

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. CHINA⁵²

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).

2. *Article 115* of the Criminal Law stipulates that whoever causes fires, floods or explosions or disseminates poisonous or radioactive substances or contagious-disease pathogens, or employs other dangerous means that lead to serious injury or death or cause major damage to public or private property, is to be sentenced to not less than 10 years of fixed-term imprisonment, life imprisonment, or the death penalty.

3. *Article 120* of the Criminal Law stipulates that whoever organizes or leads a terrorist organization is to be sentenced to not less than 10 years of fixed-term imprisonment or life imprisonment; whoever actively participates in a terrorist organization is to be sentenced to not less than three years but not more than 10 years of fixed-term imprisonment; other participants are to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, or public surveillance. Individuals who finance terrorist organizations or engage in terrorist acts are to be sentenced to not more than five years of fixed-term imprisonment, criminal detention, or public surveillance or deprived of their political rights, and are also to be subject to punitive fines. When the circumstances of the case are serious, such individuals are to be sentenced to not less than five years of fixed-term imprisonment, and are to be subject to punitive fines or confiscation of property. When a work unit commits the offences mentioned in the preceding paragraph, it is to be subject to punitive fines and its directly presiding officers and other directly responsible staff are to be punished in accordance with the provisions of the preceding paragraph.

4. *Article 125, Paragraph 2* of the Criminal Law stipulates that whoever endangers public security by illegally manufacturing, trading, transporting or storing poisonous or radioactive substances or contagious-disease pathogens is to be punished in accordance with the provisions of the preceding paragraph.

5. *Article 127* of the Criminal Law stipulates that whoever endangers public security by stealing or seizing firearms, ammunition or explosive articles, or stealing or seizing poisonous or radioactive substances or contagious-disease pathogens, is to be sentenced to not less than three years and not more than 10 years of fixed-term imprisonment, or not less than 10 years of fixed-term imprisonment, life imprisonment, or the death penalty when the circumstances are serious. Whoever endangers public security by plundering firearms, ammunition or explosive articles, or plundering poisonous or radioactive substances or contagious-disease pathogens, or steals or seizes firearms, ammunition, or explosive articles from State organs, military or police personnel, or people's militia is to be sentenced to not less than 10 years of fixed-term imprisonment, life imprisonment, or the death penalty.

6. *Article 191* of the Criminal Law stipulates that whoever commits any of the acts listed below for the purpose of concealing or withholding

the source or nature of what one knows to be the illegal gains of narcotics crimes, underworld organized crimes or crimes of smuggling, or to be the profits produced by such crimes, is to have the aforementioned illegal gains or profits confiscated and is to be sentenced to not more than five years of fixed-term imprisonment or criminal detention, and is to be additionally or exclusively sentenced to a fine of not less than 5 per cent and not more than 20 per cent of the amount of money so laundered; when the circumstances are serious, the sentence is to be not less than five years and not more than 10 years of fixed-term imprisonment and a fine not less than 5 per cent and not more than 20 per cent of the amount of money so laundered: (1) providing funding accounts; (2) assisting in the conversion of property into cash or financial instruments; (3) assisting in the movement of funds by means of transfer accounts or other forms of account clearance; (4) assisting in the expatriation of funds; and (5) concealing or withholding by other means the source or nature of the illegal gains or profits produced by crimes. When a work unit commits the offences mentioned in the preceding paragraph, it is to be subject to punitive fines and its directly presiding officers and other directly responsible staff are to be sentenced to not more than five years of fixed-term imprisonment or criminal detention, or when the circumstances are serious, the sentence is to be not less than five years and not more than 10 years of fixed-term imprisonment.

7. *Article 291* of the Criminal Law stipulates that whoever provokes a serious disturbance of the social order by disseminating false explosive, poisonous or radioactive substances or contagious-disease pathogens, or fabricates threats or information concerning explosives or biological or radioactive agents, or knowingly disseminates fabricated threats or messages, is to be sentenced to not less than five years of fixed-term imprisonment, criminal detention, or public surveillance, or not less than five years of fixed-term imprisonment if serious consequences have been caused.

In addition, according to provisions of the Criminal Law, if the person concerned knows that the legally acquired funds being transferred are to be used for terrorist activities, then such action constitutes a crime that is severely punishable by law. Article 120 of the Criminal Law states:

“Anyone who finances a terrorist organization or commits terrorist activities shall be sentenced to up to five years of fixed-term imprisonment, criminal detention or control, or be deprived of political rights, plus a fine; in serious cases, the sentence shall be a minimum of five years of fixed-term imprisonment, plus a fine or confiscation of property. An entity which commits one of the crimes mentioned in the preceding item shall be liable to a fine, and its executive officers directly responsible for the crime and other personnel with direct responsibility

shall be penalized in accordance with the provisions of the preceding item.”

China has also promulgated a series of export regulations strictly to prohibit relevant technology and resources from falling into the hands of terrorists. Articles 125, 127, 128, 130 and 151 of the Criminal Law all directly or indirectly criminalize supplying weapons to terrorists. China is also strictly enforcing the provisions of the Security Council sanctions resolutions regarding Afghanistan.

Territorial application

With regard to crimes committed by Chinese citizens outside the territory of the People’s Republic of China, article 7 of the Criminal Law stipulates that this Law is applicable to citizens of the People’s Republic of China who commit crimes specified in this Law outside the territory of the People’s Republic of China. However, criminal cases which under this Law carry a maximum punishment of up to three years’ imprisonment may be overlooked.

Concerning acts committed outside the territory of the People’s Republic of China by foreign nationals residing in China, article 8 of the Criminal Law of the People’s Republic of China stipulates that this Law may be applicable to foreigners who commit crimes outside the territory of the People’s Republic of China against the People’s Republic of China or its citizens, in such cases the Law provides for a minimum punishment of three years’ imprisonment, provided they are not punishable according to the local law in the place where the acts were committed.

Hong Kong and Macao Special Administrative Regions

The Penal Code of the Macao Special Administrative Region directly or indirectly criminalizes providing any form of support to terrorist acts; this of course includes the recruitment of members for terrorist groups, providing them with weapons, etc. Moreover, the Macao Special Administrative Region regulations governing firearms and explosives can be used to prevent weapons from falling into the hands of terrorists.

Only article 289 of the Penal Code of Macao contains provisions and prescribes punishment for local terrorist criminal offences by terrorist organizations. The legal definition includes the intentional promotion of the activities of such organizations, including the activities mentioned above.

In the Hong Kong Special Administrative Region, the crimes commonly committed by terrorists are generally classified as serious criminal offences and have been assigned appropriate penalties. For example, any person who violates Article 53 of the provisions on criminal offences by detonating an explosion capable of harming life or property can be imprisoned for life upon conviction under the prosecution procedures.

Major legislation of the Hong Kong Special Administrative Region regarding the subject of this subparagraph includes Article 22 of the law on associations, which criminalizes incitement, enticement or invitation of others to become members of illicit mass organizations or to assist in the management of such organizations. The maximum penalty for the foregoing offences is HK\$ 50,000 and a term of imprisonment of two years. This category can also be applied to the recruitment of members for terrorist organizations.

Moreover, the United Nations (Anti-Terrorism Measures) Ordinance of the Hong Kong Special Administrative Region provides that the authorities may freeze funds that have been used for, or are intended to be diverted to, the financing of terrorist acts, and that rules and regulations may be developed with a view to freezing other property held by terrorists or terrorist associates.

XXI. COLOMBIA⁵³

SUMMARY OF LEGISLATION OF COLOMBIA RELATED TO TERRORISM

(a) Penal Code

Title XII of the Penal Code (Act No. 599 of 2000), entitled “Crimes against public safety”, defines criminal offences related to terrorism, starting with their planning through the offences of conspiracy to commit an offence, detailed above, and training for terrorist activities.

Among the statutory offences against persons and property protected under international humanitarian law, article 144 of the Penal Code defines acts of terrorism as follows:

Article 144. Acts of terrorism.

Any person who, on the occasion of or in the course of, an armed conflict, engages in, or orders the commission of, indiscriminate or excessive attacks or makes the civilian population a target of attacks, reprisals or acts or threats of violence with the principal objective of terrorizing the civilian population, shall be liable, by that act alone, to a term of imprisonment of between fifteen (15) and twenty-five (25) years,

⁵³ Transmitted to the Secretariat on 12 December 2001 (S/2001/1318, enclosure), on 16 September 2002 (S/2002/1084, appendix) and on 14 July 2003 (S/2003/776, appendix). Information was also provided in respect of the Statute on the Determination of Refugee Status, Financial Institutions Statute, the Organic Statute of the Financial System, and the Anti-corruption Statute.