

LEGISLATIVE COUNCIL BRIEF

**United Nations (Anti-Terrorism Measures) Ordinance
(Chapter 575)**

**Fugitive Offenders Ordinance
(Chapter 503)**

**Mutual Legal Assistance in Criminal Matters Ordinance
(Chapter 525)**

**United Nations (Anti-Terrorism Measures)
(Amendment) Bill 2003**

Fugitive Offenders (Terrorist Bombings) Order

Fugitive Offenders (Maritime Safety) Order

**Mutual Legal Assistance in Criminal Matters
(Terrorist Bombings) Order**

INTRODUCTION

At the meeting of the Executive Council on 29 April 2003, the Council ADVISED and the Chief Executive ORDERED that -

- (a) the United Nations (Anti-Terrorism Measures)(Amendment) Bill 2003 (the Bill), at Annex A, should be introduced into the Legislative Council; and
- (b) the draft Fugitive Offenders (Terrorist Bombings) Order at Annex B, and the draft Fugitive Offenders (Maritime Safety) Order at Annex C (to be made under section 3 of the Fugitive Offenders Ordinance) and the draft Mutual Legal Assistance in Criminal Matters (Terrorist Bombings) Order at Annex D (to be made under section 4 of the Mutual Legal Assistance in Criminal Matters Ordinance) (the three draft Orders), should be approved in principle, to be referred back to the Chief Executive in Council to be made after the Bill has passed into law.

The Bill and the three draft Orders will permit obligations in United Nations Security Council Resolution (UNSCR) 1373 and the Special Recommendations of the Financial Action Task Force on Money Laundering (FATF) concerning the freezing of non-fund terrorist property, the International Convention for the Suppression of Terrorist Bombings (the Bombings Convention), the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (the Maritime Safety Convention) and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (the Protocol) to be implemented.

JUSTIFICATIONS

UNSCR 1373 and FATF Special Recommendations

2. Paragraph 1(c) of UNSCR 1373 (Annex E) and FATF Special Recommendation III (Annex F) require freezing of funds and other assets of terrorists and terrorist entities. While the United Nations (Anti-Terrorism Measures) Ordinance (the Ordinance) already provides for freezing of terrorist funds, further legislative provision will be required to enable the freezing of non-fund terrorist property.

The Bombings Convention

3. The Bombings Convention (Annex G) which was adopted by the United Nations in 1997 aims at preventing and repressing terrorist type attacks by means of explosives or other lethal devices (the proscribed acts). The People's Republic of China ratified the Convention and applied it to the Hong Kong Special Administrative Region (HKSAR) in November 2001, which has become effective to the HKSAR as from December 2001.

4. Articles 2 and 4 of the Bombings Convention require State Parties to criminalize the proscribed acts. Article 6 obliges State Parties to establish jurisdiction over the acts committed within their territories or by their nationals. Articles 9 and 10 further require State Parties to extradite offenders to each other, and to provide assistance to each other in connection with investigations or criminal proceedings of the acts. Article 11 requires that for the purposes of extradition and mutual legal assistance, Convention offences are not to be regarded as political offences. New legislative measures are required to give effect to these requirements.

The Maritime Safety Convention and the Protocol

5. The Maritime Safety Convention (Annex H) was adopted by the United Nations in 1988 to prevent and suppress unlawful acts threatening the safety of ships, their passengers and crew. The Protocol (Annex I) adopted also in 1988 extends the requirements of the Convention to fixed platforms attached to the sea-bed for exploiting offshore resources. The People's Republic of China ratified the Convention and the Protocol in August 1991 and arrangements will be made to have them applied to the HKSAR in due course.

6. Articles 3 and 5 of the Maritime Safety Convention require State Parties to criminalize unlawful acts endangering safety of maritime navigation such as seizure of ships by force; acts of violence against persons on board a ship; and damage of maritime navigational facilities. Article 6 obliges State Parties to establish jurisdiction over the acts committed against or on board a ship flying their flags, within their territories (including their territorial seas) or by their nationals. Article 8 states that the master of a ship may deliver an offender to the authorities of another State Party. Articles 11 and 12 further require State Parties to extradite offenders to each other, and to provide assistance to each other in connection with investigations or criminal proceedings of the acts. Article 2 of the Protocol requires criminalization of similar unlawful acts committed in relation to fixed platforms. The Protocol also adopts the Convention obligations in relation to extradition and mutual legal assistance. New legislative measures are needed to give effect to all these requirements.

THE BILL

Application of certain provisions outside HKSAR (Clause 3)

7. To give effect to jurisdictional requirements in relation to offences under the Bombings Convention and the Protocol, **clause 3** extends section 3 of the Ordinance to the offences proscribed by the Bombings Convention and the Protocol, the effect being that jurisdiction will be able to be exercised over any offender who commits an offence within the HKSAR and any offender who commits an offence outside the HKSAR who is a Hong Kong permanent resident or a body incorporated in the HKSAR.

Authorization of officers (Clause 4)

8. **Clause 4** adds a new section 3A to empower Secretary for Security (S for S) to authorize any public officer of the law enforcement agencies, namely, Hong Kong Police Force, Immigration Department, Customs and Excise

Department, Independent Commission Against Corruption and the Department of Justice, to be an authorized officer for the purposes of enforcement of the Ordinance.

Freezing of property (Clause 5)

9. To enable freezing of non-fund terrorist property as required under UNSCR 1373 and the FATF Special Recommendations, **clause 5** extends S for S's power to freeze terrorist funds under section 6 of the Ordinance to non-fund terrorist property, and empowers S for S to authorize seizure of the frozen property to prevent it from being removed from Hong Kong.

Prohibition on recruitment to specified terrorists and terrorist associates (Clause 6)

10. **Clause 6** repeals the existing section 10 on prohibition of recruitment of persons to become members of or serve with terrorists and terrorist organizations specified under section 4, and replaces it with an improved section providing for the appropriate mental elements for the offences concerned. The improved provision was originally proposed by the Administration during the Committee Stage before the passage of the Ordinance, but was not passed due to a technicality.

Prohibitions relating to the Bombings Convention, the Maritime Safety Convention and the Protocol (Clause 7)

11. **Clause 7** gives effect to the requirements in relation to offences proscribed by the Bombings Convention, the Maritime Safety Convention and the Protocol. The **new section 11B** implements Articles 2 and 4 of the Bombings Convention by criminalizing any bombing attack against an infrastructure facility, a public place, a public transportation system and a state or government facility.

12. The **new section 11E** implements Article 3 and 5 of the Maritime Safety Convention by prohibiting any unlawful act which endangers the safe navigation of a ship. The **new section 11H** gives effect to Article 8 of the Convention by providing that the master of a Hong Kong ship may deliver an alleged offender to a State Party to the Convention. The **new section 11I** gives effect to Article 6 of the Convention by establishing extra-territorial jurisdiction over the prohibited acts committed on board or against a Hong Kong ship, or by a Hong Kong permanent resident.

13. The **new section 11F** implements Article 2 of the Protocol by prohibiting unlawful acts in relation to fixed platforms.

Disclosure of knowledge or suspicion that property is terrorist property (Clause 8)

14. **Clause 8** replaces the existing section 12(6) with a new provision to enable law enforcement agencies to exchange information on transactions of suspected terrorist property which has been disclosed pursuant to section 12 with their local counterparts and relevant overseas authorities, for the purpose of suppressing terrorist financing.

Powers of investigation, seizure and detention of suspected terrorist property, offences (Clauses 9 and 11)

15. **Clause 9** provides for the necessary law enforcement powers. The **new sections 12A, 12B and 12C** empower law enforcement agencies to require relevant persons to furnish information or produce materials, to search premises for relevant materials, and to seize and retain such materials, for the purposes of investigation into offences under the Ordinance. The **new section 12G** empowers law enforcement agencies to search premises where there is suspected terrorist property, or with respect to which an offence under the Ordinance has been committed or is about to be committed, and to seize and detain such property. These powers are modelled on similar powers under the Drug Trafficking (Recovery of Proceeds) Ordinance, the Organized and Serious Crimes Ordinance and the Dangerous Drugs Ordinance, the exercise of which is subject to prior court authorization.

16. **Clause 11** sets out all the offences and penalties under the Bill.

Miscellaneous

17. **Clauses 12 and 13** provide for consequential amendments arising from the extension of S for S's power to freeze non-fund terrorist property under clause 5.

18. **Clause 14** extends the power in section 18 to award compensation where property has been frozen (in circumstances where it should not have been) to the situation where property has been seized pursuant to the new section 12G.

19. **Clause 15** repeals section 19 on making of regulations, as all required provisions will now be covered by the Ordinance and the Bill.

20. **Clause 16** provides that rules of court may be made to cater for proceedings relating to the court orders for the exercise of law enforcement powers under the new sections 12A, 12B and 12C.

21. **Clause 20** and the **Schedule** set out the consequential amendments to the Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance arising from clause 8.

22. The existing provisions being amended are at Annex J.

THE DRAFT ORDERS

23. The draft Fugitive Offenders (Terrorist Bombings) Order and Fugitive Offenders (Maritime Safety) Order seek to implement the extradition obligations under the Bombings Convention, the Maritime Safety Convention and the Protocol respectively. The draft Mutual Legal Assistance in Criminal Matters (Terrorist Bombings) Order is required to provide that offences covered by the Bombings Convention are not to be regarded as political offences. A similar Order is not required for the Maritime Safety Convention and the Protocol as they do not provide for a political offence exclusion. The three Orders are subsidiary legislation to be made by the Chief Executive in Council under the Fugitive Offenders Ordinance and the Mutual Legal Assistance in Criminal Matters Ordinance respectively, for which approval of the Legislative Council is required under appropriate vetting procedures. Upon passage of the Bill, the three Orders will be referred back to the Chief Executive in Council to be made.

LEGISLATIVE TIMETABLE

24. The legislative timetable is as follows -

Publication in the Gazette	9 May 2003
First Reading and commencement of Second Reading debate	21 May 2003
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

25. The proposal has economic, financial and civil service implications as set out at Annex K. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no productivity, environmental or sustainability implications. It will not affect the current binding effect of the Ordinance.

PUBLIC CONSULTATION

26. The Legislative Council Panel on Security was briefed on the salient legislative proposals of the Bill at its meetings on 16 January and 20 February 2003.

PUBLICITY

27. A press release will be issued on 7 May 2003. A spokesman will be available to answer enquiries.

BACKGROUND

28. UNSCR 1373 passed on 28 September 2001 aims at combatting international terrorism on various fronts, including measures against terrorism financing. By virtue of Chapter VII of the Charter of the United Nations, UNSCR 1373 is binding on all Member States. The Central People's Government gave instructions to the HKSAR in October 2001 to implement the resolution.

29. Hong Kong has been an active member of the FATF, an international body specializing in recommending standards and best practices in countering money laundering. Following the 11 September 2001 attacks in the United States, the FATF made eight Special Recommendations to tackle terrorism financing.

30. We have adopted a two-stage approach to implement the anti-terrorism requirements. In stage one, the Ordinance was enacted in July 2002 to give effect to the mandatory elements of UNSCR 1373 and the most pressing FATF Special Recommendations. In stage two, we aim to give full effect to the requirements of UNSCR 1373 and the FATF Special Recommendations to freeze non-fund terrorist property, and to implement other international conventions against terrorism, namely, the Bombings Convention, the Maritime Safety Convention and the Protocol.

ENQUIRIES

31. For any enquiries on the brief, please contact Ms Manda Chan, Assistant Secretary for Security, at telephone number 2810 2973.

Security Bureau
7 May 2003

**UNITED NATIONS (ANTI-TERRORISM MEASURES)
(AMENDMENT) BILL 2003
FUGITIVE OFFENDERS (TERRORIST BOMBINGS) ORDER
FUGITIVE OFFENDERS (MARITIME SAFETY) ORDER
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS
(TERRORIST BOMBINGS) ORDER : ANNEXES**

- | | | |
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| Annex B | - | Fugitive Offenders (Terrorist Bombings) Order |
| Annex C | - | Fugitive Offenders (Maritime Safety) Order |
| Annex D | - | Mutual Legal Assistance in Criminal Matters (Terrorist Bombings) Order |
| Annex E | - | United Nations Security Council Resolution 1373 |
| Annex F | - | Special Recommendations of the Financial Action Task Force on Money Laundering |
| Annex G | - | International Convention for the Suppression of Terrorist Bombings |
| Annex H | - | Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation |
| Annex I | - | Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf |
| Annex J | - | Existing provisions of the United Nations (Anti-Terrorism Measures) Ordinance being amended |
| Annex K | - | Economic and financial and civil service implications of the proposal |

UNITED NATIONS (ANTI-TERRORISM MEASURES)
(AMENDMENT) BILL 2003

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A BILL

To

Amend the United Nations (Anti-Terrorism Measures) Ordinance to empower the Secretary for Security to authorize certain public officers to be authorized officers for the purposes of that Ordinance; to extend the Secretary for Security's power under section 6 of that Ordinance to freeze funds suspected to be terrorist property to any property suspected to be terrorist property; to repeal and replace section 10 of that Ordinance so that the new section 10 reflects the substance of this provision as proposed by the Administration during the committee stage of the Bill which became that Ordinance upon enactment; to permit implementation, in particular, of Article 2 of the United Nations International Convention for the Suppression of Terrorist Bombings; to permit implementation, in particular, of Article 3 of the United Nations Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, and of Article 2 of the United Nations Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf; to amend section 12 of that Ordinance to specify the authorities to which and the persons to whom information obtained under or by virtue of a disclosure referred to in section 12(1) of that Ordinance may be disclosed; to set out the powers of investigation of authorized officers in relation to offences against that Ordinance; to provide for the seizure and detention of property suspected to be terrorist property; to repeal the redundant section 19 of that Ordinance; to amend references to "Court of First Instance" to "Court"; and

to make consequential amendments, in particular to section 25A of the Drug Trafficking (Recovery of Proceeds) Ordinance and of the Organized and Serious Crimes Ordinance to reflect section 12 of the United Nations (Anti-Terrorism Measures) Ordinance as amended by this Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the United Nations (Anti-Terrorism Measures)(Amendment) Ordinance 2003.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

2. Interpretation

Section 2 of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) is amended -

(a) in subsection (1) -

- (i) in the definition of "funds", by repealing "the Schedule" and substituting "Schedule 1";
- (ii) in the definition of "武器", by repealing "物料" where it twice appears and substituting "材料";

(iii) by adding -

"authorized officer" (獲授權人員) means
a public officer authorized under
section 3A(1);

"Court" (法院) means the Court of First
Instance;

"material" (材料) includes any book,
document or other record in any form
whatsoever, and any article or
substance;

"possession" (管有) includes control;

"premises" (處所) includes any place and,
in particular, includes -

- (a) any vehicle, vessel,
aircraft, hovercraft or
offshore structure; and
- (b) any tent or removable
structure;

"public body" (公共機構) means -

- (a) any Government
department; and
- (b) any public body
specified by the Chief
Executive under
subsection (8);

"relevant offence" (有關罪行) means an

offence against this Ordinance;" ;

(b) by adding -

"(8) The Chief Executive may, by notice published in the Gazette, specify a body to be a public body for the purposes of the definition of "public body".".

3. Application of certain provisions outside HKSAR

Section 3 is amended by repealing "and 10" and substituting ", 10, 11B and 11F".

4. Section added

The following is added immediately after section 3 -

"3A. Authorization of public officers

(1) The Secretary may authorize in writing any relevant public officer to be an authorized officer for the purposes of this Ordinance and subject to such conditions as the Secretary thinks fit specified in the authorization.

(2) In this section, "relevant public officer" (有關公職人員) means any public officer who is -

- (a) a police officer;
- (b) a member of the Immigration Service;
- (c) a member of the Customs and Excise Service;

- (d) an officer of the Independent Commission Against Corruption; or
- (e) a legal officer, within the meaning of section 2 of the Legal Officers Ordinance (Cap. 87), of the Department of Justice."

5. Freezing of property

Section 6 is amended -

- (a) in subsection (1) -
 - (i) by repealing "funds held by any person are" and substituting "property held by any person is";
 - (ii) by repealing "funds, direct that the funds" and substituting "property, direct that the property";
- (b) in subsection (2) -
 - (i) in paragraphs (a) and (b)(i), by repealing "funds are" and substituting "property is";
 - (ii) in paragraph (b)(ii), by repealing "funds" and substituting "property";
 - (iii) by repealing "to the funds" and substituting "to the property";
- (c) in subsection (4) -
 - (i) by repealing "funds" wherever it appears and substituting "property";
 - (ii) in paragraph (d), by repealing "have" and substituting "has";

- (d) in subsection (5), by repealing "funds" where it twice appears and substituting "property";
- (e) in subsection (6), by repealing "funds which were" and substituting "property which was";
- (f) by repealing subsection (7) and substituting -

"(7) A notice under subsection (1) or (2) shall be given to the person holding the property concerned ("the recipient") and shall require the recipient to send a copy of the notice without delay to each person, if any, whose property it is, or for or on behalf of whom the property is held ("the owner").";

- (g) by adding -

"(9) Where any property the subject of a notice under subsection (1) or (2) is immovable property, the notice shall, for the purpose of the Land Registration Ordinance (Cap. 128) -

- (a) be deemed to be an instrument affecting land; and
- (b) be registrable as such in the Land Registry under that Ordinance in such manner as the Land Registrar thinks fit.

(10) The Secretary may, in a notice under subsection (1) -

- (a) give a direction that an authorized officer may, for the purpose of preventing any property the subject of the notice being removed from the HKSAR, seize the property;
- (b) give directions in accordance with which any such property so seized shall be dealt with."

6. Section substituted

Section 10 is repealed and the following substituted -

**"10. Prohibition on recruitment,
etc. to bodies of persons
specified in notices under
section 4(1) and (2) or
orders under section 5(2)**

(1) A person shall not -

- (a) recruit another person to become a member of; or
- (b) become a member of,

a body of persons (including individuals), whether corporate or unincorporate, who the first-mentioned person knows or has reasonable grounds to believe is specified in a notice under section 4(1) or (2), or specified in an order under section 5(2), published in the Gazette.

(2) Where a person is a member of -

- (a) a body of persons (including individuals), whether corporate or unincorporate, specified in a notice under section 4(1) or (2) published in the Gazette; or
- (b) a body of persons (including individuals), whether corporate or unincorporate, specified in an order under section 5(2) published in the Gazette, immediately before the date of its publication in the Gazette, then the first-mentioned person shall, as soon as is practicable after he knows or has reasonable grounds to believe that the body of persons is specified in that notice, or in that order, as the case may be, take all practicable steps to cease to be such a member."

7. Parts 3A and 3B added

The following are added -

"PART 3A

**PROHIBITIONS RELATING TO BOMBING
OF PRESCRIBED OBJECTS**

11A. Interpretation of Part 3A

(1) In this Part, unless the context otherwise requires -
"explosive or other lethal device" (爆炸性或其他致命裝置) means -

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

capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material;

"infrastructure facility" (基建設施) means any publicly or privately owned facility providing or distributing services for the benefit of the public, and includes any water, sewage, energy, fuel or communications facility;

"place of public use" (公用場所) means those parts of any building, land, street, waterway or other location that are accessible or open to the public, whether continuously, periodically or occasionally, and whether or not upon the payment of any fee, and includes any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public;

"prescribed object" (訂明標的) means -

- (a) an infrastructure facility;
- (b) a place of public use;
- (c) a public transportation system; or
- (d) a state or government facility;

"public transportation system" (公共運輸系統) means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo;

"state or government facility" (國家或政府設施) includes any permanent or temporary facility or conveyance that is used or occupied by -

- (a) representatives of a state, or members of a government, the legislature or the judiciary, or officials or employees of a state or government or any other public authority or entity, in connection with their official duties; or
- (b) employees or officials of an intergovernmental organization in connection with their official duties.

(2) Any reference in this Part to a prescribed object does not include a prescribed object in the People's Republic of China outside the HKSAR.

**11B. Prohibitions against bombing
of prescribed objects**

(1) A person shall not deliver, place, discharge or detonate an explosive or other lethal device in, into or against a prescribed object with the intention to cause death or serious bodily injury to any person.

(2) A person shall not deliver, place, discharge or detonate an explosive or other lethal device in, into or against a prescribed object -

- (a) with the intention to cause the destruction of all or part of the prescribed object; and
- (b) where it could be reasonably concluded that the destruction would be likely to result in major economic loss (and, if the destruction does occur, irrespective of whether it in fact results in major economic loss).

PART 3B

PROHIBITIONS RELATING TO SHIPS AND FIXED PLATFORMS

11C. Interpretation of Part 3B

In this Part, unless the context otherwise requires -

"act" (行為) includes an omission;

"act of violence" (暴力行為) means -

- (a) an act done in the HKSAR which constitutes the offence of murder, attempted murder, manslaughter, culpable homicide or assault, or an offence under section 17, 19, 20, 21, 22, 23, 28 or 29 of the Offences against the Person Ordinance (Cap. 212) or under section 53 or 54 of the Crimes Ordinance (Cap. 200); and

- (b) an act done outside the HKSAR which, if done in the HKSAR, would constitute an offence mentioned in paragraph (a);

"fixed platform" (固定平台) means an artificial island, installation or structure permanently attached to the seabed for the purpose of the exploration or exploitation of resources or for other economic purposes;

"Hong Kong ship" (香港船舶) means a ship registered in the HKSAR;

"maritime navigational facility" (航海設施) includes -

- (a) any lightship and any floating or other light exhibited for the guidance of ships;
- (b) any description of a fog signal not carried on a ship;
- (c) all marks and signs in aid of marine navigation;
- (d) an electronic, radio or other aid to marine navigation not carried on board a ship;

"master" (船長) includes every person (except a pilot) having command or charge of a ship;

"Rome Convention" (《羅馬公約》) means the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988;

"scheduled to navigate" (已編定航行), in relation to a ship, means that the ship has -

- (a) an intended route;
- (b) a voyage plan;

- (c) a normal course of plying; or
- (d) an advertised sailing schedule;

"ship" (船舶) means a vessel of any type whatsoever not permanently attached to the seabed, including dynamically supported craft, submersibles, or any other floating craft.

11D. Part not to apply to certain ships

This Part shall not apply to -

- (a) a warship;
- (b) a ship owned or operated by a state when being used as a naval auxiliary or for customs or police purposes; or
- (c) a ship that has been withdrawn from navigation or is laid up.

11E. Prohibitions relating to ships

(1) A person shall not, without lawful excuse, intentionally -

- (a) by force or by threat of force or by any other form of intimidation, seize or exercise control over a ship;
- (b) on board a ship, commit an act of violence that is likely to endanger the safe navigation of the ship;
- (c) destroy a ship;

- (d) cause damage to a ship or the ship's cargo where that damage is likely to endanger the safe navigation of the ship;
 - (e) place or cause to be placed on a ship anything that is likely to destroy the ship;
 - (f) place or cause to be placed on a ship anything that is likely to cause damage to the ship or the ship's cargo where that damage endangers or is likely to endanger the safe navigation of the ship;
 - (g) destroy, seriously damage or seriously interfere with the operation of any maritime navigational facilities, where the destruction, damage or interference, as the case may be, is likely to endanger the safe navigation of a ship; or
 - (h) endanger the safe navigation of a ship by communicating to another person information which the person communicating the information knows to be false.
- (2) A person shall not intentionally -
- (a) cause the death of any person in connection with the commission or attempted commission of any act prohibited under subsection (1)(a), (b), (c), (d), (e), (f), (g) or (h); or
 - (b) injure any person in connection with the commission or attempted commission of any act prohibited under -

(i) subsection (1)(a), (b), (c), (d), (e),
(f), (g) or (h); or

(ii) paragraph (a).

(3) A person shall not threaten to do, in relation to a ship, any act prohibited under subsection (1)(b), (c), (d) or (g) if the threat -

- (a) is in order to compel any other person to do or abstain from doing any act; and
- (b) is likely to endanger the safe navigation of the ship.

11F. Prohibitions relating to fixed platforms

(1) A person shall not, without lawful excuse, intentionally -

- (a) by force or by threat of force or by any other form of intimidation, seize or exercise control over a fixed platform;
 - (b) on board a fixed platform, commit an act of violence that is likely to endanger the safety of the platform;
 - (c) destroy a fixed platform;
 - (d) cause damage to a fixed platform where that damage is likely to endanger the safety of the platform;
- or

(e) place or cause to be placed on a fixed platform anything that is likely to destroy the platform or to endanger the safety of the platform.

(2) A person shall not intentionally -

(a) cause the death of any person in connection with the commission or attempted commission of any act prohibited under subsection (1)(a), (b), (c), (d) or (e); or

(b) injure any person in connection with the commission or attempted commission of any act prohibited under -

(i) subsection (1)(a), (b), (c), (d) or (e);

or

(ii) paragraph (a).

(3) A person shall not threaten to do, in relation to a fixed platform, any act prohibited under subsection (1)(b), (c) or (d) if the threat -

(a) is in order to compel any other person to do or abstain from doing any act; and

(b) is likely to endanger the safety of the platform.

11G. Provisions supplementary to sections 11E and 11F

(1) For the purposes of sections 11E(2) and 11F(2), an act by any person occurs in connection with the commission or attempted commission of any of the acts prohibited under section 11E(1) or 11F(1) ("prohibited acts"), as the case may be, if it was done

with intent -

- (a) to commit or facilitate the commission or attempted commission of any of the prohibited acts;
- (b) to avoid the detection of himself or of any other person in the commission or attempted commission of any of the prohibited acts; or
- (c) to avoid the arrest or facilitate the flight of himself or of any other person on the commission or attempted commission of any the prohibited acts.

(2) Subsection (1) shall not limit the generality of the expression "in connection with the commission or attempted commission of".

11H. Master may deliver alleged offender to appropriate authorities

(1) The master of a Hong Kong ship may deliver to the appropriate authorities of a state that is a party to the Rome Convention any person whom the master has reasonable grounds to believe has committed any act prohibited under section 11E.

(2) The master of a Hong Kong ship who intends to deliver a person under subsection (1) shall notify the appropriate authorities of the state concerned of -

- (a) his intention to deliver the person to those authorities; and

(b) his reasons for intending to do so.

(3) A notification under subsection (2) shall be given -

(a) if it is practicable to do so, before the ship enters the territorial sea of the state concerned; or

(b) in any other case, as soon as is practicable.

(4) Where the master of a Hong Kong ship delivers a person under subsection (1), the master shall give to the appropriate authorities of the state concerned any evidence relating to the act concerned prohibited under section 11E that is in the master's possession.

**11I. Extra-territorial jurisdiction
in relation to section 11E**

Section 11E shall apply in respect of an act that occurs outside the HKSAR -

(a) if -

(i) the act occurs against or on board a ship that is navigating, or is scheduled to navigate, into or through or from the waters beyond the outer limits of the territorial sea of a state or the lateral limits of its territorial sea with adjacent states; and

(ii) either -

(A) the ship is a Hong Kong ship; or

(B) the alleged offender is a Hong Kong permanent resident;

(b) if -

(i) the act occurs against or on board a ship that is within the territory of another state;

(ii) the alleged offender is found in a state that is a party to the Rome Convention but is not the state where the act occurred; and

(iii) either -

(A) the ship is a Hong Kong ship; or

(B) the alleged offender is a Hong Kong permanent resident.".

8. Disclosure of knowledge or suspicion that property is terrorist property, etc.

Section 12(6) is repealed and the following substituted -

"(6) Information obtained under or by virtue of a disclosure referred to in subsection (1) may be disclosed -

(a) by any authorized officer to the Department of Justice, the Hong Kong Police Force, the Customs and Excise Department, the Immigration Department, and the Independent Commission Against Corruption; and

(b) by any authorized officer -

- (i) for the purpose of promoting multi-lateral cooperation in preventing and suppressing the financing of terrorist acts; and
- (ii) to the authorities or persons responsible for -
 - (A) investigating or preventing terrorist acts; or
 - (B) handling the disclosure of knowledge or suspicion that property is terrorist property, of any place outside the HKSAR which the authorized officer thinks fit.

(7) Subsection (6) is without prejudice to any other right to disclose information obtained under or by virtue of a disclosure referred to in subsection (1) that may exist apart from subsection (6).".

9. Parts 4A and 4B added

The following are added -

"PART 4A

POWERS OF INVESTIGATION

12A. Requirement to furnish information or produce material

(1) An authorized officer may, for the purpose of an investigation into a relevant offence, make an ex parte application

to the Court for an order under subsection (2) in relation to a particular person or to persons of a particular description.

(2) The Court may, if on such an application it is satisfied that the conditions referred to in subsection (4)(a), (b) and (d) or subsection (4)(a), (c) and (d) are fulfilled, make an order complying with subsection (3) in respect of the particular person, or persons of the particular description, to whom the application relates.

(3) An order under subsection (2) shall -

- (a) give particulars of the relevant offence under investigation;
- (b) identify the particular person, or state the particular description of persons, in respect of whom the order is made;
- (c) authorize the authorized officer to require the person or persons in respect of whom the order is made -
 - (i) to answer questions or otherwise furnish information with respect to any matter that reasonably appears to the authorized officer to be relevant to the investigation; or
 - (ii) to produce any material that reasonably appears to the authorized officer to relate to any matter relevant to the investigation, or any material of a class that reasonably appears to him so to

relate,

or both; and

- (d) contain such other terms (if any) as the Court considers appropriate in the public interest, but nothing in this paragraph shall be construed as authorizing the Court to order the detention of any person in custody without that person's consent.

- (4) The conditions referred to in subsection (2) are -

- (a) that there are reasonable grounds for suspecting that the relevant offence under investigation has been committed;
- (b) where the application relates to a particular person, that there are reasonable grounds for suspecting that the person has information, or is in possession of material, likely to be relevant to the investigation;
- (c) where the application relates to persons of a particular description, that -
 - (i) there are reasonable grounds for suspecting that some or all persons of that description have such information or are in possession of such material;and

- (ii) the relevant offence could not effectively be investigated if the application was required to relate to a particular person, whether because of the urgency of the investigation, the need to keep the investigation confidential or the difficulty in identifying a particular person who has the relevant information or material;
- (d) that there are reasonable grounds for believing that it is in the public interest, having regard -
 - (i) to the seriousness of the relevant offence under investigation;
 - (ii) to whether or not the relevant offence could be effectively investigated if an order under subsection (2) is not made;
 - (iii) to the benefit likely to accrue to the investigation if the information is disclosed or the material is obtained; and
 - (iv) to the circumstances under which the person or persons may have acquired, or may hold, the information or material (including any obligation of confidentiality in respect of the information or material and any family relationship with a person to whom the

information or material relates),
that an order under subsection (2) should be made
in respect of that person or those persons.

(5) Where an order under subsection (2) authorizes an authorized officer to require a person to answer questions or otherwise furnish information with respect to any matter that reasonably appears to the authorized officer to be relevant to an investigation, the authorized officer may by one, or more than one, notice in writing served on that person require him to attend before an authorized officer at a specified time and place, or at specified times and places, and answer questions or otherwise furnish information with respect to any matter that reasonably appears to the authorized officer to be relevant to the investigation.

(6) Where an order under subsection (2) authorizes an authorized officer to require a person to produce any material that reasonably appears to the authorized officer to relate to any matter relevant to an investigation, or any material of a class that reasonably appears to him so to relate, the authorized officer may by one, or more than one, notice in writing served on that person require him to produce at a specified time and place, or at specified times and places, any specified material that reasonably appears to him so to relate or any material of a specified class that reasonably appears to him so to relate.

(7) A notice in writing imposing a requirement on a person under subsection (5) or (6) shall -

(a) state that a court order has been made under this section and include -

- (i) the date of the order;
- (ii) the particulars of the relevant offence under investigation;
- (iii) where the order is made in respect of that particular person, a statement to that effect;
- (iv) where the order is made in respect of persons of a particular description and that person is of that particular description, a statement to that effect;
- (v) a statement of the authorization given to an authorized officer by the order; and
- (vi) a statement of any other terms of the order relevant to that person;

(b) have annexed to it a copy of the order under this section, but there may be excluded from such copy -

- (i) any reference in the order to a particular person other than that person, or to persons of a particular description not including that person; and
- (ii) any details in the order that relate only to such particular person or persons of

a particular description; and

- (c) be substantially in the form specified in Schedule 2 in relation to such notice and in addition shall set out or have annexed to it subsections (8), (9) and (10) and section 12E.

(8) An authorized officer may photograph or make copies of any material produced in compliance with a requirement under this section.

(9) Without prejudice to the generality of section 2(5), a lawyer may under this section be required to furnish the name and address of his client.

(10) An order under subsection (2), and a notice in writing imposing a requirement under subsection (5) or (6), may be made in relation to information held by, and material in the possession of, a public body.

(11) A person is not excused from furnishing information or producing any material required under this section on the ground that to do so would breach an obligation as to secrecy or another restriction upon the disclosure of information or material imposed by statute or otherwise.

(12) A statement by a person in response to a requirement imposed by virtue of this section may not be used against him in criminal proceedings against him except as follows -

- (a) in evidence in proceedings under section 14(7F) or under section 36 of the Crimes Ordinance (Cap. 200); or
- (b) for the purpose of impeaching his credibility in

proceedings in respect of any offence where in giving evidence he makes a statement inconsistent with it.

(13) Where an order under subsection (2) has been made, the Secretary for Justice, or a person authorized in writing by the Secretary for Justice for the purpose of this subsection, may, after satisfying any conditions that may be prescribed by rules of court in this respect, obtain a copy of the order; but subject to the foregoing part of this subsection and to subsection (7)(b), no person is entitled to obtain a copy of the order or any part of the order.

(14) Where a requirement imposed on a person under this section relates to material which consists of information recorded otherwise than in legible form -

- (a) the requirement shall have effect as a requirement to produce the material in a form in which it can be taken away; and
- (b) an authorized officer may, by notice in writing served on the person, require the person to produce at a specified time and place, or at specified times and places, the material in a form in which it is visible and legible and can be taken away, and may by like notice release the person from any obligation under the requirement to produce the material in the form in which it is recorded.

(15) An application for the revocation or variation of an order under this section may be made by any person on whom a

requirement is imposed under the order.

(16) The Secretary shall prepare a code of practice in connection with -

(a) the exercise of any of the powers conferred; and

(b) the discharge of any of the duties imposed,

by this section, and any such code shall be laid before the Legislative Council and shall not be promulgated until the code has been approved by the Legislative Council.

12B. Order to make material available

(1) An authorized officer may, for the purpose of an investigation into a relevant offence, make an ex parte application to the Court for an order under subsection (2) in relation to particular material or to material of a particular description, whether in the HKSAR or elsewhere.

(2) Subject to subsections (6) and (7), the Court may, if on such an application it is satisfied that the conditions referred to in subsection (5) are fulfilled, make an order -

(a) that the person who appears to the Court to be in possession of the material to which the application relates shall -

- (i) produce the material to an authorized officer for him to take away; or
 - (ii) give an authorized officer access to it, within such period as the order may specify;
- (b) that the person who appears to the Court likely to come into possession of the material to which the application relates shall, when the person comes into possession of any such material -
 - (i) produce the material to an authorized officer for him to take away; or
 - (ii) give an authorized officer access to it, within such period as the order may specify; or
- (c) in terms both of paragraphs (a) and (b).

(3) An order under subsection (2), in so far as it is in terms of paragraph (b) of that subsection, shall cease to have effect upon the expiration of 3 months after the day on which the order is made, or upon the expiration of such lesser period, if any, as is specified in the order for the purpose, but nothing in this subsection shall -

- (a) affect any obligation incurred under that order prior to its expiration;
- (b) prevent, in relation to the person required to comply with that order, any further order being made under that subsection in respect of that person (including before the expiration of that first-mentioned order).

(4) The period to be specified in an order under subsection (2) shall be 7 days unless it appears to the Court that a longer or shorter period would be appropriate in the particular circumstances of the application.

(5) The conditions referred to in subsection (2) are -

(a) that there are reasonable grounds for suspecting that the relevant offence has been committed;

(b) that there are reasonable grounds for believing that the material to which the application relates is likely to be relevant to the investigation for the purpose of which the application is made;

(c) that there are reasonable grounds for believing that it is in the public interest, having regard -

(i) to the benefit likely to accrue to the investigation if the material is obtained; and

(ii) to the circumstances under which the person in possession of the material holds it,

that the material should be produced or that access to it should be given.

(6) Where an application under subsection (1) relates to material of a particular description, an order under subsection (2) shall only be made where an application in relation to particular material is not practicable.

(7) An order under subsection (2) may require any officer of a public body (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it, and such an order shall be served as if the proceedings were civil proceedings against the Government.

(8) Where the Court makes an order under subsection (2)(a)(ii) or (b)(ii) in relation to material on any premises it may, on the same or a subsequent application of an authorized officer, order any person who appears to it to be entitled to grant entry to the premises to allow an authorized officer to enter the premises to obtain access to the material.

(9) An application for the revocation or variation of an order under subsection (2) or (8) may be made by any person who is subject to the order.

(10) Where material to which an application under this section relates consists of information recorded otherwise than in legible form -

- (a) an order under subsection (2)(a)(i) or (b)(i) shall have effect as an order to produce the material in a form in which it can be taken away; and
- (b) an order under subsection (2)(a)(ii) or (b)(ii) shall have effect as an order to give access to the material in a form in which it is visible and legible.

(11) Where an order under subsection (2)(a)(i) or (b)(i) relates to information recorded otherwise than in legible form, an authorized officer may, by notice in writing served on the person, require the person to produce the material in a form in which it is visible and legible and can be taken away, and may by like notice release the person from any obligation under the order to produce the material in the form in which it was recorded.

(12) An order under subsection (2) may be made in relation to material in the possession of a public body.

(13) A person is not excused from producing any material in relation to which an order under subsection (2) is made on the ground that to do so would breach an obligation as to secrecy or another restriction upon the disclosure of information imposed by statute or otherwise.

(14) An authorized officer may photograph or make copies of any material produced under this section.

12C. Authority for search

(1) An authorized officer may, for the purpose of an investigation into a relevant offence, apply to the Court for a warrant under this section in relation to specified premises.

(2) On such application the Court may issue a warrant authorizing an authorized officer to enter and search the premises if it is satisfied -

- (a) that a requirement imposed under section 12A(6) in relation to material on the premises has not been complied with;

- (b) that an order under section 12B in relation to material on the premises has not been complied with;
 - (c) that the conditions referred to in subsection (3) are fulfilled; or
 - (d) that the conditions referred to in subsection (4) are fulfilled.
- (3) The conditions referred to in subsection (2)(c) are -
 - (a) that there are reasonable grounds for suspecting that the relevant offence has been committed;
 - (b) that the conditions referred to in section 12B(5)(b) and (c) are fulfilled in relation to any material on the premises;
 - (c) that it would not be appropriate to make an order under section 12B in relation to the material because -
 - (i) it is not practicable to communicate with any person entitled to produce the material;
 - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
 - (iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless an authorized officer could secure

immediate access to the material.

(4) The conditions referred to in subsection (2)(d) are -

(a) that there are reasonable grounds for suspecting that the relevant offence has been committed;

(b) that there are reasonable grounds for suspecting that there is on the premises material which is likely to be relevant to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularized;

(c) that -

(i) it is not practicable to communicate with any person entitled to grant entry to the premises;

(ii) entry to the premises will not be granted unless a warrant is produced; or

(iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless an authorized officer arriving at the premises could secure immediate entry to them.

(5) Where an authorized officer has entered premises in the execution of a warrant issued under this section, he may seize and retain any material which is likely to be relevant to the investigation for the purpose of which the warrant was issued.

(6) An authorized officer may photograph or make copies of

any material seized under this section.

**12D. Disclosure of information obtained
under section 12A, 12B or 12C**

(1) Where any information subject to an obligation of secrecy under the Inland Revenue Ordinance (Cap. 112) has been obtained from the Commissioner of Inland Revenue or any officer of the Inland Revenue Department under or by virtue of section 12A, 12B or 12C, that information may be disclosed by any authorized officer for the purposes of -

- (a) any prosecution of a relevant offence;
- (b) any application for an order under section 5 or 13(1); or
- (c) any consideration of giving a notice under section 6(1),

but, subject to subsection (4), may not otherwise be disclosed.

(2) Subject to subsection (1), information obtained by any person under or by virtue of section 12A, 12B or 12C may be disclosed by any authorized officer -

- (a) to the Department of Justice, the Hong Kong Police Force, the Customs and Excise Department, the Immigration Department, and the Independent Commission Against Corruption;

(b) where the information appears to the Secretary for Justice to be likely to assist any corresponding person or body to discharge its functions, to that person or body; and

(c) to the Chief Executive for the purposes of section 5 and the Secretary for the purposes of section 6.

(3) Subsection (2) is without prejudice to any other right to disclose information obtained under or by virtue of section 12A, 12B or 12C that may exist apart from subsection (2).

(4) Information mentioned in subsection (1) or (2) may, on the authority of the Chief Executive, but subject to the information being transmitted through and with the approval of the Ministry of Foreign Affairs of the People's Republic of China, be disclosed –

(a) to any organ of the United Nations or to any person in the service of the United Nations; and

(b) for the purpose of assisting the United Nations in securing compliance with or detecting evasion of measures in relation to a terrorist or terrorist associate decided upon by the Security Council of the United Nations.

(5) In this section, "corresponding person or body" (相應的人員或機構) means any person who or body which, in the opinion of the Secretary for Justice, has under the law of a place outside the HKSAR, functions corresponding to any of the functions of any body mentioned in subsection (2)(a).

12E. Investigation not to be prejudiced

(1) Where an order under section 12A or 12B has been made or has been applied for and has not been refused or a warrant under section 12C has been issued, a person who, knowing or suspecting that the investigation in relation to which the order has been made or applied for or the warrant has been issued is taking place, shall not -

(a) without lawful authority or reasonable excuse, make any disclosure intending to prejudice the investigation; or

(b) falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of, any material -

(i) knowing or suspecting that the material is likely to be relevant to the investigation; and

(ii) intending to conceal the facts disclosed by the material from persons carrying out the investigation.

(2) Where a person has been arrested in connection with an investigation specified in subsection (1), that subsection shall not apply as regards any disclosure in respect of the investigation made after such arrest.

PART 4B

SEIZURE AND DETENTION OF PROPERTY SUSPECTED
TO BE TERRORIST PROPERTY

12F. Interpretation of Part 4B

In this Part, unless the context otherwise requires -
"seized property" (被檢取的財產) means any property seized under
section 12G.

12G. Issue of warrant

(1) Where it appears to any magistrate upon the oath of any person that there is reasonable cause to suspect that in any premises there is any terrorist property, or with respect to which a relevant offence has been committed or is about to be committed, the magistrate may, by his warrant directed to any authorized officer, empower the officer, with such assistance, and by such force, as is necessary and reasonable to enter the premises named in the warrant and there to search for and seize, remove and detain any terrorist property.

(2) Any authorized officer may seize, remove and detain any thing (including any material produced or required to be produced by virtue of an order under section 12A or 12B or a warrant issued under section 12C) if he has reason to suspect that such thing is terrorist property.

(3) An authorized officer who has entered any premises by virtue of a warrant issued under subsection (1) may stop and search any person found on the premises if -

(a) in relation to the premises, any thing mentioned in subsection (2) has been seized; or

(b) the authorized officer has reason to suspect that the person has in his actual custody any thing mentioned in subsection (2).

(4) No person shall be searched under this section except by a person of the same sex.

12H. Seized property may be detained

An authorized officer may, in accordance with the provisions of this Part, detain any seized property.

12I. Period for which seized property may be detained

(1) Seized property shall not be detained for a period of more than 30 days unless, before the expiration of that period, the continued detention of the property is authorized by an order under subsection (2).

(2) The Court may, on application made to it by an authorized officer, by order authorize the continued detention of seized property where it is satisfied that -

(a) there are reasonable grounds for suspecting that the property is terrorist property; and

(b) the detention of the property is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in the HKSAR or elsewhere) of -

- (i) proceedings against any person in relation to an offence with which the property is connected; or
- (ii) steps which may result in a direction being given under section 6(1) in respect of the property or which may result in the forfeiture or other confiscation of the property.

(3) An order under subsection (2) shall authorize the continued detention of the seized property to which it relates for such period, not exceeding 3 months beginning with the date of the order, as is specified in the order and the Court, on application made to it by an authorized officer and if satisfied as to the matters referred to in subsection (2)(a) and (b), may thereafter from time to time by order authorize the further detention of the property but so that -

- (a) no period of detention specified in an order under this subsection shall exceed 3 months beginning with the date of the order; and
- (b) the total period of detention shall not exceed 2 years from the date of the order under subsection (2).

(4) At any time while seized property is being detained by an order under subsection (2) or (3) the Court may direct its release if satisfied -

(a) on an application made by -

(i) the person from whom it was seized;

(ii) a person by, for or on behalf of whom
it was held; or

(iii) a person who otherwise has an interest
in it,

that there are no, or are no longer, any such grounds
for its detention as are referred to in subsection
(2); or

(b) on an application made by an authorized officer,
that its detention is no longer justified.

(5) If, at any time when any seized property is being detained
by virtue of an order under subsection (2) or (3) -

(a) proceedings are instituted (whether in the HKSAR
or elsewhere) against any person in relation to
an offence with which the property is connected;
or

(b) steps have been taken (whether in the HKSAR or
elsewhere) which may result in a direction being
given under section 6(1) in respect of the property
or which may result in the forfeiture or other
confiscation of the property,

the property shall not be released until the proceedings or steps
have been concluded.

12J. Interest

Seized property which is money and which is detained in pursuance of an order under section 12I(2) or (3) shall, unless required as evidence of an offence, be held in an interest-bearing account and the interest accruing thereon shall be added to the property on its release.

12K. Procedure

An order under section 12I(2) shall provide for notice to be given to persons affected by the order."

10. Forfeiture of certain terrorist property

Section 13 is amended -

- (a) in subsection (2), by repealing "該法庭" where it twice appears and substituting "法院";
- (b) in subsection (4), by repealing "法院" and substituting "法庭";
- (c) by repealing subsection (5).

11. Offences

Section 14 is amended by adding -

"(7A) Any person who contravenes section 11B(1) or (2) commits an offence and is liable on conviction to imprisonment for life.

(7B) Any person who contravenes section 11E(1), (2)(b) or (3) or 11F(1), (2)(b) or (3) commits an offence and is liable -

(a) on conviction on indictment to a fine and to imprisonment for 14 years;

(b) on summary conviction to a fine at level 6 and to imprisonment for 2 years.

(7C) Any person who contravenes section 11E(2)(a) or 11F(2)(a) commits an offence and is liable on conviction to imprisonment for life.

(7D) Any master of a Hong Kong ship who, without reasonable excuse, contravenes section 11H(2), (3) or (4) commits an offence and is liable on conviction to a fine at level 2.

(7E) Any person who without reasonable excuse fails to comply with a requirement imposed on him under section 12A commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 1 year.

(7F) Any person who, in purported compliance with a requirement under section 12A -

(a) makes a statement that he knows to be false or misleading in a material particular; or

(b) recklessly makes a statement that is false or misleading in a material particular,

commits an offence and is liable -

(c) on conviction on indictment to a fine of \$500,000 and to imprisonment for 3 years;

(d) on summary conviction to a fine at level 6 and to imprisonment for 1 year.

(7G) Any person who without reasonable excuse fails to comply with an order under section 12B(2) commits an offence and is liable

on conviction to a fine at level 6 and to imprisonment for 1 year.

(7H) Any person who hinders or obstructs an authorized officer in the execution of a warrant issued under section 12C commits an offence and is liable -

(a) on conviction on indictment to a fine of \$250,000 and to imprisonment for 2 years;

(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(7I) A person who contravenes section 12E(1) commits an offence and is liable -

(a) on conviction on indictment to a fine and to imprisonment for 7 years;

(b) on summary conviction to a fine of \$500,000 and to imprisonment for 3 years.

(7J) Any person who intentionally obstructs any person in the exercise of his powers under a warrant issued under section 12G(1) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months."

12. Supplementary provisions applicable to licences mentioned in section 6(1) or 8

Section 15(1)(a) is repealed and the following substituted -

"(a) such conditions may -

(i) relate to specifying the manner in which the property to which the licence relates shall be held from time to time;

- (ii) relate to the appointment of a receiver to take possession of the property and to deal with it in a manner which preserves the value of the property or any other property into which it is converted; and
- (iii) require a person holding the property to give possession of the property to a receiver, if any, appointed in respect of the property; and".

13. Applications to Court

Section 17 is amended -

- (a) in subsection (1)(b) -
 - (i) by repealing "funds specified in the notice are" and substituting "property specified in the notice is";
 - (ii) by repealing "funds so" and substituting "property so";
- (b) in subsection (2)(a), by repealing "or funds concerned is or are" and substituting "concerned is";
- (c) in subsection (3)(b)(iii), by repealing "funds specified in the notice concerned under section 6(1) are" and substituting "property specified in the notice concerned under section 6(1) is";
- (d) in subsection (4), by adding before paragraph (a) -

"(aa) the revocation or variation of a direction mentioned in section 6(10) may be made by any person affected by the notice under section 6(1) in which the direction appears;"

(e) by repealing subsection (5)(a) and substituting -

"(a) to the Secretary for Justice and to any other person affected by -

(i) the notice under section 6(1) concerned;

(ii) the operation concerned of section 6(1) or 8; or

(iii) the licence concerned,

as the case may be; and";

(f) in subsection (7) -

(i) by repealing paragraph (b) and substituting -

"(b) either -

(i) the direction to which the application relates -

(A) is, or is still, required to be revoked; or

(B) is, or is still, required to be varied; or

- (ii) the licence to which the application relates -
 - (A) is, or is still, required to be granted; or
 - (B) is, or is still, required to be varied,as the case may be,";
- (ii) by adding "the direction to be revoked or varied, or" after "cause".

14. Compensation

Section 18 is amended by adding -

"(2A) Without prejudice to the operation of subsection (1), where -

- (a) any property is seized property within the meaning of section 12F; and
- (b) subsequently, none of the following events occurs -
 - (i) the property is specified in a notice under section 6(1);
 - (ii) the property is forfeited under section 13;
 - (iii) proceedings are instituted (whether in the HKSAR or elsewhere) -

(A) against any person in relation to
an offence with which the property
is connected; or

(B) which may result in the forfeiture
or other confiscation of the
property,

the Court may, on an application made by any person by, for or
on behalf of whom the property was held, order compensation to
be paid by the Government to the applicant if, having regard to
all the circumstances, it considers it appropriate to make such
an order.

(2B) The Court shall not order compensation to be paid under
subsection (2A) unless it is satisfied that -

(a) there has been some serious default on the part
of any person concerned with the seizure or
detention of the property concerned; and

(b) the applicant has, in consequence of such seizure
or detention and the default mentioned in paragraph
(a), suffered loss in relation to the property."

15. Regulations

Section 19 is repealed.

16. Procedure

Section 20 is amended -

- (a) by repealing subsection (1)(a)(iii), (iv) and (v) and substituting -

- "(iii) section 17; or

- (iv) section 18;"

- (b) by repealing subsections (2) and (3) and substituting -

- "(2) Rules of court -

- (a) shall provide for applications by any person on whom a requirement is imposed under an order under section 12A or 12B for the revocation or variation of such order;

- (b) may provide for -

- (i) proceedings relating to section 12A, 12B or 12C;
 - (ii) conditions that must be satisfied before a person (including the Secretary for Justice) referred to in section 12A(13) may obtain a copy of an order under section 12A.

(3) Subsections (1) and (2) are without prejudice to the generality of any existing power to make rules."

17. Minor amendments

(1) Sections 2(6) and (7)(a), 5(1), (2), (5), (6) and (7)(b), 6(2)(b)(ii) and (4), 13(1) and (2), 17(1)(a)(i) and (ii) and (b), (2)(b), (3)(b), (5)(b) and (6) and 18(1), (2) and (3) are amended by repealing "of First Instance" wherever it appears.

(2) The heading to Part 2 is amended by repealing "FUNDS" and substituting "PROPERTY".

(3) The heading to Part 3 is amended by repealing "於" and substituting "乎".

18. Funds

The Schedule is amended by repealing "SCHEDULE" and substituting "SCHEDULE 1".

19. Schedule 2 added

The following is added -

"SCHEDULE 2

[s. 12A]

FORM

NOTICE UNDER SECTION 12A OF UNITED NATIONS (ANTI-TERRORISM
MEASURES) ORDINANCE (CAP. 575) REQUIRING
ATTENDANCE TO ANSWER QUESTIONS
OR FURNISH INFORMATION

To:
(name and address of person)

1. On, in the Court of First Instance, Hong
(date)

Kong an order was made by the Hon. Mr. Justice
under section 12A of the United Nations (Anti-Terrorism
Measures) Ordinance for the purpose of an investigation into
a relevant offence. A copy of the order as it relates to you
is annexed to this Notice.

2. Particulars of the relevant offence under investigation are -

(a) Offence :

(b) Date of offence :

(c) Place of offence :

(d) Other particulars:

*3. The order was made in respect of you.

or

*3. The order was made in respect of,
(description of persons)

and you are a person of that description.

6. The order also requires
(other terms of the order
.....
relevant to the person)

7. **NOTE:**
1. This Notice has important legal consequences. It is in your interest to read the provisions of the Ordinance set out with this Notice, and to seek legal advice in relation to your rights and obligations under this Notice.
 2. You may be accompanied by a solicitor and a barrister when you attend to answer questions or furnish information in compliance with paragraph 5(a) of this Notice, or to produce material in compliance with paragraph 5(b) of this Notice.

Dated this day of 20 .

.....
Authorized officer

* Delete as appropriate.".

20. Consequential amendments

The enactments specified in the Schedule are amended as set out in the Schedule.

SCHEDULE

[s. 20]

CONSEQUENTIAL AMENDMENTS

Drug Trafficking (Recovery of Proceeds) Ordinance**1. Disclosure of knowledge or suspicion
that property represents proceeds,
etc. of drug trafficking**

Section 25A of the Drug Trafficking (Recovery of Proceeds) Ordinance
(Cap. 405) is amended by adding -

"(9) Information obtained under or by virtue of a disclosure
referred to in subsection (1) may be disclosed -

(a) by any authorized officer to the Department of
Justice, the Hong Kong Police Force, the Customs
and Excise Department, the Immigration Department,
and the Independent Commission Against Corruption;
and

(b) by any authorized officer -

(i) for the purpose of promoting
multi-lateral cooperation in combating
drug trafficking; and

(ii) to the authorities or persons
responsible for -

(A) investigating or preventing drug
trafficking; or

(B) handling the disclosure of
knowledge or suspicion on property
relating to drug trafficking,
of any place outside Hong Kong which the
authorized officer thinks fit.

(10) Subsection (9) is without prejudice to any other right
to disclose information obtained under or by virtue of a disclosure
referred to in subsection (1) that may exist apart from subsection
(9).".

Organized and Serious Crimes Ordinance

2. Disclosure of knowledge or suspicion that property represents proceeds, etc. of indictable offence

Section 25A of the Organized and Serious Crimes Ordinance (Cap.
455) is amended by adding -

"(9) Information obtained under or by virtue of a disclosure
referred to in subsection (1) may be disclosed -

(a) by any authorized officer to the Department of
Justice, the Hong Kong Police Force, the Customs
and Excise Department, the Immigration Department,
and the Independent Commission Against Corruption;
and

(b) by any authorized officer -

(i) for the purpose of promoting
multi-lateral cooperation in combating
crime; and

- (ii) to the authorities or persons responsible for -
 - (A) investigating or preventing crime;
or
 - (B) handling the disclosure of knowledge or suspicion on property relating to crime,
of any place outside Hong Kong which the authorized officer thinks fit.

(10) Subsection (9) is without prejudice to any other right to disclose information obtained under or by virtue of a disclosure referred to in subsection (1) that may exist apart from subsection (9).".

Explanatory Memorandum

The object of this Bill is to amend the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) ("the Ordinance") to -

- (a) empower the Secretary for Security ("the Secretary") to authorize certain public officers to be authorized officers for the purposes of the Ordinance (See new section 3A at clause 4 as read with the definition of "authorized officer" at clause 2(a)(ii) and the consequential repeal of section 12(6) effected by clause 8);

- (b) extend the Secretary's power under section 6 to freeze funds suspected to be terrorist property to any property suspected to be terrorist property (See clause 5 as read with the consequential amendments to sections 15(1) and 17 made by clauses 12 and 13 respectively);
- (c) repeal and replace section 10 so that the new section 10 substantially reflects this provision as proposed by the Administration during the committee stage of the Bill which became the Ordinance upon enactment (See clause 6);
- (d) introduce a new Part 3A in order to permit the implementation, in particular, of Article 2 of the United Nations International Convention for the Suppression of Terrorist Bombings (See clause 7 as read with the consequential amendments to section 3 made by clause 3 and the new section 14(7A) at clause 11);
- (e) introduce a new Part 3B to permit the implementation, in particular, of Article 3 of the United Nations Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, and of Article 2 of the United Nations Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (See clause 7 as read with the consequential amendments to section 3 made by clause 3 and the new section 14(7B), (7C) and (7D) at clause 11);

- (f) amend section 12 to specify the authorities to which and the persons to whom information obtained under or by virtue of a disclosure referred to in section 12(1) may be disclosed (See clause 8). The amendment is based to some extent on section 6(2) and (3) of the Organized and Serious Crimes Ordinance (Cap. 455). Clause 20 and the Schedule make consequential amendments to section 25A of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and of the Organized and Serious Crimes Ordinance (Cap. 455) to reflect section 12 as amended by the Bill;
- (g) introduce a new Part 4A to set out the powers of investigation of authorized officers in relation to offences against the Ordinance (See clause 9, the definitions of "material", "possession", "premises", "public body" and "relevant offence" at clause 2(a)(ii), the new section 2(8) at clause 2(b), the new section 14(7E), (7F), (7G), (7H) and (7I) at clause 11, the new section 20(2) at clause 16(b) and the new Schedule 2 at clause 19). It should be noted that the provisions of the new Part 4A are substantially based on sections 3, 4, 5, 6 and 7 of the Organized and Serious Crimes Ordinance (Cap. 455);
- (h) introduce a new Part 4B to provide for the seizure and detention of property suspected to be terrorist property (See clause 9, the new section 14(7J) at clause 11 and the new section 18(2A) and (2B) at clause 14). It should

be noted that the provisions of the new Part 4B are substantially based on the provisions of Part IVA of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405);

- (i) repeal section 19 (the regulation-making power) as it is rendered redundant by the amendments made by the Bill (See clause 15); and
- (j) make minor drafting amendments to the text of the Ordinance (For example, to amend all references to "Court of First Instance" to "Court" in the interest of brevity - See clause 17 as read with the definition of "Court" at clause 2(a)(ii)).

FUGITIVE OFFENDERS (TERRORIST BOMBINGS) ORDER

(Made by the Chief Executive in Council under
section 3 of the Fugitive Offenders
Ordinance (Cap. 503))

1. Commencement

This Order shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

**2. Procedures in Ordinance to apply
between Hong Kong and certain
places outside Hong Kong**

In relation to the arrangements for the surrender of fugitive offenders which are -

(a) recited in the Schedule; and

(b) applicable to Hong Kong and places outside Hong Kong, it is hereby directed that the procedures in the Ordinance shall apply as between Hong Kong and the places outside Hong Kong to which those arrangements relate subject to the limitations, restrictions, exceptions and qualifications contained in those arrangements as so recited.

SCHEDULE

[s. 2]

**INTERNATIONAL CONVENTION FOR THE SUPPRESSION
OF TERRORIST BOMBINGS**

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations,

Recalling the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations of 24 October 1995,

Recalling also the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994, in which, inter alia, "the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States",

Noting that the Declaration also encouraged States "to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter",

Recalling further General Assembly resolution 51/210 of 17 December 1996 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, annexed thereto,

Noting also that terrorist attacks by means of explosives or other lethal devices have become increasingly widespread,

Noting further that existing multilateral legal provisions do not adequately address these attacks,

Being convinced of the urgent need to enhance international cooperation between States in devising and adopting effective and practical measures for the prevention of such acts of terrorism, and for the prosecution and punishment of their perpetrators,

Considering that the occurrence of such acts is a matter of grave concern to the international community as a whole,

Noting that the activities of military forces of States are governed by rules of international law outside the framework of this Convention and that the exclusion of certain actions from the coverage of this Convention does not condone or make lawful otherwise unlawful acts, or preclude prosecution under other laws,

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. "State or government facility" includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.

2. "Infrastructure facility" means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel or communications.

3. "Explosive or other lethal device" means:

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

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

4. "Military forces of a State" means the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security, and persons acting in support of those armed forces who are under their formal command, control and responsibility.

5. "Place of public use" means those parts of any building, land, street, waterway or other location that are accessible or open to members of the public, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public.

6. "Public transportation system" means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:

(a) With the intent to cause death or serious bodily injury; or

(b) With the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1.

3. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1 or 2; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2; or

(c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1 or 2 by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis under article 6, paragraph 1, or article 6, paragraph 2, of this Convention to exercise jurisdiction, except that the provisions of articles 10 to 15 shall, as appropriate,

apply in those cases.

Article 4

Each State Party shall adopt such measures as may be necessary:

(a) To establish as criminal offences under its domestic law the offences set forth in article 2 of this Convention;

(b) To make those offences punishable by appropriate penalties which take into account the grave nature of those offences.

Article 5

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature.

Article 6

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

(a) The offence is committed in the territory of that State; or

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or

(c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State; or

(b) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or

(c) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or

(d) The offence is committed in an attempt to compel that State to do or abstain from doing any act; or

(e) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2 under its domestic law. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be

necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2.

5. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 7

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence as set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:

(a) Communicate without delay with the nearest appropriate

representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) Be visited by a representative of that State;

(c) Be informed of that person's rights under subparagraphs (a) and (b).

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 6, subparagraph 1(c) or 2(c), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 6, paragraphs 1 and 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances

which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 8

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 6 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

Article 9

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 6, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between

States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between State Parties to the extent that they are incompatible with this Convention.

Article 10

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 11

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired

by political motives.

Article 12

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 13

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of testimony, identification or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention may be transferred if the following conditions are met:

- (a) The person freely gives his or her informed consent; and
- (b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of this article:

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he was transferred for time spent in the custody of the State to which he was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with this article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 14

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights.

Article 15

States Parties shall cooperate in the prevention of the offences set forth in article 2, particularly:

(a) By taking all practicable measures, including, if necessary, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or engage in the perpetration of offences as set forth in article 2;

(b) By exchanging accurate and verified information in accordance with their national law, and coordinating administrative and other measures taken as appropriate to prevent the commission of offences as set forth in article 2;

(c) Where appropriate, through research and development regarding methods of detection of explosives and other harmful substances that can cause death or bodily injury, consultations on the development of

standards for marking explosives in order to identify their origin in post-blast investigations, exchange of information on preventive measures, cooperation and transfer of technology, equipment and related materials.

Article 16

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 17

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 18

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

Article 19

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

Article 20

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1. The other States Parties

shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 21

1. This Convention shall be open for signature by all States from 12 January 1998 until 31 December 1999 at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 22

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 23

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 24

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on 12 January 1998.

Clerk to the Executive Council

COUNCIL CHAMBER

2003

Explanatory Note

This Order applies the procedures for the surrender of fugitive offenders set out in the Fugitive Offenders Ordinance (Cap. 503) to Hong Kong and the places outside Hong Kong to which the arrangements for the surrender of fugitive offenders recited in the Schedule relate. It should be noted that those procedures are subject to, inter alia, the limitations, restrictions, exceptions and qualifications contained in those arrangements.

FUGITIVE OFFENDERS (MARITIME SAFETY) ORDER

(Made by the Chief Executive in Council under
section 3 of the Fugitive Offenders
Ordinance (Cap. 503))

1. Commencement

This Order shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

**2. Procedures in Ordinance to apply
between Hong Kong and certain
places outside Hong Kong**

In relation to -

- (a) the arrangements for the surrender of fugitive offenders which are recited in Schedule 1 and applicable to Hong Kong and places outside Hong Kong;
- (b) the arrangements for the surrender of fugitive offenders which are recited in Schedule 2 and applicable to Hong Kong and places outside Hong Kong,

it is hereby directed that the procedures in the Ordinance shall apply as between Hong Kong and -

- (c) in the case of the arrangements recited in Schedule 1, the places outside Hong Kong to which those arrangements relate subject to the limitations, restrictions, exceptions and qualifications contained in those arrangements as so recited;

- (d) in the case of the arrangements recited in Schedule 2, the places outside Hong Kong to which those arrangements relate subject to the limitations, restrictions, exceptions and qualifications contained in those arrangements as so recited.

SCHEDULE 1

[s. 2]

CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS
AGAINST THE SAFETY OF MARITIME NAVIGATION

The States Parties to this Convention,

HAVING IN MIND the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of friendly relations and co-operation among States,

RECOGNIZING in particular that everyone has the right to life, liberty and security of person, as set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,

DEEPLY CONCERNED about the world-wide escalation of acts of terrorism in all its forms, which endanger or take innocent human lives, jeopardize fundamental freedoms and seriously impair the dignity of human beings,

CONSIDERING that unlawful acts against the safety of maritime navigation jeopardize the safety of persons and property, seriously affect the operation of maritime services, and undermine the confidence of the peoples of the world in the safety of maritime navigation,

CONSIDERING that the occurrence of such acts is a matter of grave concern to the international community as a whole,

BEING CONVINCED of the urgent need to develop international co-operation between States in devising and adopting effective and practical measures for the prevention of all unlawful acts against the safety of maritime navigation, and the prosecution and punishment of their perpetrators,

RECALLING resolution 40/61 of the General Assembly of the United Nations of 9 December 1985 which, inter alia, "urges all States unilaterally and in co-operation with other States, as well as relevant United Nations organs, to contribute to the progressive elimination of causes underlying international terrorism and to pay special attention to all situations, including colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien occupation, that may give rise to international terrorism and may endanger international peace and security",

RECALLING FURTHER that resolution 40/61 "unequivocally condemns, as criminal, all acts, methods and practices of terrorism wherever and by whomever committed, including those which jeopardize friendly relations among States and their security",

RECALLING ALSO that by resolution 40/61, the International Maritime Organization was invited to "study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures",

HAVING IN MIND resolution A.584(14) of 20 November 1985, of the Assembly of the International Maritime Organization, which called for development of measures to prevent unlawful acts which threaten the safety of ships and the security of their passengers and crews,

NOTING that acts of the crew which are subject to normal shipboard discipline are outside the purview of this Convention,

AFFIRMING the desirability of monitoring rules and standards relating to the prevention and control of unlawful acts against ships and persons on board ships, with a view to updating them as necessary, and, to this effect, taking note with satisfaction of the Measures to Prevent Unlawful Acts against Passengers and Crews on Board Ships, recommended by the Maritime Safety Committee of the International Maritime Organization,

AFFIRMING FURTHER that matters not regulated by this Convention continue to be governed by the rules and principles of general international law,

RECOGNIZING the need for all States, in combating unlawful acts against the safety of maritime navigation, strictly to comply with rules and principles of general international law,

HAVE AGREED as follows:

ARTICLE 1

For the purposes of this Convention, "ship" means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any other floating craft.

ARTICLE 2

1 This Convention does not apply to:

- (a) a warship; or
- (b) a ship owned or operated by a State when being used as a naval auxiliary or for customs or police purposes; or
- (c) a ship which has been withdrawn from navigation or laid up.

2 Nothing in this Convention affects the immunities of warships and other government ships operated for non-commercial purposes.

ARTICLE 3

1 Any person commits an offence if that person unlawfully and intentionally:

- (a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or
- (b) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or
- (c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or
- (d) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or
- (e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or
- (f) communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or
- (g) injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f).

2 Any person also commits an offence if that person:

- (a) attempts to commit any of the offences set forth in paragraph 1; or
- (b) abets the commission of any of the offences set forth in paragraph 1 perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or
- (c) threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b), (c) and (e), if that threat is likely to endanger the safe navigation of the ship in question.

ARTICLE 4

1 This Convention applies if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States.

2 In cases where the Convention does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State referred to in paragraph 1.

ARTICLE 5

Each State Party shall make the offences set forth in article 3 punishable by appropriate penalties which take into account the grave nature of those offences.

ARTICLE 6

1 Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 when the offence is committed:

- (a) against or on board a ship flying the flag of the State at the time the offence is committed; or
- (b) in the territory of that State, including its territorial sea; or
- (c) by a national of that State.

2 A State Party may also establish its jurisdiction over any such offence when:

- (a) it is committed by a stateless person whose habitual residence is in that State; or
- (b) during its commission a national of that State is seized, threatened, injured or killed; or
- (c) it is committed in an attempt to compel that State to do or abstain from doing any act.

3 Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of the International Maritime Organization (hereinafter referred to as "the Secretary-General"). If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

4 Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.

5 This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

ARTICLE 7

1 Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present shall, in accordance with its law, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2 Such State shall immediately make a preliminary inquiry into the facts, in accordance with its own legislation.

3 Any person regarding whom the measures referred to in paragraph 1 are being taken shall be entitled to:

(a) communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;

(b) be visited by a representative of that State.

4 The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or the alleged offender is present, subject to the proviso that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5 When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify the States which have established jurisdiction in accordance with article 6, paragraph 1 and, if it considers it advisable, any other interested States, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to

exercise jurisdiction.

ARTICLE 8

1 The master of a ship of a State Party (the "flag State") may deliver to the authorities of any other State Party (the "receiving State") any person who he has reasonable grounds to believe has committed one of the offences set forth in article 3.

2 The flag State shall ensure that the master of its ship is obliged, whenever practicable, and if possible before entering the territorial sea of the receiving State carrying on board any person whom the master intends to deliver in accordance with paragraph 1, to give notification to the authorities of the receiving State of his intention to deliver such person and the reasons therefor.

3 The receiving State shall accept the delivery, except where it has grounds to consider that the Convention is not applicable to the acts giving rise to the delivery, and shall proceed in accordance with the provisions of article 7. Any refusal to accept a delivery shall be accompanied by a statement of the reasons for refusal.

4 The flag State shall ensure that the master of its ship is obliged to furnish the authorities of the receiving State with the evidence in the master's possession which pertains to the alleged offence.

5 A receiving State which has accepted the delivery of a person in accordance with paragraph 3 may, in turn, request the flag State to accept delivery of that person. The flag State shall consider any such request, and if it accedes to the request it shall proceed in accordance with article 7. If the flag State declines a request, it shall furnish the receiving State with a statement of the reasons therefor.

ARTICLE 9

Nothing in this Convention shall affect in any way the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag.

ARTICLE 10

1 The State Party in the territory of which the offender or the alleged offender is found shall, in cases to which article 6 applies, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2 Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 3 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided for such proceedings by the law of the State in the territory of which he is present.

ARTICLE 11

1 The offences set forth in article 3 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2 If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 3. Extradition shall be subject to the other conditions provided by the law of the requested State Party.

3 States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 3 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4 If necessary, the offences set forth in article 3 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in a place within the jurisdiction of the State Party requesting extradition.

5 A State Party which receives more than one request for extradition from States which have established jurisdiction in accordance with article 6 and which decides not to prosecute shall, in selecting the State to which the offender or alleged offender is to be extradited, pay due regard to the interests and responsibilities of the State Party whose flag the ship was flying at the time of the commission of the offence.

6 In considering a request for the extradition of an alleged offender pursuant to this Convention, the requested State shall pay due regard to whether his rights as set forth in article 7, paragraph 3, can be effected in the requesting State.

7 With respect to the offences as defined in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent that they are incompatible with this Convention.

ARTICLE 12

1 State Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article 3, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2 States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties on mutual assistance that may exist between them. In the absence of such treaties, States Parties shall afford each other assistance in accordance with their national law.

ARTICLE 13

1 States Parties shall co-operate in the prevention of the offences set forth in article 3, particularly by:

- (a) taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories;
- (b) exchanging information in accordance with their national law, and co-ordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in article 3.

2 When, due to the commission of an offence set forth in article 3, the passage of a ship has been delayed or interrupted, any State Party in whose territory the ship or passengers or crew are present

shall be bound to exercise all possible efforts to avoid a ship, its passengers, crew or cargo being unduly detained or delayed.

ARTICLE 14

Any State Party having reason to believe that an offence set forth in article 3 will be committed shall, in accordance with its national law, furnish as promptly as possible any relevant information in its possession to those States which it believes would be the States having established jurisdiction in accordance with article 6.

ARTICLE 15

1 Each State Party shall, in accordance with its national law, provide to the Secretary-General, as promptly as possible, any relevant information in its possession concerning:

- (a) the circumstances of the offence;
- (b) the action taken pursuant to article 13, paragraph 2;
- (c) the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.

2 The State Party where the alleged offender is prosecuted shall, in accordance with its national law, communicate the final outcome of the proceedings to the Secretary-General.

3 The information transmitted in accordance with paragraphs 1 and 2 shall be communicated by the Secretary-General to all States Parties, to Members of the International Maritime Organization (hereinafter referred to as "the Organization"), to the other States concerned, and to the appropriate international intergovernmental organizations.

ARTICLE 16

1 Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2 Each State may at the time of signature or ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by any or all of the provisions of paragraph 1. The other States Parties shall not be bound by those provisions with respect to any State Party which has made such a reservation.

3 Any State which has made a reservation in accordance with paragraph 2 may, at any time, withdraw that reservation by notification to the Secretary-General.

ARTICLE 17

1 This Convention shall be open for signature at Rome on 10 March 1988 by States participating in the International Conference on the Suppression of Unlawful Acts against the Safety of Maritime Navigation and at the Headquarters of the Organization by all States from 14 March 1988 to 9 March 1989. It shall thereafter remain open for accession.

2 States may express their consent to be bound by this Convention by:

- (a) signature without reservation as to ratification, acceptance or approval; or
- (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
- (c) accession.

3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

ARTICLE 18

1 This Convention shall enter into force ninety days following the date on which fifteen States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession in respect thereof.

2 For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Convention after the conditions

for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

ARTICLE 19

1 This Convention may be denounced by any State Party at any time after the expiry of one year from the date on which this Convention enters into force for that State.

2 Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3 A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.

ARTICLE 20

1 A conference for the purpose of revising or amending this Convention may be convened by the Organization.

2 The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of one third of the States Parties, or ten States Parties, whichever is the higher figure.

3 Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

ARTICLE 21

1 This Convention shall be deposited with the Secretary-General.

2 The Secretary-General shall:

(a) inform all States which have signed this Convention or acceded thereto, and all Members of the Organization, of:

- (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;
- (ii) the date of the entry into force of this Convention;
- (iii) the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect;
- (iv) the receipt of any declaration or notification made under this Convention;

(b) transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.

3 As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication

in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 22

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed this Convention.

DONE AT ROME this tenth day of March one thousand nine hundred and eighty-eight.

SCHEDULE 2

[s. 2]

PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS
AGAINST THE SAFETY OF FIXED PLATFORMS
LOCATED ON THE CONTINENTAL SHELF

The States Parties to this Protocol,

BEING PARTIES to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation,

RECOGNIZING that the reasons for which the Convention was elaborated also apply to fixed platforms located on the continental shelf,

TAKING ACCOUNT of the provisions of that Convention,

AFFIRMING that matters not regulated by this Protocol continue to be governed by the rules and principles of general international law,

HAVE AGREED as follows:

ARTICLE 1

1 The provisions of articles 5 and 7 and of articles 10 to 16 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (hereinafter referred to as "the Convention") shall also apply mutatis mutandis to the offences set forth in article 2 of this Protocol where such offences are committed on board or against fixed platforms located on the continental shelf.

2 In cases where this Protocol does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State in whose internal waters or territorial sea the fixed platform is located.

3 For the purposes of this Protocol, "fixed platform" means an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes.

ARTICLE 2

1 Any person commits an offence if that person unlawfully and intentionally:

- (a) seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation; or
- (b) performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety; or
- (c) destroys a fixed platform or causes damage to it which is likely to endanger its safety; or
- (d) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety; or
- (e) injures or kills any person in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (d).

2 Any person also commits an offence if that person:

- (a) attempts to commit any of the offences set forth in paragraph 1; or

- (b) abets the commission of any such offences perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or
- (c) threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b) and (c), if that threat is likely to endanger the safety of the fixed platform.

ARTICLE 3

1 Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when the offence is committed:

- (a) against or on board a fixed platform while it is located on the continental shelf of that State; or
- (b) by a national of that State.

2 A State Party may also establish its jurisdiction over any such offence when:

- (a) it is committed by a stateless person whose habitual residence is in that State;
- (b) during its commission a national of that State is seized, threatened, injured or killed; or

(c) it is committed in an attempt to compel that State to do or abstain from doing any act.

3 Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of the International Maritime Organization (hereinafter referred to as "the Secretary-General"). If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

4 Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.

5 This Protocol does not exclude any criminal jurisdiction exercised in accordance with national law.

ARTICLE 4

Nothing in this Protocol shall affect in any way the rules of international law pertaining to fixed platforms located on the continental shelf.

ARTICLE 5

1 This Protocol shall be open for signature at Rome on 10 March 1988 and at the Headquarters of the International Maritime Organization (hereinafter referred to as "the Organization") from 14 March 1988 to 9 March 1989 by any State which has signed the Convention. It shall thereafter remain open for accession.

2 States may express their consent to be bound by this Protocol by:

- (a) signature without reservation as to ratification, acceptance or approval; or
- (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
- (c) accession.

3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4 Only a State which has signed the Convention without reservation as to ratification, acceptance or approval, or has ratified, accepted, approved or acceded to the Convention may become a Party to this Protocol.

ARTICLE 6

1 This Protocol shall enter into force ninety days following the date on which three States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession in respect thereof. However, this Protocol shall not enter into force before the Convention has entered into force.

2 For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Protocol after the conditions for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

ARTICLE 7

1 This Protocol may be denounced by any State Party at any time after the expiry of one year from the date on which this Protocol enters into force for that State.

2 Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3 A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.

4 A denunciation of the Convention by a State Party shall be deemed to be a denunciation of this Protocol by that Party.

ARTICLE 8

1 A conference for the purpose of revising or amending this Protocol may be convened by the Organization.

2 The Secretary-General shall convene a conference of the States Parties to this Protocol for revising or amending the Protocol, at the request of one third of the States Parties, or five States Parties, whichever is the higher figure.

3 Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Protocol shall be deemed to apply to the Protocol as amended.

ARTICLE 9

1 This Protocol shall be deposited with the Secretary-General.

2 The Secretary-General shall:

(a) inform all States which have signed this Protocol or acceded thereto, and all Members of the Organization, of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

- (ii) the date of entry into force of this Protocol;
 - (iii) the deposit of any instrument of denunciation of this Protocol together with the date on which it is received and the date on which the denunciation takes effect;
 - (iv) the receipt of any declaration or notification made under this Protocol or under the Convention, concerning this Protocol;
- (b) transmit certified true copies of this Protocol to all States which have signed this Protocol or acceded thereto.

3 As soon as this Protocol enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 10

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

DONE AT ROME this tenth day of March one thousand nine hundred and eighty-eight.

Clerk to the Executive Council

COUNCIL CHAMBER

2003

Explanatory Note

This Order applies the procedures for the surrender of fugitive offenders set out in the Fugitive Offenders Ordinance (Cap. 503) to Hong Kong and the places outside Hong Kong to which the arrangements for the surrender of fugitive offenders recited in Schedules 1 and 2 relate. It should be noted that those procedures are subject to, inter alia, the limitations, restrictions, exceptions and qualifications contained in those arrangements.

**MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS
(TERRORIST BOMBINGS) ORDER**

(Made by the Chief Executive in Council under
section 4 of the Mutual Legal Assistance in
Criminal Matters Ordinance (Cap. 525)
subject to the approval of
the Legislative Council)

1. Commencement

This Order shall come into operation on a day to be appointed by
the Secretary for Security by notice published in the Gazette.

**2. Ordinance to apply between Hong Kong
and certain places outside Hong Kong**

In relation to the arrangements for the mutual legal assistance
which are -

(a) recited in Schedule 1; and

(b) applicable to Hong Kong and places outside Hong Kong,
it is directed that the Ordinance shall, subject to the modifications
summarized in Schedule 2, apply as between Hong Kong and the places
outside Hong Kong to which those arrangements relate.

SCHEDULE 1

[s. 2]

INTERNATIONAL CONVENTION FOR THE SUPPRESSION
OF TERRORIST BOMBINGS

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations,

Recalling the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations of 24 October 1995,

Recalling also the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994, in which, inter alia, "the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States",

Noting that the Declaration also encouraged States "to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter",

Recalling further General Assembly resolution 51/210 of 17 December 1996 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, annexed thereto,

Noting also that terrorist attacks by means of explosives or other lethal devices have become increasingly widespread,

Noting further that existing multilateral legal provisions do not adequately address these attacks,

Being convinced of the urgent need to enhance international cooperation between States in devising and adopting effective and practical measures for the prevention of such acts of terrorism, and for the prosecution and punishment of their perpetrators,

Considering that the occurrence of such acts is a matter of grave concern to the international community as a whole,

Noting that the activities of military forces of States are governed by rules of international law outside the framework of this Convention and that the exclusion of certain actions from the coverage of this Convention does not condone or make lawful otherwise unlawful acts, or preclude prosecution under other laws,

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. "State or government facility" includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.

2. "Infrastructure facility" means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel or communications.

3. "Explosive or other lethal device" means:

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

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

4. "Military forces of a State" means the armed forces of a State which are organized, trained and equipped under its internal law for

the primary purpose of national defence or security, and persons acting in support of those armed forces who are under their formal command, control and responsibility.

5. "Place of public use" means those parts of any building, land, street, waterway or other location that are accessible or open to members of the public, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public.

6. "Public transportation system" means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:

- (a) With the intent to cause death or serious bodily injury; or
- (b) With the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1.

3. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1 or 2; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2; or

(c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1 or 2 by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis under article 6, paragraph 1, or article 6, paragraph 2, of this Convention to exercise jurisdiction, except that the provisions of articles 10 to 15 shall, as appropriate, apply in those cases.

Article 4

Each State Party shall adopt such measures as may be necessary:

- (a) To establish as criminal offences under its domestic law the offences set forth in article 2 of this Convention;
- (b) To make those offences punishable by appropriate penalties which take into account the grave nature of those offences.

Article 5

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature.

Article 6

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

- (a) The offence is committed in the territory of that State; or
- (b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that

State at the time the offence is committed; or

(c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State;

or

(b) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or

(c) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or

(d) The offence is committed in an attempt to compel that State to do or abstain from doing any act; or

(e) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2 under its domestic law. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which

have established their jurisdiction in accordance with paragraph 1 or 2.

5. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 7

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence as set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:

(a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person

habitually resides;

(b) Be visited by a representative of that State;

(c) Be informed of that person's rights under subparagraphs (a) and (b).

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 6, subparagraph 1(c) or 2(c), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 6, paragraphs 1 and 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends

to exercise jurisdiction.

Article 8

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 6 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

Article 9

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 6, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between State Parties to the extent that they are incompatible with this Convention.

Article 10

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 11

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence

may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 12

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 13

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of testimony, identification or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention may be transferred if the following conditions are met:

- (a) The person freely gives his or her informed consent; and
- (b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of this article:

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he was transferred for time spent in the custody of the State to which he was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with this article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 14

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights.

Article 15

States Parties shall cooperate in the prevention of the offences set forth in article 2, particularly:

(a) By taking all practicable measures, including, if necessary, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or engage in the perpetration of offences as set forth in article 2;

(b) By exchanging accurate and verified information in accordance with their national law, and coordinating administrative and other measures taken as appropriate to prevent the commission of offences as set forth in article 2;

(c) Where appropriate, through research and development regarding methods of detection of explosives and other harmful substances that can cause death or bodily injury, consultations on the development of

standards for marking explosives in order to identify their origin in post-blast investigations, exchange of information on preventive measures, cooperation and transfer of technology, equipment and related materials.

Article 16

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 17

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 18

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

Article 19

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

Article 20

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 21

1. This Convention shall be open for signature by all States from 12 January 1998 until 31 December 1999 at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 22

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 23

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 24

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on 12 January 1998.

SCHEDULE 2

[s. 2]

MODIFICATIONS TO THE ORDINANCE

Section 5(1) of the Ordinance shall be modified by deleting paragraph (b).

Clerk to the Executive Council

COUNCIL CHAMBER

2003

Explanatory Note

This Order directs that the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) shall apply as between Hong Kong and the places outside Hong Kong to which the arrangements for mutual legal assistance recited in Schedule 1 to the Order relate. It should be noted that the Ordinance is subject to the modifications summarized in Schedule 2 to the Order.

United Nations

S/RES/1373 (2001)

Security Council

Distr.: General
28 September 2001

Resolution 1373 (2001)

**Adopted by the Security Council at its 4385th meeting, on
28 September 2001**

The Security Council,

Reaffirming its resolutions 1269 (1999) of 19 October 1999 and 1368 (2001) of 12 September 2001,

Reaffirming also its unequivocal condemnation of the terrorist attacks which took place in New York, Washington, D.C. and Pennsylvania on 11 September 2001, and expressing its determination to prevent all such acts,

Reaffirming further that such acts, like any act of international terrorism, constitute a threat to international peace and security,

Reaffirming the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations as reiterated in resolution 1368 (2001),

Reaffirming the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

Deeply concerned by the increase, in various regions of the world, of acts of terrorism motivated by intolerance or extremism,

Calling on States to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism,

Recognizing the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism,

Reaffirming the principle established by the General Assembly in its declaration of October 1970 (resolution 2625 (XXV)) and reiterated by the Security Council in its resolution 1189 (1998) of 13 August 1998, namely that every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts,

Acting under Chapter VII of the Charter of the United Nations,

1. Decides that all States shall:

(a) Prevent and suppress the financing of terrorist acts;

(b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;

(c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;

(d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

2. Decides also that all States shall:

(a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;

(b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;

(c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;

(d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;

(e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;

(f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;

(g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;

3. Calls upon all States to:

(a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;

(b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;

(c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;

(d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;

(e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);

(f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;

(g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists;

4. Notes with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard emphasizes the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security;

5. Declares that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations;

6. Decides to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and calls upon all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution;

7. Directs the Committee to delineate its tasks, submit a work programme within 30 days of the adoption of this resolution, and to consider the support it requires, in consultation with the Secretary-General;

8. Expresses its determination to take all necessary steps in order to ensure the full implementation of this resolution, in accordance with its responsibilities under the Charter;

9. Decides to remain seized of this matter.

Special Recommendations of the Financial Action Task Force on Money Laundering (FATF)

Recognising the vital importance of taking action to combat the financing of terrorism, the FATF has agreed these Recommendations, which, when combined with the FATF Forty Recommendations on money laundering, set out the basic framework to detect, prevent and suppress the financing of terrorism and terrorist acts.

I. Ratification and implementation of UN instruments

Each country should take immediate steps to ratify and to implement fully the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism.

Countries should also immediately implement the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts, particularly United Nations Security Council Resolution 1373.

II. Criminalising the financing of terrorism and associated money laundering

Each country should criminalise the financing of terrorism, terrorist acts and terrorist organisations. Countries should ensure that such offences are designated as money laundering predicate offences.

III. Freezing and confiscating terrorist assets

Each country should implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organisations in accordance with the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts.

Each country should also adopt and implement measures, including legislative ones, which would enable the competent authorities to seize and confiscate property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations.

IV. Reporting suspicious transactions related to terrorism

If financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organisations, they should be required to report promptly their suspicions to the competent authorities.

V. International co-operation

Each country should afford another country, on the basis of a treaty, arrangement or other mechanism for mutual legal assistance or information exchange, the greatest possible measure of assistance in connection with criminal, civil enforcement, and administrative investigations, inquiries and proceedings relating to the financing of terrorism, terrorist acts and terrorist organisations.

Countries should also take all possible measures to ensure that they do not provide safe havens for individuals charged with the financing of terrorism, terrorist acts or terrorist organisations, and should have procedures in place to extradite, where possible, such individuals.

VI. Alternative remittance

Each country should take measures to ensure that persons or legal entities, including agents, that provide a service for the transmission of money or value, including transmission through an informal money or value transfer system or network, should be licensed or registered and subject to all the FATF Recommendations that apply to banks and non-bank financial institutions. Each country should ensure that persons or legal entities that carry out this service illegally are subject to administrative, civil or criminal sanctions.

VII. Wire transfers

Countries should take measures to require financial institutions, including money remitters, to include accurate and meaningful originator information (name, address and account number) on funds transfers and related messages that are sent, and the information should remain with the transfer or related message through the payment chain.

Countries should take measures to ensure that financial institutions, including money remitters, conduct enhanced scrutiny of and monitor for suspicious activity funds transfers which do not contain complete originator information (name, address and account number).

VIII. Non-profit organisations

Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused:

- (i) by terrorist organisations posing as legitimate entities;
- (ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and
- (iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.

**INTERNATIONAL CONVENTION FOR THE SUPPRESSION
OF TERRORIST BOMBINGS**

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations,

Recalling the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations of 24 October 1995,

Recalling also the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994, in which, inter alia, "the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States",

Noting that the Declaration also encouraged States "to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter",

Recalling further General Assembly resolution 51/210 of 17 December 1996 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, annexed thereto,

Noting also that terrorist attacks by means of explosives or other lethal devices have become increasingly widespread,

Noting further that existing multilateral legal provisions do not adequately address these attacks,

Being convinced of the urgent need to enhance international cooperation between States in devising and adopting effective and practical measures for the prevention of such acts of terrorism, and for the prosecution and punishment of their perpetrators,

Considering that the occurrence of such acts is a matter of grave concern to the international community as a whole,

Noting that the activities of military forces of States are governed by rules of international law outside the framework of this Convention and that the exclusion of certain actions from the coverage of this

Convention does not condone or make lawful otherwise unlawful acts, or preclude prosecution under other laws,

Having agreed as follows:

Article 1

For the purposes of this Convention:

1. "State or government facility" includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.
2. "Infrastructure facility" means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel or communications.
3. "Explosive or other lethal device" means:
 - (a) An explosive or incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage; or
 - (b) A weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material.
4. "Military forces of a State" means the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security, and persons acting in support of those armed forces who are under their formal command, control and responsibility.
5. "Place of public use" means those parts of any building, land, street, waterway or other location that are accessible or open to members of the public, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public.
6. "Public transportation system" means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:

- (a) With the intent to cause death or serious bodily injury; or
- (b) With the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1.

3. Any person also commits an offence if that person:

- (a) Participates as an accomplice in an offence as set forth in paragraph 1 or 2; or
- (b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2; or
- (c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1 or 2 by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis under article 6, paragraph 1, or article 6, paragraph 2, of this Convention to exercise jurisdiction, except that the provisions of articles 10 to 15 shall, as appropriate, apply in those cases.

Article 4

Each State Party shall adopt such measures as may be necessary:

- (a) To establish as criminal offences under its domestic law the offences set forth in article 2 of this Convention;
- (b) To make those offences punishable by appropriate penalties which take into account the grave nature of those offences.

Article 5

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that

criminal acts within the scope of this Convention, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature.

Article 6

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

- (a) The offence is committed in the territory of that State; or
- (b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or
- (c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

- (a) The offence is committed against a national of that State; or
- (b) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or
- (c) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or
- (d) The offence is committed in an attempt to compel that State to do or abstain from doing any act; or
- (e) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2 under its domestic law. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2.

5. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 7

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence as set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:

- (a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;
- (b) Be visited by a representative of that State;
- (c) Be informed of that person's rights under subparagraphs (a) and (b).

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 6, subparagraph 1(c) or 2(c), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 6, paragraphs 1 and 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 8

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 6 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of that trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

Article 9

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 6, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between State Parties to the extent that

they are incompatible with this Convention.

Article 10

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 11

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 12

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 13

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of testimony, identification or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention may be transferred if the following conditions are met:

- (a) The person freely gives his or her informed consent; and
- (b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of this article:

- (a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;
- (b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;
- (c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;
- (d) The person transferred shall receive credit for service of the sentence being served in the State from which he was transferred for time spent in the custody of the State to which he was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with this article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 14

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights.

Article 15

State Parties shall cooperate in the prevention of the offences set forth in article 2, particularly:

- (a) By taking all practicable measures, including, if necessary, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or engage in the perpetration of offences as set forth in article 2;
- (b) By exchanging accurate and verified information in accordance with their national law, and coordinating administrative and other measures taken as appropriate

to prevent the commission of offences as set forth in article 2;

- (c) Where appropriate, through research and development regarding methods of detection of explosives and other harmful substances that can cause death or bodily injury, consultations on the development of standards for marking explosives in order to identify their origin in post-blast investigations, exchange of information on preventive measures, cooperation and transfer of technology, equipment and related materials.

Article 16

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 17

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 18

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

Article 19

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

Article 20

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from

the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1. The other States Parties shall not be bound by paragraph 1 with respect to any State party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 21

1. This Convention shall be open for signature by all States from 12 January 1998 until 31 December 1999 at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 22

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 23

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 24

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on 12 January 1998.

**CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS
AGAINST THE SAFETY OF MARITIME NAVIGATION**

The States Parties to this Convention,

HAVING IN MIND the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of friendly relations and co-operation among States,

RECOGNIZING in particular that everyone has the right to life, liberty and security of person, as set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,

DEEPLY CONCERNED about the world-wide escalation of acts of terrorism in all its forms, which endanger or take innocent human lives, jeopardize fundamental freedoms and seriously impair the dignity of human beings,

CONSIDERING that unlawful acts against the safety of maritime navigation jeopardize the safety of persons and property, seriously affect the operation of maritime services, and undermine the confidence of the peoples of the world in the safety of maritime navigation,

CONSIDERING that the occurrence of such acts is a matter of grave concern to the international community as a whole,

BEING CONVINCED of the urgent need to develop international co-operation between States in devising and adopting effective and practical measures for the prevention of all unlawful acts against the safety of maritime navigation, and the prosecution and punishment of their perpetrators,

RECALLING resolution 40/61 of the General Assembly of the United Nations of 9 December 1985 which, inter alia, "urges all States unilaterally and in co-operation with other States, as well as relevant United Nations organs, to contribute to the progressive elimination of causes underlying international terrorism and to pay special attention to all situations, including colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien occupation, that may give rise to international terrorism and may endanger international peace and security",

RECALLING FURTHER that resolution 40/61 "unequivocally condemns, as criminal, all acts, methods and practices of terrorism wherever and by whomever committed, including those which jeopardize friendly relations among States and their security",

RECALLING ALSO that by resolution 40/61, the International Maritime Organization was invited to "study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures",

HAVING IN MIND resolution A.584(14) of 20 November 1985, of the Assembly of the International Maritime Organization, which called for development of measures to prevent unlawful acts which threaten the safety of ships and the security of their passengers and crews,

NOTING that acts of the crew which are subject to normal shipboard discipline are outside the purview of this Convention,

AFFIRMING the desirability of monitoring rules and standards relating to the prevention and control of unlawful acts against ships and persons on board ships, with a view to updating them as necessary, and, to this effect, taking note with satisfaction of the Measures to Prevent Unlawful Acts against Passengers and Crews on Board Ships, recommended by the Maritime Safety Committee of the International Maritime Organization,

AFFIRMING FURTHER that matters not regulated by this Convention continue to be governed by the rules and principles of general international law,

RECOGNIZING the need for all States, in combating unlawful acts against the safety of maritime navigation, strictly to comply with rules and principles of general international law,

HAVE AGREED as follows:

ARTICLE 1

For the purposes of this Convention, "ship" means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any other floating craft.

ARTICLE 2

- 1 This Convention does not apply to:
 - (a) a warship; or
 - (b) a ship owned or operated by a State when being used as a naval auxiliary or for customs or police purposes; or
 - (c) a ship which has been withdrawn from navigation or laid up.
- 2 Nothing in this Convention affects the immunities of warships and other government ships operated for non-commercial purposes.

ARTICLE 3

1 Any person commits an offence if that person unlawfully and intentionally:

- (a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or
- (b) perform an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or
- (c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or
- (d) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or
- (e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or
- (f) communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or
- (g) injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f).

2 Any person also commits an offence if that person:

- (a) attempts to commit any of the offences set forth in paragraph 1; or
- (b) abets the commission of any of the offences set forth in paragraph 1 perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or
- (c) threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b), (c) and (e), if that threat is likely to endanger the safe navigation of the ship in question.

ARTICLE 4

1 This Convention applies if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States.

2 In cases where the Convention does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State referred to in paragraph 1.

ARTICLE 5

Each State Party shall make the offences set forth in article 3 punishable by appropriate penalties which take into account the grave nature of those offences.

ARTICLE 6

1 Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 when the offence is committed:

- (a) against or on board a ship flying the flag of the State at the time the offence is committed; or
- (b) in the territory of that State, including its territorial sea; or
- (c) by a national of that State.

2 A State Party may also establish its jurisdiction over any such offence when:

- (a) it is committed by a stateless person whose habitual residence is in that State; or
- (b) during its commission a national of that State is seized, threatened, injured or killed; or
- (c) it is committed in an attempt to compel that State to do or abstain from doing any act.

3 Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of the International Maritime Organization (hereinafter referred to as "the Secretary-General"). If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

4 Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 in cases where the alleged offender is present in its territory and it does not extradite him to any of the State Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.

5 This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

ARTICLE 7

1 Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present shall, in accordance with its law, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2 Such State shall immediately make a preliminary inquiry into the facts, in accordance with its own legislation.

3 Any person regarding whom the measures referred to in paragraph
1 are being taken shall be entitled to:

- (a) communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;
- (b) be visited by a representative of that State.

4 The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or the alleged offender is present, subject to the proviso that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5 When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify the States which have established jurisdiction in accordance with article 6, paragraph 1 and, if it considers it advisable, any other interested States, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

ARTICLE 8

1 The master of a ship of a State Party (the "flag State") may deliver to the authorities of any other State Party (the "receiving State") any person who he has reasonable grounds to believe has committed one of the offences set forth in article 3.

2 The flag State shall ensure that the master of its ship is obliged, whenever practicable, and if possible before entering the territorial sea of the receiving State carrying on board any person whom the master intends to deliver in accordance with paragraph 1, to give notification to the authorities of the receiving State of his intention to deliver such person and the reasons therefor.

3 The receiving State shall accept the delivery, except where it has grounds to consider that the Convention is not applicable to the acts giving rise to the delivery, and shall proceed in accordance with the provisions of article 7. Any refusal to accept a delivery shall be accompanied by a statement of the reasons for refusal.

4 The flag State shall ensure that the master of its ship is obliged to furnish the authorities of the receiving State with the evidence in the master's possession which pertains to the alleged offence.

5 A receiving State which has accepted the delivery of a person in accordance with paragraph 3 may, in turn, request the flag State to accept delivery of that person. The flag State shall consider any such

request, and if it accedes to the request it shall proceed in accordance with article 7. If the flag State declines a request, it shall furnish the receiving State with a statement of the reasons therefor.

ARTICLE 9

Nothing in this Convention shall affect in any way the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag.

ARTICLE 10

1 The State Party in the territory of which the offender or the alleged offender is found shall, in cases to which article 6 applies, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2 Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 3 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided for such proceedings by the law of the State in the territory of which he is present.

ARTICLE 11

1 The offences set forth in article 3 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2 If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 3. Extradition shall be subject to the other conditions provided by the law of the requested State Party.

3 States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 3 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4 If necessary, the offences set forth in article 3 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also

in a place within the jurisdiction of the State Party requesting extradition.

5 A State Party which receives more than one request for extradition from States which have established jurisdiction in accordance with article 6 and which decides not to prosecute shall, in selecting the State to which the offender or alleged offender is to be extradited, pay due regard to the interests and responsibilities of the State Party whose flag the ship was flying at the time of the commission of the offence.

6 In considering a request for the extradition of an alleged offender pursuant to this Convention, the requested State shall pay due regard to whether his rights as set forth in article 7, paragraph 3, can be effected in the requesting State.

7 With respect to the offences as defined in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent that they are incompatible with this Convention.

ARTICLE 12

1 State Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article 3, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2 States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties on mutual assistance that may exist between them. In the absence of such treaties, States Parties shall afford each other assistance in accordance with their national law.

ARTICLE 13

1 State Parties shall co-operate in the prevention of the offences set forth in article 3, particularly by:

- (a) taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories;
- (b) exchanging information in accordance with their national law, and co-ordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in article 3.

2 When, due to the commission of an offence set forth in article 3, the passage of a ship has been delayed or interrupted, any State Party in whose territory the ship or passengers or crew are present shall be bound to exercise all possible efforts to avoid a ship, its passengers, crew or cargo being unduly detained or delayed.

ARTICLE 14

Any State Party having reason to believe that an offence set forth in article 3 will be committed shall, in accordance with its national law, furnish as promptly as possible any relevant information in its possession to those States which it believes would be the States having established jurisdiction in accordance with article 6.

ARTICLE 15

1 Each State Party shall, in accordance with its national law, provide to the Secretary-General, as promptly as possible, any relevant information in its possession concerning:

- (a) the circumstances of the offence;
- (b) the action taken pursuant to article 13, paragraph 2;
- (c) the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.

2 The State Party where the alleged offender is prosecuted shall, in accordance with its national law, communicate the final outcome of the proceedings to the Secretary-General.

3 The information transmitted in accordance with paragraphs 1 and 2 shall be communicated by the Secretary-General to all States Parties, to Members of the International Maritime Organization (hereinafter referred to as "the Organization"), to the other States concerned, and to the appropriate international intergovernmental organizations.

ARTICLE 16

1 Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2 Each State may at the time of signature or ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by any or all of the provisions of paragraph 1. The other States Parties shall not be bound by those provisions with respect to any State Party which has made such a reservation.

3 Any State which has made a reservation in accordance with paragraph 2 may, at any time, withdraw that reservation by notification to the Secretary-General.

ARTICLE 17

1 This Convention shall be open for signature at Rome on 10 March 1988 by States participating in the International Conference on the Suppression of Unlawful Acts against the Safety of Maritime Navigation and at the Headquarters of the Organization by all States from 14 March 1988 to 9 March 1989. It shall thereafter remain open for accession.

2 States may express their consent to be bound by this Convention by:

- (a) signature without reservation as to ratification, acceptance or approval; or
- (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
- (c) accession.

3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

ARTICLE 18

1 This Convention shall enter into force ninety days following the date on which fifteen States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession in respect thereof.

2 For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Convention after the conditions for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

ARTICLE 19

1 This Convention may be denounced by any State Party at any time after the expiry of one year from the date on which this Convention enters into force for that State.

2 Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3 A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.

ARTICLE 20

1 A conference for the purpose of revising or amending this Convention may be convened by the Organization.

2 The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of one third of the States Parties, or ten States Parties, whichever is the higher figure.

3 Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

ARTICLE 21

1 This Convention shall be deposited with the Secretary-General.

2 The Secretary-General shall:

- (a) inform all States which have signed this Convention or acceded thereto, and all Members of the Organization, of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;
 - (ii) the date of the entry into force of this Convention;
 - (iii) the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect;
 - (iv) the receipt of any declaration or notification made under this Convention;
- (b) transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.

3 As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 22

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed this Convention.

DONE AT ROME this tenth day of March one thousand nine hundred and eighty-eight.

**PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS
AGAINST THE SAFETY OF FIXED PLATFORMS
LOCATED ON THE CONTINENTAL SHELF**

The States Parties to this Protocol,

BEING PARTIES to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation,

RECOGNIZING that the reasons for which the Convention was elaborated also apply to fixed platforms located on the continental shelf,

TAKING ACCOUNT of the provisions of that Convention,

AFFIRMING that matters not regulated by this Protocol continue to be governed by the rules and principles of general international law,

HAVE AGREED as follows:

ARTICLE 1

1 The provisions of articles 5 and 7 and of articles 10 to 16 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (hereinafter referred to as "the Convention") shall also apply mutatis mutandis to the offences set forth in article 2 of this Protocol where such offences are committed on board or against fixed platforms located on the continental shelf.

2 In cases where this Protocol does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State in whose internal waters or territorial sea the fixed platform is located.

3 For the purposes of this Protocol, "fixed platform" means an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes.

ARTICLE 2

1 Any person commits an offence if that person unlawfully and intentionally:

- (a) seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation; or
- (b) performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety; or
- (c) destroys a fixed platform or causes damage to it which is likely to endanger its safety; or
- (d) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is

likely to destroy that fixed platform or likely to endanger its safety; or

- (e) injures or kills any person in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (d).

2 Any person also commits an offence if that person:

- (a) attempts to commit any of the offences set forth in paragraph 1; or
- (b) abets the commission of any such offences perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or
- (c) threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b) and (c), if that threat is likely to endanger the safety of the fixed platform.

ARTICLE 3

1 Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when the offence is committed:

- (a) against or on board a fixed platform while it is located on the continental shelf of that State; or
- (b) by a national of that State.

2 A State Party may also establish its jurisdiction over any such offence when:

- (a) it is committed by a stateless person whose habitual residence is in that State;
- (b) during its commission a national of that State is seized, threatened, injured or killed; or
- (c) it is committed in an attempt to compel that State to do or abstain from doing any act.

3 Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of the International Maritime Organization (hereinafter referred to as "the Secretary-General"). If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

4 Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.

5 This Protocol does not exclude any criminal jurisdiction exercised in accordance with national law.

ARTICLE 4

Nothing in this Protocol shall affect in any way the rules of international law pertaining to fixed platforms located on the continental shelf.

ARTICLE 5

1 This Protocol shall be open for signature at Rome on 10 March 1988 and at the Headquarters of the International Maritime Organization (hereinafter referred to as "the Organization") from 14 March 1988 to 9 March 1989 by any State which has signed the Convention. It shall thereafter remain open for accession.

2 States may express their consent to be bound by this Protocol by:

- (a) signature without reservation as to ratification, acceptance or approval; or
- (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
- (c) accession.

3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4 Only a State which has signed the Convention without reservation as to ratification, acceptance or approval, or has ratified, accepted, approved or acceded to the Convention may become a Party to this Protocol.

ARTICLE 6

1 This Protocol shall enter into force ninety days following the date on which three States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession in respect thereof. However, this Protocol shall not enter into force before the Convention has entered into force.

2 For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Protocol after the conditions for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

ARTICLE 7

1 This Protocol may be denounced by any State Party at any time after the expiry of one year from the date on which this Protocol enters into force for that State.

2 Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3 A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.

4 A denunciation of the Convention by a State Party shall be deemed to be a denunciation of this Protocol by that Party.

ARTICLE 8

1 A conference for the purpose of revising or amending this Protocol may be convened by the Organization.

2 The Secretary-General shall convene a conference of the States Parties to this Protocol for revising or amending the Protocol, at the request of one third of the States Parties, or five States Parties, whichever is the higher figure.

3 Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Protocol shall be deemed to apply to the Protocol as amended.

ARTICLE 9

1 This Protocol shall be deposited with the Secretary-General.

2 The Secretary-General shall:

(a) inform all States which have signed this Protocol or acceded thereto, and all Members of the Organization, of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

(ii) the date of entry into force of this Protocol;

(iii) the deposit of any instrument of denunciation of this Protocol together with the date on which it is received and the date on which the denunciation takes effect;

(iv) the receipt of any declaration or notification made under this Protocol or under the Convention, concerning this Protocol;

(b) transmit certified true copies of this Protocol to all States which have signed this Protocol or acceded thereto.

3 As soon as this Protocol enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General

of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 10

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

DONE AT ROME this tenth day of March one thousand nine hundred and eighty-eight.

**Existing provisions of the United Nations
(Anti-Terrorism Measures) Ordinance to be amended**

definition of “funds” in section 2

(1) In this Ordinance, unless the context otherwise requires-

"funds" (資金) includes funds mentioned in the Schedule;

Section 3 – Application of certain provisions outside HKSAR

Sections 7, 8, 9 and 10 shall apply to-

- (a) any person within the HKSAR; and
- (b) any person outside the HKSAR who is-
 - (i) a Hong Kong permanent resident; or
 - (ii) a body incorporated or constituted under the law of the HKSAR.

Section 6 – Freezing of funds

(1) Where the Secretary has reasonable grounds to suspect that any funds held by any person are terrorist property, the Secretary may, by notice in writing specifying the funds, direct that the funds not be made available, directly or indirectly, to any person except under the authority of a licence granted by the Secretary.

(2) Where-

(a) funds are specified in a notice under subsection (1); and

(b) either-

(i) the Secretary ceases to have reasonable grounds to suspect that the funds are terrorist property; or

(ii) the Court of First Instance has granted an application under section 17 which relates to the funds,

then the Secretary shall, as soon as is practicable, by notice in writing revoke the notice to the extent that it relates to the funds.

(3) Subject to subsection (4), a notice under subsection (1) which has not been revoked under subsection (2) shall expire on the 2nd anniversary of the date on which it was signed by the Secretary.

(4) Where an application under section 13 has been made to the Court of First Instance-

(a) in respect of funds, or part thereof, specified in a notice under subsection (1); and

(b) before the expiration of the notice under subsection (3),

then, subject to subsection (2), the notice shall not expire in relation to the funds, or part thereof, as the case may be, until the date, if any, on which-

(c) proceedings relating to the application (including proceedings relating to any appeal) are no longer pending; and

(d) the funds, or part thereof, as the case may be, have not been forfeited in consequence of those proceedings.

(5) Where a notice under subsection (1) has been revoked under subsection (2) or has expired under subsection (3) or (4), the Secretary shall not again exercise the power under subsection (1) in respect of the

funds specified in the notice unless there has been a material change in the grounds in respect of which the Secretary proposes to again exercise that power in respect of the funds.

(6) For the avoidance of doubt, it is hereby declared that the revocation under subsection (2), or the expiry under subsection (3) or (4), of a notice under subsection (1) shall not affect the application of section 8 to the funds which were specified in the notice.

(7) A notice under subsection (1) or (2) shall be given to the person holding the funds concerned ("the recipient"), and shall require the recipient to send a copy of the notice without delay to the person whose funds they are, or for or on whose behalf the funds are held ("the owner").

(8) A recipient shall be treated as complying with subsection (7) if, without delay, he sends a copy of the notice mentioned in that subsection to the owner at his last-known address or, if he does not have an address for the owner, he makes arrangements for a copy of the notice to be supplied to the owner at the first available opportunity.

Section 10 – Prohibition on recruitment, etc. to persons specified in notices under section 4(1) and (2)

(1) A person shall not-

(a) recruit another person to become a member of, or to serve in any capacity with; or

(b) become a member of, or begin to serve in any capacity with, a person specified in a notice under section 4(1) or (2).

(2) Where a person is a member of, or is serving in any capacity with, a person specified in a notice under section 4(1) or (2) immediately before the date of publication in the Gazette of the notice, the first-mentioned person shall take all practicable steps to cease to be such a member or to cease to so serve, as the case may be.

Section 12 – Disclosure of knowledge or suspicion that property is terrorist property

(1) Where a person knows or suspects that any property is terrorist property, then the person shall disclose to an authorized officer the information or other matter-

- (a) on which the knowledge or suspicion is based; and
- (b) as soon as is practicable after that information or other matter comes to the person's attention.

(2) If a person who has made a disclosure referred to in subsection (1) does any act in contravention of section 7 or 8 (whether before or after the disclosure), and the disclosure relates to that act, the person does not commit an offence under section 14(1) in respect of that contravention if-

- (a) that disclosure is made before the person does that act and the person does that act with the consent of an authorized officer; or
- (b) that disclosure is made-
 - (i) after the person does that act;
 - (ii) on the person's initiative; and
 - (iii) as soon as it is practicable for the person to make it.

(3) A disclosure referred to in subsection (1)-

- (a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;
- (b) shall not render the person who made it liable in damages for any loss arising out of-
 - (i) the disclosure;
 - (ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure.

(4) In the case of a person who was in employment at the relevant time, this section shall have effect in relation to disclosures to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as it has effect in relation to disclosures to an authorized officer.

(5) Where a person knows or suspects that a disclosure has been made under subsection (1) or (4), the person shall not disclose to another person any information or other matter which is likely to prejudice any investigation which might be conducted following that first-mentioned disclosure.

(6) In this section, "authorized officer" (獲授權人員) means a public officer authorized in writing by the Secretary for the purposes of this section.

Section 13 – Forfeiture of certain terrorist property

(1) The Court of First Instance may, if satisfied on an application made by or on behalf of the Secretary for Justice that any property specified in the application is terrorist property-

(a) mentioned in paragraph (a) of the definition of "terrorist property" and which also-

(i) in whole or in part directly or indirectly represents any proceeds arising from a terrorist act;

(ii) is intended to be used to finance or otherwise assist the commission of a terrorist act; or

(iii) was used to finance or otherwise assist the commission of a terrorist act; or

(b) mentioned in paragraph (b) of the definition of "terrorist property", order, subject to subsection (2), the forfeiture of the property.

(2) Where the Court of First Instance makes an order under subsection (1) in respect of any property, the Court shall specify in the order so much, if any, of the property in respect of which the Court is not satisfied as mentioned in that subsection.

(3) An order may be made under this section whether or not proceedings are brought against any person for an offence with which the property concerned is connected.

(4) The standard of proof on an application under this section shall be the standard of proof applicable to civil proceedings in a court of law.

(5) Subject to section 20(3), Order 115, rule 29, of the Rules of the High Court (Cap 4 sub. leg.) shall, with all necessary modifications, apply to and in relation to subsection (1) as it applies to and in relation to section 24D(1) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405).

Section 14 - Offences

(1) Any person who contravenes section 7, 8 or 9 commits an offence and is liable-

- (a) on conviction on indictment to a fine and to imprisonment for 14 years;
- (b) on summary conviction to a fine at level 6 and to imprisonment for 2 years.

(2) A person who contravenes a notice under section 6(1) commits an offence and is liable-

- (a) on conviction on indictment to a fine and to imprisonment for 7 years;
- (b) on summary conviction to a fine at level 6 and to imprisonment for 1 year.

(3) A person who, without reasonable excuse, contravenes a requirement under section 6(7) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 3 months.

(4) A person who contravenes section 10(1) or (2) or 11(1) or (2) commits an offence and is liable-

- (a) on conviction on indictment to a fine and to imprisonment for 7 years;
- (b) on summary conviction to a fine at level 6 and to imprisonment for 1 year.

(5) A person who contravenes section 12(1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 months.

(6) A person who contravenes section 12(5) commits an offence and is liable-

- (a) on conviction on indictment to a fine and to imprisonment for 3 years;
- (b) on summary conviction to a fine at level 6 and to imprisonment for 1 year.

(7) In proceedings against a person for an offence under subsection (6), it is a defence to prove-

- (a) that he did not know or suspect that the disclosure concerned was likely to be prejudicial in the way referred to in section 12(5); or
- (b) that he had lawful authority or reasonable excuse for making that disclosure.

(8) Summary proceedings for an offence under this Ordinance, being an offence alleged to have been committed outside the HKSAR, may be commenced at any time not later than 12 months from the date on which the person charged first enters the HKSAR after committing the offence.

(9) No proceedings for an offence under this Ordinance shall be instituted in the HKSAR except by or with the consent of the Secretary for Justice.

Section 15 – Supplementary provisions applicable to licences mentioned in section 6(1) or 8

(1) Without prejudice to the generality of conditions and exceptions which may be specified in a licence mentioned in section 6(1)-

(a) such conditions may relate to specifying the manner in which the funds to which the licence relates shall be held from time to time; and

(b) such exceptions may relate but are not limited to-

(i) the reasonable living expenses;

(ii) the reasonable legal expenses; and

(iii) the payments liable to be made under the Employment Ordinance (Cap 57),

of any person by, for or on behalf of whom the funds are held.

(2) Without prejudice to the generality of conditions and exceptions which may be specified in a licence mentioned in section 8, such exceptions may relate to the reasonable living expenses, reasonable legal expenses and the payments liable to be made under the Employment Ordinance (Cap 57) of the person second-mentioned in that section to which the licence relates.

Section 17 – Application to Court of First Instance

(1) Where-

- (a) an application under section 5(1) has been made ex parte and in consequence thereof an order under section 5(2) has been published in the Gazette, then-
 - (i) any person specified in the order, or any person acting for or on behalf of the person so specified, may at any time make an application to the Court of First Instance for the order to be revoked to the extent that it relates to the person so specified;
 - (ii) any person by, for or on behalf of whom any property specified in the order is held, or any other person in respect of whom the Court of First Instance is satisfied that the person is affected by the order, may at any time make an application to the Court of First Instance for the order to be revoked to the extent that it relates to the property so specified;
- (b) a notice has been given under section 6(1), then any person by, for or on behalf of whom any funds specified in the notice are held, or any other person in respect of whom the Court of First Instance is satisfied that the person is affected by the notice, may at any time make an application to the Court of First Instance for the notice to be revoked to the extent that it relates to the funds so specified.

(2) A person who makes an application under subsection (1) shall give a copy of the application (and an affidavit, if any, and other relevant documents, if any, in support)-

- (a) to the Secretary for Justice and, in the case of an application under subsection (1)(a)(ii) or (b), to any other person by, for or on behalf of whom the property or funds concerned is or are held; and
- (b) not later than 7 days before the date fixed for the hearing of the application or such shorter period as the Court of First Instance may permit pursuant to rules of court.

(3) On an application under subsection (1)-

- (a) in the case of an application under subsection (1)(a)(i) or (ii), the presumption mentioned in section 5(4) shall not be applicable, whether for the purposes of the proceedings or otherwise,

immediately upon the initiation of the proceedings and until the conclusion of the proceedings (including the conclusion of any appeal arising out of the proceedings); and

- (b) the Court of First Instance shall grant the application unless-
 - (i) where subsection (1)(a)(i) is applicable, the Court of First Instance is satisfied that the person specified in the order concerned under section 5(2) is a terrorist or terrorist associate, as the case may be;
 - (ii) where subsection (1)(a)(ii) is applicable, the Court of First Instance is satisfied that the property specified in the order concerned under section 5(2) is terrorist property;
 - (iii) where subsection (1)(b) is applicable, the Court of First Instance is satisfied that there are reasonable grounds to suspect that the funds specified in the notice concerned under section 6(1) are terrorist property.

(4) An application for-

- (a) the grant of a licence mentioned in section 6(1) or 8 may be made by any person affected by the operation of that section; or
- (b) the variation of a licence mentioned in section 6(1) or 8 may be made by any person affected by the licence.

(5) A person who makes an application under subsection (4) shall give a copy of the application (and affidavit, if any, and other relevant documents, if any, in support)-

- (a) to the Secretary for Justice and to any other person affected by the operation concerned of section 6(1) or 8, or the licence concerned, as the case may be; and
- (b) not later than 7 days before the date fixed for the hearing of the application or such shorter period as the Court of First Instance may permit pursuant to rules of court.

(6) The Court of First Instance shall not grant an application under subsection (4) unless it is satisfied that it is reasonable in all the circumstances of the case to do so.

(7) Where-

- (a) proceedings relating to an application under subsection

(4)(including proceedings relating to any appeal) are no longer pending; and

(b) the licence to which the application relates-

(i) is, or is still, required to be granted; or

(ii) is, or is still, required to be varied,

as the case may be,

then the Secretary shall, as soon as is practicable, cause the licence to be granted or varied, as the case may be, accordingly.

Section 18 - Compensation

(1) Subject to subsection (2), where-

- (a) a person has ceased to be specified as a terrorist or terrorist associate under section 5(2); or
- (b) property has ceased to be-
 - (i) specified as terrorist property under section 5(2); or
 - (ii) specified in a notice under section 6(1),

then the Court of First Instance may, on application by-

- (c) in the case of paragraph (a), the person who was so specified, or any person acting for or on behalf of the person who was so specified;
- (d) where paragraph (b) is applicable, any person by, for or on behalf of whom the property that was so specified is held,

order compensation to be paid by the Government to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.

(2) The Court of First Instance shall not order compensation to be paid under subsection (1) unless it is satisfied-

- (a) where subsection (1)(a) is applicable, that at no time when the person concerned was specified as a terrorist or terrorist associate under section 5(2) was the person either a terrorist or terrorist associate;
- (b) where subsection (1)(b) is applicable, that at no time when the property was specified as terrorist property under section 5(2), or was specified in a notice under section 6(1), as the case may be, was the property terrorist property;
- (c) that there has been some serious default on the part of any person concerned in obtaining the relevant specification under section 5(2) or 6(1); and
- (d) the applicant has, in consequence of the relevant specification and the default mentioned in paragraph (c), suffered loss.

(3) The amount of compensation to be paid under this section shall be such as the Court of First Instance thinks just in all the circumstances of the case.

Section 19 - Regulations

- (1) The Secretary may make regulations for the purposes of enabling persons to be prohibited from dealing with any property (other than funds)-
 - (a) that the Secretary has reasonable grounds to suspect is terrorist property; and
 - (b) except under the authority of a licence granted by the Secretary for the purposes of the regulations.
- (2) The Secretary may make regulations for the purposes of-
 - (a) facilitating the obtaining of evidence and information for the purpose of securing compliance with or detecting evasion of this Ordinance;
 - (b) facilitating the obtaining of evidence in relation to the commission of an offence under this Ordinance; and
 - (c) enabling property suspected of being terrorist property to be seized and detained while its origin or derivation is further investigated or consideration is given to the institution (whether in the HKSAR or elsewhere) of proceedings-
 - (i) against any person in relation to an offence with which the property is connected; or
 - (ii) which may result in the property being specified in a notice under section 6(1) or which may result in the forfeiture or other confiscation of the property.
- (3) The Secretary may make regulations for the purposes of authorizing public officers to perform functions or exercise powers under regulations made under this section.
- (4) The Secretary may make regulations for the purposes of providing compensation to be paid, on grounds specified in the regulations, to a person who has suffered loss in consequence of any act done or omission made under regulations made under this section in respect of any property.
- (5) Regulations made under this section may provide for applications to be made to, and orders to be made by, a magistrate or court for any purposes mentioned in subsection (1), (2) or (4).

- (6) Regulations made under this section may-
- (a) prescribe offences in respect of contraventions of the regulations (including contravention of any orders made under the regulations); and
 - (b) provide for the imposition in respect of any such offence of-
 - (i) on conviction on indictment, a fine and imprisonment for not more than 7 years;
 - (ii) on summary conviction, a fine at not more than level 6 and imprisonment for not more than 1 year.
- (7) Regulations made under this section shall be subject to the approval of the Legislative Council.

Section 20 - Procedure

- (1) Provision may be made by rules of court-
 - (a) with respect to applications under-
 - (i) section 5;
 - (ii) section 13;
 - (iii) section 17;
 - (iv) section 18; or
 - (v) regulations made under section 19;
 - (b) without limiting the generality of paragraph (a), with respect to the circumstances in which applications mentioned in that paragraph shall be made ex parte;
 - (c) without limiting the generality of paragraph (a), with respect to expediting, on grounds specified in the rules, the hearing of applications mentioned in that paragraph;
 - (d) with respect to the division, conversion or disposal of property for the purposes of satisfying an order under section 13(1) to which the property is subject where-
 - (i) section 13(2) is applicable; and
 - (ii) the property is not readily divisible for those purposes;
 - (e) without limiting the generality of paragraph (a), prescribing interests for the purposes of the definition of "prescribed interest";
 - (f) generally with respect to the procedure under this Ordinance before any court.
- (2) Subsection (1) is without prejudice to the generality of any existing power to make rules.
- (3) Rules made under this section may-
 - (a) state that they supersede, in whole or in part, any rules that apply to procedure under this Ordinance by virtue of section 13(5);
 - (b) for the purposes of reflecting a supersession mentioned in paragraph (a), amend section 13(5).

ECONOMIC IMPLICATIONS

The measures as proposed in the Bill will reflect Hong Kong's vigilance in cooperating with the international community for suppressing terrorism and terrorism financing. This will help uphold Hong Kong's reputation as an international financial centre. There may be some compliance costs for the financial institutions and other companies involved. This is unavoidable in the fight against terrorism, yet reckoned as unlikely to be appreciable in overall terms.

FINANCIAL AND CIVIL SERVICE IMPLICATIONS

2. Among the proposed measures, only the making of freezing notices on non-fund terrorist property under clause 5 and the investigation of the offences under clause 7 may generate additional workload for Security Bureau and the law enforcement agencies. We anticipate that such additional workload is unlikely to be substantial and Security Bureau will be able to absorb from within its existing resources.

3. The new section 18(2A) under clause 14 provides for compensation payable by the Government to aggrieved persons when property seized under the new section 12G is not frozen or forfeited, or in relation to which no proceedings are instituted. In this respect, we anticipate that the power to seize under section 12G would only be infrequently exercised and are unable to make a firm estimate of the compensation amount until and unless a claim is made. However, such compensation payable under section 18(2A) should not pose significant financial implications to the Government and will be absorbed from within existing resources.