

Appendix 2A

Terrorism and Related Offences

The Protection of Constitutional Democracy against Terrorism and Related Activities Act brings into South African law a slew of international treaties and agreements (See Tables 2A.1 and 2A.2). It is astonishing that some treaties were assented to over 30 years ago but are only now being incorporated into domestic law, a requirement often contained in a clause in such agreements.

Convention	Signed at	Assented to on
The Convention on Offences and Certain Other Acts Committed on Board Aircraft	Tokyo, September 14, 1963	May 26, 1972
Convention for the Suppression of Unlawful Seizure of Aircraft	The Hague, December 16, 1972	May 30, 1972
Convention for the Suppression for Unlawful Acts against the Safety of Civil Aviation,	Montréal, September 23, 1971	May 30, 1972
Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents	UN General Assembly, December 14, 1973	September 23, 2003
International Convention against the Taking of Hostages	UN General Assembly, December 17, 1979	September 23, 2003
Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation	Montréal February 24, 1988	September 21, 1998
Convention on the Marking of Plastic Explosives for the Purposes of Detection	Montréal, March 1, 1991	December 1, 1999
International Convention for the Suppression of Terrorist Bombings	UN General Assembly, December 15, 1997	May 1, 2003
International Convention on the Suppression of the Financing of Terrorism	UN General Assembly, December 9, 1999	May 1, 2003
Convention on the Prevention and Combating of Terrorism	OAU, Algiers, July 14, 1999	July 14, 1999

Table 2A.1: Conventions South Africa has acceded to

Convention	Signed at
Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation	Rome, March 10, 1998
Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms on the Continental Shelf	Rome, March 10, 1998
Convention on the Physical Protection of Nuclear Material	Vienna October 26, 1979, signed

Table 2A.2: Conventions South Africa must still ratify

Definitions

(1)

“Convention offence” means –

- (a) an offence, created in fulfillment of the Republic’s international obligations in terms of instruments dealing with terrorist and related activities, referred to in Part 2 of Chapter 2;
- (b) an offence referred to in section 56(1)(h) of the Nuclear Energy Act, 1999 (Act No. 46 of 1999); or
- (c) an offence referred to in section 2(1) or (2) of the Civil Aviation Offences Act. (Act No. 10 of 1972)

“engages in a terrorist activity” with reference to sections 2 and 3, includes-

- (a) the commission, performance or carrying out of
- (b) the facilitation of, participation or assistance in, or contribution to the commission, performance or carrying out of
- (c) the performance of an act in preparation for or planning of; or
- (d) instructing, directly or indirectly, the-
 - (i) commission, performance, carrying out of;
 - (ii) facilitation of, participation or assistance in, or contribution to the commission, performance or carrying out of;
 - (iii) performance of an act in preparation for or planning of,a terrorist activity...

“explosive or other lethal device”, with reference to sections 5 and 13, means –

- (a) an explosive or incendiary weapon or device which is designed or manufactured, or has the capability, to cause death, serious bodily injury or material damage;
- (b) a weapon or device which is designed or manufactured, or has the capability, to cause death, serious bodily injury or material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material; or
- (c) any weapon of mass destruction, as defined in section 1 of the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993);

“internationally protected person”, with reference to section 8, means-

- (a) a Head of State, including any member of a collegial body performing the functions of a Head of State under the constitution of the State concerned, a Head of Government or a Minister for Foreign Affairs, whenever any such person is in the Republic, as well as members of his or her family accompanying him or her; or
- (b) any representative or official of a State or any official or other agent of an international organisation or intergovernmental organisation or of an intergovernmental character who, at the time when and in the place where a crime against him or her or his or her official premises, his or her private accommodation or his or her means of transport is committed, is entitled, pursuant to international law to special protection from any attack on his or her person, freedom or dignity, as well as members of his or her family forming part of his or her household;

“terrorist activity”, with reference to this section and sections 2, 3 and 17(2), means –

- (a) any act committed in or outside the Republic, which-
 - (i) involves the systematic, repeated or arbitrary use of violence by any means or method;

(ii) involves the systematic, repeated or arbitrary release into the environment or any part of it or distributing or exposing the public or any part of it to-

(aa) any dangerous, hazardous, radioactive or harmful substance or organism;

(bb) any toxic chemical; or

(cc) any microbial or other biological agent or toxin;

(iii) endangers the life, or violates the physical integrity or physical freedom of, or causes serious bodily injury to or the death of, any person, or any number of persons;

(iv) causes serious risk to the health or safety of the public or any segment of the public;

(v) causes the destruction of or substantial damage to any property, natural resource, or the environmental or cultural heritage, whether public or private;

(vi) is designed or calculated to cause serious interference with or serious disruption of an essential service, facility or system, or the delivery of any such service, facility or system, whether public or private, including, but not limited to –

(aa) a system used for, or by, an electronic system, including an information system;

(bb) a telecommunication service or system;

(cc) a banking or financial service or financial system;

(dd) a system used for the delivery of essential government services;

(ee) a system used for, or by, an essential public utility or transport provider;

(ff) an essential infrastructure facility; or

(gg) any essential emergency services, such as police, medical or civil defence services;

(vii) causes any major economic loss or extensive destabilisation of an economic system or substantial devastation of the national economy of a country; or

(viii) creates a serious public emergency situation or a general insurrection in the Republic,

whether the harm contemplated in paragraphs (a)(i) to (vii) is or may be suffered in or outside the Republic, and whether the activity referred to in subparagraphs (ii) to (viii) was committed by way of any means or method; and

(b) which is intended, or by its nature and context, can reasonably be regarded as being intended, in whole or in part, directly or indirectly, to –

(i) threaten the unity and territorial integrity of the Republic;

(ii) intimidate, or to induce or cause feelings of insecurity within, the public, or a segment of the public, with regard to its security, including its economic security, or to induce, cause or spread feelings of terror, fear or panic in a civilian population; or

(iii) unduly compel, intimidate, force, coerce, induce or cause a person, a government, the general public or a segment of the public, or a domestic or an international organisation or body or intergovernmental organisation or body, to do or to abstain or refrain from doing any act, or to adopt or abandon a particular standpoint, or to act in accordance with certain principles, whether the public or the person, government, body, or organisation or institution referred to in subparagraphs (ii) or (iii), as the case may be, is inside or outside the Republic; and

(c) which is committed, directly or indirectly, in whole or in part, for the purpose of the advancement of an individual or collective political, religious, ideological or philosophical motive,

objective, cause or undertaking;

“terrorist and related activities” means any act or activity related to or associated or connected with the commission of the offence of terrorism, or an offence associated or connected with a terrorist activity, or a Convention offence, or an offence referred to in sections 11 to 14.

(2) For purposes of this Act, **“act”** includes **“omission”**.

(3) For the purposes of paragraph (o)(vi) and (vii) of the definition of **“terrorist activity”**, any act which is committed in pursuance of any advocacy, protest, dissent or industrial action and which does not intend the harm contemplated in paragraph (o)(i) to (v) of that definition, shall not be regarded as a terrorist activity within the meaning of that definition.

(4) Notwithstanding any provision of this Act or any other law, any act committed during a struggle waged by peoples, including any action during an armed struggle, in the exercise or furtherance of their legitimate right to national liberation, self-determination and independence against colonialism, or occupation or aggression or domination by alien or foreign forces, in accordance with the principles of international law, especially international humanitarian law, including the purposes and principles of the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the said Charter, shall not, for any reason, including for purposes of prosecution or extradition, be considered as a terrorist activity, as defined in subsection (1).

(5) Notwithstanding any provision in any other law, and subject to subsection (4), a political, philosophical, ideological, racial, ethnic, religious or any similar motive, shall not be considered for any reason, including for purposes of prosecution or extradition, to be a justifiable defense in respect of an offence of which the definition of terrorist activity forms an integral part.

(6) For the purposes of this Act a person has knowledge of a fact if-

(a) the person has actual knowledge of that fact; or

(b) the court is satisfied that-

(i) the person believes that there is a reasonable possibility of the existence of that fact;
and

(ii) he or she fails to obtain information to confirm the existence of that fact.

(7) For the purposes of this Act a person ought reasonably to have known or suspected a fact if the conclusions that he or she ought to have reached, are those which would have been reached by a reasonably diligent and vigilant person having both-

(a) the general knowledge, skill, training and experience that may reasonably be expected of a person in his or her position; and

(b) the general knowledge, skill, training and experience that he or she in fact has.

Table 2A.3: Some definitions from the Act.