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Counter terrorism conventions

2006, Act No. 280

AN ACT to provide for the suppression of terrorism and transnational crimes

Part 1 – Preliminary

1. Short Title

This is the **Terrorism Suppression and Transnational Crimes Act 2006**.

2. Principal objects

The principal objects of this Act are to implement the United Nations Security Council Resolution 1373 and Conventions dealing with terrorism and transnational organised crime, to prevent terrorists from operating in Niue, and to prevent persons in Niue from taking part in terrorist activities or supporting terrorism.

3. Interpretation

In this Act:

“**Attorney-General**” has the same meaning as in section 2 of the Proceeds of Crime Act 1998;

“**authorised officer**” means a constable, customs officer, or immigration officer;

“**Convention country**” means a country that is party to a counter terrorism convention;

“**counter terrorism convention**” means a Convention listed in the **Schedule**;

“craft” includes any aircraft, ship, boat, or other machine or vessel used or capable of being used for the carriage or transportation of persons or goods, or both, by air or water or over or under water;

“detection agent” means a substance in the table to Part 2 of the Technical Annex to the Plastic Explosives Convention;

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

“explosive or other lethal device” means:

- (a) an explosive, 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;

“financial institution” has the same meaning as in **section 3 of the Financial Transactions Reporting Act 2006**;

“Financial Intelligence Unit” means the Financial Intelligence Unit established under **Part 5 of the Financial Transactions Reporting Act 2006**;

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

“forfeiture order” means an order made under **section 21**;

“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 country where the shipment originates:

- (a) beginning with the departure from a facility of the shipper in the country; and
- (b) ending with the arrival at a facility of the receiver within the country of ultimate destination;

“international organisation” means any organisation of States or Governments of States or any organ or any agency of any organisation of that kind;

“military device” includes a shell, bomb, projectile, mine, missile, rocket, charge, grenade, or perforator, lawfully manufactured exclusively for military or police purposes;

“Niuean land” has the same meaning as in section 2 of the Niue Amendment Act (No. 2) 1968;

“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 an ore or ore residue;
- (e) a substance containing nuclear material;

“Nuclear Material Convention” means the Convention for the Physical Protection of Nuclear Material, done at Vienna and New York on 3 March 1980;

“organised criminal group” means a group of at least 3 persons, existing for a period of time, that acts together with an objective of obtaining material benefits from the commission of offences that are punishable by a maximum penalty of at least 4 years imprisonment;

“plastic explosive” means an explosive that is:

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

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

“privileged communication” means a confidential communication, whether made directly or indirectly through an agent:

between:

a lawyer in his or her professional capacity and another lawyer in the same capacity; or

a lawyer in his or her professional capacity and his or her client; and

to obtain or give legal advice or assistance; but

not for the purpose of committing or assisting the commission of an illegal or wrongful act;

“property” includes:

- (a) assets of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible; and
- (b) legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, those assets including, but not

limited to, bank credits, traveller's cheques, bank cheques, money orders, shares, securities, bonds, drafts, and letters of credit;

"Rome Convention" means the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, adopted at Rome on 10 March, 1988;

"specified entity" means a person or entity that is prescribed under **section 5**;

"trafficking in persons" means the recruitment, transportation, transfer, harbouring, or receipt of a person by improper means such as force, abduction, fraud or coercion for an improper purpose such as forced or coerced labour, servitude, slavery or sexual exploitation;

"terrorist act" has the meaning given by **section 4**;

"terrorist group" means:

- (a) an entity that has as one of its activities or purposes committing or facilitating the commission of a terrorist act; or
- (b) a group that is a specified entity;

"terrorist property" means:

- (a) property that has been, is being, or is likely to be, used to commit a terrorist act; or
- (b) property that has been, is being, or is likely to be, used by a terrorist group; or
- (c) property owned or controlled, or derived or generated from property owned or controlled, by or on behalf of a specified entity;

"unmarked plastic explosive" means a plastic explosive that:

- (a) does not contain a detection agent; or
- (b) at the time of manufacture, does not contain the minimum concentration level of a detection agent set out in the table to Part 2 of the Technical Annex to the Plastic Explosives Convention; and

"weapon" includes a firearm, chemical, biological, or nuclear weapon.

4. Definition of terrorist act

(1) For the purposes of this Act:

"terrorist act" means an act or omission that:

- (a) constitutes an offence within the scope of a counter terrorism convention;
- or
- (b) is mentioned in **subsection (2)**.

(2) For **paragraph (1)(b)**, the act or omission must:

involve death or serious bodily injury to a person (other than the person carrying out the act); or
involve serious damage to property; or
endanger a person's life; or
create a serious risk to the health or safety of the public or a section of the public; or
involve the use of weapons; or
involve introducing into the environment, distributing, or exposing the public to any:
dangerous, hazardous, radioactive, or harmful substance; or
toxic chemical; or
microbial or other biological agent; or
involve serious disruption to any system or the provision of services directly related to essential infrastructure; and
must be intended or, by its nature and context, reasonably be regarded as being intended:
to intimidate the public or a section of the public; or
to compel a Government or an international organisation to do, or refrain from doing, any act; and
must be made for the purpose of advancing a political, ideological, or religious cause.

- (3) However, an act or omission mentioned in **subsection (2)** does not include an act or omission that:
is committed as part of an advocacy, protest, demonstration, dissent, or industrial action, and is not intended to result in any harm mentioned in **subparagraph (2)(a)(i), (ii), (iii), or (iv)**; or
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 2 – Specified entities

5. United Nations listed entities to be specified entities

- (1) For the purposes of this Act, the entities listed from time to time by the United Nations Security Council as terrorist entities are “**specified entities**”.
- (2) The Minister must, by notice published in the *Gazette*, give notice of the list of terrorist entities referred to in **subsection (1)**, and continue to give notice as and when the United Nations Security Council adds or removes any terrorist entity from that list.
- (3) A list of United Nations terrorist entities prepared and certified by the Minister is deemed to be prima facie evidence that the list is a correct list of entities listed by the United Nations Security Council as terrorist entities.

Part 3 – Offences

6. Financing of terrorism

- (1) A person who provides or collects, by any means, directly or indirectly, any property, intending, knowing, or having reasonable grounds to believe that the property will be used, in full or in part, to carry out a terrorist act, commits an offence and is liable on conviction to imprisonment for a term not exceeding 14 years.
- (2) A person commits an offence who provides or collects, by any means, directly or indirectly, any property intending, knowing, or having reasonable grounds to believe that it will benefit an entity that the person knows is a specified entity commits an offence and is liable on conviction to imprisonment for a term not exceeding 14 years.
- (3) In a prosecution for an offence against **subsection (1) or subsection (2)**, it is not necessary for the prosecutor to prove that the property collected or provided were actually used, in full or in part, to carry out a terrorist act.

7. Provision of property or services to specified entity

- (1) A person who, directly or indirectly, knowingly makes available property, financial, or other related services to, or for the benefit of, a specified entity commits an offence and is liable on conviction to imprisonment for a term not exceeding 14 years.
- (2) **Subsection (1)** does not apply if the provision of the property or service is of a kind that is authorised by a resolution of the United Nations Security Council.

8. Dealing with terrorist property

- (1) A person commits an offence and is liable on conviction to imprisonment for a term not exceeding 14 years, who knowingly:
 - (a) deals, directly or indirectly, in any terrorist property; or
 - (b) collects or 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 does not commit an offence under **paragraph (1)(a), (b), or (c)** if the person:
 - (a) tells the Attorney-General, in writing, as soon as the person becomes aware that the property is terrorist property; and
 - (b) acts in accordance with any direction of the Attorney-General for the property.

9. Harboursing of persons committing terrorist acts

A person commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years, who harbours or conceals, or prevents, hinders, or interferes with the apprehension of any other person knowing or having reason to believe that the other person:

- (a) has committed, or is planning, or is likely to commit, a terrorist act; or

(b) is a member of a specified entity.

10. Provision of weapons to terrorist groups

A person commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years, who knowingly offers to provide, or provides, a weapon to:

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

11. Recruitment of person to be members of terrorist groups or to participate in terrorist acts

A person commits an offence is liable on conviction to imprisonment for a term not exceeding 7 years, who knowingly 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.

Part 4 – Management and forfeiture of property of specified entities

Management

12. Order to take control of property

- (1) The Attorney-General may apply to the Court for an order under **subsection (3)** for property in Niue if the Attorney-General has reasonable grounds to believe that the property is terrorist property.
- (2) The Court:
 - (a) may make orders for service of the application; and
 - (b) may deal with the application *ex parte*.
- (3) If the Court is satisfied that there is evidence to support the application, the Court may direct the Registrar of the High Court to take custody and control of the property.
- (4) The order:
 - (a) must specify the property concerned; and
 - (b) may be subject to conditions.
- (5) A person who has custody and control of the property specified in the order must allow the Registrar of the High Court to take custody and control of the property in accordance with the order.

13. Notice of order

- (1) Notice of the making of an order under **section 12** must be given:
 - (a) if practicable, as soon as possible to the person who owns or controls the property if the person or a representative of the person is in Niue; and
 - (b) to any other person that the Attorney-General thinks may have an interest in the property.
- (2) Failure to comply with **subsection (1)** does not affect the validity of the order.

14. Variation, revocation, or expiry of order

- (1) If the Court has made an order under **section 12**, the Court may, on application by the Attorney-General or by the person who owns or controls the property:
 - (a) make another order under **section 12** varying the conditions of the order or the property that is subject to the order; or
 - (b) revoke the order.
- (2) If the application is made by the person who owns or controls the property:
 - (a) the person must give 14 days notice in writing of the application to the Attorney-General; and
 - (b) before deciding on the application, the Court must hear from the Attorney-General.
- (3) The Court must:
 - (a) if the Court decides that there are reasonable grounds to do so, revoke the order; or
 - (b) if the Court decides that there are no reasonable grounds to revoke the order, refuse the application.
- (4) If the Court revokes the order, the Attorney-General must:
 - (a) tell the person who owns or controls the property in writing; and
 - (b) publish a notice of revocation in the *Gazette*.
- (5) If not earlier revoked, an order under **section 12** about property of a specified entity expires if:
 - (a) for property of a specified entity, the entity ceases to be a specified entity; or
 - (b) a forfeiture order is made under **section 21** in relation to the property

15. Appeal

The Attorney-General or a person whose property is subject to an order may, within 21 days of the making of the order, appeal to the Court of Appeal against a decision made by the Court under this Part.

16. Third parties may apply for relief

- (1) A person, other than the person who owns or controls the property, who claims an interest in the property that is subject to an order under **section 12** may apply to the Court for an order under **section 17**.
- (2) The person must give 14 days notice in writing of the application to the Attorney-General, who is a party to any proceedings on the application.

17. Court may grant relief to third party

- (1) **Subsection (2)** applies if:
 - (a) a person makes an application under **section 16**; and
 - (b) the Court is satisfied that the person's claim to the interest is valid.
- (2) The Court must make an order:
 - (a) declaring the nature, extent, and value of the person's interest in the property; and

- (b) declaring that the interest is no longer subject to the order under **section 12**; and
 - (c) if the interest is held by the Registrar of the High Court-
 - i) directing the Registrar of the High Court to transfer the interest to the person; or
 - ii) declaring that there is payable, by the Registrar of the High Court to the person, an amount equal to the value of the interest declared by the Court.
- (3) The Court may refuse to make an order if it is satisfied that:
- (a) the person was knowingly involved in any way in the carrying out of the terrorist acts that are the basis of the designation of the entity as a specified entity, or is an entity that is wholly owned or effectively controlled, directly or indirectly, by the specified entity; or
 - (b) if the person acquired the interest at the time of, or after the designation of, the entity as a specified entity, the applicant did not acquire the interest in the property in good faith and for value, without knowing or having reason to believe that the property was, at the time of the acquisition, property subject to an order under **section 12**.

Forfeiture

18. Certain property excluded from forfeiture

A forfeiture order must not be made against property that is Niuean land or that is a leasehold right under section 29 of the Land Act 1969.

19. Application for forfeiture order

- (1) The Attorney-General may apply to the Court for a forfeiture order against terrorist property.
- (2) The Attorney-General must:
 - (a) name as respondents to the application only those persons who are known to own or control the property that is the subject of the application; and
 - (b) give notice of the application to each respondent in the manner directed by the Court.
- (3) The Court may, at any time before the final determination of the application, make orders for:
 - (a) service of the application on any person whom the Court thinks has an interest in the property; and
 - (b) publication of notice of the application in the *Gazette*.
- (4) Any person who claims an interest in the property may appear and present evidence at the hearing of the application.

20. Making forfeiture order

- (1) If the Court is satisfied, on the balance of probabilities, that the property that is the subject of the application is terrorist property, the Court must order that the property be forfeited to the Government of Niue.
- (2) If the Court is satisfied that a person mentioned in **section 20(2)(a)** or **(3)(a)**:
 - (a) has an interest in the property that is the subject of the application; and
 - (b) has exercised reasonable care to ensure that the property is not terrorist property; and
 - (c) is not a member of a specified entity;the Court must order that the interest is not affected by the order and declare the nature and extent of the interest.
- (3) If the Court makes a forfeiture order, the Court may give any directions that are necessary or convenient to give effect to the order.
- (4) If the Court refuses to make a forfeiture order, the Court must make an order that describes the property and that declares that it is not terrorist property.

21. Effect of forfeiture order

- (1) If the Court makes a forfeiture order against property (other than registrable property), the order vests the property absolutely in the Government of Niue.
- (2) If the Court makes an order against registrable property:
 - (a) the order vests the property in the Government of Niue in equity, but does not vest it in the Government of Niue at law until the applicable registration requirements have been complied with; and
 - (b) the Government of Niue is entitled to be registered as owner of the property; and
 - (c) the Attorney-General may do, or authorise the doing of, anything necessary or convenient to obtain the registration of the Government of Niue as owner, including the executing of any necessary instrument; and
 - (d) the Attorney-General may do anything necessary or convenient to give notice of, or otherwise protect, the Government of Niue's equitable interest in the property; and
 - (e) anything done by the Attorney-General under **paragraph (d)** is not a dealing for the purposes of **paragraph (3)(a)**.
- (3) If the Court makes a forfeiture order against property (including registrable property):
 - (a) the property must not, except with leave of the Court and in accordance with any directions of the Court, be disposed of, or otherwise dealt with, by or for the Government of Niue, until 6 months after the forfeiture order was made; and
 - (b) the property may be disposed of, and the proceeds applied or otherwise dealt with as the Attorney-General directs, until 6 months after the forfeiture order was made

22. Protection of third parties

- (1) A person who claims an interest in property that has been forfeited and who has not been given notice under **section 19(2)(b) or (3)(a)** may apply to the Court within 6 months after the forfeiture order was made for an order under **subsection (4)**.
- (2) The person must give 14 days notice in writing of the application to the Attorney-General.
- (3) The Attorney-General:
 - (a) is a party to the proceedings in an application under **subsection (1)**; and
 - (b) may make an application under **subsection (1)** for a person.
- (4) If a person applies to the Court for an order about the person's interest in property, the Court must make an order declaring the nature, extent, and value (as at the time the order is made) of the person's interest if the Court is satisfied in accordance with **section 20(2)**.
- (5) An appeal lies to the Court of Appeal from an order under **subsection (4)**.

23. Return of property

- (1) The Attorney-General must on application by a person who has obtained an order under **section 22(4)**, if the period for appeals has expired and any appeal from that order has been determined or has lapsed:
 - (a) arrange for the return of the property, or the part of it to which the interest of the applicant relates, to the applicant; or
 - (b) if the interest in the property is no longer vested in the Government of Niue, pay an amount equal to the value of the interest of the applicant, as declared in the order, to the applicant.
- (2) **Subsection (1)** does not apply to any property returned, or amount paid, to the person under **section 17**.

24. Appeal

The Attorney-General or a person affected by a decision made by the Court under this Part may appeal to the Court of Appeal against the decision.

Information

25. Disclosure of information

- (1) A financial institution must immediately tell the Attorney-General about the existence of any property in its possession or control:
 - (a) that is owned or controlled, directly or indirectly, by or for a specified entity, including property derived or generated from that property; or
 - (b) for which there are reasonable grounds to suspect is property of a kind specified in **paragraph (a)**.
- (2) The Attorney-General may tell the Financial Intelligence Unit or other appropriate authority of a foreign country about any information it has about any property of the kind mentioned in **subsection (1)**, if the Attorney-General thinks the information would be relevant to the foreign country.

- (3) Information may be given under **subsection (2)** subject to any conditions that the Attorney-General determines.
- (4) A financial institution must tell the Financial Intelligence Unit about every dealing that occurs in the course of its activities and for which there are reasonable grounds to suspect is related to the commission of a terrorist act.
- (5) No civil or criminal proceedings lie against a person for making a disclosure or report in good faith under **subsections (1), (2), or (4)**.
- (6) Nothing in **subsection (1) or (4)** requires a lawyer to disclose a privileged communication.
- (7) A person who receives information under **subsection (1), (2), or (4)** must not disclose the information or its source except:
 - (a) for the purposes of:
 - (i) the enforcement of this Act; or
 - (ii) the detection, investigation, or prosecution of an offence under this Act; or
 - (iii) providing assistance under the Mutual Assistance in Criminal Matters Act 1998; or
 - (b) in accordance with an order of a Court.
- (8) A person who contravenes **subsections (1) or (4)** commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding 7 years.

Part 5 – General powers

26. Controlled delivery of property

- (1) This section applies to an authorised officer who has reasonable grounds to believe that a person has committed, is committing, or is about to commit, an offence under this Act.
- (2) The authorised officer may allow property, which the authorised officer reasonably suspects has been, is being, or may be used to commit an offence under this Act, to enter, leave, or move through Niue for the purpose of gathering evidence to identify a person or to facilitate a prosecution for the offence.
- (3) An authorised officer does not commit an offence under this Act if:
 - (a) the authorised officer is engaged in the investigation of a suspected offence under this Act; and
 - (b) the offence involves property that the authorised officer reasonably suspects has been, is being, or may be used, to commit an offence under this Act; and
 - (c) the authorised officer does not take action that the authorised officer would otherwise be required to take under this Act for the purpose of the investigation.

27. Exchange of information relating to terrorist groups and terrorist acts

- (1) The Attorney-General may disclose to the appropriate authority of a foreign country any information in his or her 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; and

- (b) the use of forged or falsified travel papers by persons suspected of involvement in the commission of terrorist acts; and
 - (c) traffic in explosives or other lethal devices by terrorist groups or persons suspected of involvement in the commission of terrorist acts; and
 - (d) the use of communication technologies by terrorist groups; and
- if the disclosure is not prohibited by any provision of law and will not, in the Attorney-General's view, prejudice national security or public safety.

Part 6 – Counter terrorism Convention offences

Nuclear material

28. Movement of nuclear material

- (1) A person commits an offence who knowingly imports or exports nuclear material to or from Niue, except with the written permission of Cabinet.
- (2) A person commits an offence who knowingly, without written permission from the Cabinet, transports nuclear material:
 - (a) over the territory of Niue; or
 - (b) through any of its seaports or airports.
- (3) The written permission specified in **subsections (1) and (2)** may be given only if the Cabinet has received a written assurance from the person that the material will, during international nuclear transport, be protected at the levels set out in the Nuclear Material Convention.
- (4) A person who commits an offence against **subsections (1) or (2)** or who knowingly makes a false statement or provides a false assurance to the Cabinet under **subsections (1) or (2)** is liable on conviction to a term of imprisonment not exceeding **10 years**.

29. Offences relating to nuclear material

A person commits an offence and is liable on conviction to imprisonment for a term not exceeding 14 years, who intentionally:

- (a) without lawful authority receives, possesses, uses, transfers, alters, disposes of, or disperses nuclear material in a way that causes, or is likely to cause, death or serious injury to a person or substantial damage to property; or
- (b) steals nuclear material; or
- (c) embezzles or fraudulently obtains nuclear material; or
- (d) demands nuclear material by threat, or use of force, or any other form of intimidation; or
- (e) threatens:
 - (i) to use nuclear material to cause death or serious injury to any person or substantial damage to property; or
 - (ii) to steal nuclear material to compel a person, State, or an international organisation to do or refrain from doing any act.

30. Definition of "ship"

For the purposes of **sections 31 and 32**:

- (a) "ship" means a vessel that is not permanently attached to the seabed including a hovercraft, hydrofoil, submarine or other floating craft, but does not include a warship, a ship owned or operated by a State and being used as a naval auxiliary or for customs or police purposes, or a ship that has been withdrawn from navigation; and
- (b) a duty of a master of a ship to arrest, detain, and notify the appropriate authority in Niue includes any other country that is a party to the Rome Convention.

31. Offences

(1) A person commits an offence and is liable on conviction to imprisonment for a term not exceeding 20 years, who unlawfully and intentionally:

- (a) seizes, or exercises control over, a ship or fixed platform by force, or by threat of force, or by other form of intimidation; or
- (b) commits 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) causes damage 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 cause damage to the ship or its cargo that is 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 and that endangers the safe navigation of a ship; or
- (h) injures or kills a person in connection with the commission, or attempted commission, of an offence set out in **paragraphs (a), (b), (c), (d), (e), (f), or (g)**.

(2) A person commits an offence and is liable to conviction on indictment to a term of imprisonment not exceeding **14 years** who, with the intention of compelling another person to do or to refrain from doing any act, threatens to commit an offence mentioned in **subsection (1)(b), (c), (d), or (f)** in relation to a ship or

fixed platform, if the threat is likely to endanger the safety of the ship or fixed platform.

32. Arrest and delivery

- (1) The master of a ship registered in Niue who has reasonable grounds to believe that a person has committed an offence under **section 31** against, or on board, any ship 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 the 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 reasons for the refusal.
- (4) A master of a ship who contravenes **subsection (2)**, commits an offence and is liable on conviction to a term of imprisonment not exceeding **7 years**.

Plastic explosives

33. Plastic explosives offences

- (1) A person commits an offence who manufactures plastic explosives knowing that they are unmarked.
- (2) A person commits an offence who possesses or transports unmarked plastic explosives knowing that they are unmarked.
- (3) A person commits an offence who imports or exports unmarked plastic explosives.
- (4) It is not an offence under **subsections (1) or (2)** if:
 - (a) the person manufactures or holds unmarked explosives in a quantity approved, in writing by Cabinet, solely for the use:
 - (i) in research, development, or testing of new or modified explosives; or
 - (ii) in training in explosives detection or in the development or testing of explosives detection equipment; or
 - (iii) 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 Niue within 3 years after the coming into force of the Plastic Explosives Convention in Niue.

- (5) It is not an offence under **subsection (2)** if the person possesses or transports unmarked plastic explosives in a quantity, approved in writing by Cabinet, solely for the use mentioned in **subsection (4)**.
- (6) A person who commits an offence under this section is liable on conviction to a term of imprisonment not exceeding 7 years.

Terrorist bombing

34. Terrorist bombing offences

(1) **Subsection (2)** applies to an action that is intended by a person:

- (a) to cause death or serious bodily injury; or
 - (b) to cause extensive damage to a place mentioned in **subsection (2)(a)** or **(b)**, a facility mentioned in **subsection (2)(c)**, or a facility mentioned in **subsection (2)(d)**, if the damage results in, or is likely to result in, major economic loss.
- (2) A person commits an offence and is liable on conviction to a term of imprisonment not exceeding 14 years, who unlawfully and intentionally delivers, places, discharges, or detonates an explosive or other lethal device in, into, or against:
- (a) a part of a building, land, street, waterway or other location that is accessible or open to members of the public, whether continuously or occasionally, including a commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational, or similar place; or
 - (b) a facility or conveyance that is used or occupied, in connection with his or her official duties, by:
 - (i) a representative of any Government; or
 - (ii) the Head of State of any country; or
 - (iii) the Prime Minister or a Minister of any country; or
 - (iv) a member of the legislature of any country; or
 - (v) a Judge of any country; or
 - (vi) a public official or employee of a Government or public authority or an inter-governmental organisation; or
 - (c) a facility, conveyance, or instrumentality, whether public or privately owned, that is used in or for a publicly available service for the transportation of persons or cargo; or
 - (d) a publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, energy, fuel, or communications.

Transnational organised crime

35. Participation in organised criminal group

A person commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years, who participates (whether as a member, associate member, or

prospective member) in an organised criminal group, knowing that it is an organised criminal group; and

- (a) knowing that his or her participation contributes to the occurrence of criminal activity; or
- (b) reckless as to whether his or her participation contributes to the occurrence of criminal activity.

Part 7 – People Trafficking and Smuggling

People trafficking

36. Offence of trafficking in persons

A person commits an offence and is liable on conviction to a term of imprisonment for a term not exceeding 14 years, who engages in trafficking in persons or is involved in the arranging of trafficking of persons knowing that the person's entry into Niue or any other country is or was arranged by means not in accordance with the law of Niue or that other country.

37. Offence of trafficking in children

A person commits an offence and is liable on conviction to a term of imprisonment for a term not exceeding 20 years, who intentionally engages in trafficking in a person who is a child or is involved in the arranging of trafficking in a person who is a child, regardless of whether the child's entry into Niue or any other country is or was arranged by means not in accordance with the law of Niue or that other country.

38. Consent not a defence

It shall not be a defence to any prosecution under **section 36 or section 37**:

- (a) that the trafficked person consented to the intended exploitation;
- or
- (b) that the intended exploitation did not occur.

39. Protection for trafficked persons

(1) A trafficked person is not liable to prosecution for -

- (a) the act of trafficking in persons or being a party to an offence of trafficking in persons; or
- (b) the trafficked person's illegal entry into Niue in connection with the act of trafficking in persons if Niue is the receiving country; or
- (c) the trafficked person's period of unlawful residence in Niue after being trafficked, if Niue is the receiving country; or
- (d) the trafficked person's procurement or possession of any fraudulent travel or identity documents that the person obtained, or with which the trafficked person was supplied, for the purpose of entering the receiving country in connection with the act of trafficking in persons.

(2) Subsection (1) shall not prevent the removal from Niue of a trafficked person in accordance with Entry, Residence and Departure Act 1985

People smuggling

40. Offence of people smuggling

- (1) A person who, in order to obtain a material benefit, engages in people smuggling either knowing or being reckless as to the fact that the entry of the person being, or to be, smuggled into the country is illegal commits an offence and is liable on conviction to a term of imprisonment not exceeding 14 years.
- (2) **Subsection (1)** applies whether or not the person being smuggled enters or arrives in the receiving country.

41. Offence to facilitate stay of an unauthorised person

A person who knowingly facilitates the continued presence of an unauthorised person in a receiving country in order to obtain a material benefit commits an offence and is liable on conviction to a term of imprisonment not exceeding 14 years.

42. Aggravated offences

- (1) A person commits an aggravated offence of any of the offences mentioned in **sections 40 or 41** who commits that offence in 1 or more of the following circumstances:
- (a) the unauthorised person is subjected to torture or to any other cruel, inhuman or degrading treatment (including exploitation);
 - (b) the life or safety of the person being smuggled is, or is likely to be, endangered.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a term of imprisonment not exceeding 20 years.

43. Protection for smuggled persons

- (1) An unauthorised person is not liable to prosecution for an offence against **sections 40 and 41**, by reason only of the fact that the person is the object of the following conduct:
- (a) people smuggling;
 - (b) when committed for the purpose of enabling people smuggling, an offence against **section 46**;
 - (c) an offence against **section 41**.
- (2) For the avoidance of doubt, nothing in **subsection (1)** prevents proceedings being taken against an unauthorised person for an act or omission that constitutes an offence under any other law.

44. Boarding, search and detention of craft

- (1) This section applies to a craft that is a ship, boat or other machine or vessel used or capable of being used for the carriage of persons by water or over water, except for a foreign warship.

- (2) An authorised officer may stop and board the craft within Niue if the authorised officer has reasonable grounds to believe the craft:
- (a) is being used to commit an offence against **section 40**; and
 - (b) the craft is in:
 - (i) Niue; or
 - (ii) the contiguous zone of Niue.
- (3) The authorised officer may, when reasonably necessary for the exercise of his or her functions in connection with an offence against **section 40**:
- (a) direct the craft to stay where it is, or direct it to be taken to a suitable place in Niue, for the purpose of search; and
 - (b) search and detain the craft, anyone on it and anything on it; and
 - (c) question any person on board the craft; and
 - (d) require the production of any documents relating to the craft or any travel or identity documents of a person on the craft; and
 - (e) take a copy of any documents produced; and
 - (f) seize and detain anything found on the craft that appears to him or her to be evidence of an offence against this **Part**; and
 - (g) remain on the craft for such period as is reasonably necessary for the purpose of boarding, searching and directing the craft or carrying out an investigation for an offence against **section 40**.
- (4) If the craft fails to stop at the request of the authorised officer, the officer may pursue it into international waters and take any action that is reasonable necessary to stop the craft and enable it to be boarded (other than in the territorial sea of another country).
- (5) The authorised officer may require the person in charge of the craft, a member of the crew or any person on board to take any action that may be directed by the officer for **paragraph (3)(a)**.
- (6) The person in charge of the craft must give any authorised officer who remains on board the craft proper and sufficient food and suitable accommodation without charge.
- (7) Any person who fails to comply with a direction of an authorised officer under this section commits an offence and is liable on conviction on indictment to a fine not exceeding **500 penalty units** or a term of imprisonment not exceeding **5 years**, or both.

Exploitation

45. Exploitation of people not legally entitled to work

- (1) An employer commits an offence who allows an unlawful employee to undertake employment in the employer's service and takes any action with the intention of preventing or hindering the employee from:
- (a) leaving Niue; or
 - (b) ascertaining or seeking that person's entitlement under the law of Niue; or
 - (c) disclosing to any person the circumstances of that person's employment by the employer.

- (2) Without limiting the generality of **subsection (1)**, the following are examples of actions of the kind mentioned in that subsection:
- (a) taking or retaining possession or control of a person's passport, any other travel or identity document, or travel tickets;
 - (b) preventing or hindering a person from:
 - (i) having access to a telephone; or
 - (ii) using a telephone; or
 - (iii) using a telephone privately; or
 - (iv) leaving premises; or
 - (v) leaving premises unaccompanied;
 - (c) preventing or hindering a authorised officer from entering or having access to any place or premises to which the person is entitled to have access under any law.
- (3) An employer who commits an offence under this section is liable to a fine not exceeding **500 penalty units** or to a term of imprisonment not exceeding **5 years**, or both.

General

46. Offence relating to fraudulent travel or identity documents

A person commits an offence, and is liable on conviction to a fine not exceeding 500 penalty units or to a term of imprisonment not exceeding 5 years or both, who knowingly and in order to obtain a material benefit:

- (a) produces a fraudulent travel or identity document; or
- (b) procures, provides or possesses a fraudulent travel or identity document.

47. Obligation on commercial carriers

- (1) A commercial carrier commits an offence and is liable on conviction to a fine not exceeding 500 penalty units, who transports a person into Niue if, on entry into the Niue, the person does not have the travel documents required for lawful entry.
- (2) A commercial carrier is not guilty of an offence under **subsection (1)** if:
 - (a) the commercial carrier had reasonable grounds to believe that the documents that the person has are the travel documents required for lawful entry of that person into Niue; or
 - (b) the person possessed the travel documents required for lawful entry into Niue when that person boarded, or last boarded, the means of transport to travel to Niue; or
 - (c) entry into Niue occurred only because of illness of or injury to a person on board, emergency, stress of weather or other circumstances beyond the control of the commercial carrier.
- (3) A commercial carrier that commits an offence under this section is liable to pay the costs of the person's detention in, and removal from Niue.

51. Restricted grounds for refusal to extradite or provide mutual assistance

- (1) Notwithstanding the Extradition Act 1965 or the Mutual Assistance in Criminal Matters Act 1998, an offence under this Act or any other Act, where the act or omission constituting the offence also constitutes a terrorist act, is taken, for the purposes of extradition and mutual assistance, not to be:
 - (a) an offence of a political character or an offence connected with a political offence or an offence inspired by a political motive; or
 - (b) a fiscal offence.
- (2) Notwithstanding the Mutual Assistance in Criminal Matters Act 1998, no request for mutual assistance in relation to an offence under this Act may be declined solely on the basis of bank secrecy.

52. Consent of Attorney-General

- (1) Proceedings for any offence under this Act for which jurisdiction is claimed under **section 36(1)(a)(ii)** for an offence committed on board a ship elsewhere than in Niue or for any other offence committed outside Niue 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.

53. Regulations

Cabinet may make such regulations as are necessary or convenient for the purposes of this Act.

Schedule

Section 4(1)

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.
- 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.