

Convention for the suppression of the financing of terrorism

Background¹

- 5.1 The purpose of the *International Convention for the Suppression of the Financing of Terrorism* (the Convention) is to suppress acts of terrorism by depriving terrorists and their organisations of the financial means to commit such acts. The Convention was adopted by the United Nations General Assembly on 9 December 1999 and entered into force on 10 April 2002. As of 12 July 2002, 40 countries had deposited instruments ratifying, accepting, approving or acceding to the Convention.
- 5.2 The investigations into the coordinated attacks against the World Trade Centre in New York and the Pentagon in Washington DC on 11 September 2001 demonstrated the extensive financial networks maintained by terrorist organisations and highlighted the inability of states to unilaterally close down these networks. Since the events of 11 September, 36 of the 40 parties to the Convention have deposited their instruments of ratification.
- 5.3 Since the 1970s, Australia has had in place legislation that criminalises the financing of hostile acts against foreign states by Australians, or persons using Australia as a base. However, this legislation was unique to

¹ Unless otherwise specified the material in this and the following section was drawn from the National Interest Analysis (NIA) for the *International Convention for the Suppression of the Financing of Terrorism*. The full text of the NIA can be found at the Committee's website on www.aph.gov.au/house/committee/jsct.

Australia in many ways and inhibited international assistance in the investigation and prosecution of these offences. The uniqueness of Australian law in this area impedes international cooperation because:

if we seek to extradite somebody back to Australia from a foreign country, that country generally will not do it if the offence we want to try that person for is not an offence in the country they are currently in.²

- 5.4 The banking secrecy regulations of other states also obstruct international cooperation against terrorism. The Convention removes some of these obstacles.

Proposed treaty actions

- 5.5 The Convention obligates Australia to criminalise and take other measures to prevent the provision or collection of funds for the purpose of committing terrorist acts, and to cooperate with other parties to the Convention in the prevention, detection, investigation and prosecution of activities that finance terrorism. Article 2 of the Convention specifies an offence as:

- (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the Annex;³ 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 an act ... is to intimidate a population, or compel a government or an international organisation to do or to abstain from doing any act.

- 5.6 The Convention requires that Australia:

- establish jurisdiction over Convention offences when committed in its territory or on board a vessel flying the Australian flag, or an Australian registered aircraft at the time the offence was committed or by an Australian national;

2 Peter Scott, *Transcript of Evidence*, 12 July 2002, p. 65.

3 The NIA states that Australia has ratified eight of the nine treaties included in the Annex to the Convention. The Committee recommended that Australia take binding treaty action on the outstanding treaty (the *International Convention for the Suppression of Terrorist Bombings*) in Report 46 tabled in June 2002. Australia deposited its instruments of accession to this Convention on 9 August 2002.

- extradite or investigate and, if appropriate, prosecute any alleged offender within its territory;
 - identify, detect and freeze or seize any funds used or allocated for the purpose of committing Convention offences; and
 - not refuse requests for extradition or legal assistance on the sole ground that they concern a fiscal or political offence.
- 5.7 The Convention does not apply where an offence has no transnational element or Australia has grounds for believing that a request for extradition or legal assistance has been made for the purpose of persecuting a person.
- 5.8 The Convention is implemented by the *Suppression of the Financing of Terrorism Act 2002* (the Act). The Act:
- inserts a new ‘Financing terrorism’ offence into the *Criminal Code Act 1995* directed at persons who provide or collect funds to be used to facilitate a terrorist act;
 - amends the *Charter of the United Nations Act 1945* to increase penalties for using or dealing with the assets of specified persons and entities involved in terrorist activities and making assets available to those persons or entities; and
 - amends the *Financial Transaction Reports Act 1988* to require financial institutions, securities dealers, trustees and other cash dealers to report suspected terrorist related activities and streamlines the procedures for the disclosure financial transaction reports by Australian security agencies to their foreign counterparts.
- 5.9 The Act was passed with amendments on 27 June 2002. The main amendments proposed by the Senate and accepted by the House tighten the definition of terrorism and provide for regulations to be made setting out procedures to be followed in relation to the freezing of assets and notification of the freezing of assets. The Act received assent on 5 July 2002.

Evidence presented and issues arising

Definition of terms

- 5.10 The Committee had voiced concerns previously over the lack of a definition of terrorism in international conventions on terrorism when it considered the government's proposal to accede to the *Convention for the Suppression of Terrorist Bombings*.⁴ The Committee revisited this issue in its consideration of the government's proposed ratification of the *Convention for the Suppression of the Financing of Terrorism*.
- 5.11 Government witnesses pointed out that the Convention refers to terrorist acts rather than offering a definition of terrorism. So, in terms of the Convention, terrorist persons and organisations are defined as the perpetrators of terrorist acts. The character of a terrorist act is set out in Article 2 of the Convention and in the Annex which:
- includes a range of treaties: the convention for the Suppression of Unlawful Seizure of Aircraft, civil aviation treaties and treaties on the taking of hostages and the protection of nuclear material et cetera.⁵
- 5.12 In fact, the Convention does not require that parties criminalise terrorist persons and organisations. It assumes that a state is already capable of prosecuting those responsible for terrorist acts. Rather, parties to the Convention are obligated to exercise jurisdiction over persons or organisations that are responsible for the financing of persons and organisations that perpetrate terrorist acts.⁶

Civil liberties and criminal intentions

- 5.13 The Committee raised the possibility that the Convention could infringe upon the activities of Australians who support organisations such as the African National Congress, the Palestinian Liberation Organisation, the Irish Republican Army or, in the past, the National Council of Timorese Resistance. These organisations have supported and participated in armed resistance and were, as a consequence, proscribed as terrorist organisations by the governments against whom they offered resistance. However, some Australians viewed these organisations as representing

4 See *Report 46: Treaties Tabled 12 March 2002*, June 2002, ch. 12.

5 Sarah Chidgey, *Transcript of Evidence*, 12 July 2002, p. 56.

6 Peter Scott, *Transcript of Evidence*, 12 July 2002, p. 57.

principles of human rights and social justice against repressive regimes and so supported them financially as well as in other ways.

- 5.14 The Department of Foreign Affairs and Trade gave evidence to the effect that tolerance in the community has decreased dramatically for organisations that use violence against civilians and property to pursue political goals. However:

That does not mean that the political pursuit of human rights, good governance, the end of oppression and so on are not just as vigorous in the international arena ... it means that using violence against civilians as a tool for such a campaign will not be tolerated in any circumstances.⁷

- 5.15 A further insurance of the civil liberties of Australians to support regimes proscribed as terrorist in other countries that may not be proscribed in Australia is the requirement that a person or organisation must be shown to have intended that their contributions would be used to finance terrorist acts:

Article 2 contains those knowledge based elements of the offence for the very reason of preventing somebody being found to be liable for a terrorist financing event when ... [for instance] they thought they were giving money for charitable purposes rather than terrorist purposes.⁸

Indeed, a claim that a person was seeking to make personal gain rather than financing terrorism, if substantiated, would provide a defence against allegations that a person or organisation committed a Convention offence.⁹

Reporting suspicious transactions

- 5.16 The Committee inquired into the requirement to report suspicious transactions and how that would impact upon the activities and responsibilities of cash dealers. It was particularly interested in how the requirement that the financing of terrorist activity be intentional might determine what constitutes a suspicious transaction.
- 5.17 In response to these concerns, the Committee heard evidence that the onus of establishing intention was a matter for the courts and not the financial

7 Peter Scott, *Transcript of Evidence*, 12 July 2002, p. 61.

8 Peter Scott, *Transcript of Evidence*, 12 July 2002, p. 58.

9 Peter Scott, *Transcript of Evidence*, 12 July 2002, p. 63.

institution processing the transaction.¹⁰ The obligation of cash dealers to report suspicious transactions builds on an existing obligation that they report all transactions that might constitute a Commonwealth offence.¹¹

- 5.18 When asked what made a transaction 'suspicious' the Department of Foreign Affairs and Trade referred to two measures. The first measure occurs in the form of international standards and best practice that have been developed, most particularly by a group of financial intelligence units called the Egmont Group. Once modes of illicit transactions are detected, information about them is distributed among cash dealers, who then take action as required. The second measure for determining suspicious transactions is the mandatory reporting of certain categories of transaction to the Australian Transaction Reports and Analysis Centre. These categories include transfers of amounts in excess of A\$10,000 and the electronic or telegraphic transfer of funds into or out of Australia.
- 5.19 The Committee also heard that other benefits may flow from the widespread acceptance of the Convention by the international community. These benefits include increased transparency of previously closed banking systems. A further possible benefit of international acceptance of the Convention was suggested by Eileen Kelly, who drew a connection between transnational crime and terrorism and proposed that the greater transparency of financial transactions may also bring to light the activities of drug and people smugglers.¹²

Conclusions and recommendations

- 5.20 The Committee recognises that parties to the Convention are under obligation to investigate, and if necessary prosecute or extradite, those alleged to be involved in the financing of persons and organisations that perpetrate terrorist acts. The financing and commission of terrorist acts are already proscribed by Australian legislation. In outlining the impact of the Convention upon cash dealers the Attorney-General's Department stated that it:

10 Peter Scott, *Transcript of Evidence*, 12 July 2002, p. 63.

11 Sarah Chidgey, *Transcript of Evidence*, 12 July 2002, p. 60.

12 Ms Eileen Kelly, *Submission No. 6*, p. 1.

does not extend existing obligations. It makes it clearer to [cash dealers] that they have a specific obligation in relation to terrorist offences.¹³

What is true of Australia's ratification of the Convention for cash dealers is also true for the wider Australian community.

- 5.21 The Committee is satisfied that the requirement that an intention to finance a person or organisation engaged in perpetrating terrorist acts be proved before an individual or organisation can be found guilty under the terms of the Convention is a sufficient safeguard for the civil freedoms of Australians. This safeguard constituted one of the main amendments to the *Suppression of the Financing of Terrorism Act 2002*.
- 5.22 Accordingly, the Committee makes the following recommendation:

Recommendation 4

- 5.23 **The Committee supports the *Convention on the Suppression of the Financing of Terrorism* and recommends that binding treaty action be taken.**

13 Sarah Chidgey, *Transcript of Evidence*, 12 July 2002, p. 60.