against the taking of Hostages, adopted by the General Assembly of the United Nations on 17th December, 1979.
5. Convention on the Physical Protection of Nuclear Material adopted at Vienna on 3rd March, 1980.
6. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24th February, 1988.
7. Convention for the suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10th March, 1988.
(Incorporated into the *Shipping Act*, Cap. 296).
8. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10th March, 1988.
9. International Convention for the Suppression of Terrorist Bombings adopted by the United Nations General Assembly on 15th December, 1997.