

# COUNTER TERRORISM BILL 2014

## SAMOA

### Explanatory Memorandum

#### **Summary**

This Bill repeals the Prevention and Suppression of Terrorism Act 2002 and implements the United Nations Security Council Resolutions and Conventions (as listed in the Schedule) dealing with terrorism.

The Bill further provides offences and penalties in relation to, unlawful seizure of aircraft, diplomatic agents, hostages, unlawful movement of nuclear materials and unmarked plastic explosives, crimes at an airport, ships and fixed platforms, plastic explosives, terrorist bombing, terrorist financing, and nuclear terrorism. These offences reflect those under the respective counter terrorism Conventions, including amendments and protocols supplementary to those Conventions.

Reference is also made in the Bill, to relevant provisions of the Customs Act 1977 (in relation to the importation/exportation of nuclear and other material), the Civil Aviation Act 1998 (in relation to powers of an aircraft commander and indemnity for actions done in good faith) and the Proceeds of Crime Act 2007 (in relation to management of property and forfeiture/restraining orders) to extend and apply to relevant provisions of this Bill. Provision is also made for Part V (relating to parties to an offence) of the Crimes Act 2013 to apply.

The Bill also makes provision for the management, forfeiture and restraining of suspected terrorist property. It also provides general powers relating to delivery of terrorist property, detention of goods of suspected terrorist property, exchange of information relating to terrorist groups and acts, etc.

There is also provision relating to the prosecution and extradition of suspected foreign terrorists, and extra-territorial jurisdiction of Samoan courts.

Lastly, the Bill provides consequential amendments to the Civil Aviation Act 1998 and the Proceeds of Crime Act 2007, and provides an up to date list (under Schedule 1) of the Conventions relating to terrorism.

**Clauses:**

**PART I**  
**PRELIMINARY**

- Clause 1:** - provides the short title and commencement of the Act.
- Clause 2:** - provides for the meaning of terms used in the Act.
- Clause 3:** - provides the definition of “terrorist act”.

**PART II**  
**SPECIFIED ENTITIES**

- Clause 4:** - declares the United Nations listed entities as specified entities, and requires the Prime Minister to make available to the public, copies of such list.
- Clause 5:** - provides that the Prime Minister may declare a group or an individual as a specified entity after consultation with the Attorney General and the Commissioner of Police. This clause also requires the Prime Minister to give public notice of the making of such declaration.
- Clause 6:** - provides that a declaration made under clause 5 may only be varied or revoked by the Prime Minister as he or she wishes or as requested by the Attorney General or any specified entity. The Prime Minister is also required to give

- public notice of such variation of revocation.
- Clause 7:** - provides for the Attorney General to review a declaration made under section 5 and determining whether such should continue to apply; if there is no need for a declaration under section 5 to continue to apply the Attorney General makes a request to the Prime Minister to revoke the declaration.
- Clause 8:** - gives the right to an entity group or an individual (that is subject to a declaration made under clause 5) to apply to the Supreme Court to vary or revoke such declaration. If the Supreme Court decides to revoke or vary a declaration, such must be published.
- This clause also gives the right to a specified entity to apply to the Supreme Court for an order that it is not an entity to which section 4 applies.
- Clause 9:** - sets out the procedure that the Court may apply in relation to a hearing under this Part.

### **PART III** **OFFENCES**

#### *Division 1 - Terrorist acts and terrorist groups*

- Clause 10:** - creates the offence and penalty of harbouring a person committing a terrorist act.
- Clause 11:** - creates the offence and penalty of providing weapons to a terrorist group.
- Clause 12:** - creates the offence and penalty of participating in a terrorist group.
- Clause 13:** - makes it an offence for a person to recruit another person to be a member of a terrorist group or to participate in a

- terrorist act. The penalty is imprisonment for a term not exceeding 15 years.
- Clause 14:** - creates the offence and penalty of terrorist bombing.
  - Clause 15:** - creates the offence and penalty of attempted terrorist bombing.
  - Clause 16:** - creates the offence and penalty of participating in a terrorist bombing.

*Division 2 - Hostage-taking*

- Clause 17:** - creates the offence of hostage-taking. The penalty is imprisonment for a term not exceeding 15 years.
- Clause 18:** - creates the offence and penalty of attempted hostage-taking. The penalty is imprisonment for a term not exceeding 12 years.
  - also creates the offence and penalty of participating as a party to, organising or directing others to participate in, or in any other way contributing to the seizure, detention or injury of the hostage.
  - further creates the offence and penalty of participating as a party to, organising or directing others to participate in, or in any other way contributing to the attempted seizure, detention or injury of the hostage.

*Division 3 - Crimes against  
Internationally Protected Persons*

- Clause 19:** - creates the offence and penalty of murdering, kidnapping or assault or attacking an internationally protected person.
- Clause 20:** - creates the offence and penalty of unlawfully entering the premises or private accommodation or the means of

- transport of an internationally protected person.
- Clause 21:** - creates the offence and penalty of attempting or participating in an attack against an internationally protected person.
- Clause 22:** - creates the offence and penalty of threatening to attack or unlawfully entering the premises of, an internationally protected person.

*Division 4 - Financing and supporting terrorist acts*

- Clause 23:** - creates the offence and penalty of terrorism financing.
- Clause 24:** - creates the offence and penalty of attempted financing and support for terrorist acts.
- also creates the offence and penalty of participating as a party to, organising or directing others to participate in, or in any other way contributing to, providing or collecting property or funds to carry out a terrorist act or for the benefit of a specified entity.
  - further creates the offence and penalty of participating as a party to, organising or directing others to participate in, or in any other way contributing to, providing or collecting property or funds to carry out any other terrorist act causing death or bodily injury.
  - provides also the offence and penalty of participating as a party to, organising or directing others to participate in, or in any other way contributing to, providing or collecting property or funds to carry out any other terrorist act to cause death or bodily injury.

- Clause 25:** - creates the offence and penalty of providing property or services to a terrorist group.
- Clause 26:** - creates the offence and penalty of dealing with terrorist property. There are also exceptions provided to circumstances in which a person does not commit an offence under this section.

*Division 5 - Unlawful seizure of aircraft*

- Clause 27:** - creates the offences of hijacking, attempted hijacking, and threatening to hijack and the respective penalties.
- also creates the offence and penalty of participating as a party to, organising or directing others to participate in, or in any other way contributing to the seizure or attempted seizure or exercise of control of an aircraft, (by use of force).
- Clause 28:** - provides for the provisions under the Civil Aviation Act 1998 relating to the powers of an aircraft commander to apply to the provisions relating to hijacking under this Act.

*Division 6 - Offences involving nuclear and other materials*

- Clause 29:** - creates the offences and the respective penalties of unlawfully moving nuclear material, and making a false or misleading statement to obtain the consent of the Comptroller of Customs to import, export or otherwise transport nuclear material in and out of Samoa.
- Clause 30:** - creates the offence and penalty of unlawfully receiving, possessing or using, etc. of nuclear material.

- also creates the offences and the respective penalties of attempting or threatening to commit nuclear terrorism.
- Clause 31:** - provides for the provisions under the Customs Act 1977 relating to prohibited imports and exports (except for penalties and offences) to apply to the importation and exportation of nuclear material prohibited under this Act.

*Division 7 - Unlawful movement  
of unmarked plastic explosives*

- Clause 32:** - creates the offence and penalty of unlawfully manufacturing, possessing, transporting, and importing, exporting, using or diverting, unmarked plastic explosives.
- Clause 33:** - provides the power of entry to an officer authorised by the Commissioner of Police, in order to investigate, inspect records or take copies from, a place or premises suspected of manufacturing, holding, or storing explosives.
- also creates the offence and penalty of resisting or obstructing an authorised officer, and knowingly giving false information, or suppressing relevant information, required for an inquiry.

*Division 8 - Crimes at an airport*

- Clause 34:** - creates the offence and penalty of performing or threatening to perform an act of violence at an airport, or destroying or damaging facilities of an airport, or disrupting the services of an airport.
- Clause 35:** - creates the offence and penalty of attempted violence at an airport.

**PART IV**  
**MARITIME SAFETY**

- Clause 36:** - creates the offence and penalty of unlawfully seizing a ship or fixed platform.
- Clause 37:** - makes it an offence for a person to unlawfully use nuclear, chemical or other substance on a ship or fixed platform. The penalty for such is also provided.
- Clause 38:** - provides the power of arrest to a master of a ship registered in Samoa, in relation to a person who has committed an offence under clauses 36 and 37. The master of a ship is also empowered to deliver such person to the appropriate authorities, and is required to inform the appropriate authorities. This clause further requires a police officer to take the delivered person into custody but if the police officer refuses to do so, he or she must provide reasons for refusal in writing.

**PART V**  
**MANAGEMENT AND FORFEITURE OF  
PROPERTY OF SPECIFIED ENTITIES**

- Clause 39:** - provides for the Proceeds of Crime Act 2007 to apply to the forfeiture and restraint of property of a specified entity referred to in section 4.
- also provides for property that is the subject of a direction by the Prime Minister to be taken into custody and control of the Administrator without delay or prior notice.
- Clause 40:** - provides for the Prime Minister to appoint and direct (in writing) the Administrator to take custody and control

- of suspected terrorist property, and other matters relating to such direction.
- Clause 41:** - requires the Prime Minister to cause the publication of a direction made under clause 40, and that even if a direction by the Prime Minister is not published, it still has full legal effect.
- Clause 42:** - provides discretion to the Prime Minister to vary or revoke a direction made under clause 40, and requires the publication of the same in accordance with clause 41. This clause also provides for the expiration of a direction in relation to property (of a specified entity, or property that is subject to a forfeiture order made under clause 52).
- Clause 43:** - gives the right to any person who owns, or claims an interest or has control of property (that is subject to a direction by the Prime Minister under clause 40) to apply to the Supreme Court to vary or revoke such direction. The Supreme Court may dismiss an application or revoke the direction. If the Supreme Court decides to revoke or vary a direction, such direction is required to be published.
- This clause also provides the Attorney General or any person (whose property is subject to a direction under clause 40) the right to appeal against a decision made by the Supreme Court under this clause. Both a judicial review and an appeal may only be allowed if the Supreme Court or Court of Appeal (respectively) has no reasonable grounds to suspect that an entity is a specified entity.
- Clause 44:** - sets out the procedure to apply for a hearing under this Part.

**PART VI**  
**RESTRAINT AND FORFEITURE**  
**OF TERRORIST PROPERTY**

- Clause 45:** - provides for the provisions of the Proceeds of Crime Act 2007 relating to forfeiture and restraining orders for property (except penalties for offences under that Act) to apply to property of a specified entity under section 4(2) or declared under section 5 as if the property was forfeited or subject to a restraining order under that Act.

**PART VII**  
**GENERAL POWERS**

- Clause 46:** - provides that an authorised officer may allow the property of a person that he or she reasonably suspects is used to commit an offence under this Act, to enter, leave or move through Samoa.
- Clause 47:** - gives discretion to the Commissioner of Police to disclose or exchange information relating to terrorist groups and terrorist acts, so long as the disclosure is not prohibited by law and is not (in the Commissioner's view) prejudicial to national security or public safety.
- Clause 48:** - empowers an authorised officer to seize and detain goods suspected to be terrorist property.
- Clause 49:** - permits an authorised officer to use reasonable force to seize or detain goods under clause 57. An authorised officer is also required to give notification to the person from whom the goods have been seized and detained. This clause further provides for goods detained under clause

57 to be taken into a secure place (as the authorised officer directs).

- This clause also protects an authorised officer or a person lawfully assisting an authorised officer for the loss or damage of property. It also extends the Customs Act 1977, the Money Laundering Prevention Act 2007 and the Proceeds of Crime Act 2007 to apply despite this Part.
- Clause 50:** - requires an authorised officer to return the goods seized and detained under clause 48, to the person from whom they were seized, as soon as practicable after completion of investigation or the expiry of the investigation period. This clause also provides a seven (7) day period (and an extension to that period) for an investigation in relation to goods seized and detained under clause 48.
- Clause 51:** - provides for the extension of the seven (7) day period under clause 50, and in order to obtain such extension, an application has to be made in the manner provide in this clause, with the required details.
- Clause 52:** - provides for the custody of certain goods (namely, goods that are a ship, vehicle or animal) detained under clause 48.
- Clause 53:** - creates other offences relating to the detention of goods that are a ship, vehicle or animal. These offences are: (i) acting in breach of any requirement imposed under clause 52(2) or (3); and (ii) taking or carrying away or converting goods under clause 52 for the person's own use. The penalty for the offence in (i) is imprisonment for a term not exceeding five (5) years and a fine not exceeding 500 penalty units. The penalty for the offence in (ii) is imprisonment for a term

not exceeding five (5) years, or a fine not exceeding 500 penalty units, or both.

**PART VIII**  
**CRIMINAL LIABILITY**

- Clause 54:** - provides for Part V of the Crimes Act 2013 to apply to this Act.
- Clause 55:** - makes a company (including an employee, agent or officer) liable if found guilty of any of the offences under this Act, in addition to the liability of any person for the same offence.

**PART IX**  
**ARREST AND EXTRADITION OF  
SUSPECTED FOREIGN TERRORIST**

- Clause 56:** - provides that this Part applies despite the provisions of the Extradition Act 1974 or any other law.
- Clause 57:** - allows a police officer to use reasonable force to arrest a suspected foreign terrorist, and also provides for the extradition of such person.
- Clause 58:** - requires the Minister responsible for Justice to refer a matter (relating to a foreign suspected terrorist) to the Attorney General for prosecution. If no prosecution follows then the Minister responsible for Justice is obligated to extradite the suspected foreign terrorist.

**PART X**  
**JURISDICTION**

- Clause 59:** - provides for extra-territorial jurisdiction of the Supreme Court of Samoa.

- Clause 60:** - provides for proceedings for an offence committed elsewhere than in or over Samoa to be made only with the consent of the Attorney General.

**PART XI**  
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- Clause 61:** - empowers the Cabinet to establish a Committee for the purposes of this Act.
- Clause 62:** - empowers the Head of State to make regulations, acting on the advice of Cabinet, including the power to add or omit items to or from Schedule 1.
- Clause 63:** - repeals the Prevention and Suppression of Terrorism Act 2002 and provides for transitional and savings.
- Clause 64:** - provides for consequential amendments to the Civil Aviation Act 1998 and the Proceeds of Crime Act 2007.
- Schedule 1:** - provides the list of counter terrorism conventions and protocols from 1963 until 2010.



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(Hon SALA Fata Pinati)

**MINISTER OF POLICE AND PRISONS**

## COUNTER TERRORISM BILL 2014

### SAMOA

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SCHEDULE 1

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**2014, No.**

**A BILL INTITULED**

**AN ACT to repeal the Prevention and Suppression of Terrorism Act 2002 and to implement United Nations Security Council Resolutions and Conventions dealing with terrorism.**

**BE IT ENACTED** by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART I  
PRELIMINARY**

**1. Short title and commencement-**(1) This Act may be cited as the Counter Terrorism Act 2014.

(2) This Act commences on the date it is assented to by the Head of State.

**2. Interpretation** - In this Act, unless the context otherwise requires:

“act of violence” means any act or omission, whether committed inside or outside Samoa that, if done or omitted in Samoa would constitute an offence under the Crimes Act 2013 involving bodily harm, grievous bodily harm or the unlawful death of any person;

“Administrator” has the same meaning as in the Proceeds of Crime Act 2007;

“aircraft” has the same meaning as in the Civil Aviation Act 1998;

“authorised officer” means:

(a) a commissioned officer of the Samoa Police Service;

or

(b) a Customs Officer; or

(c) any other person authorised in writing by the Minister responsible for Police.

“Commissioner” means the Commissioner of the Samoa Police Service;

“Commonwealth country” has the same meaning as in the Extradition Act 1974;

“Convention” means any of the Conventions listed in Schedule 1, dealing with terrorism;

“convention country” means, for the purpose of Part V of this Act:

(a) a country that is a State Party to the Convention for the Suppression of Unlawful Acts against the

Safety of Maritime Navigation, done at Rome on 10 March 1988; and

(b) a country that is a State Party to the Tokyo Convention.

“Court” means the Supreme Court of Samoa;

“duly authorised military device” include, but are not limited to, shells, bomb, projectiles, mines, rockets, shaped charges, grenades and perforators manufactured exclusively for military or police purposes according to the laws of Samoa;

“entity” means a person, group, undertaking, trust, partnership, fund or an incorporated or unincorporated association or organisation;

“exclusive economic zone” has the same meaning under the Maritime Zones Act 1999;

“explosive” means explosive products, commonly known as “plastic explosive”, including explosives in flexible or elastic sheet form, as described in the Technical Annex to the Plastic Explosives Convention;

“explosive or other lethal device” means:

(a) an explosive or other incendiary weapon or device that is designed or has the capability to cause death, serious bodily injury or substantial material damage; or

(b) a weapon or device that is designed or has the capability to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents, toxins or similar substances or radiation or radioactive materials.

“fixed platform” means an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes;

“foreign country” has the same meaning as in the Extradition Act 1974;

“forfeiture order” has the same meaning under the Proceeds of Crime Act 2007;

- “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, travelers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit;
- “Government of Samoa” means the Government of the Independent State of Samoa;
- “infrastructure facility” means any publicly or privately owned facility providing or distributing services for the benefit of the public, including water, sewage, energy, fuel or communications, and financial transactions;
- “International Atomic Energy Agency” means the United Nations agency that was established on 29 July 1957 which seeks to promote the peaceful use of nuclear energy, and to inhibit its use for any military purpose, including nuclear weapons, and reports to both the United Nations General Assembly and Security Council;
- “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:
- (a) beginning with the departure from a facility of the shipper in that State; and
  - (b) ending with the arrival at a facility of the receiver within the State of ultimate destination.
- “international organisation” means any organisation of a State or Government of a State or any organ or agency of any organisation of that kind;
- “internationally protected person” means:
- (a) a Head of State (including any member of a collegial body performing the functions of a Head of State under the constitution of the State concerned);
  - (b) a Head of Government or a Minister responsible for foreign affairs, wherever any such person is in a foreign State, as well as members of his family who accompany him;

- (c) any representative or official of a State or any official or other agent of an international organisation of an inter-governmental character who, when and where a crime against the person or the person's official premises, private accommodation or his means of transport is committed, is entitled under international law to special protection from attack on the person's freedom or dignity, as well as members of his family forming part of that person's household.
- “manufacture” means any process, including reprocessing, that produces explosives;
- “nuclear facility” means:
- (a) any nuclear reactor, including reactors installed on vessels, vehicles, aircraft (whether or not used for military, customs or police services) or space objects for use as an energy source in order to propel the vessels, vehicles, aircraft or space objects for any other purpose; or
  - (b) any plant or convenience being used for the production, storage or processing or transport of radioactive material.
- “nuclear material” means any of the following:
- (a) plutonium with an isotopic concentration of not more than 80% in plutonium-238;
  - (b) uranium-233;
  - (c) uranium containing uranium-233 or uranium-235 or both;
  - (d) uranium with a naturally occurring isotopic concentration, other than uranium in the form of ore or ore residue;
  - (e) any material containing one (1) or more of the foregoing.
- “Nuclear Material Convention” means the Convention for the Physical Protection of Nuclear Material, done at Vienna and New York on 3 March 1980;
- “place of public use” means those parts of any building, land, road, waterway or other location that are accessible or open to members of the public, whether continuously,

periodically or occasionally whether or not on payment of a fee or otherwise, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public;

“plastic explosive” means an explosive that:

- (a) is formulated with one (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
- (b) is formulated with a binder material; and
- (c) is, when mixed, malleable or flexible at normal room temperature.

“Plastic Explosives Convention” means the Convention on the Marking of Plastic Explosives for the Purpose of Identification, done at Montreal on 1 March 1991;

“property” has the same meaning as given by the Proceeds of Crime Act 2007;

“public transportation system” means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo;

“radioactive device means:

- (a) any nuclear explosive device; or
- (b) any radioactive material dispersal or radiation-emitting device which may, owing to its radiological properties, cause death, bodily injury to persons or substantial damage to property or to the environment.

“radioactive material” means nuclear material and other radioactive substances which contain nuclides which undergo spontaneous disintegration (a process accompanied by emission of one (1) or more types of ionising radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, owing to their radiological or fissile properties, cause death, bodily injury to persons or substantial damage to property or to the environment;

- “Samoan-controlled aircraft” means an aircraft that is registered in Samoa;
- “Ship” means any vessel of any type whatsoever (other than a warship) not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any other floating craft;
- “specified entity” means an individual or entity:
- (a) that is listed by the United Nations Security Council as described in section 4; or
  - (b) declared as such under section 5.
- “State or Government facility” includes 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 intergovernmental organisation in connection with their official duties;
- “terrorist act” has the meaning given by section 3;
- “terrorist group” means:
- (a) an entity that has as one of its activities or purposes planning, committing, or facilitating the commission of, a terrorist act; or
  - (b) a specified entity.
- “terrorist property” means:
- (a) property that has been, is being, or is likely to be used -
    - (i) to commit a terrorist act; or
    - (ii) by a terrorist group; or
  - (b) property owned or controlled, or derived or generated from property owned or controlled, by or on behalf of a specified entity.
- “third party” for sections 17 to 18A, means a State, an international or inter-governmental organisation or any other person;
- “Tokyo Convention” means the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on 14 September 1963;

“weapon” includes a firearm, and a chemical, biological or nuclear weapon.

**3. Definition of terrorist act-**(1) In this Act, “terrorist act” means:

- (a) an act or omission committed in or out of Samoa, that -
  - (i) constitutes an offence under this Act; or
  - (ii) endangers a person’s life, physical integrity or freedom; or
  - (iii) causes serious injury or death to a person or any number or group of persons; or
  - (iv) creates a serious risk to the health or safety of the public or a section of the public; or
  - (v) causes or may cause damage to public or private property, natural resources, environmental or cultural heritage; or
  - (vi) involves the use of weapons; or
  - (vii) involves introducing into the environment, or distributing or exposing the public to any:
    - (A) dangerous, hazardous, radioactive or harmful substance; or
    - (B) toxic chemical; or
    - (C) microbial or other biological agent or toxin; or
  - (viii) involves serious disruption to any system or the provision of services directly related to essential infrastructure; and
  - (ix) is intended, or, by its nature and context, is reasonably to be regarded as being intended:
    - (A) to intimidate the public or a section of the public; or
    - (B) to compel a Government or an international organisation to do, or refrain from doing, any act; or

- (b) any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organising, or procurement of any person, to commit any act referred to in paragraph (a)(i) to (ix).
- (2) An act or omission mentioned in subsection (1) does not include an act or omission that:
  - (a) is committed as part of an advocacy, protest, demonstration, dissent or industrial action and is not intended to result in any harm mentioned in subsection (1)(a)(i) to (ix); or
  - (b) occurs in a situation of armed conflict and is, at the time and in the place it occurred, in accordance with rules of international law applicable to the conflict.

## **PART II SPECIFIED ENTITIES**

**4. United Nations list of specified entities-**(1) An entity to which this section applies is an entity specified or designated under subsection (2) or (4).

(2) The entities listed in the Consolidated List of Individuals and Entities belonging to or associated with the Taliban and Al-Qaida Organisations as established and maintained by the United Nations Security Council are deemed to be specified entities for the purpose of this Act.

(3) The Prime Minister must make available to the public an up to date Consolidated List of Individuals and Entities belonging to or associated with the Taliban and Al-Qaida Organisations.

(4) A copy of the Consolidated List of the United Nations terrorist entities prepared and certified by the Minister responsible for Foreign Affairs is deemed to be prima facie evidence that the list is a correct list of entities designated by the United Nations Security Council as terrorist entities.

**5. Declaration of certain entities as specified entities-(1)**

This section applies to a group or individual, other than an entity to which section 4 applies.

(2) In relation to a group or individual to which this section applies, if the Prime Minister has reasonable grounds to believe that:

- (a) the group or individual has committed, attempted to commit, participated in committing or facilitated the commission of a terrorist act; or
  - (b) the group or individual is acting on behalf of, at the direction of or in association with a group or individual mentioned in paragraph (a); or
  - (c) the group (other than an individual) is wholly owned or effectively controlled, directly or indirectly, by the group mentioned in paragraph (a) or (b),
- the Prime Minister after consulting the Attorney General and the Commissioner may declare the group or the individual as a specified entity.

(3) The declaration under subsection (2) must be published in the *Savali* (including one other newspaper circulating in Samoa) within three (3) days of its making.

**6. Variation or revocation of declaration by the Prime Minister-(1)** The Prime Minister may, on own initiative or on written request by the Attorney General or any specified entity, vary or revoke a declaration made under section 5.

(2) The declaration under subsection (1) must be published in the *Savali* (including one other newspaper circulating in Samoa) within three (3) days of its making.

**7. Review of declaration-(1)** The Attorney General must, whenever necessary, review any declarations made under section 5 to determine whether the declaration should continue to apply.

(2) If the Attorney General determines that there are no reasonable grounds for a declaration to continue to apply to a specified entity, the Attorney General must, as soon as practicable, make a written request to the Prime Minister for the revocation of the declaration relating to the specified entity.

**8. Application to revoke declaration-**(1) A group or individual to which section 5 applies may apply to the court to revoke the declaration.

(2) The application must be served on the Attorney General.

(3) When determining the application, the Court may:

(a) dismiss the application if it is satisfied that matters in section 5(2) still exists; or

(b) revoke the declaration if satisfied that there are reasonable grounds to revoke the declaration.

(4) If the Court revokes a declaration, the Attorney General must publish notice of the revocation in the Savali (including one other newspaper circulating in Samoa).

(5) An entity to which section 4 applies may apply to the Court for an order to declare it an entity to which section 4 does not apply.

(6) The application under subsection (5) must be served on the Attorney General to appear and be heard on the application.

(7) When considering the application, the Court may make an order if satisfied that there are no reasonable grounds to believe that the applicant is an entity to which section 4 applies.

**9. Procedure-**(1) Upon hearing an application under section 8, the Court may:

(a) receive in evidence anything that would not otherwise be admissible as evidence (including information from the Government or institution or agency of a foreign country or an international organisation), that the Court thinks is reliable and relevant; and

(b) appoint an *amicus curiae* to assist the Court.

(2) The Court must if subsection (1)(a) applies, give the entity a statement summarising the information available to the Court, without disclosing any information that the Court thinks could prejudice national security or endanger the safety of any person.

### **PART III OFFENCES**

#### *Division 1 - Terrorist acts and terrorist groups*

**10. Harboursing of a person committing a terrorist act-**(1) A person commits an offence who harbours, or conceals, or prevents, hinders or interferes with the apprehension of, any other person, having reason to believe that the other person:

- (a) has committed or is planning or likely to commit a terrorist act; or
- (b) is a member of a terrorist group.

(2) A person who is convicted of an offence under subsection (1) is liable to imprisonment for a term not exceeding 15 years.

**11. Provision of weapons to a terrorist group-**(1) A person commits an offence who provides, or offers to provide a weapon to:

- (a) a terrorist group; or
- (b) a member of a terrorist group; or
- (c) any other person for use by, or for the benefit of, a terrorist group or a member of a terrorist group.

(2) A person convicted of an offence under subsection (1) is liable to imprisonment for a term not exceeding 15 years.

**12. Participation in a terrorist group-**(1) A person who participates as a member, associate member or prospective member in a terrorist group which they have reason to believe is a terrorist group commits an offence.

(2) A person convicted of an offence under subsection (1) is liable to imprisonment for a term not exceeding 15 years.

**13. Recruitment of a person to be a member of a terrorist group or to participate in a terrorist act-**(1) A person commits an offence who agrees to recruit, or recruits, another person:

- (a) to be a member of a terrorist group; or

(b) to participate in the commission of a terrorist act.

(2) A person convicted of an offence under subsection (1) is liable to imprisonment for a term not exceeding 15 years.

**14. Terrorist bombing-**(1) A person commits an offence who delivers, places, discharges or detonates an explosive or other lethal device, into or against a place of public use, a State or Government facility, a public transportation system or an infrastructure facility causing:

- (a) death; or
- (b) bodily injury; or
- (c) damage to such a place, facility or system; or
- (d) public alarm, fear or panic.

(2) A person convicted of an offence under:

- (a) subsection (1)(a) must be sentenced to life imprisonment; or
- (b) subsection (1)(b), (c) or (d) is liable to imprisonment for a term not exceeding 15 years.

**15. Attempted terrorist bombing-**(1) A person commits an offence who, delivers, places, discharges or detonates an explosive or other lethal device, into or against a place of public use, a State or Government facility, a public transportation system or an infrastructure facility to cause:

- (a) death; or
- (b) bodily injury; or
- (c) damage to such a place, facility or system; or
- (d) public alarm, fear or panic.

(2) A person convicted of an offence under:

- (a) subsection (1)(a) is liable to imprisonment for life; or
- (b) subsection (1)(b), (c) or (d) is liable to imprisonment for a term not exceeding 12 years.

**16. Participation in a terrorist bombing and unlawful possession of an explosive, etc.-**(1) A person commits an offence who participates as a party to, organizes or directs others to participate in, or in any other way contributes to, delivering, placing, discharging or detonating an explosive or

other lethal device, into or against a place of public use, a State or Government facility, a public transportation system or an infrastructure facility:

(a) causing -

(i) death; or

(ii) bodily injury, damage to such a place, facility or system, or public alarm, fear or panic; or

(b) to cause -

(i) death; or

(ii) bodily injury, damage to such a place, facility or system, or public alarm, fear or panic.

(2) A person convicted of an offence under:

(a) subsection (1)(a)(i) must be sentenced to imprisonment for life; or

(b) subsection (1)(b)(i) is liable to imprisonment for life; or

(c) subsection (1)(a)(ii) is liable to imprisonment for a term not exceeding 15 years; or

(d) subsection (1)(b)(ii) is liable to imprisonment for a term not exceeding 12 years.

(3) In this section, 'participates' includes transporting or carrying or wearing of a package, bag, container receptacle or thing that contains an explosive, other lethal device or weapon.

(4) It is a defence for any person charged under this section to prove to the Court that he or she did not suspect that he or she was transporting or carrying an explosive or other lethal device.

(5) The commission of an offence under this section or section 14 or 15, in particular where it is intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other factors of a similar nature.

(6) A person who unlawfully possesses or attempts to obtain possession of, an explosive or other lethal device to commit an offence under this section or section 14 or 15, commits an offence and is liable upon conviction to imprisonment not exceeding 12 years.

*Division 2 - Hostage-taking*

**17. Hostage-taking-**(1) A person commits an offence who seizes, detains or threatens to kill, to injure or to continue to detain another person (“hostage”) in order to compel a third party, to do or abstain from doing an act as an explicit or implicit condition for the release of the hostage.

(2) A person convicted of an offence under subsection (1) is liable to imprisonment for a term not exceeding 15 years.

**18. Attempted or participation in hostage-taking-**(1) A person commits an offence who attempts to seize, detain or injure the hostage in order to compel a third party, to do or abstain from doing an act as an explicit or implicit condition for the release of the hostage.

(2) A person convicted of an offence under subsection (1) is liable to imprisonment for a term not exceeding 12 years.

(3) A person commits an offence who participates as a party to, organises or directs others to participate in, or in any other way contributes to:

(a) the seizure, detention or injury of the hostage; or  
 (b) attempted seizure, detention or injury of the hostage,  
 in order to compel a third party, to do or abstain from doing an act as an explicit or implicit condition for the release of the hostage.

(4) A person convicted of an offence under:

- (a) subsection (3)(a) is liable upon conviction to imprisonment for a term not exceeding 15 years;  
 or  
 (b) subsection (3)(b) is liable to imprisonment for a term not exceeding 12 years.

*Division 3 - Crimes against  
Internationally Protected Persons*

**19. Attack against an internationally protected person-**(1) A person commits an offence who:

- (a) murders; or
  - (b) kidnaps; or
  - (c) assaults or otherwise attacks,
- an internationally protected person.
- (2) A person convicted of an offence under:
- (a) subsection (1)(a), must be sentenced to imprisonment for life; or
  - (b) subsection (1)(b) or (c), is liable to imprisonment for a term not exceeding 15 years.

**20. Unlawful entry of premises of an internationally protected person-**(1) A person who unlawfully enters the official premises or private accommodation or the means of transport of an internationally protected person with intent to commit an offence under this Act or without lawful justification for his or her presence there, commits an offence.

(2) A person convicted of an offence under subsection (1) is liable to imprisonment for a term not exceeding three (3) years.

**21. Attempted or participation in attack against an internationally protected person-**(1) A person commits an offence who attempts to:

- (a) murder; or
  - (b) kidnap, assault or attack,
- an internationally protected person.
- (2) A person convicted of an offence under:
- (a) subsection (1)(a) is liable to imprisonment for life; or
  - (b) subsection (1)(b) is liable to imprisonment for a term not exceeding 12 years.
- (3) A person commits an offence who participates as a party to, organises or directs others to participate in, or in any other way contributes to the:
- (a) murder; or
  - (b) kidnap, assault or attack; or

- (c) attempted murder; or
  - (d) attempted kidnap, assault or attack,
- against an internationally protected person.
- (4) A person who is convicted under:
    - (a) subsection (3)(a) must be sentenced to imprisonment for life; or
    - (b) subsection (3)(c) is liable to imprisonment for life; or
    - (c) subsection (3)(b) or (d) is liable to imprisonment for a term not exceeding 12 years.

**22. Threat of attack against an internationally protected person-**(1) A person who threatens to commit an offence under section 19 or 20 commits an offence.

(2) A person convicted of an offence under subsection (1) is liable to imprisonment for a term not exceeding five (5) years.

*Division 4 - Financing and  
supporting terrorist acts*

**23. Terrorism financing-**(1) A person commits an offence who provides or collects property or funds:

- (a) to carry out a terrorist act or for the benefit of a specified entity; or
- (b) to carry out any other act causing -
  - (i) death; or
  - (ii) bodily injury,
 to any person not taking 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 abstain from doing any act.

(2) A person convicted of an offence under:

- (a) subsection (1)(b)(i) must be sentenced to imprisonment for life; or
- (b) subsection (1)(a) or (b)(ii) is liable to a fine not exceeding 1,000 penalty units or to imprisonment for a term not exceeding 15 years, or both.

(3) In a prosecution for an offence against subsection (1), it is not necessary for the prosecution to prove that the property or funds collected or provided was actually used, in full or in part, to carry out a terrorist act.

(4) In this section, “provide” or “collect” means to provide or collect by any means, directly or indirectly, in full or in part.

**24. Attempted, participation, etc., in financing and support for terrorist acts-**(1) A person commits an offence who attempts to provide or collect any property or funds:

- (a) to carry out a terrorist act or for the benefit of a specified entity; or
- (b) to carry out any other act to cause -
  - (i) death; or
  - (ii) bodily injury,

to any person not taking 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 person convicted of an offence under:

- (a) subsection (1)(b)(i) is liable to imprisonment for life; or
- (b) subsection (1)(a) or (b)(ii) is liable to a fine not exceeding 750 penalty units or to imprisonment for a term not exceeding 12 years, or both.

(3) A person commits an offence who participates as a party to, organises or directs others to participate in, or in any other way contributes to, providing or collecting property or funds:

- (a) to carry out a terrorist act or for the benefit of a specified entity; or
- (b) to carry out any other act -
  - (i) causing:
    - (A) death; or
    - (B) bodily injury; or
  - (ii) to cause:
    - (A) death; or
    - (B) bodily injury,

to any person not taking 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.

(4) A person convicted of an offence under:

- (a) subsection (3)(b)(i)(A) must be sentenced to imprisonment for life; or
- (b) subsection (3)(a) and (b)(i)(B) is liable to a fine not exceeding 1,000 penalty units or to imprisonment for a term not exceeding 15 years, or both; or
- (c) subsection (3)(b)(ii)(A) is liable to imprisonment for life; or
- (d) subsection (3)(b)(ii)(B) is liable to a fine not exceeding 750 penalty units or to imprisonment for a term not exceeding 12 years, or both.

**25. Provision of property or services to a terrorist group-**(1) A person who, either directly or indirectly, makes available property or financial or other related services to, or for the benefit of, a terrorist group, commits an offence.

(2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding 1,000 penalty units or to imprisonment for a term not exceeding 15 years, or both.

(3) In this section “make available” means to make available by any means, directly or indirectly, in full or in part.

**26. Dealing with terrorist property-**(1) A person commits an offence who:

- (a) deals, either directly or indirectly, in any terrorist property; or
- (b) collects, acquires or possesses terrorist property; or
- (c) enters into, or facilitates, directly or indirectly, any transaction in respect of terrorist property; or
- (d) converts, conceals or disguises terrorist property.

(2) A person convicted of an offence under this section is liable to a fine not exceeding 1,000 penalty units or to imprisonment for a term not exceeding 15 years, or both.

(3) A person does not commit an offence under subsection (1) if the person:

- (a) informs the Attorney General, in writing, as soon as the person becomes aware that the property is terrorist property; and
  - (b) acts in accordance with all reasonable directions of the Attorney General in relation to property or financial services.
- (4) In this section, “deal” means to deal by any means, directly or indirectly, in full or in part.

*Division 5 - Unlawful  
seizure of aircraft*

**27. Hijacking and attempted, etc., hijacking-**(1) A person on board an aircraft in flight, who uses force or threats of any kind, to seize or exercise control of the aircraft, commits an offence.

(2) Proceedings may be brought for an offence under this section if:

- (a) the offence is committed on board an aircraft registered in Samoa; or
- (b) the aircraft on board which the offence is committed lands in Samoa’s territory and the alleged offender is on board; or
- (c) the offence is committed on board an aircraft leased without crew to a lessee who has his or her principal place of business in Samoa or, if the lessee has no principal place of business in Samoa, or if the lessee is a permanent resident of Samoa.

(3) A person on board an aircraft in flight, who attempts to seize or exercise control of the aircraft (by use force or threats of any kind), commits an offence.

(4) A person who threatens to commit an offence under section 27, commits an offence.

(5) A person commits an offence who participates as a party to, organises or directs others to participate in, or in any other way contributes to:

- (a) seizing or exercising control of the aircraft (by use force or threats of any kind); or
  - (b) the attempted seizing or exercise of control of the aircraft (by use force or threats of any kind).
- (6) A person who commits an offence under:
- (a) subsection (1) or (5)(a) is liable to imprisonment for a term not exceeding 15 years; or
  - (b) subsection (3), (4) or (5)(b) is liable to imprisonment for a term not exceeding 12 years.

**28. Application of the Civil Aviation Act 1998** - The powers of an aircraft commander under the Civil Aviation Act 1998 relating to crimes on aircraft must extend and apply with respect to the offence of hijacking under this Act as if such offence is an offence under the Civil Aviation Act 1998.

*Division 6 - Offences involving  
nuclear and other materials*

**29. Unlawful movement of nuclear material**-(1) A person who unlawfully imports nuclear material into, or exports nuclear material out of Samoa, or otherwise transports nuclear material within or through Samoa, including its airspace or its exclusive economic zone, without the prior written consent of the Comptroller of Customs commits an offence.

(2) A person convicted of an offence under subsection (1) is liable to imprisonment for a term not exceeding 15 years.

(3) A person who makes a false or misleading statement with the intention of obtaining the consent of the Comptroller of Customs required under this section commits an offence.

(4) A person convicted of an offence under subsection (3) is liable to a fine not exceeding 1,000 penalty units or to imprisonment for a term not exceeding 15 years, or both.

(5) The Comptroller of Customs may only provide written consent under this section with the approval of the Minister responsible for Customs, and if satisfied that any nuclear material will, during international nuclear transport, be protected at the levels specified in the Nuclear Materials Convention.

**30. Other unlawful acts relating to nuclear material, including attempt, participation and threat-**(1) A person commits an offence who:

- (a) without lawful authority knowingly receives, possesses, uses, transfers, alters, disposes of or disperses nuclear material causing -
    - (i) death to a person; or
    - (ii) serious injury to a person or substantial damage to property or to the environment; or
  - (b) steals nuclear material; or
  - (c) embezzles or fraudulently obtains nuclear material; or
  - (d) without lawful authority commits an act against a nuclear facility or interferes with a nuclear facility causing -
    - (i) death to a person; or
    - (ii) serious injury to a person or substantial damage to property or to the environment.
- (2) A person commits an offence who:
- (a) without lawful authority knowingly receives, possesses, uses, transfers, alters, disposes of or disperses nuclear material to cause -
    - (i) death to a person; or
    - (ii) serious injury to a person or substantial damage to property or to the environment; or
  - (b) attempts to steal nuclear material; or
  - (c) attempts to embezzle or fraudulently obtains nuclear material; or
  - (d) without lawful authority commits an act against a nuclear facility or interferes with a nuclear facility to cause -
    - (i) death to a person; or
    - (ii) serious injury to a person or substantial damage to property or to the environment.

(3) A person commits offence who participates as a party to, organises or directs others to participate in, or in any other way contributes to nuclear terrorism:

(a) causing -

(i) death; or

(ii) serious injury to a person or substantial damage to property or to the environment; or

(b) to cause -

(i) death; or

(ii) serious injury to a person or substantial damage to property or to the environment.

(4) A contribution made under this section must be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence concerned.

(5) A person commits an offence who:

(a) uses a threat or force or any other form of intimidation to demand nuclear material, supply of radioactive material or a radioactive device or for a nuclear facility to be made available or for access to a nuclear facility;

(b) threatens -

(i) to use nuclear material to cause:

(A) death to any person; or

(B) serious injury to any person or substantial damage to any property or to the environment; or

(ii) to steal nuclear material to compel a person, State or an international organisation to do or refrain from doing any act; or

(c) threatens to commit an act against a nuclear facility, interferes with, uses or damages a nuclear facility, or increases the risk of a release of radioactive material, to cause -

(i) death to a person; or

(ii) serious injury to a person or substantial damage to property or to the environment; or

(iii) to compel a person, State or an international organisation to do or refrain from doing any act.

(6) A threat referred to in subsection (5) must be made in circumstances which would cause a reasonable person to believe that the threat was real.

(7) A person convicted of an offence:

(a) under subsection (1)(a)(i) or (d)(i) or (3)(a)(i) must be sentenced to imprisonment for life; or

(b) under subsection (3)(b)(i) is liable upon conviction to imprisonment for life; or

(c) under subsection (1)(a)(ii), (b), (c), (d)(ii), (2) or (3)(a)(ii) or (b)(ii), is liable to imprisonment for a term not exceeding 25 years; or

(d) under subsection (5) is liable to imprisonment for a term not exceeding five (5) years.

**31. Application of Customs Act 1977** - The provisions of the Customs Act 1977 dealing with prohibited imports and exports, except the penalties for offences under that Act, apply to nuclear material and other material whose importation and exportation is prohibited under this Act in all respects as if they were prohibited imports or exports under the Customs Act 1977.

*Division 7 - Unlawful movement  
of unmarked plastic explosives*

**32. Plastic explosives-(1)** A person commits an offence who:

(a) manufactures unmarked plastic explosives, knowing that they are unmarked; or

(b) possesses, transports, or imports into, or exports unmarked plastic explosives, into or out of Samoa knowing that they are unmarked; or

- (c) uses or diverts unmarked plastic explosives for purposes inconsistent with this Act.
- (2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding 1,000 penalty units or to imprisonment for a term not exceeding 10 years, or both.
- (3) A person does not commit an offence under this section if:
  - (a) the person manufactures or holds, possesses or transports unmarked plastic explosives in a quantity approved in writing by the Commissioner solely for use -
    - (i) in research, development or testing of new or modified explosives; or
    - (ii) in training in explosives detection; or
    - (iii) in the development or testing of explosives detection equipment; or
    - (iv) for forensic science purposes; or
  - (b) the unmarked plastic explosives are destined to be, and are incorporated as, an integral part of duly authorised military devices in Samoa within three (3) years after the coming into force of the Plastic Explosives Convention in Samoa.

**33. Power of entry-**(1) An officer authorised in writing by Commissioner may enter any premises where the officer has reasonable grounds to believe that explosives are being manufactured, kept or stored and do any of the following:

- (a) investigate and make inquiries on the premises to find out whether an offence under section 30 is being committed;
- (b) inspect any records, documents or equipment found on the premises;
- (c) take copies of, or extracts from, the records or documents; or
- (d) remove any explosives found to be manufactured, kept or stored on the premises.

(2) A person commits an offence who:

- (a) resists or obstructs an officer authorised under subsection (1) from exercising the powers mentioned in subsection (1); or
- (b) knowingly gives false information in response to an inquiry under subsection (1); or
- (c) suppresses any material information in response to an inquiry under subsection (1).

(3) A person convicted of an offence under subsection (2) is liable upon conviction to a fine not exceeding 200 penalty units or to a term of imprisonment not exceeding two (2) years, or both.

*Division 8 - Crimes at an airport*

**34. Violence at an airport-**(1) A person commits an offence who unlawfully and intentionally, uses any device, substance or weapon, that endangers or is likely to endanger safety at the airport:

- (a) by performing an act of violence against a person at an airport serving international civil aviation causing -
    - (i) serious injury to a person; or
    - (ii) death to a person; or
  - (b) by threatening to perform an act of violence against a person at an airport serving international civil aviation causing -
    - (i) serious injury to a person; or
    - (ii) death to a person; or
  - (c) by destroying or seriously damaging the facilities of an airport or airport serving an international civil aviation or aircraft not in service located thereon; or
  - (d) by disrupting the services of an airport.
- (2) A person convicted of an offence under:
- (a) subsection (1)(a)(i), (b)(i), (c) or (d) is liable to imprisonment for a term not exceeding 12 years; or
  - (b) subsection (1)(a)(ii) and (b)(ii) must be sentenced to imprisonment for life.

**35. Attempted violence at an airport-**(1) A person commits an offence who unlawfully and intentionally, uses any device, substance or weapon, that endangers or is likely to endanger safety at the airport:

- (a) by performing an act of violence against a person at an airport serving international civil aviation to cause -
    - (i) serious injury to a person; or
    - (ii) death to a person; or
  - (b) by threatening to perform an act of violence against a person at an airport serving international civil aviation to cause -
    - (i) serious injury to a person; or
    - (ii) death to a person; or
  - (c) by attempting to destroy or seriously damage the facilities of an airport or airport serving an international civil aviation or aircraft not in service located thereon; or
  - (d) by attempting to disrupt the services of an airport.
- (2) A person convicted of an offence under:
- (a) subsection (1)(a)(i), (b)(i), (c) or (d) is liable to imprisonment for a term not exceeding seven (7) years; or
  - (b) subsection (1)(a)(ii) or (b)(ii) is liable to imprisonment for life.

#### **PART IV MARITIME SAFETY**

**36. Seizure of a ship or fixed platform-**(1) A person commits an offence who unlawfully and intentionally:

- (a) seizes, or exercises control over, a ship or fixed platform by force or threat of force or other form of intimidation; or
- (b) commits or performs an act of violence against a person on board a ship or fixed platform, that is likely to endanger the safe navigation of the ship or safety of the fixed platform; or
- (c) destroys a ship or fixed platform; or

- (d) cause damages, to a ship or its cargo or a fixed platform, that is, likely to endanger the safe navigation of the ship or safety of the fixed platform; or
  - (e) places or causes to be placed, on a ship or fixed platform, a device or substance, likely -
    - (i) for a ship, to destroy the ship, or to cause damage to the ship or its cargo, or likely to endanger the safe navigation of the ship; or
    - (ii) for a fixed platform, to destroy the fixed platform or to endanger its safety; or
  - (f) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation in a way that is likely to endanger the safe navigation of a ship; or
  - (g) communicates information, that he or she knows to be false, endangering the safe navigation of a ship; or
  - (h) injures any person in connection with the commission, or attempted commission, of an offence mentioned in paragraph (a), (b), (c), (d), (e), (f) or (g); or
  - (i) by compelling another person to do or to refrain from doing any act, threaten to commit any of the acts described in relation to a ship or fixed platform, if such threats are likely to endanger the safety of the ship or fixed platform or any person thereon; or
  - (j) attempts or threatens to commit or assist or is a party to the commission of, any of the acts in paragraphs (a) to (i); or
  - (k) kills any person in connection with the commission, or attempted commission, of an offence mentioned in paragraph (a), (b), (c), (d), (e), (f) or (g).
- (2) Any person convicted of an offence under:
- (a) subsection (1)(a) to (j), is liable to imprisonment for a term not exceeding 15 years; or

(b) subsection (1)(k), is liable to imprisonment for life.

**37. Use of nuclear, chemical or other substances on a ship or fixed platform-**(1) A person commits an offence who unlawfully and intentionally:

(a) intimidates a population or compels a Government or international organization to do or to refrain from doing any act -

(i) uses against or on or discharges from a fixed platform or ship any nuclear, chemical or biological weapon or radioactive or nuclear material in a manner that causes or is likely to cause:

(A) death to a person; or

(B) serious injury to a person or damage; or

(ii) discharges from a fixed platform or ship oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by paragraph (a)(i) in such quantity or concentration that causes or is likely to cause:

(A) death to a person; or

(B) serious injury to a person or damage; or

(iii) uses a ship in a manner that causes:

(A) death to a person; or

(B) serious injury to a person or damage; or

(iv) threatens to commit an offence in paragraphs (a)(i), (ii) or (iii); or

(b) transports on a ship -

(i) any explosive or radioactive material knowing that it is intended to cause or threatened to be used to cause:

(A) death to a person; or

(B) injury to a person or to damage,

with the intention to intimidate a population or compel a Government or international organization to do or refrain from doing an act;

(ii) any nuclear, chemical or biological weapon;

(iii) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material knowing that it is intended or is likely to be used in a nuclear explosive activity or in any other nuclear activity not under safeguard pursuant to an International Atomic Energy Agency comprehensive safeguards agreement;

(iv) any equipment, material, or software or related technology that is intended to contribute to the design, manufacture, or delivery of a nuclear, chemical or biological weapon;

(v) a person who has committed an act that constitutes an offence under this section with the intent to assist that person to avoid criminal prosecution; or

- (c) injures another person in connection with the commission of any offence under this section; or
  - (d) causes the death of another person in connection with the commission, or attempted commission, of an offence under this section.
- (2) A person convicted of an offence under:
- (a) subsection (1)(a)(i)(A), (ii)(A), (iii)(A), (b)(i)(A) or (d) is liable to imprisonment for life; or
  - (b) subsection (1)(a)(i)(B), (ii)(B), (iii)(B), (iv), (b)(i)(B), (ii) to (v) or (c) is liable to a term of imprisonment not exceeding 15 years.

**38. Arrest and delivery-**(1) The master of a ship registered in Samoa who has reasonable grounds to believe that a person has committed an offence under sections 36 and 37, or on board, may:

- (a) arrest and detain the person; and
  - (b) deliver the person to the appropriate authorities in any other convention country.
- (2) The master of the ship must:
- (a) notify the authorities in the other convention country before delivering the person; and
  - (b) give to the authorities evidence in his or her possession that the person has committed an offence.
- (3) If the person is delivered to a police officer:
- (a) the police officer must take the person into custody unless he or she has reasonable grounds to believe that the person has not committed the offence; and
  - (b) if the police officer refuses to take the person into custody, give written reasons for the refusal.

## **PART V MANAGEMENT AND FORFEITURE OF PROPERTY OF SPECIFIED ENTITIES**

**39. Application of this Part-**(1) Without limiting the application of the Proceeds of Crime Act 2007, this Part applies to a specified entity referred to under section 4(2).

(2) Property that is the subject of a direction by the Prime Minister under this Part, is to be taken into custody and control of the Administrator without delay or prior notice to the person who has custody or control of the property.

**40. Direction to take control of property-**(1) The Prime Minister may by written instrument appoint and direct the Administrator to take custody and control of property if the Prime Minister has reasonable grounds to believe that the property is terrorist property owned or controlled by a specified entity to which this Part applies.

(2) The direction:

- (a) must specify the property concerned; and
- (b) may be subject to conditions.

(3) A person who has custody or control of property mentioned in the direction must allow the Administrator to take custody and control of the property in accordance with the direction.

**41. Notice of direction-**(1) The Prime Minister must cause a direction under section 40:

(a) to be served -

(i) as soon as possible, on the person who owns or has custody or control of the property or if the person is not in Samoa, on the agent or representative of the person in Samoa; and

(ii) on any other person that the Prime Minister considers may have an interest in the property; and

(b) if the service under paragraph (a) is not practicable, to be published in the Savali or another newspaper circulating in Samoa.

(2) Failure to comply with subsection (1) does not affect the validity of the direction.

**42. Variation, revocation, or expiry of direction-**(1) The Prime Minister may:

(a) by another direction under section 40, vary the conditions of the direction or the property that is subject to the direction; or

(b) may revoke a direction made under section 40.

(2) Notice of any variation or revocation under this section must be given in accordance with section 41.

(3) If not earlier revoked, a direction under section 39 relating to property of a specified entity expires if:

(a) for property of a specified entity to which this Part applies, the entity ceases to be a specified entity;  
or

- (b) a forfeiture order is made on the property under section 51.

**43. Court may vary or revoke directions-**(1) A person (“applicant”) who owns, claims an interest in, or has effective control of property that is subject to a direction under section 39, may apply to the Court to vary or revoke the direction.

(2) The Court may:

- (a) dismiss the application if the Court decides that there are reasonable grounds for a direction under section 40; or
- (b) revoke the direction if the Court decides that there are no reasonable grounds to support the direction under section 40.

(3) If the Court revokes the direction, the Attorney General must:

- (a) notify the person who owns or controls the property of the decision in writing; and
- (b) publish a notice of revocation in the Savali or any other newspaper circulating in Samoa.

(4) The sole ground upon which the Court may vary or revoke a direction under section 40 is that there are no reasonable grounds for believing that the individual or entity is specified entity to which this Part applies.

**44. Procedures-**(1) The following provisions apply to any application to the Court under this Part:

- (a) the application is to be made pursuant to the Court Rules; and
- (b) the applicant must serve the application on the Attorney General; and
- (c) the Attorney General must be heard on the application.

(2) In hearing and determining an application under this Part, the Court may:

- (a) hear any evidence or information presented by the Attorney General in the absence of the specified entity or counsel representing the specified entity, or the public, if the Court thinks that

disclosure of the information would prejudice national security or endanger the safety of any person; and

- (b) receive in evidence anything that would not otherwise be admissible as evidence (including information from any source) that the Court thinks is relevant; and
- (c) if paragraph (a) applies, give the specified entity a statement summarising the information available to the Court, without disclosing any information that the Court thinks could prejudice national security or endanger the safety of any person; and
- (d) appoint an *amicus curiae* to assist the Court.

## **PART VI RESTRAINT AND FORFEITURE OF TERRORIST PROPERTY**

**45. Application of the Proceeds of Crime Act 2007** - The provisions relating to forfeiture and restraining orders for property under the Proceeds of Crime Act 2007, except the penalties for offences under that Act, apply (with all necessary modifications) to property of a specified entity under section 4(2) or declared under section 5 as if the property was forfeited or subject to a restraining order under that Act.

## **PART VII GENERAL POWERS**

**46. Controlled delivery of property** - An authorised officer who has reasonable grounds to believe that a person has committed, is committing or about to commit an offence under this Act, may allow the person's property to enter, leave or move through Samoa, for the purpose of gathering evidence to identify a person or to facilitate a prosecution for the offence.

**47. Exchange of information relating to terrorist groups and terrorist acts** - The Commissioner or the Attorney General may disclose to the appropriate authority of a foreign country any information in its possession relating to any of the following:

- (a) the actions or movements of terrorist groups or persons suspected of involvement in the commission of terrorist acts;
  - (b) the use of forged or falsified travel papers by persons suspected of involvement in the commission of terrorist acts;
  - (c) traffic in explosives or other lethal devices by terrorist groups or persons suspected of involvement in the commission of terrorist acts;
  - (d) the use of communication technologies by terrorist groups; and
  - (e) any property referred to in section 47,
- if the disclosure is not prohibited by any law and will not, in his or her view, prejudice national security or public safety.

**48. Detention of goods suspected to be terrorist property** - An authorised officer may, without warrant, seize and detain goods if:

- (a) the goods came to the Officer's attention, or into the Officer's possession, during a search, inspection, audit, or examination authorised by law; or
- (b) the goods are in Samoa and the authorised officer is satisfied that they either -
  - (i) are being, or are intended to be, exported out of Samoa; or
  - (ii) are being, or have been, imported into Samoa; and
- (c) the officer has good cause to suspect that the goods are terrorist property.

**49. Further provisions regarding detention under section 48-(1)** An authorised officer may use reasonable force if it is necessary to seize or detain goods under section 48.

(2) If the person who owns or has possession of goods which have been seized and detained under section 48 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 authorised officer must make all reasonable efforts to notify that person of the detention and seizure as soon as practicable.

(3) Goods detained under section 48 must be taken to such a place of security as an authorised officer directs, and there detained, unless section 48 applies.

(4) An authorised officer or a person lawfully assisting an authorised officer is not liable for the loss of or damage to any property occasioned by anything done or omitted to be done or purported to have been done in good faith, by an authorised officer or person lawfully assisting in the exercise of any power conferred under sections 48 to 52.

(5) Nothing in this Part limits or affects powers under the Customs Act 1977 or the Money Laundering Prevention Act 2007 or the Proceeds of Crime Act 2007.

**50. Return of goods detained under section 48-**(1) In this section, “investigation period”, in relation to goods seized and detained under section 48:

- (a) means the period of seven (7) days after the date on which the goods were seized and detained; and
- (b) includes any extension of that period granted by the Court under section 45.

(2) Goods seized and detained under section 48 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 that the goods are not terrorist property; or
- (b) the expiry of the investigation period.

(3) Subsection (2) does not apply if the goods are subject to a forfeiture or restraining order under the Proceeds of Crime Act 2007.

**51. Extension of 7 day period in section 50-**(1) The seven (7) day period in section 50(1)(a) may be extended (but once only) by order of the Court for a further period not exceeding 28 days if, on an application for the purpose made before the expiry of that seven (7) day period, that Court is satisfied:

- (a) that the good cause to suspect required by section 48(c) exists; and
  - (b) that the extension to be granted is necessary to enable investigations in or outside Samoa in relation to the goods or entity to be completed.
- (2) The application to the Court must be made in writing and served on the person from whom the goods were seized (if that person can be identified and located), and must include the following particulars:
- (a) a description of the goods detained;
  - (b) the date on which the detention commenced;
  - (c) a statement of the facts supporting the good cause to suspect required by section 48(c); and
  - (d) a statement of the reasons why the extension sought is necessary to enable investigations in or outside Samoa in relation to the goods or entity to be completed.
- (3) The person from whom the goods were seized is entitled to appear and be heard on the application.
- (4) The authorised officer must make all reasonable efforts to notify the person from whom the goods were seized, at least 24 hours before the hearing of the application, of the time and place of that hearing.

**52. Custody of certain goods detained under section 48-**(1) If a ship, vehicle or animal is detained as goods under section 48 an authorised officer may leave those goods in the custody of either:

- (a) the person from whom the goods have been seized;  
or
- (b) any other person authorised by the authorised officer and who consents to having such custody.

(2) A person who has the custody of goods under subsection (1) must, until a final decision is made under section 48 as to whether or not they are to be returned, hold them in safekeeping, without charge to the Government of Samoa and in accordance with any reasonable conditions that may be imposed by the authorised officer.

(3) A person to whom subsection (2) applies must also:

- (a) make the goods available to an authorised officer on request; and
- (b) not alter, or dispose of, or remove the goods from Samoa, unless the person is authorised to do so by the authorised officer; and
- (c) return the goods on demand to the custody of the authorised officer.

**53. Offences in relation to certain detained goods-**(1) A person commits an offence who:

- (a) has custody of goods pursuant to section 52(1), and acts in breach of any requirement of, or imposed pursuant to, section 52(2) or (3); or
- (b) takes or carries away or otherwise converts to the person's own use goods to which section 52(2) and (3) applies, without the permission of the authorised officer.

(2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding 500 penalty units or to imprisonment for a term not exceeding five (5) years, or both.

## **PART VIII CRIMINAL LIABILITY**

**54. Application of Part V of the Crimes Act 2013** - Part V of the Crimes Act shall apply to this Act.

**55. Liability of a company-**(1) This Act applies to a company in the same way as it applies to an individual and a company may be found guilty of any of the offences set out in this Act, in addition to the liability of any person for the same offence.

(2) For an offence under this Act, the conduct or state of mind of an employee, agent or officer of a company is taken to be attributed to the company if that person is acting:

- (a) within the scope of the person's employment; or
- (b) within the scope of the person's actual or apparent authority; or
- (c) with the consent or agreement (express or implied) of a director, employee or agent of the company, and giving that consent is within the actual or apparent authority of the director, employee or agent.

(3) In this section, "state of mind" includes the person's knowledge, intention, opinion, belief or purpose, and the person's reasons for that intention, opinion, belief or purpose.

## **PART IX ARREST AND EXTRADITION OF SUSPECTED FOREIGN TERRORIST**

**56. Application of this Part** - This Part applies as an exception to the Extradition Act 1974 or any other Act or law.

**57. Arrest and extradition of suspected foreign nationals**-(1) If a police officer suspects on reasonable grounds:

- (a) that a foreign national is wanted by a Commonwealth or Foreign Country to face a charge or charges in that country relating to a terrorist act; or
- (b) that a foreign national is unlawfully at large after conviction for committing a terrorist act,

the police officer, using reasonable force, may arrest the person and without undue delay bring the person before the Supreme Court.

(2) In this Part, "terrorist act" includes any offence provided under this Act or an offence determined by the Supreme Court to be the same as any offence provided for under this Act.

(3) If the Court is satisfied that:

- (a) section 6 of the Extradition Act 1974 does not apply; and

(b) there is reasonable evidence available to the Court that the person should face trial for committing a terrorist act or is unlawfully at large after conviction for committing a terrorist act, the Court must order that the person remain in custody and be returned to the Commonwealth country or foreign country wishing to put the person on trial for committing a terrorist act or be returned to the Commonwealth country or foreign country wishing to regain the custody of the person following the person's conviction for committing a terrorist act, as the case may be.

**58. Obligation to extradite or prosecute-**(1) If the Minister responsible for Justice refuses a request from another country to extradite a person under the Extradition Act 1974, and the extradition request relates to a criminal offence under this Act, the Minister responsible for Justice must submit the matter to the Attorney General for the purpose of possible prosecution.

(2) If no prosecution follows that person must be extradited.

## **PART X JURISDICTION**

**59. Jurisdiction** - As an exception to any other Act or law, the Supreme Court has jurisdiction to hear and determine any matter under this Act:

- (a) if the act or omission or offence -
  - (i) is committed in Samoa; or
  - (ii) is committed on board a ship or aircraft registered in Samoa; or
  - (iii) is committed by a person who, is or resides, in Samoa, or is a Samoan national;
 and
- (b) whether or not the act or omission constituting the offence is committed in or outside Samoa, if the act or omission -

(i) is committed by a citizen of Samoa or a citizen of any country who is ordinarily resident in Samoa; or

(ii) is committed in order to compel the Government to do or abstain from doing any act; or

(iii) is committed against a citizen of Samoa; or

(iv) is committed by a person who is, after the commission of the offence, present in Samoa.

**60. Consent of Attorney General-**(1) Proceedings for any offence under this Act, for which jurisdiction is claimed under section 59(a)(ii) for an offence committed on board an aircraft, elsewhere than in or over Samoa or for any other offence committed outside Samoa may only be instituted with the consent of the Attorney General.

(2) Subsection (1) does not prevent the arrest, or the issue of a warrant for the arrest, of any person for any offence, or the remanding in custody or on bail of any person charged with any offence.

## **PART XI MISCELLANEOUS**

**61. Power to establish a Committee** - Cabinet may establish a Committee for the purposes of this Act.

**62. Regulations-**(1) The Head of State, acting on the advice of Cabinet, may make regulations to give effect to the provisions of or for the purposes of this Act.

(2) Without limiting subsection (1), regulations may be made:

- (a) to providing the membership, appointment, functions, duties and powers of a Committee established under this Act and any other matter necessary to the work of the Committee;

- (b) to provide a framework to facilitate the provision of international assistance to and from Samoa, in the event of a terrorist event or emergency;
- (c) to prescribe any matter required to be prescribed under this Act;
- (d) to amend Schedule 1.

**63. Repeal, transitional and savings-**(1) The Prevention and Suppression of Terrorism Act 2002 is repealed (“repealed Act”).

(2) A reference in law (other than this Act) or a document or act of authority to the repealed Act is taken as a reference to this Act except where the context otherwise requires.

(3) All prosecutions and other matters arising out of or under the repealed Act which are not determined or otherwise dealt with under that Act at the date of the commencement of this Act continue and are to be determined or otherwise dealt with under this Act.

(4) All legal proceedings made under the repealed Act as at the commencement of this Act continue as if they were made or taken in accordance with this Act.

(5) An act of authority made or issued under the repealed Act so far as they are subsisting or in force at the commencement of this Act, continues to have effect under this Act until it expires or is altered, amended or cancelled.

**64. Consequential amendments-**(1) The Civil Aviation Act 1998 is amended:

- (a) in section 2 -
  - (i) after the definition of “Convention” insert:

““convention country” means, for the purpose of this Act any country that is a State Party to the Tokyo Convention;

“commander” means the person who is in command of the aircraft;”; and

(ii) after the definition for “Samoa Register of Aircraft” insert:

““Samoan-controlled aircraft” means an aircraft that is registered in Samoa;” and

- (b) in section 28, for “Samoa Police Force” substitute “Samoa Police Service”; and
- (c) in section 72 and 110(3) for “Samoa Police” substitute “Samoa Police Service”; and
- (d) in section 79(1)(a), for “Sections 105, 106, 107 and 112” substitute “Section 107 and 112”; and
- (e) sections 105, 106, 108(1) and 110(1) are repealed; and
- (f) in section 108(3), delete “the provisions of subsection (1) or”; and
- (g) in section 109, delete “the crime of hijacking or” wherever occurring; and
- (h) in section 110 -
  - (i) for the section heading “Application of sections 105, 106 and 107” substitute “Application of section 107”; and
  - (ii) delete subsection (1); and
  - (iii) in subsection (3), delete “section 105 or section 106 or”; and
- (i) in section 111, delete “to the crime of hijacking or” and “crime referred to in section 106 of this Act committed in connection with the crime of hijacking”; and
- (j) in section 113(1), 114(1)(b), (c) and (3), 116(5)(a) and (b), and 117(1) and (2), for “member of the Samoa Police” substitute “sworn member of the Samoa Police Service”; and
- (k) in section 116 -
  - (i) in subsection (6), for “(being, in Samoa, a member of the Samoa Police)” substitute “(being in Samoa, a sworn member of the Samoa Police Service, and the

appropriate diplomatic or consular office of the country of nationality of that person”); and

(ii) for subsection (7), substitute:

“(7) If the commander intends to deliver any person in accordance with subsection (5), he or she must, before or as soon as practicable after landing, give notification of his or her intention and of the reasons -

(i) if the country is Samoa, to a sworn member of the Samoa Police Service or immigration officer or, for any other country, to an officer having functions corresponding to the functions either of a police officer or of an immigration officer in Samoa; and

(ii) in either case to the appropriate diplomatic or consular office of the country of nationality of the person.”; and

(iii) for subsection (8), substitute:

“(8) The commander of an aircraft who, without reasonable cause, fails to comply with the requirements of this section commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units.”; and

(iv) in subsection (9), omit “civil”; and

(l) in section 116A(b), for “116(c), (d) or (e)” substitute “116”; and

(m) in section 119, delete “section 105 or section 106 or”.

(2) The Proceeds of Crime Act 2007 is amended as follows:

(a) in section 2, after the term and definition of “tainted property” insert the following:

““terrorist act” has the same meaning in the Counter Terrorism Act 2014;

“terrorist property” has the same meaning in the Counter Terrorism Act 2014;”;

(b) in section 6(1), after “serious offence” insert “or terrorist act”;

(c) in section 7(1) -

(i) at the end of paragraph (c), remove the fullstop and substitute a semicolon;

(ii) after paragraph (c), insert the following:

“(d) a terrorist property.”;

(d) in section 19(1), after “convicted” insert “or terrorist property”;

(e) in section 46(3)(e), after “possession” insert “or control”;

(f) in section 48(1)(c), after “serious offence” insert “or terrorist act”;

(g) in section 74(2)(b), after “to commit” insert “a terrorist act or”; and

(h) in section 86, renumber the current provision as subsection (1) and insert a new subsection (2) as follows:

“(2) Regulations may be made under this section to provide for further procedures or other matters relating to confiscation and forfeiture orders or other orders and related matters, in relation to terrorist property.”.

**SCHEDULE 1**  
**(Sections 2 and 62)**

**COUNTER TERRORISM CONVENTIONS**

1. Convention on Offences and certain Other Acts committed on Board Aircraft done at Tokyo on 14 September 1963.
2. Convention for the Suppression of Unlawful Seizure of Aircraft done at The Hague on 16 December 1970, and 2010 Protocol Supplementary to the Convention for the Suppression of Unlawful Aircraft.
3. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.
4. 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.
5. International Convention against the taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
6. Convention on the Physical Protection of Nuclear Material, done at Vienna and New York on 3 March 1980, and amendments to the International Convention on the physical protection of nuclear material adopted by the Conference on the Physical Protection of Nuclear Material on 8 July 2005.
7. 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.
8. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988, and 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.

9. 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, and 2005 Protocol to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf.
  10. Convention on the Marking of Plastic Explosives for the Purposes of Detection, done at Montreal on 1 March 1991.
  11. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.
  12. International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.
  13. International Convention for the Suppression of Acts of Nuclear Terrorism, adopted by the General Assembly of the United Nations on 13 April 2005.
  14. 2010 Convention on the Suppression of Unlawful Acts Relating to International Aviation.
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