

**INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE
FINANCING OF TERRORISM, DONE AT NEW YORK ON
9 DECEMBER 1999**

Documents tabled on 18 June 2002:

- **National Interest Analysis**
- **Text of the proposed treaty action**

International Convention for the Suppression of the Financing of Terrorism, done at New York on 9 December 1999

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1. The Government proposes to ratify the International Convention for the Suppression of the Financing of Terrorism (the Convention) in accordance with **Article 25, paragraph 2** of the Convention.

Date of proposed binding treaty action

2. The Government proposes to deposit its instrument of ratification with the Secretary-General of the United Nations once Parliament has passed the Suppression of the Financing of Terrorism Bill 2002 and the requisite regulations are made under the *Extradition Act 1988*. Ratification after the passing of this Bill and the making of these regulations will ensure that Australia is in a position to discharge its Convention obligations immediately upon ratification. Australia signed the Convention on 15 October 2001.

3. The Convention entered into force on 10 April 2002 in accordance with **Article 26, paragraph 1**. As at 10 April 2002, twenty-six States had ratified the Convention. The Convention would enter into force for Australia on the thirtieth day after the deposit of our instrument of ratification (**Article 26, paragraph 2**).

Date of tabling of the proposed treaty action

4. 18 June 2002.

Summary of the purpose of the proposed treaty action and why it is in the national interest

5. The purpose of the Convention is to suppress acts of terrorism by depriving terrorists and terrorist organisations of the financial means to commit such acts. It does so by obliging State Parties 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 State Parties in the prevention, detection, investigation and prosecution of terrorist financing.

7. Ratifying the Convention is in the national interest because it will dramatically increase the effectiveness of our criminal prohibitions on terrorist financing and ensure that terrorist organisations are unable to obtain resources to support their activities. It will also demonstrate Australia's commitment to cooperating with global counter-terrorism measures.

6. Although Australia has had legislation in place to criminalise the financing of hostile acts against foreign States by Australians or persons using Australia as a base since the 1970s, there has been limited international assistance in these matters. Australia's legislation was in many respects unique and thus the capacity for Australia to receive international assistance in the investigation and prosecution of these offences was severely inhibited by the "dual criminality rule" that generally applies to such international cooperation. In addition, many States had in place banking secrecy regulations and procedures to prevent cooperation in international investigation of purely fiscal offences which both impeded law enforcement efforts and provided the capacity for terrorists to develop sophisticated financing mechanisms with relative impunity. The Convention removes some of these obstacles. Australia's participation in the Convention will therefore aid Australia's efforts in combating the financing of terrorist acts and organisations.

Reasons for Australia to take the proposed treaty action

8. The coordinated terrorist attacks on the United States on 11 September 2001 brought into focus the organisational sophistication and substantial resources available to terrorist organisations and the capacity this gives them to perpetrate terrorist acts on an enormous scale. It demonstrated the extensive financial networks maintained by terrorist organisations and highlighted the fact that it was not possible for one State unilaterally to close these financial networks down. The Convention's significance was reinforced in September 2001 through United Nations Security Council Resolution 1373. Resolution 1373 imposes international legal obligations on Members of the United Nations requiring them to take several of the measures provided for in the Convention. Resolution 1373 also calls on States to ratify the Convention.

9. By becoming a party to the Convention, Australia will be in a position to receive international assistance and cooperation in suppressing terrorist financing. As well as making its own anti-terrorism efforts more effective, Australia's participation in the Convention is consistent with the decisions and requests of the Security Council set out in Resolution 1373 and will aid in the suppression of terrorism world-wide.

Obligations

Financing of terrorism offence

10. The Convention obliges State Parties to make it an offence under their domestic law to provide or collect funds with the intention that those funds should be used or in the knowledge that they are to be used to carry out (i) any of the offences established under instruments listed in Annex A to the Convention or (ii) any other act intended to cause death or serious bodily injury to a civilian for the purpose of intimidating a population, or compelling a government or an international organisation to do or to abstain from doing any act. State Parties are also obliged to make it an offence to participate in, organise, direct, or contribute to, the commission of such an offence (**Articles 2 and 4**).

11. The instruments presently listed in Annex A are as follows:

- Convention for the Suppression of Unlawful Seizure of Aircraft;
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents;
- International Convention against the Taking of Hostages;
- Convention on the Physical Protection of Nuclear Material;
- 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;
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation;

- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf;
- International Convention for the Suppression of Terrorist Bombings.

Australia is party to all but the last of these instruments. The International Convention for the Suppression of Terrorist Bombings was tabled in Parliament on 12 March 2002.

12. State Parties are required to establish jurisdiction over those offences when committed in their territory, or on board a vessel flying their flag or an aircraft registered under their laws at the time the offence is committed, or by their national. The Convention also allows, but does not oblige, State Parties to establish jurisdiction over the offences in a number of other circumstances where there is a connection between the offence, or the offender, and the State Party concerned. However, where an offender is within its territory, Australia must either extradite the offender or establish its jurisdiction over the offender, whether or not there is some connection between the offender, the offence and Australia (**Article 7**). However, the Convention does not apply where the offence has no trans-national element, with the exception of the provisions on law enforcement cooperation, judicial assistance and prevention (**Article 3**).

Freezing and forfeiture of funds

13. State Parties are obliged to identify, detect and freeze or seize any funds used or allocated for the purpose of committing the Convention offences, as well as the proceeds derived from such offences. Identified funds and proceeds are to be subject to forfeiture. States are obligated to consider using forfeited funds to compensate victims of the offences set out in the Convention. The Convention requires that these obligations be implemented without prejudice to the rights of third parties acting in good faith (**Article 8**).

Investigation, prosecution and extradition

14. The Convention provides for obligations to ensure the investigation and prosecution of any alleged offender. State Parties are obliged to investigate allegations that a person on their territory has committed a Convention offence and, if the outcome of the investigations so warrant, to take measures to ensure that person's presence for the purpose of prosecution or extradition (**Article 9**). If a State Party in which an alleged offender is present has jurisdiction in respect of the offence, it is obliged to prosecute the alleged offender, unless the alleged offender is extradited (**Article 10**).

15. The Convention provides for the Convention offences to be treated as extraditable offences between State parties to the Convention (**Article 11**). The State Party that finally prosecutes the alleged offender must communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who will transmit the information to the other State Parties (**Article 19**).

16. The Convention obliges State Parties to cooperate with each other in relation to investigations, extradition and mutual legal assistance concerning the Convention offences, and lays down conditions for such cooperation (**Articles 12 and 16**). In particular, the Convention prevents State Parties refusing requests for mutual legal assistance on the ground of bank secrecy, or for extradition or mutual legal assistance on the sole ground that it concerns a fiscal offence or a political offence (**Articles 12-14**). It nevertheless preserves the right of State Parties to refuse requests for extradition or mutual legal assistance if they have substantial grounds for believing that the request 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 15**).

Rights of an alleged offender

17. The Convention confirms the rights of a person detained in relation to a Convention offence to consular assistance or assistance from the International Committee of the Red Cross (**Article 9**). The Convention also provides for guarantees of 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 17**).

Preventative measures

18. State Parties are obliged to cooperate in the prevention of the Convention offences by taking all practicable measures to prevent and counter preparations in their respective territories for the commission of the offences within or outside their territories. Such measures would include prohibiting illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of a Convention offence and better customer identification procedures for financial institutions. State Parties are further obliged to consider supervisory measures for all money-transmission agencies and measures to track cross-border transportation of cash and bearer negotiable instruments. Finally, State Parties are obliged to exchange accurate and verified information in accordance with their domestic law and to coordinate administrative and other measures to prevent the commission of a Convention offence (**Article 18**).

Dispute settlement procedures

19. Any dispute arising between two or more State Parties to the Convention which cannot be settled through negotiation shall, at the request of one of the State Parties involved in the dispute, be submitted to arbitration. If, within six months, the parties cannot agree on the organisation of the arbitration, any of the State Parties involved in the dispute may be referred to the International Court of Justice (**Article 24**).

20. **Article 24(2)** allows States to declare, when they sign or ratify the Convention, that they are not bound by the dispute settlement provision in **Article 24(1)**. The other State Parties will consequently not be bound by **Article 24(1)** with respect to any State Party which has made such a reservation. **Article 24(3)** provides that any State which has made a reservation in accordance with **Article 24(2)** may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Implementation

21. The Convention will be implemented by the Suppression of the Financing of Terrorism Bill 2002.

22. The Suppression of the Financing of Terrorism Bill will insert a new offence into the *Criminal Code Act 1995* directed at persons who provide or collect funds and are reckless as to whether those funds will be used to facilitate a terrorist act. The maximum penalty for the offence will be imprisonment for life. The Bill also amends the *Charter of the United Nations Act 1945* to introduce new higher penalty offences 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. The amendments to the Act will supersede the existing offences in the *Charter of the United Nations (Anti-terrorism Measures) Regulations 2000*.

23. To ensure these offences can be effectively detected and investigated, the Bill amends the *Financial Transaction Reports Act 1988* to require financial institutions, securities dealers, trustees and other cash dealers to report suspected terrorist-related transactions to the Director of the Australian Transaction Reports and Analysis Centre (Austrac). In addition, the procedures for the disclosure of financial transaction reports information (FTR information) to foreign countries will be streamlined by enabling Austrac, the Australian Security Intelligence Organisation and the Australian Federal Police to disclose FTR information directly to foreign countries and foreign law enforcement and intelligence agencies.

24. The existing conviction-based forfeiture regime in the *Proceeds of Crime Act 1987* implements the Convention obligations relating to forfeiture of funds. However, the Proceeds of Crime Bill 2002 will enable the civil forfeiture of property that is the proceeds of a terrorist financing offence or that has been used, or is intended to be used, in the commission of a terrorist financing offence.

Costs

25. Confiscation of the instruments and proceeds of terrorism, in line with Convention requirements and relevant domestic legislation, is likely to produce a net gain to Commonwealth revenue. The costs of investigating and prosecuting new terrorism offences will be absorbed within existing agency budgets.

Consultation

26. On 15 February 2002, the Commonwealth Attorney-General wrote to his State and Territory counterparts to invite comments on the proposed ratification of the Convention. (In the case of South Australia, the Secretary of the Commonwealth Attorney-General's Department wrote to his South Australian counterpart.) There has not been any opposition by States or Territories to the proposed ratification of the Convention.

27. In addition, relevant Commonwealth agencies were consulted in the framing of the Suppression of the Financing of Terrorism Bill 2002 and the terrorism related provisions of the Proceeds of Crime Bill 2002. Agencies consulted included the Australian Federal Police, National Crime Authority, Australian Security Intelligence Organisation, Commonwealth Director of Public Prosecutions, Austrac, and the Federal Privacy Commissioner.

28. The treaty action has been advised to the States and Territories through the process of the Commonwealth-State-Territory Standing Committee on Treaties.

Regulation Impact Statement

29. The Office of Regulation Review has been consulted and has confirmed that a Regulation Impact Statement is not required.

Future treaty action: amendments, protocols, annexes or other legally binding instruments

30. **Article 23** provides for the addition to the Annex of related treaties that (i) are open to the participation of all States, (ii) have entered into force, and (iii) have been ratified by at least

twenty-two State Parties to the (Financing) Convention. After the entry into force of the Convention, any State Party may propose such an addition to the UN Secretary General who, if the proposal meets the above conditions, will seek the views of the other State Parties. The proposal is adopted after 180 days, unless one third of the State Parties object to it within that time. An adopted amendment to the Annex enters into force for all those State parties that deposited an instrument of ratification relating to the amendment 30 days after 22 State Parties have ratified the amendment. For each State Party ratifying the amendment after the deposit of the twenty-second instrument, the amendment enters into force on the thirtieth day after deposit by such State Party of its instrument of ratification.

31. The Convention is silent on the question of amendment of its terms apart from the Annex. Consequently, the provisions of Article 40 of the Vienna Convention on the Law of Treaties would apply to amendments.

32. With the exception of the dispute settlement provision in Article 24, the Convention is otherwise silent on the question of reservations to its provisions. As with general amendments to the Convention, the provisions of Section 2 of the Vienna Convention on the Law of Treaties would thus apply to the question of reservations.

Withdrawal or denunciation

33. **Article 27** provides that any State Party may denounce the Convention by written notification to the Secretary-General of the United Nations. Denunciation takes effect one year following the date on which notification is received by the Secretary-General of the United Nations.

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