



Security Council

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Letter dated 14 March 2007 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Tuvalu submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(Signed) Ricardo Alberto **Arias**
Chairman

Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism



Annex

Note verbale dated 13 March 2007 from the Permanent Mission of Tuvalu to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of Tuvalu to the United Nations presents its compliments to the Chairman of the Counter-Terrorism Committee and, with reference to the note verbale from the Chairman dated 4 May 2005 concerning a follow-up report from the Government of Tuvalu, has the honour to submit a report on the actions that the Government of Tuvalu has taken to implement resolution 1373 (2001) (see enclosure).

Enclosure

Report of Tuvalu on actions taken by the Government to implement Security Council resolution 1373 (2001)

Introduction

The government of Tuvalu presents this second report on its implementation of Security Council resolution 1373 (2001).

The government of Tuvalu considers, for a variety of reasons, that there is currently a low risk of terrorist related activity occurring within Tuvalu. However, it recognises the need for all countries, irrespective of the level of risk, to develop and maintain effective measures to combat terrorism wherever it may occur. Only in this way will individual countries, regions and the international community be safe from terrorism.

Accordingly, the government is committed to and continues to support, to the greatest extent possible, regional and international initiatives to combat terrorism and related criminal activities.

Legislative measures

At a legislative level, Tuvalu has a comprehensive *Penal Code* (revised in 1978) that criminalises most generally recognised criminal acts. However, it does not currently have specific counter terrorism legislation.

Recognising this, the government is currently considering whether it will adopt, with any necessary modifications, counter terrorism and trans-national crime legislation developed under the auspices of the Pacific Islands Forum Secretariat.

This legislation contains offences implementing obligations under the *1999 Terrorist Financing Convention*, including offences of terrorist financing, provision of property or services to terrorists, harbouring of persons committing terrorist acts, provision of weapons to terrorists, and recruitment or participation in terrorist groups. It also contains offences and provisions to implement the following Conventions and Protocols:

1963 Tokyo Convention

1970 Hague Convention (Hijacking)

1971 Montreal Convention (Violence at Airports Protocol)

1973 Internationally Protected Persons Convention

1979 Hostages Convention

1979 Nuclear Material Convention

1988 Montreal Convention (Unlawful Acts Against Civil Aviation)

1988 Maritime Safety Convention

1988 Fixed Platforms Protocol

1991 Plastic Explosives Convention

1997 Terrorist Bombing Convention

2001 Trans national Organised Crime Convention and related Protocols (People Smuggling) and (Migrant Trafficking)

Notwithstanding the lack of specific counter-terrorism legislation Tuvalu's *Penal Code* criminalises a range of acts that may be carried out by terrorists, including (but not limited to) murder, attempted murder, kidnapping, assaults, and threats of violence. The maximum penalty for the most serious of these offences is imprisonment for life. The Code also imposes criminal liability on principal offenders, secondary parties and for attempted offences and conspiracies. It confers territorial jurisdiction on courts in Tuvalu for criminal offences. The courts in Tuvalu do not have extra-territorial jurisdiction for criminal offences of any sort.

The *Hostages Act* (1984) makes it an offence to detain or threaten any person for the purpose of compelling any state, international or governmental organization to act or refrain from acting in a particular manner. The maximum penalty for the offence is life imprisonment.

The *Arms and Ammunition Act* (1964) regulates the importation, exportation, manufacture, possession and use of firearms within Tuvalu. The Act restricts these activities to persons authorised by government issued licences and provides Police with powers of search and arrest when investigating suspected offences. The maximum penalty for offences under the Act is imprisonment for 10 years.

The *Explosives Act* (1927) regulates the sale, storage, possession or use of explosives within Tuvalu. Only persons authorised under licences issued by the Commissioner of Police may engage in these activities with explosives. The maximum penalty for offences under the Act is a fine of \$100 or imprisonment for 6 months. The Act also provides Police with powers of entry, search and arrest for suspected offences.

The combined effect of this legislation is that many acts of terrorism, or attempts and conspiracies to commit such acts against persons or property would constitute serious criminal offences under Tuvalu's domestic law.

In 2005, the government passed three significant pieces of legislation. These were the *Extradition Act*, the *Proceeds of Crime Act* and the *Mutual Assistance in Criminal Matters Act*.

The *Extradition Act*

- Establishes a range of criminal offences in which requests for surrender may be made;
- Establishes regimes by which requests for surrender may be made to competent authorities in Tuvalu;
- Clarifies the grounds on which requests for surrender may be declined.

The *Proceeds of Crime Act*

- Creates an offence of money laundering;
- Imposes obligations on financial institutions and businesses to identify and report suspicious transactions, to conduct customer identification, and to keep records and operate internal controls;
- Establishes a Transaction Tracking Unit (TTU) and provides investigative powers;
- Creates a regime for the restraint and confiscation of criminal assets, including those relevant to international criminal investigations.

The *Mutual Assistance in Criminal Matters Act*

- Establishes a range of criminal offences in which requests for mutual legal assistance may be made;
- Establishes the procedures by which requests for mutual legal assistance may be considered by competent authorities in Tuvalu;
- Clarifies the grounds on which requests for assistance must or may be declined.

These Acts significantly enhance Tuvalu's ability to provide timely and effective assistance to other countries seeking assistance in the investigation and prosecution of terrorist related offences. To-date, authorities in Tuvalu have not received any requests for assistance from other countries related to the investigation of suspected terrorist activities.

Notwithstanding this existing coverage for terrorist related activity the government recognises the need to provide more comprehensive coverage for such acts through specific counter terrorism legislation. It therefore places a high priority on passing appropriate counter terrorism legislation.

Operational measures

The Police is the government agency primarily responsible for issues related to law enforcement, security and defence in Tuvalu. In addition, the Commissioner of Police is responsible for prisons and immigration. The Commissioner reports to the Ministers responsible for these portfolios.

In addition to Police, the Ministry of Foreign Affairs, the Ministry of Finance, Customs and Immigration agencies play important roles in the government's counter-terrorism activities.

Inter-agency co-ordination of counter terrorism measures is relatively easy due to the small number of agencies involved (resulting largely from the aggregation of responsibility for several key functions to the Commissioner of Police). Agencies interact closely on a wide range of operational issues. A *Boarding Party Committee*, chaired by the Commissioner of Police and comprised of officials from several agencies with interests in border security issues meets each month. This allows for the exchange of information and discussion on issues of common interest relating to border surveillance and investigations and can be utilised as a regular inter-agency forum on counter-terrorism issues.

Due to its geographic location and composition Tuvalu's greatest potential security risk lies in its expansive maritime zone. Tuvalu operates a patrol presence in this zone and currently receives assistance from the Australian government on maritime surveillance operations. An Australian maritime surveillance adviser, based in Tuvalu and funded by the Australian government is providing valuable technical assistance to authorities on the development and maintenance of an effective maritime surveillance service. The large maritime zone and resource constraints present a significant challenge to the government but resources are applied in a manner that provides the greatest efficiency and results.

The government is committed to the ongoing development of an enhanced operational counter terrorism capability within government agencies. This includes its border security systems, intelligence gathering and coordination capabilities, as well as participation in regional security training exercises. However, considerable technical assistance from donors is required to achieve this outcome.

Offences specific to terrorism

As indicated, the government is assessing whether to adopt, with necessary modifications, counter terrorism and trans-national crime legislation developed under the auspices of the Pacific Islands Forum Secretariat.

In addition to passing specific counter-terrorism legislation, Tuvalu requires considerable technical assistance to implement effective operational mechanisms for the detection, reporting, investigation and prosecution of terrorist financing and other terrorist related activities.

Executive Action

The Prime Minister, along with Ministers responsible for portfolios related to border security place a high priority on issues pertaining to security. Ministers and senior officials represent Tuvalu at key regional and international meetings related to security, particularly the Pacific Islands Forum and its security related committees.

Operative paragraph 1

The government considers that the small size and domestically focused nature of Tuvalu's financial sector minimises the risk of money laundering or terrorist financing occurring within the country. This, together with associated obligations imposed on financial institutions and businesses is aimed at preventing money-laundering activity.

Tuvalu's financial sector is very small, being limited to two banks (both government owned), a National Provident Fund, an insurance company and a single money transfer operator. The sector is regulated and supervised by the Ministry of Finance.

With the enactment of the *POCA* Tuvalu has criminalised and imposed very heavy penalties for money-laundering offences.

The offence of money laundering is committed when a person engages in a transaction that involves money, or other property, that the person knows, or ought reasonably to know, to be proceeds of crime; or where a person receives, possesses, conceals, disposes of or brings into Tuvalu money, or other property, that the person knows, or ought reasonably to know, to be proceeds of crime. The offence is punishable by fines of up to \$120,000 (for natural persons) or imprisonment for up to 20 years, or both.

The term "*proceeds of crime*" is defined as property derived or realised directly or indirectly from a "*serious offence*" that include any offences against a law of Tuvalu, or offences in other countries that if committed in Tuvalu would constitute an offence punishable by a maximum penalty of imprisonment for 12 months or longer.

Under *POCA* a *Transaction Tracking Unit (TTU)* was established within Police with powers of entry, search and seizure to obtain evidence relevant to a suspected money laundering offence.

The Unit is empowered to monitor and enforce obligations imposed on regulated institutions under the Act however it does not investigate suspected money laundering offences. This function remains the responsibility of the Police.

While the TTU has been established by Statute it requires considerable technical assistance in order to develop the operational capability required to meet the international standards for a functional Financial Intelligence Unit (FIU).

The *POCA* imposes obligations on financial institutions to identify and report suspicious transactions, verify the identity of customers, keep and maintain transaction and customer records, and operate internal controls. A failure to comply with these requirements constitutes an offence punishable by fines and imprisonment.

The Ministry of Foreign Affairs receives updated lists of entities or associated persons designated by the 1267 Committee. These updated lists are available to Police, the Ministry of Finance, Customs, and Immigration Services as well as financial institutions and businesses regulated under the *POCA*. Regulated institutions are expected to use the lists in identifying suspicious transactions and applying other internal controls required by the *POCA*. Any assets (including funds) suspected of being proceeds of crime can be restrained pending confiscation under that Act.

Subparagraph (a) – What measures if any have been taken to prevent and suppress the financing of terrorist acts in addition to those listed in your responses to questions on 1(b) to (d)?

The Police exchange intelligence information with the Suva based Pacific Trans-national Crime Coordination Centre (PTCCC), a regional intelligence centre. In addition to this, the Police have access to international intelligence channels such as Interpol through its relationship with the Australian Federal Police (AFP).

Subparagraph (b) - What are the offences and penalties in your country with respect to the activities listed in this subparagraph?

Currently, Tuvalu does not have specific terrorist financing offences. The specific counter terrorism legislation currently being considered by the government would significantly enhance the implementation of the terrorist financing aspects of relevant UN Security Council Resolutions and UN Counter terrorism Conventions.

Subparagraph (c) – What legislation and procedures exist for freezing accounts and assets at banks and financial institutions? It would be helpful if States supplied examples of any relevant action taken.

To-date, no assets of suspected terrorists have been located within Tuvalu.

The draft counter-terrorism legislation under consideration by the government includes obligations related to terrorist-financing reporting and freezing of assets. The adoption of this legislation will greatly enhance Tuvalu's level of implementation and compliance with the relevant UN Security Council resolutions and counter terrorism Conventions.

Subparagraph (d) – What measures exist to prohibit the activities listed in this subparagraph?

To-date authorities in Tuvalu have not identified any instances of suspected terrorist financing. Given the small size and localised nature of Tuvalu's financial sector the government considers there to be a very low risk of terrorist financing occurring in the country. However, it is committed to ensuring that appropriate mechanisms are developed and put in place to prevent such activity occurring.

Operative Paragraph 2

Recruitment to and participation in terrorist groups

The draft legislation under consideration by the government contains offences relating to recruitment of, or participation in, terrorist groups. The passage of this or similar legislation would enhance Tuvalu's implementation of its obligations under these aspects of the relevant Security Council Resolutions and international arrangements.

Supply of weapons to terrorists

To-date no cases have been identified that have required an investigation or prosecution of persons for these offences in the terrorism context.

As indicated, the *Arms and Ammunition Act* prohibits dealing in arms or ammunition, except where a licence is granted by the Commissioner of Police. The possession, carriage or use of arms or ammunition or explosives is also prohibited unless authorised by permit. Maximum penalties for offences under the Act are imprisonment for up to 10 years.

The Police have powers of search and seizure when investigating alleged offences relating to these items.

The *Explosives Act* makes it an offence to supply, deal in, possess, or use explosives unless authorised under permit issued by the Commissioner of Police. Offences are punishable by fines of up to \$100 or imprisonment for up to 6 months.

Subparagraph (b) – What other steps are being taken to prevent the commission of terrorist acts and, in particular, what early warning mechanisms exist to allow exchange of information with other States?

As stated, Tuvalu is an active member of the Pacific regional intelligence network. Its authorities will, whenever appropriate, pass on information of any suspected terrorist activity that may be relevant to the security of other countries.

Subparagraph (c) – What legislation or procedures exist for denying safe haven to terrorists, such as laws for excluding or expelling the types of individuals referred to in this subparagraph? It would be useful if States supplied examples of any relevant action taken.

The government of Tuvalu considers there is a low risk of terrorists or associated persons entering Tuvalu. Reasons for this include:

- Tuvalu's remote geographical location and limited commercial air and sea links from countries with closely monitored borders;
- Tuvalu's low population, largely comprised of its own citizens;
- The close relationship between Tuvalu's Police and border agencies and their counterparts in the Pacific region.

These factors operate to make Tuvalu an undesirable location for terrorists to undertake terrorist related activity. However, in the event suspected terrorists arrived at the border seeking entry into Tuvalu, authorities would, in addition to exchanging necessary information with relevant international agencies, take action under the *Immigration Act* to detain or remove such persons.

Under the *Immigration Act* the Minister of Immigration has a broad discretion to deny entry to, or removal of persons in Tuvalu classified by them as "prohibited immigrants". The Minister could exercise this power to classify known or suspected terrorists as prohibited immigrants if they may pose a danger to the peace, order and security of the country.

In addition, the *Extradition Act* provides a mechanism by which persons suspected of terrorist attacks could be sought by, or from Tuvalu.

Subparagraph (d) – What legislation or procedures exist to prevent terrorists acting from your territory against other States or citizens? It would be helpful if States supplied examples of any relevant action taken.

To date no terrorist acts have occurred in Tuvalu nor have any known terrorists been located in the country. If persons were identified in the country that presented a threat to the security of Tuvalu or any other country, authorities would consult with counterparts in other countries to determine an appropriate response. This may include extradition or removal of the person from Tuvalu.

Subparagraph (e) – What steps have been taken to establish terrorist acts as serious criminal offences and to ensure that the punishment reflects the seriousness of such terrorist acts? Please supply examples of any convictions obtained and the sentence given.

Under the *Penal Code* serious criminal offences carried out by terrorists in Tuvalu (in whole or part) would be capable of being prosecuted and upon conviction carry heavy penalties. The draft legislation currently under consideration by the government would extend the range of terrorist related acts that could be subject to prosecution.

Subparagraph (f) – What procedures and mechanisms are in place to assist other States? Please provide any available details of how these have been used in practice.

To-date, Tuvalu has not received any requests from another country for extradition or mutual assistance in a criminal investigation. However, the passage of the *Extradition Act*, *Mutual Assistance in Criminal Matters Act* and the *Proceeds of Crime Act* means Tuvalu now has in place a comprehensive framework for mutual cooperation in criminal investigations, including extradition of suspected offenders.

Subparagraph (g) – How do border controls in your country prevent the movement of terrorists? How do your procedures for issuance of identity papers and travel documents support this? What measures exist to prevent their forgery etc.?

All persons who are non-citizens of Tuvalu require a visa to enter the country. Visas are issued on arrival by the Immigration Service and are valid for a period of one month, unless extended.

Currently, there is no electronic border security system in operation to provide real time information to border officials on “persons of interest” arriving at the border, including their status under international “watch lists”. Processing of passengers is undertaken manually by immigration officials at the time of entry. In order to take any necessary action in respect of such persons (i.e. suspected terrorists or criminals) authorities in Tuvalu are primarily reliant on prior notification of such persons by their counterparts in other countries.

Immigration officials in Tuvalu share intelligence information with the Suva-based Pacific Immigration Directors Conference (PIDC), and have access to other sources (e.g. Interpol, the Pacific Trans-national Crime Co-ordination Centre) through linkages between the Police and Australian Federal Police.

The *Immigration Act* requires commercial air and sea operators to provide authorities with passenger manifestos on arrival at the border. Currently, there is no provision for electronic Advanced Passenger Information (API) or Advanced Passenger Processing (APP) systems in Tuvalu. The required passenger information is provided manually by carriers to authorities for processing at the time of arrival. Immigration officials are working with regional partners on the possible development of protocols with airline operators to provide passenger lists prior to arrival by e-mail or facsimile.

The Act provides for denial of entry for, or removal of “prohibited immigrants”. Grounds on which authorities may deny entry to, or remove such persons include belief that they present a risk to the national security of the country.

It is an offence under the Act, punishable by imprisonment for up to one year for a person to make false or misleading representations or statements for the purpose of obtaining a passport.

The *Penal Code* also makes it a criminal offence, punishable by imprisonment to forge, alter, or fraudulently use passports or identification documents or to conspire or attempt those acts.

Officials from the Immigration Department are currently undertaking a project, funded by Australia to tighten up controls and procedures for the issuance of passports. As a result of this work, expected to be completed by mid 2007 Tuvalu’s processes for issuance of passports will meet stringent ICAO standards and will substantially reduce the risk of misuse of these important documents.

Operative Paragraph 3

Subparagraph (a) – What steps have been taken to intensify and accelerate the exchange of operational information in the areas indicated in this subparagraph?

Tuvalu continues to contribute to regional intelligence networks and to develop to the greatest extent possible its internal intelligence capability.

Subparagraph (b) – What steps have been taken to exchange information and cooperate in the areas indicated in this subparagraph?

To-date authorities in Tuvalu have not received any requests from other countries for assistance on administrative and judicial matters. However, the enactment in 2005 of the *Mutual Assistance in Criminal Matters Act*, *Proceeds of Crime Act* and *Extradition Act* means Tuvalu can respond to any such requests in a timely and effective manner.

Subparagraph (c) – What steps have been taken to cooperate in the areas indicated in this subparagraph?

In addition to continuing development of more robust border controls combined with a comprehensive legislative framework operate to prevent suppress terrorist attacks and to take action against perpetrators)

Subparagraph (d) – What are your Government’s intentions regarding signing and/or ratifying the conventions and protocols referred to in this subparagraph?

Tuvalu was a colony of the United Kingdom until 1975 and was granted independence in 1978. Prior to 1975 the United Kingdom adopted many treaties on its own behalf and territories over which it had sovereignty, including Tuvalu.

On 2 December 2005 Tuvalu deposited an Instrument of Ratification in respect of the 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports. The government is considering accession to the remaining counter-terrorism conventions and arrangements relative to its other domestic and international priorities.

Subparagraph (e) – Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this subparagraph.

See subparagraph (d) above.

Subparagraph (f) – What legislation, procedures and mechanisms are in place for ensuring asylum seekers have not been involved in terrorist activity before granting refugee status? Please supply examples of any relevant cases.

To date there have been no cases where persons entering Tuvalu have claimed refugee status. The government considers the risk of this occurring low because of Tuvalu’s remote location, the small number of commercial air and shipping services, and high level of border controls that are applied in the countries from which these services originate.

Subparagraph (g) – What procedures are in place to prevent the abuse of refugee status by terrorists? Please provide details of legislation and/or administrative procedures which prevent claims of political motivation being recognised as grounds for refusing requests for the extradition of alleged terrorists. Please supply examples of any relevant cases.

While the risk of terrorists claiming refugee status in Tuvalu is considered low, mechanisms do exist that permit authorities to make appropriate inquiries to confirm the bona fides of the claimant. In addition, where it is considered that claimants present a risk to Tuvalu’s security the Minister of Immigration would be able to classify them as “prohibited immigrants” under the Immigration Act. This would empower the Principal Immigration Officer to deny them entry into Tuvalu or to facilitate their removal from the country.

The *Extradition Act* governs requests for extradition of persons to and from Tuvalu.

Under s 5 of the Act an offence is an extradition offence if it is an offence against a law of the requesting country for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of 1 year or more; and the conduct that constitutes the offence, if committed in Tuvalu, would constitute an offence (however described) in Tuvalu for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of 1 year or more.

The Act contains procedures for extradition based on the nature of the relationship between Tuvalu and the requesting or requested country. These provide for requests between Tuvalu and countries with which it has extradition treaties or that are Commonwealth countries, or are “comity countries”.

The Act sets out mandatory grounds for refusal of requests. In addition, discretionary grounds include a belief that the offences for which the person is sought are political in character or that requests for surrender are politically motivated. However, the Act expressly excludes alleged terrorist acts from offences of a “political character”.

Operative paragraph 4

Tuvalu is not a signatory to the United Nations Convention Against Trans-national Organised Crime and related Protocols relating to the Smuggling of Migrants and Trafficking in Persons.

The government is considering whether to adopt the Convention and Protocols relative to other domestic and international priorities,

The government considers that there is a low risk that acts of migrant smuggling or people trafficking would occur in Tuvalu given its relatively remote location, small number of commercial air services and the high level of border controls in the countries from which flights originate. Similar considerations apply to sea bound criminal activity of this sort. In so far as situations occur in Tuvalu that involve persons being detained against their will or in circumstances involving coercion or duress these would be covered by the offence of kidnapping in the *Penal Code*. The maximum penalty for the offence is 15 years imprisonment.

The Code makes it an offence to conspire or attempt to commit the substantive offence and extends liability to secondary parties as well as principal offenders.

Conclusion

The government of Tuvalu places a high priority on meeting its obligations under Security Council resolution 1373 (2001) and on supporting and contributing, to the greatest extent possible, the ongoing international campaign against terrorism and associated criminal activity. The government will actively work with relevant organizations and potential donors to enhance its legislative frameworks and operational mechanisms to ensure the implementation of all relevant Security Council requirements.
