

SAMOA

Country Report: Anti-terrorism laws & policing

1. Country summary

- a. **Government:** Parliamentary Republic
- b. **Population:** 185 000
- c. **Size:** 2 831 square km
- d. **Region:** Pacific


e. General

At the beginning of the 20th century, Samoa was divided between the United States and Germany, with Britain having given up its claims in exchange for other territories in the Treaty of Berlin. In 1914, New-Zealand troops seized control from the German Authorities following a British request. Until 1962, New Zealand maintained control over Samoa under a mandate from the United Nations. The New Zealand administration was criticised for its inability to rule correctly in the interest of the island (for example, it is reported that one fifth of the population died due to New Zealand negligence in enforcing quarantine). In the 1920s, western Samoans began a peaceful campaign to protest against the New Zealand administration. During a peaceful demonstration in 1929, police fired randomly into the crowd. The movement grew, remaining non-violent, until Western Samoa was finally granted independence in 1962.

The Constitution was amended in 1997 (with the approval of the UN) and the name of the Country changed from Western Samoa to Samoa, which led to protests in the US territories of American Samoa, which remains an American territory. Today, Samoa is relatively stable, notwithstanding allegations of corruption in the political process (for example bribery allegations were made in the 2001 elections).

Anti-terrorism measures in the Pacific Islands

Since 11 September 2001, the Pacific Islands have been under pressure to comply with international anti-terrorism conventions. The demands come principally from Australia, which considers the Pacific Islands to be at risk of being used by terrorists as transit points to other countries including Australia. Prior to 2001, Australia had already been involved in policy and legislative decisions in the Pacific Islands. The Australian Attorney General's Department and the Pacific Islands Forum (PIF) had agreed on the 1992 Honiara Declaration on Law Enforcement Cooperation, which requires the Pacific Islands "to have in place policy and legislation to combat transnational organised crime".¹ The Nasonini Declaration on Regional Security followed the Honiara Declaration in 2002, with an emphasis on counter-terrorism and the need to conform to the United Nations Transnational Organised Crime Convention and Protocols. Australia already has Memoranda of Understanding with the Fiji Islands and Papua New Guinea although neither country has anti-terrorism legislation in place.



The PIF has also adopted a Pacific Plan, the “Kaliboro Roadmap”.ⁱⁱ The Pacific Plan has four pillars aimed at improving economic growth, sustainable development, good governance, and security for the Pacific through regionalism. The fourth pillar on increased security addresses anti-terrorism.

Most of the Pacific Islands do not have any specific anti-terrorism legislation. However, new legislation has been drafted to secure borders, particularly around maritime and aviation points. Therefore the impact of anti-terrorism is most evident on the policing of border control, customs, immigration, money laundering, port control and airport security. Additionally, there has been a crackdown on transnational crime, an issue that was already prevalent long before 2001. Although security has visibly increased, finding examples of the impact of relevant legislation on policing in the general public is difficult due to the sparse use of the term terrorism in that context. In fact, Pacific Islanders prefer not to use the term loosely and there is a popular opinion that terrorism is not a fundamental issue to be addressed in the Pacific Islands. One opinion, expressed by Imrana Jalal of Pacific Regional Rights Resource Team (RRRT), is that the Pacific does “not wish to be drawn into America’s war on terrorism”.ⁱⁱⁱ

Critics of the Pacific Plan have expressed distrust over the “disproportionate concern about national security, particularly Australian national security. Since [Pacific Island Countries] are not yet to be overly concerned with external threats, there is an argument that security in this context ought to be more about human security... rather than focused only on national security”.^{iv} The Pacific Islands have existing internal issues to attend to such as economic, environmental, social and political matters. Many regard these issues to be more important to the region than issues of terrorism.

Like other countries in the Pacific Islands, Samoa has increased border security and there have been technological developments in order to improve security as well as the strengthening of policing, all of which have been supported by Australia.

2. Relevant legislation

Prevention and Suppression of Terrorism Act 2002 (PSTA)

International Banking Act 2005

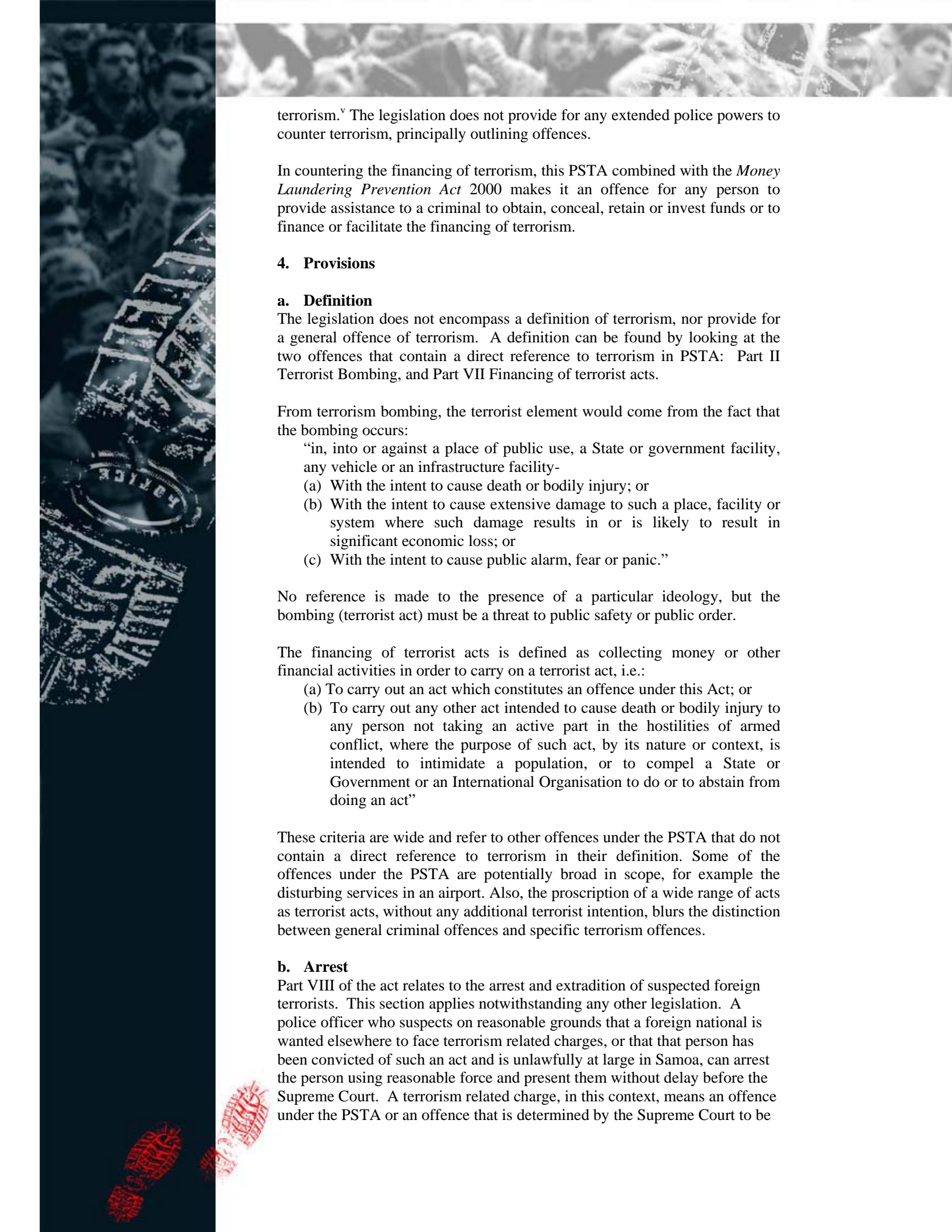
Money Laundering Prevention Act 2000

Money Laundering Prevention Amendment Act 2000

Police Powers Bill – the passing of this Bill has been opposed by many NGOs and has been indefinitely postponed by the Government. An NGO platform, along with the national council of churches, has objected to the provision of arming the police and allowing a possible foreign military intervention.

3. Law summary

The PSTA states in its preamble that the act was passed to give effect to Samoa’s international treaty obligations. Until now Samoa has not faced any



terrorism.^v The legislation does not provide for any extended police powers to counter terrorism, principally outlining offences.

In countering the financing of terrorism, this PSTA combined with the *Money Laundering Prevention Act* 2000 makes it an offence for any person to provide assistance to a criminal to obtain, conceal, retain or invest funds or to finance or facilitate the financing of terrorism.

4. Provisions

a. Definition

The legislation does not encompass a definition of terrorism, nor provide for a general offence of terrorism. A definition can be found by looking at the two offences that contain a direct reference to terrorism in PSTA: Part II Terrorist Bombing, and Part VII Financing of terrorist acts.

From terrorism bombing, the terrorist element would come from the fact that the bombing occurs:

- “in, into or against a place of public use, a State or government facility, any vehicle or an infrastructure facility-
- (a) With the intent to cause death or bodily injury; or
- (b) With the intent to cause extensive damage to such a place, facility or system where such damage results in or is likely to result in significant economic loss; or
- (c) With the intent to cause public alarm, fear or panic.”

No reference is made to the presence of a particular ideology, but the bombing (terrorist act) must be a threat to public safety or public order.

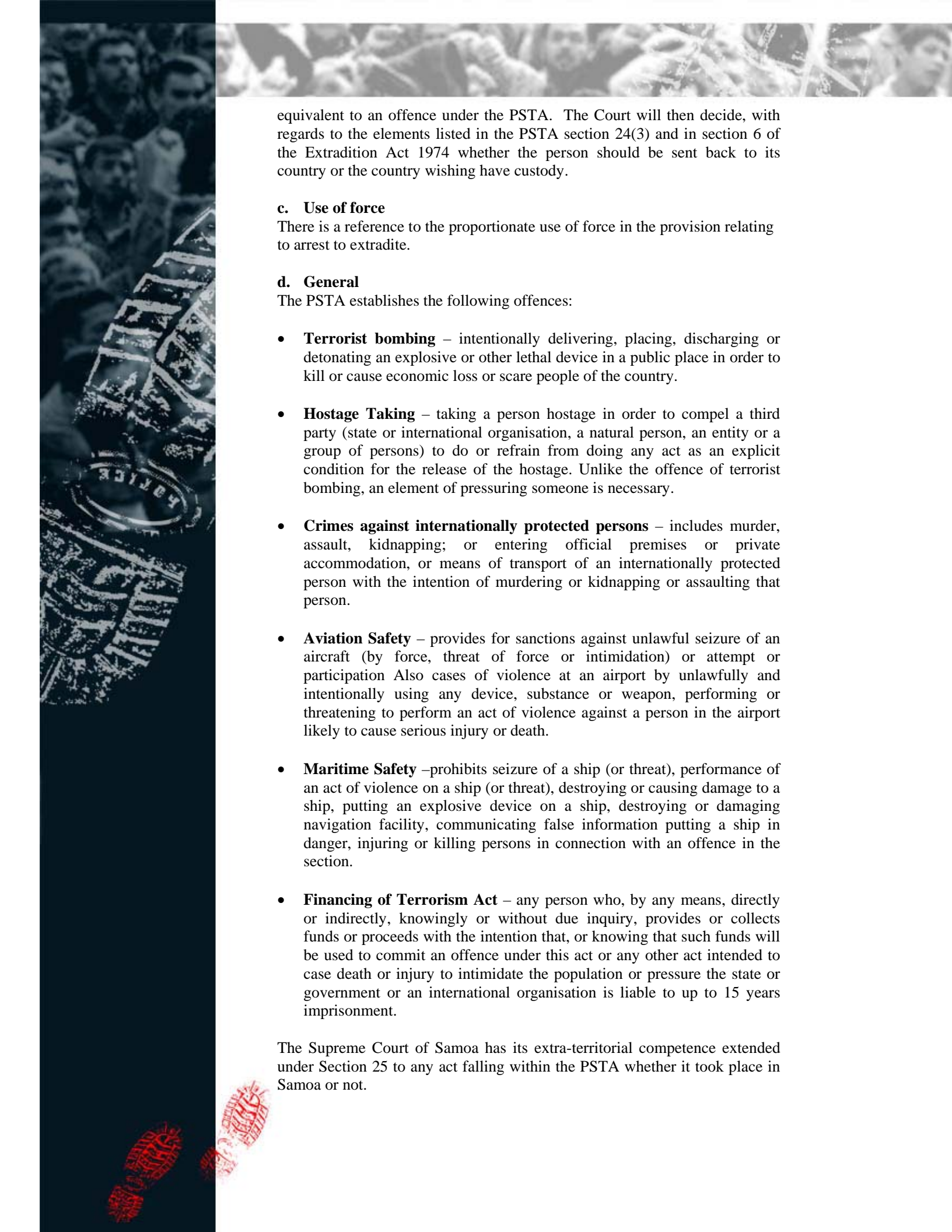
The financing of terrorist acts is defined as collecting money or other financial activities in order to carry on a terrorist act, i.e.:

- (a) To carry out an act which constitutes an offence under this Act; or
- (b) To carry out any other act intended to cause death or bodily injury to any person not taking an active part in the hostilities of armed conflict, where the purpose of such act, by its nature or context, is intended to intimidate a population, or to compel a State or Government or an International Organisation to do or to abstain from doing an act”

These criteria are wide and refer to other offences under the PSTA that do not contain a direct reference to terrorism in their definition. Some of the offences under the PSTA are potentially broad in scope, for example the disturbing services in an airport. Also, the proscription of a wide range of acts as terrorist acts, without any additional terrorist intention, blurs the distinction between general criminal offences and specific terrorism offences.

b. Arrest

Part VIII of the act relates to the arrest and extradition of suspected foreign terrorists. This section applies notwithstanding any other legislation. A police officer who suspects on reasonable grounds that a foreign national is wanted elsewhere to face terrorism related charges, or that that person has been convicted of such an act and is unlawfully at large in Samoa, can arrest the person using reasonable force and present them without delay before the Supreme Court. A terrorism related charge, in this context, means an offence under the PSTA or an offence that is determined by the Supreme Court to be



equivalent to an offence under the PSTA. The Court will then decide, with regards to the elements listed in the PSTA section 24(3) and in section 6 of the Extradition Act 1974 whether the person should be sent back to its country or the country wishing have custody.

c. Use of force


There is a reference to the proportionate use of force in the provision relating to arrest to extradite.

d. General

The PSTA establishes the following offences:

- **Terrorist bombing** – intentionally delivering, placing, discharging or detonating an explosive or other lethal device in a public place in order to kill or cause economic loss or scare people of the country.
- **Hostage Taking** – taking a person hostage in order to compel a third party (state or international organisation, a natural person, an entity or a group of persons) to do or refrain from doing any act as an explicit condition for the release of the hostage. Unlike the offence of terrorist bombing, an element of pressuring someone is necessary.
- **Crimes against internationally protected persons** – includes murder, assault, kidnapping; or entering official premises or private accommodation, or means of transport of an internationally protected person with the intention of murdering or kidnapping or assaulting that person.
- **Aviation Safety** – provides for sanctions against unlawful seizure of an aircraft (by force, threat of force or intimidation) or attempt or participation Also cases of violence at an airport by unlawfully and intentionally using any device, substance or weapon, performing or threatening to perform an act of violence against a person in the airport likely to cause serious injury or death.
- **Maritime Safety** –prohibits seizure of a ship (or threat), performance of an act of violence on a ship (or threat), destroying or causing damage to a ship, putting an explosive device on a ship, destroying or damaging navigation facility, communicating false information putting a ship in danger, injuring or killing persons in connection with an offence in the section.
- **Financing of Terrorism Act** – any person who, by any means, directly or indirectly, knowingly or without due inquiry, provides or collects funds or proceeds with the intention that, or knowing that such funds will be used to commit an offence under this act or any other act intended to case death or injury to intimidate the population or pressure the state or government or an international organisation is liable to up to 15 years imprisonment.

The Supreme Court of Samoa has its extra-territorial competence extended under Section 25 to any act falling within the PSTA whether it took place in Samoa or not.



ⁱ Attorney-General's Department, Australian Government (2006) *Australia's Aid Program in the Pacific: Submission by the Attorney-General's Department*, 30 June: <http://www.aph.gov.au/house/committee/jfadt/pacificaid/subs/sub15.pdf> as on 6 March 2007.

ⁱⁱ See Australian Government: Department of Foreign Affairs and Trade (25-27 October 2005), *Thirty-Sixth Pacific Islands Forum*, p.2, http://www.dfat.gov.au/geo/spacific/regional_orgs/pif36_communique.html as on 06/03/07.

ⁱⁱⁱ Jalal, I (14 July 2006) "Through Pacific Eyes: Australia and the Pacific Islands", *National President's Forum*, 14 July: http://www.aiia.asn.au/national/7_Jalal_Through_Pacific_Eyes.html as on 5 March 2007.

^{iv} Ibid.

^v In the absence of internationally accepted definitions of the terms "terrorism", "terrorist" and "terrorist act", in this report these terms refer to either the definition as enshrined in the country's legislation, or the common use of the term. The use and meaning of these terms is addressed in CHRI's report "Stamping Out Rights: The impact of anti-terrorism laws on policing" (2007).