

PACIFIC REGIONAL FRAMEWORK FOR EXTERNAL ASSISTANCE IN THE EVENT OF A TERRORIST EMERGENCY

In the Nasonini Declaration of 2002 Forum Leaders recognised the heightened threat to global and regional security following the events of September 11 2001. Forum Leaders underlined their commitment to implement internationally agreed anti-terrorism measures and reaffirmed the importance of regional law enforcement cooperation, backed by a strong common legislative base. They highlighted the importance of developing national strategies to combat serious crime including terrorism.

2 At the 37th Pacific Islands Forum in 2006 Leaders recognised that a response to a terrorist emergency might include requests for external assistance. Although the level of terrorist threat in the region was generally low, there would be value in taking contingency steps to ensure that, in the event of an emergency, requests for assistance could be made, facilitated and responded to at short notice. To this end Leaders requested that a draft framework for counter-terrorism assistance and response be developed. An initial draft of this Pacific Regional Framework for External Assistance in the Event of a Terrorist Emergency (the Framework) was considered by the 2007 Forum Regional Security Committee and Leaders' Meeting. It was decided that the Framework should be finalised in preparation for adoption at the 2008 Forum Regional Security Committee and Leaders' Meeting; and that model legislation should also be developed to help those Forum members who wish to implement these assistance and response arrangements (see the Model Law Relating to International Assistance in the Event of Terrorist Emergencies (Model Assistance Law)).

Purpose of Framework

3 This non-legally binding framework is intended to help facilitate the provision of external assistance requested by any Forum member facing a terrorist emergency. 'Terrorist emergency' refers to real and imminent terrorist threats and actual terrorist incidents.

4 The Framework recognises that individual Forum members will respond to terrorist emergencies in different ways depending on the nature and scale of the emergency and the ability of the Forum member to respond to it. In some cases it will be possible for members to respond effectively without the need for external assistance. In other cases external assistance might be requested given the complex and multi-faceted nature of terrorist offending and the challenges facing any Forum member responding to it. The Framework is designed to assist those Forum members that wish to take contingency steps to ensure that, in the event of a terrorist emergency, a request for assistance can be made, responded to and facilitated at short notice.

Types of External Assistance

5 The type of external assistance sought will vary depending on the circumstances of the terrorist emergency. It may include assistance with personnel and materials, consultation/advice on how to resolve a situation, requests for information or, in the most serious cases, direct action by law enforcement, military, medical or other specialist personnel of another state. Activities undertaken by such

personnel might include provision of specific medical services, crime scene analysis and victim identification, and assistance with the maintenance of law and order.

Internal Management

6 The speed with which Forum members are able to identify the types of external assistance required will depend in large part on the effectiveness of internal procedures established to manage terrorist and other crises. Effective counter-terrorism coordination planning requires a whole of government approach that ensures a clear understanding of roles, agency responsibilities, arrangements and points of contact. In some Forum states, existing inter-agency procedures established to prepare for, and respond to, natural disasters and other hazards could provide a useful basis or model for interagency counter-terrorism planning.

Internal Contact Points

7 To ensure that requests for assistance can be received and considered expeditiously, the Forum Secretariat will compile and maintain a list of key counter-terrorism coordinating contacts in each Forum state. Forum members will provide the Forum Secretariat with the contact details of the relevant inter-agency coordinator/coordinating body and ensure that the Secretariat is advised of any changes. The Forum Secretariat will take steps to check the accuracy of this list on an annual basis.

External Contact Points

8 A formal request for assistance from a requesting to a requested state will be conveyed to the Head of Mission of the relevant Embassy, High Commission or Consulate-General of the requested state (i.e. via diplomatic channels).

9 Where direct contact is made between the law enforcement, medical and/or other authorities of the requested and requesting states, for example to convey urgent intelligence or law enforcement information or better identify the type of medical or other assistance that is required, the formal contact point, usually the Head of Mission of the requested country, will be advised that such contact has taken place. This is essential to avoid misunderstandings and duplication of effort and to ensure that, should the requested country decide it is able to respond, it can do so in an effective and coordinated manner.

Form of Request

10 To ensure that a request for assistance can be considered expeditiously, the request can be made either orally or in writing and should provide as much detail as is possible about:

- The nature of the terrorist emergency, including if it involves foreign interests;
- Relevant intelligence and/or law enforcement information;
- Summary of what action has already been undertaken by local authorities;
- The type of assistance required;
- The duration of the task (if known);

- Whether assistance has been sought from other states and/or regional or international organizations and if so what type of assistance;
- The timeframe in which a response to the request is required;
- The basis for assistance under domestic laws (including if the Model Assistance Law has been enacted); and
- Any other relevant information.

Requests made orally will be followed up as soon as practical and within 48 hours with written confirmation. This written confirmation should include as much of the above information as possible.

Response from Requested State

11 In deciding if it is able to respond to a request for assistance, a requested state will need to consider a range of complex policy, legal and operational issues including its capacity to provide the assistance sought; the need for coordination with any other external providers; possible funding sources; and relevant international and/or domestic law governing the provision of assistance. Each case will need to be considered taking into account the particular circumstances of the terrorist emergency, and, accordingly, the timeframes for response may vary.

Legal Requirements

12 Where the assistance requested involves the sending of personnel, and the requested state agrees to provide such personnel, the requested state will usually require an arrangement or agreement to be in place with the requesting state. The exact nature and legal status of this instrument will differ depending on the type of assistance and personnel involved, the date of commencement of that assistance, and its likely duration. The form of instrument could range from an Exchange of Notes constituting a non-binding arrangement through to a fully articulated legally-binding treaty. Whatever its form, the purpose of the instrument will be to:

- Provide authority for the presence of, and proposed activities by, the requested state's personnel in the territory of the requesting state;
- Confirm the status of the requested state's personnel;
- Outline their mandate and legal authority;
- Clarify command, control and discipline arrangements; and
- Address immunities and jurisdiction issues.

13 A range of additional issues may also need to be covered. These issues could include (but may not be limited to):

- Exemptions from general visa and immigration laws for the requested state's personnel;
- Exemptions from customs laws, for example to allow for the importation of equipment to be used by the requested state's personnel;
- Access to public utilities for the requested state's personnel;
- Exemptions from taxes;
- Exemptions from licensing regulations for medical and other specialist personnel;

- Exemptions from local vehicle, aircraft and vessel registration and licensing requirements;
- Entry and exit clearances for aircraft and ships from the requested state;
- Issues relating to agriculture, quarantine and other biosecurity regulations;
- A mechanism for considering any claims resulting from the presence of the requested state's personnel;
- Any relevant issues arising from international law including international human rights obligations.

14 The requesting state will need to have domestic legislation, regulations or another legal mechanism in place to allow for the implementation of the arrangement or agreement. Implementation may be possible for some Forum members via a constitutional mechanism such as an emergency decree but for many members legislation will be required that provides the necessary provisions relating, for example, to immigration, customs, defence, and air transport legislation.

15 To ensure that the provision of international assistance is not impeded by delays in agreeing and implementing legal arrangements, Forum members participating in this Framework could:

- Identify within their constitutional frameworks, the processes that would need to be taken for their government to authorise at short notice an arrangement or agreement with a requested state concerning the provision of international assistance;
- Where possible, take steps in advance that will help expedite those processes in the event of an emergency;
- Where necessary, adopt domestic legislation and/or regulations to help meet the requirements of an assistance arrangement or agreement without delay (see paragraph 16).

Domestic Provision of Assistance Law

16 Those Forum members that wish to participate in this Framework but do not already have laws in place that could implement an international assistance arrangement or agreement, should consider adopting a 'provision of assistance' law that could be activated at short notice. Such a law would avoid the need for Forum members to amend a number of different pieces of legislation, for example those relating to immigration and customs, and provide a simple mechanism through which to trigger the application of the relevant legislation in the event of an emergency. Such legislation could be drafted to apply only in terrorist emergencies, or more widely to cover all disasters, whether attributable to nature or human action. To ensure such laws cover all the necessary issues, the Model Assistance Law has been developed for those Forum members who wish to implement these assistance and response arrangements. Forum members will inform the Forum Secretariat if they enact assistance legislation and forward a copy the legislation to the Forum Secretariat.

International Law

17 In the event of a terrorist emergency both requesting and requested states will need to consider any applicable international law. Many Forum members are party to some or all of the international conventions dealing with different aspects of

terrorism. These conventions emphasise the need for states to cooperate closely to combat terrorism, and in the event of a terrorist act or emergency. The conventions also provide, among other things, a legal basis for mutual legal assistance and extradition in respect of terrorist acts. Those Forum members not yet party to these conventions are encouraged to become so. All Forum members are bound by terrorism-related United Nations Security Council resolutions passed under Chapter VII of the United Nations Charter. Any assistance arrangement or agreement will also need to be consistent with broader international law, including international human rights law.

Review

18 Efforts by Forum members to establish and implement laws and procedures relating to counter-terrorism assistance and response will be considered on an ongoing basis by the Working Group on Counter-Terrorism and related Forum meetings as part of broader counter-terrorism discussions and preparedness planning.

Model Law Relating to International Assistance in the Event of Terrorist Emergencies

Explanatory Notes

Introduction

These explanatory notes have been prepared to assist in understanding the Model Law Relating to International Assistance in the Event of Terrorist Emergencies (Model Assistance Law) prepared for Forum members. They do not form part of the Model Assistance Law nor do they provide a comprehensive description of all aspects within it.

Background

- 2 In the Nasonini Declaration of 2002 Pacific Island Forum Leaders recognised the heightened threat to global and regional security following the events of September 11 2001. They underlined their commitment to implement internationally agreed anti-terrorism measures and reaffirmed the importance of regional law enforcement cooperation, backed by a strong common legislative base. They highlighted the importance of developing national strategies to combat serious crime including terrorism.
- 3 At the 37th Pacific Islands Forum in 2006 Leaders recognized that a response to a terrorist emergency might include requests for external assistance. Although the level of terrorist threat in the region was generally low, there would be value in taking contingency steps to ensure that, in the event of an emergency, requests for assistance could be made, facilitated and responded to at short notice. To this end Leaders requested that a draft framework for counter-terrorism assistance and response be developed (the Framework). An initial draft of the Framework was considered by the 2007 Forum Regional Security Committee and Leaders' Meeting. It was agreed that the draft should be finalised in preparation for adoption at the 2008 Forum Regional Security Committee and Leaders' Meeting; and that model legislation should also be developed to help those Forum members who wish to implement these assistance and response arrangements.
- 4 The Model Assistance Law is designed for use by those Forum members that wish to participate in the Framework but do not already have laws in place that would allow them to implement an international assistance arrangement or agreement ('international instruments') in the event of a terrorist emergency. The Model Assistance Law is designed to provide a simple, all-in-one vehicle for implementing provisions relating to powers, privileges and immunities commonly required in advance of the delivery of assistance by other states. It is designed to avoid the need for Forum members to amend a number of different pieces of legislation, for example those relating to immigration and customs,

and provide a simple mechanism through which to trigger the application of the International Assistance in the Event of Terrorist Emergencies Act (the Assistance Act) in the event of an emergency.

- 5 The Model Assistance Law does not in its current form cover natural or other non-terrorism related disasters but could be easily adapted to do so by Forum members wishing to provide domestic laws to facilitate the provision of international assistance in such circumstances. Many of the substantive provisions included in the Model Assistance Law would, for example, be equally applicable to the provision of international assistance in the event of a natural disaster.

Summary

6 The Model Assistance Law:

- Empowers the Head of Government to request and accept offers of assistance from other countries in the event of a terrorist emergency;
- Defines a ‘terrorist emergency’ to include terrorist acts and real or imminent threats of terrorist acts;
- Defines the counter-terrorism related activities that international assistance missions can be asked to provide;
- Provides a mechanism for the Head of Government to advise that the Assistance Act applies to an assistance mission by issuing an international assistance notice;
- Provides powers, privileges and immunities to members of international assistance missions through provisions covering police powers, the use of force, carriage of weapons, seizure and destruction of weapons, freedom of movement, use of public utilities, communications, wearing of national uniforms, provisions relating to medical personnel, entry, departure and customs provisions, taxation, immunity from legal proceedings, deceased members of assistance missions and command and control provisions;
- Provides a general regulation-making power to give full effect to the Assistance Act including by allowing for the implementation of provisions of international assistance instrument not already covered by the Assistance Act.

Sources

- 7 The Model Assistance Law includes a number of powers, privileges and immunity issues commonly covered in status of forces agreements and memoranda of understanding relating to the work of police personnel from one country within another country. In the Pacific context consideration was given in particular to the provisions of the Solomon Islands Facilitation of International Assistance Act 2003 as a recent example of a domestic law designed to implement an international assistance agreement. The different context of the Solomon Islands law was nevertheless recognized and taken into account when drafting these provisions. International guidelines including the United Nations Code of

Conduct for Law Enforcement Officials, and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990, were also considered.

Commentary on sections of the Model Assistance Law

- 8 Where a section or part of a section does not require any explanation or comment, none is given.

Part 1 - Preliminary Provisions

Section 3 Purpose - Consistent with the approach taken in the Pacific Regional Framework for External Assistance in the Event of a Terrorist Emergency, the purpose of the Model Assistance Law and related definition of ‘terrorist emergency’ in section 4 cover both real or imminent terrorist threats and actual terrorist attacks. This recognizes that international assistance could be valuable to help prevent a terrorist act as well as when dealing with the consequences of one.

Section 4 Interpretation - The interpretation section provides a number of important definitions that are used throughout the Model Assistance Law. The relevance of some of these definitions is explained in the commentary provided on later sections below. The definition of “terrorist act” is linked to a Forum member’s existing counter-terrorism law, if any, or alternatively to the definition included in the Pacific Model Provisions on Counter-Terrorism and Transnational Crime.

Section 5 empowers the Head of Government to request assistance from another country for a “terrorism-related purpose” and to agree to the terms upon which such assistance is to be provided. This provides authority for the Head of Government to act in the best interests of the country in an emergency situation avoiding delays to the speedy provision of international assistance that can result from time spent securing Cabinet or other approval required under constitutional processes. The Model Assistance Law suggests that the Head of Government, rather than any other Minister, be granted these powers given the gravity of terrorism related issues and the significance of seeking international assistance.

The reference to a “terrorism-related purpose” and its definition in section 4, allow the Head of Government to outline the type of assistance that is to be provided and restrict powers and privileges granted to an assistance mission under later provisions of the Assistance Act to those which are necessary to fulfill the mission’s “terrorism related purpose”.

Sections 6 and 7 provide a simple way for the Head of Government to alert government departments and the public to the fact that the Assistance Act has been triggered and therefore applies in relation to foreign personnel (the assistance mission) sent to assist in a terrorist emergency. By issuing an “international assistance notice”, government departments and the public are advised that the Assistance Act is to apply to a visiting assistance mission, outlines the purpose of the assistance mission and clarifies if all or just some of the legislation’s provisions are to apply.

Section 8 outlines the types of personnel that can form part of an assistance mission. Section 8(2) allows the requested country to limit the powers and privileges accorded to some members of the assistance mission, for example some civilian, as opposed to police or armed forces, personnel.

Part 2 - Powers, Privileges and Immunities of Assistance Mission

Section 9 Police powers – effectively grants visiting police and armed forces the same powers as local police officers but limits the use of these powers to activities required to fulfill the assistance mission’s terrorism-related purpose.

Section 10 Use of force – these provisions draw on international best practice in relation to the use of force by law enforcement officers including the United Nations Code of Conduct for Law Enforcement Officials, and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990.

Section 11 Carriage of weapons – makes the carriage of weapons by visiting personnel subject to the limitations on police powers and the use of force in section 9 and 10 and restricts them generally to the assistance mission’s purpose.

Section 12 Seizure and destruction of weapons – provides for the seizure of weapons, if necessary, on terms common to status of forces and related agreements. Depending on the nature of the assistance mission, these powers may not be necessary. If considered unnecessary in a particular instance, section 6(1)(g) could be used by the Head of Government to make it clear on the face of the international assistance notice that section 12 does not apply.

Section 13 Freedom of movement – guarantees freedom of movement to assisting personnel and their equipment and vehicles including free use of roads and other infrastructure. This provision also exempts assisting personnel and their vehicles etc from local licensing laws ensuring the mission is able to commence work immediately.

Section 14 Use of public utilities – allows the assistance mission to use public buildings, electricity, water and other public utilities free of charge and also to generate its own electricity, if required, without the need to meet local regulations.

Section 15 Communications – allows the assistance mission to establish and use its own communication facilities should it wish to and to be exempt from any otherwise applicable licensing fees.

Section 16 Wearing of national uniforms – a general provision included in many status of forces and related agreements allowing, but not compelling, members of visiting police and armed forces to wear their national uniforms when on official duty.

Section 17 Medical and other professional staff – recognizing that medical personnel will often be included in assistance missions sent in the aftermath of terrorist or other attacks, this provision ensures that such staff can assist immediately without the need to meet local licensing or certification requirements for members of their profession. The provision similarly covers other professional staff, for example lawyers, who may form part of an assistance mission.

Section 18 Entry, departure and customs – facilitates swift entry and exit of assisting personnel and the assistance mission’s equipment without the need to meet normal immigration or customs requirements including payment of duties and related taxes. Provides that any items brought into the country duty-free shall not be sold to others within the country without relevant duty being paid. Preserves the right of the Forum member to screen for biosecurity reasons.

Section 19 Taxes - exempts assisting personnel from all taxes.

Section 20 Immunity from legal proceedings – a general provision granting immunity from legal proceedings to members of the assistance mission for acts or omissions taking place in the course of their official duties. Personnel of the requested country will be expected to respect and obey the laws of the requesting country. Section 20(2) grants the assisting country the right to exercise criminal and disciplinary jurisdiction over assisting personnel for conduct outside of their official duties but preserves the right of the requesting country to commence criminal or disciplinary action in respect of this conduct if the requested country chooses not to. Section 20(4) allows the requested country to waive immunity granted by the section.

Section 22 Command and control of assistance mission - a general provision making it clear that the assistance mission will have sole responsibility for its internal command, control, discipline and administration.

Section 23 International assistance instrument – a provision to clarify that the Assistance Act does not override provisions of an international assistance instrument or any other domestic law that implements provisions of an international assistance instrument.

Part 3 - Miscellaneous

Section 24 Regulations – provides a general regulation-making power to provide for the implementation of other provisions not already covered by the Assistance Act or requiring further detailed regulation.

Model Law Relating to International Assistance in the Event of Terrorist Emergencies

Contents

1.	Title
2.	Commencement
Part 1	Preliminary Provisions
3.	Purpose
4.	Interpretation
5.	[Head of Government] may request international assistance
6.	International assistance notice
7.	Effect of international assistance notice
8.	Membership of assistance mission
Part 2	Powers, Privileges and Immunities of Assistance Mission
9.	Police powers
10.	Use of force
11.	Carriage of weapons
12.	Seizure and destruction of weapons
13.	Freedom of movement
14.	Use of public utilities
15.	Communications
16.	Wearing of national uniforms
17.	Medical and other professional staff
18.	Entry, departure and customs
19.	Taxation
20.	Immunity from legal proceedings
21.	Deceased members of assistance mission
22.	Command and control of assistance mission
23.	International assistance instrument
Part 3	Miscellaneous
24.	Regulations
25.	Act to have effect notwithstanding other legislation
Schedule 1	Counter-Terrorism conventions

[This Model Law is intended to provide a framework for a domestic international assistance law and includes provisions likely to be required to implement international assistance instruments. Its provisions will need to be considered by those Forum members wishing to participate in the Pacific Regional Framework for External Assistance in the Event of a Terrorist Emergency, in light of the different constitutions and governance arrangements that exist in different Forum member states to ensure that they are not inconsistent with those arrangements.]

1. Title

This Act is the International Assistance in the Event of Terrorist Emergencies Act 20**.

2. Commencement

This Act comes into force on [assent] [specific date]

**Part 1
Preliminary Provisions**

3. Purpose

The purpose of this Act is to facilitate the provision of international assistance to [the country] in the event of a terrorist emergency.

4. Interpretation

In this Act, unless the context otherwise requires, -

“assisting country” means a country identified in an international assistance notice issued under section 6 which has agreed to provide assistance to help [the country] respond to a terrorist emergency;

“assistance mission” means a group of one or more people identified in an international assistance notice issued under section 6 sent to [the country] by another country to assist [the country] in responding to a terrorist emergency;

“counter-terrorism convention” means an instrument specified in Schedule 1;

“international assistance instrument” means a binding agreement or non-binding arrangement that may be identified in an international assistance notice issued under section 6 between [country] and another country relating to the provision of assistance by that other country to help [country] respond to a terrorist emergency;

“international assistance notice” means a notice issued under section 6 that causes this Act to apply;

“terrorist emergency” means:

- (a) the occurrence of a terrorist act in [the country] or on any vessel or aircraft registered in [the country]; or
- (b) the existence of a real or imminent threat of a terrorist act occurring in [the country] or on any vessel or aircraft registered in [the country].

“terrorism-related purpose” includes;

- the prevention, where possible, of terrorist acts;
- the protection of people and property from terrorist acts and their immediate consequences;
- the recovery of people and property following terrorist acts;
- the treatment, including medical treatment, of people who are victims of terrorist acts;
- crime scene analysis and victim identification related to terrorist acts;
- the investigation and prosecution of those responsible for, directly or indirectly, financing, planning, facilitating, committing, or attempting to commit, terrorist acts and related criminal offending;
- the rebuilding of infrastructure and other public property affected by terrorist acts.

“terrorist act” means

[Use the definition of “terrorist act” included in the country’s counter-terrorism legislation]

or

[if the country does not have domestic counter-terrorism legislation, use the definition included in the Pacific Counter-Terrorism and Transnational Organised Crime Model Provisions namely]:

[“Terrorist act” means:

- (1) an act or omission in [the country] 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:
 - (a) must:
 - (i) involve death or serious bodily injury to a person; or
 - (ii) involve serious damage to property; or
 - (iii) endanger a person’s life; or
 - (iv) create a serious risk to the health or safety of the public or a section of the public; or
 - [(v) involve the use of weapons;] or
 - (vi) involve introducing into the environment, 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
 - (vii) involve serious disruption to any system or the provision of services directly related to essential infrastructure¹; and
 - (b) must be intended or, by its nature and context, reasonably be regarded as being intended:
 - (i) to intimidate the public or a section of the public; or
 - (ii) to compel a government or an international organisation to do, or refrain from doing, any act; and
 - (c) 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:
- (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 subparagraph (2) (i), (ii), (iii), (iv), (v), or (vi); 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.

[Forum members may wish to amend the above definition of terrorist act to include additional clarification of some provisions for example section 2(a)(iii) above could be amended to exclude the life of the person taking the action i.e. actions which solely endanger the life of the person committing the offence would not be covered. Examples could also be provided of the types of interference with essential infrastructure that would be covered by section 2(a)(vii). Reference to terrorist acts in armed conflict has not been included on the assumption that terrorist emergencies in the Pacific are unlikely to occur in such circumstances but Pacific members may wish to cover these.]

5. [Head of Government] may request international assistance

(1) The [Head of Government] may request international assistance from another country (“the assisting country”) for a terrorism-related purpose if the [Head of Government] is satisfied that such assistance is necessary to respond to a terrorist emergency.

(2) If an offer of assistance is made by another country, whether unsolicited or in response to a request by the [Head of Government], the [Head of Government] may agree to the terms on which such assistance will be provided.

6. International assistance notice

(1) If the [Head of Government] makes a request under section 5(1) and agrees to the terms on which international assistance is to be provided by

¹ For this provision, particular types of infrastructure (eg water or electricity supply) can be included.

another country in accordance with section 5(2), the [Head of Government] may issue a notice that states some or all of the following –

- (a) that the Government has requested assistance from an assisting country for a terrorism-related purpose;
- (b) that an assisting country has agreed to provide assistance for a terrorism-related purpose;
- (c) what the terrorism-related purpose is;
- (d) the nature of the assistance to be provided;
- (e) that the assistance will be provided by one or more persons (“the assisting mission”) from the assisting country;
- (f) the duration of the assistance mission if it is for a fixed period;
- (g) whether all or certain specified provisions of this Act apply in relation to the assistance mission.

(2) Solely for the purpose of outlining the nature of the international assistance and the basis on which it is being provided, the notice may refer to an “international assistance instrument” established between [the country] and the assisting country that covers, among other things:

- (a) The basis for the presence of, and proposed activities by, the assisting country’s personnel in the [the country];
- (b) The status of the assisting country’s personnel while in [the country];
- (c) The mandate and legal authority of the assisting country’s personnel;
- (d) Command, control and discipline arrangements relating to the assisting country’s personnel;
- (e) Immunities and jurisdiction issues relating to the assisting country’s personnel;
- (f) Other issues relating to the presence and role of the assisting country’s personnel while in [the country].

7. Effect of international assistance notice

(1) If the [Head of Government] issues an international assistance notice under section 6, all provisions of this Act apply to the assistance mission for the duration of its mission unless the international assistance notice specifies that only certain provisions of the Act will apply.

(2) An international assistance notice under section 6 may be reviewed at any time if circumstances so require.

8. Membership of assistance mission

(1) An assistance mission may consist of –

- a) members of the police of an assisting country;
- b) members of the armed forces of an assisting country;
- c) other individuals notified by an assisting country to the [Head of Government] who are able to provide specialist assistance required to fulfill an assistance mission’s terrorism-related purpose.

(2) If an assisting country notifies the [Head of Government] that specified members of the assistance mission are not to be accorded specified powers, privileges or immunities under this Act, those members may not exercise those powers or privileges or enjoy those immunities.

Part 2

[In incorporating the following provisions, Forum members may wish to pay particular regard to any relevant constitutional requirements]

Powers, Privileges and Immunities of Assistance Mission

9. Police powers

Members of the police or armed forces of an assisting country, who form part of an assistance mission, may exercise powers that may be exercised by police officers appointed under the [Police Act or equivalent] to the extent that such powers are reasonably necessary to achieve the assistance mission's terrorism-related purpose.

10. Use of force

(1) Members of the police or armed forces of an assisting country, who form part of an assistance mission, shall as far as practicable avoid the use of force as a means to achieve the assistance mission's terrorism-related purpose.

(2) When the use of force is necessary, members of the police or armed forces of an assisting country, who form part of an assistance mission, may use such force as is reasonably necessary and proportionate to achieve the assistance mission's terrorism-related purpose.

11. Carriage of weapons

Subject to sections 9 and 10, members of the police or armed forces of an assisting country, who form part of an assistance mission, may possess, carry and use arms in accordance with their national orders or rules in order to –

- a) Protect themselves or the assistance mission; or
- b) Protect other persons as required to meet the assistance mission's terrorism-related purpose; or
- c) Protect property of the assistance mission; or
- d) Protect public or private property as required to meet the assistance mission's terrorism-related purpose; or
- e) Undertake other activities required to meet the assistance mission's terrorism-related purpose.

12. Seizure and destruction of weapons

(1) Members of the police or armed forces of an assisting country, who form part of an assistance mission, may seize weapons, if such seizure is required to meet the assistance mission's terrorism-related purpose.

(2) Members of an assistance mission may, with the permission in writing of the [e.g. Commissioner of Police], destroy seized weapons.

(3) Members of an assistance mission shall, as far as practicable, record particulars of weapons seized or destroyed, including serial numbers (if applicable) and the dates and places of seizures or destruction, and the particulars of the persons from whom they were seized.

(4) In considering whether to give permission under subsection (2), the [e.g. Commissioner of Police] shall take into account whether it is likely that the weapons will be required for production as evidence in criminal or civil proceedings.

13. Freedom of movement

(1) Members of an assistance mission, together with vehicles, vessels, aircraft and equipment being used by the mission, shall enjoy freedom of movement within [the country].

(2) Members of an assistance mission, together with vehicles, vessels, aircraft and equipment being used by the mission, may use roads, bridges, canals and other waters, port and airfield facilities without payment of dues, tolls or any other charges or fees which would otherwise apply.

(3) Members of an assistance mission may operate vehicles, vessels, aircraft and other equipment without the need to hold any permit or licence which would otherwise be required provided that such personnel hold licences or permits to operate such vehicles, vessels, aircraft or other equipment which are required in their country of residence.

(4) Vehicles, vessels, aircraft or other equipment provided and used by an assistance mission shall not be subject to any registration and licensing laws which would otherwise apply.

14. Use of public utilities

(1) No charges shall be sought from an assistance mission for the use of any public buildings or premises made available to the assistance mission unless otherwise negotiated.

(2) Members of an assistance mission may use water, electricity and other public utilities free of charge, unless otherwise negotiated.

(3) An assistance mission may generate, transmit and distribute electricity for its own use without being subject to any regulation or licensing requirement which would otherwise apply and free of charge.

15. Communications

(1) Members of an assistance mission may install and operate communication systems, including satellite systems, as required to facilitate the assistance mission's international and domestic communications and shall

not be subject to any relevant regulation or licensing requirement or licence fees which would otherwise apply.

(2) Members of an assistance mission shall enjoy unrestricted communication by radio, telephone, or any other means while present in [the country].

16. Wearing of national uniforms

Members of an assistance mission may wear their national uniforms when on official duty.

17. Medical and other professional staff

(1) Members of an assistance mission who are medical, nursing or paramedic staff may treat members of the assistance mission and other persons without being subject to any regulation or licensing requirements which would otherwise apply provided that such persons hold the necessary qualifications, licences or other professional certification necessary to practise their profession in their country of residence.

(2) For the purposes of subsection (1) of this section, treatment includes possession, prescription and the administering of medicines and other restricted drugs as appropriate and necessary.

18. Entry, departure and customs

(1) Members of an assistance mission shall be exempt from any visa requirements and immigration inspection and restrictions when entering or departing from [the country].

(2) Members of an assistance mission shall be exempted from departure tax.

(3) Members of an assistance mission may import into [the country] without licence or other restriction or registration and free of customs, duties and taxes or any other charge that may otherwise be levied, equipment (including vehicles and weapons) and other supplies required to fulfil the assistance mission's terrorism-related purpose, together with personal effects of and items for the support of members of the assistance mission.

(4) Any material belonging to an individual member of an assistance mission that is imported under this section and later sold in [the country] to a person other than those entitled to tax-free privileges shall be subject to any applicable customs and other duties at the time of its sale.

(5) Any material imported under this section may be re-exported without licence or other restriction or registration and free of any customs, duties and taxes or any other charge that would otherwise be levied.

(6) Nothing in this section prevents screening of items entering the country with the assistance mission for the purposes of meeting any relevant biosecurity laws and regulations.

19. Taxation

Members of an assistance mission shall be exempt from direct taxes, including income tax and death duties.

20. Immunity from legal proceedings

(1) Members of an assistance mission and an assisting country shall have immunity from legal proceedings in [the country's] courts and tribunals in relation to acts or omissions of members of the assistance mission in the course of, or incidental to, their official duties.

(2) With respect to conduct not involving official duties, criminal and disciplinary jurisdiction shall not be exercised over a member of an assistance mission arising out of an action taking place in [the country] if the assisting country asserts jurisdiction over that member in respect of that action.

(3) In this section, "legal proceedings" include criminal, civil, disciplinary and administrative proceedings.

(4) For this section, the [Attorney-General/other Minister responsible for justice] shall be deemed to have directed the [public prosecutor] not to initiate action with respect to members of an assistance mission for actions referred to in subsections (1) and (2), unless the assisting country has expressly consented to the exercise of such jurisdiction.

(5) An assisting country may waive immunity granted by this section.

(6) Where a question arises as to whether particular conduct on the part of a member of an assistance mission was carried out in the course of, or incidental to, their official duties the assisting country shall determine that question.

(7) Certification from an assisting country that particular conduct on the part of a member of an assistance mission was carried out in the course of, or incidental to, their official duties shall be conclusive evidence in any legal proceedings.

(8) An assisting country's personnel may exercise any powers granted to them by that country's domestic laws to enforce that country's national laws, including the power to arrest, against members of an assistance mission.

21. Deceased members of assistance mission

(1) The assistance mission may take charge of and repatriate the body of a member of the assistance mission who dies in [the country].

(2) The coronial authorities of the assisting country may exercise such powers as are necessary to carry out the identification, processing, and repatriation of the body of a member of the assistance mission who dies in [the country].

(3) The [Coroners Act or equivalent] shall not apply with respect to deceased members of an assistance mission unless the assisting country agrees to its application.

22. Command and control of assistance mission

While respecting the laws of [the country], an assistance mission shall have sole responsibility for the internal command, control, discipline and administration of its members.

23. International assistance instrument

Nothing in this Act shall be interpreted to limit or override any provision contained in an international assistance instrument established between the [the country] and the assisting country relating to the provision of assistance by that other country to help [country] respond to a terrorist emergency or any other law of [the country] implementing such an international assistance instrument.

Part 3 Miscellaneous

24. Regulations

(1) The [e.g. Governor-General] may make such regulations as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

(2) Without limiting subsection (1) the regulations may provide for the full implementation of an international assistance instrument, or of any other instrument between the government and the government of an assisting country that deals with an assistance mission.

25. Act to have effect notwithstanding other legislation

(1) [Subject to the Constitution, (where relevant)] this Act shall have effect notwithstanding any other law of [the country].

(2) An Act enacted after the commencement of this Act is not to be interpreted as amending or repealing, or otherwise altering the effect or operation of, this Act or of any regulation made under it, unless that intention is expressly provided for in that Act.

Schedule 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
- 6 Convention on the Physical Protection of Nuclear Material, done at Vienna and New York on 3 March 1980
- 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 the Rome on 10 March 1988
- 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
- 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 2005 Protocol of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
- 15 2005 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf
- 16 Amendment to the Convention on the Physical Protection of Nuclear Material