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Definition and Prosecution of Terrorist Acts

Ireland has not as of yet defined terrorism. Instead, terrorist acts are dealt with under general criminal law (Murder, firearms offenses, etc...). This will change once Ireland enacts legislation giving effect to the Framework Decision on Combatting Terrorism. The Framework Decision makes provision for minimum criminal sanctions for: "offences under national law when committed with the aim of seriously intimidating a population, unduly compelling a Government or international organisation to perform or abstain from performing an act, or seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or international organization offences relating to terrorist groups such as directing or knowingly participating in the activities of such groups, as well as other terrorist linked offences which are committed for the purpose of committing terrorist acts." It will also deal with non-indigenous terrorist groups, criminalizing their activities and attempt to deter their recruiting efforts.

The *Offences against the State Acts 1939-1998* prohibits people from being a member of an unlawful organization. "Organization" includes associations, societies and other organizations or combinations of persons of whatsoever nature or kind whether known or not known by a distinctive name. Section 18 sets out the criteria of an unlawful organization:

- engages in, promotes, encourages, or advocates the commission of treason or any activity of a treasonable nature, or
- advocates, encourages, or attempts the procuring by force, violence, or other unconstitutional means of an alteration of the Constitution, or
- raises or maintains or attempts to raise or maintain a military or armed force in contravention of the Constitution or without constitutional authority, or
- engages in, promotes, encourages, or advocates the commission of any criminal offence or the obstruction of or interference with the administration of justice or the enforcement of the law, or
- engages in, promotes, encourages, or advocates the attainment of any particular object, lawful or unlawful, by violent, criminal, or other unlawful means, or
- promotes, encourages, or advocates the non-payment of moneys payable to the Central Fund or any other public fund or the non-payment of local taxation.

The Irish Republican Army (IRA) and the Irish National Liberation Army (INLA) have been declared unlawful organizations in accordance with those acts. Most terrorist organizations would fit this definition as well.

An amendment to the Acts in 1998 makes directing an unlawful organization a crime, as well as training persons in the making or use of firearms or explosives. The penalties for violations of the Acts are severe -- maximum penalties for offenses under the *Offences Against the State Acts 1939-1998* are as follows: Membership in an unlawful organization - 7 years; Recruiting etc. for an unlawful organization - 10 years; Directing an unlawful organization - life imprisonment; and Training persons in the making or use of firearms, etc. - 10 years.

The *Criminal Law Act 1976* makes it a crime to recruit another person for an unlawful organization or to incite or invite another person to join an unlawful organization or to take part in or support or assist its activities.

Irish criminal law provides for extraterritorial jurisdiction in certain circumstances in relation to a range of terrorist related offenses, including offences covered by United Nations conventions directed against terrorism and offences covered by the *European Convention on the Suppression of Terrorism*. The relevant offenses are all punishable by a maximum sentence of imprisonment for life.

Control of Weapons

Ireland has a variety of measures to ensure illegal arms are not moved across its boundaries. The import and export of arms must be licensed in accordance with the Firearms Acts 1925 and 1964, and the EC (Acquisition and Possession of) Weapons and Ammunition Regulations 1993. Exports are also subject to the Control of Exports Act 1993 and Statutory Orders made thereunder, and to the international obligations and responsibilities derived from membership of the United Nations, the EU, the OSCE and other entities which involve obligations concerning the regulation of arms exports.

Ireland has safeguard agreements through the IAEA regarding the movement of deadly and hazardous materials. Recent efforts provide for strengthening of the Safeguards Agreement by requiring that information be submitted to the IAEA on export, import, production and manufacture of nuclear and related material.

Ireland is a State Party to the Chemical Weapons Convention and abides by regulations set out by the Organization for the Prohibition of Chemical Weapons. Ireland's annual returns to the OPCW provide a record of transfer of material in and out of the State and these are cross-referenced with the returns of other countries to ensure that there are no discrepancies. A license is required for the keeping of a Schedule One chemical and any movement from the licensed site requires a new license application.

Ireland is a party to the Biological and Toxin Weapons Convention and is currently reviewing the legislative situation regarding activities in the biological field which are or may be within the scope of that Convention. Ireland is also a member of the Australia Group and the Nuclear Suppliers Group, which regulate export of dual-use goods and technologies in the chemical, biological and nuclear fields. In addition, Ireland implements the EU Regulation on Dual-Use goods.

Laws Pertaining To Biology

The Safety, Health and Welfare at Work (Biological Agent) Regulations provide a definition of biological agents and what could be considered a weapon and provide guidelines against the exposure of biological agents at work and what to do in case any abnormality occurs. The Genetically Modified Organisms Regulations control genetic manipulation of microorganisms. This regulation provides definitions as to what is constituted to be a "accident", "contained use", "deliberate release". In 2001, new regulations were issued to require that all contained use work with genetically modified organisms be licensed. The Importation of Pathogenic Agents Order prohibits the importation of pathogenic agents into the State save under and in accordance with a licence granted by the Minister for Agriculture and Food.

Money Laundering – Prevention and Prosecution

With regard to transfer of national funds to other countries, The Financial Transfers Act, 1992 enables the Minister for Finance, by order, to restrict financial transfers between the State and other countries. It creates an offence and sets out penalties for the contravention of such an order. An order under the Financial Transfers Act, 1992 usually prohibits financial transfers between the state and another country in relation to persons, entities or bodies specified in EU Regulations containing financial sanctions. However, the Act cannot be applied generically to "terrorist" organizations.

The *Offences Against the State Acts 1939-1998* contains provisions that allow for seizure and/or freezing of property and funds that are the property of or destined for unlawful organizations for the purposes of those Acts. Section 22 of the Act gives the power to the state to seize the assets of an unlawful organization when a suppression order is issued against the organization. Under the *Offences Against the State (Amendment) Act 1985* the Minister for

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Justice, Equality and Law Reform may freeze funds that may be being directed for the use of an unlawful organization.

Three pieces of legislation pertain directly to confiscation of finances when they can be shown to be the direct or indirect proceeds of crime. The *Criminal Justice Act of 1994* allows for seizure, confiscation, and restraint of the proceeds of drug trafficking and other serious offenses. The *Proceeds of Crime Act 1996* gives the power to the High Court to freeze and confiscate which the Court is satisfied, on the balance of probabilities, is the proceeds of crime. Any property which constitutes, directly or indirectly, the proceeds of crime where the value of the property is not less than £10,000 can be restrained or seized under the Act. This is unique from the 1994 Act in that the seizure of funds may be made even if the property owner has never been convicted of a crime. The *Criminal Assets Bureau Act 1996* established the Criminal Assets Bureau (CAB) which identifies criminal assets or suspected criminal assets, and takes steps to freeze or seize the assets through the appropriate proceedings.

Information Sharing

Ireland will give assistance outside of any agreements or conventions to which they belong; however, any requests falling outside the conventions are considered on an individual basis. The primary agency responsible for sharing information between Ireland and other states with regard to countering terrorist activity is the Garda Siochana (national police). This force also conducts the intelligence gathering function associated with the prevention and investigation of crime including terrorism. The Garda Siochana has well-developed procedures for the exchange of such information, but these are being modified in light of the changing prominence of international terrorism, with an aim to cooperate more fully with international police organizations and other nations on a bilateral basis. The Garda Siochana is a member of Interpol, the European Police Office (Europol) and other European Union related forums.

Ireland is a party numerous international conventions which provide mechanisms under which assistance may be provided to other States for the purposes of judicial proceedings or the investigation or prosecution of criminal offenses. Ireland also has bilateral agreements with a number of countries relevant to international crime and terrorism. In addition, the Garda Siochana (national police force) has interdepartmental agreements with the Russian Ministry of Internal Affairs and the Hungarian National police pledging cooperation in law enforcement efforts. Further legislation is scheduled to be enacted to increase the ability of Ireland to provide for mutual assistance with other nations, especially those in Europe. The legislation aimed to give effect to additional international instruments in the mutual assistance area emanating from the European Union and the Council of Europe.

As a party to the *European Convention on the Suppression of Terrorism*, Ireland's extradition law excludes from the scope of the political offense exception, for the purposes of extradition between Convention States, offenses covered by the Convention.

BIBLIOGRAPHY OF IRISH LAWS

Definition and Prosecution of Terrorist Acts

1. Offences against the State Acts 1939-1998
2. 1939 Act Section 18
3. 1998 Amendment to the Acts
4. Criminal Law Act of 1976
5. Firearms Acts 1925-2000
6. Air Navigation and Transport Act 1973, Section 11
7. Air Navigation and Transport Act 1975, Section 3
8. Radiological Protection Act 1991, Section 38
9. Air Navigation and Transport (Amendment) Act 1998, Section 51

Laws Pertaining To Biology

1. Importation of Pathogenic Agents Order S.I. No. 373/1997
2. Genetically Modified Organisms (Contained Use) Regulations S.I. No.73 of 2001
3. Dangerous Substances (European Agreement Concerning the International Carriage of Dangerous Goods by road (ADR)) Regulations S.I. No. 388/1996
4. Dangerous Substances (Conveyance of Scheduled Substances by Road) (Trade or Business) Regulations (S.I. No. 389/1996)
5. Genetically Modified Organisms Regulations S.I No.345/1994
6. Safety, Health and Welfare at Work (Biological Agent) Regulations S.I. No. 146/1994

Money Laundering – Prevention and Prosecution

1. Offences against the State Acts 1939-1998
 - i. 1939 Act Section 22
 - ii. 1985 Amendment to the Act
 - iii. 1998 Amendment to the Acts
2. Criminal Justice Act 1994
3. Proceeds of Crime Act 1996
4. Criminal Assets Bureau Act 1996
5. Financial Transfers Act, 1992
6. EC Council Regulation 881/2002
7. EC Council Regulation 2580/2001
8. Council Decision 2001/927/EC
9. Council Decision 2002/334/EC
- 10.** Firearms Acts 1924 and 1964
- 11.** EC (Acquisition and Possession of) Weapons and Ammunition Regulations 1993
- 12.** Control of Exports Act 1993