(ii) Attack against flying aircraft (*Article 297)*: imprisonment from 2 to 8 years and from 6 to 12 if the attack provoked injury and from 16 to 25 in case of death,

(iii) Attack against the security of civil aviation (*Article 300*): penalties of 1 to 5 years of imprisonment. In case of injury 2 to 8 years and in case of death 4 to 12 years,

(iv) Carriage of explosives on board of aircrafts (*Article 303*): the person who authorized or allowed unlawfully the entry in the State territory or in its territorial waters as well as the over-flying will be punished with imprisonment from 3 to 6 month. In case of injury 1 to 4 years of imprisonment and in case of death from 4 to 8 years of imprisonment.

# XIX. CHILE[47]

## SUMMARY OF LEGISLATION OF CHILE RELATED TO TERRORISM

(a) Penal Code

The Penal Code, and in particular Act 18.314 of 17 May 1984, which defines terrorist conduct and establishes penalties. The current situation is as follows:

*Recruitment*

The recruitment of members of terrorist groups is punished by reason of unlawful association. Recruitment, by its very nature, presupposes the existence of an unlawful association. Within this context, such conduct is unquestionably punishable under that heading on the basis of article 2 (unlawful terrorist association), paragraph 5 of Act No. 18.314, on terrorist offences, in connection with articles 292 et seq. of the Penal Code. See also the remarks given below, in counection with article 294 of the Penal Code and article 8 of the Arms Control Act.

It should recalled that a person may be held criminally liable not only for unlawful terrorist association but for any form of unlawful association under articles 292 ff of the Penal Code.

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[47] Transmitted to the Seeretariat by that Government on 2 January 2002 (S/2002/5, enclosure), on 24 October 2002 (S/2002/1192, annex) and on 29 July 2003 (S/2003/775, appendix). Texts (in the original Spanish) of relevant legislation and draft legislation were also appended to document S/2002/5.

In that regard, the argument that it is not always the case that the person responsible for recruitment is a member of the unlawful association is debatable. In the Chilean view, the recruiter is necessarily a member of the association.

The situation would be different if a person were operating from Chile, for example, and delegated the task of recruitment to other persons operating abroad who did not belong to the organization and were unaware of its true purpose. Although this is a somewhat laboured hypothesis, since successful recruitment would be difficult under those conditions, it should be borne in mind that, in accordance with the ubiquity principle now commonly accepted in comparative law, as well as Chilean law,[48] an offence can be considered to be committed in any of the countries in which a part of the offence was carried out. That being the case, if the incitement proceeded from Chile, the conduct could certainly be prosecuted in Chilean territory.

A different question arises, however, in the case of organizations that intend to commit terrorist acts only in foreigu territory. In such cases, the ubiquity principle, which, as already mentioned, is widely recognized in comparative law,[49] would make it possible to prosecute the act by invoking either the law of the country where one or more members of the unlawful association are to be found or the law of the country where the offences in question are to be committed. The foregoing would apply, that is, assuming that unlawful association were defined as an offence in all legal systems of the world or that terrorist offences were penalized in all legal systems from the conspiracy or incitement stage. In such case, moreover, if one of the participants happened to be temporarily in Chile, that person could be extradited on request in accordance with the general rules. Concerning the supplying of arms: article 294 of the Penal Code provides for the punishment of any person who has taken part in the association (not as chief or leader, for which a more severe punishment is provided under article 293), but simply as a collaborator) and in particular anyone who knowingly (in other words, being aware of the unlawful character - the objectives of the association) and voluntarily provides means and instruments for committing crimes, shelter, or hiding or meeting places. This provision is significant in the context of the punishment of terrorist offences in general. In particular, the reference to the suppliers of means and instruments necessary for committing crimes should be noted. It should be borne in mind that the wording of the article used to be more specific "horses, arms, munitions and instruments", but was amended by Decree-

[48] The ubiquity principle (according to which both the country in which an action was initiated and the country in which it produced its effects have jurisdiction to try the offence) is the predominant doctrine in Chilean law (and in comparative law). In Chile, the principle of ubiquity is upheld in *Novoa* I, p. 167 ff; *Cury* I, p. 193; and *Politoff* I, p. 121; *Garrido* I, p. 133, considers it predominant. It is significant that of these authors Cury and Garrido are currently serving on the Supreme Court of Chile. The principle has long been recognized in Chilean jurisprudence (see, for example, the Supreme Court decision of 14 September 1964).

[49] For example, article 6 of the Italian Penal Code and article 9 of the German Penal Code - to mention just two of the comparative systems that have had a major influence in Chile - enshrine the ubiquity principle in legislation.

Law 2621 of 1979 in order to broaden its scope by including the present generic formula "means and instruments". Consequently, judging from the documented history of the provision, it can be concluded that the supplying of arms is certainly a punishable offence.

It could also be argued that the recruitment of members of terrorist groups could be punished on the grounds that it constituted supplying of means (though this interpretation is open to question). Similarly, the notion of providing a hiding or meeting place might be useful for punishing the offences of harbouring or covert collaboration - acts which are normally associated with a State or Government - although the penalty, naturally, applies only to natural persons.

*Financing the commission of a terrorist offence*

Depending on the circumstances of the case, persons who engage in such conduct are currently punishable as perpetrators of, or at least as accomplices in, the terrorist offence (by application of articles 15, no. 3, and 16 of the Penal Code, whose provisions cover perpetration and participation). Such conduct is punishable only when the commission of the terrorist offence amounts to, at the very least, an attempt; according to the law, a serious and credible threat and conspiracy both constitute an attempt, which is subject to the same penalty as the completed act, even where attenuated (article 7, Act 18.314). In sum, such conduct is punishable only if it can be linked to a concrete terrorist offence involving at least a serious and credible threat or a conspiracy.

Punishments vary considerably, depending on the terrorist offence committed, and it would be difficult to describe in detail each of the penalties (our terrorist legislation covers more than 25 possible situations, from minor terrorist injuries to terrorist homicide and damage). In general, however, the punishments are the same as for ordinary crimes, increased by 1, 2 or 3 degrees. As a general rule, whatever the specific situation, ordinary imprisonment and long-term rigorous imprisonment apply (from 5 years and one day to 20 years to life imprisonment).

A second variant arises when the provider of funds belongs to an unlawful terrorist organization. In such a case, and without prejudice to any possible responsibility he may have for a specific terrorist act as described above (article 294 b, Penal Code), the punishment of rigorous imprisonment applies, either short-term or medium-term, depending on whether the association was formed for the perpetration of crimes or simple offences (article 294, Penal Code), in both cases increased by one degree (article 3, Act 18.314; from 541 days to 3 years in the first case and from 3 years and a day to 5 years in the second). All this on the understanding that the person providing the funds does not exercise control over or abet the unlawful terrorist organization, in which case the punishments provided in article 293 apply, increased by two degrees (in other words, simple rigorous imprisonment for life and qualified rigorous imprisonment for life: from rigorous imprisonment for life, in which conditional liberty may be granted after 20 years of imprisonment to rigorous imprisonment for life, in which conditional liberty may be granted after 40 years), when the purpose of such unlawful

organizations is the commission of crimes; and rigorous imprisonment, from short-term to long-term (5 years and a day to 15 years), when the purpose of such unlawful organizations is the commission of simple offences.[50]

This requirement arises from the criminalization of the funding of terrorism. Our entire body of law, which is in keeping with human rights and is democratic and punishes terrorist actions, fulfils this requirement without any need for a separate criminal definition. Moreover, this prohibition is reflected in both the provision on unlawful associations contained in article 294 of the Penal Code (which punishes any individual who takes part in an unlawful association and, in particular, any one who knowingly and voluntarily provides means and instruments for the commission of crimes, or a shelter, hiding place or meeting place), as well as in the general provisions governing complicity and harbouring contained in the body of law.

*General principles*

Under the Chilean legal system accessories to a crime are held criminally liable along with the principals (articles 14, 15, 16 and 17 of the Penal Code). Penalties for accessories before and during the fact are one degree less than those for principals, and penalties for accessories after the fact, are two degrees less.

Instigators and "intellectual perpetrators" are considered principals. All cases of mediated perpetration are covered by the definition (article 15, No. 2 and part of No. 3 of the Penal Code).

Moreover, penalties are imposed not only for offences that have been carried out but also for those that have been attempted. In determining the penalty, a distinction is drawn between completed but frustrated attempts and incomplete attempts (attempts in the narrow sense). Frustrated attempts are subject to a penalty one degree less than that applicable to the corresponding completed offence, and incomplete attempts are subject to a penalty two degrees less.

Furthermore, on an exceptional basis, the law provides for punishment for acts that are preparatory or not related to execution (prior to any attempted offence) such as conspiracy or incitement. This applies to all terrorist offences, in

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[50] This description, when considered in relation to the definitions required under the international obligation, reveals that existing Chilean law must be supplemented to cover the following matters:

(a) The provision of funds that cannot be linked either to an unlawful terrorist organization or to concrete terrorist offences; and

(b) The previous collection of funds.

The analysis and proposal mentioned in the reply to the question asked under subparagraph (b) have been undertaken in consideration of these legislative gaps.

respect of which, pursuant to Act No. 18,314 (article 7), conspiracy to commit a terrorist act and serious and plausible threat to commit such an act are penalized. It is therefore possible to penalize the planning of a terrorist offence and even other activities which precede those related to actual execution.

(b) Arms Control Act

*Offence of unlawful association as defined in the Arms Control Act (organization of armed parties) (article 8)*

Reference should also be made to an offence defined in Act No. 17.798, on Arms Control, which proves applicable apparently in concurrence with the offence of unlawful terrorist association - in many of the conceivable hypotheses relating to recruitment and supplying of weapons. We are referring here to the offence dealt with in article 8 of the said Act, designated as unlawful association under the Arms Control Act, which provides that "those who organize, belong to, finance or equip, or who instruct, incite or induce others to create and operate, private militias, combat groups or militarily organized parties armed with any of the items referred to in article 3 (in general, firearms and explosives), shall be liable to any of the degrees of long-term rigorous imprisonment. It states:

> "Persons who knowingly assist in the creation and operation of private militias, combat groups or militarily organized parties armed with any of the items referred to in article 3 shall incur the same penalty, diminished by one degree."
>
> ...
>
> "If the offences defined in the preceding paragraphs are committed by members of the armed forces or the police and security forces, whether in active service or retired, the penalty shall be increased by one degree.
>
> ...
>
> "In times of foreign war, the penalties established in subparagraphs 1 and 3 of this article shall be, respectively, long-term rigorous imprisonment (medium degree) to rigorous imprisonment for life and long-term rigorous imprisonment (minimum degree) to rigorous imprisonment for life."[51]

Thus, penalties are imposed on those who organize, belong to, finance or equip or who instruct, incite or induce others to create and operate private militias, combat groups or militarily organized parties armed with any of the materials or weapons mentioned in the Act.

[51] Article 8 of Act No. 17.798, on Arms Control.

Penalties are also imposed on those who knowingly assist in the creation and operation of private militias, combat groups or militarily organized parties.

If the groups are armed with prohibited materials or devices, the penalty is greater (long-term rigorous imprisonment in any degree, ranging from 5 years and a day to 20 years imprisonment). Otherwise (if conventional or authorized weapons are involved), the penalty ranges from medium-term rigorous imprisonment or internal exile in the maximum degree to long-term rigorous imprisonment or internal exile in the minimum degree (from 3 years and a day to 10 years of rigorous imprisonment or internal exile).

The relevance of the rule invoked with a view to sanctioning the acts in question is clear. There are, in fact, numerous cases in which the aforesaid offence has been applied (unfortunately with some excess, inasmuch as the offence of unlawful terrorist association and that of unlawful association under the Arms Control Act have been applied jointly, in respect of the same act; fortunately, in recent cases there has been a tendency to solve the problem through the application of the theory of concurrence, apparently on the basis of the principle *non bis in idem*).

# XX. CHINA[52]

## SUMMARY OF LEGISLATION OF CHINA RELATED TO TERRORISM

On 29 December 2001, the ninth session of the Standing Committee of the National People's Congress adopted draft amendments to the Criminal Law of the People's Republic of China; the amendments entered into force the same day. The provisions of the amended Criminal Law regarding measures to punish terrorist crimes have been made more explicit. Prominent among them are the following:

1. *Article 114* of the Criminal Law stipulates that whoever endangers public security by causing fires, floods or explosions, or by disseminating poisonous or radioactive substances or contagious-disease pathogens, or employing other dangerous means, is to be sentenced to not less than three years but not more than 10 years of fixed-term imprisonment in cases where serious consequences have not been caused.

[52] Transmitted to the Secretariat by that Government on 22 December 2001 (S/2001/1270, enclosure), on 17 July 2002 (S/2002/884, enclosure) and on 9 July 2003 (S/2003/721, enclosure).