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NATIONAL LAWS AND REGULATIONS ON
THE PREVENTION AND SUPPRESSION OF
INTERNATIONAL TERRORISM

Part II (A-L)



Serie législative des Nations Unies

DISPOSITIONS LEGISLATIVES
ET REGLEMENTAIRES NATIONALES
RELATIVES A LA PREVENTION
ET A L'ELIMINATION
DU TERRORISME INTERNATIONAL

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INTRODUCTION

This volume of the *United Nations Legislative Series*, entitled "National laws and regulations on the prevention and suppression of international terrorism, Part II (A-L)" has been prepared by the Codification Division of the Office of Legal Affairs, pursuant to paragraph 10 (b) of the Declaration on Measures to Eliminate International Terrorism (annexed to General Assembly resolution 49/60 of 9 December 1994). The aim of this compilation of national laws and regulations is to provide resource material and thereby contribute to enhancing international cooperation in the struggle against terrorism.

This volume of the *Legislative Series* is confined to information received from Member States, some of which was submitted to the Counter-Terrorism Committee. It reproduces texts of national legislation submitted by States relating to the prevention and suppression of terrorism in all its forms and manifestations. Some submissions consist of specific legislation implementing international conventions on terrorism. Others are provisions of national law relevant to the topic, or a substantive summary thereof. Texts submitted by Member States that are only indirectly related to the topic of international terrorism have generally not been reproduced, due to resource limitations, but are available for consultation. The purpose of this volume is to reproduce, as far as possible, actual texts of national laws. Available extracts of such laws have been reproduced, in some cases supplemented by summaries. This volume should also be read in conjunction with the annual report of the Secretary-General on "Measures to eliminate international terrorism" which summarizes information received by States on the various measures taken by them to address international terrorism, as well as the relevant reports to the Counter-Terrorism Committee.

As in the case of other volumes of the *Legislative Series*, texts in English or French have been reproduced in their original version. To the extent that available resources permitted, texts submitted in other official languages of the United Nations have been translated into English by the Secretariat and have been included in this volume. Member States whose official language is not one of the official languages of the United Nations were asked to provide their own translation or a summary in either English or French of their relevant laws and regulations.

* * *

INTRODUCTION

Le présent volume de la *Série législative des Nations Unies* intitulé « Dispositions législatives et réglementaires nationales relatives à la prévention et à l'élimination du terrorisme international, deuxième partie (A-L) » a été établi par la Division de la codification du Bureau des affaires juridiques, conformément au paragraphe 10 b) de la Déclaration sur les mesures visant à éliminer le terrorisme international (dont le texte figure en annexe à la résolution 49/60 de l'Assemblée générale en date du 9 décembre 1994). Le but de la compilation est de fournir du matériel de référence et de contribuer ainsi à renforcer la coopération internationale dans la lutte contre le terrorisme.

Le présent volume de la *Série législative* se limite aux informations reçues des États Membres, dont certaines ont été soumises au Comité Contre le Terrorisme. S'y trouvent reproduits les textes des législations nationales concernant la prévention et l'élimination du terrorisme sous toutes ses formes et manifestations qui ont été soumis par les États. Certains de ces textes concernent des lois spécifiques portant application de conventions internationales sur le terrorisme. D'autres sont des dispositions du droit national se rapportant à la question, ou un résumé substantiel de ces dispositions. Les textes soumis par les États membres, n'ayant seulement qu'un lien indirect avec le terrorisme international, n'ont pas été reproduits à cause du manque de ressources, mais sont disponibles pour consultation. Le présent volume vise à reproduire, dans la mesure du possible, le texte même des lois nationales. Des extraits de ces lois sont reproduits accompagnés, le cas échéant, de sommaires de ces dispositions. Il devrait être lu parallèlement au rapport annuel du Secrétaire général sur les « mesures visant à éliminer le terrorisme international », qui résume les informations reçues des États sur les diverses mesures qu'ils ont prises pour faire face au problème, ainsi que les rapports pertinents soumis au Comité Contre le Terrorisme.

Comme pour les autres volumes de la *Série législative*, les textes en anglais ou en français ont été reproduits dans leur version originale. Dans la mesure où les ressources dont il disposait le lui ont permis, le Secrétariat a traduit en anglais les textes présentés dans les autres langues officielles de l'Organisation des Nations Unies et les a reproduits dans le présent volume. Les États Membres dont la langue officielle n'est pas l'une des langues officielles de l'Organisation ont été priés de fournir leur propre traduction ou un résumé en anglais ou en français de leurs dispositions législatives ou réglementaires pertinentes.

I. ALBANIA¹

SUMMARY OF LEGISLATION OF ALBANIA RELATED TO TERRORISM

(a) Constitutional provisions

Pursuant to Article 5 of the Constitution, the Republic of Albania applies international law that is binding upon it.

Article 122 of the Constitution states:

1. Any international agreement that has been ratified constitutes part of the internal juridical system after it is published in the Official Journal of the Republic of Albania. It is implemented directly, except for cases when it is not self-executing and its implementation requires issuance of a law. The amendment, supplementing and repeal of laws approved by the majority of all members of the Assembly, for the effect of ratifying an international agreement, is done with the same majority.
2. An international agreement that has been ratified by law has superiority over laws of the country that are not compatible with it.
3. The norms issued by an international organization have superiority, in case of conflict, over the laws of the country if the agreement ratified by the Republic of Albania for its participation in the organization expressly contemplates their direct applicability.

Moreover, pursuant to article 123 of the Constitution, The Republic of Albania, on the basis of international agreements, delegates to international organizations state powers for specific issues.

(b) Penal Code

The penal legislation of the Republic of Albania expressly prohibits the creation of terrorist groups and the delivery of any kind of assistance to their activities in Albania or abroad. Articles 28, 233 and 234 of the Penal Code of the Republic of Albania No. 7895 dated 27.01.1995, define the armed gang and the criminal organization as forms of a special kind of cooperation that is distinguishable for the number of participants, the level of the organization and the repeated perpetration of criminal offences. The sanctions against them range from imprisonment to five years to life sentence.

¹ Transmitted to the Secretariat by that Government on 31 December 2001 (S/2001/1309, enclosure) and on 29 August 2002 (S/2002/973, enclosure). Information was also provided with respect of Law no. 8610, dated 17 May 2000 "On Prevention of Money Laundering" and the law entitled "On Banks in the Republic of Albania".

The Penal Code also includes some measures aimed to prevent arms supplies for terrorists (articles 278/a and 279 of the Penal Code of the Republic of Albania changed with the law No. 8733 dated 24.01.2001). The sanction under the article 278/a entitled "Trafficking of Weapons and Munitions" ranges from 7 to 15 year imprisonment, whereas the article 279 entitled "Production and Illegal Possession of Small Arms and Light Weapons" provides for punishment with fine or imprisonment of up to 5 years.

The provisions in the Albanian legislation, which are aimed to prevent the terrorists from using the territory of the Republic of Albania for activities against other countries or their citizens, are: article 297 of the Penal Code on "Illegal Border Crossing" and the article 299 of the Penal Code "On Violation of Flight Regulations"

The provisions of the Penal Code of the Republic of Albania aiming at preventing terrorist funding activities are:

Article 30/2 "Supplementary punishments"

Besides the principal punishment, a person who has committed offences or criminal contravention may also be sentenced to one or some of the following supplement punishments:

...

2. Confiscation of the means relevant to the commitment of the criminal act and of the profits deriving from it;

Article 36 "Confiscation of the means for committing the criminal act"

Confiscation is necessarily decided by the court on persons committing criminal acts, and consists in the seizure and transfer in favor of the state of the means which have served or were chosen as a means to commit a criminal act, as well as the objects, money, and any other property resulting from the criminal act or the reward given or promised for its commitment.

Article 287 "Alienation of property"

Alienation, transferring, hiding, disappearing of nature, source, belonging of property originated from criminal activity, is sentenced from three to ten years of imprisonment.

Article 287/a

Financial transactions or other economic actions, which are intended for money laundering or deriving from criminal activities as

well as their re- circulation and use for whatever entrepreneurship or economic activities, is sentenced from five to ten years imprisonment.

When this criminal act is committed in collaboration or more than one time, is sentenced from seven to fifteen years of imprisonment, and, when it has caused serious consensus, it is sentenced not less than fifteen years imprisonment.

Moreover, according to the Albanian Constitution the Convention for the Suppression of Financing Terrorism is directly applicable upon its ratification. However, the relevant institutions of the Republic of Albania will review the provisions of the Penal Code in order to adjust them in accordance with the provisions of the above-mentioned Convention.

Articles 297 and 299 provide the provisions of the Penal Code, which aim to prevent the use by terrorists of the territory of the Republic of Albania. Article 297 titled: "Illegally crossing state border", provides that:

"Illegally crossing the state borders constitutes criminal contravention and is sentenced to a fine or up to two years of imprisonment and when organized for lucrative purposes, it is punishable by imprisonment up to 10 years".

Meanwhile, the article 299 titled "Breach of Flight Rules", provides that:

"Breach of international flight rules such as entering or leaving the territory of the Republic of Albania without a flight permit, ignoring flight lanes, landing places, flight corridors, or designated cruising altitude, is punishable by a fine or up to five years of imprisonment".

In addition, pursuant to Article 111 of the Penal Code, hijacking planes, ships and other means of transportation that carry people is sentenced from ten to twenty years of imprisonment.

The provisions of the Penal Code that intend penalizing terrorist groups or activities are provided by articles 28, 230 and 233 of the same Code (Penal Code).

Article 28 provides punishment for creation and participation in an armed gang or in criminal organization that represent particular form of collusion which differ, not only with respect to the number of participants, but also on their level of organization and persistence to commit a number of criminal acts.

Article 230 of the Penal Code titled, "Terrorist acts", provides that:

"Committing violent acts against the life, health of people, personal freedom through kidnapping of people, or hijacking public transportation, with the intent to seriously disturb public order and

instilling fear and uncertainty in the public is sentenced to no less than fifteen years of imprisonment or to life imprisonment”

Article 233 of the Penal Code titled “Creation of armed gangs” provides that:

“Creating armed gangs to oppose on the public order through violent acts against life, health, personal freedom of the individual, property, with the intent of instilling fear and uncertainty to the public, is sentenced up to ten years of imprisonment”.

Territorial Application

According to article 6/2 of the Penal Code, Criminal law of the Republic of Albania shall also be applicable to the Albanian citizen who commits an offence within the territory of another country, when that offence is concurrently punishable, unless a foreign court has given a final sentence. In the sense of this article, Albanian citizens shall also be considered those persons who hold another nationality besides the Albanian one.

According the article 7/2 of the Penal Code, the penal legislation of the Republic of Albania is also applicable to a foreign citizen who, outside of the Republic of Albania, commits against the interests of the Albanian State or an Albanian citizen one of the following offences:

- a) crimes against humanity;
- b) crimes against the Albanian independence and its constitutional order;
- c) terrorism;
- d) organization of prostitution, illegal manufacturing and trafficking of drugs, other narcotic substances, of weapons, nuclear substances, as well as pornographic materials;
- e) hijacking airplanes or ships;
- f) falsifying the Albanian state seal, Albanian currency, or Albanian bonds or stocks;
- g) crimes which affect the life or health of Albanian citizens, to which the law provides for a punishment by imprisonment of five years or any other heavier punishment.

II. ALGERIA²

ELEMENTS DU DISPOSITIF LEGISLATIF ET REGLEMENTAIRE DE L'ALGERIE

LA DEFINITION DU TERRORISME

L'adaptation du cadre législatif et réglementaire national aux missions régaliennes de l'État dans sa lutte contre le terrorisme est intervenue progressivement pour prendre en charge l'ensemble des activités liées à la prévention, à la répression et à la lutte contre le terrorisme et ses réseaux sur l'ensemble du territoire national.

C'est ainsi que le décret législatif 92-03 du 30 septembr 1992 relatif à la lutte contre la subversion et le terrorisme, modifié et complété par le décret législatif 93-05 du 9 avril 1993, a défini le cadre d'intervention des autorités publiques pour réprimer les actes terroristes. Des amendements ont été apportés aux Codes pénal et de procédure pénale pour étoffer le dispositif juridique national en la matière.

L'article premier du décret 93-03, repris par l'article 87 bis de l'ordonnance 95-II du 25 février 1995 modifiant et complétant l'ordonnance 66-156 du 8 juin 1966 portant code pénal, considère comme acte subversif ou terroriste « toute infraction visant la sûreté de l'État, l'intégrité du territoire, la stabilité et le fonctionnement normal des institutions par toute action ayant pour objet de :

- Semer l'effroi dans la population et créer un climat d'insécurité en portant atteinte moralement et physiquement aux personnes ou en mettant en danger leur vie, leur liberté ou en portant atteinte à leurs biens;
- Entraver la circulation ou la liberté de mouvement sur les voies et occuper les places publiques par des attroupements;
- Attenter aux symboles de la nation et de la République et profaner les sépultures;
- Porter atteinte à l'environnement, aux moyens de communication et de transport;

² Transmitted to the Secretariat by that Government on 24 December 2001 (S/2001/1280, enclosure), on 27 December 2001 (S/2001/1280/Corr.1), on 14 August 2002 (S/2002/972, enclosure) and on 10 July 2003 (S/2003/723, enclosure). Information was also provided in respect of *L'ordonnance 66-211 du 21 juillet 1966 relative à la situation des étrangers en Algérie*.

- Faire obstacle à l'action des autorités publiques et établissements concourant au service public ou au libre exercice du culte et des libertés publiques;
- Faire obstacle au fonctionnement des institutions publiques ou porter atteinte à la vie et aux biens de leurs agents, ou faire obstacle à l'application des lois et règlements. »

L'article 2, repris par l'article 87 bis 3 du Code pénal, assimile les activités suivantes aux actes terroristes :

- Création d'associations, corps, groupes ou organisations dont les objectifs sont de mener des activités subversives ou terroristes;
- Adhésion ou participation, sous quelque forme que ce soit, à ces associations subversives ou terroristes;
- Apologie du terrorisme, encouragement et financement des activités terroristes;
- Reproduction ou diffusion de documents, enregistrements ou imprimés faisant l'apologie du terrorisme.

L'ordonnance 95-11 précitée a adapté le Code pénal aux nouvelles réalités et au développement des activités nationales et transnationales du terrorisme pour inclure dans la définition les actes terroristes commis dans les conditions suivantes :

- Tout Algérien qui active ou s'enrôle à l'étranger dans une association, groupe ou organisation terroristes ou subversifs, quelle que soit leur forme ou leur dénomination, même si leurs activités ne sont pas dirigées contre l'Algérie;
- Quiconque vend, achète ou distribue, importe ou fabrique à des fins illicites des armes blanches;
- Quiconque détient, soustrait, porte, commercialise, importe, exporte, fabrique, répare ou utilise, sans l'autorisation de l'autorité compétente, des armes prohibées, des munitions ou substances explosives.

LA MISE EN ŒUVRE DES MESURES DE LUTTE CONTRE LE TERRORISME

Dans l'élaboration des moyens légaux de lutte contre le terrorisme et la subversion, le législateur algérien a pris en compte l'ensemble des droits et obligations des présumés coupables ainsi que la dimension fondamentale des

droits de l'homme dans le traitement des cas portés devant les juridictions nationales.

La loi 01-08 du 26 juin 2001 modifiant et complétant l'ordonnance 66-155 du 8 juin 1966 portant code de procédure pénale constitue le texte de référence en matière de répression des actes terroristes.

La perquisition domiciliaire:

Lorsqu'il s'agit de crimes qualifiés d'actes terroristes ou subversifs, le juge d'instruction peut procéder, par les officiers de police judiciaire compétents, à toutes perquisitions ou saisies, de jour comme de nuit, et en tout lieu sur toute l'étendue du territoire national (cf. art. 47 de l'ordonnance 95-10 du 25 février 1995).

Il peut également prendre les autres mesures prévues par la législation en vigueur, ordonner soit d'office, soit sur réquisition du ministère public, soit sur demande de l'officier de police judiciaire, toutes mesures conservatoires.

La garde à vue:

Si pour nécessité de l'enquête, l'officier de police judiciaire est amené à garder à sa disposition une ou plusieurs personnes, il doit en informer le Procureur de la République et lui soumettre un rapport sur les motifs de la garde à vue; celle-ci ne peut excéder 48 heures (art. 51 modifié et complété par la loi 01-08 du 26 juin 2001).

Tous les délais prévus sont portés au double lorsqu'il s'agit d'atteinte à la sûreté de l'État. Ces délais peuvent, sur autorisation écrite du Procureur de la République, être prorogés dans la limite de 12 jours dans les cas de crimes qualifiés d'actes terroristes ou subversifs.

La détention provisoire:

La détention provisoire est une mesure exceptionnelle. Elle ne peut être ordonnée ou maintenue, dans des conditions particulières, que si les obligations du contrôle judiciaire sont insuffisantes (cf. art. 123 de la loi susmentionnée).

En matière criminelle, la détention provisoire est de quatre mois. Toutefois s'il s'avère nécessaire, le juge d'instruction peut, par ordonnance motivée et sur réquisition du Procureur de la République, prolonger la détention deux fois pour une durée de quatre mois pour chaque prolongation.

Lorsqu'il s'agit de crimes terroristes, le juge d'instruction peut prolonger la détention provisoire cinq fois – article 125 bis, loi 01-08 du 26 juin 2001. Pour le crime transnational, le juge d'instruction a la possibilité de prolonger la détention provisoire 11 fois, pour une période de quatre mois.

Nature des sanctions pour les actes et activités terroristes:

Le Code pénal – article 87 bis 1 – prévoit les peines suivantes pour les crimes qualifiés de terroristes ou subversifs :

- La peine de mort, lorsque la peine prévue par la loi est la réclusion perpétuelle (toutefois, un moratoire sur la peine de mort a été décidé en 1993 et il est strictement observé depuis lors);
- La réclusion perpétuelle, lorsque la peine prévue par la loi est la réclusion de 10 à 20 ans.
- La réclusion de 10 ans à 20 ans, lorsque la peine prévue par la loi est la réclusion de cinq à 10 ans.

Les peines complémentaires suivantes sont également prévues par la loi 89-05 du 25 avril 1989 :

- L'assignation à résidence;
- L'interdiction de séjour;
- L'interdiction d'exercer certains droits;
- La confiscation partielle des biens;
- La dissolution d'une personne morale;
- La publicité de la condamnation.

La pénalisation de l'acte terroriste entraîne des sanctions proportionnelles à la nature de l'acte commis :

- Quiconque crée, fonde, organise ou dirige toute association, corps, groupe ou organisation qualifié de type terroriste, est puni de la réclusion criminelle;
- Toute adhésion ou participation à ce type d'organisation est punie d'une peine de réclusion de 10 à 20 ans;
- Les actes liés aux armes prohibées et munitions sont punis de la réclusion à temps de 10 à 20 ans et d'une amende de 500 000 à 1 million de dinars algériens; ceux liés aux armes blanches, de la réclusion à temps de cinq ans à 10 ans et d'une amende de 100 000 à 500 000 dinars algériens;

- L'utilisation de lieu de culte pour prêcher sans autorisation de l'autorité publique habilitée est punie d'un emprisonnement de un à trois ans et d'une amende de 10 000 à 100 000 dinars algériens;
- Est puni d'un emprisonnement de trois à cinq ans et d'une amende de 50 000 à 200 000 dinars algériens quiconque, par prêche ou par toute autre action, entreprend une activité contraire à la noble mission des lieux de culte ou de nature à attenter à la cohésion de la société ou à faire l'apologie et la propagande du terrorisme;
- En matière d'actes apologistes de crimes terroristes et de financement, il est prévu une peine de réclusion de cinq à 10 ans et d'une amende de 100 000 à 500 000 dinars algériens;
- La reproduction ou diffusion de documents faisant l'apologie du terrorisme sont punies d'une peine de réclusion de cinq à 10 ans et d'une amende de 100 000 à 500 000 dinars algériens;
- Le maniement ou l'utilisation d'explosifs à des fins subversives, compte tenu des pertes en vies humaines provoquées et l'ampleur des dommages subis, est passible de la peine de mort.

Juridictions compétentes:

Le tribunal criminel est la juridiction compétente pour connaître des faits qualifiés d'actes subversifs ou terroristes renvoyés par arrêt définitif de la chambre d'accusation conformément aux dispositions de l'ordonnance 95-10 du 25 février 1995.

Cette instance a la plénitude de juridiction pour juger les individus majeurs ou mineurs âgés de 16 ans ayant commis des crimes subversifs ou terroristes. Elle a également compétence pour juger tout individu accusé d'appartenance à un groupe ou à une organisation terroriste, ayant directement ou indirectement pris part ou contribué à l'organisation d'un acte terroriste ou étant à l'origine d'un acte terroriste.

Cette compétence s'étend aux actes d'encouragement, de financement, de collecte de fonds au profit de groupes terroristes et de complicité avec une organisation terroriste. Elle englobe également les actes liés à l'achat, à la vente et à la fabrication, à des fins illicites, d'armes blanches, à l'importation, à l'utilisation et à la commercialisation d'armes prohibées.

Les officiers de police judiciaire ont compétence nationale – au lieu et place d'une compétence territoriale – pour connaître de toute activité terroriste ou subversive et procéder aux investigations nécessaires. Les activités de ces officiers s'opèrent sous le contrôle du Procureur général territorialement compétent.

Champ d'application de la loi algérienne :

La loi pénale s'applique à toutes les infractions commises sur le territoire de la République. Elle s'applique également aux infractions commises à l'étranger lorsqu'elles relèvent de la compétence des juridictions répressives algériennes en vertu des dispositions du Code de procédure pénale. C'est ainsi que le Code pénal élargit son champ d'application aux activités menées par des Algériens à l'étranger, même si les actes incriminés ne sont pas dirigés contre l'Algérie.

La loi 01-08 du 26 juin 2001 dans son article 125 bis reconnaît aux tribunaux algériens la compétence pour connaître d'un crime transnational. Le juge d'instruction peut ordonner une détention provisoire de quatre mois susceptible de prorogation jusqu'à la réunion par les parties concernées des éléments de preuve pour étayer l'accusation.

S'agissant des actes commis à bord des navires et aéronefs battant pavillon national, la loi algérienne consacre la compétence des tribunaux algériens lorsque le crime ou le délit est commis :

- En haute mer, quelle que soit la nationalité de l'auteur;
- Dans un port algérien à bord d'un navire marchand étranger;
- À bord d'un aéronef étranger si l'auteur ou la victime est algérien ou si l'appareil atterrit en Algérie après la commission du crime ou du délit.

Concernant la compétence territoriale, c'est celle du lieu d'atterrissage ou du lieu d'arrestation en Algérie si l'acte intervient postérieurement.

FINANCEMENT DU TERRORISME

Le dispositif législatif algérien concernant la collecte de fonds, le financement du terrorisme, la réglementation des changes et des mouvements de capitaux de et vers l'étranger, prévoit des peines criminelles et délictuelles assorties d'amendes pécuniaires.

Collecte illégale de fond :

Les quêtes sont soumises à autorisation préalable dans des conditions précises décrites par l'ordonnance 77-03 du 19 février 1977. Toute infraction aux dispositions de cette ordonnance est punie d'un mois à deux années d'emprisonnement.

Financement du terrorisme :

L'Algérie a été l'un des premiers pays à pénaliser le financement du terrorisme en adoptant dès l'année 1995 l'ordonnance 95-11 du 25 février 1995 par laquelle le financement du terrorisme est puni d'une peine de réclusion de cinq à 10 ans.

En outre, l'article 87 bis du Code pénal relatif aux crimes qualifiés d'actes terroristes énumère les conditions d'application de la loi relative aux activités terroristes ou commission d'actes terroristes. Les peines sont proportionnelles à la gravité de l'acte de même que la saisine ou la confiscation de l'objet du crime, déclaré par jugement acquis au Trésor public, conformément à l'article 93 du Code. La répression du financement des activités terroristes s'inscrit dans cette catégorie. L'article 87 et suivants assimilent le financement des activités terroristes à l'activité principale qui est l'acte terroriste lui-même. Le gel des avoirs en cas de soupçons, la saisie des fonds et la confiscation font partie des mesures préventives et répressives des activités terroristes.

Ce dispositif juridique de répression du financement des activités terroristes est complété par le décret exécutif 02-127 du 7 avril 2002 portant création d'une Cellule de traitement du renseignement financier. Cette nouvelle structure a pour mandat de procéder au gel des avoirs des individus, groupes ou organisations terroristes. La procédure consiste pour la Cellule à recevoir des établissements bancaires et de toutes autres structures financières des déclarations de soupçons. La Cellule procède légalement et sur cette base au gel des avoirs et diligente une enquête pour s'assurer de l'origine de l'argent et de sa destination. En cas de preuve de financement d'activités terroristes ou de provenance des fonds de ces mêmes activités, le dossier est transmis aux tribunaux seuls habilités à prononcer les mesures légales en la matière.

REPRESSION DU RECRUTEMENT

La législation algérienne punit sévèrement l'enrôlement à l'étranger de tout Algérien dans une organisation terroriste. L'article 87 bis 6 du Code pénal dispose que tout Algérien qui active ou s'enrôle à l'étranger dans une association, groupe ou organisation terroristes ou subversifs, quelle que soit leur forme ou leur dénomination, même si leurs activités ne sont pas dirigées contre l'Algérie, est puni d'une peine de réclusion de 10 à 20 ans et d'une amende de 500 000 à 1 million de dinars algériens.

L'article 87 bis 3 du Code pénal interdit le recrutement à des fins subversives et terroristes. Ainsi, la création d'associations ou de groupes dont l'objectif est de mener des activités terroristes et l'adhésion ou la participation à ces groupes sont sévèrement punis par le Code pénal.

Le Code pénal, article 87 bis 1 prévoit la réclusion criminelle pour toute adhésion ou participation à ces groupes. L'article 87 bis 1 du Code pénal prévoit

la peine capitale pour toute personne reconnue coupable de maniement ou d'utilisation d'explosifs à des fins subversives et terroristes.

L'article 87 bis 4 – ordonnance 95 – réprime l'apologie du terrorisme et condamne ses auteurs à une peine de prison de cinq à 10 ans et d'une amende de 100 000 à 500 000 dinars algériens.

La constitution de groupes, d'organisations ou d'associations dans un but subversif ou aux fins de perpétrer des attentats terroristes est combattue en Algérie par les moyens légaux et dans le cadre de la loi. En revanche, l'enrôlement à l'étranger échappe à la lutte nationale antiterroriste. En effet, les règles permissives de certains pays hôtes et leur attitude laxiste à l'égard de ces groupes, notamment à travers la facilité d'octroi de l'asile et l'acceptation de l'utilisation du droit à la libre expression pour l'apologie du crime terroriste, ont contribué à la recrudescence des actes terroristes en Algérie.

III. ANDORRA³

ELEMENTS DU DISPOSITIF LEGISLATIF ET REGLEMENTAIRE DE L'ANDORRE

Les dispositions du Code pénal qui concernent directement le terrorisme dans l'ordre juridique andorran sont peu nombreuses:

- L'article 145 du Code pénal en fait une référence directe : « [...] un délit de [...] terrorisme, [...] sera puni d'un emprisonnement d'un maximum de huit ans et d'une amende pouvant atteindre 20 millions de pesetas » (environ 120 202 euros);
- De même, on devrait tenir en compte l'article 230, « quiconque avec violence ou intimidation se sera emparé ou aura pris le contrôle d'un aéronef ou d'un véhicule automobile transportant des passagers sera puni d'un emprisonnement d'une durée maximale de dix ans »;

³ Transmitted to the Secretariat by that Government on 21 December 2001 (S/2001/1244, enclosure) and on 19 September 2002 (S/2002/1047, enclosure). Information was also provided with respect to the law on the protection of bank secrecy and prevention of the laundering of money or securities constituting the proceeds of crime of 11 May 1995, the Basic Decree on Immigration of 26 June 1980 and la loi de coopération pénale internationale et de lutte contre le blanchiment de l'argent ou valeurs provenant de la délinquance internationale, of 29 December 2000.

– On constate aussi, à l'article 82, « seront punis d'un emprisonnement d'une durée maximale de vingt ans ceux qui [...] au moyen d'armes ou d'explosifs, ou en commettant des attentats »;

– À ce propos, on peut trouver un autre possible acte terroriste à l'article 118 « ceux qui en groupe auront porté atteinte à la paix publique et infligé des lésions ou des brimades graves aux personnes ou des dommages aux choses seront punis d'un emprisonnement d'un maximum de deux ans et six mois »;

– Finalement, l'article 88 punit d'un emprisonnement d'une durée maximale de trois ans quiconque aura participé à des groupes considérés comme paramilitaires, tant par leur organisation, uniforme ou emblèmes que par leur attitude incitant à des manifestations armées.

Le Code pénal andorran punit quiconque ayant collecté des fonds au bénéfice de ces organisations ou groupes d'un emprisonnement d'un maximum de huit ans. Si, lors de l'obtention de ces fonds, il aura été usé de la violence ou de l'intimidation, la peine applicable sera de douze ans (art. 84).

Par ces organisations, l'article 82 entend ceux qui auront porté atteinte à la sûreté de la Principauté ou altéré la paix et l'ordre public au moyen d'armes ou explosifs, ou en commettant des attentats.

De plus, le Code pénal prévoit une série de sanctions pour ceux qui apporteront de l'aide aux « organisations et groupes qui auront porté atteinte à la sûreté de la Principauté ou altéré la paix et l'ordre public au moyen d'armes ou explosifs, ou en commettant des attentats » (art. 82).

Le Code pénal entend comme aide :

– « quiconque aura procuré logement ou moyens de quelque nature aux membres de ces organisations sera puni d'un emprisonnement d'un maximum de huit ans » (art. 85);

– « quiconque aura fourni ou procuré des armes ou explosifs à des terroristes ou groupes armés sera puni d'un emprisonnement d'un maximum de quinze ans, sans préjudice d'une peine supérieure prévue au titre d'un autre délit » (art. 86);

– « et on peut même considérer comme appui aux organisations l'apologie des délits ou des organisations ou des groupes visés dans les articles précédents. Celle-ci sera punie d'un emprisonnement de six ans » (art. 87).

De plus, l'article 84 du Code pénal condamne « quiconque aura collecté des fonds au bénéfice des organisations ou groupes [...] » s'agissant de groupes ou organisations qui auront porté atteinte à la sûreté de la Principauté ou altéré la paix

et l'ordre public au moyen d'armes ou explosifs ou en commettant des attentats (articles précédents). Pour ce qui est de l'origine de l'argent, le Code pénal en cet article ne fait aucune distinction entre la provenance licite ou illicite des fonds.

L'article 83 du Code pénal fait référence à l'obtention d'argent par des moyens illicites en établissant des sanctions pour quiconque qui, pour obtenir des fonds au bénéfice des organisations ou des groupes visés à l'article précédent, aura porté atteinte aux biens, en ayant provoqué la mort ou des blessures graves.

Même si ces normes ne mentionnent pas explicitement l'expression « financement du terrorisme », elles le visent implicitement par l'utilisation de termes comme « la collecte de fonds » et « obtenir des fonds ».

Pour ce qui est du recrutement de personnes en Andorre pour des groupes terroristes qui agissent à l'étranger, le Code pénal prévoit aux articles 3.2 et 4 de son livre premier concernant l'application de la loi pénale que celle-ci s'appliquera pour les délits commencés, préparés ou commis en territoire andorran lorsqu'ils produisent ou ont pour but de produire des effets à l'étranger et pour les délits commis à l'étranger qui se continuent en Andorre. Les tribunaux andorrans seront également compétents pour juger des délits complexes lorsqu'un acte caractérisant l'un quelconque de leurs éléments constitutifs aurait été accompli sur le territoire de la Principauté. En ce sens, le recrutement de personnes en Andorre peut être considéré comme un acte caractérisant l'un quelconque des éléments constitutifs des délits prévus aux articles 82, 85, 86 et 87 du Code pénal. (Ceux qui, individuellement ou en organisations ou groupes, porteront atteinte à la sûreté de la Principauté ou altéreront la paix et l'ordre public au moyen d'armes ou explosifs ou en commettant des attentats, ceux qui procureront logement ou moyens de quelque nature aux membres de ces organisations ou groupes, ceux qui fourniront ou procureront des armes ou explosifs à des terroristes ou groupes armés, ceux qui feront l'apologie des délits ou de ces organisations ou groupes.)

Dans l'ordre juridique andorran se trouvent diverses dispositions relatives au trafic d'armes. En premier lieu, un décret du 3 juillet 1989 établit des normes régulatrices sur la possession, l'utilisation et la circulation des armes à feu, et plus précisément les sections II et III énumèrent les armes interdites et les imitations des armes interdites ainsi que celles dont le port est interdit.

En deuxième lieu, le Code pénal punit la possession illicite d'armes à feu, (art. 289 et 290), ainsi que « le dépôt, l'importation, l'exportation, le commerce ou le transit, réel ou fictif, par la Principauté, ainsi que la fabrication des armes interdites ou des imitations de ces armes, visées à la section 2, article 2, du décret du 3 juillet 1989, exception faite de celles du paragraphe 8, seront punis d'un emprisonnement d'un maximum de dix ans », et « le port illégal de l'une ou plusieurs des armes [...] sera puni d'un emprisonnement d'un maximum de cinq ans » (art. 89 et 90).

Troisièmement, l'article 93 énonce que « l'importation, l'acquisition, la vente, la détention, le port et la réparation d'armes réglementées ou la fabrication

de munitions également réglementées sans les permis, autorisations ou livrets adéquats seront punis d'un emprisonnement d'un maximum de trois ans, sauf les cas prévus aux articles 289 et 290 du présent code. Sont exclues de l'application du présent article les armes de chasse à canon lisse ».

Dans la même ligne, l'article 95 sanctionne « la vente illégale d'une arme de poing réglementée à une personne ne possédant pas la qualité de résident en Principauté sera punie d'un emprisonnement d'un maximum de quatre ans ».

Finalement, « quiconque aura réalisé des opérations internationales d'armes réglementées, avec transit réel ou fictif par la Principauté, sera puni d'un emprisonnement d'un maximum de huit ans » de même en ce qui concerne les explosifs : « l'achat, la vente, la détention ou l'importation d'explosifs non destinés à une activité autorisée seront punis d'un emprisonnement d'un maximum de dix ans » (art. 96 et 98, respectivement).

Application territoriale

Le premier chapitre du livre premier du Code pénal définit le champ d'application de la loi pénale.

Conformément aux articles 2, 3 et 4 de ce Code, les dispositions pénales sont applicables :

- À tous les délits et contraventions commis sur le territoire de la Principauté;
- Aux délits commencés, préparés ou commis à l'étranger lorsqu'ils produisent ou ont pour but de produire des effets sur le territoire andorran;
- Aux délits commencés, préparés ou commis en territoire andorran lorsqu'ils produisent ou ont pour but de produire des effets à l'étranger;
- Aux délits commis par des Andorrans ou des étrangers, à l'étranger, contre la sûreté de la Principauté, ses institutions ou ses autorités, et aux délits de falsification de documents, monnaies ou sceaux officiels andorrans;
- Aux délits commis par des Andorrans dans un pays étranger, dans le cas où, cumulativement :
 - a) L'accusé est présent en territoire andorran;
 - b) L'accusé n'a pas été jugé dans le pays où il a commis l'infraction;

c) L'infraction dont il est accusé a également le caractère de délit dans le pays où elle a été commise;

– Les délits commis à l'étranger qui se continuent en Andorre seront punis conformément au présent Code. Les tribunaux andorrans seront également compétents pour juger des délits complexes lorsqu'un acte caractérisant l'un quelconque de leurs éléments constitutifs aurait été accompli sur le territoire de la Principauté.

Ceci étant, pour les cas des personnes résidant en Principauté, qui aident, recèlent ou commettent des actes terroristes en dehors du pays, il faudra qu'au moins un élément du délit complexe ait été accompli en Andorre.

Dans le cas contraire, si l'inculpé est andorran il pourra être poursuivi par les tribunaux andorrans; s'il est étranger, il pourra être extradé lorsqu'une demande en ce sens sera adressée aux juges andorrans.

IV. ANTIGUA AND BARBUDA⁴

SUMMARY OF LEGISLATION OF ANTIGUA AND BARBUDA RELATED TO TERRORISM

(a) Penal Code

There are no specific laws to prevent recruitment to terrorist groups in or outside of Antigua and Barbuda. The practical methods of preventing such recruitment are denial of entry into the country or the granting of status to reside to suspected terrorists: the Immigration Department has been provided with a copy of the UN and FBI lists of terrorists, and careful checks at all border entries can be made and suspects closely monitored. The Immigration Department remains on alert and can report arrivals of any members of suspected groups that give terrorist concern.

(b) Suppression of Terrorism Act 1993

The Prevention of Terrorism Act 2001 does not amend the Suppression of Terrorism Act 1993. The Suppression of Terrorism Act makes provision for offences related to acts of terror such as murder, wounding and destruction of

⁴ Transmitted to the Secretariat by that Government on 22 July 2002 (S/2002/600/Add.1, enclosure) and on 19 May 2003 (S/2003/521, enclosure). Information was also provided in respect of the Money Laundering (Prevention) Act 1996, the Proceeds of Crime Act 1993, The Mutual Legal Assistance in Criminal Matters Act 1993,

property.⁵ Such offences are not regarded as offences of a political character and are extraditable. It also makes such offences extraterritorial offences.

⁵ List of Scheduled Offences under the Suppression of Terrorism Act 1993:

1. Murder
2. Manslaughter
3. Rape
4. Kidnapping, abduction
5. False imprisonment
6. Assault occasioning actual bodily harm or causing injury
7. Wilful fire-raising
8. Offence under any of the following provisions of the Offences Against the Person Act (Cap. 58)
 - (a) Section 17 (wounding with intent to cause serious bodily harm);
 - (b) Section 19 (causing grievous bodily harm);
 - (c) Section 20 (Attempting to choke etc in order to commit or assist in the committing of any indictable offence);
 - (d) Section 21 (using chloroform etc. to commit or assist in committing any indictable offence);
 - (e) Section 22 (maliciously administering poison etc., so as to endanger life or inflict grievous bodily harm);
 - (f) Section 23 (maliciously administering poison etc. with intent to injure etc.)
9. An offence under the following provisions of the Offences Against the Person Act (Cap. 58) –
 - (a) section 48 (abduction of any woman)
 - (b) section 51 (child stealing)
10. Use of explosives to commit felonies under the Offences Against the Person Act (Cap. 58) –
 - (a) section 27 (causing bodily injury by gun powder);
 - (b) section 28 (causing gun powder to explode or sending any person an explosive substances with intent to cause grievous bodily harm);
 - (c) section 29 (placing gun powder near a building with intent to do bodily injury to any person);
11. The following offences under the Firearms Act 1972 (No. 11 of 1972) —
 - (a) an offence under section 12 (possession of firearms or ammunition with intent to injure);
 - (b) an offence under section 13 (use of firearms or ammunition to resist arrest);
12. An offence under section 2, 3, 4, 8, 9 and 10 of the Malicious Damage Act (Cap. 51).
13. An offence under the Hijacking Act, 1975 (No. 21 of 1975)
14. An offence of attempting to commit any offence mentioned in a preceding paragraph of this Schedule.

V. ARGENTINA⁶

SUMMARY OF LEGISLATION OF ARGENTINA RELATED TO TERRORISM

Argentine law does not characterize terrorism or terrorist acts as a separate offence nor does it lay down penalties for such acts. Argentine criminal law says nothing about terrorism being a component of any criminal offence or a general or specific aggravating circumstance. Consequently, it does not characterize as offences actions aimed at financing terrorism or terrorist acts.

However, certain criminal acts which, owing to their impact in terms of damage to persons or goods, may be related to terrorist acts are covered by other offences under Argentine criminal law.

Thus, article 210 of the Penal Code defines the offence of unlawful association as participation in an association or group of three or more persons existing for criminal purposes; simply being a member of the association is an offence. This could cover participation of individuals in an organization existing for the purpose of committing certain criminal acts defined in the law which, owing to their impact in terms of damage to persons or goods, may be related to terrorist acts. Such participation might include the financing of criminal acts. The penalty provided for is 3 to 10 years' ordinary or rigorous imprisonment.

Article 210 *bis* of the Penal Code, concerning aggravated unlawful association lists, *inter alia*, cooperation or assistance in the creation or maintenance of an unlawful association existing for criminal purposes if this action jeopardizes the operation of the Constitution, as a punishable act. The penalty is from 5 to 20 years' ordinary or rigorous imprisonment.

Article 210, along with its provisions for aggravating circumstances, penalizes an individual for belonging to a group of three or more individuals whose objective is the commission of a crime, solely because he belongs to the group, and regardless of whether the planned act is committed in Argentina or elsewhere. Argentine criminal law includes the category of "recruitment" under the offence of unlawful association (art. 210 of the Penal Code), which could be applied to members of terrorist groups, whether as perpetrators, accomplices or participants.

⁶ Transmitted to the Secretariat by that Government on 27 December 2001 (S/2001/1340, enclosure), on 13 September 2002 (S/2002/1023, enclosure) and on 11 July 2003 (S/2003/719, enclosure). Information was also provided with respect of the Act No. 25,246 on concealment and laundering of the proceeds of criminal acts, of 13 April 2000, the Domestic Security Act No. 24,059, and Act No. 25,520 on National Intelligence, of 27 November 2001.

In cases in which article 210 does not apply, as, for instance, when there are fewer than three persons, the general provisions of the Penal Code against criminal involvement (such as aiding and abetting or complicity) apply.

Article 211 (on public intimidation) imposes a penalty of two to six years' imprisonment on anyone who, in order to frighten the public or incite disturbances or disorder, makes signs, raises alarms, threatens to commit an act that will endanger the public or uses other material means suited to producing such effects. The use of explosives, harmful chemicals or similar materials for such purposes, provided that the act does not constitute an attack against public security, is penalized by 3 to 10 years' imprisonment.

With regard to an attack against public security, article 213 of the Penal Code provides that "anyone who organizes or takes part in permanent or temporary groups not covered by article 210 of this Code whose primary or secondary purpose is to impose their ideas or combat those of others by force or threat shall be punished with three to eight years' confinement or imprisonment solely by virtue of being a member of the group"

Moreover, Argentine legislation defines terrorist acts as "Criminal acts committed by members of unlawful associations or organizations established for the purpose of creating alarm or fear, which are carried out by means of explosive or inflammable substances, weapons or other deadly items, when used to endanger the life or physical integrity of an indeterminate number of persons" (Act No. 25,241 on repentant offenders). These acts are not described for the purpose of defining a specific offence and penalty, but solely for the purposes of the application of this Act which provides for a reduced penalty for anyone who collaborates effectively in the investigation of such acts. Thus, the purpose of this provision is to obtain information in order to prevent or suppress terrorist acts.

VI. ARMENIA⁷

SUMMARY OF LEGISLATION OF ARMENIA RELATED TO TERRORISM

The National Assembly of Armenia recently adopted a new Criminal Code, which entered into force beginning 1 August 2003. Here is the outline of its main articles related to terrorism:

⁷ Transmitted to the Secretariat by that Government on 8 February 2002 (S/2002/162, enclosure), on 21 January 2003 (S/2003/146, enclosure) and on 24 October 2003 (S/2003/1044, enclosure). Information was also provided in respect of the Code of Criminal Procedure and the Law on Banks and Banking.

- Article 104 of the Criminal Code stipulates that murder in conjunction with a terrorist act is punishable by imprisonment for 8-15 years or life sentence and establishes punishment with imprisonment for 5-10 years for causing grave injury in conjunction with a terrorist act.
- Article 217 of the Criminal Code (Terrorism) establishes liability for the explosion, arson, assassination, similar acts causing mass casualties, destruction of property or other dangerous outcome for the public as well as the threat to commit such an act, aimed at disruption of public security, terrorisation of the population, influencing of the decision-making of any state body and/or official or the fulfilment of the demands of criminals. Such acts are punishable by imprisonment for 8-15 years.
- Article 222 of the Criminal Code which replaced Article 72 of the former Criminal Code, establishes legal liability for the formation and leading of the armed gangs aimed at the assault of individuals or organisations as well as participation in such groups and in their assaults. Such acts are punishable by the imprisonment for 8-15 years.
- Article 224 of the Criminal Code establishes legal liability for the formation of and participation in the illegal armed groups, which could not be convicted by Article 222. Such acts are punishable by the imprisonment for 2-10 years.
- Article 305 of the new Criminal Code, which replaced Article 62 of the former Criminal Code (Terrorist Act Directed against a Representative of a Foreign State), establishes liability for the murder of a state, public or political figure (with no specific mention of the state of belonging) committed to disrupt his/her activities. Such an act is punishable by imprisonment for 10-15 years or life sentence.
- Article 319 of the Criminal Code (International Terrorism) establishes liability for the explosion, arson, similar acts, which cause death of people, mass casualties, destruction or damage to the buildings, roads, means of transport or communication, other property, committed in the territory of foreign state and aimed at provoking of international hostilities or war, destabilizing internal situation of foreign state. Such acts are punishable by imprisonment for 10-15 years or life sentence.
- Article 388 of the Criminal Code establishes liability for the murder of a representative of a foreign state or international organisation if such acts are committed with an aim to provoke war or international tension. Such an act is punishable by imprisonment for 10-15 years. The act of violence against a representative of a foreign state or international organisation, his/her kidnapping or detention is punishable by imprisonment for 5-12 years.

In addition, the norms of the Part 7 of the new Criminal Code and particularly Article 38 also establish criminal liability for the accessories to a crime: an organizer (a person who organized or led the perpetration of felony as well as established or led a gang or criminal association), an instigator (a person who incited another person to perpetrate a felony by persuasion, financial incentive, threat or otherwise) and an abettor (a person who assisted by advice, instruction, offering an information, resources or tools, eliminating obstacles, had previously promised to conceal the offender, means or tools, traces of felony, to conceal, purchase or vend the items obtained through felony). Article 217 of the Criminal Code (Terrorism) in combination with the norms of the Part 7 of the same Code on establishing criminal liability for the accessories to a crime provides adequate legal basis for the prosecution of any involvement in terrorist activities including the provision of funds.

Furthermore, the Chapter 6 of the Criminal Code gives the definitions of a completed or unfinished offence, of an attempt or a preparation of offence, and stipulates a provision that the attempt and the preparation of offence must be convicted under the same Article of the General Part of the Code as the completed offence.

Territorial scope of application

According to Article 14 of the Criminal Code, an offence has to be considered as committed in the territory of Armenia and thus prosecuted by the Criminal Code of Armenia even if it started, continued or concluded in the territory of Armenia or it was carried out in complicity with persons committed an offence outside the country. Furthermore, the same Article stipulates that, regardless of the place of the crime commitment, a person is subject to criminal liability under the Criminal Code of the Republic of Armenia, if he/she is called for criminal liability within Armenia, and there are no other requirements by the international agreements.

Article 15 of the Criminal Code establishes liability for the citizens or residents of Armenia who committed an offence outside Armenia as long as that they have not been convicted in another country. Same Article establishes liability for foreign citizens or stateless persons who committed an offence outside Armenia providing that an offence is prosecuted by International Agreements of Armenia or is of grave nature (terrorism is considered as such) directed against the interests of Armenia or the rights or freedoms of its citizens as long as the perpetrators have not been convicted in another country.

Moreover, under current Armenian legislation an offence has to be considered as committed in the territory of Armenia and thus prosecuted by the Criminal Code of Armenia even if it started, continued or was completed in the territory of Armenia or it was carried out in complicity with persons who committed an offence outside the country.

VII. AUSTRALIA⁸

SUMMARY OF LEGISLATION OF AUSTRALIA RELATED TO TERRORISM

(a) 2002 Counter Terrorism Legislation package

The Australian Government's 2002 Counter Terrorism Legislation package consisted of the following Acts⁹:

- Security Legislation Amendment (Terrorism) Act 2002^{*}
- Suppression of the Financing of Terrorism Act 2002^{*}
- Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002^{**}
- Telecommunications Interception Legislation Amendment Act 2002^{*}
- Border Security Legislation Amendment Act 2002^{*}
- Criminal Code Amendment (Anti-Hoax and Other Measures) Act 2002^{***}

The Acts amended a range of legislation as described below.

Terrorism offences

The *Security Legislation Amendment (Terrorism) Act 2002* inserted the following new offences in the Criminal Code, with effect from 6 July 2002:

- *s. 101.1* – Engaging in a terrorist act (punishable by life imprisonment);
- *subs 101.2(1)* – Providing/receiving training connected with a terrorist act¹⁰ – knowing the connection (25 years imprisonment);
- *subs 101.2(2)* – Providing/receiving training connected with a terrorist act – reckless as to the connection (15 years imprisonment);

⁸ Transmitted to the Secretariat by that Government on 8 April 2003 (S/2003/513, enclosure). Information was also provided in respect of the Crimes (Foreign Incursions and Recruitment) Act 1978, reproduced in Part I of this publication.

⁹ * Received Royal Assent on 5 July 2002.

^{**} Received Royal Assent on 3 July 2002.

^{***} Received Royal Assent on 4 April 2002.

¹⁰ The phrase “connected with a terrorist act” is a shorthand for the phrase “connected with preparation for, the engagement of a person in, or assistance in, a terrorist act”

- *subs 101.4(1)* – Possessing a thing connected with a terrorist act – knowing the connection (15 years imprisonment);
- *subs 101.4(2)* – Possessing a thing connected with a terrorist act – reckless as to the connection (10 years imprisonment);
- *subs 101.5(1)* – Collecting/making a document connected with a terrorist act – knowing the connection (15 years imprisonment);
- *subs 101.5(2)* – Collecting/making a document connected with a terrorist act – reckless as to the connection (10 years imprisonment);
- *s 101.6* – Doing acts in preparation for or planning a terrorist act (life imprisonment).

The phrase “terrorist act” is defined in section 100.1 as an act, or threat of action, that is done or made with the intention of advancing a political, ideological or religious cause; and done or made with the intention of either coercing or influencing by intimidation an Australian government or the government of another country; or intimidating the public or a section of the public. The act must also cause a person serious physical harm or death, or involve serious risk to public health or safety, serious damage to property, or serious interference with an electronic system, or be a threat to do any of these acts.

Advocacy, protest, dissent and industrial action is excluded from the definition of “terrorist act” if not intended to cause serious physical harm to a person; or to cause a person’s death; or to endanger the life of a person, other than the person taking the action; or to create a serious risk to the health or safety of the public or a section of the public.

Terrorist organisations offences

The Security Legislation Amendment (Terrorism) Act 2002 inserted the following new offences directed against terrorist organisations in the Criminal Code, with effect from 6 July 2002:

- *subs 102.2(1)* – intentionally directing the activities of a terrorist organisation – knowing it is a terrorist organisation (25 years imprisonment);
- *s 102.3* – intentionally being a member of a terrorist organisation listed by the UN Security Council under a resolution relating to terrorism – knowing it is a terrorist organisation (10 years imprisonment);
- *subs 102.4(1)* – intentionally recruiting a person to a terrorist organisation – knowing it is a terrorist organisation (25 years imprisonment);

- *subs 102.5(1)* – intentionally providing training to or receiving training from a terrorist organisation – knowing it is a terrorist organisation (25 years imprisonment);
- *subs 102.6(1)* – intentionally receiving funds from or making them available to a terrorist organisation – knowing it is a terrorist organisation (25 years imprisonment);
- *subs 102.7(1)* – intentionally providing support or resources to a terrorist organisation that would help it engage in (in effect) terrorist related activities – knowing it is a terrorist organisation (25 years imprisonment).

Each of the offences except the membership offence is mirrored by a subsection (2) offence applicable where the defendant is reckless to the organisation being a terrorist organisation, carrying a maximum penalty of 15 years imprisonment.

The definition of “terrorist organisation” in subsection 102.1(1) is central to the operation of each of the offences. There are two alternate ways in which an organisation can be determined to be a terrorist organisation. First, if a person is prosecuted for one of the terrorist organisations offences, an organisation is a terrorist organisation if a court is satisfied beyond reasonable doubt that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act occurs). Secondly, if the organisation is specified by regulation. A regulation can be made only if the Minister is satisfied on relevant grounds that the organisation is identified in or pursuant to a decision of the United Nations Security Council relating to terrorism and that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act occurs). Regulations cease to have effect two years after their commencement.

Financing of terrorism offence

The *Suppression of the Financing of Terrorism Act 2002* inserts a new section 103.1 into the Criminal Code, which makes it an offence to (intentionally) provide or collect funds, reckless as to whether those funds will be used to facilitate or engage in terrorism. The maximum penalty is life imprisonment. The provision commenced on 6 July 2002.

Financial intelligence provisions

The *Suppression of the Financing of Terrorism Act 2002* amended section 16 of the *Financial Transactions Reports Act 1988*, commencing on 5 July 2002, to oblige cash dealers to report suspected terrorist-related transactions. In addition, the Director of the Australian Transaction Reports and Analysis Centre (Austrac, Australia’s financial intelligence unit), the Australian Federal Police Commissioner and the Director-General of Security have been empowered to disclose financial transaction reports information directly to foreign countries, foreign law enforcement agencies and foreign intelligence agencies, subject to appropriate undertakings to protect the confidentiality of the information, control

the use of the information and ensure that the information is used only for the purpose for which it was communicated.

Asset freezing provisions

The *Suppression of the Financing of Terrorism Act 2002* inserted a new Part 4 of the *Charter of the United Nations Act 1945* (“the Act”) to replace the *Charter of the United Nations (Anti-terrorism Measures) Regulations 2001* as the mechanism to implement Australia’s obligations to freeze terrorist assets under Security Council resolution 1373 (2001). These amendments commenced on 13 December 2002.

Section 20 makes it an offence for a person who holds a “freezable asset” to use or deal with the asset, or allow the asset to be used or dealt with, or facilitate the use of the asset or dealing with the asset. Section 21 makes it an offence to, directly or indirectly, make an asset available to a proscribed person or entity.

A “freezable asset” is an asset owned or controlled by a “proscribed person or entity”, or an asset listed by the Minister under section 15 of the Act, or is derived or generated from such assets. A “proscribed person or entity” is a person or entity listed by the Minister under section 15 or a person or entity proscribed by regulation under section 18. Section 15 provides for the Governor-General to make regulations prescribing the matters of which the Minister must be satisfied before listing a person, entity or asset, to give effect to a decision that the Security Council has made under Chapter VII of the Charter of the United Nations relating to terrorism and dealings with assets. Section 22A provides for the Governor-General to make regulations relating to procedures for the implementation of asset freezing.

Pursuant to sections 15 and 22A, the Governor-General made the *Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002*. Regulations 2 to 6 provide for the transition between the old and new asset freezing mechanisms and the “proscribed matters” provided for in section 15 (that is, a person, entity or asset referred to in paragraph 1(c) of resolution 1373 (2001)). Regulations 7 - 12 provide for the procedure referred to in section 22A.

Air security officer program

The *Security Legislation Amendment (Terrorism) Act 2002* also amended the *Australian Protective Service Act 1987* and the *Crimes (Aviation) Act 1991* to extend the arrest without warrant powers of Australian Protective Services officers to the terrorist and terrorist bombing offences and ensure that these powers may be exercised on intrastate flights in relation to hijacking and other offences in Part 2 of the Crimes (Aviation) Act. The *Australian Protective Service Act 1987* sets out powers in relation to certain offences for the Australian Protective Service, such as the power of arrest without warrant for hijacking on Australian aircraft. The functions and powers of the Australian Protective Service are contained in sections 6 and 13-18 of the *Australian Protective Service Act 1987*.

Review provision

Section 4 of the *Security Legislation Amendment (Terrorism) Act 2002* lays down a requirement for a review of the provisions of the *Security Legislation Amendment (Terrorism) Act 2002*, *Suppression of the Financing of Terrorism Act 2002*, *Border Security Legislation Amendment Act 2002* and the *Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002*. This must be undertaken as soon as practicable after the third anniversary of the commencement of the amendments (i.e., as soon as practicable after 6 July 2005). In the first instance, there will be a review by a committee chaired by a retired judicial officer appointed by the Attorney-General. This committee's report will be forwarded to the Parliamentary Joint Committee on the Australian Security Intelligence Organisation, the Australian Secret Intelligence Service and the Defence Signal Directorate. This second committee is then to undertake a review of the provisions, pursuant to section 29(1)(ba) of the *Intelligence Services Act 2001* and report to Parliament.

(b) Other Legislation

The *Crimes (Aviation) Act 1991* makes the offences provided for in the *Convention on Offences and Certain Other Acts Committed on Board Aircraft* (Tokyo, 1963), the *Convention for the Suppression of Unlawful Seizure of Aircraft* (The Hague, 1970) the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* (Montreal, 1971) and the *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation* (Montreal, 1988) criminal offences under Australian law. Penalties for the offences range from two years to life imprisonment, depending upon the gravity of the offence.

The *Crimes (Ships and Fixed Platforms) Act 1992* makes the offences provided for in the *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation* (Rome, 1988) and the *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf* (Rome, 1988) criminal offences under Australian law. Penalties for the offences range from two years to life imprisonment, depending upon the gravity of the offence.

The *Nuclear Non-Proliferation (Safeguards) Act 1987* makes the offences provided for in the *Convention on the Physical Protection of Nuclear Material* (Vienna, 1980) criminal offences under Australian law. The penalty for each of the offences is A\$20,000 or ten years imprisonment or both.

The *Crimes (Hostages) Act 1989* makes the offences provided for in the *International Convention against the Taking of Hostages* (New York, 1979) criminal offences under Australian law. The maximum penalty for the offence of "hostage taking" is life imprisonment.

The *Crimes (Internationally Protected Persons) Act 1976* makes the offences provided for in the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents* (New York, 1973) criminal offences under Australian law. Penalties for the offences range from seven years to life imprisonment, depending upon the gravity of the offence.

Section 8 of the *Crimes (Biological Weapons) Act 1976* makes it an offence to develop, produce, stockpile or otherwise acquire or retain:

- microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or
- weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

The maximum penalty for the offence in the case of a natural person is a fine of A\$10,000 or imprisonment for life or both. In the case of a corporation, the maximum penalty is a fine of A\$200,000.

In addition, Section 12 of the *Chemical Weapons (Prohibition) Act 1994* makes it an offence to intentionally or recklessly:

- develop, produce, otherwise acquire, stockpile or retain chemical weapons; or
- transfer, directly or indirectly, chemical weapons to another person; or
- use chemical weapons; or
- engage in any military preparations to use chemical weapons; or
- assist, encourage or induce, in any way, another person to engage in any activity prohibited to a State Party under the Convention; or
- use riot control agents as a method of warfare.

The penalty for the offence is imprisonment for life.

VIII. AUSTRIA¹¹

1. SUMMARY OF LEGISLATION OF AUSTRIA RELATED TO TERRORISM

Under the Austrian Penal Code financing of armed associations (Section 279 of the Penal Code) is punishable by deprivation of liberty of up to 3 years.

Under certain circumstances, the intentional financing of a specific terrorist act would be considered as an act of assistance (participation) to the terrorist act itself (Section 12 of the Penal Code in relation with the offence committed, e.g. murder, intentional endangering by explosives etc.). However, the terrorist act in question would at least have to be attempted in order to make the (financing) participant punishable (Sections 15 Paras. 1 and 2 of the Penal Code). Sanctions would depend on the specific offence committed and would range up to a deprivation of liberty of 10 to 20 years or life imprisonment, depending on the gravity of the offence (Section 12 of the Penal Code in relation with the relevant general offence committed; e.g. murder).

Under certain circumstances, the providing or collecting of money in order to finance the activities of a criminal organization would be considered as participation in the criminal organization as such. In this case, it is not necessary that a specific terrorist act has already been committed or attempted (Section 278a of the Penal Code). This crime is punishable by deprivation of liberty of 6 months to 5 years.

As soon as three or more people conspire with the intent to continually committing criminal offences (criminal organization), this is considered to be a general risk, which law enforcement authorities pursuant to Section 21 of the Security Police Act have to eliminate.

The participation in a criminal organization as defined in Section 278a of the Penal Code constitutes a criminal offence punishable by deprivation of liberty of 6 months to 5 years (Section 278a of the Penal Code).

Section 278b of the Austrian Penal Code criminalizes the leading of and the participation in a terrorist group. For the purpose of further defining the meaning of "participation" Section 278b para. 3 refers to Section 278 para. 3 of the Penal Code, which stipulates that anybody who *inter alia* supports a (criminal) group by providing information or assets or in any other way with the awareness

¹¹ Submitted to the Secretariat by that Government on 20 December 2001 (S/2001/1242, enclosure), on 2 August 2002 (S/2002/969, enclosure) and on 24 February 2003 (S/2003/276, enclosure). Information was also provided in respect of the Austrian Aliens Act.

that he/she thereby promotes the group or its criminal acts participates as member in the group. As has been pointed out explicitly in the explanatory memorandum to the government bill that introduced this concept, “recruiting” is an example for such a support “in another way”.

The recruitment of members for armed associations constitutes a criminal offence punishable by deprivation of liberty for up to 3 years (Section 279 of the Penal Code).

Moreover, conspiracy – with at least one other person – to commit a criminal act such as murder, kidnapping, hijacking of an aircraft or endangering by explosives constitutes a criminal offence, irrespective of the actual attempt or commitment of the specific (terrorist) act (Section 277 of the Penal Code). It is punishable by deprivation of liberty of 6 months to 5 years.

Under certain circumstances, the intentional financing of a specific terrorist act would be considered as an act of assistance (participation) to the terrorist act itself (Section 12 of the Penal Code in relation with the offence committed, e.g. murder, intentional endangering by explosives, etc.). However, the terrorist act in question would at least have to be attempted in order to make the act of the (financing) participant punishable (Section 15 para. 1 und 2 of the Penal Code). Section 279 of the Penal Code relates to the financing of armed associations. Under certain circumstances, the providing or collecting of money in order to finance the activities of a criminal organisation as defined in Section 278a of the Penal Code would be considered as participation in the criminal organisation as such. In this case, it is not necessary that a specific terrorist act has already been committed or attempted. Certain acts of handling assets that belong to a criminal organisation as defined in Section 278a of the Penal Code, if they are used or destined for financing terrorist acts could fall under Section 278a para 2 of the Penal Code when committed with the knowledge that the assets belong to a criminal organisation.

Currently, support for criminal organisations acting outside Austria is punishable in Austria, if the supportive act has been effected in Austrian territory. The recruitment of members for a criminal organisation can be considered as such a supportive act. (In the future legislation, terrorist groups will be covered explicitly).

The amended Penal Code and the Code of Criminal Procedure implementing both Resolution 1373 (2001) and the *International Convention for the Suppression of the Financing of Terrorism* provide the possibility to issue an injunction with respect to funds, assets and economic resources of individuals and entities, either resident or non-resident, if they are linked to terrorism. The relevant provisions include funds, assets and economic resources suspected to have been obtained through or could be used for the commitment of a criminal act as defined in Section 278d of the Penal Code. In addition, this procedure applies also to funds, assets and economic resources within the disposition of a criminal organisation or a terrorist group.

Territorial Application

Austrian Penal law requires prosecution of foreign nationals who committed a terrorist offence outside Austria and who are found in Austria and can not be extradited.

Under Section 64 para.1 subpara. 9 of the Penal Code, there is Austrian jurisdiction regarding the following offences committed abroad:

- conspiracy to commit terrorist offences (Section 278b of the Penal Code); and
- terrorist offences (Section 278c of the Penal Code),

provided inter alia that the perpetrator was a foreign national at the time of the commission of the offence and his/her surrender or extradition is refused.

Under Section 64 para. 1 subpara. 10 of the Penal Code, there is Austrian jurisdiction with regard to the offence of financing of terrorism (Section 278d of the Penal Code) committed abroad, provided inter alia that the perpetrator is found in Austria and cannot be extradited to another State. Furthermore, Section 65 para.1 subpara. 2 of the Penal Code provides for Austrian jurisdiction over foreign nationals who have committed criminal offences, including terrorist offences, abroad and are found in Austria and cannot be extradited to another State.

2. PENAL CODE¹²

*Section 20 (Confiscation of Profits)*¹³

(1) Whoever

1. has committed an offence and has obtained economic benefit from it, or
2. has received economic benefit for committing an offence, is to be condemned to payment of an amount of money equivalent to the gained illegal profits. Insofar as the extent of the profits cannot be established at all, or cannot be established without disproportionate expenditure, the court may fix the sum of money to be confiscated according to its conviction.

¹² Unofficial English translation provided by Government.

¹³ BGBl. Nr. I 134/2002.

(2) If the perpetrator

I. has committed crimes (sect. 17) continuously or repeatedly and has obtained economic benefits from, or received for, their commission and has gained during the same period further economic benefits, there being an obvious supposition that these benefits derive from other crimes of the same nature, and the legal acquisition of the benefits not being made credible, these economic benefits have to be taken into consideration in fixing the amount of money to be confiscated.

(3) A perpetrator who, during the period of his membership in a criminal organization (sect. 278a) or in a terrorist group (sect. 278b), has gained economic benefits, is to be condemned to payment of an amount of money the court may fix corresponding to the gained profits according to its conviction, if there is an obvious supposition that these profits derive from offences and their legal acquisition cannot be made credible.

(4) Whoever profits illegally and directly from an offence committed by another person, or from the economic benefit given for the commission of such [an] offence, is to be condemned to payment of an amount of money equivalent to these profits. This applies mutatis mutandis to legal persons and partnerships which have gained profits.

(5) If the person who has gained illegal profits has died, or if the legal person or partnership has ceased to exist, the profits are to be confiscated from the legal successor insofar as they were still existent at the moment of transmission of rights. A majority of persons who have gained illegal profits are to be condemned according to their respective shares. If the share cannot be established, the court has to fix it according to its conviction.

*Section 20b (Forfeiture)*¹⁴

(1) Property being at the disposal of a criminal organization (sect. 278a) or a terrorist group (Sect. 278b) or which has been provided or collected as a means for financing terrorism shall be declared forfeited.

(2) Property deriving from an offence where Austrian jurisdiction is not established under sect. 62 to 65 shall be declared forfeited if the offence is punishable under the law of the State where it was committed.

*Section 41a*¹⁵

(1) If the perpetrator of a criminal offence punishable under sects. 277, 278, 278a or 278b or of a criminal offence being connected with such a

¹⁴ BGBl. I Nr. 134/2002.

¹⁵ As amended by Federal Law Gazette Nr. I 1997/105, most recently amended by Federal Law Gazette Nr. I 2002/134.

conspiracy, association or organization discloses his knowledge to a prosecution authority about facts whose knowledge contributes essentially

1. to remove or reduce considerably the dangers arising from the conspiracy, association or organization,
2. to promote the clearing up of such an offence in addition to his own complicity or
3. to find a person who participated in such a conspiracy in a leading position or had a leading position in such an association or organization, the sentence may remain under the legal minimum penalty under sect. 41 if this is adequate to the importance of the disclosed facts compared with the guilt of the perpetrator. Sect. 41 para. 3 is applicable *mutatis mutandis*.

(2) Para.1 applies *mutatis mutandis* to the participant in a conspiracy, association or organization being punishable under the prohibition law or to the perpetrator of a criminal offence being connected with such a conspiracy, association or organization. In case the knowledge of the perpetrator relates to criminal offences to which the Austrian penal laws are not applicable, para.1 shall apply nevertheless so far as a legal assistance would be admissible.

Criminal offences abroad being punished irrespective of the laws which are valid for the scene of the crime

Section 64¹⁶

(1) The Austrian penal laws are applicable regardless of the penal laws which are valid for the scene of the crime to the following offences being committed abroad:

1. espionage of a trade or business secret in favour of foreign countries (sect. 124), high treason (sect. 242), preparations for high treason (sect. 244), subversive associations (sect. 246), attacks on the high instruments of state (sects. 249 to 251), treason to the country (sects. 252 to 258) and criminal offences against the Federal Armed Forces (sects.259 and 260);
2. criminal offences committed against an Austrian public officer (sect. 74 n.4) during or for the execution of his functions and committed by an Austrian public officer; false testimony before a court (sect. 288) and perjury or false deposition under oath before an administrative authority (sect. 289) in proceedings pending in an Austrian court or in an Austrian administrative authority;

¹⁶ As amended by Federal Law Gazette Nr. 1987/605, 1996/762, I 1997/112, I 1998/153, I 2000/34 and I 2002/134.

3. extortionate kidnapping (sect. 102), surrender to a foreign power (sect. 103), slave trade (sect. 104), traffic in persons (sect. 217), money counterfeiting (sect. 232), the forgery of particularly protected securities punishable under section 232 (sect. 237), criminal organization (sect. 278a para.1) and the criminal offences punishable under sects. 28 para.2 to 5, 31 para.2 and 32 para.2 of the drug law if Austrian interests have been violated or if the perpetrator cannot be extradited;

4a. gross sexual abuse of minors (sect. 206), sexual abuse of minors (sect. 207) and pornographic representations with minors pursuant to sect. 207a para. 1 and 2 if the perpetrator is an Austrian citizen residing generally in the homeland;

4b. production and distribution of weapons for mass extermination (sect. 177a) if the perpetrators are Austrian citizens, but as to nuclear weapons only so far as the offence did not be committed by order or at the responsibility of a contracting party of the treaty against the distribution of nuclear weapons, Federal Law Gazette Nr. 258/1970, which is a state with nuclear weapons;

5. hijacking (sect. 185) and criminal offences against life and limb in this connection or against the freedom of aviation and its intentional endangering (sect. 186) if the criminal offence is directed against an Austrian aircraft,

a) the aircraft lands in Austria and the perpetrators are still on board;

b) the aircraft has been rented out to someone without a crew who has his business seat in Austria or in default of such a seat resides permanently in Austria; or

c) the perpetrator is in Austria and cannot be extradited;

6. other criminal offences for which Austria is bound to prosecution even if they have been committed abroad, irrespective of the laws which are valid for the scene of the crime;

7. criminal offences which commits an Austrian against an Austrian if both of them have their domicile or general residence in Austria;

8. participation (sect. 12) in a criminal offence which has been committed by the direct perpetrator at home as well as receiving stolen goods (sect. 164) and money laundering (sect. 165) referring to an offence being committed at home;

9. terrorist association (sect. 278b) and terrorist criminal offences (sect. 278c) as well as criminal offences under sections 128 to 131, 144 and 145 and 223 to 224, which have been committed in this connection, if

- a) the perpetrator has been an Austrian at the time of the offence or he has gained the Austrian citizenship afterwards and is still in its possession at the time of the institution of penal proceedings;
- b) the perpetrator has his domicile or general residence at home;
- c) the offence has been committed in favour of a legal entity having its seat in Austria;
- d) the offence has been committed against the National Parliament, the Federal Parliament, the Federal Assembly, the Federal Government, a Provincial Parliament, a Provincial Government, the Constitutional Court, the Administrative Court, the Supreme Court, any other court or administrative authority or against the people of the Republic of Austria;
- e) the offence has been committed against an authority of the European Union or against an entity under the treaties for the institution of the European Communities or the treaty on the European Union, having its seat in the Republic of Austria;
- f) the perpetrator has been a foreigner at the time of the offence, is now in Austria and cannot be extradited.

10. financing of terrorism (sect. 278d) if

- a) the perpetrator has been an Austrian at the time of the offence or he has gained the Austrian citizenship afterwards and is still in its possession at the time of the institution of penal proceedings; or
- b) the perpetrator has been a foreigner at the time of the offence, is now in Austria and cannot be extradited.

(2) If the penal laws mentioned in para. 1 cannot be applied only for the reason that there has been committed a criminal offence which is punished by a severer sanction, the offence being committed abroad shall be punished nevertheless irrespective of the penal laws which are valid for the scene of the crime pursuant to the Austrian penal laws.

Criminal acts committed abroad which are subject to prosecution only if they are punishable also according to the law of the State where the act was committed

Section 65

(1) For other criminal acts committed abroad than those referred to in sections 63 and 64 applies the Austrian criminal law, if the act is punishable also according to the law of the state where the act was committed:

1. if the perpetrator has been an Austrian national at the time of the criminal act or if he acquired Austrian nationality later on and still is Austrian national at the time of the trial; if the perpetrator has been foreigner at the time of the criminal act, is being caught in Austria and can not be extradited to a foreign state for other reasons than the nature or characteristics of the criminal act.

(2) The penalty is to be determined so that the perpetrator in general is not treated less favorably than he would have been according to the laws of the state where he committed the criminal act.

(3) It is sufficient that the act is criminalized according to Austrian law if no criminal justice exists at the place where the criminal act was committed.

Section 165 (Money laundering)¹⁷

(1) Whoever conceals property items that derive from the crime of another person, from such an offense under sections 223, 224, 225, 229, 230, 269, 278, 278d, 288, 289, 293, 295 or 304 to 308, or from such a tax offense of smuggling or evasion of import or export taxes (insofar as these fall within the competence of the courts), or disguises the origin thereof, particularly by giving in legal relations false information regarding the origin or true nature of those property items, the ownership of or other rights to them, the right to dispose of them, their transfer or their location, shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding 360 daily rates.

(2) Whoever knowingly acquires such property items, holds them in custody, invests, administers, converts, realizes, or transfers them to a third party, shall be liable in the same way.

(3) Whoever commits the offence involving items worth more than 40,000 Euro or as the member of a criminal group associated for the purpose of continuous money laundering shall be liable to imprisonment for a term of six months to five years.

(4) A property item shall be deemed to derive from an offense when the perpetrator of the crime has obtained it through that offence or received it for the

¹⁷ BGBl. I Nr. 134/2002

commission of that offence, or when it represents the value of the originally obtained or received property item.

(5) Whoever knowingly, acting on behalf or in the interest of a criminal organization (sect. 278a) or of a terrorist group (sect. 278b), acquires property items of that organization or group, holds them in custody, invests, administers, converts, realizes, or transfers them to a third party, shall be liable to imprisonment for a term not exceeding three years; whoever commits the offence involving items worth more than 40,000 Euro, to imprisonment for a term from six months to five years.

Section 278 (Criminal association)¹⁸

(1) A person who founds a criminal association or participates in such an association as member is to be sentenced to imprisonment up to three years.

(2) A criminal association is an union planned for a longer time of more than two persons aiming the commitment of one or more crimes by one or more members of the association, other considerable acts of violence against life and limb, not only petty damages to property, thefts or frauds or misdemeanours under sects. 165, 177b, 223 to 239, 304 or 307 or under sects. 104 or 105 of the Aliens Act.

(3) As member participates in a criminal association who commits a criminal offence within the scope of its criminal orientation or participates in its activities by providing for information or assets or in another way with the awareness that he promotes thereby the association or its criminal acts.

(4) If the association did not lead to a criminal offence in the planned way no member shall be punished if the association dissolves itself voluntarily or it results from its conduct that it has given up its plan voluntarily. Furthermore a person shall not be punished for criminal association who withdraws voluntarily from the association before an offence in the planned way has been committed or attempted; but a person who participated in the association in a leading position only in case he effects by an information of the authority (Sect.151 para. 3) or in another way that the danger is removed which arises from the association.

Section 278a (Criminal organization)¹⁹

Whoever establishes an association of a considerable number of persons, intended to last a longer period of time and similar to an enterprise, or who participates in such an association as a member (sect. 278 para. 3), shall be liable to imprisonment for a term of six months to five years if the association

¹⁸ As amended by Federal Law Gazette Nr. 1 2002/134.

¹⁹ BGBl. 1 Nr. 134/2002.

1. is oriented, even if not exclusively, towards the repeated and planned commission of grave offences against life and limb, freedom, or property, or of grave offences relating to the sexual exploitation of human beings, smuggling of aliens, illegal trafficking in military weapons, nuclear and radioactive material, dangerous waste, counterfeit money or drugs, and
2. aims at profits on a high scale or at considerable influence on politics or economy and
3. undertakes to corrupt, or intimidate, others, or to particularly screen itself against prosecution measures.

Section 278, para. 4, shall apply mutatis mutandis.

Section 278b (Terrorist association)²⁰

(1) A person who leads a terrorist association (para. 3) is to be sentenced to imprisonment from five to fifteen years. A person who leads a terrorist association which confines itself to threaten with terrorist offences (sect. 278c para. 1) is to be sentenced to imprisonment from one year to ten years.

(2) A person who participates in a terrorist association as member (sect. 278 para. 3) is to be sentenced to imprisonment from one year to ten years. A terrorist association is an union planned for a longer time of more than two persons aiming the commitment of one or more terrorist criminal offences (sect. 278c) by one or more members of the association.

Section 278c (Terrorist criminal offences)²¹

- (1) Terrorist criminal offences are
1. murder (sect.75),
 2. bodily injuries under sections 84 to 87,
 3. extortionate kidnapping (sect. 102),
 4. gross intimidation (sect. 106),
 5. dangerous threat sect. 107 para.2),
 6. gross damage to property (sect. 126) and damaging of data (sect. 126a) if thereby a danger to the life of another person or a danger to the property of another person to a large extent can be caused,

²⁰ As amended by Federal Law Gazette 1 2002/134.

²¹ As amended by Federal Law Gazette Nr. 1 2002/134.

7. intentional offences of dangerousness to public safety (sects. 169, 171, 173, 175, 176, 177a, 177b, 178) or intentional infringement of environment (sect. 180),

8. hijacking (sect. 185),

9. intentional danger to the safety of aviation (sect. 186) or

10. a criminal offence punishable under section 50 of the Weapons Act 1996 or section 7 of the War Material Act, if the offence is appropriate to cause a severe interference with the public life or such an interference for a longer time or to cause a severe damage to the economic life being committed with the intent to intimidate the people in a serious manner or to force public authorities or an international organization to an action, permission or omission or to convulse or destroy the politic, constitutional, economic or social basic structures of a state or an international organization.

(2) A person who commits a criminal offence under para. 1 shall be punished pursuant to the law applicable to the offence mentioned there, and the maximum penalty is to be increased by half of the penalty being prescribed respectively, but not exceeding twenty years.

(3) The offence is not regarded as terrorist criminal offence if it is directed to the establishment or re-establishment of a democratic and constitutional situation or the exercise or observance of human rights.

Section 278d (Financing of terrorism)²²

(1) A person who provides for assets of property or collect them with the intent that they are used for the commitment

1. of a hijacking (sect. 185) or an intentional danger to the safety of aviation (sect. 186),

2. of an extortionate kidnapping (sect. 102), or the threat with it,

3. of an attack on life and limb or the freedom of a person protected by international law or a violent attack on an apartment, the official premises or the means of transportation of such a person which is appropriate to expose this person to a danger to life and limb or freedom or a threat with it;

4. of an intentional endangering by nuclear energy or ionized radiation (sect. 171) or a threat with it, of a unlawful use of nuclear materials or radioactive substances (sect. 177b), of any other criminal offence to obtain nuclear materials or radioactive substances or of the threat to

²² As amended by Federal Law Gazette Nr. 1 2002/134.

commit a theft or robbery of nuclear materials or radioactive substances aiming to force another person to an action, permission or omission,

5. of a considerable attack on life and limb of another person on an airport serving the international civil aviation, of an destruction or considerable damaging of such an airport or a civil aircraft being on it or an interruption of the services on the airport, so far as the offence is committed by the use of a weapon or other device and is appropriate to endanger the security of the airport;

6. of a criminal offence committed in a way mentioned in sects. 185 or 186 against a vessel or a fixed platform, against a person being on board of a vessel or a fixed platform or against the cargo loaded on a ship or an equipment of the ship;

7. of the transportation of a blasting composition or another deadly device in a public place, to a governmental or public institution or a public traffic system or services of supply or of the operation of these means aiming to cause the death or a grievous bodily injury of another person or the destruction of the place, institution or system to a high degree, as far as the destruction is appropriate to bring about a considerable economic damage;

8. of a criminal offence which shall effect the death or a grievous bodily injury of a civil person or another person not being actively involved in the hostilities of an armed conflict if this act is aimed for the reason of its nature and the circumstances at threatening a group of the population or forcing a government or an international organization to an action or omission; is to be sentenced to imprisonment from six months to five years. But the nature and extent of the sentence must not be severer than the penalty provided for the offence.

(2) The offender shall not be punished under para. 1 if the offence is subject to a severer penalty under another provision.

3. CODE OF CRIMINAL PROCEDURE

Section 144a

(1) If there is suspicion of illegal profits, and it is supposed that these profits will be confiscated according to section 20 of the Penal Code, or if there is suspicion that property is at the disposal of a criminal or terrorist organization (sect. 278a and 278b Penal Code), was provided or collected for the purpose of financing terrorism (sect. 278d Penal Code), or derives from an offence, and it is supposed that this property will be declared forfeited according to section 20b of the Penal Code, the investigating judge must, upon application by the public prosecutor, issue a provisional injunction safeguarding such order, if there is concern that the enforcement of such order would otherwise be in danger or

substantially impeded. The provisions of the Code of Civil Execution are to be applied to such injunctions *mutatis mutandis*, if not interfering with the following provisions.

(2) The following means of safeguarding may be ordered by the investigating judge according to the purpose of safeguarding in the actual case:

1. the custody or administration of movable tangible goods (sections 259 ff of the Code of Civil Execution) belonging to the person against whom the provisional injunction is issued, including the payment into court;
2. the prohibition of transfer or pledge of movable tangible goods;
3. the third-party prohibition if the person against whom the provisional injunction is issued, has pecuniary claims or other claims to performance or restoration against a third party;
4. the prohibition to transfer real property, or rights incorporated in public registers, or to submit it to charges or encumbrances.

(3) A provisional injunction may be issued even if the exact amount to be safeguarded is not yet known.

(4) In the provisional injunction, an amount of money has to be fixed, by the payment of which the execution of the injunction is suspended. After the payment, the injunction is insofar to be lifted, upon application of the party concerned. The amount of money is to be fixed so that it covers the presumable confiscation of profits or the presumable forfeiture.

(5) The provisional injunction must be lifted as soon as its prerequisites cease to apply; in particular, if it is supposed that confiscation of profits or forfeiture will be abstained from for the reasons set out in sections 20a para. 2 and 20c of the Penal Code. The public prosecutor, the person charged and other parties concerned (section 444) may appeal against the court decision ordering or lifting the provisional injunction, to the appellate court.

(6) The Federal State can be made liable for pecuniary loss caused by a provisional injunction, its execution or a decision to lift it, only under the provisions of the Law on Public Liability.

*Section 145a*²³

(1) As far as credit or financial institutes are not obliged to keep the banker's discretion sect. 38 para.2 n.1 of the Banking Act, Federal Law Gazette Nr.

²³ BGBl. I Nr. 134/2002 (As amended by Federal Law Gazette Nr. I 2000/108, most recently amended by Federal Law Gazette Nr. I 2002/134).

532/1993 and supposing that it seems to be necessary for clearing up a crime or offence within the jurisdiction of a court of first instance they and their persons are obligated

1. to disclose the name and other data being known to them about the identity of the holder of a business connection as well as his address;

2. to give information whether a suspected person holds a business connection with this institute, is economically empowered by it or authorized to it and in the affirmative to make all statements being necessary for the precise characterization of this business connection as well as to produce all documents about the identity of the holder of such a business connection and about his right of disposal;

3. to hand over all documents and any records about the nature and the extent of the business connection and business activities being connected with it and other business events of a certain period in the past or in the future if it must be supposed for certain reasons

- a) that the business connection of a person with the credit or financial institute is related to the commission of the penal offence and either the holder of the account is personally suspicious to have committed the offence or it is to be expected that a person being suspected of the offence has realized a transaction through the account or will realize it; or that the business connection is used for the transaction of a profit which has been obtained by penal offences or received for them (sect. 20 of the Penal Code or which is at the disposal of a criminal organization or terrorist group or has been provided or collected as a means for financing terrorism (Sect. 20b of the Penal Code);

(1a) On the conditions mentioned under para.1 the persons being employed with the credit or financial institute must make a statement as a witness about facts which have been entrusted or made accessible to them by reason of the business connection.

(1b) An judicial order about the existence of the obligations under para.1 is only admissible if the proportionality for the purpose of the measure is observed. In this connection it shall be particularly taken into consideration that the aimed success is justifiably proportionate to the presumably effected infringement upon the rights of disinterested third parties and it shall be examined whether there could be also a reasonable chance of the aimed success by taking less incisive measures.

(2) Instead of the originals of documents and other records copies may be handed over as far as they correspond with the Original beyond doubt. In case of the use of data mediums the credit or financial institute must hand over reproductions being legible without any auxiliary means or arrange for such

reproductions; if an automatic data processing is used for the business connection an electronic data medium must be transmitted which shall have a size in common use.

(3) The existence of the obligations under para. 1 has to be determined by an order the investigating judge. This order must contain

1. the proceedings and the offence being the reason for the investigation,
2. the credit or financial institute,
3. the documents and other records which have to be handed over as well as the information which must be given,
4. the facts from which arise the necessity and proportionality of the obligations pursuant to para. 1,
5. in case of para. 1 n. 3 the period concerned and the facts from which arises the relation between the business connection and the subject of the investigation.

(4) An order under para. 1 must be served upon the credit or financial institute, the accused and the persons being authorized to dispose by virtue of the business connection as soon as they are known to the court. The service upon the accused and the persons being authorized to dispose may be suspended so long as the purpose of the investigation would be endangered. About that the credit or financial institute must be informed which is obliged to keep all the facts and occurrences in connection with the judicial order temporarily a secret from costumers and third parties.

(5) In case the credit or financial institute is not willing to hand over certain documents or other records or to give certain information the actions under sects. 143 para. 2 and 145 para. 2 shall be taken.

Section 443

(1) As to confiscation of profits, forfeiture, confiscation and other pecuniary sanctions liability for fines, forfeiture and value compensation, the decision shall be made in the penal judgement, save it is provided, in this chapter in another way.

(2) If the results of the penal proceedings as such or after carrying out simple additional investigations are insufficient to judge reliably the pecuniary sanctions mentioned in para. 1, their determination may be reserved by an order for a separate decision (sects. 445, 445a); apart from this case any further order regarding the assets and objects concerned is admissible.

(3) The decision on pecuniary sanctions is - save the case under sect. 445a - equal to the imposition of a penalty and may be appealed in favour and against the convicted or the other persons concerned by the decision (sect. 444).

Section 445²⁴

(1) If there are reasons to suppose that the prerequisites for confiscation of profits (section 20 of the Penal Code), for forfeiture (section 20b of the Penal Code) or for confiscation (section 26 of the Penal Code) are fulfilled, and if it is not possible to issue the order in a penal proceeding or in a proceeding on preventive measures involving deprivation of liberty, the public prosecutor has to make an independent application to order such pecuniary sanction.

(2) On an application for confiscation of profits or for forfeiture the competent court has to decide by judgement in an independent proceeding after public and oral trial; the competent court is the court which was or would have been competent for the trial and judgement of the underlying offence; but in absence of such competence the competent court is the court of first instance where the profits or property is located. The court of first instance decides through single judge. In case a court of lay assessors or a jury court has decided on the offence which shall be the basis for the order or has reserved the decision (sect. 443 para. 2), its presiding judge is competent as single judge.

(3) On an application for confiscation the district court has to decide where the offence has been committed; but if this place is unknown or situated abroad the district court has to decide where the object is located; the decision shall be made as a rule (sect.445a) by judgement in an independent proceeding after public and oral trial. The provisions regarding the trial before district courts as well as section 444 are applicable *mutatis mutandis*.

(4) By application of sects. 463 to 468 (sect. 489) *mutatis mutandis* the judgement may be appealed in favour and against the person concerned; section 444 para. 1 last sentence is applicable accordingly.

Section 445a²⁵

(1) On an application for confiscation in an independent proceeding the district court may decide after hearing the public prosecutor and the persons concerned (sect. 444) by an order if the value of the object underlying the confiscation does not exceed 726 Euro or the possession of this object is generally prohibited. In case the residence of the person concerned is abroad or cannot be established without a particular expenditure of proceedings, the hearing of that person may be dropped.

²⁴ Federal Law Gazette Nr. 1996/762.

²⁵ As amended by Federal Law Gazette Nr. 1996/762, most recently amended by federal Law Gazette Nr. 1 2001/130.

(2) Against an order under para. 1 the person concerned and the public prosecutor are entitled to lodge an appeal to the superior court within 14 days. The appeal has to be served on the opposing party with the instruction that a counter-statement may be filed within 14 days.

IX. AZERBAIJAN²⁶

SUMMARY OF LEGISLATION OF AZERBAIJAN RELATED TO TERRORISM

(a) Constitutional Provisions

Under articles 148 and 151 of the Constitution of the Republic of Azerbaijan, international treaties to which Azerbaijan is a party constitute an integral part of the legislative system of Azerbaijan and in the event of any conflict between the country's normative legal acts and those international treaties, the norms embodied in the international treaties shall apply.

(b) Counter-Terrorism Act

The legislation of the Republic of Azerbaijan in the field of counter-terrorism has been brought into line with international legal instruments and is currently being further refined. The most significant domestic legal standard in this field is the Counter-Terrorism Act of the Republic of Azerbaijan of 18 June 1999. A decree promulgating the act was issued on 30 August 1999.

The Counter-Terrorism Act establishes the legal and institutional groundwork for counter-terrorism efforts in Azerbaijan, coordinates the action of State agencies engaged in counter-terrorism and sets out the rights and duties of such agencies and of citizens.²⁷

(c) Criminal Code

Criminal liability for terrorism is also provided for in art. 214 on terrorism and art. 277 on attempts on the life of a State or public figure (terrorist act) of the *Criminal Code of the Republic of Azerbaijan of 2000*. The offences

²⁶ Transmitted to the Secretariat by that Government on 27 December 2001 (S/2001/1325, annex), on 9 September 2002 (S/2002/1022, annex), and on 6 November 2003 (S/2003/1085, annex). Information was also provided in respect of the *Act of the Republic of Azerbaijan on the Status of Refugees and Forcibly (Internally) Displaced Persons* of 8 July 1999, *Act of the Republic of Azerbaijan on Grants* of 17 April 1998, and *Act of the Republic of Azerbaijan on Non-Governmental Organizations (Voluntary Associations and Funds)*.

²⁷ The text of the Counter-Terrorism Act is reproduced in Part I of the present publication, (ST/LEG/SER.B/22) pp. 72-80.

enumerated in these articles constitute serious or very serious crimes depending on their nature and the degree of public danger which they entail.

Article 214 of the *Criminal Code* also defines “Terrorism” and the “Financing of Terrorism.”

The following penalties are established in respect of the commission of the criminal acts specified in article 214 “Terrorism” and article 214-1 “The financing of terrorism” of the *Criminal Code*:

Under article 214 “Terrorism” of the *Criminal Code*:

“Terrorism ... is punishable by deprivation of freedom for a period of 8 to 12 years with the confiscation of property.

214.2 If those acts:

214.2.1 were committed by a group of persons who had previously entered into an agreement or by an organized group or criminal association (criminal organization);

214.2.2 were repeated offences;

214.2.3 were committed with the use of firearms and objects used as weapons;

214.2.4 through carelessness led to the death of people or other serious consequences — they are punishable by deprivation of freedom for a period of from 10 to 15 years or to life imprisonment with confiscation of property.

A person who has participated in the preparation of a terrorist activity shall be relieved of responsibility in the event that he warns the authorities in good time or by some other means helps to prevent such an act, provided that his activities include no other criminal offence”.

Under article 214-1 “Financing of terrorism” of the *Criminal Code*:

“The financing of terrorism ... is punishable by deprivation of freedom for a period of from 8 to 12 years with confiscation of property.”

Pursuant to the *Criminal Code*, the author of such a crime is any physical person of sound mind who has attained the age of 14 years by the time of committing the crime. Persons who have committed or have participated in the commission of terrorist acts, wherever such acts may have been planned or committed, are brought to trial and sentenced in accordance with the law of the

Republic of Azerbaijan, and, under treaties concluded by Azerbaijan with other States, may be extradited to a foreign State to stand trial or to serve their appointed sentence.

In accordance with article 12.3 of the *Criminal Code*, foreign nationals and stateless persons who have committed crimes against peace or humanity or who have been involved in terrorism, the hijacking of an aircraft, the taking of hostages, attacks on persons or organizations enjoying international protection — or other crimes punishable in accordance with international agreements to which Azerbaijan is a party — are to be tried and punished, irrespective of the location of the crime. However, it should be noted that, in accordance with the note appended to article 214 of the *Criminal Code*, criminal liability may be waived if a person who has participated in planning an act of terrorism gives timely warning to the authorities or who enables by some other means the prevention of the act in question, and providing that person has committed no other crime.

In addition to terrorism, the *Criminal Code* establishes the following types of crime:

- “*Hostage-taking*” – art. 215;
- “*Hijacking an aircraft, sea vessel or railway train*” – art. 219;
- “*Illegal manufacture of weapons*” – art. 229;
- “*Misappropriation or extortion of weapons, ammunition, explosive substances or explosive devices*” – art. 232;
- “*Establishment of military formations or groups that are not provided for in legislation*” – art. 279.

The special provisions of the *Criminal Code* (articles 31-34) that deal with the conceptions, types of participation and responsibility of those who participate preclude the legal possibility on the part of such persons of evading responsibility. The criminal legislation of Azerbaijan defines participators as those who commit, organize or instigate crimes or serve as accomplices in their commission, whatever the circumstances may be regarding the persons who have financed terrorism.

The question of a person participating in a terrorist act against a public or government agent (article 277 of the *Criminal Code*) is resolved in the same way as in the case of a person participating in any other crime specified in the *Criminal Code* of the Republic, insofar as the provisions on such participation are identical.

It is clear from the above that the absence of any special article in the *Criminal Code* establishing criminal liability for the financing of terrorism does not exempt persons guilty of such acts from criminal liability.

On the basis of article 12.1 of the *Criminal Code*, citizens of Azerbaijan and permanent residents of Azerbaijan who are stateless and who commit crimes beyond the borders of Azerbaijan are subject to criminal liability under the Criminal Code of Azerbaijan, if such acts are considered a crime in Azerbaijan and in the State in whose territory the act was committed, and if such persons have not been tried in the foreign State.

Article 12.3 of the *Criminal Code* states that foreign nationals and stateless persons who commit such crimes as terrorism, the hijacking of aircraft, the seizure of hostages, the illegal diversion of narcotic drugs and psychotropic substances, the production or sale of counterfeit money or securities, attacks against persons or organizations enjoying international protection, and other crimes the liability for which flows from the international agreements concluded by Azerbaijan, are subject to criminal liability and punishment in accordance with the Criminal Code of Azerbaijan, without regard to the place where the crimes were committed.

As is seen from the foregoing, the criminal legislation in force in the Republic provides the necessary legal basis for the trial and sentencing of criminals for actions involving the financing of terrorism. Moreover, these provisions also exclude the possibility of the granting of asylum to such persons or the use of the territory of Azerbaijan for the commission of terrorist acts.

X. BAHAMAS²⁸

1. SUPPRESSION OF THE TAKING OF HOSTAGES ACT

Arrangement of sections

SECTION.

1. Short title.
2. Interpretation.
3. Crime of hostage-taking.
4. Crime of hostage-taking within the Extradition Act and the Fugitive Offenders Act.
5. Crime of hostage-taking deemed to be included in extradition treaties.
6. Surrender of offenders.
7. Restrictions on surrender of offenders.
8. Attorney-General's consent to prosecutions.
9. Evidence.

²⁸ Transmitted to the Secretariat by that Government on 10 June 2002 and 4 April 2003. Information was also provided in respect of: the Penal Code; the Airports (Security Measures) Protected Persons Act; the Explosive Substances (Illegal use and possession) Act; the Explosives Act; the Firearms Act; and the Proceeds of Crime Act.

10. Proceedings for an offence under this Act not otherwise affected.
11. Hostage-taking not to be regarded as of political character.
12. No derogation.

CHAPTER 80.

SUPPRESSION OF THE TAKING OF HOSTAGES.

An Act to give effect to the Convention Against the Taking of Hostages adopted by the United Nations in 1979 and for matters incidental to the implementation of that convention by the BAHAMAS.

[1st November, 1985]

1. This Act may be cited as the Suppression of the Taking of Hostages Act.

2. (1) In this Act

“The 1979 Convention” means the Convention Against the Taking of Hostages adopted by the United Nations in 1979 and to which The Bahamas is a party;

“Convention country” means a country for the time being that is a party to the 1979 Convention.

- (2) Any reference in this Act to

(a) the Extradition Act is a reference to either of the Extradition Acts 1870 and 1873 of the Parliament of the United Kingdom as extended to The Bahamas or both such Acts, as the case may require.

(b) the Fugitive Offenders Act is a reference to the Fugitive Offenders Act 1967 of the Parliament of the United Kingdom as extended to The Bahamas.

3. (1) Subject to subsection (2) a person commits the offence of hostage-taking who, whether in or outside The Bahamas, unlawfully seizes or detains any person (in this section referred to as the hostage) without his consent, or with his consent obtained by fraud or duress, with intent to compel the government of any country or any international intergovernmental organisation or any other person to do or abstain from doing any act as a condition, whether express or implied, for the release of the hostage.

- (2) No person shall be convicted of the offence of hostage-taking if
 - (a) the act of hostage-taking takes place in The Bahamas; and
 - (b) the alleged offender is in The Bahamas; and
 - (c) the alleged offender and the hostage are citizens of The Bahamas.
- (3) A person who commits the offence of hostage-taking is liable on conviction on indictment to imprisonment for fifteen years.

4. There shall be deemed to be included in the list of extradition crimes in Schedule I to the Extradition Act and among the description of offences set out in Schedule I to the Fugitive Offenders Act, 1967, the offence of hostage-taking as constituted by this Act.

5. (1) For the purposes of the Extradition Act the offences of hostage-taking, including attempting to commit that offence, aiding, abetting, inciting, counselling or attempting to procure any person to commit such offence when it is not in fact committed and being an accessory after the fact to that offence shall, if not already described in the treaty, be deemed to be an offence described in any extradition treaty concluded before the commencement of this Act and for the time being in force between The Bahamas and any foreign country that is a party to the 1979 Convention.

(2) Where no such arrangement as is mentioned in section 2 of the Extradition Act has been made with a state which is a party to the 1979 Convention, an Order applying that Act to that state may be made by the Minister responsible for Foreign Affairs with like effect and subject to like terms and conditions as if authorised by the said section 2 and, for the purposes of any such Order, the 1979 Convention shall be treated as an arrangement such as mentioned in that section;

Provided that where the Extradition Act applies by virtue of an Order under this subsection, no such application shall relate to any extradition crimes within the meaning of the Extradition Act except an offence mentioned in subsection (1).

(3) Notwithstanding subsection (1) or (2), no person shall be liable to be surrendered under the Extradition Act in respect of an act or omission that amounts to a crime to which either of those subsections applies if that act or omission occurred before the date on which the offence was deemed by subsection (1) to be an offence described in the relevant extradition treaty or before the date of the relevant Order made under subsection (2), as the case may be.

(4) For the purposes of this section the expression “foreign country” includes any territory for whose international relations the government of a foreign country is responsible and to which the extradition treaty and the 1979 Convention extends.

6. (1) Where the surrender of a person is sought under either the Extradition Act or the Fugitive Offenders Act in respect of any act or omission that amounts to any offence mentioned in section 5 and for which the person whose surrender is sought could be tried and punished in the country seeking surrender, being a country that is a party to the 1979 Convention, that act or omission shall be deemed to have been committed within the jurisdiction of that country notwithstanding that it was committed outside the territory of that country.

(2) Without prejudice to subsection (1), where any act or omission to which that subsection applies occurred in The Bahamas, the Extradition Act and the relevant extradition treaty, or the Fugitive Offenders Act, as the case may be, shall apply with any necessary modifications as if the act or omission had occurred outside The Bahamas.

(3) In this section, the term “country” means any territory for whose international relations the government of a country is responsible and to which the extradition treaty (if any) and the 1979 Convention extends.

7. (1) Notwithstanding sections 4 to 6, or the Extradition Act or the Fugitive Offenders Act, a person whose surrender is sought in respect of any act or omission that amounts to an offence mentioned in section 5 shall not be surrendered from The Bahamas to another country if it appears to the aforesaid Minister or to the court before which that person is brought or to any court or judge on an application for a writ of habeas corpus, that

(a) the surrender of the offender, although purporting to have been sought in respect of such a crime, was sought for the purpose of prosecuting or punishing him on account of his race, ethnic origin, religion, nationality, or political opinions; or

(b) if the offender is surrendered

(i) he may be prejudiced at his trial, or punished, detained, or restricted in his personal liberty, by reason of his race, ethnic origin, religion, nationality or political opinions; or

(ii) his position may be prejudiced because communication with him by the appropriate authorities of the country that is entitled in international law to exercise rights of protection in respect of the accused person cannot be effected.

(2) Notwithstanding section 4 to 6 or the Extradition Act or the Fugitive Offenders Act, no person shall be surrendered from The Bahamas to another country in respect of any act or omission that amounts to an offence mentioned in section 5 if proceedings have been brought in The Bahamas against that person in respect of the act or omission.

(3) Notwithstanding sections 4 to 6 or the Extradition Act or the Fugitive Offenders Act, but subject to subsection (4), no court in The Bahamas shall order the surrender, or the committal for the purposes of surrender of a person to another country in respect of any act or omission that amounts to an offence mentioned in section 5 if the Attorney-General certifies that the case is being or is about to be considered to determine whether or not proceedings should be brought in The Bahamas against that person in respect of the act or omission.

(4) If, in any case to which subsection (3) applies, it is subsequently determined that proceedings should not be brought in The Bahamas against the person in respect of the act or omission, the Attorney-General shall advise the court accordingly, and the court shall proceed with the matter as if the Attorney-General's certificate had never been given.

8. (1) Subject to subsection (2), no proceedings for the trial and punishment of any person charged with an offence mentioned in section 5 shall be instituted in any court except with the consent of the Attorney-General.

(2) A person charged with an offence referred to in subsection (1) may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained, but no further proceedings shall be taken until that consent has been obtained.

9. For any purpose in connection with this Act, a certificate given by the Minister responsible for Foreign Affairs certifying

(a) that any country is or is not, or was or was not at any material time, a party to the 1979 Convention; or

(b) that the government of any country is or is not, or was or was not at any material time, responsible for the international relations of any territory shall be sufficient evidence of that fact.

10. Nothing in any other law which relates to the jurisdiction of a court of The Bahamas in respect of any offence committed on board any ship or aircraft

beyond The Bahamas or which requires the consent of the Attorney-General to proceedings in certain cases for such an offence shall apply with respect to any proceedings brought under this Act in respect of an offence mentioned in section 5.

11. (1) This section applies to any offence mentioned in section 5(1) of which a person is accused or has been convicted outside The Bahamas.
- (2) For the purposes mentioned in subsection (3), no offence to which this section applies shall be regarded as an offence of a political character and no proceedings in respect of such an offence shall be regarded as a criminal matter of a political character or as a criminal proceedings of a political character.
- (3) Those purposes are
 - (a) the purposes of the Extradition Act in relation to any requisition for the surrender of a fugitive criminal made on behalf of a Convention country after the coming into operation of this Act;
 - (b) the purposes of the Fugitive Offenders Act in relation to any request for the return of a person under that Act made on behalf of a Convention country after the coming into operation of this Act; and
 - (c) the purposes of the taking of evidence pursuant to the Extradition Act in relation to any criminal proceedings instituted in a Convention country after the coming into operation of this Act.
12. (1) Save as specifically provided for by the other sections of this Act, nothing in this Act shall derogate from the provisions of any other law.
- (2) Notwithstanding anything to the contrary, this Act shall be construed and have effect subject to Article 12 of the 1979 Convention as set out in the Schedule.

SCHEDULE

Article 12

In so far as the Geneva Conventions of 1949 for the protection of war victims or the protocols Additional to those Conventions are applicable to a particular act of hostage-taking, and in so far as States Parties to this Convention are bound under those Conventions to prosecute or hand over the hostage-taker, the present Convention shall not apply to an act of hostage-taking committed in the course of armed conflicts as defined in the Geneva Conventions of 1949 and the Protocols thereto, including armed conflicts mentioned in Article 1, paragraph 4, of protocol Additional I of 1977, in which peoples are fighting against colonial

domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

2. PROTECTION OF AVIATION ACT

CHAPTER 260.

PROTECTION OF AVIATION (TOKYO, HAGUE AND MONTREAL CONVENTIONS)

An Act to give effect to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation and to consolidate the law relating to matters affecting the security of civil aviation.

[31st December 1984]

[Commencement 4th January, 1985.]

PART I

Preliminary

1. This Act may be cited as the Protection of Aviation (Tokyo, Hague and Montreal Conventions) Act.

2. (1) In this Act

“Immigration Officer” has the meaning assigned to it in section 2(1) of the Immigration Act.

“service aircraft” means any aircraft which is used in the military, customs or police service of any country.

(2) Any reference in this Act to the Extradition Act shall be construed as a reference to the Extradition Act, 1870 of the Parliament of the United Kingdom in its application as part of the law of The Bahamas.

(3) Any reference to “military service” includes a reference to naval or air force service.

PART II

Provisions giving effect to the Tokyo Convention

3. (1) In this Part

“aircraft” means any aircraft, whether or not a Bahamian-controlled aircraft, but with the exception

(a) of any service aircraft:

Provided that the Minister may, by order, direct that any of the provisions of this Part shall apply, with or without modification, to any service aircraft, other than an aircraft which is used in military service;

(b) of any aircraft (other than service aircraft) to the exclusive use of which the Government is entitled;

“Bahamian-controlled aircraft” means an aircraft

(a) which is for the time being registered in The Bahamas; or

(b) which is not for the time being registered in any country but in the case of which either the operator of the aircraft or each person entitled as owner to any legal or beneficial interest in it

(i) is a person qualified to be the owner of a legal or beneficial interest in an aircraft registered in The Bahamas; and

(ii) resides or has his principal place of business in The Bahamas; or

(c) which, being registered in some other country is demised or hired out to a person who, or to persons each of whom, satisfies the requirements set out in paragraph (b) (i) and (ii):

“commander”, in relation to an aircraft, means the member of the crew designated as the commander of that aircraft by the operator thereof, or failing such a person the person who is for the time being lawfully the pilot in command of the aircraft;

“Convention country” means a country in which the Convention is for the time being in force, and a certificate of the Minister charged with responsibility for Foreign Affairs that any country specified in the certificate is a Convention country for the purposes of this Act shall be

conclusive evidence that the country in question is for the time being a Convention country;

“operator”, in relation to an aircraft at any time, means the person who at the time has lawfully the management of that aircraft;

“pilot in command”, in relation to an aircraft, means the person who for the time being is lawfully in charge of the piloting of the aircraft without being under the direction of any other pilot in the aircraft;

“the Convention” means the Convention on Offences and certain other Acts committed on board Aircraft signed at Tokyo on 14th September 1963.

(2) For the purposes of this Part, the period during which an aircraft is in flight shall be deemed to include

(a) any period from the moment when the power is applied for the purpose of the aircraft taking off on a flight until the moment when the landing run (if any) at the termination of that flight ends; and

(b) for the purposes of section 6

(i) any further period from the moment when all external doors, if any, of the aircraft are closed following embarkation for a flight until the moment when any such door is opened for disembarkation after that flight; and

(ii) if the aircraft makes a forced landing, any period thereafter until the time when the competent authorities of the country in which the landing takes place take over the responsibility for the aircraft and for the persons and property on board (being, if the forced landing takes place in The Bahamas, the time when a peace officer acting in the execution of his functions, arrives at the place of landing), and any reference in this Part to an aircraft in flight includes a reference to an aircraft during any period when it is on the surface of the sea or land but not within the territorial limits of any country.

(3) In this Part, any reference to a country or the territorial limits thereof includes a reference to the territorial waters, if any, of that country.

4. (1) Any act taking place on board a Bahamian-controlled aircraft while in flight elsewhere than in or over The Bahamas and which, if taking place in The Bahamas, would constitute an offence under the law in force in The Bahamas shall constitute that offence:

Provided that this subsection shall not apply to any act which is, by or under that law, expressly or impliedly authorised when taking place outside The Bahamas.

(2) No proceedings for any offence under the law in force in The Bahamas committed on board an aircraft while in flight elsewhere than in or over The Bahamas (other than an offence against the Civil Aviation Act, or any orders or regulations made thereunder or as mentioned in section 20 thereof) shall be instituted except by or with the consent of the Attorney-General.

5. For the purpose of conferring jurisdiction, any offence under the law in force in The Bahamas, being an offence committed on board an aircraft in flight, shall be deemed to have been committed in any place in The Bahamas where the offender may for the time being be.

6. (1) The provisions of subsections (2) to (5) shall have effect for the purposes of any proceedings before any court in The Bahamas.

(2) If the commander of an aircraft in flight, wherever that aircraft may be, has reasonable grounds to believe in respect of any person on board the aircraft

(a) that the person in question has done or is about to do any act on the aircraft while it is in flight which jeopardizes or may jeopardize

(i) the safety of the aircraft or of persons or property on board the aircraft; or (ii) good order and discipline on board the aircraft; or

(b) that the person in question has done on the aircraft while in flight any act which in the opinion of the commander is a serious offence under any law in force in the country in which the aircraft is registered, not being a law of a political nature or based on racial or religious discrimination, then subject to subsection (4) the commander may take with respect to that person such reasonable measures, including restraint of his person, as may be necessary

(i) to protect the safety of the aircraft or of persons or property on board the aircraft; or

(ii) to maintain good order and discipline on board the aircraft; or

(iii) to enable the commander to disembark or deliver that person in accordance with subsection (5), and for the purposes of paragraph (b) any Bahamian-controlled aircraft shall be deemed to be registered in The Bahamas whether or not it is in fact so registered and whether or not it is in fact registered in some other country.

(3) Any member of the crew of an aircraft and any other person on board the aircraft may, at the request or with the authority of the commander of the aircraft, and any such member shall if so required by that commander, render assistance in restraining any person whom the commander is entitled under subsection (2) to restrain; and at any time when the aircraft is in flight any such member or other person may, without obtaining the authority of the commander, take with respect to any person on board the aircraft any measures such as are mentioned in subsection (2) which he has reasonable grounds to believe are immediately necessary to protect the safety of the aircraft or of persons or property on board the aircraft.

(4) Any restraint imposed on any person on board an aircraft under the powers conferred by the foregoing provisions of this section shall not be continued after the time when the aircraft first thereafter ceases to be in flight unless before or as soon as is reasonably practicable after that time, the commander of the aircraft causes notification of the fact that a person on board the aircraft is under restraint, and of the reasons therefore, to be sent to an appropriate authority of the country in which the aircraft so ceases to be in flight, but subject to such notification may be continued after that time

(a) for any period (including the period of any further flight) between that time and the first occasion thereafter on which the commander is able with any requisite consent of the appropriate authorities to disembark or deliver the person under restraint in accordance with subsection (5); or

(b) if the person under restraint agrees to continue his journey under restraint on board that aircraft.

(5) The commander of an aircraft

(a) if in the case of any person on board the aircraft he has reasonable grounds

(i) to believe as mentioned in paragraph (a) of subsection (2); and

(ii) to believe that it is necessary so to do in order to protect the safety of the aircraft or of persons or property on board the aircraft or to maintain good order and discipline on board the aircraft, may disembark that person in any country in which that aircraft may be; and

(b) if in the case of any person on board the aircraft he has reasonable grounds to believe as mentioned in paragraph (b) of subsection (2), may deliver that person

(i) in The Bahamas, to a peace officer or immigration officer; or

(ii) in any country which is a Convention country, to an officer having functions corresponding to the functions in The Bahamas either of a peace officer or of an immigration officer.

(6) The commander of an aircraft

(a) if he disembarks any person in pursuance of paragraph (a) of subsection (5), in the case of a Bahamian-controlled aircraft, in any country or, in the case of any other aircraft, in The Bahamas, shall report the fact of, and the reasons for, that disembarkation to

(i) an appropriate authority in the country of disembarkation; and

(ii) the appropriate diplomatic or consular office of the country of nationality of that person;

(b) if he intends to deliver any person in accordance with paragraph (b) of subsection (5) in The Bahamas or, in the case of a Bahamian-controlled aircraft, in any other country which is a Convention country, shall before or as soon as reasonably practicable after landing give notification of his intention and of the reasons therefore

(i) where the country in question is The Bahamas, to a peace officer or immigration officer or, in the case of any other country, to an officer having functions corresponding to the functions in The Bahamas either of a peace officer or of an immigration officer; and

(ii) in either case to the appropriate diplomatic or consular officer of the country of nationality of that person, and any commander of an aircraft who without reasonable cause fails to comply with the requirements of this subsection shall be liable on summary conviction to a fine of five hundred dollars.

7. For the purposes of the application of the Extradition Act to crimes committed on board an aircraft in flight, any aircraft registered in a Convention country shall, at any time, while that aircraft is in flight, be deemed to be within the jurisdiction of that country whether or not it is for the time being also within the jurisdiction of any other country; and paragraphs (1) to (3) of section 16 of the Extradition Act shall have effect also where a person's surrender is sought in respect of a crime committed on board an aircraft in flight which lands in The Bahamas, but as if in paragraph (3) for references to the port where the vessel lies there were substituted references to the place at which the person whose surrender is sought is disembarked.

8. (1) Where, in proceedings before any court in The Bahamas for an offence committed on board an aircraft, the testimony of any person is required and the court is satisfied that such person cannot be found in The Bahamas, there shall, subject to subsection (2), be admissible in evidence before that court any deposition relating to the subject matter of those proceedings, previously made on oath by that person outside The Bahamas and which was so made

(a) in the presence of the person charged with the offence; and

(b) before a judge or magistrate of any country in the Commonwealth or before any consular officer within the meaning of the Merchant Shipping Act.

(2) Any such deposition shall be authenticated by the signature of the judge, magistrate or officer aforesaid before whom it was made, and shall be certified by him to have been taken in the presence of the person charged as aforesaid.

(3) It shall not be necessary in any proceedings to prove the signature or official character of the person appearing to have authenticated any deposition, or to have given such a certificate, as aforesaid; and such a certificate shall, unless the contrary is proved, be sufficient evidence in any proceedings that the person charged as aforesaid was present at the making of the deposition.

(4) If a complaint is made to such an officer as aforesaid that any offence has been committed on a Bahamian-controlled aircraft while in flight elsewhere than in or over The Bahamas, it shall be lawful for that officer to inquire into the case upon oath.

(5) In this section, the expression "deposition" includes any affidavit, affirmation or statement made upon oath; and nothing in this section shall prejudice the admission as evidence of any deposition which is admissible in evidence apart from this section.

PART III

Provisions giving effect to the Hague Convention

9. (1) Subject to subsection (2), a person on board an aircraft in flight who unlawfully, by use of force or threats of any kind, seizes the aircraft or exercises control of it, commits the offence of hijacking, whatever his nationality, whatever the State in which the aircraft is registered, and whether the aircraft is in The Bahamas or elsewhere.
- (2) If
- (a) the aircraft is a service aircraft; or
 - (b) both the place of take-off and the place of landing are in the territory of the State in which the aircraft is registered, subsection (1) shall not apply unless
 - (i) the person seizing or exercising control of the aircraft is a citizen of The Bahamas; or
 - (ii) his act is committed in The Bahamas; or
 - (iii) the aircraft is registered in The Bahamas or is a Bahamian service aircraft.
- (3) A person who
- (a) commits the offence of hijacking; or
 - (b) in The Bahamas, induces or assists the commission elsewhere of an act which would be the offence of hijacking but for subsection (2) shall be liable on conviction on information to imprisonment for life.
- (4) For the purposes of this section, the period during which an aircraft is in flight shall be deemed to include any period from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation, and, in the case of a forced landing, any period until the competent authorities of the State in which that landing takes place take over responsibility for the aircraft and for persons and property on board (being, if the forced landing takes place in The Bahamas, the time when a peace officer acting in the execution of his functions, arrives at the place of landing).
- (5) In relation to any offence of hijacking committed outside The Bahamas section 5 shall apply and for the purpose of such application in

respect of a service aircraft paragraph (a) of the definition of aircraft in section 3(1) shall be deemed to have been omitted.

(6) For the purposes of this section, the territorial waters of any State shall be treated as part of its territory.

10. Without prejudice to section 4, where a person (of whatever nationality) does on board any aircraft (wherever registered) and while outside The Bahamas any act which, if done in The Bahamas, would constitute the offence of murder, attempted murder, manslaughter or assault or an offence under section 270, 271, 273, 274, 275, 276 or 277 of the Penal Code, or section 3 of the Explosive Substance (Illegal Use and Possession) Act, or section 34 of the Firearms Act, his act shall constitute that offence if it is done in connection with the offence of hijacking committed or attempted by him on board that aircraft.

11. (1) The list of extradition crimes in the First Schedule to the Extradition Act shall be deemed to include any offence under this Part and (so far as not included in that list by virtue of the foregoing) any attempt to commit such an offence.

(2) Subject to sections 19(1) and 25(2), where the Extradition Act does not apply in the case of any foreign State which is a party to the Convention, an order providing for the Extradition Act to apply in the case of that State may be made with like effect and subject to like terms and conditions as if authorised by section 2 of that Act and, for the purposes of any such order, the Convention shall be treated as an arrangement such as mentioned in that section:

Provided that where the Extradition Act applies by virtue of an order under this subsection, no such application shall relate to any extradition crimes within the meaning of the Extradition Act except offences under this Part and attempts to commit such offences.

(3) In this section “the Convention” means the Convention for the Suppression of Unlawful Seizure of Aircraft signed at The Hague on 16th December, 1970.

PART IV

Provisions giving effect to the Montreal Convention

12. (1) In this Part

“act of violence” means

(a) any act done in The Bahamas

(i) which constitutes the offence of murder, attempted murder, manslaughter, or an assault or an offence under sections 270, 271, 273, 274, 275, 276 or 277 of the Penal Code or section 34 of the Firearms Act; or

(ii) whereby an explosion of a nature likely to endanger life, or to cause serious injury to property, is maliciously caused by means of any explosive substance, whether or not any injury to person or property is actually caused; or

(b) any act done outside The Bahamas which, if done in The Bahamas, would constitute an act of violence within the meaning assigned to that expression by paragraph (a);

“article” includes any substance, whether in solid or liquid form or in the form of a gas or vapour;

“explosive substance” includes any materials or apparatus for making any explosive substance, any apparatus, machine, implement or article or materials used, or intended to be used, or adapted for causing or aiding in causing, any explosion in or with any explosive substance and any part of any such apparatus, machine or implement;

“property” includes any land, buildings or works, any aircraft or vehicle and any baggage, cargo or other article of any description;

“unlawfully”

(a) in relation to the commission of an act in The Bahamas, means so as (apart from the provisions of this Part) to constitute an offence under the law of The Bahamas;

(b) in relation to the commission of an act outside The Bahamas, means so that the commission of the act would (apart from the provisions of this Part) have been an offence under the law of The Bahamas if it had been committed in The Bahamas.

(2) The provisions of section 9(4) shall apply in relation to this Part as they apply in relation to Part III.

(3) For the purposes of this Part, an aircraft shall be taken to be in service during the whole of the period which begins with the pre-flight preparation of the aircraft for a flight and ends twenty-four hours after the aircraft lands upon completion of that flight, and also at any time (not falling within that period) while the aircraft is in flight.

13. (1) It shall, subject to subsection (4), be an offence for any person unlawfully and intentionally
- (a) to destroy an aircraft in service or so to damage an aircraft in service as to render it incapable of flight or as to be likely to endanger its safety in flight; or
 - (b) to commit on board an aircraft in flight any act of violence which is likely to endanger the safety of the aircraft.
- (2) It shall also, subject to subsection (4), be an offence for any person unlawfully and intentionally to place, or cause to be placed, on an aircraft in service any device or substance which is likely to destroy the aircraft, or is likely so to damage it as to render it incapable of flight or as to be likely to endanger its safety in flight, but nothing in this subsection shall be construed as limiting the circumstances in which the commission of any act
- (a) may constitute an offence under subsection (1); or
 - (b) may constitute attempting or conspiring to commit, or aiding, abetting, counselling or procuring, the commission of such an offence.
- (3) Except as provided by subsection (4), subsections (1) and (2) apply whether any such act as is therein mentioned is committed in The Bahamas or elsewhere, whatever the nationality of the person committing the act and whatever the State in which the aircraft is registered.
- (4) Subsections (1) and (2) do not apply to any act committed in relation to any service aircraft unless
- (a) the act is committed in The Bahamas; or
 - (b) where the act is committed outside The Bahamas, the person committing it is a citizen of The Bahamas.
14. (1) It shall, subject to subsections (5) and (6), be an offence for any person unlawfully and intentionally to destroy or damage any property to which this subsection applies, or to interfere with the operation of any such property, where the destruction, damage or interference is likely to endanger the safety of aircraft in flight.
- (2) Subsection (1) applies to any property used for the provision of air navigation facilities, including any land, building or ship so used, and including any apparatus or equipment so used, whether it is on board an aircraft or elsewhere.

(3) It shall also, subject to subsections (4) and (5), be an offence for any person intentionally to communicate any information which is false, misleading or deceptive in a material particular, where the communication of the information endangers the safety of an aircraft in flight or is likely to endanger the safety of aircraft in flight.

(4) It shall be a defence for a person charged with an offence under subsection (3) to prove that, when he communicated the information

(a) he believed and had reasonable grounds for believing, the information to be true; or

(b) he was lawfully employed to perform duties which consisted of or included the communication of information and that he communicated the information in good faith in the performance of those duties.

(5) Subsections (1) and (3) do not apply to the commission of any act unless either the act is committed in The Bahamas or, where it is committed outside The Bahamas

(a) the person committing it is a citizen of The Bahamas; or

(b) the commission of the act endangers or is likely to endanger the safety in flight of a civil aircraft registered in The Bahamas or demised or hired out to a person whose principal place of business, or (if he has no place of business) whose permanent residence, is in The Bahamas; or

(c) the act is committed on board a civil aircraft referred to in paragraph (b); or

(d) the act is committed on board a civil aircraft which lands in The Bahamas with the person who committed the act still on board.

(6) Subsection (1) also does not apply to any act committed outside The Bahamas and so committed in relation to property which is situated outside The Bahamas and is not used for the provision of air navigation facilities in connection with international air navigation, unless the person committing the act is a citizen of The Bahamas.

(7) In this section "civil aircraft" means any aircraft, other than a service aircraft.

15. (1) It shall be an offence for any person in The Bahamas to induce or assist the commission outside The Bahamas of any act which

(a) would, but for section 13(4) be an offence under section 13;
or

(b) would, but for subsection (5) or (6) of section 14, be an offence under section 14.

(2) Subsection (1) shall, in relation to any offence under section 13 or 14, have effect without prejudice to the provisions of sections 85 and 328 of the Penal Code.

16. (1) Any person who commits an offence under this Part shall be liable on conviction on information to imprisonment for life.

(2) Section 9(5) shall apply in relation to any offence under section 13 or 14, being an offence committed outside The Bahamas, as it applies in relation to any offence of hijacking committed outside The Bahamas.

17. (1) The list of extradition crimes in the First Schedule to the Extradition Act shall be deemed to include any offence under this Part and (so far as not included in that list by virtue of the foregoing) any attempt to commit such an offence.

(2) Subject to sections 19(1) and 25(2), where the Extradition Act does not apply in the case of any foreign State which is a party to the Convention, an order providing for the Extradition Act to apply in the case of that State may be made with like effect and subject to like terms and conditions as if authorised by section 2 of that Act and, for the purposes of any such order, the Convention shall be treated as an arrangement such as mentioned in that section:

Provided that where the Extradition Act applies by virtue of an order under this subsection, no such application shall relate to any extradition crimes within the meaning of the Extradition Act except offences under this Part or attempts to commit such offences.

(3) In this section “the Convention” means the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23rd September, 1971.

18. Nothing in the provisions of sections 13, 14 and 15

(a) confers a right of action in any civil proceedings in respect of any contravention of this Part; or

(b) derogates from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Part.

PART V.

General.

19. (1) All authority for the making of orders under sections 11 and 17 shall be vested in the Minister charged with responsibility for Foreign Affairs.
- (2) For the purposes of the Extradition Act, any act (wherever committed)
- (a) which is an offence under Part III or IV, or an attempt to commit such an offence, or would be such an offence or attempt but for section 9(2) or section 13(4) or subsection (5) or (6) or section 14; and
- (b) which is an offence against the law of any foreign State in the case of which the Extradition Act applies, shall be deemed to be an offence committed within the jurisdiction of that State.
- (3) There shall be deemed to be included among the descriptions of offences set out in Schedule I to the Fugitives Offenders Act, 1967, in its application as part of the law of The Bahamas, any offence constituted by any act of the description referred to in paragraph (a) of subsection (2) of this section.
20. If the Minister by order declares
- (a) that any two or more States named in the order have established an organization or agency which operates aircraft; and
- (b) that one of those States has been designated to exercise the powers of the State of registration, or to be considered as the State thereof, in relation to all or any aircraft so operated, then, for the purposes of such provisions of this Act as the order shall prescribe, the State declared under paragraph (b) shall be deemed to be the State in which all aircraft so operated, or (as the case may be) any such aircraft specified in the order, are registered.
21. (1) A certificate of the Minister stating whether or not
- (a) an aircraft is or was at any time a service aircraft;
- (b) an aircraft is one to the exclusive use of which the Government is or was, at any time, entitled;
- (c) military service is the service in reference to which an aircraft is or was at any time a service aircraft, for the purposes of any

provisions of this Act shall be conclusive evidence of the matter so certified.

(2) Any document purporting to be such a certificate as is mentioned in subsection (1) shall be deemed to be such a certificate, unless the contrary is proved.

22. (1) No proceedings for any offence under Part III or IV shall be instituted except by or with the consent of the Attorney-General.

(2) Nothing in subsection (1) or in section 4(2) shall prevent the arrest, or the issue of a warrant for the arrest, of any person in respect of any offence under this Act, or the remanding in custody or on bail of any person charged with any such offence.

(3) For the purposes of Parts III, IV and of this Part, the territorial sea of, and archipelagic waters adjacent to, The Bahamas shall be treated as included in The Bahamas.

23. Where a peace officer has reasonable cause to suspect that a person about to embark on an aircraft in The Bahamas, or a person on board such an aircraft, intends to commit an offence under PART III or IV in relation to the aircraft, the peace officer may prohibit him from travelling on board the aircraft; and for the purpose of enforcing such prohibition may

(a) prevent him from embarking on the aircraft, or as the case may be, remove him from the aircraft;

(b) arrest him without warrant and detain him for so long as may be necessary for that purpose.

24. For the avoidance of doubt, it is hereby declared that for the purposes of any proceedings before any court in The Bahamas in respect of piracy, the provisions set out in the Schedule, being provisions of the Convention on the High Seas signed at Geneva on the 29th April, 1958, shall be treated as constituting part of the law of nations; and any such court having jurisdiction in respect of piracy committed on the high seas shall have jurisdiction in respect of piracy committed by or against an aircraft wherever that piracy is committed.

25. (1) The provisions of the Tokyo Convention Act, 1967 and of the Hijacking Act, 1971 of the United Kingdom as applied to The Bahamas by the Tokyo Convention Act, 1967 (Overseas Territories) Order, 1968 and the Hijacking Act, 1971 (Overseas Territories) Order, 1971, respectively, are hereby repealed.

(2) Notwithstanding the repeal of the provisions effected by subsection (1) all laws made under the repealed provisions or the Extradition Act for the purpose of the carrying out of the repealed provisions in their

application to The Bahamas and having effect therein at the commencement of this Act shall, in so far as such laws are not inconsistent with this Act, or like provision made by or under this Act, continue to have effect as if references in those laws to the repealed provisions were references to the respective provisions of this Act subject to such modifications, adaptations, qualifications and exceptions as may be necessary for the purpose.

SCHEDULE
(Section 24)

PROVISIONS OF GENEVA CONVENTION ON THE HIGH SEAS TO BE TREATED AS PART OF THE LAW OF NATIONS.

Article 15

Piracy consist of any of the following acts

(1) Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(b) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(2) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft:

(3) Any act of inciting or of intentionally facilitating an act described in subparagraph (1) or subparagraph (2) of this article.

Article 16

The acts of piracy, as defined in article 15, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship.

Article 17

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 15. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

XI. BAHRAIN²⁹

SUMMARY OF LEGISLATION OF BAHRAIN RELATED TO TERRORISM

The measures taken by Bahrain to prevent the commission of terrorist acts, eliminate the supply of weapons to terrorists and deny safe haven to them and prevent their movement across borders, come under the Penal Code promulgated by Decree Law No. 15/1976. Although it contains no explicit references to terrorist acts, there are many provisions in its chapter VI that relate to offences that constitute a public danger, including crimes of arson, crimes relating to explosives, infamous crimes and crimes involving interference with communications. All the offences enumerated in chapter VI may thus be included under numerous terrorist crimes, given that they endanger people's lives and property or cause extreme fear.

Many of the criminal acts enumerated in chapter I of the section on specific crimes, which is on offences against the internal and external security of the State, fall into the category of terrorist crimes. The Code provides that whoever knowingly gives or provides to an armed group weapons, equipment or vehicles that it may use to achieve its objectives, or who sends it supplies or collects funds for it, or who enters into criminal communications in any manner whatever with the leader or leaders of such a group, or who, knowing its purpose and character, provides it with accommodation or premises in which its members may take refuge or meet together shall be sentenced to life imprisonment or to imprisonment for a term.

The Code, as promulgated by Decree Law No. 15/1976, reveals the following provisions:

Article 6

The provisions of this Code shall apply to any national or alien who commits outside the State of Bahrain any act that makes him a perpetrator or accessory to an offence prejudicial to the external or internal security of the State, as specified in part II, chapter 1, sections 1 and 2, or the offence of forging State seals and emblems or counterfeiting currency and monetary instruments, as specified in articles 257, 262 and 263.

²⁹ Transmitted to the Secretariat by that Government on 13 December 2001 (S/2001/1210, enclosure) and on 19 February 2003 (S/2003/268, enclosure). Information was also provided in respect of Decree Law No. 4/2001 concerning the prohibition and suppression of money-laundering.

Article 45

Whosoever is involved as a perpetrator of or accessory to the offence shall be subject to the corresponding penalty, unless otherwise specified by the Code.

Article 129

Whosoever deliberately destroys, wrecks or ruins weapons, ships, aircraft, equipment, installations, devices, utilities, munitions, provisions, medicines or other items intended for defence of the State or used for that purpose shall be subject to rigorous imprisonment for life or for a term.

The same penalties shall apply to whomsoever deliberately sabotages their production or repair or acts in such a way as to render them, albeit temporarily, unfit for their intended use or otherwise harmful. The death penalty or rigorous imprisonment for life shall apply if the offence is committed in time of war.

Article 137

A person shall be prosecuted as an accessory to the offences specified in this section if:

1. He was aware of the offender's intentions and provided him with aid, means of subsistence, accommodation, shelter, a meeting-place or other assistance; he bore his messages, helped him to find the object of the offence, concealed him, transported him or provided him with information;
2. He knowingly concealed items used or designed to be used in, or derived from, commission of the offence;
3. He deliberately destroyed, misappropriated, concealed or altered a document revealing the offence, providing evidence of it or facilitating prosecution of its perpetrators.

This article shall not apply to the spouse, progenitors or offspring of the offender.

The court is empowered to excuse relatives of the offender, including relatives by marriage, up to the fourth degree of separation, unless they are prosecuted under another article of this Code.

Article 148

Whosoever conspires forcibly to overturn or alter the Constitution of the State, the rule of the Amir or the form of government, or to usurp such rule shall be subject to rigorous imprisonment for life or for a term.

Where the offence is committed by an armed band, whosoever formed, headed or occupied any leading position in the band shall be subject to the death penalty.

Article 149

Whosoever conspires forcibly to occupy a public building or the premises of Government agencies or any of the authorities mentioned in article 107, paragraphs 1, 5 and 6 shall be subject to rigorous imprisonment for life or for a term. Where the offence is committed by an armed band, whosoever formed, headed or occupied any leading position in the band shall be subject to the death penalty.

Article 150

Whosoever takes control of a division or section of the army, a warship, warplane, military position, port or city without Government authorization or other legitimate reason shall be subject to rigorous imprisonment for life.

Article 152

Whosoever forms a band which attacks a group of people, puts up armed resistance to police officers to prevent law enforcement, heads such a band or occupies any leading position therein shall be subject to the death penalty.

Whosoever joins such a band without participating in its formation or occupying any leading position therein shall be subject to rigorous imprisonment for life or for a term.

Article 153

Whosoever assumes control of an armed band, occupies any leading position therein or otherwise manages its movements or actions for the purpose of seizing or usurping land or property owned by the Government or a group of people, or resists the military force responsible for pursuit of the perpetrators, shall be subject to the death penalty.

Other members of such a band shall be subject to rigorous imprisonment.

Article 154

Whosoever knowingly gives or provides to a band as described in the article above weapons, equipment or machines used to achieve its objective, or sends it supplies, collects funds for it, enters into criminal communications in any manner whatever with the chiefs or administrators of such bands, or, knowing its purpose and character, provides them with accommodation or premises where they take refuge or meet together shall be subject to rigorous imprisonment for life or for a term.

Article 277

Whosoever causes a fire endangering the life of individuals or their property, whether movable or immovable, even if that property is his own, shall be subject to rigorous imprisonment for a term not exceeding ten years.

Causing a fire in a public building, premises used for public purposes, a residential complex or one intended for such use, on a means of public transport, or in munitions, weapons, explosives, fuel, mines, pipes or oil wells, shall be considered as aggravating circumstances.

The penalty shall be rigorous imprisonment if the fire leads to permanent disablement; if it leads to a human fatality, the penalty shall be death or rigorous imprisonment for life.

Article 278

Whosoever negligently sets fire to the movable or immovable property of another shall be subject to imprisonment and a fine, or to one of these two penalties.

Article 279

Whosoever uses explosives to commit an offence as specified in article 148 or to sabotage buildings or installations of public utility or intended for the use of Government agencies or one of the authorities mentioned in article 107, or for public meetings, or other buildings or premises designed to be frequented by the public, shall be subject to the death penalty.

Article 280

Whosoever knowingly uses or conspires to use explosives in such a way as to endanger human lives shall be subject to rigorous imprisonment.

If the explosion causes a human fatality, the penalty shall be rigorous imprisonment for life.

Article 281

Whosoever knowingly uses or conspires to use explosives in such a way as to endanger the property of another shall be subject to rigorous imprisonment for a term not exceeding ten years.

If the explosion causes serious damage to property, the penalty shall be rigorous imprisonment.

Article 282

Whosoever knowingly causes a serious accident on board a ship, aircraft or any other means of public transport shall be subject to rigorous imprisonment for life.

Article 283

Whosoever knowingly endangers the life or safety of individuals by placing materials, germs or other items which may cause death or serious damage to public health in a well, reservoir or other facility designed for public use shall be subject to rigorous imprisonment for life or for a term.

Article 284

Whosoever knowingly endangers a means of public land, air or sea transport or in any way impedes its functioning shall be subject to rigorous imprisonment.

Whosoever in any way impedes a means of public cable or wireless communication shall be subject to rigorous imprisonment for a term not exceeding ten years.

Article 285

Where the action specified in the preceding articles results in a human fatality, the offender shall be subject to the death penalty or rigorous imprisonment for life.

Article 286

Whosoever in any way knowingly endangers a means of private transport shall be subject to imprisonment and, where the result is a human fatality, the penalty shall be rigorous imprisonment.

Article 287

Where an offender, for the purpose of committing an offence specified in this or the preceding section, takes advantage of turmoil or strife, or uses force

or the threat of force to commit his offence, this shall be an aggravating circumstance.

Article 288

Whosoever negligently causes the perpetration of any offence specified in this section shall be subject to imprisonment and a fine, or to one of these two penalties.

Article 289

Whosoever transports or conspires to transport explosives or flammable materials in a means of land, sea or air transport or to mail them in letters or parcels in violation of the pertinent rules and regulations shall be subject to imprisonment for a term not exceeding six months and a fine not exceeding 50 dinars, or to one of these two penalties.

Article 290

Whosoever knowingly disturbs another by misuse of cable and wireless communications equipment shall be subject to imprisonment for a term not exceeding six months and a fine not exceeding 50 dinars.

Article 291

Whosoever in any way damages a device, instrument or other piece of equipment designed for use by the ambulance, fire or water rescue services, or by any other emergency service, shall be subject to imprisonment for a term not exceeding one year.

It should be noted that article 6 of part II of the section on general provisions, concerning the application of the Code *ratione loci*, states that its provisions shall apply to any national or alien who commits outside the State of Bahrain any act that makes him a perpetrator of or accessory to a felony prejudicial to the external or internal security of the State such as those stipulated in parts I and II of chapter I of the section on specific crimes. In this way Bahrain criminalizes terrorist acts, and they constitute a crime against the external or internal security of the State whether the offence is committed in Bahrain or elsewhere, whether by a national or an alien and whether the person concerned is a primary perpetrator or an accessory to the crime.

XII. BARBADOS³⁰

1. ANTI-TERRORISM ACT, 2002-6

Arrangement of Sections *Section*

PART I - *Preliminary*

1. Short title.
2. Definitions.

PART II

Terrorism Offences

3. Offence of terrorism.

Financing of Terrorism

4. Providing or collecting funds for criminal purposes.
5. Liability of a legal entity.

PART III - *Investigatory Provisions*

6. Investigation.
7. Rights of an offender.

PART IV - *Freezing, or Forfeiture of Funds*

8. Freezing of funds.
9. Forfeiture order.
10. Sharing of forfeited funds.

PART V - *Extradition*

11. Extradition.

PART VI - *Miscellaneous*

12. Jurisdiction.

³⁰ Transmitted to the Secretariat by that Government on 24 December 2001 (S/2001/1276, enclosure), 28 June 2002 (S/2002, 794, enclosure) and on 14 February 2003 (S/2003/262, enclosure).

13. Notification to the appropriate State through United Nations.
14. Conditions for transfer of persons detained.
15. Attorney-General to be the competent authority.
16. Application of Cap. 140A.
17. Regulations, Orders.
18. Amendment to Acts.

FIRST SCHEDULE
SECOND SCHEDULE
THIRD SCHEDULE³¹

BARBADOS

I assent

C. STRAUGHN HUSBANDS

Governor-General.

30th May, 2002.

2002-6

An Act to implement the United Nations Convention respecting the Suppression of the Financing of Terrorism, the United Nations Security Council Resolution 1373 on terrorism, generally to make provision for preventing and combating terrorism and to amend the Constitution to the extent necessary to give effect to the provision respecting capital punishment.

(30th May, 2002)

ENACTED by the Parliament of Barbados in accordance with the provisions of section 49 of the *Constitution* as follows:

PART I

Preliminary

1. This Act may be cited as the *Anti-Terrorism Act, 2002*.
2. (1) In this Act,

“Convention” means the International Convention for the Suppression of the Financing of Terrorism adopted by the General Assembly of the United Nations on 9th December, 1999 set out in the *First Schedule*;

³¹ The First, Second and Third Schedules of this Act, containing the text of the International Convention for the Suppression of the Financing of Terrorism, Amendments to other enactments, and a list of Treaties respecting terrorism, respectively, have been omitted from the present publication.

“Commissioner” means the Commissioner of Police;

“Court” means the High Court;

“entity” means an incorporated or unincorporated body;

“freeze” means to restrain any funds or dealing in funds;

“funds” means

(a) assets of every kind, whether tangible or intangible, movable or immovable, however acquired; and

(b) legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in such assets as bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit;

“proceeds” means any funds derived from or obtained, directly or indirectly, through the commission of an offence set out in section 3 or 4;

“State or government facility” means any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.

PART II

Terrorism

3. (1) A person who in or outside Barbados carries out
- (a) an act that constitutes an offence under or defined in any of the Treaties listed in the *Third Schedule*; or
- (b) any other act
- (i) that has the purpose by its nature or context, to intimidate the public or to compel a government or an international organization to do or to refrain from doing any act; and
- (ii) that is intended to cause

(A) death or serious bodily harm to a civilian or in a situation of armed conflict, to any other person not taking an active part in the hostilities;

(B) serious risk to the health or safety of the public or any segment of the public;

(C) substantial property damage, whether to public or private property, where the damage involves a risk of the kind mentioned in sub-paragraph (B) or an interference or disruption of the kind mentioned in sub-paragraph (D); or

(D) serious interference with or serious disruption of an essential service, facility or system, whether public or private, not being an interference or disruption resulting from lawful advocacy, or from protest, dissent or stoppage of work and not involving a risk of the kind mentioned in sub-paragraph (B),

is guilty of the offence of terrorism and on conviction on indictment

(c) where death ensues, and where that act would have constituted the offence of murder or treason prior to the commencement of this act, shall be sentenced to death; or

(d) in any other case, is liable to imprisonment for life.

(2) A person who

(a) aids, abets, counsels, procures, incites or solicits the commission of an offence; or

(b) conspires with another or others to commit an offence under subsection (1) is liable on conviction on indictment to be punished as a principal offender under that subsection.

(3) For the avoidance of doubt, section 12(1) of the *Constitution* is amended by paragraph (c) of subsection (1) to the extent necessary to give effect to that sub-paragraph.

Financing of Terrorism

4. (1) A person who in or outside Barbados directly or indirectly, unlawfully and wilfully,

- (a) provides or collects funds; or
- (b) provides financial services or makes such services available to persons with the intention that the funds or services are to be used or with the knowledge that the funds or services are to be used in full or in part, in order to carry out
 - (i) an act that constitutes an offence under or defined in any of the Treaties listed in the *Third Schedule*; or
 - (ii) any other act
 - (A) that has the purpose by its nature or context, to intimidate the public or to compel a government or an international organization to do or to refrain from doing any act; and
 - (B) that is intended to cause
 - (aa) death or serious bodily harm to a civilian or in a situation of armed conflict, to any other person not taking an active part in the hostilities;
 - (bb) the risk, damage, interference or disruption of the kind mentioned in sub-paragraph (B), (C) or (D) of section 3(1) as the case may be,

is guilty of an offence and is liable on conviction on indictment to imprisonment for a term of 25 years.

(2) For an act to constitute an offence under subsection (1), it is not necessary to prove that the funds or the financial services were actually used to carry out the offence.

(3) A person who

- (a) aids, abets, counsels, procures, incites or solicits the commission of an offence; or
- (b) conspires with another or others to commit an offence under subsection (1) is liable on conviction on indictment to be punished as a principal offender under that subsection.

5. Where an offence referred to under section 3 or 4 is committed by a person responsible for the management or control of an entity located or registered in Barbados or in any other way organized under the laws of Barbados, that entity, in circumstances where the person committed the offence while acting in that capacity, is guilty of an offence and is liable on conviction on indictment to a fine of \$2 000 000 notwithstanding

(a) any criminal liability that may have been incurred by an individual that was directly involved in the commission of the offence; or

(b) any civil or administrative sanction that may have been imposed by law.

PART III

Investigatory Provisions

6. (1) Where any person has reasonable grounds to suspect that funds or financial services are related to or are to be used to facilitate an offence under this Act, it shall be the duty of that person to report the matter to the Commissioner.

(2) Where information is received from any source in or outside Barbados that a person who has committed or who is alleged to have committed an offence under this Act may be present in Barbados, the Commissioner shall take such measures as may be necessary to investigate the facts contained in the information.

(3) Where on investigation it is found that the person referred to in subsection (2) is in Barbados, the Commissioner shall make a report to the Director of Public Prosecutions who shall take such measures as are necessary to prosecute the offender as the circumstances warrant.

(4) Where any person, referred to in subsection (1) fails to report as required under that subsection, that person is guilty of an offence and is liable on conviction on indictment to a fine of \$250 000 or to imprisonment for a term of 5 years.

7. A person against whom measures referred to in section 6(2) or 6(3) are taken is entitled to

(a) communicate without delay with the nearest appropriate representative of

(i) the State of which that person is a national;

(ii) the State which is otherwise entitled to protect that person's rights; or

(iii) where that person is a stateless person, the State in which that person ordinarily resides;

(b) be visited by a representative of the relevant State referred to in paragraph (a); and

(c) be informed of his rights referred to in paragraphs (a) and (b).

PART IV

Freezing or Forfeiture of Funds

8. (1) Subject to subsection (4), the Court may, where it is satisfied on the application by the Director of Public Prosecutions that

(a) a person has been charged or is about to be charged with an offence under section 3 or 4; or

(b) a request has been made by the appropriate authority of another State in accordance with section 16, in respect of a person

(i) who has been charged or is about to be charged with an offence in respect of an act described in section 3 or 4; or

(ii) in respect of whom there is reasonable suspicion that the person has committed an offence referred to in sub-paragraph (i),

make an order, in this Part referred to as a “freezing order”, freezing the funds in the possession of or under the control of that person.

(2) An application for a freezing order under subsection (1), may be made *ex parte* and shall be in writing and be accompanied by an affidavit stating

(a) where the person referred to in subsection (1) has been charged, the offence for which he is charged;

(b) where the person has not been charged, the grounds for

(i) believing that the person committed the offence; or

(ii) having a reasonable suspicion that the person committed the offence

(c) a description of the funds in respect of which the freezing order is sought;

(d) the name and address of the person who is believed to be in possession of the funds; and

(e) the grounds for believing that the funds are related to or are used to facilitate an offence referred to in subsection (1) and that the funds are subject to the effective control of the person.

(3) Where the Court makes an order under subsection (1), the Court shall require that

(a) the Order be published within such time and manner as the Court directs;

(b) the applicant, within 21 days of the making of the Order, serve notice of the Order together with a copy of the Order on any person whom, in the opinion of the Court, appears to have an interest in the funds referred to in subsection (2); and

(c) the person referred to in paragraph (b) or any other person that appears to have interest in the funds, be afforded an opportunity to be heard by the Court within such time as the Court determines,

unless in respect of paragraph (b) the Court is of the opinion that giving such notice would result in the disappearance, dissipation or reduction in the value of the funds.

(4) Where an application for a freezing order made under subsection (1) is made as a result of a request from another State, the Court shall not make the order unless it is satisfied that reciprocal arrangements exist between Barbados and that other State whereby that other State is empowered to make a similar order in respect of a request for a freezing order from Barbados.

(5) The Court may, in making an order under subsection (1), give directions with regard to

(a) the duration of the freezing order; or

(b) the disposal of the funds for the purpose of

(i) determining any dispute relating to the ownership of or other interest in the funds or any part thereof;

(ii) its proper administration during the period of the freezing order;

(iii) the payment of debts incurred in good faith prior to the making of the order;

(iv) the payment of moneys to the person referred to in subsection (1) for the reasonable subsistence of that person and his family; or

(v) the payment of the costs of the person referred to in subparagraph (iv) to defend criminal proceedings against him.

(6) Notwithstanding subsection (5), a freezing order made under this section shall cease to have effect at the end of the period of 6 months after the order was made where the person against whom the order was made has not been charged with an offence under this Act within that period.

(7) An order made under subsection (1) may be renewed for a period not exceeding 6 months in each particular case but in no case shall the entire period of the order exceed 18 months.

(8) A freezing order granted by the Court under this section shall not prejudice the rights of any third party acting in good faith.

(9) Where the Court makes an order for the administration of frozen funds the person charged with the administration of the funds is not liable for any loss or damage to the funds or for the costs of proceedings taken to establish a claim to the funds or to an interest in the funds unless the court in which the claim is made is of the opinion that the person has been guilty of negligence in respect of the taking of custody and control of the funds.

9. (1) Where a person is convicted of an offence under section 3 or 4, the Director of Public Prosecutions may apply to the Court for a forfeiture order against the funds that are the subject of the offence.

(2) The court may upon application by the Director of Public Prosecutions, forfeit any funds of or in the possession or under the control of any person who is convicted of an offence of terrorism or any funds of that person that are the subject of a freezing order, unless it is proved that the funds did not derive from the commission by that person of an offence under section 3 or 4.

(3) For the purposes of subsection (2) the burden of proof lies on the person who owns, or is in possession or control of, the funds.

(4) In determining whether or not any funds are derived from an offence under section 3 or 4, the standard of proof required for the purposes of subsection (2) is the same as in criminal proceedings and for the purposes of subsection (3) is the same as in civil proceedings.

- (5) In making a forfeiture order the Court may give directions
- (a) for the purpose of determining any dispute as to the ownership of or other interest in the funds or any part thereof; and
 - (b) as to the disposal of the funds.
- (6) Upon application to the Court by a person against whom a forfeiture order has been made under this section, the Court may order that an amount deemed by the Court to be the value of the funds so ordered to be forfeited, be paid by that person to the Court and upon satisfactory payment of that sum by that person the funds ordered to be forfeited shall be returned to him.
10. (1) The Government of Barbados may, pursuant to any agreement with any other State, share with that State on a reciprocal basis, the funds derived from forfeiture pursuant to this Act.
- (2) Funds referred to under subsection (1) may be utilized by the Government of Barbados to compensate victims of the offences referred to under this Act

PART V

Extradition

11. (1) Where a person who has committed or is alleged to have committed an offence under this Act is present in Barbados and it is not intended to extradite that person, the Director of Public Prosecutions shall prosecute the offender for the offence on the direction of the Attorney-General given under paragraph (b) of section 79A(2) of the *Constitution*
- (2) Notwithstanding the provisions of this Act, no person shall be extradited pursuant to this Act where the Government of Barbados has substantial grounds for believing that a request for extradition for an offence under this Act has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would be prejudicial to that person's rank or status for any of these reasons.

PART VI

Miscellaneous

12. Where a person is alleged to have committed an offence under this Act, proceedings in respect of that offence may be commenced in Barbados where the alleged offence

- (a) is committed by a national of Barbados;
- (b) was directed towards or resulted in the carrying out of an offence under this Act in Barbados or against a national of Barbados;
- (c) was directed towards or resulted in the carrying out of an offence under this Act against a State or government facility of Barbados outside Barbados;
- (d) was directed towards or resulted in the carrying out of an offence under this Act committed in an attempt to compel Barbados to do or refrain from doing any act;
- (e) was committed by a stateless person who is ordinarily resident in Barbados;
- (f) was committed on board an aircraft that
 - (i) is operated by the Government of Barbados or a national of Barbados; or
 - (ii) is registered in Barbados;
- (g) was committed on board a vessel that is flying the flag of Barbados or is registered in Barbados; or
- (h) threatens the national security of Barbados

13. Where a person is taken into custody as a result of an investigation under section 6, the Director of Public Prosecutions shall inform the Attorney-General who shall

- (a) notify, through the Secretary General of the United Nations, the State which established jurisdiction in respect of an application brought under section 8 or 9, of the detention of that person and of the circumstances that warranted the detention; and
- (b) communicate the final outcome of the proceedings to the Secretary-General for transmission of the information to the other State.

14. (1) Where a person who is being detained or who is serving a sentence of imprisonment in the territory of one State whose presence in another State is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences for the purposes of this Act, that person may be transferred if the following conditions are met:
- (a) the person freely gives his informed consent; and
 - (b) the competent authorities of both States agree, subject to such conditions as those States may deem appropriate.
- (2) Unless the State from which a person is to be transferred pursuant to subsection (1) so agrees, that person shall not be prosecuted, detained or subjected to any other restriction of his personal liberty in the territory of the State to which the person is transferred in respect of any acts done or convictions received prior to his departure from the State from which that person was transferred.
- (3) Where a person is transferred under subsection (1) from Barbados, the person transferred shall receive credit for service of the sentence being served in Barbados for the time spent in the custody of the State to which that person was transferred.
- (4) Unless the Attorney-General otherwise directs, all expenses incurred in respect of any requests made under this section, must be paid by the State making the request.
15. The Attorney-General is the competent Authority in Barbados for the exchange of information relating to criminal investigations or extradition proceedings in respect of an offence under this Act.
16. Section 27 of the *Mutual Assistance in Criminal Matters Act* applies to the procedure to be adopted in respect of a request made from another State for mutual assistance in obtaining a freezing or forfeiture order under this Act with such modifications as are necessary to give effect to such requests.
17. (1) The Attorney-General may, subject to affirmative resolution, make Regulations to give effect to this Act.
- (2) The Attorney-General may by Order amend
- (a) the Annex to the Convention in accordance with the terms of Article 23 of the Convention; or
 - (b) the *Third Schedule*.

18. The enactments specified in the *Second Schedule* are amended to the extent so specified in that *Schedule*.

2. HIJACKING ACT

An Act to make provision with a view to ratification on behalf of Barbados of the Convention for the suppression of unlawful seizure of aircraft and for related matters.

[3rd May, 1973]

1. This Act may be cited as the *Hijacking Act*.
2. (1) Subject to subsection (2), a person on board an aircraft in flight who unlawfully, by the use of force or threats of any kind, seizes the aircraft or exercises the control of it commits the offence of hijacking, whatever his nationality, whatever the State in which the aircraft is registered, and whether the aircraft is in Barbados or elsewhere.
(2) Subsection (1) shall not apply if
 - (a) the aircraft is used in military, customs or police service; or
 - (b) both the place of take-off and the place of landing are in the territory of the State in which the aircraft is registered, unless
 - (i) his act is committed in Barbados, or
 - (ii) the aircraft is a Barbadian-controlled aircraft or is used in the military or customs service of Barbados or in the service of the Police Force.
- (3) A person who
 - (a) commits the offence of hijacking; or
 - (b) in Barbados induces or assists in the commission elsewhere of an act which would, but for subsection (2), be the offence of hijacking, is liable on conviction on indictment to imprisonment for life.
- (4) For the purposes of this section “Barbadian-controlled aircraft” and “operator” in relation thereto, have the same meanings as in section 2 of the *Civil Aviation (Tokyo Convention) Act*;
“military service” includes naval and airforce service.

(5) For the purposes of this section

(a) the period during which an aircraft is in flight includes

(i) any period from the moment when all external doors, if any, of the aircraft are closed following embarkation for a flight until the moment when any such door is opened for disembarkation after that flight; and

(ii) if the aircraft makes a forced landing, any period thereafter until the time when the competent authorities of the State in which that landing takes place take over responsibility for the aircraft and for the persons and property on board the aircraft (being, if that landing takes place in Barbados, the time when a member of the Police Force arrives at the place of landing);

(b) the territorial waters of any State shall be treated as part of its territory.

3. Without prejudice to section 4 of the *Civil Aviation (Tokyo Convention) Act*, where a person (of whatever nationality) does on board an aircraft (wherever registered) and while outside Barbados any act which if done in Barbados would constitute the offence of murder, attempted murder, manslaughter, culpable homicide or assault or an offence under section 16, 17, 18, 19, 22 or 23 of the *Offences Against the Person Act*, his act shall constitute that offence if it is done in connection with the offence of hijacking committed or attempted by him on board that aircraft.

4. (1) Subject to subsection (2), where no extradition treaty within the meaning of Part III of the *Extradition Act*, has been made with a State that is a party to the Convention and that State is not a Commonwealth country, Part I of that Act applies to that foreign state as if the Convention were such an extradition treaty with that state.

(2) When Part I of the *Extradition Act*, applies to a foreign state by virtue of this section, that Part has effect in respect of that foreign state as if the only extradition crimes within the meaning of that Act were offences under this Act and attempts to commit such offences.

(3) In this section, "Convention" refers to the Convention for the Suppression of Unlawful Seizure of Aircraft signed at The Hague on December 16th, 1970, the text of which is set out in the Schedule.

5. (1) If the Minister responsible for Civil Aviation by order declares

(a) that any two or more States named in the order have established a joint air transport organisation or an international

operating agency, which operates aircraft; and that one of these States has been designated as exercising, for aircraft so operated, the powers of the State of registration the State declared under paragraph (b) shall be deemed for the purposes of this Act to be that State in which any aircraft so operated is registered.

(2) Paragraph (b) of section 2 (2) shall have effect in relation to aircraft to which this section applies as if it referred to the territory of any one of the States named in the order.

6. No proceedings for an offence under this Act shall be instituted except by or with the consent of the Director of Public Prosecutions.

3. FOREIGN INCURSIONS AND MERCENARIES ACT

An Act to prevent the raising of mercenaries in Barbados and to prevent armed incursions into other countries by Barbadians

Citation

1. This Act may be cited as the *Foreign Incursions and Mercenaries Act*.

Interpretation

2. In this Act,

(a) “government”, in relation to any country means the government recognised by the Government of Barbados as the lawful government of that country;

(b) “other country” means a country other than Barbados;

(c) “permanent resident” means a permanent resident within the meaning of the *Immigration Act*;

(d) “recruit” includes engage, enlist, procure or train as a soldier;

(e) “warfare or armed conflict” includes guerrilla or irregular warfare and rebellion or armed insurrection.

Statement of Purpose

3. (1) The purposes of this Act are

(a) to make it unlawful for individuals owing any measure of allegiance to Barbados to engage in armed incursions against the government of another country, and

(b) to prohibit the recruiting of mercenaries within or from Barbados.

(2) This Act shall be given such fair, large and liberal construction as will best ensure the attainment of its purposes.

Foreign Incursions

4. (1) No person to whom this section applies shall
- (a) enter any other country with intent to engage in a hostile activity against the government of that country, or
 - (b) engage in any other country in a hostile activity against the government of that country.
- (2) This section applies to an individual who,
- (a) at the relevant time, is a citizen of Barbados or is a permanent resident of Barbados, or
 - (b) at any time during the twelve months immediately preceding the relevant time, was present in Barbados for a purpose connected with a contravention of subsection (1).
- (3) Nothing in subsection (1) applies to an act done by an individual in the course of, and as part of, his service
- (a) in any capacity in a force described in section 8, or
 - (b) in any capacity in the armed forces of the government of another country to which he has been enlisted or commissioned while ordinarily resident in that other country.
- (4) An individual engages in a hostile activity against the government of another country when he participates in or does any act to achieve any one or more of the following objects, that is to say:
- (a) the overthrow by force or violence of the government of that other country,
 - (b) by force or violence causing the public in the other country to be in fear of suffering death or personal injury;

- (c) causing the death of, or bodily injury to, a person who
 - (i) is the head of state or head of government of the other country, or
 - (ii) holds, or performs any of the duties of, a public office in the other country
 - (d) unlawfully destroying or damaging any property belonging to the government of the other country, whether or not any of the objects are achieved.
- (5) In this section “relevant time” means the time of the doing of the act that is alleged to constitute a contravention of subsection (1).

Foreign Recruitment

5. (1) No person shall within Barbados recruit any individual for the purpose of his taking part in any warfare or armed conflict outside Barbados.
- (2) No individual shall permit himself to be recruited within Barbados for the purpose of his taking part in any warfare or armed conflict outside Barbados.
6. (1) No person shall, by advertisement within or outside Barbados, induce an individual within Barbados to be recruited to take part in any warfare or armed conflict outside Barbados in contravention of this Act.
- (2) In this section “advertisement” means to advertise by word of mouth, through pamphlets, leaflets, or other published materials, however printed and disseminated, or to advertise by radio, television, rediffusion or other mode of public or private broadcasting or by any medium by which an advertisement can be made.
7. No person shall transport or convey, or assist in the transportation or conveyance of, an individual from Barbados to any place where warfare or armed conflict is in progress with the intent that the individual take part in warfare or armed conflict outside Barbados in contravention of this Act.
8. Nothing in this Act prevents an individual within
- (a) serving, or recruiting another individual to serve, as a member of the armed forces of the Crown;
 - (b) serving, or recruiting another individual to serve, in the armed forces of the government of another country under a treaty or other international agreement to which Barbados is a party; or

(c) serving, or recruiting another individual to serve, as a member of a peace-keeping or other international force operating under the authority of the United Nations by resolution of the Security Council or of the General Assembly.

General

9. Nothing in this Act prevents an individual who does not bear arms or serve as a combatant or in support of combatants from doing or being approached to do any service of a medical or humanitarian nature for the relief of the suffering of civilians or combatants in any warfare or armed conflict outside Barbados.

10. A person who contravenes this Act is guilty of an offence triable on indictment and liable on conviction to a fine of twenty-five thousand dollars or imprisonment for five years or both.

11. The *Foreign Enlistment Act, 1870*, of the United Kingdom ceases to have effect in Barbados.

12. This Act comes into operation on a day to be fixed by proclamation.

4. INTERNATIONALLY PROTECTED PERSONS ACT

SECTION

1. Short title.
2. Definitions.
3. Act committed against internationally protected person.
4. Attack on person, premises etc.
5. Conspiracy and incitement.
6. Threatened offences.
7. Jurisdiction.
8. Autrefois convict or acquit.
9. Evidence.
10. Consent of Director of Public Prosecutions.
11. Arrest without warrant.
12. Notification of foreign State or international organisation.
13. Saving.
14. Recovery of damages.
15. Loss of status in certain cases.
16. Extradition.
17. Purposes and construction.

SCHEDULE.

CHAPTER 19

INTERNATIONALLY PROTECTED PERSONS

An Act to provide for the prevention and punishment of crimes against internationally protected persons and related matters.

[10th November 1980]

1. This Act may be cited as the *Internationally Protected Persons Act*.

2. For the purposes of this Act,

“head of state” includes

- (a) any member of a collegial body performing the functions of a head of state under the constitution of the state concerned;
- (b) any head of a government of a state; and
- (c) a minister of foreign affairs of a government of a state;

“international organisation” means an international organisation of a governmental character;

“internationally protected person” means

- (a) a head of state whenever he is in a state other than the one in which he holds that position or office;
- (b) a member of the family of a person described in paragraph (a) who accompanies him in a state other than the one in which he is a head of state;
- (c) a representative or official of a state or an official or agent of an international organisation who, at a time when and at the place where an act referred to in section 3(2) or an offence under section 4 or 5 is committed against his person or upon his official premises, private accommodation or means of transport, is entitled pursuant to international law to special protection from any attack on his person, freedom or dignity; or
- (d) a member of the family of a representative official or agent described in paragraph (c) who forms part of his household if, at the time when and at the place where an offence mentioned in that paragraph is committed against the member of his family or any

property referred to in that paragraph that is used by the member of his family, the representative, official or agent is entitled pursuant to international law to special protection from any attack on his person, freedom or dignity;

“Minister” means the Minister responsible for Foreign Affairs

3. (1) Any person who, outside Barbados, commits against the person of an internationally protected person or against any property used by him an act that would be an offence if committed in Barbados, shall be deemed to commit that act in Barbados if
 - (a) the act is committed on a ship registered in Barbados;
 - (b) the act is committed on
 - (i) an aircraft registered in Barbados, or
 - (ii) an aircraft leased without crew and operated by a person qualified to operate an aircraft in Barbados; or
 - (c) the person who commits the act is a citizen of Barbados or is subsequently found in Barbados.
- (2) This section applies in respect of an act that would, if committed in Barbados be an offence under
 - (a) section 2, 8, 9, 12, 13, 17 or 40 of the *Offences against the Person Act*; or
 - (b) section 3, 4, (in so far as it relates to a house or office) or 11 of the *Malicious Injury to Property Act*
4. (1) Any person who commits an attack on the person of an Attacks on internationally protected person in a manner likely to endanger his life or liberty is guilty of an offence and is liable on conviction on indictment to imprisonment for life and, if such attack results in the death of the internationally protected person, is liable to such punishment as may be imposed for that offence under the law of Barbados.
 - (2) Any person who commits an attack on the official premises, private accommodation or means of transport, of an internationally protected person that is likely to endanger the life or liberty of the internationally protected person is guilty of an offence and is liable on conviction on indictment to imprisonment for a term of 2 years.
5. (1) A person who, while in Barbados commits any act amounting to an offence of conspiracy or incitement to commit, in a place outside

Barbados, an offence mentioned in section 4, is triable in Barbados in respect of such incitement or conspiracy, as the case may be.

(2) An offence of conspiracy or incitement referred to in subsection (1) is triable on indictment and is punishable in like manner as if the offence had been in fact committed.

6. Any person who threatens to commit an offence against an internationally protected person is guilty of an offence and is liable on conviction on indictment to a fine of \$10,000 or imprisonment for a term of 2 years.

7. Where a person commits an act referred to in section 3, he is triable and punishable by a court in Barbados if he is found in Barbados.

8. Where, as a result of committing an act referred to in section 3, a person has been tried and convicted or acquitted outside Barbados in respect of that act, he shall be deemed to have been tried and convicted or acquitted, as the case may be, in Barbados.

9. Where, in any proceedings under this act, a question arises as to whether a person is a person entitled pursuant to international law to special protection from an attack on his person, freedom or dignity, a certificate issued by or under the authority of the Minister that contains a statement of fact relevant to that question is admissible in evidence in the proceedings; and, in the absence of evidence to the contrary, is proof of the statements contained in the certificate.

10. Subject to section 79 of the *Constitution*, no prosecution under this Act may be instituted without the consent of the Director of Public Prosecutions.

11. A person who commits an act referred to in section 3 or an offence under section 4 or 5 may be arrested without a warrant by a member of the Police Force.

12. Where a person who commits an act referred to in section 3 is found in Barbados, the Minister must take all reasonable steps to inform

- (a) the state where the offence was committed;
- (b) the state of which that person is a national, or if that person is stateless, the state in which he permanently resides;
- (c) any state that has an interest in the prosecution of that person; and
- (d) the international organisation, if any, of which the internationally protected person is an official or agent,

that that person has been found in Barbados.

13. Nothing in this Act affects any remedy available at Common Law against a person who commits an offence under section 4.

14. Where the Government of Barbados reimburses the government of another state for any loss of or damage done to property of that state that is situated in Barbados and the loss or damage is the result of an act committed by a citizen of Barbados, a permanent resident or an immigrant within the meaning of the *Immigration Act*, the amount of expense that the Government of Barbados has incurred in reimbursing that other state is recoverable from the person who committed the act as a debt due to the Crown.

15. A person who, having the status of permanent resident, permitted entrant or immigrant within the meaning of those expressions in the *Immigration Act*, commits an act referred to in section 3 or an offence under section 4 or 5 is liable, in addition to any punishment that is imposed on him,

(a) to have his status revoked and to be deported from Barbados if he is present in Barbados; or

(b) if he is not present in Barbados, to have his status revoked and to be declared a *persona non grata*

16. (1) Where a Commonwealth Country has not been designated under the *Extradition Act*, as a Commonwealth Country to which Part I of that Act applies, the Commonwealth Country shall, nevertheless, be deemed to be a designated Commonwealth Country for the purpose of extradition proceedings under that Act in respect of an act referred to in section 3 of this Act or any offence under section 4 or 5 of this Act.

(2) Where no extradition treaty within the meaning of the *Extradition Act*, exists between Barbados and a foreign state, the foreign state shall, nevertheless, be deemed, for the purpose of extradition proceedings under that Act in respect of an act referred to in section 3 of this Act or any offence under section 4 or 5 of this Act, to be a foreign state to which Part I of that Act applies.

17. This Act is remedial and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of the purposes of the Convention the text of which is contained in the *Schedule*.³²

³² The Schedule, containing the text of the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, has been omitted from the present publication.

XIII. BELARUS³³

SUMMARY OF LEGISLATION OF BELARUS RELATED TO TERRORISM

(a) Criminal Code

The articles of the Criminal Code of Belarus establish criminal liability for the commission of the following crimes connected with terrorism:

Article 6 of the Criminal Code provides for the prosecution of persons who have committed offences outside Belarus, in particular:

1. Nationals of Belarus or stateless persons habitually resident in Belarus who have committed offences outside Belarus are liable to prosecution if the acts committed by them are offences in the State in whose territory they were committed and if they have not been prosecuted in that State. When such persons are sentenced, the penalty is fixed within the limits of the sanction stipulated in the [relevant] article of the Criminal Code but must not exceed the upper limit of the sanction provided by the law of the State in whose territory the offence was committed.
2. Foreign nationals or stateless persons not habitually resident in Belarus who have committed offences outside Belarus are liable to prosecution in cases involving the commission of particularly serious offences directed against the interests of Belarus.
3. The Criminal Code is applied independently of the criminal law of the place in which the act was committed where the following offences are concerned:
 - (1) Genocide (article 127);
 - (2) Crimes against the security of humankind (article 128);
 - (3) Production, stockpiling or distribution of prohibited instruments of war (article 129);
 - (4) Ecocide;
 - (5) Use of a weapon of mass destruction (article 134);
 - (6) Violation of the laws and custom of war (article 135);

³³ Transmitted to the Secretariat by that Government on 20 June 2002 (S/2002/693, enclosure).

(7) Criminal violation of the norms of international humanitarian law in time of armed conflict (article 136);

(8) Inaction or issuance of a criminal order in time of armed conflict (article 137);

(9) Other offences committed outside Belarus which are prosecutable on the basis of a binding international treaty of Belarus.

4. In the cases provided for in sections 2 and 3 of the aforementioned article 6, persons are liable to prosecution under the Criminal Code if they have not been convicted in another State and are brought to justice in the territory of Belarus.

Article 132 - The recruitment, training, financing and use of mercenaries

The recruitment, training, financing, assisting and use of mercenaries for the purpose of participating in military action against a foreign State or preventing the lawful enjoyment of the right of peoples to self-determination, recognized by international law, are punishable by a term of imprisonment of between 7 and 15 years.

Article 285 - Establishing or participating in a criminal organization

1. Activity for the purpose of establishing a criminal organization or leading a criminal organization or its structural components is punishable by a term of imprisonment of between 5 and 12 years, either with or without the confiscation of property.

2. Participation in a criminal organization in any other manner is punishable by a term of imprisonment of between three and six years, with or without confiscation of property.

3. Actions specified in paragraph 1 or 2 of this article committed by officials exercising their official authority are punishable by a term of imprisonment of between 10 and 15 years, with or without confiscation of property.

Article 291 - Hostage-taking

1. The seizure or holding of a person as a hostage, combined with the threat to murder such person or to cause him physical injury, or the continued holding of such a person with a view to coercing a State, international organization, corporate entity or individual or group of persons to take or refrain from taking any action as a condition for the release of the hostage (hostage-taking) is punishable by a term of imprisonment of between 5 and 10 years.

2. The taking of hostages:
 - (a) By a group of persons acting in conspiracy;
 - (b) Repeatedly;
 - (c) Involving the use, during the seizure or holding of the person, of force endangering the life or health of the victim;
 - (d) In the knowledge that the hostage is a minor;
 - (e) In the knowledge on the part of the offender that the hostage is a pregnant woman;
 - (f) Where two or more hostages are involved;
 - (g) For mercenary motives or for reward

is punishable by a term of imprisonment of between 6 and 12 years, with or without confiscation of property.

3. The actions specified in paragraph 1 or 2 of this article, committed by an organized group or causing loss of human life through negligence or giving rise to other serious consequences, either deliberately or through negligence, are punishable by a term of imprisonment of between 10 and 15 years, with or without confiscation of property.

Note: A person who releases a hostage, either voluntarily or at the request of the authorities, shall be absolved of criminal liability under this article.

Article 292 - Seizure of buildings and installations

1. The seizure or holding of buildings, installations, roads and means of transport or communication, accompanied by the threat to destroy or damage them or by a threat to kill or cause physical injury to persons for the purpose of forcing a State or other entity, a body corporate or an individual or group of persons to commit or refrain from committing any action as a condition for not carrying out the threat is punishable by detention for a term of between three and six months, or by restriction of liberty for up to five years, or by a term of imprisonment for the same period.

2. Those actions, where committed by an organized group, whether causing loss of human life through negligence or giving rise to large-scale damage or other serious consequences, shall be punishable by a term of imprisonment of between 7 and 12 years.

Article 311 The hijacking of a train, aircraft or vessel or their seizure for purposes of hijacking

1. The hijacking of a train, aircraft or vessel or their seizure for purposes of hijacking is punishable by restriction of liberty for up to five years or by a term of imprisonment for the same period.
2. The same actions, if committed by a group of persons acting in conspiracy, whether involving the use or threat of force, or causing major damage, are punishable by restriction of freedom for between three and five years or by a term of imprisonment of between three and seven years.
3. The actions specified in paragraph 1 or 2 of this article, if committed by an organized group or causing loss of human life through negligence or giving rise to serious physical injury, is punishable by a term of imprisonment of between 5 and 15 years.³⁴

(b) Other Sources

In accordance with the third part of article 15 of the Act “On international treaties of the Republic of Belarus”, the legal norms contained in international treaties of the Republic of Belarus which have entered into force are part of the legislation in force in the territory of Belarus and can be directly applied, except in cases where it follows from the international treaty that a domestic enactment is required for the application of such norms. Consequently, after the International Convention for the Suppression of the Financing of Terrorism enters into force for the Republic of Belarus, its basic provisions will become part of the legislation in force in the territory of the Republic of Belarus and will be applied directly, without duplication in domestic legislative acts.

XIV. BOLIVIA³⁵

SUMMARY OF LEGISLATION OF BOLIVIA RELATED TO TERRORISM

The Bolivian Criminal Code (Book Two, Special Part, Chapter Three), which deals with “Public Tranquillity,” contains articles concerning maintenance of the country’s internal security:

³⁴ The text of additional Penal Code articles are contained in Part I of the present publication, pp. 85-87.

³⁵ Transmitted to the Secretariat by that Government on 2 January 2002 (S/2002/27, enclosure) and on 31 July 2002 (S/2002/970, appendix). Information was also provided in respect of the Code of Criminal Procedure.

Article 1 of the Bolivian Criminal Code (National Territory) states:

“This Code shall apply to:

“1. Crimes committed in Bolivian territory or in localities under its jurisdiction;

“2. Crimes committed abroad which have produced or were intended to produce results in Bolivian territory or in localities under its jurisdiction;

“3. Crimes committed abroad by a Bolivian, provided that he or she is in the national territory and has not been punished in the locality where the crime was committed;

“4. Crimes committed abroad against State security, public confidence and the national economy. This provision extends to aliens if they have been extradited or are found in Bolivian territory;

“5. Crimes committed on board Bolivian vessels, aircraft or other means of transportation in a foreign country, if they have not been prosecuted in that country;

“6. Crimes committed abroad by Bolivian civil servants in the performance of their duties;

“7. Crimes that Bolivia is required by treaty or convention to punish, even if they were not committed in its territory.”

In the case of a crime committed by a person habitually resident in Bolivia, the aforesaid article does not apply; he or she must be tried in the locality where the crime was committed.

Article 132 bis (Criminal Organization) provides:

“Anyone who is part of an association of three or more individuals organized in a permanent manner, under rules of discipline or control, existing for the purpose of committing the following crimes: genocide, destruction or damage to State property or national resources, abduction of a child or incompetent person, deprivation of liberty, harassment and torture, kidnapping, legitimization of illicit profits, manufacture of or illicit traffic in controlled substances, environmental crimes covered in special laws, offences against intellectual property, or who utilizes commercial or business structures to commit such crimes, shall be punished by one to three years’ imprisonment.

“Those who direct such an organization shall be punished by two to six years’ imprisonment.

“The sentence shall be increased by one third when the organization utilizes minors or incompetent persons to commit the crimes referred to in this article, and when the member of the organization is a public official responsible for preventing, investigating or judging the commission of crimes.”

Under *Article 133 (Terrorism)* the following is considered criminal:

“Anyone who participates in, acts in the service of or collaborates with an armed organization existing for the purpose of committing crimes against common security, life, physical integrity, freedom of movement or property, with a view to subverting the constitutional order or spreading a state of unrest, alarm or collective panic among the populace or a sector thereof, shall be punished by 15 to 20 years’ imprisonment, without prejudice to the penalty to be imposed should such crimes be committed.”

Chapter IV of the Bolivian Criminal Code, which deals with offences against international law, contains the following articles:

Article 136 (Violation of Immunities) establishes that:

“Anyone who violates the immunities of the Head of State or the representative of a foreign power or anyone having diplomatic immunity shall incur a prison sentence of six months to two years.

“The same sentence shall be imposed on anyone who offends the dignity or decorum of such persons while they are in Bolivian territory.”

Article 139 (Piracy) states that:

“Anyone who seizes a vessel or aircraft, diverts it from its established route or destroys it, or who captures, kills or injures its crew or passengers, or commits any act of depredation, shall be punished by two to eight years’ imprisonment.

The same sentence shall be imposed on anyone who knowingly traffics with pirates or provides them with assistance from the territory of the Republic.”

XV. BRAZIL³⁶

SUMMARY OF LEGISLATION OF BRAZIL RELATED TO TERRORISM

(a) Constitution

Article 4, paragraph VIII, of the Constitution of the Republic establishes the “repudiation of terrorism” and imposes an obligation on the country to join efforts to combat terrorism.

In addition, *Article 5*, provides that:

“All persons are equal before the law, without any distinction whatsoever, and Brazilians and foreigners resident in Brazil are assured of inviolability of the right to life, liberty, equality, security and property, on the following terms:

“(…) XLIII. the law shall consider the practice of torture, unlawful trafficking in narcotics and similar drugs, terrorism and crimes defined as heinous crimes to be crimes not entitled to bail or to mercy or amnesty, and shall hold responsible individuals who order or commit such acts and those who, though in a position to stop them, refrain from doing so;

“XLIV. the acts of civilian or military armed groups against the constitutional and democratic order are crimes not entitled to bail or subject to the statute of limitations”

These constitutional imperatives form the basis for the extensive complementary legislation on the subject. Worth noting, in particular, are Act 6815 of 18 August 1980 (provides that terrorism cannot be deemed a political offence); Act 7170 of 14 December 1983 (defines offences against national security and the political and social order; title II, “Offences and Penalties”, establishes the penalty for “terrorist acts”); Act 8072 of 25 July 1990 (classifies terrorism as a heinous crime); and Act 9613 of 3 March 1998 (establishes as the offence of money-laundering any activity aimed at concealing or disguising the true nature, source, location, disposition, movement or ownership of property, rights or assets derived directly or indirectly from the crime of terrorism; offences against the national financial system; and offences committed by criminal organizations, among others).

³⁶ Transmitted to the Secretariat by that Government on 26 December 2001 (S/2001/1285, annex), on 8 July 2002 and on 14 March 2003. Information was also provided in respect of Act 9474 of 22 July 1997 (“to define mechanisms for the application of the 1951 Status of Refugees, and to create other provisions”), Act No. 9613 of 3 March 1998 (offences of laundering or concealing property, rights and assets) and the Code of Criminal Procedure.

In implementation of article 5, paragraph XLIII, of the Constitution, Brazilian law prescribes penalties for individuals who order or commit terrorist acts and those who, though in a position to stop them, refrain from doing so. The possibility that natural and legal persons resident in Brazil may be involved in international crimes such as terrorism, contraband, drug or arms trafficking, money laundering and piracy is a matter of concern for the Government of Brazil. When the issue is raised by representatives of concerned States, the Brazilian authorities always request concrete information that would assist in the launching or expansion of investigations in Brazil. Act No. 9034 of 3 May 1995, in article 2, paragraph V, allows for infiltration by agents of the police or the intelligence services as part of an investigation undertaken by the relevant specialized bodies and authorized by a reasoned judicial order delivered in secret. Investigative resources were strengthened with the passage of Act No. 10446 of 8 May 2002, which contains provisions governing criminal acts with inter-State and international repercussions that must be prevented and punished in Brazil based on uniform standards. It is important to note that, in keeping with the constitutional principles of a democratic State based on the rule of law, the Government does not accept denunciations or follow up rumours, allegations and insinuations unsubstantiated by solid evidence. Where it detects the existence of a system of support for terrorist activities, the Federal Government takes the appropriate domestic legal measures and notifies the target State of the criminal act so that it could alert its security organs.

(b) Penal Code

The constitutional imperatives and international commitments undertaken by Brazil are the basis of extensive legislation that supports and provides the tools and legitimacy for the fight against terrorism in the national territory. Although there is still no criminal characterization that includes a specific and detailed definition of the crime of terrorism, the legislation contains a series of provisions that describe criminal conduct inherent in terrorist acts (including criminal association, currency fraud, and trafficking in arms, ammunition and explosives).

As mentioned above, there is no precise and detailed legal description of the crime of terrorism in Brazilian legislation; there are only descriptions of conduct that constitutes a means of carrying out a terrorist act, as in the case of offences of collective endangerment (see, for example, article 373 of the Penal Code: "Attacking persons or property, for seditious, immoral or frivolous reasons, by means of serious threats, violence or harmful methods, for the purpose of spreading terror").

In specific cases, the judicial authorities are responsible for verifying the existence of an offence, in accordance with developments in the doctrine and case law and in application of the provisions of Act 8072 of 25 July 1990, which deals with heinous crimes and establishes stricter rules for the serving of sentences. Article 2 of that law provides that persons convicted of the crime of terrorism are

not entitled to “I — amnesty, mercy or pardon; II — bail or interim release; paragraph 1 shall be carried out in its entirety under a closed prison regime”.

Article 288 of the Penal Code deals with associations of more than three persons for the purpose of undertaking criminal activities. The recruitment of new members for terrorist groups would fall under the definition of that crime. Act 9034 of 3 May 1995, in article 2, paragraph V, allows for “infiltration by agents of the police or the intelligence services as part of an investigation undertaken by the relevant specialized bodies, and authorized by a reasoned judicial order delivered in secret” The Act also provides for the possibility of a reduced penalty in order to encourage voluntary cooperation on the part of a criminal leading to the dismantling of the organization.

Furthermore, in accordance with the Criminal Code, Article 7, II, “a”, the Brazilian jurisdiction is extended over perpetrators of offences described in international conventions to which Brazil is a part of as soon they are found in the national territory. Brazil is a member of most anti-terrorism international conventions. Therefore, under Brazilian law, anyone who has committed terrorist acts abroad and is found in the national territory may be punished. The Criminal Code, Article 7, also prescribes a series of other cases in which the Brazilian jurisdiction is extended over perpetrators of offences committed abroad.³⁷

(c) Other Legislation

Act No. 8072 of 25 July 1990 governing heinous crimes provides more rigid rules for the serving of sentences. Article 2 of the Act provides that individuals convicted of the crime of terrorism may not receive amnesty, mercy, pardon or bail. It further provides that the entire sentence must be served under incarceration. Article 7 of Decree-Law No. 2848 of 7 December 1940 (Penal Code), as amended by Act No. 7209/84, deals with the application of Brazilian law to crimes committed by Brazilians abroad, which acts as a further deterrent to the recruitment of nationals by terrorist groups.

37 See Presidência da República. Subchefia de Assuntos Jurídicos. www.planalto.gov.br/ccivil_03/Decreto-Lei/Del2848.htm

XVI. BULGARIA³⁸

1. SUMMARY OF LEGISLATION OF BULGARIA RELATED TO TERRORISM

Bulgarian criminal law provides essential legal grounds for prosecuting and punishing the financing of terrorist acts. In this context, of special importance are the Criminal Code institutes of “preparation” and “complicity”. Furthermore, the Criminal Code provides for punishment of accessories as accomplices in the perpetration of an intentional crime (respectively a terrorist act), i.e. those who have intentionally facilitated the perpetration of a crime through advice, explanations, promises to render assistance after the act, removal of obstacles, supply of means or in any other way (Article 20 of the Criminal Code).

In addition to that, with regard to most crimes of a terrorist nature such as subversion, murder and most generally dangerous crimes, a punishment is also envisaged for the preparation itself including “getting ready the means, finding accomplices and, in general, creating conditions for the perpetration of the intended crime before the commencement of its perpetration (Article 17 of the Criminal Code). The preparation (including the financing) for most generally dangerous crimes constituting, in substance, terrorist acts, is punished by deprivation of liberty for three to eight years (Article 356a of the Criminal Code).

In the Criminal Code, a comprehensive list of crimes and punishments for acts constituting terrorist acts under the relevant UN Conventions is given. The criminal legislation in force concerning these criminal acts is, to a great extent, in line with the international standards.

In the context of the direct organization, preparation, supply and armament of terrorism, the Bulgarian legislation unequivocally defines, as a crime, the provision of any forms of assistance, active or passive, to structures or persons involved in terrorist acts, recruitment of members of terrorist groups and arms supplies to terrorists.

The recruitment of members of terrorist groups and arms supplies to terrorists is punishable as preparation for or facilitation of a respective terrorist act. Besides, illegal arms supplies may be punished as generally dangerous crimes (Article 337 and Article 339 of the Criminal Code) or qualified contraband (Article 242).

³⁸ Transmitted to the Secretariat by that Government on 24 December 2001 (S/2001/1273, annex). Information was also provided in respect of the Law on Measures against Money Laundering.

In addition to that, the special Decree of the Council of Ministers adopted on 12 December 2001 concerning the application of Resolution 1373 (2001) explicitly prohibits the recruitment, in any way whatsoever, of members of terrorist groups, by Bulgarian persons or entities or in the territory of the Republic of Bulgaria as well as the sale, supply or transfer, by Bulgarian persons or entities or in the territory of the Republic of Bulgaria, of any kinds of armament and related equipment to persons or entities involved in the preparation or commission of terrorist acts.

The Bulgarian Criminal Law also contains special provisions incriminating the use of the territory of the country for preparation or commission of terrorist acts against other states (Article 356b of the Criminal Code). Besides, under Article 10, paragraph 1, sub-paragraph 4 of the Foreign Nationals Act, foreign nationals for whom there is information that they are preparing to commit terrorist acts may not be admitted to the territory of the country.

According to the Bulgarian legislation (Criminal Code), the subject of terrorist acts can be both individuals and groups and organizations. In the broadest sense, the law covers all hypotheses of terrorist activities envisaged in the international instruments. They relate to crimes committed on board of an aircraft to offences endangering the security of the air traffic, against taking of hostages, protection of nuclear material, extradition of persons who have committed terrorist acts. A criminal offence is the preparation for such acts or the setting up of a group or organization on the Bulgarian territory for the purpose of committing a crime abroad resorting to the use of explosives, taking of hostages, endangering the safety of the civil aviation, generally dangerous pollution of the environment.

The Bulgarian State takes all the necessary legislative and practical measures so that each person involved in the financing, planning, preparation for or commission of terrorist acts or support for such acts be liable to the judicial bodies, and guarantee, in addition to all other measures against terrorist acts, that such acts are treated as grave criminal offences under the domestic legislation and provisions and that the punishments duly reflect the gravity of such terrorist acts.

The Criminal Code sets out a detailed list of *corpora delicti* and punishments for actions constituting terrorist acts under the relevant UN conventions. The criminal law in force regarding these criminal acts has been harmonized, to a great extent, with the international standards.

Crimes constituting terrorist acts under the Bulgarian Criminal Code are:

- depriving of life and inflicting a severe bodily injury to a state or public figure as well as causing the death of one or more persons (Article 96);
- depriving of life and inflicting a severe bodily injury to a representative of a foreign state (Article 99);

- destroying or damaging public buildings, construction projects, installations, equipment, transport vehicles or means of communication, or other significant public property (Article 106);
- murdering an official, a representative of the public as well as a serviceman, including one of an allied or friendly state or army, during or in connection with the performance of his duty or function, of a person enjoying international protection as well as murdering in a way or by means dangerous to the life of many (Article 116, paragraph 1, sub-paragraphs 1 and 6);
- setting on fire a building or other property of a considerable value including damaging or destroying the property under Article 330 by an explosive (Article 333);
- causing an inundation and thereby exposing to a danger the life or property of another person (Article 334);
- damaging rolling stock or railway lines, an aircraft, an automobile, an electric transport vehicle or equipment, or accessories to them, a tunnel, a bridge or a supporting wall on the roads as well as a ship thereby creating danger for the life of another person or for considerable endamage of another person's property (Article 340, paragraph 1);
- destroying an aircraft in operation or inflicting on it a damage that make it unfit for flight or endanger its safety in flight (Article 340, paragraph 2);
- placing into an aircraft a device or substance which can destroy it or damage it making it unfit for flight or creating danger for its safety in flight (Article 341a, paragraph 1);
- endangering the safety of an aircraft in flight (Article 341a, paragraph 2);
- exerting violence against a person on board an aircraft in flight if this act has been of such a nature as to endanger the safety of the aircraft (Article 341a, paragraph 3);
- unlawfully seizing an aircraft on the ground or in flight or establishing control over such an aircraft (Article 341b);
- intentionally causing death, bodily injury or considerable property damage in driving a railway rolling stock, an aircraft, a motor vehicle, a vessel, a combat or special machine and violating the traffic regulations (Article 342, paragraph 3);

- removing or shifting to another place a sign or signal intended for securing the safety of movement or railway traffic, water transport and electric transport as well as putting up such a false sign or giving a false signal (Article 344);
- intentionally putting or admixing an object hazardous to human life or health in a well, spring, water mains or another installation intended for public use whereupon or whereby potable water is supplied (Article 349, paragraph 1);
- spreading agents of epidemic diseases for the purpose of infecting people (Article 349, paragraph 3);
- preparing foodstuffs or drinks intended for public use in a way so that therein substances hazardous to human health are formed or allowed to enter as well as selling, offering for sale or otherwise distributing such foodstuffs or drinks (Article 350);
- polluting or allowing the pollution of water sources, basins, underground waters, territorial and inland sea waters, the soil and the air thereby rendering them hazardous to people, animals and plants or making them unfit for use (Article 352, paragraph 1);
- acquiring, holding, appropriating or giving to another person, without due permission, highly active or poisonous substance which is not narcotic substance placed under permit regime as well as violating rules established for the production, acquisition, safekeeping, accounting, prescribing, transportation or carrying of such substances (Article 354).
- damaging nuclear material, nuclear equipment or another source of ionizing radiation, thus causing considerable property damage or damage to the environment or creating danger for the life and health of another person: imprisonment from five to fifteen years; In case that death was caused, the penalty shall be imprisonment from ten to twenty years, life imprisonment or life imprisonment without appeal (Article 356e).

In accordance with Article 110, 117 and 356a of the Criminal Code, the preparation of the above mentioned crimes shall also be punished (the penalty for preparation of these crimes shall be imprisonment up to five or from three to eight years).

2. LAW ON THE MEASURES AGAINST FINANCING OF TERRORISM³⁹

Article 1

This Law shall lay down the measures for the suppression of financing of terrorism, as well as the procedures and the control of the implementation thereof.

Article 2

The objectives set out in this Law are to prevent and detect actions on behalf of natural and legal persons, as well as groups and organisations, intended to finance terrorism.

Article 3

- (1) The measures provided for in this Law are, as follows:
 1. Freezing funds or financial assets, or other property;
 2. Prohibiting the provision of financial services, funds, financial assets or other property.
- (2) The authorities that have applied any of the measures referred to in paragraph (1) shall forthwith inform the Minister of the Interior and the Minister of Finance thereof.
- (3) The freeze referred to in paragraph (1) shall have the effect of distress or foreclosure.

Article 4

The information required in order to achieve the objectives set out in this Law shall be collected, processed, classified, analysed, kept, used and provided by the Ministry of the Interior.

Article 5

- (1) The Council of Ministers, acting on a motion of the Minister of the Interior or the Prosecutor General, shall adopt, supplement or amend by a relevant decision a list of the natural and legal persons, as well as the groups and organisations, in respect of which the measures provided for in this Law shall apply.
- (2) The list referred to in paragraph (1) shall include:
 1. natural and legal persons, as well as groups and organisations designated by the UN Security Council as being associated with

³⁹ Published in State Gazette No. 16 of 18 February 2003, amended in SG No. 31 of 4 April 2003

terrorism or in respect of which counter-terrorism sanctions have been imposed by a resolution of the UN Security Council;

2. persons against whom criminal proceedings have been initiated for terrorism, financing of terrorism, forming, directing or participating in an organised criminal group, having as its purpose the commission of terrorist acts or financing of terrorism, or the preparation to commit terrorist acts, or the manifest incitement to commit terrorist acts, or threat to commit terrorist acts within the provisions of the Penal Code.

(3) The list referred to in paragraph (1) may also include persons designated by the competent authorities of another state or the European Union.

(4) The decision of the Council of Ministers referred to in paragraph (1) shall be published in the *State Gazette* immediately following the adoption thereof.

(5) The persons referred to in paragraphs (2) and (3) may appeal against the decision of the Council of Ministers, whereby they have been put on the list referred to in paragraph (1), before the Supreme Administrative Court. The appeal shall not suspend the enforcement of the act appealed.

(6) Where the reasons for including a person in the list referred to in paragraph (1) cease to exist, the Minister of the Interior or the Prosecutor General shall, on his/her own initiative or at the request of the persons concerned, within 14 days of the time when he/she has been notified that the said reasons had ceased to exist, submit to the Council of Ministers a proposal on the removal of that person from the list. The decision of the Council of Ministers amending the list shall be published in accordance with the procedure laid down in paragraph (4).

(7) Copy of the judgment of the Supreme Administrative Court, whereby the appeal referred to in paragraph (5) is given favourable consideration, shall be forwarded to the Council of Ministers which shall make without delay the necessary amendments. The decision of the Council of Ministers amending the list shall be published in accordance with the procedure laid down in paragraph (4).

(8) When instituting criminal proceedings for terrorism, financing of terrorism, forming, running or participating in an organised criminal group, having as its purpose the commission of terrorist acts or financing of terrorism, or the preparation to commit terrorist acts, or the manifest incitement to commit terrorist acts, or threat to commit terrorist acts within the provisions of the Penal Code, investigators and public prosecutors shall forthwith inform the Prosecutor General thereof.

Article 6

(1) Any funds, financial assets and other property owned by the persons referred to in Article 5, regardless of the holder thereof, as well as any funds, financial assets and other property possessed or held by the persons appearing on the list referred to in Article 5, except for those objects and rights which may not be subject of coercive enforcement, shall be frozen.

(2) The measure referred to in paragraph (1) shall be applied also with

respect of funds, financial assets and other property acquired following the publication of the list referred to in Article 5.

(3) The enforcement of the measure referred to in paragraph (1) shall not discontinue the interest accrual and the acquisition of other civil benefits deriving from the frozen funds, financial assets and other property, however, anything newly acquired shall be frozen too.

(4) The Minister of Finance may authorise payment or any other disposal of frozen funds, financial assets and other property, where this is required for:

1. medical treatment or other emergency humanitarian needs of the person whose property has been frozen or of any of his/her family members;
2. repayment of liabilities to the State;
3. payment of labour remuneration;
4. payment of compulsory social insurance contributions;
5. covering current needs of the natural persons appearing on the list referred to in Article 5 and their family members.

(5) The authorisation referred to in paragraph (4) shall be issued on a case-by-case basis subject to a motivated request filed by the person concerned, and in the event of repayment of liabilities to the State - on the initiative of the Minister of Finance as well. The Minister of Finance shall deliver his/her opinion within 48 hours following the receipt of the request.

(6) The refusal of the Minister of Finance to grant authorisation in the cases referred to in paragraph (4) shall be subject of appeal before the Supreme Administrative Court.

Article 7

(1) Natural and legal persons shall be prohibited from providing funds, financial assets or other property, as well as financial services, to persons included in the list referred to in Article 5, unless in case of an authorisation issued in compliance with Article 6.

(2) The prohibition provided for in paragraph (1) shall not refer to minor transactions intended to cover current needs of a natural person appearing on the list referred to in Article 5 or his/her family members.

Article 8

(1) Transaction involving frozen funds, financial assets and other property of persons appearing on the list referred to in Article 5, as well as transactions involving the provision of funds, financial assets and other property to such persons shall be prohibited.

(2) Anything given by the parties to a transaction performed in violation of the provisions of paragraph (1) shall be expropriated in favour of the State.

(3) The claim under paragraph (2) shall be filed by the Minister of Finance at the place where the property is located or where the transaction took place, as appropriate. In the event the transaction has taken place abroad, the claim shall be filed before the Sofia District Court.

(4) If the funds, financial assets or other property subject to divestment are missing, the pecuniary equivalence thereof shall be adjudicated.

(5) Third *bona fide* persons claiming autonomous rights in regard with frozen funds, financial assets and other property, may file a claim within six months from the publication in the *State Gazette* of the decision of the Council of Ministers adopting, supplementing or amending the list referred to in Article 5.

Article 9

(1) Anyone who is aware that specific operations or transactions are intended to finance terrorism shall be under the obligation to inform without delay the Minister of the Interior thereof.

(2) In cases where, during the performance of the functions entrusted to the Financial Intelligence Agency, suspicions arise that certain operations or transactions are intended to finance terrorism, the Director of the Agency shall forthwith inform the Minister of the Interior thereof.

(3) In cases of any suspicion arisen as to financing of terrorism, the persons referred to in Articles 3(2) and 3 of the Law on Measures against Money Laundering shall be under the obligation to inform the Financial Intelligence Agency thereof. In such cases the Agency shall exercise the powers conferred to it under Articles 13, 17 and 22 of the Law on Measures against Money Laundering.

(4) The persons referred to in Article 3 (2) and (3) of the Law on Measures against Money Laundering shall include in their internal rules of procedure, under Article 16(1) of the same Law, criteria for detecting suspicious operations, transactions and customers intended for financing of terrorism.

(5) The disclosure of the information referred to in paragraphs (2) and (3) may not be restricted for reasons of classified information representing official, banking or commercial secret, and shall not entail liability for violation of the provisions of other laws.

Article 10

(1) The competent authorities that have obtained information in regard with the implementation of this Law shall keep confidential the identity of the sources of such information.

(2) The information collected in compliance with this Law shall be used exclusively for the purposes of this Law or for counteracting crime.

Article 11

(1) In the cases referred to in Article 9(1), (2) and (3), the Minister of the Interior may issue a written warrant for the suspension of an operation or transaction for a maximum period of three working days as of the day following

the date of issue of such warrant, and shall forthwith notify the prosecution authorities thereof, providing them the full information required.

(2) In the event of emergencies, when this is the only possibility to freeze funds, financial assets or other property of a person in respect of whom an information has been obtained that he/she is preparing to commit a terrorist act, the Minister of the Interior may order, by a written warrant, the suspension of an operation or transaction for a maximum period of 45 working days as of the day following the date of issue of such warrant, and shall forthwith notify the prosecution authorities thereof, providing them the full information required.

(3) The warrants issued by the Minister of the Interior in accordance with paragraphs (1) and (2) shall be subject of appeal before the Supreme Administrative Court. The Supreme Administrative Court shall deliver its judgment on the appeal within 24 hours from the receipt thereof. The appeal shall not have effect of suspension.

(4) The persons who are under the obligation to enforce the warrants referred to in paragraphs (1) and (2) shall be deemed notified as of the date of receipt of a copy of the relevant warrant.

(5) Copy of the warrant issued by the Minister of the Interior in accordance with paragraph (2) and the judgment of the court in accordance with paragraph (3), where the subject of freezing is an immovable property, shall be forwarded to the relevant Registration Office.

Article 12

The measures provided for in Article 3(1) shall cease to apply on the day following the date of publication in the *State Gazette* of the decision of the Council of Ministers, whereby the natural or legal person, or the groups and organisations concerned are removed from the list.

Article 13

The Minister of the Interior shall exchange information relevant to the prevention and detection of actions of natural and legal persons intended to finance terrorism with the competent authorities of other states and international organisations.

Article 14

The Financial Intelligence Agency, acting on its own initiative and upon a request received, shall exchange the information provided for in this Law with the relevant international bodies, as well as with the authorities of other states, based on international agreements and under the conditions of reciprocity.

ADMINISTRATIVE & PENAL PROVISIONS

Article 15

(1) Anyone, who commits or allows to be committed a violation under Article 6(1), Article 7(1), Article 9(1) and (3) and Article 11(1) and (2), is subject

to a fine in the amount of BGN 2,000.00 to BGN 5,000.00, provided that the act does not constitute a crime.

(2) Where the violation referred to in paragraph (1) has been committed by a sole trader or a legal person, a property sanction in the amount of BGN 20,000.00 to BGN 50,000.00 shall be imposed.

Article 16

(1) The acts for detected violations shall be issued by the authorities of the Ministry of the Interior, while the penal provisions shall be issued by the Minister of the Interior or by duly authorised officials.

(2) The detecting of violations, the issuing, the appealing and the enforcement of penal provisions shall be in compliance with the Law on Administrative Violations and Sanctions.

ADDITIONAL PROVISIONS

§ 1. For the purposes of this Law, 'financial services' shall mean: performance of the transactions referred to in Articles 1 and 2 of the Law on Banks; insurance, reinsurance or insurance related services; public offering of and trade in securities; all forms of professional management of funds or properties; all forms of collective investment management and management of insurance companies and funds; provision and dissemination of financial information, financial data processing and the relevant software deriving from providers of other financial services, as well as consulting, brokerage, accounting and other supporting activities related to the above described financial services.

TRANSITIONAL & CONCLUDING PROVISIONS

§ 2. The persons referred to in Article 3(2) and (3) of the Law on Measures against Money Laundering shall, within four months from the date of entrance into force of this Law, include in their internal rules of procedure, as laid down in Article 16(1) of the Law on Measures against Money Laundering, criteria for detecting suspicious operations, transactions and customers intended for financing of terrorism, and shall forward them to the Director of the Financial Intelligence Agency for approval.

§ 3. In § 21 of the Law on the 2003 State Budget of the Republic of Bulgaria (published, SG No. 120/2002; as amended, SG No. 2/2003), paragraphs (1) and (2) shall be repealed.

§ 4. The implementation of this Law shall be entrusted to the Minister of the Interior and the Minister of Finance.

This Law has been adopted by the 39th National Assembly on February 5, 2003 and bears the official stamp of the National Assembly.

3. EXTRACT OF THE PENAL CODE

Article 108a

(1) A person who for the purpose of causing disturbance and fear to the public, to threaten or to force a government body or a representative of the community or a representative of a foreign country or international organization to carry out or to fail to carry out a certain action within the scope of their functions and commits a crime under Articles 115, 128, 142.1, 194.1, 216.1, 326, 330.1, 333, 334.1, 337.1, 339.1, 340.1-2, 341a1-3, 341b.1, 344, 347.1, 348, 349.1, 349.3, 350.1, 352.1, 354.1, 356e.1, 356.3 shall be punished for terrorism by imprisonment from 5 to 15 years; in case somebody's death has been caused - imprisonment from 15 to 30 years, life imprisonment or life imprisonment without replacement.

(2) A person who in any way, direct or indirect, collects or provides funds for the purposes of carrying out the act under (1) or is aware or supposes that these are going to be used for the same purpose shall be punished with imprisonment from 3 to 15 years and a fine up to BGN 30,000.

(3) The proceeds subject to the act under (2) shall be confiscated by the state.

Article 109

(1) A person who forms or leads an organization or group, which has set itself the aim of committing crimes under this Chapter, shall be punished by deprivation of liberty for up to twelve years, but not more than the punishment provided for the respective crime.⁴⁰

(2) A person who is a member of such an organization or a group shall be punished by deprivation of liberty for up to ten years, but not more than the punishment provided for the respective crime.

(3) A participant in the group who, of his own accord gives himself up to the authorities and reveals everything he/she is aware of about the group thus assisting significantly the detection and the investigation of crimes committed by the group shall be punished in accordance with Art. 55.⁴¹

(4) A participant in the group who, of his own accord gives himself up to the authorities before a crime he or the groups commits other crime shall not be punished.⁴²

Article 110

For preparation of a crime under Articles 95, 96, 99, 106 and 107 and 108a, the punishment shall be deprivation of liberty for up to six years.⁴³

⁴⁰ Amended, SG No. 99/1989.

⁴¹ Amended, SG No. 95/1975; 92/2002.

⁴² Amended, SG No. 92/2002.

⁴³ Amended, SG No. 99/1989.

Article 114

(1) For crimes under this Chapter, the court may rule compulsory domicile, as well as deprivation of rights under Article 37, sub-paragraphs 6 - 10.

(2) For crimes under Articles 95 - 107, 108a and 109, the court may rule confiscation of part or of the entire property of the convict.⁴⁴

Article 320a

(New, SG No. 41/1985) A person who threatens to commit a crime under Art. 108a.1, Articles 330, 333, 334, 340, 341a, 341b, 342, paragraph (3), Articles 344, 349, 350 or 352, paragraph (1), and where such threat might give rise to justified fear of its implementation, shall be punished by deprivation of liberty for up to two years. The court may also rule compulsory domicile.

XVII. CAMEROON⁴⁵

ELEMENTS DU DISPOSITIF LEGISLATIF ET REGLEMENTAIRE DU CAMEROUN

(a) Constitution

Conformément aux dispositions de l'article 45 de la Constitution du Cameroun, tout Traité régulièrement ratifié est au-dessus de la norme interne. Il n'est donc pas nécessaire, sauf en cas de contradiction avec la Constitution, de procéder au préalable à la promulgation des lois et autres dispositions juridiques en vue d'appliquer les instruments internationaux auxquels le Cameroun est partie.

(b) Code Pénal

En l'état actuel, et en l'absence de manifestation du terrorisme dans le pays, le droit pénal camerounais ne consacre pas d'infraction spécifique pour réprimer la fourniture ou la collecte délibérée de fonds destinés à la perpétration des actes de terrorisme. Ce qui ne doit nullement laisser penser que de tels faits sont tolérés ou soustraits au régime des actes répréhensibles.

Le Cameroun, en ce qui le concerne, dispose d'un cadre juridique général qui permet de répondre à une telle situation en attendant l'adoption d'une législation spécifique plus élaborée sur le terrorisme. En effet, en plus de la possibilité offerte au chef de l'État de mettre en oeuvre les dispositions de l'article

⁴⁴ Amended, SG No. 28/1982.

⁴⁵ Transmitted to the Secretariat by that Government on 15 March 2002 (S/2002/277, enclosure) and on 15 April 2003 (S/2003/489, enclosure). Information was also provided in respect of Act of 19 December 1990 on freedom of association and Law No. 83/002 of 21 July 1983 concerning appeals for public donations.

9 de la Constitution du Cameroun en cas de menacc grave, le Code pénal camerounais réprime de différentes manières, les infractions qui, dans leur manifestation, s'apparentent aux actes terroristes. Il existe par ailleurs en droit camerounais, et bien qu'elle soit récente, une législation contre le terrorisme en matière de répression des infractions et actes dirigés contre la sécurité de l'aviation civile. Il est prévu enfin, dans le cadre de la réforme du dispositif législatif camerounais, une adaptation du Code pénal, afin de réprimer de manière plus spécifique, celles des infractions qui, comme le terrorisme et ses différentes formes de manifestations, n'y sont traitées que par association ou assimilation à d'autres dispositions du code.

Bien que le contexte actuel exige une législation particulière sur les infractions relatives au terrorisme, on trouve dans le Code pénal des dispositions permettant d'en assurer la répression. Ainsi en est-il de :

– *L'association des malfaiteurs*: (répression de la conspiration, art. 9 et 95). Aux termes de l'article 9 du Code pénal, « il y a conspiration dès que la résolution de commettre une infraction est concertée et arrêtée entre deux ou plusieurs personnes... La conspiration en vue de commettre un crime ou un délit, si elle n'a été suspendue ou si elle n'a manqué son effet que par des circonstances indépendantes de la volonté de ses auteurs, est considérée comme le crime ou le délit lui-même ».

– *Les préparatifs dangereux*: L'article 248 du Code pénal punit « d'un emprisonnement de 20 jours à un an celui qui, dans le but de commettre un crime ou un délit, porte un instrument apte à forcer la porte d'un immeuble. Ce but est toujours présumé lorsque ces faits sont commis de nuit ».

– *Le vagabondage*: Aux termes de l'article 247 du Code pénal, « est vagabond et puni d'un emprisonnement de six mois à 2 ans celui qui, ayant été trouvé dans un lieu public, ne justifie ni d'un domicile certain, ni de moyens de subsistance. Les peines sont doublées :

– Si le vagabond est trouvé porteur d'armes ou muni d'un instrument propre à commettre nne infraction;

– Si le vagabond a exercé ou tenté d'exercer quelque acte de violence que ce soit envers les personnes ».

– *Les bandes armées*: L'article 115 du Code pénal punit de la prison à vie tout individu qui, dans le but de provoquer la sécession, la guerre civile, la révolution, ou pour empêcher l'action de la force publique contre les auteurs de ces crimes, organise une bande armée ou y exerce une fonction ou un commandement quelconque ou participe avec cette bande à l'exécution ou à la tentative d'exécution de ces crimes.

– Est puni d'un emprisonnement de 10 à 20 ans tout individu ayant participé à la réunion de cette bande;

- Constitue une bande armée tout rassemblement d'au moins cinq personnes dont l'une est porteuse d'une arme apparente ou cachée.
- *Complicité*: Aux termes de cet article 97 « est complice d'une infraction qualifiée crime ou délit :
 -
 - a) Celui qui provoque de quelque manière que ce soit à l'infraction ou donne des instructions pour la commettre;
 - b) Celui qui aide ou facilite la préparation ou la consommation de l'infraction. »

L'alinéa 2 précise que « la tentative de complicité est considérée comme la complicité elle-même ».

Il faut noter que la complicité ou la tentative de complicité peut exister, même si l'auteur principal de l'infraction bénéficie d'une cause d'impunité ou d'irresponsabilité (mineur, aliéné). Même si l'auteur principal a été acquitté pour défaut d'intention criminelle, le complice peut être poursuivi et condamné s'il est établi que l'auteur principal lui a servi de moyen pour commettre son infraction. Il en serait alors l'auteur principal.

Ainsi en est-il d'une personne qui mettrait une bombe dans le sac d'un passager d'avion, à l'insu de ce dernier. Ainsi en est-il également d'un animal dressé pour tuer ou pour commettre des attentats. Le dresseur serait tout simplement l'auteur principal. Ainsi en serait-il enfin d'une personne qui, par quelque moyen (financier notamment), aiderait à la commission des actes terroristes.

Au Cameroun, de manière générale, l'interdiction et la répression du financement des actes de terrorisme peuvent être envisagées par la combinaison de l'article 97 du Code pénal sur la complicité, avec les autres dispositions de la législation nationale, qui répriment des actes de terrorisme proprement dits ou des actes assimilables.

S'agissant des peines, les coauteurs et complices sont passibles de la même peine que l'auteur principal (art. 98 du Code pénal).

Dans le Code pénal, on peut également relever des infractions qui correspondent à des méfaits renvoyant aux mobiles, aux manifestations ou aux conséquences habituelles des actes terroristes, mais qu'on ne peut ni poursuivre, ni réprimer sous le vocable de terrorisme.

Il s'agit :

- Des infractions voisines, réprimées comme atteintes à la sûreté intérieure ou extérieure de l'État (détérioration des constructions, installations ou matériels en vue de nuire à la défense nationale -

art. 103 –, révolution consistant en l'usage de la force pour modifier les lois constitutionnelles ou pour renverser les autorités politiques instituées – art. 114);

– Des infractions réprimées dans le cadre des atteintes à la sûreté publique (incendies d'habitation, de véhicules de terre, de mer ou de l'air contenant des personnes ou de mines exploitées – art. 227) ou aux biens (destructions d'édifices, ouvrages, navires ou installations – art. 316-2);

– Des incriminations permettant de réprimer des conséquences d'actes de terrorisme dans le cadre général des atteintes à l'intégrité physique des personnes (art. 275 à 281 du Code pénal réprimant le meurtre, l'assassinat, les blessures graves, les coups mortels, les coups avec blessures graves, les blessures simples et les blessures légères).

Toutes ces infractions sont punies de peines allant de la peine de mort à l'emprisonnement à vie ou à de graves peines d'emprisonnement.

En outre, la loi No 2001/019 du 18 décembre 2001 réprime les infractions et actes dirigés contre la sécurité de l'aviation civile. Cette loi introduit de manière expresse dans le champ d'application du droit et de la procédure pénale au Cameroun, l'incrimination du terrorisme. Elle comporte par ailleurs des dispositions spécifiques pour lutter contre les actes d'intervention illicite dirigés contre la sécurité de l'aviation civile. Onze types de comportements allant du détournement d'avions au transport d'explosifs non marqués, sont désormais qualifiés d'actes de terrorisme et punis de l'emprisonnement à vie ou de la peine de mort (art. 4 et 10 de la loi).

XVIII. CAPE VERDE⁴⁶

SUMMARY OF LEGISLATION OF CAPE VERDE RELATED TO TERRORISM

The Aeronautical Code approved by the Legislative Decree nr. 1/2001 establishes, among others, the following criminal penalties:

- (i) Seizure of aircraft (*Article 297*): imprisonment from 5 to 12 years and from 16 to 25 if the offence resulted in injury or death,

⁴⁶ Transmitted to Secretariat on 27 December 2001 (S/2001/1329, enclosure). Information was also provided in respect of Law nr. 78/IV/93, of 12 of July against money laundering.

(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. CHILE⁴⁷

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 connection with article 294 of the Penal Code and article 8 of the Arms Control Act.

It should be 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.

⁴⁷ Transmitted to the Secretariat 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 foreign 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

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. 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.

a fine of between two thousand (2,000) and forty thousand (40,000) times the minimum statutory monthly wage, and loss of rights and public functions for a period of between fifteen (15) and twenty (20) years.

Article 182 of the Penal Code provides for a term of imprisonment of between one and two years for anyone who forces another person to do, condone or fail to do anything, a penalty that will be increased by between one third and one half (article 183) when the objective pursued by the perpetrator is of a terrorist nature.

Article 184. Compulsion to commit an offence.

Any person who compels another person to commit a punishable act, provided that such act does not constitute an offence entailing a higher degree of punishment, shall be liable to a term of imprisonment of between one (1) and three (3) years.

Article 185. Aggravating circumstance.

The penalty shall be increased by between one third and one half when:

1. The objective of the act is to induce persons to become members of terrorist groups, groups of hired murderers, death squads or private justice groups;
2. The persons who are the objects of the act are minors under eighteen (18) years of age or active or retired law enforcement officers or members of State security bodies.

Article 197. Illicit use of transmitting or receiving equipment.

Any person who, for illicit purposes, possesses or makes use of wireless or television equipment or any electronic means designed or adapted for transmitting or receiving signals shall, for that act alone, be liable to a term of imprisonment of between one (1) and three (3) years.

The penalty shall be increased by between one third and one half when the act described in the preceding paragraph is carried out for terrorist purposes.

Article 340. Conspiracy to commit an offence.

When a number of persons conspire for the purpose of committing offences, each of them shall, for that act alone, be liable to a term of imprisonment of between three (3) and six (6) years.

When the conspiracy involves the commission of the crimes of genocide, enforced disappearance, torture, forcible displacement, homicide, terrorism, trafficking in toxic or narcotic drugs and psychotropic substances, kidnapping, extortive kidnapping, extortion, unlawful enrichment, money laundering or fronting and related crimes, or the organization, promotion or financing of illegal armed groups, the penalty shall be a term of imprisonment of between six (6) and twelve (12) years and a fine of between two thousand (2,000) and twenty thousand (20,000) times the minimum statutory monthly wage.

The penalty of deprivation of liberty shall be increased by one half for any person who organizes, encourages, promotes, directs, heads, establishes or finances a conspiracy for the purpose of committing an offence.

Article 341. Training for illicit activities.

Any person who organizes, instructs, trains or equips persons in military tactics, techniques or procedures for the purpose of conducting terrorist activities or operating death squads, private justice groups or gangs of hired murderers, or who recruits them, shall be liable to a term of imprisonment of between fifteen (15) and twenty (20) years and a fine of between one thousand (1,000) and twenty thousand (20,000) times the minimum statutory monthly wage.

Article 342. Aggravating circumstance.

When the acts described in the preceding articles are committed by active or retired law enforcement officers or members of State security bodies, the penalty shall be increased by between one third and one half.

With regard to the financial aspect of the crime of terrorism, the Penal Code provides for the offence of “management of resources linked to terrorist activities”

Article 343. Terrorism.

Any person who provokes or maintains the population, or a segment of the population, in a state of anxiety or terror through acts that endanger the lives, physical integrity or the freedom of the persons or buildings or means of communication, transport, processing or conveyance of fluids or motive power, making use of means capable of causing destruction, shall be liable to a term of imprisonment of between ten (10) and fifteen (15) years and a fine of between one thousand (1,000) and ten thousand times the minimum statutory monthly wage, without prejudice to the penalty to which he or she is liable for the other offences committed in connection with such conduct.

If the state of anxiety or terror is caused by a telephone call, a magnetic tape, a video, a cassette or an anonymous letter, the punishment shall be from between two (2) and five (5) years and a fine of between one hundred (100) and five hundred (500) times the minimum statutory monthly wage.

Article 344. Aggravating circumstances.

The penalties indicated in the first paragraph of the preceding article shall be a term of imprisonment of between twelve (12) and twenty (20) years and a fine of between five thousand (5,000) and thirty thousand (30,000) times the minimum statutory monthly wage when:

1. A minor under eighteen (18) years of age is forced to participate in the commission of the offence;
2. Police premises, State security units or diplomatic or consular posts are attacked or taken;
3. The act was committed in order to hinder or alter the normal conduct of democratic contests;
4. The perpetrator or participant is a law enforcement agent or a member of a State security body;
5. When the act affects an internationally protected person other than those indicated in section II of this Book, or diplomatic agents, in accordance with the international treaties and conventions ratified by Colombia, or when buildings of friendly countries are affected or when international relations are disrupted.

Article 345. Management of resources linked to terrorist activities.

Any person who manages money or assets linked to terrorist activities shall be liable to a term of imprisonment of between six (6) and twelve (12) years and a fine of between two hundred (200) and ten thousand (10,000) times the minimum statutory monthly wage.”

Instigation to commit an offence for terrorist purposes is also penalized:

Article 348. Instigation to commit an offence.

Any person who publicly and directly incites another person or persons to commit a specific offence or type of offence shall be liable to a fine.

If the act is engaged in for the purpose of committing the crimes of genocide, enforced disappearance, extortive kidnapping, torture, forcible displacement or homicide or for terrorist purposes, the penalty shall be a term of imprisonment of between five (5) and ten (10) years and a fine of between five hundred (500) and one thousand (1,000) times the minimum statutory monthly wage.

It is also worth noting, in this respect, that the offence of “compulsion to commit an offence” includes among the aggravating circumstances the objective of inciting persons to become members of terrorist groups.

As a way of ensuring that persons involved in acts of terrorism are prosecuted, article 449 of the Penal Code, provides for severe penalties imprisonment from five to eight years - for a public servant responsible for the surveillance, custody or transport of a detainee or convict, who enables or facilitates the escape of the detainee or convict. The second paragraph of article 449 increases the penalty by up to one third when the person is deprived of liberty for more serious offences, including terrorism.

Furthermore, in December 2002 the Congress of the Republic adopted Act No. 793 derogating from Act No. 333 of 1996 and establishing rules governing termination of ownership rights, under which, by means of a simple procedure, ownership of assets used in or derived from the commission of punishable acts may be terminated in favour of the State.

Territorial application of penal law

The competence of the Colombian criminal courts to investigate criminal acts such as those cited in this question is defined in the following articles of the Penal Code:

Article 14. Territoriality.

Colombian penal law shall apply to all persons that infringe it in the national territory, with the exceptions established in international law.

The punishable conduct is deemed to have occurred:

1. In the place where the action took place in whole or in part.
2. In the place where the action should have taken place but did not.
3. In the place where the result occurred or should have occurred.

Article 15. Territoriality by extension.

Colombian penal law shall apply to any person who engages in punishable conduct on board a ship or aircraft belonging to the State while it is away from the national territory, with the exceptions

established in international treaties or agreements ratified by Colombia. It shall also apply to any person who engages in the conduct on board any other Colombian ship or aircraft while on the high seas, unless criminal proceedings have been initiated abroad.

Article 16. Extraterritoriality.

Colombian penal law shall apply:

1. To any person who commits a crime abroad against the existence or security of the State, against the constitutional regime, against the economic and social order with the exception of the conduct defined in article 323 of this Code, or against the public administration, or who counterfeits the national currency or forges a public credit document or official seal, even if he has been acquitted or convicted abroad and given a lesser sentence than is provided for under Colombian law.

Time already served in prison shall, however, be deducted from the sentence.

2. To any person who is in the service of the Colombian State, enjoys immunity under international law, and commits the crime abroad.

3. To any person who is in the service of the Colombian State, does not enjoy immunity under international law, and commits abroad a crime other than those cited in paragraph 1, unless he has been tried abroad.

4. To any national to whom the preceding paragraphs do not apply and who is present in Colombia after having committed a crime on foreign soil, provided that the penalty under Colombian penal law is a term of imprisonment of at least two (2) years and that he has not been tried abroad.

In the case of a lesser penalty, prosecution must be initiated by, or at the request of, the Attorney-General.

5. To any foreigner to whom paragraphs 1, 2 and 3 do not apply and who is present in Colombia after having committed on foreign soil a crime against the State or against a Colombian national that Colombian law punishes with a term of imprisonment of at least two (2) years, unless he has been tried abroad.

In such a case, prosecution must be initiated by, or at the request of, the Attorney-General.

6. To any foreigner who has committed on foreign soil a crime against a foreigner, if the following conditions apply:

- (a) He is present on Colombian soil.
- (b) In Colombia the crime is punishable by a term of imprisonment of at least three (3) years;
- (c) The crime is not political, and
- (d) A request for extradition has not been granted by the Colombian Government. If the extradition is not approved, a criminal trial shall be conducted.

In the case referred to in this paragraph, prosecution shall be initiated solely by, or at the request of, the Attorney-General and only if the case has not been prosecuted abroad.

Article 17. Foreign sentence.

An acquittal or conviction pronounced abroad shall be considered *res judicata* for all legal purposes.

Sentences handed down abroad for the crimes dealt with in article 15 and article 16, paragraphs 1 and 2, shall not be deemed *res judicata* under Colombian law.

The penalty or part thereof that the convicted person has served under such sentences shall be deducted from any sentence imposed under Colombian law, if both are equal in nature. If not, the applicable conversions shall be calculated, by comparing the relevant legislation and consulting the guidelines for setting the penalty contained in this Code.

(b) Code of Criminal Procedure

In accordance with the provisions of article 357 of the Code of Criminal Procedure (Act No. 600 of 2000), the custodial measure of prevention is applied “1. When the offence entails the penalty of imprisonment of at least, or exceeding, four (4) years”, a provision which, in cases of terrorism, makes it possible to deprive those involved of their liberty. The purpose of that measure is to ensure that the accused appears for trial and the penalty of deprivation of liberty is executed, or to prevent him from escaping, continuing his criminal activity or impeding the collection of evidence.

It should be mentioned that, pursuant to Act No. 504 of 1999, the investigation and prosecution of offences, such as terrorism, that cause great social alarm, is carried out by the specialized justice system.

Article 356 of the Code of Criminal Procedure provides that the time limits established for provisional release, in paragraphs 4 and 5, will be doubled when cases are heard by the specialized justice system. This is an important measure, since it enables officials to have a more suitable time-limit for conducting judicial proceedings – bearing in mind the difficulty encountered in such cases, which generally deal with accused persons who belong to powerful criminal organizations – as well as in the submission of evidence.

XXII. COSTA RICA⁵⁴

SUMMARY OF LEGISLATION OF COSTA RICA RELATED TO TERRORISM

The Costa Rican Penal Code contains a number of definitions of offences which, although scattered throughout the Code rather than compiled under a specific section on terrorism, correspond to various acts which may constitute typical acts of terrorism.

Some articles refer to offences expressly linked to terrorism, for instance:

Article 374, defining international crimes, imposes 10 to 15 years' imprisonment on leaders and members of international groups, one of whose aims is to commit terrorist acts. It states:

A sentence of 10 to 15 years' imprisonment shall be imposed on anyone heading or participating in international organizations that engage in trafficking of slaves, women, children or drugs or in acts of terrorism, or that violate provisions of human rights treaties to which Costa Rica is a party.

⁵⁴ Transmitted to the Secretariat by that Government on 24 December 2001 (S/2001/1279, appendix), on 12 July 2002 (S/2002/864, enclosure) and on 31 March 2003 (S/2003/453, enclosure). Information was also provided in respect of Act No. 8204 amending the Act on narcotic drugs, psychotropic substances, unauthorized drugs and related activities, the Civil Aviation Act No. 5150 of 14 May 1973 and the Associations Act.

Article 274 imposes one to six years' imprisonment for unlawful association, i.e. association with criminal intent, and increases the penalty to three to 10 years' imprisonment if the purpose of the association is to commit terrorist acts.

Article 246 imposes penalties of varying severity depending on the aggravating circumstances, in cases where fire or explosion is used to create a collective threat to persons or property. The second paragraph of this article states that "for the purposes of this article and of articles 274 and 374, the following shall be considered terrorist acts:

- (a) The acts described in articles 215 (5) and (6) and 260 of this Code;
- (b) Attempts on the life or physical integrity of public officials, diplomats or consular officials accredited in Costa Rica or passing through its territory;
- (c) Attacks on ships, aircraft on the ground, public transport vehicles and official or public buildings, in which firearms or explosives are used or a fire or explosion is caused."

Other articles of the Penal Code penalize illicit acts which, although not defined as terrorist acts, could be of use in prosecuting and punishing those who commit terrorist acts:

Article 229 imposes six months' to three years' imprisonment for aggravated damage in the following cases:

- (a) If the damage is done to items of scientific, artistic, cultural or religious value when, by virtue of their location, they are entrusted to the public or intended for the service, use or reverence of an indeterminate number of persons;
- b) If the damage is done to means or channels of communication, means of transport, roads or railways, bridges or canals, or to plants which produce or distribute water, electricity or sources of energy;
- (c) If the act is committed with violence against persons or with threats; and
- (d) If the act is carried out by three or more persons.

Article 247 provides that the penalties imposed in article 246 will apply to persons who cause criminal damage by means of flooding, collapse or demolition of a building or any other powerful means of destruction.

Article 248 imposes one to four years' imprisonment on any person who damages or disables dikes or other structures designed to protect the public against

disasters, thereby creating the risk that such disasters will occur; if the disaster does occur, the penalty is increased at the discretion of the judge.

Article 250 imposes for four to eight years' imprisonment on any person who, for the purpose of contributing to the commission of offences, manufactures, supplies, acquires, steals or possesses bombs or explosive, inflammable, asphyxiating or toxic materials, or substances or materials for their preparation. The same penalty is imposed on any person who, in a situation where he or she knows or should assume that he or she is contributing to the commission of offences, gives instructions for the preparation of the substances or materials referred to in the previous paragraph. A penalty of two to four years' imprisonment is imposed on any person who has such materials in his or her possession, for purposes other than those indicated above, without the authorization of the appropriate authorities.

Article 251 imposes two to six years' imprisonment on any person who knowingly carries out any act which endangers the safety of a ship, floating structure or aircraft. If the act causes a shipwreck, a running aground or an aviation accident, the penalty is increased to six to 12 years' imprisonment. The penalty is six to 15 years' imprisonment if the accident causes injury to any person and eight to 16 years if it causes death.

Article 252 imposes one to six years' imprisonment on any person who knowingly commits an act which endangers the safety of a train, cable car or other means of overland transport. The penalty is six to 15 years' imprisonment if the act causes a derailment, collision or other serious accident and from eight to 18 years if it results in death.

Article 253 penalizes attacks on public safety, including attacks on plants, engineering works and facilities designed for the production or transmission of electric power or energy sources, and attacks on the security of any means of telecommunication. If such acts cause a disaster, the penalty is three to eight years' imprisonment.

Article 258 penalizes the offence of piracy, imposing three to 15 years' imprisonment on, *inter alia*, any person who seizes a ship or anything belonging to its crew by means of fraud or violence against its captain.

Article 259 increases the penalty to no less than 10 years' imprisonment if the acts cause the death of any person who is on board the ship that is attacked.

Article 261 imposes a penalty of three to 10 years' imprisonment on any person who poisons, contaminates or adulterates, in a manner hazardous to health, water, foodstuffs or medicines intended for public or community use. If the act results in the death of a person, the penalty is eight to 18 years' imprisonment.

It should be noted that most of the above offences are punishable by prison terms of over four years, which means that they may fall within the scope of

the new Act No. 8204 and that the penalties and financial controls provided for in that Act may be applicable to them.

Territorial application

Article 5 – Extraterritoriality:

The criminal law of Costa Rica shall also apply to punishable laws committed abroad whenever:

1. they impugn the internal or external security of the State, or its economy, and
2. they are committed against the public administration or, by officials in its service, whether Costa Rican citizens or others.”

Article 6 – Possibility of initiating legal proceedings for punishable acts committed in other countries:

Legal proceedings may be initiated for punishable acts committed in other countries, and Costa Rican law may apply, when such acts:

1. Produce or may produce effects wholly or in part in the national territory;
2. Were committed by persons in the service of Costa Rica, and such persons have not been tried in the place where the acts were committed owing to diplomatic immunity or their immunity of office; and
3. Are perpetrated against a Costa Rican or the rights of a Costa Rican.

Article 7 – International Crimes:

Irrespective of the provisions in force in the place where a punishable act is committed and the nationality of the perpetrator, persons committing punishable acts against human rights as stipulated in treaties to which Costa Rica is a party or in this Code shall be subject to punishment under Costa Rican law. In accordance with article 374, terrorism is considered an international crime.

However, article 8 of the same Code states that in the cases described in articles 6 and 7, in order for crimes to be punishable in Costa Rica, it is necessary for the offender to be in the national territory; this is not true for cases covered by article 5, for which only State action is required.

Article 8

Irrespective of the provisions in force in the place where a punishable act is committed and the nationality of the perpetrator, persons committing acts of piracy, genocide, counterfeiting of money, credit instruments, banknotes and other bearer bonds; engaging in the trafficking of slaves, women or children; engaging in the trafficking of narcotics or obscene material or committing other punishable acts against human rights as stipulated in treaties to which Costa Rica is a party or in this Code shall be subject to punishment under Costa Rican law.

The provisions of the Costa Rican Penal Code are not applicable to acts committed outside Costa Rica by a foreign national who is currently in Costa Rica; such a person would simply be the subject of extradition, in accordance with the extradition treaties to which our country is a party.

Recruitment

The current Penal Code does not specify that the recruitment of persons to commit acts of terrorism is a crime but, as with the financing of terrorism, the definitions of accessory, co-perpetrator and instigator could be applied to those who recruit persons to commit terrorist acts that are actually carried out.

Costa Rica also has the offence of unlawful association (art. 274 of the Penal Code), which carries with it a sentence of one to six years' imprisonment for "anyone taking part in an association of two or more persons with the aim of committing offences, simply by virtue of membership in the association". The sentence is increased to three to ten years' imprisonment "if the aim of the association is to carry out acts of terrorism". Similarly, article 374 imposes sentences of ten to fifteen years on leaders and members of international groups, one of whose aims is to commit terrorist acts. These provisions are currently sufficient to prosecute and punish any person who is part of a terrorist group. At the same time, we could, if necessary, consider including in the special law on terrorism a new criminal offence expressly prohibiting the recruitment of terrorist groups.⁵⁵

Thus, in accordance with current legislation, unlawful international association to commit terrorist acts is covered under Chapter XVII concerning offences against human rights. As stated earlier, in accordance with article 7 of the Penal Code, anyone who commits "punishable acts against human rights as stipulated in treaties to which Costa Rica is a party" shall be subject to

⁵⁵ Current legislation regarding unlawful association of an international nature does not spell out whether the offences for which the association was established must be committed inside or outside the country. Nevertheless, it can be interpreted in both ways, especially regarding article 374 which mentions the crimes of trafficking and terrorism, which usually have transnational implications. In speaking of terrorist acts, it does not specify whether they are only against States or only against citizens of other countries; therefore, it is understood that it would apply in both cases.

punishment. In other words, unlawful association to commit terrorist acts shall always be punishable in Costa Rica even when the acts are committed outside the country, in the same way as human rights violations that may occur as a result of terrorist acts. In any case, as explained above, the draft Law on the strengthening of Costa Rican legislation against terrorism includes a proposed amendment of article 374 to include an express reference to terrorist acts committed outside the country.

Furthermore, in cases where terrorist acts are executed outside the country, or are not actually committed, articles 274 and 374 of the Penal Code establish penalties for belonging to national or international organizations whose aim is to commit terrorist acts. The offence of “unlawful association” arises as soon as at least two persons agree to commit a crime. Therefore, even if the recruiter does not belong to a terrorist organization, from the moment he recruits at least one other person he has committed the offence of unlawful association.

XXIII. COTE D’IVOIRE⁵⁶

ELEMENTS DU DISPOSITIF LEGISLATIF ET REGLEMENTAIRE DE LA COTE D’IVOIRE

La législation locale de la Cote D’Ivoire ne fait pas mention de la notion de terrorisme, elle se prononce cependant sur les cas d’attentat. Ainsi, *l’article 158* du Code pénal ivoirien relatif aux attentats dispose que :

Est puni de la détention à vie, l’attentat dont le but est soit :

- De détruire ou de changer le régime constitutionnel;
- D’exciter les citoyens ou habitants à s’armer contre l’autorité de l’État ou s’armer les uns contre les autres;
- De porter atteinte à l’intégrité du territoire national;
- D’organiser le massacre et la dévastation.

Par ailleurs, le Code pénal en son *article 27* qui permet de punir de la même peine que l’auteur, le coauteur et le complice de l’attentat, dispose que :

Est complice d’un crime ou d’un délit, celui qui, sans prendre une part discrète ou déterminante à sa réalisation :

⁵⁶ Transmitted to the Secretariat by that Government on 3 January 2002 (S/2002/75, enclosure).

- Donne des instructions pour le commettre ou participe à sa réalisation en usant de dons, promesses, menaces, abus d'autorité ou de pouvoir, machinations ou artifices coupables;
- Procure tout moyen devant servir à l'action tel que arme, instrument ou renseignement;
- Aide ou assiste en connaissance de cause, directement ou indirectement, l'auteur ou un coauteur de l'infraction.

XXIV. CROATIA⁵⁷

1. SUMMARY OF LEGISLATION OF CROATIA RELATED TO TERRORISM

Croatian legislation contains provisions that criminalize support, active or passive, to entities or persons involved in terrorist acts, including the recruitment of members of terrorist groups and supply of weapons to terrorists. The main provisions are contained in the Criminal Code, the Trade Act and Government Decision on Determination on Goods Imported and Exported on the Basis of Licenses.

In its Article 169, the Criminal Code⁵⁸ defines the crime of international terrorism. Its basic definition is given in paragraph I:

“[W]hoever, with intent to harm a foreign state or an international organisation, causes an explosion or fire by some generally dangerous act or device, endangers people or property or kidnaps a person or commits some other act of violence shall be sentenced to a minimum three-year imprisonment”.

A qualified form of this criminal act is provided in paragraphs 2 and 3. Paragraph 2 describes a specific form of qualified murder: “[I]f the perpetrator, when carrying out a criminal act referred to in paragraph 1 of this Article, intentionally kills one or more persons, he/she shall be sentenced to a minimum ten year or long-term imprisonment.” A long-term imprisonment usually refers to a sentence of 20 to 40 years. Paragraph 3 states that “[I]f by a criminal act referred to in paragraph I of this Article the death of one or more persons or

⁵⁷ Transmitted to the Secretariat by that Government on 21 December 2001 (S/2001/1271, enclosure). Information was also provided in respect of the Law on the Prevention of Money-Laundering, Law on the Office for Combating Corruption and Organised Crime, and Law on Movement and Residence of Foreigners.

⁵⁸ Official Gazette Nos. 110/97, 27/98, 50/00, 129/00 and 51/01.

extensive destruction is caused, the perpetrator shall be sentenced to a minimum of five year imprisonment”

In addition to the crime of international terrorism, Article 141 of the Criminal Code defines the crime of anti-state terrorism. It is described as follows:

“[W]hoever, with the aim to endanger the constitutional order or the security of the Republic of Croatia, causes an explosion, fire, or by a generally dangerous act or device imperils the lives of people, endangers property, kidnaps a person, or commits some other act of violence within the territory of the Republic of Croatia or against its citizens, thus causing a feeling of personal insecurity to citizens, shall be punished by imprisonment for no less than three years.”

In cases where the terrorist (criminal) organisation has been established, the individual can be punished for being a member in the terrorist organisation, pursuant to Article 333 of the Criminal Code, with a maximum of three years of imprisonment.

Article 333, paragraph 2 provides that “[W]hoever organises or leads a criminal organisation shall be sentenced to imprisonment of six months to five years.” paragraph 4 states that “a member of the group” referred to in paragraph 2 of this Article “shall be sentenced to imprisonment of three months to three years.”

Article 334, paragraph 1 of the Criminal Code, which deals with the assembly and supply of weapons and instruments intended for the perpetration of a criminal offence, provides for the punishment for whoever makes, supplies or enables another to obtain weapons, explosive substances or means intended for their production, or poisons which he knows to be intended for the perpetration of a criminal offence. The perpetrator shall be punished by a prison term from three months to three years.

Article 335, paragraph 1 is on illicit possession of weapons and explosive substances. It incriminates unauthorised possession of firearms and explosive substances, when a person makes, supplies, possesses or otherwise acquires for himself/herself or a third party firearms, ammunition or explosive substances whose supply, sale or possession is not permitted to citizens. The perpetrator shall be fined or imprisoned for up to three years. Paragraph 2 provides for the punishment for whoever supplies, possesses, sells, makes or exchanges, without authorisation, larger quantities of firearms, ammunition or explosive substances. The perpetrator shall be imprisoned from one to five years.

Moreover, pursuant to the Criminal Code, instigators and accomplices who instigate the perpetrators or help by commission, shall be punished. If such an organisation is organised on the territory of the Republic of Croatia, its members would also be held responsible for the criminal act defined in Article 333, i.e. for organising or heading a criminal organisation, that is being members thereof.

In the legislation of the Republic of Croatia, the criminal offence of international terrorism is ranked among the criminal offences against the values protected by international law (Chapter XIII of the Criminal Code). In accordance with Article 169, paragraph 2 of the Criminal Code, the punishment for participation in the financing, perpetration or support of terrorist acts is long-term imprisonment (maximum forty years). If the above-mentioned criminal act was attempted, an individual should be punished as a perpetrator.

Financing of terrorism

The perpetrator, i.e. an individual who collects funds with the intention that the financial means should be used in order to carry out a criminal act of international terrorism, may be punished for assisting in the execution of a criminal act of international terrorism pursuant to Article 38 of the Criminal Code. This person shall be punished as if he/she himself/herself committed the crime in question. In cases where the act was only an attempt, the punishment is at least three years of imprisonment. If at least one person was intentionally killed, the punishment could be long-term imprisonment, which is considered to be imprisonment from 20 to 40 years.

Article 279 of the Criminal Code defines a criminal act of the "Concealing Illegally Acquired Money". It stipulates the imprisonment from six months to five years for its perpetration. If the crime defined in this Article is committed within a criminal group or organisation, a prison sentence from one to ten years is prescribed.

Territorial application

Article 14 paragraph 1 of the Criminal Code provides, among other things, that the criminal legislation of the Republic of Croatia shall apply to anyone who, outside its territory commits any criminal offence which the Republic of Croatia is obliged to prosecute according to the provisions of international law and treaties. Paragraph 4 provides that the criminal legislation of the Republic of Croatia shall be applied to a foreigner who, outside the territory of the Republic of Croatia, commits a criminal offence against a foreign state or another foreigner, for which a punishment of five years of imprisonment or a more severe penalty may be applied, provided that the perpetrator is found on the territory of the Republic of Croatia and is not extradited to a foreign state.

2. PROVISIONS OF THE CRIMINAL CODE

Article 140 (Violence Against the Highest State Officials)

Whoever, by force or by the threat to use force, prevents the President of the Republic of Croatia, the President of the Parliament of the Republic of Croatia, the Members of the Parliament of the Republic of Croatia, the Prime Minister, Deputy Prime Minister, or a member of the Government of the Republic of

Croatia, the President or a judge of the Constitutional Court of the Republic of Croatia, the President or a judge of the Supreme Court of the Republic of Croatia, the President or members of the State Judicial Council of the Republic of Croatia, the State Attorney of the Republic of Croatia or his/her deputy, the Public Defense Attorney or his/her deputy, the Ombudsman of the Republic of Croatia or his/her deputy from acting or forces him/her to omit acting in the execution of his/her duties shall be punished by imprisonment for three to ten years.

Article 141 (Anti-State Terrorism)

Whoever, with an aim to endanger the constitutional order or the security of the Republic of Croatia, causes an explosion, fire, or by a generally dangerous act or device imperils the lives of people or endangers property or kidnaps a person, or commits some other act of violence within the territory of the Republic of Croatia or against its citizens, thus causing a feeling of personal insecurity in citizens, shall be punished by imprisonment for not less than three years.

Article 142 (Armed Rebellion)

Whoever takes part in an armed rebellion directed against the constitutional order or the security of the Republic of Croatia shall be punished by imprisonment for not less than three years.

Article 143 (Act of Sabotage)

Whoever, with an aim to endanger the constitutional order or the security of the Republic of Croatia, by way of demolition, fire or some other way destroys or damages an industrial, agricultural or other economic facility or a plant, a road, a means of transportation, a communication

Article 153 (Preparation of Criminal Offenses Against the Republic of Croatia)

Whoever procures or ensures the operation of the means, removes obstacles, makes a plan or conspires with others or undertakes other actions that create conditions for the direct perpetration of the criminal offenses referred to in Article 135, paragraphs 1 and 2, Articles 137 to 139, Articles 141 to 143, Articles 147 and 150 of this Code shall be punished by imprisonment for one to five years.

Article 154 (Accessory After the Fact to Criminal Offenses Against the Republic of Croatia)

(1) Whoever conceals the perpetrator of the criminal offense referred to in Article 135, paragraphs 1 and 2, Articles 137 to 139, Articles 141 to 143, Articles 148 and 150 of this Code, provides him/her with food, clothes, money or takes care of him/her in any other way so as to hinder his/her being discovered or arrested shall be punished by imprisonment for six months to three years.

(2) For the perpetration of the criminal offense referred to in paragraph 1 of this Article, the spouse of the perpetrator of a criminal offense, the person with whom the perpetrator lives out of wedlock, the perpetrator's relative by blood in a direct line, his/her brother or sister, an adopter or an adoptee and their spouse or person with whom they live out of wedlock shall not be punished.

Article 155 (Punishment for the Most Serious Forms of Criminal Offenses Against the Republic of Croatia)

(1) If, in the course of the perpetration of the criminal offense referred to in Article 135, paragraph 1 and 2, Articles 141 to 143, Articles 149 and 150 of this Code, the perpetrator murders one or more persons with intent, he/she shall be punished by imprisonment for not less than ten years or by long-term imprisonment.

(2) If, by the criminal offense referred to in paragraph 1 of this Article, the death of one or more persons or extensive destruction is caused, the perpetrator shall be punished by imprisonment for not less than five years.

CHAPTER THIRTEEN (xiii)

CRIMINAL OFFENSES AGAINST VALUES PROTECTED BY INTERNATIONAL LAW

Article 163 (Forbidden Means of Combat)

(1) Whoever makes or improves, produces, stores, offers for sale or buys, or intermediates in a purchase or sale, possesses, transfers, or transports chemical or biological weapons, or some other means of combat prohibited by the rules of international law, shall be punished by imprisonment for three months to three years.

(2) Whoever, at a time of war or armed conflict, orders the use of chemical or biological weapons, or the means or methods of combat prohibited by the rules of international law, or whoever uses such weapons, means or methods, shall be punished by imprisonment for not less than one year.

(3) If, by the criminal offense referred to in paragraph 1 of this Article, the death of several persons is caused, the perpetrator shall be punished by imprisonment for not less than five years or by long-term imprisonment.

Article 169 (International Terrorism)

(1) Whoever, with intent to harm a foreign state or an international organization, causes an explosion or fire or, by some generally dangerous act or device, endangers people or property or kidnaps a person or commits some other act of violence shall be punished by imprisonment for not less than three years.

(2) If the perpetrator, in the course of the perpetration of the criminal offense referred to in paragraph 1 of this Article, intentionally murders one or more persons, he/she shall be punished by imprisonment for not less than ten years or by long-term imprisonment.

(3) If, by the criminal offense referred to in paragraph 1 of this Article, the death of one or more persons or extensive destruction is caused, the perpetrator shall be punished by imprisonment for not less than five years.

(4) In order to initiate criminal proceedings for the criminal offense referred to in this Article, an approval from the State Attorney of the Republic of Croatia is required.

Article 170 (Endangering the Safety of Internationally Protected Persons)

(1) Whoever kidnaps an internationally protected person, or commits some other act of violence against such a person or attacks his/her official premises, accommodation or his/her means of transport shall be punished by imprisonment for not less than one year.

(2) If the perpetrator, in the course of the perpetration of the criminal offense referred to in paragraph 1 of this Article, intentionally murders one or more persons, he/she shall be punished by imprisonment for not less than ten years or by long-term imprisonment.

(3) If, by the criminal offense referred to in paragraph 1 of this Article, the death of one or more persons is caused the perpetrator shall be punished by imprisonment for not less than five years.

(4) Whoever endangers the safety of an internationally protected person by a serious threat to attack him/her, members of his/her family, his/her official premises, the private accommodation or his/her means of transport shall be punished by imprisonment for one to five years.

Article 171 (Taking of Hostages)

(1) Whoever kidnaps, seizes or detains and threatens to kill, to injure or to continue to detain another person in order to compel a certain state or an international organisation to do or abstain from doing any act as an explicit or implicit condition for the release of a hostage shall be punished by imprisonment for not less than one year.

(2) If the perpetrator, in the course of the perpetration of the criminal offense referred to in paragraph 1 of this Article, intentionally kills a hostage, he/she shall be punished by imprisonment for not less than ten years or by long-term imprisonment.

(3) If, by the criminal offense referred to in paragraph 1 of this Article, the death of the hostage is caused, the perpetrator shall be punished by imprisonment for not less than five years.

Article 172 (Misuse of Nuclear Materials)

(1) Whoever, by force, threat, the perpetration of a criminal offense or by any other way without authorization procures, possesses, uses, transports, stores, gives to another or enables another to procure nuclear materials shall be punished by imprisonment for three months to three years.

(2) Whoever, by the act referred to in paragraph 1 of this Article, endangers human lives and property to a greater extent shall be punished by imprisonment for six months to five years.

(3) The same punishment referred to in paragraph 2 of this Article shall be inflicted on whoever, by serious threat to use nuclear material, endangers the safety of people.

(4) Whoever, in order to compel some state or international organization or a natural or legal person to do or refrain from doing an act, threatens to endanger the lives of people and property to a greater extent through the use of nuclear material shall be punished by imprisonment for one to ten years.

(5) Whoever commits the criminal offense referred to in paragraph 2 of this Article by negligence shall be punished by imprisonment for three months to three years.

(6) If, by the criminal offense referred to in paragraphs 1, 2 and 4 of this Article, the death of one or more persons or extensive damage to property is caused, the perpetrator shall be punished by imprisonment for not less than three years.

(7) If, by the criminal offense referred to in paragraph 1 of this Article, the death of one or more persons is caused or extensive damage to property is caused, the perpetrator shall be punished by imprisonment for one to ten years.

Article 179 (Hijacking an Aircraft or a Ship)

(1) Whoever, by force or serious threat to use force, takes over the control over an aircraft in flight or over a ship or a vessel shall be punished by imprisonment for not less than one year. If the perpetrator, in the course of the perpetration of the criminal offense referred to in paragraph 1 of this Article, intentionally kills one or more persons, he/she shall be punished by imprisonment for not less than ten years or by long-term imprisonment.

(2) If, by the criminal offense referred to in paragraph 1 of this Article, the death of one or more persons or the destruction of an aircraft, a ship or a vessel is

caused, or some other extensive pecuniary damage is caused, the perpetrator shall be punished by imprisonment for not less than five years.

Article 180 (Piracy on the Sea and in the Air)

(1) A crew member of a ship or an aircraft or a passenger on a ship or an aircraft which is not a public ship or aircraft who, with intent to secure for himself/herself or for another some gain or to cause some damage to another, commits at sea or in a place which is not under the rule of any state a violent act or some other type of coercion against another ship or aircraft, or persons or objects on them, shall be punished by imprisonment for not less than one year.

(2) If the perpetrator, in the course of the perpetration of the criminal offense referred to in paragraph 1 of this Article, intentionally murders one or more persons, he/she shall be punished by imprisonment for not less than ten years or by long-term imprisonment.

(3) If, by the criminal offense referred to in paragraph 1 of this Article, the death of one or more persons or the destruction of an aircraft or a ship or some other extensive destruction is caused, the perpetrator shall be punished by imprisonment for not less than five years.

Article 181 (Endangering the Safety of International Air Traffic and Maritime Navigation)

(1) Whoever, without an aim to commit the hijacking of an aircraft (Article 179), destroys or damages air navigation facilities or causes some other damage to the aircraft, places or carries into the aircraft an explosive or other device or a substance capable of destroying or damaging the aircraft, gives false information regarding the flight of the aircraft, performs violence against the aircraft crew members, or some other act of violence, endangering thereby the safety of the flight, shall be punished by imprisonment for one to ten years.

(2) The same punishment as referred to in paragraph 1 of this Article shall be inflicted on whoever, with an aim to interrupt operations at an airport and endangering the safety of air traffic, performs violence against a person employed at an international airport or seriously damages or destroys airport facilities or damages an aircraft not in use.

(3) The same punishment as referred to in paragraph I of this Article shall be inflicted on whoever, without an aim to commit the hijacking of a ship or a vessel (Article 179) or the criminal offense of piracy (Article 180), by the destruction of, or damage caused to air navigational facilities or other damage to the ship or vessel, by placing or carrying into the ship or vessel an explosive or other device or substance capable of destroying or damaging the ship or vessel, by giving false information about the voyage of the ship or the condition of the vessel, by an act of violence against the crew members of the ship or vessel, or by

another act of violence, endangers the safety of the voyage of the ship or the safety of the vessel.

(4) If, by the criminal offense referred to in paragraphs 1, 2 and 3 of this Article, the death of one or more persons or the destruction or extensive damage to an aircraft, ship or vessel is caused or any other extensive pecuniary damage is caused, the perpetrator shall be punished by imprisonment for not less than three years.

Article 186 (Damaging the Reputation of a Foreign State and International Organization)

(1) Whoever exposes a foreign state, its flag, coat of arms, national anthem, its Head of State or diplomatic representative to public ridicule, contempt or severe disdain shall be punished by imprisonment for three months to three years.

(2) The same punishment as referred to in paragraph 1 of this Article shall be inflicted on whoever exposes to ridicule, contempt or severe disdain the United Nations, the International Red Cross or any other recognized international organization or its highest representatives.

(3) Criminal proceedings shall be instituted on the basis of an approval by the State Attorney of the Republic of Croatia, who may issue such an approval after obtaining consent by the state, an international organization or the person against whom the criminal offense is committed.

Article 187 (Association for the Purpose of Committing Criminal Offenses Against the Values Protected by International Law)

(1) Whoever organizes a group of people or in some other way joins three or more persons in common action for the purpose of committing the criminal offenses referred to in Articles 156, 158, 159 and 160 of this Code shall be punished by imprisonment for one to eight years.

(2) Whoever becomes a member of the group referred to in paragraph 1 of this Article shall be punished by imprisonment for six months to five years.

(3) The perpetrator of the criminal offense referred to in paragraph 1 of this Article who, by timely uncovering the group, prevents perpetration of the criminal offenses referred to in paragraph 1 of this Article shall be punished by imprisonment for six months to three years, but the punishment may also be remitted.

(4) The punishment shall be remitted for a member of the group who uncovers the group prior to having committed the criminal offense referred to in paragraph 1 of this Article.

XXV. CUBA⁵⁹

1. SUMMARY OF LEGISLATION OF CUBA RELATED TO TERRORISM

In addition to the Law against acts of terrorism⁶⁰, terrorism is also covered in Law No. 62 (Penal Code), which in Title I, relative to crimes against the security of the State, chapter II, seventh section, article 106, provides for the crime of terrorism and specifies penalties ranging from 10 to 20 years' imprisonment or the death penalty.

Law No. 62 (Penal Code), in Book II of the Special Part includes four chapters containing 33 articles on terrorism. These articles provide for very harsh maximum sentences. (The parts of this Code that deal with terrorism and related offences were repealed with the enactment by the National Assembly of People's Power, on 20 December 2001, of the Law against terrorist acts).

Chapter X of the Penal Code, which deals in articles 211 and 213 with the illegal carrying and possession of firearms and explosives, also provides for penalties ranging from fines to prison sentences lasting between six months and 10 years, depending on the type of weapon; the place and action; whether possession or carrying was involved; manufacture; and the sale and delivery of firearms or explosives.

Furthermore, articles 110, 111 and 112 of the Penal Code establish penalties for those who carry out enlistment or other hostile acts against a foreign State or recruitment in the national territory for the military service of a foreign State and for those who carry out an act intended to undermine the independence of a foreign State.

Territorial Application

Article 5 of the Penal Code establishes that "Cuban penal law is applicable to Cubans and non-citizens resident in Cuba who commit a crime abroad, if they are in Cuba or have been extradited; to Cubans who commit a crime abroad and are surrendered to Cuba to be prosecuted by its courts, in accordance with agreements concluded; and to foreigners and non-citizens not resident in Cuba who commit a crime on foreign soil, if they are in Cuba and have not been extradited, whether they reside in the territory of the State in which the acts are perpetrated or in any other State, so long as such action is also punishable in the place where it was committed," a requirement which is not applicable if the act constitutes a crime against the fundamental, political or economic interests of

⁵⁹ Transmitted to the Secretariat by that Government on 27 December 2001 (S/2002/15, enclosure) and on 24 September 2002 (S/2002/1093, enclosure).

⁶⁰ See section 2 *infra*.

the Republic, or against humanity, human dignity or collective health, or is justiciable under international agreements.

2. LAW AGAINST ACTS OF TERRORISM

Ricardo Alarcón de Quesada, President of the National Assembly of People's Power of the Republic of Cuba.

BE IT KNOWN: That the National Assembly of People's Power, at the eighth regular session of the fifth legislature, held on 20 and 21 December 2001, has adopted the following.

Introduction

Law against Acts of Terrorism

This Law is founded upon the deeply held ethical and political convictions that have always inspired the Cuban Revolution, and represents an expression of our determination to reject and condemn, by means of specific legal measures, the methods and practices of terrorism.

Moreover, the people of Cuba unquestionably possess the moral authority to do so because they have been victimized by such crimes for over forty years and because, despite the high cost of the deaths and injuries suffered by thousands of Cubans, as well as the tremendous moral prejudice and property losses inflicted on the country, Cuba has always dealt with these losses with legitimate resources and not through war which, by its very nature and outcome, is also a form of terrorism which Cuba strongly repudiates.

By enacting this Law, Cuba is contributing to the implementation of the provisions contained in the international instruments recognized by the United Nations as conventions against terrorism to which our country is a party, including those which were recently ratified at a special session of the National Assembly of People's Power.

The Law is comprised of two titles, ten chapters, 28 articles, a special provision and three final provisions.

While the text of the Law does not provide an exhaustive definition of terrorism, it does describe its general characteristics and, in particular, the various acts which constitute this criminal activity. Thus, the Law is based on the definitions of different manifestations of terrorism set forth in the aforementioned international conventions and agreements, as well as certain offences included in the Penal Code currently in force in our country. These offences have been included in the Law in order to reaffirm that they are acts of terrorism, bearing in

mind the definitions of such acts in those instruments and in order to avoid duplicating similar legal norms.

Special attention is paid to the ways in which terrorist acts are carried out, including those relating to chemical or biological weapons, which have recently given rise to special concern within the international community. Such weapons have been used against Cuba on several occasions for many years, causing loss of human life and considerable property damage among our people.

The general provisions also include certain rules which under our substantive penal law must be set down as specific offences in order to make them applicable, such as those referring to the punishment of preparatory acts and the related penalty of confiscation of goods.

Another important norm is that providing for preventive attachment or freezing of funds and other financial assets or of property or economic resources of alleged offenders, independently of the degree of participation in the offence, and of persons and entities acting on behalf of or under the control of alleged offenders.

The general section of the Penal Code and of the Law on Military Offences are to be considered complementary to this Law, in order to avoid the repetition of many provisions. This is also the case with the Law on Penal Procedures and the Law on Military Penal Procedures since, given the special nature of this legislation, it was considered necessary to reaffirm clearly the procedural rules that are applicable.

Some of the most important rules are those pertaining to the effect in space of the Law against Acts of Terrorism, given that for purposes of punishment, the Law stipulates that the offences shall be deemed to have been committed in Cuban territory both when the perpetrator prepares for or carries out the acts in Cuba, even if they produce an effect in another country, and when the preparatory acts are carried out on foreign soil but produce an effect in Cuba. In addition, Cuban courts shall recognize the validity of firm sentences and penalties handed down by foreign courts in determining the matter of recidivism or multi-recidivism.

The single special provision instructs the Government to sign agreements and conventions with States that are willing to promote international cooperation in a number of substantive aspects in the struggle to prevent, suppress and eradicate terrorism.

In establishing the penalties for the offences, the following considerations have been borne in mind:

- (a) to respect, insofar as possible, the scale of penalties established in the Penal Code and avoid creating other, different penalties, which

would be unnecessary and would create inconsistencies between offences of similar gravity already existing in both legal texts;

(b) to establish more severe penalties for offences that have very serious consequences (death, serious injury and substantial and significant damage).

The text includes terms taken from the international instruments on which it is based, as established in article 4, so that it is not necessary to reproduce them in full in the body of the Law, which would make it unduly long. Instead, the relevant details are set forth in the annexes.

Other terms used in the text which are not defined in the aforementioned international instruments, as regards meaning and scope, shall be defined as provided in the relevant legislation currently in force in our country.

This Law against acts of terrorism is adopted at this time bearing in mind the circumstances prevailing on the world scene. It represents another significant legal step in the battle of ideas in which the Cuban people are involved.

WHEREAS: The people of Cuba have been victims of numerous acts of terrorism which have caused serious harm to people, as well as moral prejudice and property damage, for over forty years.

WHEREAS: Cuba bases its protection against terrorist actions on its defence system, which is based on the invaluable participation and support of its people. Our essential premise is to prevent such acts in order to prevent their harmful consequences, both on our territory and anywhere in the world.

WHEREAS: The international community, in many different legal instruments to which Cuba is a party, has agreed to join efforts to present a more coordinated and effective front against the various manifestations of terrorism.

WHEREAS: The National Assembly of People's Power, on behalf of the people of Cuba:

- Rejects and condemns the acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed and for whatever reasons, including those which jeopardize relations among States and peoples and threaten and represent an attack against the territorial integrity, peace and security of States. Terrorism is a dangerous and ethically indefensible phenomenon which must be eradicated.
- Reaffirms its unswerving determination to never allow the territory of the Cuban State to be used to organize, instigate, support or execute terrorist actions and the firm determination to cooperate reciprocally with all countries to prevent and suppress acts of terrorism.

- Firmly stands by its decision not to allow the entry into Cuba of individuals who qualify as terrorists under the laws of our country.
- Repudiates war as a method of confrontation and combat against terrorism, as its consequences of death and destruction, rather than focusing on the terrorists themselves, seriously affect innocent and defenceless people, whose living conditions are worsened by the destruction of their economic and social infrastructure. War aggravates the causes and conditions that lead to terrorism.
- Ratifies its decision to continue its struggle for peace, as well as its determination that friendship and collaboration between all States, peoples and civilizations, set in a context of respect for the principles of sovereignty and independence and the rules of international law, shall be the basis for joining efforts and increasing cooperation between all countries in the fight against terrorism.
- Recognizes that the General Assembly of the United Nations, its competent bodies and the international instruments in this field, are the appropriate forums for coordinating, joining and leading the efforts of the international community to confront and combat terrorism anywhere and in whatever form it is manifested.

THEREFORE: By the powers vested in it by article 73(b) of the Constitution of the Republic of Cuba, the National Assembly of People's Power adopts the following:

LAW AGAINST ACTS OF TERRORISM⁶¹

TITLE I

GENERAL PROVISIONS

Article 1.

1. The purpose of this Law is to prevent and punish the acts described in the articles below which, because of the manner in which they are executed and the means and methods used, are evidently intended to provoke states of alarm, fear or terror among the population, and which represent an imminent danger to or affect the life or physical or mental integrity of persons, as well as to significant or important material assets, to international peace or to the security of the Cuban State.

2. For purposes of punishment, the events referred to in the above paragraph shall be deemed to have been committed on Cuban soil both if the perpetrator uses Cuban territory to carry out preparatory acts or acts related to

⁶¹ Law No. 93.

execution, even if their effects are produced in another country, and if those acts are carried out on foreign soil and their effects are produced in Cuba.

Article 2.

The provisions of the General Section of the Penal Code and of the Law on Military Offences, and in the laws relating to penal procedures and military penal procedures, as the case may be, shall be applicable to the matters governed by this Law.

Article 3.

The offences envisaged in this Law shall be punishable independently of those defined in the Penal Code or, as the case may be, in the Law on Military Offences, and of crimes committed in connection with the offences referred to in such laws.

Article 4.

In determining the content and scope of the concepts referred to in the text of this Law, the relevant definitions established by relevant international treaties and conventions to which the Cuban State is a party shall apply, including the following: vessels, explosives, internationally protected person, aircraft in flight, aircraft in service, public or government facilities, infrastructure facilities, explosive device or other deadly devices, military forces of a State, place of public use, public transport system, fixed platform and funds. These expressions are defined in the annexes to this Law.

Article 5.

Under this Law, preparatory acts, attempts and consummated acts of terrorism shall be punishable in connection with the offences envisaged in this Law. Likewise, under the rules established in the Penal Code for preparatory acts, the following shall be punished:

- (a) any person who, having decided to commit one of the offences envisaged in this Law, proposes to another or to other persons that they participate in carrying out the act in question;
- (b) any person who conspires with one or more persons to carry out some of the offences envisaged in this Law, and they decide to commit them;
- (c) any person who incites or induces another or other persons, by spoken word, in writing or in any other form, publicly or privately, to carry out some of the offences envisaged in this Law. If the offence is committed following such incitement or inducement, the person who

provokes it shall be punished as the perpetrator of the offence committed.

Article 6.

In respect of the offences referred to in this Law, the court may reduce the minimum punishment envisaged by as much as two thirds or in exceptional cases, exempt a defendant from criminal liability, when:

(a) the defendant has voluntarily abandoned his criminal activities and appears before the authorities confessing those acts in which he has participated;

(b) the perpetrator has abandoned his criminal contacts, has prevented or substantially decreased the danger in a situation, prevented a harmful outcome or effectively contributed to obtaining decisive evidence leading to the identification or capture of other suspects or to throwing light on the situation.

Article 7.

1. A punishment that has been imposed by a definitive sentence handed down by a foreign court may be taken into account by the Cuban courts for purposes of determining recidivism or, as the case may be, multi-recidivism, with respect to defendants accused of offences envisaged in this Law.

2. The aforementioned firm sentence shall be confirmed in accordance with the relevant regulations of the Ministry of Justice.

Article 8.

The pre-trial judge, the government attorney or the court, depending on the stage at which the proceedings relating to offences covered by this Law are, may issue forthwith an order for the preventive attachment or freezing of the funds and other financial assets, or of economic assets or resources of the defendants, irrespective of the degree to which they have participated in the punishable act, and of any persons or entities that have acted on behalf of the defendants and entities under the defendant's orders, including funds obtained or arising from assets belonging to or under the control, direct or indirect, of the defendants and of persons and entities associated with them.

Article 9.

In respect of the offences envisaged in this Law, the court may, as an accessory penalty, order the confiscation of the defendant's assets, as provided for in article 44 of the Penal Code.

TITLE II

ON ACTS OF TERRORISM

Chapter I

Acts committed with an explosive or deadly device, chemical or biological agents or other means or substances

Article 10.

Anyone who manufactures, facilitates, sells, transports, remits, introduces into the country or has in his power, in any form or place, arms, munitions or flammable, asphyxiating or toxic materials, substances or instruments, plastic or any other kind of explosives or chemical or biological agents or any other element from which products of the nature described or any other similar substance or explosive or deadly substance can be developed as a result of research, design or combination, shall be subject to ten to thirty years imprisonment, life imprisonment or death.

Article 11.

The same penalty shall apply to anyone who delivers, places, throws, disseminates, detonates or in any other way uses an explosive or deadly device or any other means or substance described in article 10, against:

- (a) a public gathering place;
- (b) a public or government facility;
- (c) a public transport system or any of its components;
- (d) an infrastructure facility;
- (e) crops, forests, pastures, cattle or poultry;
- (f) camps, warehouses, arms, construction sites or military facilities in general.

Article 12.

1. Any person who adulterates food or other types of substances or products intended for human consumption in such a way that they could cause death or be harmful to human health shall be subject to ten to twenty years imprisonment.

2. If, as a result of the acts described in the preceding paragraph, any person is seriously injured or killed, the penalty shall be ten to thirty years imprisonment, life imprisonment or death.

Article 13.

1. Any person who carries out an act against the life, physical integrity, freedom or safety of anyone who by the nature of his or her activities is well-known in society, or against that person's closest relatives, shall be subject to ten to thirty years imprisonment, life imprisonment or death.

2. If the act carried out is intended to destroy or significantly damage the assets of the individuals referred to in the preceding paragraph, the penalty shall be imprisonment of four to ten years.

Chapter II

Taking of Hostages

Article 14.

1. Anyone who seizes another person or holds that person against his and her will and threatens to kill, wound or hold him or her in order to compel a State, an intergovernmental organization, an individual or a legal entity or a group of persons to perform or abstain from performing any act, as an explicit or implicit condition for the release of the hostage shall be subject to ten to twenty years imprisonment.

2. If as a result of the actions described in the preceding paragraph one or more persons are killed or seriously injured or the condition for the liberation of the hostage is complied with, the penalty shall be ten to thirty years imprisonment, life imprisonment or death.

Chapter III

Acts against Internationally Protected Persons

Article 15.

1. Any person who carries out an act against the life, physical integrity, freedom or safety of an internationally protected person or of any relative belonging to that person's household shall be subject to ten to thirty years imprisonment, life imprisonment or death.

2. Anyone who carries out an act against the official premises, the private residence or means of transport of the internationally protected person and thereby endangers that person's life, physical integrity, freedom or safety shall be subject to imprisonment of four to ten years.

Chapter IV

Acts against the Safety of Maritime Navigation

Article 16.

1. Any person who commits the following acts shall be subject to imprisonment of ten to thirty years:

- (a) seizes or exercises control over a vessel by force or threat thereof or any other form of intimidation;
- (b) performs an act of violence against a person on board a vessel if that act is likely to endanger the safe navigation of said vessel;
- (c) destroys a vessel or causes damage to a vessel or to its cargo which is likely to endanger the safe navigation of that vessel;
- (d) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a vessel;
- (e) communicates information which he and she knows to be false, thereby endangering the safe navigation of a vessel.

2. If, in connection with the commission of any of the acts mentioned in the preceding paragraph, one or more persons is seriously injured or killed, the penalty shall be imprisonment of fifteen to thirty years, life imprisonment or death.

Chapter V

Acts against the Safety of Civil Aviation or Airports

Article 17.

Any person who, while on board an aircraft in flight, seizes or exercises control over such aircraft by force or threat thereof or any other illicit act, or who endangers the safety of the aircraft, shall be subject to imprisonment of ten to thirty years.

Article 18.

The same penalty shall be applicable to any person who endangers or might endanger safety at an airport by:

- (a) performing an act of violence or intimidation against a person;

- (b) destroying or causing serious damages in the airport facilities or on an aircraft that is not in service and is located at the airport, or interfering in any way with the services provided there.

Article 19.

The same penalty shall be applicable to any person who endangers or might endanger the safety of an aircraft as follows:

- (a) performs an act of violence or intimidation against a person on board an aircraft in flight;
- (b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight;
- (c) destroys or damages air navigation facilities or services or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight;
- (d) communicates information which he or she knows to be false, thereby endangering the safety of an aircraft in flight.

Article 20.

If, as a result of the acts envisaged in articles 17, 18 and 19, one or more persons are seriously wounded or killed, the penalty shall be imprisonment of fifteen to thirty years, life imprisonment or death.

Chapter VI

Other Acts against Air and Maritime Safety

Article 21.

Any person who performs the acts listed below shall be subject to imprisonment of ten to thirty years, life imprisonment or death:

1. Uses a vessel or aircraft, with or without artillery, to perform an act of violence or threat thereof or any other type of intimidation or hostility against another vessel or aircraft with the intent to:
 - (a) seize the vessel or aircraft, or the assets on board;
 - (b) damage or destroy the vessel or aircraft, divert it from its route or prevent its movement or normal activities;
 - (c) take hostages, injure or kill crew or passengers.

2. Uses a vessel or aircraft to attack, in any way, a target on land, in the air or at sea.

3. Places or causes to be placed on a vessel or aircraft, by any means whatsoever, a device or substance which is likely to destroy that vessel or aircraft, or cause damage to that vessel or aircraft which is likely to render it useless or which, by its very nature, is likely to endanger the safety of that vessel or aircraft.

4. Without being authorized to do so or in violation of the provisions in force in that respect, serves as crew or travels on vessels or aircraft within the territorial sea or airspace of Cuba.

5. Bearing arms, enters into the territorial sea or airspace of Cuba on an unarmed vessel or aircraft, with the intention of performing any of the acts described in the preceding paragraphs.

Article 22.

1. The same penalty shall be applied to any person who voluntarily hands over a vessel or aircraft with the intent to perform the acts described in the preceding article, or with the knowledge that the vessel or aircraft will be used for such purposes.

2. Any person who serves as crew on a vessel or aircraft for the purpose of performing any of the acts mentioned in this chapter shall be prosecuted for any offence that may be committed with that vessel or aircraft.

Chapter VII

Acts against the Safety of Fixed Platforms Located on the Continental Shelf

Article 23.

1. Any person who performs one of the following acts shall be subject to imprisonment of ten to thirty years:

(a) seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation;

(b) performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety;

(c) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or endanger its safety.

2. If, as a result of the acts mentioned above, a fixed platform is destroyed or substantially and considerably damaged or if any person is seriously injured or killed, the penalty shall be fifteen to thirty years imprisonment, life imprisonment or death.

Chapter VIII

Acts Performed in connection with the Use of Information Technology

Article 24.

Any person who performs the following acts in order to facilitate any of the acts envisaged in this Law shall be subject to five to twenty years imprisonment:

- (a) uses computer equipment, means, programmes, networks or any other computer application to intercept, interfere with, use, alter, damage, render useless or destroy data, information, electronic documents, software support systems, information, communication or telematic programmes or systems of public, social, administrative, emergency, national security or any other type of services of national or international entities or entities of another country;
- (b) uses or allows the use of electronic mail, other Internet services or protocols or any telecommunications terminal equipment;
- (c) creates, distributes, trades in or has in his or her power programmes capable of producing the effects referred to in subparagraph (a).

Chapter IX

Financing of Terrorism

Article 25.

1. Any person who by any means, directly or indirectly, collects, transports, provides or has in his power financial or material funds or resources with the intention that they should be used or in the knowledge that they are to be used in order to carry out any of the offences envisaged in this Law, shall be subject to imprisonment of ten to thirty years.

2. The same penalty shall apply to any person who, directly or indirectly, makes funds, financial or material resources or financial or related services of any other kind available to any person or entity who uses them to carry out any of the offences envisaged in this Law.

Chapter X

Other Acts of Terrorism

Article 26.

Any person who carries out any other act that is not punished more severely by law but which, because of the manner, means or place or time in which it is carried out, leads to accomplishing the ends referred to in article 1 shall be subject to imprisonment of four to ten years.

Article 27.

Any person who has knowledge that a person has participated in the commission of an offence or that the person is accused of such an offence, and without being an accomplice himself or herself, conceals or enables the person to be concealed, to flee or to alter or eliminate evidence or proof that might be damaging to the person or in any other way helps the person evade investigation and avoid criminal prosecution, shall be subject to the same punishment as that established for the offence that was covered up, reduced by one third with respect to the minimum and maximum penalties.

Article 28.

Any person who has knowledge of the preparation or execution of any offence envisaged in this Law who does not report it, without prejudice to having done everything in his or her power to prevent it by all possible means shall be subject to imprisonment of six months to three years.

SPECIAL PROVISION

SINGLE ARTICLE. The Government of the Republic is hereby instructed to enter into agreements and understandings with those States that are willing to promote international cooperation on matters relating to the exchange of information, judicial and police assistance, investigation, gathering of evidence and possible extradition of alleged offenders, for the purpose of preventing, suppressing and eradicating terrorism.

FINAL PROVISIONS

FIRST. Upon this Law's entry into force, the Council of Government of the Supreme People's Court shall determine which chambers of the people's provincial courts shall be competent to take cognizance of the offences envisaged in this Law. Where military tribunals are responsible for a case, the rules of competence established in the Law on Military Penal Procedures shall apply.

SECOND. Articles 106 through 109, 1997, 118, 122 and 123 of the Penal Code currently in force are hereby repealed, as are any other provisions that are in contradiction to the provisions of this Law.

THIRD. This Law shall enter into force on the date of its publication in the *Gaceta Oficial de la República*.

DONE at the meeting hall of the National Assembly of People's Power, Palacio de las Convenciones, in the city of Havana, on the twentieth day of December two thousand one.

XXVI. CYPRUS⁶²

1. SUMMARY OF LEGISLATION OF CYPRUS RELATED TO TERRORISM

Many provisions of the criminal law in Cyprus are implemented in order to combat terrorist acts.

More specifically, Part II of the Criminal Code deals with the offences against Public Order and refers to a number of serious crimes which are related to terrorism, such as preparation of war or warlike conduct (S.42), use of armed force against the government (S. 41) and carrying arms for terrorist acts (S.80).

Section 63 of the Criminal Code defines an unlawful organization, as any body or person incorporated or not, which by its constitution or propaganda or otherwise advocates, incites or encourages, inter alia, any of the following unlawful acts, namely: the overthrow of the constitution of the Republic of Cyprus by revolution or sabotage, the overthrow by force or violence of the government and the destruction of property of the State. Being a member of an unlawful organization is punishable with 3 years imprisonment (S. 56).

Concerning fundraising, section 58 states that any person who gives or pays contributions, subscriptions or donations, for or on account of, any unlawful association is guilty of a misdemeanour and is liable to one year imprisonment. In addition, section 60 makes provisions for the seizure and forfeiture of the property of an unlawful organization.

⁶² Transmitted to the Secretariat by that Government on 21 December 2001(S/2001/1243, enclosure), on 17 June 2002 (S/2002/689, enclosure) and on 14 February 2003 (S/2003/263, enclosure). Information was also provided in respect of the Prevention and Suppression of Money Laundering Activities Law of 1996, (No. 61(I)/96) and the Refugee and Asylum Seekers Law.

Concerning the “planning and facilitating of terrorist acts against other States or their citizens, even if no related terrorist act has actually been committed or attempted”, the provisions of certain sections of the Criminal Code are applied, such as the section on “conspiracy” which states as follows:

“372. Any person who conspires with another to commit a misdemeanour, or to do any act in any part of the would which if done in the Republic would be a misdemeanour, and which is an offence under the laws in force in the place where it is purposed to be done, is guilty of a misdemeanour.”

Regarding recruitment of terrorists or the supply of weapons to terrorists, provisions exist in the Criminal Code that are applicable in such cases (e.g. section 55 providing for unlawful training, section 56 making the membership of an unlawful association illegal, section 53 concerning unlawful oaths to commit offences). Moreover, under the Firearms Law (38/74 and 27/78) and the Explosive Substances Law (Cap. 54), the possession and carrying of firearms and explosive substances is prohibited and entails severe penalties.

In addition, the provisions in the domestic Criminal Code which could be applied to acts of terrorism, with the penalties provided for each one, are the following:

- S.42 Inciting to mutiny (Life imprisonment)
- S.43 Aiding soldiers or policemen in acts of mutiny (Misdemeanour)
- S.44 Inducing soldiers or policemen to desert (Imprisonment for six months)
- S.45 Aiding prisoners of war to escape (Life imprisonment, Misdemeanour)
- S.47 Seditious conspiracy and publications with seditious intention (Five years imprisonment)
- S.50 Publication of false news (Two years imprisonment or fine of five hundred pounds or both)
- S.50A Publication of news, etc., relating to defence works, etc. (Six years imprisonment)
- S.50C Espionage (Ten years imprisonment)
- S.51 Encouraging violence and promoting ill will (Twelve months imprisonment)

- S.51A Procurement or incitement to acts of violence, etc. (Twelve months imprisonment or fine of one thousand pounds or both, in case of a body corporate fine of three thousand pounds)
- S.52 Unlawful oaths to commit capital offences (Life imprisonment)
- S.53 Other unlawful oaths to commit offences (Seven years imprisonment)
- S.55 Unlawful training (Seven years imprisonment)
- S.56 Membership of an unlawful association (Three years or seven years imprisonment)
- S.57 Advocating and encouraging unlawful association (Five years imprisonment)
- S.58 Giving or soliciting contributions for an unlawful association. (Five years imprisonment)
- S.59 Possession of documents having a seditious intention and (Three years imprisonment and publication, etc. propaganda of unlawful association. (Confiscation of documents)
- S.80 Carrying arms to terrorise (Two years imprisonment, and confiscation of arms or weapons)
- S.91 Threatening violence (Three years imprisonment)
- S.92 Possessing firearms with intent to injure (Five years imprisonment)
- S.108A Use of uniform by unauthorized persons (Twelve months imprisonment or a fine of three hundred pounds or both)
- S.109 Impersonating public officers (Three years imprisonment)

The Courts of Cyprus have jurisdiction over such offences and foreigners, "if the offence is one to which, under any international treaty or convention binding on the Republic, the Law of the Republic is applicable" (Section 5 of the Criminal Code, Cap. 154).

Territorial application

The extent of the criminal jurisdiction of the Court of the Republic is regulated by section 5 of the Criminal Code Cap. 154, according to which offences under the Code committed outside Cyprus are triable in Cyprus:

(a) if committed by a citizen of the Republic the Criminal Code provided that:

(i) the offence is punishable by imprisonment exceeding two years and

(ii) the act committed constitutes an offence under the Law of the country where committed.

(b) if committed by any person and the offence is:

(i) treason or is against the security and the constitutional order, or

(ii) piracy, or

(iii) connected with the monetary currency of the Republic, or

(iv) related to the illegal trading of dangerous drugs, or

(v) is one of the offences for which the Law of Cyprus is applicable under the provision of an International Treaty or Convention binding on the Republic.

In view of the above, a person who is not a citizen of the Republic but is habitually resident in Cyprus would only be liable for trial in Cyprus if the requirements of paragraph (b) above are satisfied.

2. CRIMINAL CODE (CAP. 154)

PART II - OFFENCES AGAINST PUBLIC ORDER

...

Use of armed force against the Government, etc.

4I. Whoever prepares or endeavours, by armed force or the show of armed force, to procure an alteration in the Government or laws, or to resist the execution of the laws, or to compel any member of the Council of Ministers, the Executive or Legislative organs, or any person in command or any military or naval forces or of any peace officers, to do, or abstain from doing, any act of a public or official character is liable to life imprisonment.

*Inciting to mutiny*⁶³

42. Any person who maliciously and advisedly endeavours to effect any of the following purposes, that is to say –

- (a) to seduce any person serving in the army (as defined in subsection (2) of section 44A) or any member of the police force from his duty and allegiance to the Laws of the Republic; or
- (b) to incite any such persons to commit an act of mutiny or any traitorous or mutinous act; or
- (c) to incite any such persons to make or endeavour to make a mutinous assembly,

is guilty of a felony, and is liable to life imprisonment.

Aiding soldiers or policemen in acts of mutiny

43. Any person who –

- (a) aids, abets, or is accessory to any act of mutiny by; or
- (b) incites to sedition or to disobedience to any lawful order given by a superior officer or to any act of insubordination,

any non-commissioned officer or private of the army (as defined in subsection (2) of section 44A) or any member of the police force, is guilty of a misdemeanour.⁶⁴

*Inducing soldiers or policemen to desert*⁶⁵

44. Any person who, by any means whatever, directly or indirectly –

- (a) procures or persuades or attempt to procure or persuade to desert; or
- (b) aids, abets, or is accessory to the desertion of; or
- (c) having reason to believe he is a deserter, harbours or aids in concealing,

any non-commissioned officer or private of the army (as defined in subsection (2) of section 44A), or any member of the police force, is guilty of a misdemeanour, and is liable to six months imprisonment.

⁶³ 3 of 69/64.

⁶⁴ Ibid.

⁶⁵ Ibid.

*Disturbing order and discipline in the army*⁶⁶

- 44A. (1) Any person who maliciously does any act calculated to disturb order and discipline in the army is guilty of a misdemeanour and is liable to imprisonment not exceeding two years or to a fine not exceeding two hundred pounds or to both such imprisonment and fine.
- (2) For the purposes of this section "army" includes the army of the Republic, the National Guard and any other military force established by law.
- (3) No prosecution under this section shall be commenced except with the approval of the Attorney General of the Republic.

Aiding prisoners of war to escape

45. Any person who –
- (a) knowing and advisedly aids an alien enemy of the Republic, being a prisoner of war in the Republic, whether such prisoner is confined in a prison or elsewhere or is suffered to be at large on his parole, to escape from his prison or place of confinement or if he is at large on his parole, to escape from the Republic, is guilty of a felony, and is liable to life imprisonment,
- (b) negligently and unlawfully permits the escape of any such person as is mentioned in the proceeding paragraph is guilty of a misdemeanour.

Seditious conspiracy and publications with seditious intention

47. Any person who –
- (a) conspires with any other person or persons to do any act in furtherance of any seditious intention common to both or all of them; or
- (b) publishes any words or document or makes any visible representation whatsoever with a seditious intention,
- is guilty of a felony and is liable to five years imprisonment.

*Publication of false news, etc.*⁶⁷

50. (1) Any person who in any manner publishes in any form false news or information which may impair public order or the confidence of the public in the state or its organs or to cause fear or concern to the public

⁶⁶ 2(a) of 69/64, 3(1) of 166/87.

⁶⁷ 3(1) of 166/87.

or to disturb in any way public peace and order shall be guilty of an offence and shall be punishable with imprisonment for a term not exceeding two years or with a fine not exceeding five hundred pounds or with both such imprisonment and fine:

Provided that it shall be a good defence for the accused to prove to the satisfaction of the Court that the publication was made in good faith and on the basis of facts justifying such publication.

For the purposes of this sub-section, the provisions of paragraphs (a) and (b) of section 201 in relation to good faith shall apply.

(2) No prosecution under this section shall be instituted without the written consent of the Attorney-General of the Republic.

*Publication of news, etc., relating to defence works, etc.*⁶⁸

50A. Any person who, without lawful authority, publishes or communicates to any unauthorized person any sketch, plan, model, note, document, article, information or news relating to any fortifications, means or works of defence, camps, military stores or other places occupied or used by or for the needs of the armed forces of the Republic or relating to the stationing, concentration, movement, deployment or activities thereof is guilty of an offence and is liable to six years imprisonment.⁶⁹

*Espionage*⁷⁰

50C. (1) Any person who for any purpose prejudicial to the safety or the interests of the Republic procures himself with, obtains, collects, records, publishes, transmits or communicates to any other person any secret official code or secret password or any plan, form, note, article or other document or information which is intended or may or is calculated to be directly or indirectly useful to any other state shall be guilty of a felony and shall be punishable with imprisonment for a term of ten years.

(2) In any criminal prosecution under this section there shall be presumed, until the contrary is proved, that the act or omission constituting the offence has been committed for a purpose prejudicial to the safety or the interests of the Republic.

(a) if from the circumstances of the case or the conduct or known character of the accused, as such character has been proved, it

⁶⁸ 2 of 41/64.

⁶⁹ 2 of 13/79.

⁷⁰ 2 of 58/67.

transpires that the purpose was prejudicial to the interest or the security of the Republic;

(b) if any secret official code or secret password of any plan, form, note, article or other document or information has been obtained, drawn up or recorded by any person not authorized in this respect or not in accordance with the terms and the extent of his authority, or published, transmitted or communicated to any person not authorized in this respect or not in the manner authorized.

Encouraging violence and promoting ill will

51. (1) Any person who prints, publishes, or to any assembly makes any statement calculated or likely to

(i) encourage recourse to violence on the part of any of the inhabitants of the Republic; or

(ii) promote feelings of ill will between different classes or communities or persons in the Republic, is guilty of misdemeanour and is liable to twelve months imprisonment:

Provided that no person shall be guilty of an offence under the provisions of this section if such statement was printed, published or made solely for any one or more of the following purposes, the proof whereof shall lie upon him, that is to say:

(a) to endeavour in good faith to show that the Government of the Republic has been misled or mistaken in any of its measures; or

(b) to point out in good faith errors or defects in the Government, or the policies thereof, or constitution of the Republic as by law established, or any legislation or in the administration of justice, with a view to the remedying of such errors or defects; or

(c) to persuade in good faith any inhabitants of the Republic to attempt to procure by lawful means the alteration of any matter in the Republic as by law established other than that referred to in paragraph (b) of section 48; or

(d) to point out in good faith with a view to their removal any matters which are producing or have a tendency to produce discontent amongst any of the inhabitants of the Republic or feelings of ill will and enmity between different communities or classes of persons in the Republic.

(2) For the purposes of this section “an assembly” means a gathering of five or more persons.

*Procurement or incitement of acts of violence, etc.*⁷¹

51A. (1) Any person who publicly in any manner and in any way procures the inhabitants to acts of violence against each other or to mutual discord or foments the creation of a spirit of intolerance, is guilty of a misdemeanour and is liable to twelve months imprisonment or to a fine of one thousand pounds or to both such penalties, and if a body corporate to a fine of three thousands pounds.

(2) No prosecution under this section shall be instituted without the written consent of the Attorney General of the Republic.

Unlawful oaths to commit capital offences

52. Any person who –

(a) administers, or is present at and consents to the administering of, any oath, or engagement in the nature of an oath, purporting to bind the person who takes it to commit any offence punishable with death; or

(b) takes any such oath or engagement, not being compelled to do so,

is guilty of a felony and is liable to life imprisonment.

Other unlawful oaths to commit offences

53. Any person who –

(a) administers or is present at and consents to the administering of, any oath or engagement in the nature of an oath, purporting to bind the person who takes it to act in any of the way following, that is to say

(i) to engage in any mutinous or seditious enterprise;

(ii) to commit any offence not punishable with death;

(iii) to disturb the public peace;

(v)⁷² to obey the orders or commands of any committee or body of men not lawfully constituted, or of any leader or commander or other person not having authority by law for that purpose;

(iv) not to inform or give evidence against any associate, confederate or other person;

⁷¹ 2 of 59/74.

⁷² Numbering conforms to original Government submission to the Counter-Terrorism Committee.

(vii) not to reveal or discover any, unlawful association, or confederacy or any illegal act done or to be done, or any illegal oath or engagement that may have been administered or tendered to or taken by himself or any other person, or the import of any such oath or engagement; or

(b) takes any such oath or engagement, not being compelled to do so, is guilty of a felony, and is liable to seven years imprisonment.

Unlawful drilling

55. (1) Any person who –

(a) without the permission of the Council of Ministers trains or drills any other person to the use of arms or the practice of military exercises, movements, or evolutions; or

(b) is present at any meeting or assembly of persons, held without the permission of the Council of Ministers for the purpose of training or drilling any other persons to the use of arms or the practice of military exercise, movements, or evolutions,

is guilty of a felony, and is liable to seven years imprisonment.

(2) Any person who at any meeting or assembly held without the permission of the Council of Ministers is trained or drilled to the use of arms or the practice of military exercises, movements, or evolutions, or who is present at any such meeting or assembly for the purpose of being so trained or drilled is guilty of a felony and is liable to five years imprisonment.

OFFENCES AGAINST THE CONSTITUTION AND EXISTING SOCIAL ORDER

Unlawful association

56. (1) Any person who is a member of an unlawful association is guilty of felony and is liable to three years imprisonment.

(2) Any person who occupies or acts in any office or position in or of an unlawful association or who acts as a representative of an unlawful association or who acts as a teacher in any institution or school conducted by or under the authority or apparent authority of an unlawful association is guilty of a felony and is liable to seven years imprisonment.

(3) Any person who attends a meeting of an unlawful association or of members of an unlawful association or of persons who advocate or encourage the doing of any of the acts declared to be unlawful in section 63 of this Code or who has in his possession or custody any badge, ticket book of membership, or any letter or document whatsoever, whenever issued, which appears to imply membership of, or any authority from or any connection with an unlawful association, shall be presumed, unless or until the contrary is proved, to be a member of an unlawful association.

Advocating and encouraging unlawful association

57. Any person who by speech or writing or in any other way advocates or encourages the doing of any of the acts declared to be unlawful in section 63 of this Code is guilty of a felony and is liable to five years imprisonment.

Giving of soliciting contributions for an unlawful association

58. Any person who gives or pays contributions, subscriptions or donations and any person who solicits contributions or subscriptions or donations for or on account of any unlawful association is guilty of a misdemeanour and is liable to one-year imprisonment.

Possession of documents having a seditious and publication, etc., of propaganda of unlawful association

59. Any person who –

(a) transmits through the post or who, without lawful authority or excuse, the proof of which lies upon him, has in his possession any book, periodical, pamphlet, poster, proclamation, newspaper, letter or any other document or writing whatsoever having a seditious intention as defined in section 48 of this Code; or

(b) prints, publishes, sells, or exposes for sale, or transmits through the post or who, without lawful authority or excuse, the proof of which lies upon him, has in his possession any book, periodical, pamphlet, poster, proclamation, newspaper, letter or any other document or writing whatsoever which advocates or encourages any of the acts declared to be unlawful in section 63 of this Code or which is issued or appears to be issued by or on behalf of, or in the interests of, an unlawful association,

is guilty of a felony and is liable to imprisonment for three years, and any book, periodical, pamphlet, poster, proclamation, newspaper, letter or any other document or writing in respect of which such person shall have been convicted shall be forfeited.

*Persons taking part in criminal organization*⁷³

63A. Any person who takes part in a criminal organization is guilty of an offence and in the case of being convicted, liable to three years imprisonment.

*Persons taking part and accepting commission of crimes*⁷⁴

63B. (1) Any person who knowing of the illegal purposes and activities of any criminal organizations –

(a) takes part in with any action any illegal act of a criminal organization; or

(b) takes part in with any action, any illegal act of a criminal organization, which he ought to have known that logically is connected in any way with the commission of any offence,

is guilty of a felony, punishable with imprisonment not exceeding ten years or with a fine not exceeding fifty thousand pounds or with both such punishments.

(2) The Court may try offences laid down in subsection (1) of this section and in cases where the criminal organization exists or operates partly or wholly in the Republic.

(3) For the purposes of this Law, the term “criminal organization” means a group structured of three or more persons which is incorporated and function with the intention to commit offences punishable with maximum imprisonment not exceeding three years.

Carrying arms to terrorise

80. Any person who carries in public without lawful occasion any offensive arm or weapon in such a manner as to cause terror to any person is guilty of a misdemeanour, and is liable to two years imprisonment and his arms or weapons shall be forfeited.

Threatening violence

91. Any person who –

(a) with intent to intimidate or annoy any person, threatens to break or injures a dwelling house; or

⁷³ 2 of 12(I) 2002.

⁷⁴ Ibid.

(b) with intent to alarm any person in a dwelling house, discharges loaded firearms or commits any other breach of the peace; or

(c) with intent to cause any person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, threatens another with injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested.

is guilty of a misdemeanour, and is liable to three years.

Possessing firearms with intent to injure

92. Any person who has in his possession or under his custody any firearm or ammunition with intent by means thereof to endanger life or cause serious injury to property, or to enable any other person by means thereof to endanger life or cause serious injury to property, is, whether any injury to person or property has been caused or not, guilty of a felony and is liable to five years imprisonment.

In this section the expression “firearm” means any firearm from which any shot, bullet, or other missile can be discharged, or any part thereof, and the expression “ammunition” means ammunition for any such firearms, and includes grenades, bombs, and other similar missiles, whether such missiles are capable of use with a firearm or not, and ingredients and components thereof.

PART III

OFFENCES AGAINST THE ADMINISTRATION OF LAWFUL AUTHORITY

False assumption of authority

108. Any person who –

(a) not being a judicial officer, assumes to act as a judicial officer; or

(b) without authority assumes to act as a person having authority by law to administer an oath or take a solemn declaration or affirmation or affidavit or to do any other act of a public nature which can only be done by persons authorised by law to do so;

(c) represents himself to be a person authorised by law to sign a document testifying to the contents of any register or record kept by lawful authority or testifying to any fact or event, and signs such document, as being so authorised, when he is not, and knows that he is not, in fact, so authorised,

is guilty of a misdemeanour.

*Assumption of the rights to wear uniform, etc.*⁷⁵

108A. Any person who publicly and without authority wears the uniform or other distinctive mark of a member of the army or the National Guard or the police, which he is not authorised to wear or use is guilty of a misdemeanour and is liable to twelve months imprisonment's or to a fine of three hundred pounds or to both such penalties.

Personating public officers

109. Any person who –

(a) personates any person employed in the public service on an occasion when the latter is required to do any act or attend in any place by virtue of his employment; or

(b) falsely represents himself to be a person employed in the public service, and assumes to do any act or to attend in any place for the purpose of doing any act by virtue of such employment,

is guilty of a misdemeanour, and is liable to three years imprisonment.

XXVII. CZECH REPUBLIC⁷⁶

SUMMARY OF LEGISLATION OF THE CZECH REPUBLIC RELATED TO TERRORISM

According to the Criminal Code of the Czech Republic, provisions relating to the following crimes can be utilised in the fight against terrorism:

Criminal acts against the foundations of the Republic

- High treason - Section 91 (can only be committed by a citizen of the Czech Republic)
- Subversion of the Republic - Section 92

⁷⁵ 3(l) of 59/74, 3(l) of 166/87.

⁷⁶ Transmitted to the Secretariat by that Government on 27 December 2001 (S/2001/1302, enclosure), on 23 July 2002 (S/2002/872, enclosure) and on 17 February 2003 (S/2003/261, enclosure) Information was also provided in respect of the following: Act No. 48/2000 Col., Decree No. 164/2000 Col., Measures in Relation to the Afghan Taliban Movement; Act No. 49/1997 Col. Decree No. 327/2001 Col., Further Measures in Relation to the Afghan Taliban Movement; Civil Aviation, Act No. 325/1999 Col.; Asylum, and Act No 61/1996 Col., Various Measures against Money Laundering.

- Terror - Section 93 (intentional killing, or attempted killing, with the objective of damaging the constitutional order of the Republic)
- Terror - Section 93a (the seizure of a hostage with the aim of using extortion to gain the fulfilment of conditions injurious to the constitutional order of the Republic)
- Sabotage - Section 95 (general endangerment)
- Sabotage - Section 96 (the destruction or damaging of objects)
- Sabotage - Section 97

The object group for these crimes are the interests protecting the foundation of the Republic, the security of the Republic, and the defence of the nation.

The legal order of the Czech Republic recognises the crime of terror. This crime is committed by a person who:

1. with the intention of damaging the constitutional order of the Czech Republic commits premeditated murder or attempts to do so (Section 93 of the Criminal Code), where a punishment of 12 to 15 years or an exceptional punishment is stated (an exceptional punishment is imprisonment for 15 to 20 years or life imprisonment), or
2. seizes a hostage and threatens to kill him/her or injure him/her with the aim of extorting the fulfilment of conditions damaging to the constitutional order of the Czech Republic (Section 93a Paragraph 1 of the Criminal Code).

Punishments are stated according to seriousness from three to ten years of imprisonment to a scale of ten to fifteen years or an exceptional punishment.

Endangerment crimes

Another category of offences applicable to terrorist acts is the general endangerment category. General endangerment is considered to constitute the type of behaviour that usually carries with it a threat to life or health or the danger of a large extent of damage to property. The offences in this category include:

- General endangerment - Section 179
- Endangering the safety of air transport and civilian planes - Section 180a
- Hijacking of an aircraft to a foreign country - Section 180c

- Damage and endangerment of the operation of generally beneficial equipment and utilities - Section 182
 - Public telecommunication equipment, the equipment and facilities of the holder of the postal licence or public transport equipment
 - Protective equipment against the leakage of pollutants
 - Water and electricity distribution equipment
 - Public protection equipment against fire, flood or other act of god
 - Seabed cables
 - Defence or protection equipment against aerial or other forms of attack and their consequences
- Hostage taking - Section 234a

According to Section 179 of the Criminal Code the crime of general endangerment is committed by a person who deliberately exposes people to the danger of death or serious injury or exposes the property of others to the risk of major damage by fire, flood or the effects of explosives, gas, electricity or other similarly dangerous materials or forces or who perpetrates similarly dangerous behaviour (general danger) or a person who increases general danger or impedes its prevention or abatement. The punishment is set at three to eight years. Qualified facts of the case relate to the committing of the crime by a member of an organised group, the repeated committing of the crime over a short period, a crime that causes serious injury or death to several people, major damage or other especially serious consequences. Also the causing of death intentionally. The punishment in this case is from twelve to fifteen years imprisonment or an exceptional punishment.

Air piracy is a specific general endangerment offence. Attacks against civil aviation are qualified as the crime of endangering the safety of air transport and civil aircraft according to Section 180a or the crime hijacking an aircraft and forcing it abroad according to Section 180c of the Criminal Code. The provisions of Section 180a of the Criminal Code provide greater protection to the safety of aviation against an attack of this nature than is required by the Convention on the Suppression of the Illegal Seizure of Aircraft – the Hague Convention, which only relates to the seizure of a plane during flight. The most severe punishment for this crime is from twelve to fifteen years or an exceptional punishment.

Sabotage can be committed in the form of the destruction or damage of items (Section 257 of the Criminal Code – Damage as a Criminal Matter) by which an offender, with the intention of damaging the constitutional order or the

ability of the Republic to defend itself, causes material destruction or damage or renders an object unusable (Section 96 Paragraph 1 of the Criminal Code). For this crime the punishment is graded according to its seriousness. In its most serious form, the offender is faced with a punishment of twelve to fifteen years imprisonment or an exceptional punishment (if such an act causes serious injury or death).

Moreover, membership in a terrorist group on the assumption of closer connection with organised criminal groups is punishable similarly as participation in a criminal association (Section 163a of the Criminal Code). The fact that a person committed a criminal offence as a member of an organised group, which is characterised by a lower degree of organisation than a criminal association, does not prevent him/her, under the conditions stated in the Criminal Code, from being prosecuted as the perpetrator of a criminal offence committed in favour of a criminal association (Section 88, Paragraph 2 of the Criminal Code).

In addition, the prohibition on the supply of weapons to terrorists is set out in the Czech Criminal Code by the following substantive crimes:

- Breach of the regulations on the shipment of controlled goods and technology (concerning the breach of the ban or restrictions on the shipping of controlled goods and technology regulated by the special regulations for their import and export) - Section 124a, b, c.
- Breach of the regulations on foreign trade with military material – foreign trade without authorisation or a license - Section 124d.
- Breach of the regulations on foreign trade with military material – foreign trade using illegitimate authorisation or license - Section 124e.
- Breach of the regulations on foreign trade with military material – the acquiring of authorisation or a licence by extortion - Section 124f.
- Illegal arming - Section 185.
- Development, production and holding of banned weapons - Section 185a.
- Unauthorised production and holding of radioactive material and hazardous substances - Section 186.
- Unauthorised production and holding of intoxicating and psychotropic substances and poisons - Section 187.
- Production, procurement or receipt of an illegal product for the manufacture of intoxicating and psychotropic substances and poisons - Section 188.

The Czech legislation permits for specific crimes the imposing of an exceptional punishment (Section 29 of the Criminal Code; 15 to 25 years and life imprisonment) if the level of danger to society is very high and the task of rehabilitating the offender is especially difficult. The punishment of life imprisonment can only be applied in cases of murder according to Section 219 Paragraph 2, treason (Section 91), terror (Sections 93 or 93a Paragraph 3 – taking a hostage), general endangerment (Section 179 Paragraph 3) or genocide (Section 259). Preparation, an attempt and all forms of participation (organisation, instruction and support) are considered according to the punishment scale stated for the crime committed.

- An aggravating circumstance according to Section 34 is applicable for example if an offender has committed a crime as an organiser, a member of an organised group or member of an association, if the crime caused a high level of damage, if a crime was committed by a brutal method, if it involved treachery, is especially deceitful or if the crime was committed on the basis of particularly reprehensible motives etc.
- The possibility of a conditional release and a conditional waiving of the performance on the remainder of a ban on activity or a ban on residence is impeded (after the performance of 2/3 of an imprisonment sentence or, in the case of life imprisonment, only after the serving of at least 20 years) in relation to the crimes specified in Section 62 – for example espionage, sabotage, general endangerment, endangerment of air transport and civilian craft, the hijacking of an aircraft and forcing it abroad, the unauthorised production, holding of intoxicating and psychotropic substances and poisons, murder, the taking of a hostage and a criminal offence against peace according to Section 1 of Act No. 165/1950 Col. etc.

Financing

The basic standards preventing the provision of support to terrorists are the legal standards creating the constitutional order of the Czech Republic, including the implementation of the international agreements by which the Czech Republic is bound.

In the Criminal Code of the Czech Republic (Act No. 140/1961 Col., of the Criminal Code) the crime of financing terrorist acts is not specifically defined. An attempt to commit, or participation in the form of organisation, instruction and assistance in the below mentioned criminal acts is generally punishable, their preparation is only punishable on the condition that it is leading to the execution of a particularly serious criminal act. The action of an accomplice is punishable in the same way as the action of a direct offender. When prosecuting it is possible to proceed on the basis of the following crimes defined by law:

- The crime of terror (Section 93 of the Criminal Code – deliberate or attempted killing with the objective of damaging the constitutional order of the Republic and Section 93a of the Criminal Code – the seizure of

hostages with the aim of exacting the fulfilment of conditions damaging to the constitutional order of the Czech Republic):

- punishment of imprisonment for 12 to 15 years or an exceptional punishment (which refers to a punishment of between 15 and 25 years or the exceptional punishment of life imprisonment)
 - for basic facts of the case 3 to 10 years
 - for qualified facts of the case 5 to 12 years
 - 10 to 15 years or an exceptional punishment
- The crime of sabotage (Sections 95 and 96 of the Criminal Code):
- the punishment of imprisonment for 3 to 10 years for basic facts of the case
 - 12 to 15 years or an exceptional punishment for qualified facts of the case.
- The crime of general endangerment (Section 179 of the Criminal Code), in the case of terrorist attacks is subject to the strictest sentence of 12 to 15 years or an exceptional punishment.
- The crime of endangering the safety of civil aircraft and vessels (Section 180a of the Criminal Code)
- 8 to 15 years for basic facts of the case
 - 12 to 15 years for qualified facts of the case
- The crime of hijacking an aircraft and forcing it to a different country (Section 180c of the Criminal Code)
- 3 to 10 years for basic facts of the case
 - 10 to 15 years or an exceptional punishment for qualified facts of the case
- The crime of illegal arming (Section 185 of the Criminal Code), in its strictest form, 1-5 years
- The crime of the development, production and possession of forbidden arms (Section 185a of the Criminal Code), 1-5 years

- The crime of the illegal production and possession of radioactive material and other highly hazardous substances (Section 186 of the Criminal Code), according to the seriousness the applicable punishment is imprisonment for 1-5 years, 2-10 years, 8-15 years.
- The crime of extortion (Section 235 of the Criminal Code), in its most severe form 5-12 years.
- The crime of abduction (Section 216 of the Criminal Code) in its most severe form 3-10 years.
- The crime of seizing a hostage (Section 234a of the Criminal Code), according to seriousness the punishment is imprisonment for 2-8 years, 3 – 10 years or 10 – 15 years.
- The crime of murder (Section 219 of the Criminal Code), 10 – 15 years, 12– 15 years or an exceptional punishment.

Moreover, the act of legalizing the proceeds of organized crime was established as a criminal offence by Act No. 143/2002 amending the Criminal Code, effective from 1 July 2002 (Section 252, para a). The provision is specifically directed against money laundering as an activity closely connected with organized crime and terrorism.

Collection of money to reward or support perpetrators of terrorist attacks constitutes the crime of “advocating criminal activities” under Section 165, para 2 of the Criminal Code, as long as the act of collecting money is clearly separate from the terrorist act. A collection directly connected with a terrorist act would constitute participation in or preparation of a crime or complicity under the provisions mentioned above.

The Criminal Code contains also provisions for the prosecution of an organised criminal act, incitement to a criminal act and assistance in the committing of a crime, including the provision of means (Section 10 of the Criminal Code), actual participation in a criminal conspiracy including its support (Section 163a of the Criminal Code), the provision of encouragement for a criminal act (Section 164 of the Criminal Code) etc. An attempt at a crime is a crime and in relation to serious crimes (among which are the majority of crimes in the original Report) preparation alone is considered a crime.

Preparation of crimes is established as a criminal offence, including preparation of crimes committed against another State or planned to be committed in its territory. The Criminal Code contains sanctions against organizing, aiding and abetting the commission of crimes, including the provision of means (Section 10 of the Criminal Code), against participation in a conspiracy, including support for a conspiracy (Section 163 of the Criminal Code), incitement to crimes (Section 164 of the Criminal Code), etc. Attempts or even preparation to commit crimes are also established as a criminal offence. It is important that perpetrators and their

accomplices are equally liable for punishment and that attempted crimes and, in principle, preparation for a crime carry the same sanctions as completed crimes.

The classification would depend on the circumstances and facts of the case, especially on the intentions of the perpetrators and those who e.g. provided or collected funds with the knowledge that the funds will be or would be used for terrorist purposes. For instance, an offender may be charged with “participation in an offence by organizing, counselling or aiding and abetting” (Section 10 of the Criminal Code), preparation of a crime (Section 7 of the Criminal Code) or, if he acted in closer association with the principal perpetrators, with complicity (Section 9, para 2 of the Criminal Code).

Membership in an organized criminal group (Section 34g of the Criminal Code) is an especially aggravating factor in all cases, including completed, prepared or attempted crimes and participation in a crime.

The provisions on criminal conspiracy as defined in Section 89, para 17 of the Criminal Code are applied if there is a provable connection between the source of funds and a terrorist group. The participants covered by Section 163 of the Criminal Code are charged with “crimes committed for the benefit of a criminal conspiracy”, subject to the conditions laid down in Sections 43 and 44 of the Criminal Code.

XXVIII. DEMOCRATIC REPUBLIC OF THE CONGO⁷⁷

ELEMENTS DU DISPOSITIF LEGISLATIF ET REGLEMENTAIRE DE LA REPUBLIQUE DEMOCRATIQUE DU CONGO

(a) Code pénal

Les dispositions du Code pénal congolais ne comportent pas de définition expresse du terrorisme. Mais la République démocratique du Congo a toujours préconisé une politique de prévention et de répression des actes relevant de ce fléau tant sur le plan interne que sur les plans régional et international.

⁷⁷ Transmitted to the Secretariat by that Government on 27 December 2001 (S/2001/1331, enclosure) and on 6 March 2003 (S/2003/386, enclosure). Information was also provided in respect of décret No 070/2001 du 26 décembre 2001 portant création d’un Comité national de coordination de la lutte contre le terrorisme international.

Le Code pénal congolais n'érige pas le terrorisme en infraction autonome. Néanmoins il sied de retenir que quelques infractions définies par le Code pénal congolais couvrent parfois certains aspects des activités terroristes.

Pour décourager la constitution des bandes terroristes sur le territoire national, le Code pénal congolais érige en infraction toute association formée dans le but d'attenter aux personnes ou aux propriétés (articles 156 à 160 du Code pénal, livre II). Cette infraction existe par le seul fait de l'organisation de la bande et sans qu'il soit nécessaire que l'association ainsi constituée commette une infraction particulière ou que l'entente entre ses membres soit établie en vue de commettre un crime déterminé. Les infractions prévues par les articles précités sont par priorité poursuivies et jugées dans un délai d'un mois maximum.

L'association de malfaiteurs

L'article 156 du Code pénal congolais, livre II, dispose ce qui suit :

« Toute association formée dans le but d'attenter aux personnes et aux propriétés est une infraction qui existe par le seul fait de l'organisation de la bande ».

S'agissant de la peine applicable à cette infraction, l'article 157 du même Code pénal, livre II, renchérit dans le même sens en disposant que « Les provocateurs de cette association, les chefs de cette bande et ceux qui auront exercé un commandement quelconque seront punis de mort. »

Quant à l'article 158 du Code pénal, livre II, il est libellé comme suit :

« Tous les autres individus faisant partie de l'association et ceux qui auront sciemment et volontairement fourni à la bande des armes, munitions, instruments d'infraction seront également punis de mort. »

La jurisprudence congolaise, tablant sur la gravité de cette infraction estime notamment qu'il y a association de malfaiteurs lorsqu'il y a entre les prévenus une entente même momentanée dans le but d'attenter aux personnes et à leurs propriétés (voir Cour suprême de justice, 1er juillet 1980, Rôle pénal (RP) 319). Les cours et tribunaux congolais admettent aussi que l'association de malfaiteurs existe par le seul fait de l'organisation de la bande, sans qu'il soit nécessaire que l'association ainsi constituée commette une infraction particulière ou que l'entente entre ses membres soit établie en vue de commettre un crime déterminé (voir Cour suprême de justice, 16 mai 1991, RP 29/30/31).

En dehors de cette infraction d'association de malfaiteurs, l'arsenal juridique congolais est parsemé de tant d'autres incriminations qui, à divers égards, couvrent certains aspects des activités terroristes. Il s'agit à titre indicatif des infractions ci-après :

- Le meurtre et l'assassinat, article 45 du Code pénal congolais, livre II;

- L'incendie, articles 103 à 109 du Code pénal congolais, livre II;
- Les destructions méchantes, articles 110 à 113 du Code pénal congolais, livre II;
- L'association de malfaiteurs, le meurtre, l'assassinat sont punis de mort, les autres infractions sont punies de peines diverses.

Régime des armes de guerre

Au plan interne et en vue de prévenir la commission des actes relevant des activités terroristes, la loi congolaise interdit à quiconque, s'il n'est pas chargé des fonctions militaires, de détenir des armes de guerre, notamment revolvers, pistolets, mitraillettes, fusils ou toutes armes automatiques tirant en rafales (décret du 21 février 1950, portant régime des armes à feu et de leurs munitions).

Le décret du 21 février 1950 portant régime des armes à feu et de leurs munitions règle déjà la question en quelque sorte. Il comporte un important dispositif de prévention de tout approvisionnement illégal en armes. Ce décret est repris dans les dispositions pénales complémentaires du Code pénal congolais, Titre II (Défense sociale et législation sociale), section I (armes à feu) comme suit :

Article 2 .

L'importation, le dépôt dans les entrepôts publics, les poudrières de l'État et les dépôts généraux, le retrait de ces locaux, le transport, le trafic, la détention, la remise à titre précaire, le don, l'abandon et la vente des armes à feu et de leurs pièces détachées, de leurs munitions et de leurs parties détachées, sont soumis à une autorisation préalable du Président de la République ou du fonctionnaire délégué à cette fin. Les conditions des autorisations sont, sous réserve des dispositions du présent décret, déterminées par le Président de la République.

Article 3 :

Nul ne peut, s'il n'est pas chargé des fonctions militaires, détenir des armes de guerre, notamment revolvers, pistolets, mitraillettes, fusils « Fal » ou toutes armes automatiques tirant en rafales. Toutefois, le Ministre de l'intérieur peut autoriser, pour l'exercice de leurs fonctions, les membres de l'administration de la sûreté, de la police judiciaire des parquets, de la magistrature et des services territoriaux et pénitentiaires, à détenir l'une quelconque des armes susmentionnées.

Article 15 :

Quiconque importe, transporte, détient, remet à titre précaire, vend, donne ou abandonne des armes à feu ou des munitions en violation des

dispositions du présent décret, de ses arrêtés ou ordonnances d'exécution, sera puni d'une servitude pénale de sept jours à un an et d'une amende de 25 à 1 000 zaïres ou d'une de ces peines seulement. La servitude pénale sera toujours prononcée et son maximum pourra s'élever à 10 ans si le délinquant s'est livré au commerce des armes à feu ou de leurs munitions dans les régions où ont lieu des opérations militaires. Quiconque détient une arme de guerre sans autorisation constatée par une attestation du permis de port d'armes délivré par le Ministre de l'intérieur sera puni d'une servitude pénale de 10 à 20 ans.

Aussi, faut-il préciser que l'ordonnance-loi No 85-035 du 3 septembre 1985 en ses articles 5, 6 et 8 prohibe de façon claire l'acquisition, la détention et la cession des armes et munitions sauf exception expresse prévue par la loi. Les infractions aux dispositions des articles 5 et 6 de l'ordonnance-loi ci-dessus sont punies d'une servitude pénale de 5 à 10 ans :

Recrutement

Le recrutement des membres du groupe terroristes : il s'agit d'un aspect de l'infraction d'association de malfaiteurs qui punit toute association constituée dans le but d'attenter aux personnes ou à la propriété et qui est punie de mort.

(b) Code de justice militaire

Dans le Code de justice militaire, certaines infractions couvrent aussi divers aspects des actes de terrorisme. On peut citer notamment :

- Les crimes de guerre, articles 523, 323, 530 du Code de justice militaire;
- Les atteintes à la sûreté intérieure de l'État, articles 193 et 194, 202, 205 du Code de justice militaire;
- La prohibition des milices privées (ordonnance législative No 11-130 du 25 mars 1960) sur les milices privées.

Compte tenu de leur gravité, ces infractions sont punies de mort.

XXIX. DENMARK⁷⁸

1. SUMMARY OF LEGISLATION OF DENMARK RELATED TO TERRORISM

(a) Criminal Code and other relevant legislation

The Criminal Code contains no separate provision on terrorism today, but a number of the provisions of the Code cover acts characterised as terrorism in general usage and in international conventions. The most serious offences as for example murder and hijacking carry a penalty of up to life imprisonment.

Section 23 of the Criminal Code extends the penalty provided in respect of any offence to apply to everyone who has contributed to the act by instigation, advice or action. Thus, if a person consents with one or more other persons to commit a criminal offence, such conduct is punishable under section 23. The penalty for offences punishable under section 23 is the same as the penalty for the relevant provisions in the Criminal Code.

Under the present legislation recruitment to terrorist groups can be punished as contribution to the terrorist acts committed or contemplated. According to recent legislation, recruitment can be punished as contribution to violation of the new provision on terrorism.

In addition, the supply of weapons to terrorists can be punished as contribution to the terrorist acts committed or contemplated or as violation of the Act on Weapons and Explosives. Under the new legislation grave violations of the Act on Weapons and Explosives and transport of weapons for terrorist purposes will be covered by the new provision on terrorism.

(b) Anti-Terrorism Act

The Anti-Terrorism Act adopted by the Parliament on May 31 2002, includes the following main elements:

- Insertion of a special section on terrorism in the Danish Criminal Code (straffeloven). A large number of the offences typically designated terrorist acts are today punishable under specific provisions of the Criminal Code. Thus, for example, homicide is punishable under section 237 of the Criminal Code regardless of the offender's motive for the act. The Government wanted to signal more clearly that terrorism in all its forms is unacceptable in a democratic society. Therefore a terrorism section defining the concept of terrorism has been inserted into the

⁷⁸ Transmitted to the Secretariat by that Government on 27 December 2001 (S/2001/1303, enclosure) and 8 July 2002 (S/2002/789, enclosure), as well as on 27 May 2003.

Criminal Code. The provision comprises very serious offences committed to disturb the established order and intimidate the population, and the maximum penalty is fixed at life imprisonment.

– Insertion of a special section of financing of terrorism, according to which it is an offence, to a wider extent than today, to provide or arrange for financial support to a terrorist organisation or otherwise to contribute to the promotion of its criminal activities. The maximum penalty is fixed at 10 years imprisonment.

– An amendment to section 77 (a) of the Criminal Code to make it possible to carry out confiscation of money and other property (and not just “objects”), which it is feared will be applied to commit crimes. At the same time, an amendment to sections 802 and 803 of the Danish Administration of Justice Act (retsplejeloven) on seizure to make it possible to seize money and other property (and not just objects) for the purpose of confiscation under section 77 (a) of the Criminal Code. This amendment is necessary as a consequence of the proposed extension of section 77 (a) of the Criminal Code.

– Amendments to the rules on criminal responsibility for legal persons (companies, etc.), repealing the requirement that a violation of the Criminal Code must have been committed to obtain a gain for the legal person. It is further specified that legal persons can be punished for attempted offences to the same extent as natural persons. Finally, it is specified that the period of limitation for the criminal responsibility of legal persons must follow the period of limitation for natural persons. The period of limitation for legal persons is always two years.

– An extension to the provision on the seizing of aircraft and ships in section 183 (a) to include other means of public or goods transport as well.

– Aggravated violations of the Arms Act (våbenloven) are serious offences that may be connected with terrorism. To make it possible to impose heavier sentences for particularly aggravated violations, the maximum penalty in section 192 a of the Criminal Code in respect of aggravated violations of the Arms Act is increased from four years’ to six years’ imprisonment.

– A clarification of section 192a of the Criminal Code to make it appear expressly that the development of chemical and biological weapons or research to that effect falls within the provision. A similar clarification has been made of section 5 of the Arms Act.

– A new provision on non-proliferation of weapons of mass destruction, etc. has been inserted in Part 13 of the Criminal Code with a maximum penalty of imprisonment for up to six years.

- In order to improve the investigative possibilities of the police, insertion of a provision into section 786 of the Administration of Justice Act, according to which telecommunications companies and Internet service providers have to record and store (“log”) for one year the information on tele- and Internet communications of relevance to police invasion of the secrecy of communications, etc.
- Moreover, the Act contains improvements of the investigative possibilities of the police on several points where, in practice, difficulties arise in connection with the actual implementation of invasion of the secrecy of communications.
- The Act further includes rules on the access for the police to the nation-wide directory inquiry service, which contains name and address data concerning all telephone subscribers listed by name in Denmark, including unlisted telephone numbers, regardless of the subscriber’s telecommunications provider.
- A new provision (section 791 b) has been inserted into the Administration of Justice Act, according to which, in cases of very serious offences, the police can obtain a court warrant allowing them to capture data in an information system not available to the public by means of software or other equipment (data capture) without being present at the location where an information system (*i.e.*, a computer or another data system) is used. This will make it possible to permit measures whereby, by means of a so-called “sniffer program”, the police will receive a copy of all data input by the data system user.
- The Act also includes an amendment of section 799 of the Administration of Justice Act to provide a right to secret searches in cases of aggravated arson, explosion of bombs, hijacking and addition of toxic substances to the water supply or foodstuffs, etc. The right to keep information on searches in such cases secret may, for example, be of crucial importance where the offence were presumably committed by several unknown co-offenders, and where it is therefore necessary to keep the investigation secret to be able to identify and arrest these individuals.
- At the same time the Act contains an amendment of section 799 of the Administration of Justice Act to authorise the court to allow the police, with only one warrant, to carry out several individual searches without immediate notification (repeated secret searches) within a period not exceeding four weeks. This may be necessary where, for example, no drugs or weapons were found at the first search, but where it is still suspected that delivery on the location in question will take place within a short time, or where a search has had to be interrupted owing to the risk of discovery of the investigation. The court has to fix the number of

searches in connection with the search warrant. In special cases the court may decide, however, that the police may carry out an indeterminate number of searches within the specified period (not exceeding four weeks).

– In addition, the Act includes an amendment of section 806 of the Administration of Justice Act, according to which it becomes possible to order a third party to surrender documents, etc. (discovery) without prior warrant in cases where the purpose will be forfeited if a warrant has to be awaited. This might, for example, be thought relevant in a situation where the police need prompt surrender of the passenger list of an airline company.

– Furthermore, the Act includes an amendment of the prohibition of the Extradition Act (udleveringsloven) against extradition of Danish nationals. The purpose of this amendment is to provide authority for the extradition of Danish nationals for prosecution abroad when certain conditions are satisfied. Either the offence must be serious (a maximum penalty of more than four years' imprisonment) or the offender must have lived in the country requesting extradition for at least two years before the offence.

2. CRIMINAL CODE

Section 114

(1) Any person is liable to imprisonment for any term up to life imprisonment if he commits one or more of the following offences with the intent seriously to intimidate a population or unlawfully to compel Danish or foreign public authorities or an international organisation to do or to abstain from doing any act or to destabilise or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation, provided that the offence may inflict serious harm on a country or an international organisation by virtue of its nature or the context in which it is committed: -

(i) Homicide under section 237.

(ii) Assault under section 245 or 246.

(iii) Deprivation of liberty under section 261.

(iv) Impairment of the safe operation of means of transport under section 184(1), unlawful disturbances in the operation of public means of communication, etc., under section 193(1) or very serious damage to property under section 291(2), where such offences are committed in a manner likely to endanger human lives or cause considerable economic loss.

(v) Unlawful seizure of public means of transport under section 183 a.

(vi) Serious violations of the arms legislation under section 192 a or under section 10(2) of the Act on Weapons and Explosives.

(vii) Arson under section 180, explosion, spreading of noxious gases, floods, shipwreck or any railway or other traffic accident under section 183(1) and (2), injurious pollution of the water supply under section 186(1), injurious poisoning or pollution of products intended for general use, etc., under section 187(1).

(2) The same penalty shall apply to any person who transports weapons or explosives with the intent as referred to in subsection (1) hereof.

(3) The same penalty shall also apply to any person who threatens to commit one of the offences listed in subsections (1) and (2) hereof with the intent as referred to in subsection (1) hereof.

Section 114 a.

Any person is liable to imprisonment for any term not exceeding 10 years if he: –

(i) directly or indirectly grants financial support to;

(ii) directly or indirectly provides or collects funds for; or

(iii) directly or indirectly makes money, other financial assets or financial or other similar services available to a person, a group of persons or an association that commits or intends to commit terrorist acts comprised by section 114.

Section 114 b.

Any person is liable to imprisonment for any term not exceeding six years if he otherwise contributes by instigation, advice or action to furthering the criminal activity or the common purpose of a group of persons or an association which commits one or more of the offences comprised by section 114 or section 114 a (i) or (ii), where such activity or purpose involves the commission of one or more offences of such nature.

Section 114 c.

Any person is liable to imprisonment for any term not exceeding six years if he participates in or provides substantial financial or other essential support, although such act is not comprised by sections 114 to 114 b, to a corps, a group of persons or an association which intends to use force to exercise influence on public affairs or to disturb the established order.

Section 114 d.

Any person is liable to a fine or imprisonment for any term not exceeding four months or, in aggravated circumstances, to imprisonment for any term not exceeding two years if he participates in an unlawful military organisation or group, although such act is not comprised by sections 114 to 114 c.

Section 114 e.

Any person is liable to imprisonment for any term not exceeding six years if, in aggravated circumstances contrary to the legislation on non-proliferation of weapons of mass destruction, etc., he: –

- (i) exports dual-use products without permission;
- (ii) for the purpose of decisions by public authorities on dual-use products, gives incorrect or misleading information or suppresses information of importance to the decision in the case; or
- (iii) acts in contravention of conditions stipulated in decisions by public authorities on dual-use products.

3. ADMINISTRATION OF JUSTICE ACT

Section 786.

(1) Mail enterprises and providers of telecommunications networks or services shall assist the police in implementing invasions in the secrecy of communication, including by establishing interception of telephone conversations, etc., by giving the information referred to in section 780(1)(iii) and (iv) and by withholding and surrendering consignments and mail, etc.

(2) In cases other than those referred to in section 780(1)(iii), the court may, at the request of the police and with the consent of the owner of a telephone or other communication device, order the companies, etc., referred to in subsection (1) hereof to state what other devices are connected with the device in question.

(3) The provision of section 178 applies correspondingly to any person who fails to provide the assistance referred to in subsection (1) hereof or to comply with an order made under subsection (2) hereof without any lawful cause.

(4) Providers of telecommunications networks or services shall record and store traffic data for one year for the purpose of investigation and prosecution of criminal offences. Upon negotiation with the Minister for Science, Technology and Innovation, the Minister of Justice will lay down detailed rules on such recording and storing.

(5) Upon negotiation with the Minister for Science, Technology and Innovation, the Minister of Justice may lay down rules on the practical assistance to the police by providers of telecommunications networks and services in connection with invasions in the secrecy of communication.

(6) Any person is liable to a fine if he violates subsection (4), first sentence, hereof. Criminal liability may be imposed on companies, etc. (legal persons) under the rules of Part 5 of the Criminal Code.

(7) Provisions on fines may be laid down for violation of provisions in regulations laid down pursuant to subsection 4, second sentence, and subsection (5) hereof. Provisions may also be laid down on the imposition of criminal liability on companies, etc., (legal persons) under the rules of Part 5 of the Criminal Code.

(8) The Minister of Justice may lay down rules on financial compensation to the enterprises referred to in subsection (1) hereof for expenses in connection with assistance to the police for implementation of invasions in the secrecy of communication.

Section 791 b.

(1) Data in an information system not available to the public may be captured by means of software or other equipment (data capture), if: –

(i) there are specific reasons for assuming that a suspect is using the information system in connection with an offence, either planned or committed, as referred to in paragraph (iii) hereof;

(ii) the measure must be assumed to be decisive to the investigation; and

(iii) the investigation relates to an intentional violation of Parts 12 or 13 of the Criminal Code or a violation of section 180, 183(1) and (2), 183 a, 186(1), 187(1), 191, 192 a or 237 of the Criminal Code.

(2) Measures as referred to in subsection (1) hereof may not be carried out if the measure would be disproportionate in view of the purpose of the measure, the importance of the case, and the infringement and inconvenience presumably inflicted on the person or persons subject to the measure.

(3) Any decision on data capture is made by the court by order. Such order must state the information system subject to the measure. In other respects, the rules of section 783(1), third and fourth sentences, and subsections (2) and (3) apply correspondingly.

(4) Subsequent notice of a measure carried out will be given under the rules of section 788(1), (3) and (4). The notice will be given to the person who disposes of the information system subject to the data capture under subsection (1) hereof. In other respects, the rules of sections 782(2), 784, 785, 789 and 791 apply correspondingly.

XXX. DJIBOUTI⁷⁹

1. CODE PENAL

Article 167

Constituent des actes de terrorisme, lorsqu'elles sont en relation avec une entreprise individuelle ou collective ayant pour but de troubler gravement l'ordre public par l'intimidation ou la terreur, les infractions suivantes :

- Les atteintes volontaires a la vie, les atteintes volontaires a l'intégrité de la personne, l'enlèvement et la séquestration ainsi que le détournement d'aéronef, de navire ou de tout autre moyen de transport;
- Les vols, les extorsions, le vandalisme et les autres destructions, dégradations et détériorations, ainsi que les infractions en matière informatique.

Article 168

Constituant également un acte de terrorisme l'introduction dans l'atmosphère, sur le sol, dans le sous-sol ou dans les eaux y compris celle de la mer des substances de nature à mettre en péril la santé de l'homme ou des animaux ou du milieu naturel.

2. AUTRES DISPOSITIONS

Par ailleurs la Loi No 196/AN/02/4èmeL du 29/12/2002 sur le blanchissement, la confiscation et la coopération internationale en matière de produits du crime érige en crime la fourniture ou la collecte délibérée par les nationaux sur le territoire, par quelque moyen que ce soit directement ou indirectement de fonds destiné à la commission d'acte de terrorisme.

⁷⁹ Transmitted to the Secretariat by that Government on 27 December 2001 (S/2001/1311, enclosure) and 2 April 2003 (S/2003/483, enclosure).

XXXI. ECUADOR⁸⁰

SUMMARY OF LEGISLATION OF ECUADOR RELATED TO TERRORISM

(a) Penal Code

Chapter III of the Ecuadorian Penal Code imposes penalties for offences against the internal security of the State and provides that “the very existence of an attempt is punishable” (art. 130).

Article 136 stipulates that “an attack whose purpose is to cause devastation and bloodshed shall be punishable by eight to 12 years’ rigorous imprisonment”. The same article establishes that “conspiracy to carry out such an attack, followed by any act of preparation for it, shall be punishable by four to eight years’ rigorous imprisonment”

Article 138 of the Code provides for a penalty of from one to five years for anyone “who hijacks (...) a warship” or “aircraft”.

In addition, article 147 stipulates that “anyone who promotes, directs or participates in guerrilla organizations, commandos, combat groups or terrorist groups or cells whose purpose is to subvert public order or overthrow, attack or interfere with the normal functioning of the Government shall be punishable by rigorous imprisonment of from four to eight years’ and a fine.

Moreover, chapter IV, article 160, of the Penal Code imposes a penalty of three to six years’ medium-term rigorous imprisonment and a fine for “anyone who, for the purpose of committing offences against the security of persons or property, manufactures, provides, acquires, steals, throws, uses or introduces into the country weapons, munitions or explosives, explosive substances, asphyxiating or toxic materials, or substances used in their preparation”. “If the said acts cause injury to persons, the maximum penalty set forth in the previous paragraph shall be imposed, and if the death of one or more persons results, the penalty shall be 16 to 25 years’ long-term rigorous imprisonment” and a fine.

An additional article (art. 160-A) of the Ecuadorian Penal Code provides that:

“anyone who, individually or collectively, as participants in irregular forces, organizations, gangs, commandos, terrorist groups, guerrillas or similar groups, whether armed or not, and whether claiming patriotic, social, economic, political, religious, revolutionary, retaliatory, proselytizing, racial, local or regional motives, commits offences

⁸⁰ Transmitted to the Secretariat by that Government on 27 December 2001 (S/2001/1327, enclosure) and 22 July 2002 (S/2002/885, enclosure).

against the security of persons or human groups of any type, or against their property, by attacking, damaging or destroying buildings, banks, warehouses, shops, markets or offices; or by raiding or invading homes, living quarters, secondary or primary schools, institutes, hospitals, clinics or convents, or government, military, police or paramilitary installations; or by stealing or confiscating property or assets of any type or amount; or by abducting persons or taking over vehicles, vessels or aircraft for the purposes of demanding ransom, exerting pressure and calling for changes in laws or legally promulgated orders and provisions or demanding that the competent authorities release persons being held or punished for common or political offences; or by occupying, by force, threat or intimidation, public or private premises or services of any nature or type; or by building barricades, barriers, trenches or obstacles for the purpose of confronting the Government to defend his or her intentions, plans, opinions or manifestos; or by attacking, in any way, the community or its property and services, shall be subject to a penalty of from four to eight years' rigorous imprisonment and a fine". "If the said criminal acts cause injury to persons, the maximum penalty set forth in the previous paragraph shall be imposed, and if the death of one or more persons results, the penalty shall be 16 to 25 years' long-term rigorous imprisonment and a fine."

Moreover, Article 147 of the Ecuadorian Penal Code, in book II, title I, chapter II, "Offences against the internal security of the State", imposes penalties of 8 to 12 years ordinary rigorous imprisonment on anyone who promotes or participates in guerrilla organizations, commandos, combat groups or terrorist cells whose purpose is to subvert public order, while obeying instructions from foreign sources and receiving support or economic assistance from abroad; article 151 criminalizes the receipt of money for subversive purposes and establishes a prison sentence of three months to two years, with the proceeds of the confiscation of these assets to be used for national defence.

(b) Other Provisions

In addition, article 13 of the Basic Regulations of the Department of Public Security provides that one of the functions of provincial public security agencies is to "plan and carry out immediate, short-term and future actions to neutralize and prevent the activities of elements and organizations that are carrying out proselytizing activities, especially those involving sabotage, espionage, sedition, subversion and terrorism and other activities that endanger the internal security of the State and the peace and tranquillity of the citizenry"

XXXII. EGYPT⁸¹

SUMMARY OF LEGISLATION OF EGYPT RELATED TO TERRORISM

Egyptian law treats factors contributing to and sources serving as a basis for terrorist acts and activities as criminal, as follows:

(a) Article 86 (a) of the Penal Code provides the penalty of execution or lifelong hard labour for the supplying of groups, gangs or other terrorist formations with weapons, ammunition, explosives, materials, instruments, funds or information that assist them in carrying out their aims;

(b) The code also establishes penalties (under articles 88 (b), 97 and 98) for anyone who invites another to join even a mere agreement aimed at the commission of crime in connection with terrorist activity, even if his invitation is not accepted, and for anyone who has knowledge of the existence of a plan to commit such crimes and fails to inform the authorities thereof.

XXXIII. ESTONIA⁸²

1. SUMMARY OF LEGISLATION OF ESTONIA RELATED TO TERRORISM

In Estonia, terrorism is deemed to be a crime against the state, which is punishable by law. According to § 64 of the Criminal Code, terrorism is defined as an assault upon an individual, establishment, or organisation; also, as the perpetration of acts with the aim of hijacking, destroying, or damaging of property, or the injuring of people so as to provoke war or international conflict, or for some other political or religious goal.

Terrorism is punishable with 6 to 12 years of imprisonment. If the terrorist act creates human loss or has some other dire results, it is punishable with 8 to 15 years of imprisonment, or even with a life sentence.

⁸¹ Transmitted to the Secretariat by that Government on 22 May 2002 (S/2002/601, enclosure).

⁸² Transmitted to the Secretariat by that Government on 26 December 2001 (S/2001/1315, enclosure) and 18 February 2003 (S/2003/275, enclosure).

According to § 65 of the Criminal Code, killing of a foreign country's representative, with the aim of provoking war or an international conflict, is punishable with 8 to 15 years of imprisonment, or a life sentence. Causing dire injury, with the aforementioned aim, to a representative of a foreign country, is punishable with 5 to 12 years.

In addition to this, § 197 and § 124 of the Criminal Code, prescribe imprisonment for the illegal seizure of an aircraft, whether it is on the ground or in flight, and for the taking of a hostage.

Acts that are related to terrorism and are punishable in accordance with the Criminal Code in Estonia also include:

- violation of the regulations of international aerial navigation,
- acquisition of radioactive material through criminal means, threatening to acquire radioactive material through criminal means, or the use of this material for criminal purposes, for the violation of the rules of the storage, use, calculation, transport or handling of the radioactive materials,
- smuggling, illegal manufacture, acquisition of explosive material and explosive devices or their necessary parts etc.

In addition, § 180 and § 181 of the Criminal Code, respectively, deal with the covering up of a crime, and not informing the authorities about an offence.

Membership in a terrorist group is punishable in Estonia on the basis of the Criminal Code's § 196. This paragraph stipulates the punishment which can be imposed for belonging to a criminal association, or for organising such an association, or for recruiting members into such an association, or for leading such an association or a sub-unit of such an association. A criminal association is defined as a permanent unit consisting of at least 3 individuals, each of whom have definite functions within the association, which exists for the purpose of committing, or the activities of which lead to the committing of first or second degree crimes. In Estonia, terrorism is a first degree crime.

Membership in a criminal association is punishable with 3 to 8 years of imprisonment. Organising of a criminal association, or recruiting of members for such an association, or leading of such an association or its sub-unit is punishable with 5 to 10 years of imprisonment.

Article 237 of the Penal Code (Terrorism) cannot in any way be interpreted as the criminalization of only those terrorist acts, which are aimed at Estonian citizens or the Estonian state. The article actually states that acts aimed at causing health damage or death or at unlawful seizure, damaging or destruction of property, committed with the intention to provoke war or an international

conflict or for political or religious causes, are punishable by 3 to 12 years' imprisonment or life imprisonment. The same act, if committed by a legal person, is punishable by compulsory dissolution. The wording of the referred to provisions reflects the fact that an offence committed against another democratic entity in Estonia, is regarded as an offence against international security. Offences against international security are dealt with in Penal Code Art. 110-112 in greater detail. These articles specify some of the ways in which terrorist acts can be committed (piracy, the hijacking of aircraft, and attacks against flight safety). Thus, the articles of terrorism in the Estonian Penal Code are not limited to the terrorist attacks against Estonia.

2. PENAL CODE

CHAPTER 8, DIVISION 5 – OFFENCES AGAINST INTERNATIONAL SECURITY

§ 110. Piracy

(1) Attacking, seizure or destruction of a ship on the high seas or in a territory outside the jurisdiction of any state, or attacking or detention of persons on board such ship, or seizure or destruction of property on board such ship by using violence, is punishable by 2 to 10 years' imprisonment.

(2) The same act, if it causes:

(a) the death of a person;

(b) major damage, or

(c) a danger to the life and health of a large number of people,

is punishable by 6 to 20 years' imprisonment.

§ 111. Hijacking Of Aircraft

(1) Unlawful assumption of the navigation of an aircraft in flight, or unlawful restriction of the free navigation rights of the crew of an aircraft using violence or deceit, is punishable by 5 to 15 years' imprisonment.

(2) The same act, if it causes:

(a) the death of a person;

(b) major damage, or

(c) a danger to the life and health of a large number of people,

is punishable by 6 to 20 years' imprisonment.

(3) An aircraft is deemed to be in flight as of the moment of the commencement of boarding of the crew members or passengers or loading of the cargo, until the moment when the crew members or passengers have left the aircraft or the cargo has been unloaded.

§ 112. Attacks against flight safety

(1) A person who places on board an aircraft in flight explosives or a device causing ignition, or a device, facility or substance otherwise harmful to the flight safety of the aircraft, or shoots an aircraft with the intention to destroy or damage the aircraft, shall be punished by 2 to 10 years' imprisonment.

(2) The same act, if it causes:

(a) the death of a person;

(b) major damage, or

(c) a danger to the life and health of a large number of people,

is punishable by 6 to 20 years' imprisonment.

CHAPTER 15 (OFFENCES AGAINST THE STATE), DIVISION 2 (OFFENCES AGAINST STATE POWER)

§ 237. Terrorism

(1) Acts aimed at causing health damage or death or at unlawful seizure, damaging or destruction of property, committed with the intention to provoke war or an international conflict or for political or religious causes, are punishable by 3 to 12 years' imprisonment or life imprisonment.

(2) The same act, if committed by a legal person, is punishable by compulsory dissolution.

DIVISION 3, OFFENCES AGAINST FOREIGN STATES OR INTERNATIONAL ORGANISATIONS ARE CRIMINALIZED, PURSUANT TO OBLIGATIONS ARISING FROM INTERNATIONAL AGREEMENTS.

§ 246. Attack against life or health of persons enjoying international immunity

(1) Killing, hostage taking or causing health damage, if committed against a representative of an international organisation or generally recognised international non-governmental organisation or a foreign high-ranking public official or a family member thereof, is punishable by 6 to 20 years' imprisonment or life imprisonment.

(2) Subsection (1) of this section does not apply in the case of an operation involving use of armed forces sanctioned by the Security Council of the United Nations on the basis of Chapter VII of the Charter of the United Nations where the persons participating in the operation are combatants in an armed conflict.

§ 247. Defamation of persons enjoying international immunity

(1) Defamation of a person enjoying international immunity or of a family member of such person is punishable by a pecuniary punishment or up to 2 years' imprisonment.

(2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.

§ 248. Illegal entry into territory, building or premises enjoying diplomatic immunity

(1) Illegal entry into or occupation of a territory, building or premises enjoying diplomatic immunity in the Republic of Estonia is punishable by a pecuniary punishment or up to 3 years' imprisonment.

(2) The same act, if committed:

(a) by using violence, or

(b) by using threat with a weapon, any other object used as a weapon, an explosive device or explosive substance,

is punishable by 1 to 5 years' imprisonment.

(3) An act provided for in subsection (1) or (2) of this section, if serious consequences or major damage are thereby caused, is punishable by 4 to 12 years' imprisonment.

§ 249. Defamation of official symbols of foreign state or international organisation

A person who tears down, damages, profanes or otherwise defames the national flag, national coat of arms or any other official symbol of a foreign state, or an official symbol of an international organisation, or defames the national anthem of a foreign state, shall be punished by a pecuniary punishment or up to one year of imprisonment.

§ 250. Incitement to commission of criminal offence against foreign state or international organisation

Public incitement to the commission of a criminal offence provided for in this Division is punishable by a pecuniary punishment or up to 3 years' imprisonment.

TAX FRAUD DIVISION

§ 392. Illicit traffic in prohibited goods or goods requiring a special permit

(1) Illicit traffic in prohibited goods or carriage of radioactive substances, explosive substances, narcotic drugs or psychotropic substances, precursors for narcotic drugs or psychotropic substances, non-narcotic medicinal products, dangerous chemicals or waste, strategic goods, firearms or ammunition without the corresponding special permit is punishable by a pecuniary punishment or up to 5 years' imprisonment.

(2) The same act, if committed:

- (a) by an official taking advantage of his or her official position, or
- (b) by a group,

is punishable by 2 to 10 years' imprisonment.

(3) An act provided for in subsection (I) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

(4) The court shall confiscate the substance or object which was the direct object of commission of an offence provided for in this section.

XXXIV. ETHIOPIA⁸³

SUMMARY OF LEGISLATION OF ETHIOPIA RELATED TO TERRORISM

Terrorism is addressed in the Ethiopian Penal Code of 1957 by way of criminalizing acts committed to serve terrorist objectives. As such, a person who willfully provides or collects funds to finance the commissioning of a criminal act which serves the objective of terrorism will be charged as co-offender under article 32 and/or alternatively such person will be charged as an accomplice to the crime under article 36 of the Code. The penalties for such criminal acts are rigorous imprisonments and depending on the gravity of the offense the penalty could go as far as capital punishment.

⁸³ Transmitted to the Secretariat by that Government on 30 January 2001 (S/2002/137, enclosure) and 31 October 2002 (S/2002/1234, enclosure).

The recruitment to terrorist groups for a commission of an offense is a criminal act punishable under article 37 of the Penal Code. Articles 475, 763 and 764 of the Penal Code clearly provide that the supply of weapons even for ordinary use is an offense. Illegal trafficking in arms is also punishable with severe penalty under Article 41 of the Revised Special Penal Code (Proclamation 214/82).

Alien perpetrators of terrorist acts would be tried or extradited as long as they are found within Ethiopia's jurisdiction, irrespective of their nationality or the place of commission of the crime. This is clearly stipulated in article 11, 13, 18, 19 and 21 of the Penal Code of Ethiopia.

Any hostile act against a foreign state is a punishable criminal act under Art. 273 of the Penal Code of Ethiopia. Therefore, a terrorist act perpetrated or attempted against a foreign state, citizen or corporate bodies would entail criminal liability as per this and other pertinent provisions of the Penal Code.

Articles 32 and 36 of the Penal Code deal with the capacity of offenders as principal, co-offender and accomplice with respect to any criminal act including the carrying out of terrorist acts. Solicitation of funds for the commission of criminal acts including terrorist acts will be treated as intentionally associating oneself with the principal offence in accordance with article 32 and 36 of the Penal Code, which read as follows:

Article 32 - Principal act: offender and co-offender

- (1) A person shall be regarded as having committed an offence and punished as such if:
 - (a) he actually commits the offence directly or indirectly, for example by means of animal or natural forces; or
 - (b) he without performing the criminal act itself fully associates himself with the commission of the offence and the intended result; or
- (2) (omitted)
- (3) Where several co-offenders are involved they shall be liable to the same punishment as provided by law.

Article 36 - Accomplice

An accomplice is a person who knowingly assists a principal offender either before or during the carrying out of the criminal design whether by information, advice, supply of means or material aid or assistance of any kind whatsoever in the commission of an offence.

An accomplice in an international offence shall be always be liable to punishment.

As regards the criminalization of the provisions and collection of funds for terrorist acts committed outside Ethiopia, articles 32 and 36 of the Penal Code apply to all criminal acts specified in the penal code or any other domestic legislation which criminalize certain acts, to the violations of international law, offences considered by national law as international crime and to violations of treaties ratified by Ethiopia. The most appropriate legal provision in this respect is article 17 of the Code which deals with offences committed in a foreign country against international law and universal order.

XXXV. FINLAND⁸⁴

1. ACT ON PREVENTING AND CLEARING MONEY LAUNDERING⁸⁵

Section 1: Purpose of the Act

The purpose of this Act is to prevent money laundering and financing of terrorism, promote the detection and investigation of money laundering and financing of terrorism, and to reinforce tracing and recovery of proceeds from crime.

The provisions of this Act on preventing and clearing money laundering also apply to preventing and clearing financing of terrorism referred to in Chapter 34a, section 5 of the Penal Code (39/1889).

Section 2: Definitions

For the purposes of this Act:

- 1) “money laundering” means activities referred to in Chapter 32, sections 6-10 of the Penal Code (39/1889);
- 2) “clearing money laundering” means receiving, recording, clearing and investigating reports on suspicious transactions referred to in sections 5 and 10; and

⁸⁴ Transmitted to the Secretariat by that Government on 25 February 2003 and 12 February 2004 (S/2003/279, enclosure).

⁸⁵ 68/1998. Amendments up to 365/2003 included.

- 3) “a party under obligation to report” means institutions and businesses and professions referred to in section 3.

Section 3: Parties under obligation to report

For the purposes of this Act, the following are parties under obligation to report:

- 1) credit institutions and financial institutions referred to in the Credit Institutions Act (1607/1993);
- 2) branches and representative offices of foreign credit institutions and financial institutions referred to in the Act on the Operation of a Foreign Credit Institution or Financial Institution in Finland (1608/1993);
- 3) investment firms referred to in the Investment Firms Act (579/1996) and institutions which are not investment firms but which are professionally engaged in activities referred to in section 16 of the Investment Firms Act;
- 4) branches and representative offices of foreign investment firms referred to in the Act on the Right of Foreign Investment Firms to Offer Investment Services in Finland (580/1996);
- 4a) management companies and depositories referred to in the Investment Funds Act (48/1999); (29.1.1999/54)
- 5) limited-liability companies or co-operatives engaged in restricted credit institution activities referred to in section 1a of the Credit Institutions Act;
- 6) insurance companies referred to in the Insurance Companies Act (1062/1979);
- 7) representative offices of foreign insurance companies referred to in the Act on Foreign Insurance Companies (398/1995);
- 8) insurance brokers referred to in the Insurance Brokers Act (251/1993);
- 9) pawnshops referred to in the Pawnshops Act (1353/1992);
- 10) institutions referred to in section 12(1) of the Lotteries Act (1047/2001) engaged in betting, totalizator betting or casino activity, and entrepreneurs and institutions acting as agents for participation coupons and fees related to pools, betting and totalizator betting referred to in the Lotteries Act. (23.11.2001/1052)

- 11) real estate businesses and apartment rental agencies referred to in the Act on Real Estate Businesses and Apartment Rental Agencies (1075/2000);
- 12) Central Securities Depository, account operators and service points of foreign institutions in Finland having the right to operate as account operators referred to in the Act on the Book-Entry System (826/1991);
- 13) businesses or professions practising other payments transfer than payment intermediation referred to in the Credit Institutions Act;
- 14) businesses or professions carrying out duties referred to in section 1(1) of the Auditing Act (936/1994).
- 15) businesses or professions practising external accounting;
- 16) businesses or professions selling or dealing precious stones or metals, works of art or vehicles;
- 17) businesses or professions holding auctions;
- 18) businesses or professions providing assistance in legal matters.

Businesses or professions providing assistance in legal matters referred to in subsection 1(18) above are under obligation to report when they participate on behalf of their client in planning or realising a purchase or a sale of real estates or business units, management of assets, securities or other funds of the client, opening or management of bank, savings or book-entry accounts, asset arrangements required to establish, manage or administer companies, or establishment or management of or responsibility for the activity of foundations, companies or similar institutions, as well as when acting on behalf of their client in business or real estate transactions. Carrying out duties of an attorney or a counsel is not subject to the obligation to report. For the purposes of this Act, duties of an attorney or a counsel include, in addition to actual duties related to legal proceedings, legal counselling concerning the legal status of a client in the pre-trial investigation of an offence or in other pre-trial handling of the case, and legal counselling concerning starting or avoiding legal proceedings.

Section 4: Money laundering clearing house

For carrying out duties relating to clearing money laundering, a Money Laundering Clearing House, hereafter the Clearing House, shall be established at the National Bureau of Investigation. The Clearing House shall also promote co-operation between different authorities in the prevention of money laundering, as well as co-operation and exchange of information with authorities in foreign States and international organisations responsible for clearing money laundering. The National Bureau of Investigation shall provide the Ministry responsible for police functions with annual reports on the activity of the Clearing House and on the progress of anti-money laundering activity in Finland in general.

Section 5: Obligation of the authorities and other supervisory bodies to oversee and to report

The authority supervising a party under obligation to report, the Savings Bank Inspectorate referred to in the Savings Banks Act (1270/1990), the Central Body for the Amalgamated Co-Operative Banks referred to in the Co-operative Banks Act (1271/1990) and auditors of the savings fund operations referred to in the Co-Operatives Act shall supervise the fulfilment of the obligations laid down by this Act or by provisions laid down under this Act.

If the authority referred to in subsection 1 or other supervisory body considers, on the basis of facts discovered in the context of its supervisory or other duties, that there are reasons to suspect the legal origin of the assets or other property included in a transaction or that these are used to commit an offence referred to in section 1(2) or a punishable attempt of such an offence, the authority shall report the case to the Clearing House.

Section 6: Obligation to identify

In addition to what is provided hereafter, a party under obligation to report shall always verify the identity of its customer if there are reasons to suspect the legal origin of the assets or other property included in a transaction or that these are used to commit an offence referred to in section 1(2) or a punishable attempt of such an offence.

A party under obligation to report referred to in section 3, paragraphs 1-8 and 11-18 above shall verify the identity of its regular customer. The same requirement also applies to other than regular customers when the total value of a single transaction or of several transactions that are connected with each other is EUR 15,000 at minimum.

A party under obligation to report referred to in section 3, paragraphs 6-8 above need not verify the identity of its customer, if

- 1) the commission agreement concerns such an insurance policy in which the premium for the insurance period is EUR 1,000 at maximum or the single premium is EUR 2,500 at maximum;
- 2) the commission agreement concerns such a statutory employment pension insurance policy or such a pension insurance policy of a self-employed person that does not include a repurchase clause and that cannot be used as a security for a loan; or
- 3) the premium for an insurance is paid from policy holder's account with a credit institution or financial institution authorised in a Member State of the European Economic Area, or from an account with a branch of a credit institution or financial institution authorised in a State outside the European Economic Area but operating in a Member State of the European Economic Area.

A party under obligation to report referred to in section 3(10) above shall verify the identity of its customer in the context of.

- 1) casino activities; and
- 2) pools, betting or totalizator betting when the value of the monetary stake placed by a player as a single transaction or as several transactions connected with each other is EUR 3,000 at minimum. (29.11.2001/1052).

The identity of a customer need not be verified if the customer is a credit institution, financial institution, investment firm or life insurance company authorised in a Member State of the European Economic Area or a branch of a credit institution, financial institution, investment firm or life insurance company authorised in a State outside the European Economic Area but operating in a Member State of the European Economic Area. Nor needs the identity of a customer be verified if the customer is a credit institution, financial institution, investment firm or life insurance company authorised in such other State whose system of preventing and clearing money laundering meets the international standards, or a branch of a credit institution, financial institution, investment firm or life insurance company authorised in another State but operating in such a State.

Section 7: Obligation to identify in case of acting on behalf of another person

If it is probable that a customer is acting on behalf of another person, the identity of this other person shall also be verified by all available means.

Section 8: Storing identification data

All customer identification data shall be stored in a secure manner for at least five years following the completion of a business transaction or termination of a customer relationship.

Section 9: Obligation to exercise due diligence

A party under obligation to report shall examine with due diligence the grounds for and the purpose of the use of its services, if it notices that such services are unusual in respect of composition or scale, or the size of a party under obligation to report or in respect of the facilities of such party, or if they have no apparent financial purpose, or if they are inconsistent with the financial situation or business transactions of a customer.

Section 10: Obligation to report

If, when fulfilling the obligation to exercise due diligence referred to in section 9, or on some other grounds, a party under obligation to report has a reason to suspect the legal origin of the assets or other property included in a transaction or that these are used to commit an offence referred to in section 1(2) or a

punishable attempt of such an offence, the party shall report the case to the Clearing House without delay and supply at request all information and documents that may have significance in clearing the suspicion.

A party under obligation to report referred to in section 3, paragraph 9 above shall submit a report referred to in subsection 1, if it is a question of a pledge of a significant financial value.

Submitting such report shall not be disclosed to the person subject to a suspicion or any other person.

Section 11: Suspension of a transaction and refusal to effect

If a party under obligation to report has a reason to suspect the legal origin of the assets or other property included in a transaction or that these are used to commit an offence referred to in section 1(2) or a punishable attempt of such an offence, the party shall suspend the transaction for the purposes of further inquiries or refuse to effect the transaction.

If it is not possible to refrain from a transaction, or if suspending or refusing to effect the transaction would be likely to hamper establishing the beneficiary of the transaction, the transaction may be completed, after which a report referred to in section 10 shall be submitted immediately.

After receiving a report on a suspicious transaction, a commanding police officer working at the Clearing House may give an order to refrain from effecting the transaction for five business days at maximum, if such refraining is necessary for clearing money laundering.

Section 11a: Reinforced obligation to identify, to exercise due diligence and to report

If a transaction is connected with a State whose system of preventing and clearing money laundering does not meet the international standards, the transaction shall be subject to a reinforced obligation to identify, to exercise due diligence and to report.

To fulfil a reinforced obligation to report, a party under obligation to report shall submit a report referred to in section 10 to the Clearing House if a client does not provide an account requested in order to fulfil the obligation to exercise due diligence, or if the party under obligation to report finds the given account unreliable. The same applies to a situation in which the account obtained by a party under obligation to report does not provide sufficient information on the grounds for the transaction and the origin of the assets. A party under obligation to report shall also submit a report to the Clearing House if a legal person cannot be identified, or if beneficiaries cannot be established reliably. The same also applies if a person on behalf of whom a customer is acting cannot be identified.

Section 12: Obtaining, recording, using and disclosing data

The Clearing House has the right to obtain free of charge any information and documents needed for clearing money laundering from authorities and institutions conducting public duties, notwithstanding provisions on the confidentiality of information on business or trade secrets, or the financial circumstances or a financial status of an individual, institution or foundation.

A decision on obtaining confidential information referred to in subsection 1 shall be made by a commanding police officer working at the Clearing House.

The Clearing House has the right to obtain any information needed for clearing money laundering from a private body or person, notwithstanding the secrecy obligation binding the members, auditors, auditors of the savings fund operations, board members or employees of the body on written request by a commanding police officer working at the Clearing House.

The Clearing House has the right to record information received on the basis of sections 5 and 10 and subsections 1 and 3. The information may be used or disclosed only for preventing and clearing money laundering.

Section 13: Reference to certain acts

In addition to this Act, the provisions of the Police Act (493/1995) on a police investigation apply to clearing money laundering, unless the Pre-Trial Investigation Act (449/1987) is applied to clearing the matter.

In addition to this Act, the provisions of the Police Personal Data File Act (509/1995) on police personal data files apply to handling of information on suspicious transactions.

Section 13a: Obligation to make a notification of payments transfer activity

A party practising payments transfer referred to in section 3(1)(13) above and a financial institution practising payments transfer shall make a notification of the activity to the State Provincial Office of Southern Finland, which act as the central administrative authority, prior to starting the business.

The notification shall include information about the practitioner and the activity referred to in the notification.

Section 14: Government decisions and further provisions

A list of States whose systems of preventing and clearing money laundering meet the international standards referred to in section 6(5), as well as a list of States whose systems of preventing and clearing money laundering,

correspondingly, do not meet the international standards referred to in section 11a(1), may be confirmed by a decision made in a Government plenary session.

Further provisions on fulfilling the obligations laid down in sections 6-11 and 11a and on the content of the notification referred to in section 13a(2) are given by decree of the Ministry of the Interior. Before issuing a decree, other competent Ministries, the Insurance Supervisory Authority and the Financial Supervision shall be heard.

Section 15: Liability for damages

A party under obligation to report is liable for the financial loss sustained by a customer due to giving an account of a transaction, reporting on a suspicious transaction or the suspension of or refusal to effect a transaction, only if the party under obligation to report has failed to exercise such due diligence as could have been expected from the party, considering the circumstances.

In other cases, the provisions of the Tort Liability Act (412/1974) apply to the liability for damages of a party under obligation to report.

Section 16: Content of the obligation to identify

A person who, deliberately or through negligence, fails to fulfill the obligation to identify a customer laid down in sections 6, 7 or 11a or the obligation concerning storing identification data referred to in section 8 shall be sentenced for *violation of obligation to identify* to a fine, unless a more severe penalty for the act is provided elsewhere in the law.

Section 16a: Violation of obligation to report money laundering

A person who, deliberately or through negligence, fails to make a report referred to in sections 10 or 11 a, against the prohibition laid down in section 10, discloses such reporting, or fails to fulfill the obligation to exercise due diligence referred to in section 9 and, therefore, does not notice the existence of the obligation to report referred to in section 10 shall be sentenced for *violation of obligation to report money laundering* to a fine.

Section 16b: Violation of obligation to make a notification of payments transfer activity

A person who, deliberately or through negligence, fails to make a notification of payments transfer activity referred to in section 13a shall be sentenced for *violation of obligation to make a notification of payments transfer activity* to a fine, unless a more severe penalty for the act is provided elsewhere in the law.

Section 17: Entry into force

This Act shall enter into force on 01 March 1998.

Measures required to enforce this Act may be implemented before the Act takes effect.

Section 18: Transitional provisions

At the time of the entry into force of this act, those matters pending in the Financial Supervision Authority and in the Ministry of Social Affairs and Health, which in accordance of this Act shall fall under the competence of the Clearing House, shall be transferred to the Clearing House for processing.

At the time of the entry into force of this act, data on suspicious transactions recorded by the Financial Supervision Authority and by the Ministry of Social Affairs and Health shall be transferred to the Clearing House. Regarding recording, using and disclosing data, the provisions of section 12(4) are in force.

Entry into force and application of the amendments:

(34/1999) This Act enters into force on 01 February 1999.

(92/1999) This Act enters into force on 01 April 1999.

(799/2000) This Act enters into force on 16 October 2000.

(1076/2000) This Act enters into force on 01 March 2001.

(1052/2001) This Act enters into force on 01 January 2002.

(63/2003) This Act enters into force on 01 April 2003.

(365/2003) This Act enters into force on 01 June 2003.

Transitional provisions regarding amendment (365/2003):

This Act also applies to a customer of a party under obligation to report referred to in section 3(1), paragraphs 5 and 11-18, whose business relation with the party under obligation to report has started prior to the entry into force of this Act. A party under obligation to report shall identify such a customer as provided in sections 6 and 11a and, if it is probable that the customer is acting on behalf of another person, the party shall identify this other person as provided in section 7, prior to performing a new business transaction.

At the time of the entry into force of this Act, a party practising payments transfer referred to in section 3(1), paragraph 13 and a financial institution practising payments transfer shall make a notification of their business referred to in section 13a within six months from the entry into force of this Act.

2. PENAL CODE

CHAPTER 34a - TERRORIST OFFENCES

Section 1 - Offences committed with a terrorist intention

A person who, with a terrorist intention and so as to seriously damage a State or international organisation:

- 1) presents an unlawful threat or raises a false alarm, shall be sentenced to imprisonment for at least four months and at most three years,
- 2) deliberately commits an offence of endangerment, an explosives offence or a violation of the provisions of the Edged Weapons Act (108/1977), shall be sentenced to imprisonment for at least four months and at most four years,
- 3) commits an aggravated theft or unauthorized use of a motor vehicle designed for the transport of passengers or goods, criminal mischief or criminal traffic mischief, an offence of health endangerment or aggravated criminal damage, an aggravated firearms offence or an export offence referred to in the Act on the Export and Transit of Defence Materiel (242/1990), shall be sentenced to imprisonment for at least four months and at most six years,
- 4) violates the prohibition on chemical weapons or biological weapons, or intentionally commits aggravated impairment of the environment within the meaning of subsection 1, paragraph 1, of section 1 in Chapter 48, shall be sentenced to imprisonment for at least four months and at most eight years,
- 5) commits an aggravated assault, an offence of kidnapping or hostage taking, aggravated criminal mischief or an offence of aggravated health endangerment, a nuclear device offence or an offence of hijacking, shall be sentenced to imprisonment for at least two and at most twelve years,
- 6) kills a person, shall be sentenced to imprisonment for at least four and at most twelve years,
- 7) commits manslaughter, shall be sentenced to imprisonment for at least eight years or at most for life.

A person who, with a terrorist intention, commits murder, shall be sentenced to life imprisonment.

An attempt is punishable.

Section 2 - Preparation of an offence committed with a terrorist intention

A person who, with an intention to commit one of the offences referred to in subsection 1, paragraphs 2 to 7, or subsection 2 of section 1,

- 1) agrees with another person or prepares a plan to commit the offence,
- 2) manufactures, keeps in his/her possession, acquires, transports, supplies or uses an explosive, a chemical, biological or toxic weapon, a firearm or a dangerous object or substance, or
- 3) acquires instruments or substances that may be used for the production of nuclear devices or chemical, biological or toxic weapons, or acquires formulas or plans for their production, shall be sentenced for the preparation of an offence committed with a terrorist *intention* to a fine or to imprisonment for at most three years.

Section 3 - Directing a terrorist group

A person who directs a terrorist group, the activities of which include the commission of or a punishable attempt to commit an offence referred to in subsection 1, paragraphs 2 to 7, or subsection 2 of section 1, shall be sentenced, for *directing a terrorist group*, to imprisonment for at least two and at most twelve years.

A person who directs a terrorist group, in the activities of which only an offence referred to in subsection 1, paragraph 1, of section 1 has been committed, shall be sentenced, for directing a terrorist group, to imprisonment for at least four months and at most six years.

Anyone who is sentenced for directing a terrorist group shall also be sentenced for any commission of or any punishable attempt to commit an offence referred to in section 1 and for any commission of an offence referred to in section 2, either directly by him/herself or by the terrorist group under his/her direction.

Section 4 - Facilitation of the activities of a terrorist group

A person who, with the intention of facilitating or in the knowledge that his/her conduct will contribute to the criminal activities of a terrorist group as referred to in sections 1 and 2,

- 1) creates or organizes the group, or recruits or attempts to recruit members to the group,
- 2) supplies or attempts to supply explosives, weapons, ammunition or substances or materiel needed for their production, or other dangerous objects or substances, to the group,

- 3) implements or attempts to implement or provides training for the group in support of its criminal activities,
- 4) finds or attempts to find or provides office premises or other facilities, means of transport or other material resources for the group, which are of great relevance for its activities,
- 5) finds or attempts to find information which, when brought to the attention of the group, may seriously damage a state or international organisation, or transmits, supplies or discloses such information to the group,
- 6) is responsible for the management of the relevant finances of the group or provides financial or legal advice of great relevance for the group,
- 7) commits one of the offences referred to in subsection 2, paragraphs 1 and 2, of section 1 in Chapter 32,

and where the group's activities include the commission of or an attempt to commit an offence referred to in section 1 or the commission of an offence referred to in section 2, shall be sentenced, unless the act shall be punished under section 1 or 2 or unless the same or a more severe penalty for the act is provided by other provisions of law, for *promotion of a terrorist group* to imprisonment for at least four months and at most eight years.

The provisions in paragraph 6 above, concerning the provision of legal advice, do not apply to advice given in the performance of the duties of a legal counsel or attorney in the context of criminal investigations, court proceedings or enforcement of sentences.

Section 5 - Financing of terrorism

A person who directly or indirectly provides or collects funds with the intention that they should be used or in the knowledge that they are to be used in order to commit:

- 1) kidnapping or hostage taking,
- 2) such criminal mischief, aggravated criminal mischief or preparation of endangerment as shall be considered an offence referred to in the International Convention for the Suppression of Terrorist Bombings (FTS 60/2002)
- 3) such criminal mischief, criminal traffic mischief, aggravated criminal mischief or preparation of endangerment as shall be considered an offence referred to in the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (FTS 56/1973), in the Protocol

for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (FTS 43/1998), in the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (FTS 11/1999), or in the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (FTS 44/2000),

4) such a nuclear material offence, an offence of health endangerment or aggravated health endangerment, unlawful use of nuclear energy or other punishable act addressed at nuclear material or committed by means of using nuclear material, as shall be considered an offence referred to in the Convention on the Physical Protection of Nuclear Material (FTS 72/1989)

5) murder, manslaughter, killing, aggravated assault, deprivation of personal liberty, aggravated deprivation of personal liberty, kidnapping, hostage taking or aggravated breaking of peace, or threatening with such an act, where it is addressed at a person referred to in the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (FTS 63/1978)

shall be sentenced, for *financing of terrorism*, to imprisonment for at least four months and at most eight years.

A person who directly or indirectly provides or collects funds with the intention that they should be used or in the knowledge that they are to be used in order to commit any of the offences referred to in section 1, shall also be sentenced for financing of terrorism.

An attempt is punishable.

The above provisions of this section shall not apply to an act which is punishable as the commission of or an attempt to commit an offence referred to in paragraphs 1 to 5 of subsection 1, as participation in such an offence or under the provisions of section 1 or 2, or for which a more severe sentence is provided by other provisions of law.

Section 6 – Definitions

The perpetrator of an offence is considered to act with a terrorist intention where the offence is committed with the aim of:

- 1) seriously intimidating a population;
- 2) unduly compelling a Government or other authority or an international organisation to perform, tolerate or abstain from performing any act;

- 3) unlawfully repealing or amending the constitution of a State or seriously destabilizing the legal order of a State, or seriously damaging the economic or social structures of a State; or
- 4) seriously damaging the economic or other fundamental structures of an international organisation.

'Terrorist group' shall mean a structured group of more than two persons, established over a period of time and acting in concert to commit offences referred to in section 1 above.

'International organisation' shall mean an intergovernmental organisation or an organisation which, due to its role and internationally recognized status, is comparable with an intergovernmental organisation.

Section 7 - Right of prosecution

A decision on prosecution in respect of offences referred to in the provisions of this Chapter shall be made by the Prosecutor General. At the same time, the Prosecutor General shall designate the prosecutor in charge of the case.

Section 8 - Liability of legal persons

The provisions on the liability of legal persons shall apply to the offences specified in this Chapter.

The provisions on the liability of legal persons shall also apply to theft, aggravated theft, extortion and aggravated extortion perpetrated with a view to committing one of the offences specified in section 1 or subsection 1, paragraph 3, of section 1 in this Chapter, and to forgery and aggravated forgery perpetrated with a view to committing one of the offences specified in subsection 1, paragraphs 2 to 7, or subsection 2 of section 1, in subsection 1, paragraph 3, of section 2, or in section 4 or 5 in this Chapter.

XXXVI. FRANCE⁸⁶

1. ELEMENTS DU DISPOSITIF LEGISLATIF ET REGLEMENTAIRE DE LA FRANCE

Répression du recrutement de groupes terroristes

Le recrutement de membres de groupes terroristes est visé par la loi française dans le cadre de l'infraction d'association de malfaiteurs à caractère terroriste, qui réside dans le fait de «participer à un groupement formé ou à une entente établie en vue de la préparation, caractérisée par un ou plusieurs éléments matériels d'actes de terrorisme». Cette infraction est punie d'une peine de 10 ans d'emprisonnement et de 1 500 000 FF d'amende.

Les autorités judiciaires mettent systématiquement en oeuvre des poursuites judiciaires dès lors que des indices graves et concordants laissent présumer la constitution d'une association de malfaiteurs se donnant pour but de commettre des actes de terrorisme.

La loi française réprime également les infractions à la législation de 1936 sur l'interdiction des groupes de combat et de mouvements dissous. Ces infractions sont punies plus sévèrement depuis 1996 lorsqu'elles sont en relation avec une entreprise terroriste. Les peines encourues varient de 5 à 10 ans d'emprisonnement, assorties d'amendes, selon qu'il s'agit de participation, de maintien ou de reconstitution de mouvement dissous ou de groupe de combat.

Cette politique pénale développée avec constance permet d'identifier, le plus tôt et le plus en amont, les activités conspiratrices susceptibles de menacer gravement l'ordre public conduites par des personnes dont l'interpellation a posteriori serait d'autant plus délicate qu'elles appartiennent à des organisations internationales bénéficiant de réseaux de soutien basés à l'étranger.

Par ailleurs, en réprimant d'une part l'incitation à la haine raciale, à la discrimination et à la violence, d'autre part l'apologie du terrorisme, la loi du 29 juillet 1881 permet de sanctionner à la fois la diffusion, à des fins de propagande, et donc de recrutement, mais aussi les personnes physiques ou morales qui se livrent à du prosélytisme à des fins de terrorisme.

Tous ces faits sont susceptibles d'être poursuivis de manière identique, que l'activité terroriste vise le territoire français ou un territoire étranger, et font dès lors l'objet de procédures judiciaires.

⁸⁶ Transmitted to the Secretariat by that Government on 24 December 2001 (S/2001/1274, enclosure). Information was also provided in respect of the national legislation related to money-laundering, the financing of terrorism and combating biological terrorism.

Une loi relative à la sécurité quotidienne a été adoptée le 15 novembre 2001. Elle contient des dispositions nouvelles pour:

a) Renforcer la lutte contre les infractions pouvant avoir un lien avec des activités terroristes :

– Possibilité pour les forces de police ou de gendarmerie de visiter les véhicules automobiles dans le cadre d’infractions portant particulièrement atteinte à la sécurité publique telles que les infractions relatives au terrorisme, au trafic d’armes, d’explosifs ou de stupéfiants;

– Possibilité de perquisitionner des locaux non habités pendant la nuit sur ordre d’un magistrat dans le cadre d’infractions relatives au terrorisme, au trafic d’armes, d’explosifs ou de stupéfiants;

b) Renforcer plus généralement la lutte contre le terrorisme :

– Possibilité d’effectuer des enregistrements vidéo d’auditions ou d’utiliser des moyens de vidéoconférence dans le cadre de confrontations pour les infractions liées au terrorisme ou au trafic de stupéfiants, afin d’assurer une transmission plus rapide des informations au magistrat instructeur et d’éviter des transfèrements inutiles;

– Les données personnelles incluses dans les systèmes de traitement des données personnelles des services de police pourront être consultées par l’administration dans le cadre de situations spécifiques qui seront énumérées par décret;

– Les données de connexions Internet et autres données techniques devront être conservées suffisamment longtemps pour permettre l’identification et les poursuites des auteurs d’infractions.

2. CODE PENAL

LIVRE II, TITRE II: DU TERRORISME

Chapitre 1er : Des actes de terrorisme

Article 421-1⁸⁷

⁸⁷ Loi No 96-647 du 22 juillet 1996, art. 1, Journal Officiel du 23 juillet 1996 ; Loi No 98-467 du 17 juin 1998, art. 84, Journal Officiel du 18 juin 1998 ; Loi No 2001-1062 du 15 novembre 2001, art. 33, Journal Officiel du 16 novembre 2001[0].

Constituent des actes de terrorisme, lorsqu'elles sont intentionnellement en relation avec une entreprise individuelle ou collective ayant pour but de troubler gravement l'ordre public par l'intimidation ou la terreur, les infractions suivantes :

1° Les atteintes volontaires à la vie, les atteintes volontaires à l'intégrité de la personne, l'enlèvement et la séquestration ainsi que le détournement d'aéronef, de navire ou de tout autre moyen de transport, définis par le livre II du présent code;

2° Les vols, les extorsions, les destructions, dégradations et détériorations, ainsi que les infractions en matière informatique définis par le livre III du présent code;

3° Les infractions en matière de groupes de combat et de mouvements dissous définies par les articles 431-13 à 431-17 et les infractions définies par les articles 434-6 et 441-2 à 441-5;

4° La fabrication ou la détention de machines, engins meurtriers ou explosifs, définies à l'article 3 de la loi du 19 juin 1871 qui abroge le décret du 4 septembre 1870 sur la fabrication des armes de guerre;

– La production, la vente, l'importation ou l'exportation de substances explosives, définies à l'article 6 de la loi No 70-575 du 3 juillet 1970 portant réforme du régime des poudres et substances explosives;

– L'acquisition, la détention, le transport ou le port illégitime de substances explosives ou d'engins fabriqués à l'aide desdites substances, définis à l'article 38 du décret-loi du 18 avril 1939 fixant le régime des matériels de guerre, armes et munitions;

– La détention, le port et le transport d'armes et de munitions des première et quatrième catégories, définis aux articles 24, 28, 31 et 32 du décret-loi précité;

– Les infractions définies aux articles 1er et 4 de la loi No 72-467 du 9 juin 1972 interdisant la mise au point, la fabrication, la détention, le stockage, l'acquisition et la cession d'armes biologiques ou à base de toxines;

– Les infractions prévues par les articles 58 à 63 de la loi No 98-467 du 17 juin 1998 relative à l'application de la Convention du 13 janvier 1993 sur l'interdiction de la mise au point, de la fabrication, du stockage et de l'emploi des armes chimiques et sur leur destruction;

5° Le recel du produit de l'une des infractions prévues aux 1E° à 4E° ci-dessus;

6° Les infractions de blanchiment prévues au chapitre IV du titre II du livre III du présent code;

7° Les délits d'initié prévus à l'article L. 465-1 du Code monétaire et financier.

Article 421-2⁸⁸

Constitue également un acte de terrorisme, lorsqu'il est intentionnellement en relation avec une entreprise individuelle ou collective ayant pour but de troubler gravement l'ordre public par l'intimidation ou la terreur, le fait d'introduire dans l'atmosphère, sur le sol, dans le sous-sol ou dans les eaux, y compris celles de la mer territoriale, une substance de nature à mettre en péril la santé de l'homme ou des animaux ou le milieu naturel.

Article 421-2-1⁸⁹

Constitue également un acte de terrorisme le fait de participer à un groupement formé ou à une entente établie en vue de la préparation, caractérisée par un ou plusieurs faits matériels, d'un des actes de terrorisme mentionnés aux articles précédents.

Article 421-2-2⁹⁰

Constitue également un acte de terrorisme le fait de financer une entreprise terroriste en fournissant, en réunissant ou en gérant des fonds, des valeurs ou des biens quelconques ou en donnant des conseils à cette fin, dans l'intention de voir ces fonds, valeurs ou biens utilisés ou en sachant qu'ils sont destinés à être utilisés, en tout ou partie, en vue de commettre l'un quelconque des actes de terrorisme prévus au présent chapitre, indépendamment de la survenance éventuelle d'un tel acte.

Article 421-3⁹¹

Le maximum de la peine privative de liberté encourue pour les infractions mentionnées à l'article 421-1 est relevé ainsi qu'il suit lorsque ces infractions constituent des actes de terrorisme :

1° Il est porté à la réclusion criminelle à perpétuité lorsque l'infraction est punie de trente ans de réclusion criminelle;

⁸⁸ Loi No 96-647 du 22 juillet 1996 art. 2 Journal Officiel du 23 juillet 1996.

⁸⁹ Inséré par Loi No 96-647 du 22 juillet 1996, art. 3, Journal Officiel du 23 juillet 1996.

⁹⁰ Inséré par Loi No 2001-1062 du 15 novembre 2001, art. 33, Journal Officiel du 16 novembre 2001.

⁹¹ Loi No 96-647 du 22 juillet 1996, art. 4, Journal Officiel du 23 juillet 1996.

2° Il est porté à trente ans de réclusion criminelle lorsque l'infraction est punie de vingt ans de réclusion criminelle;

3° Il est porté à vingt ans de réclusion criminelle lorsque l'infraction est punie de quinze ans de réclusion criminelle;

4° Il est porté à quinze ans de réclusion criminelle lorsque l'infraction est punie de dix ans d'emprisonnement;

5° Il est porté à dix ans d'emprisonnement lorsque l'infraction est punie de sept ans d'emprisonnement;

6° Il est porté à sept ans d'emprisonnement lorsque l'infraction est punie de cinq ans d'emprisonnement;

7° Il est porté au double lorsque l'infraction est punie d'un emprisonnement de trois ans au plus.

Les deux premiers alinéas de l'article 132-23 relatif à la période de sûreté sont applicables aux crimes, ainsi qu'aux délits punis de dix ans d'emprisonnement, prévus par le présent article.

Article 421-4

L'acte de terrorisme défini à l'article 421-2 est puni de quinze ans de réclusion criminelle et de 1 500 000 F d'amende.

Lorsque cet acte a entraîné la mort d'une ou plusieurs personnes, il est puni de la réclusion criminelle à perpétuité et de 5 000 000 F d'amende.

Les deux premiers alinéas de l'article 132-23 relatif à la période de sûreté sont applicables au crime prévu par le présent article.

Article 421-5⁹²

Les actes de terrorisme définis aux articles 421-2-1 et 421-2-2 sont punis de dix ans d'emprisonnement et de 1 500 000 F d'amende.

La tentative du délit défini à l'article 421-2-2 est punie des mêmes peines.

Les deux premiers alinéas de l'article 132-23 relatif à la période de sûreté sont applicables aux délits prévus par le présent article.

⁹² Loi No 96-647 du 22 juillet 1996, art., 5 Journal Officiel du 23 juillet 1996; Loi No 2001-1062 du 15 novembre 2001, art. 33, Journal Officiel du 16 novembre 2001.

Chapitre II : Dispositions particulières

Article 422-1

Toute personne qui a tenté de commettre un acte de terrorisme est exempte de peine si, ayant averti l'autorité administrative ou judiciaire, elle a permis d'éviter la réalisation de l'infraction et d'identifier, le cas échéant, les autres coupables.

Article 422-2

La peine privative de liberté encourue par l'auteur ou le complice d'un acte de terrorisme est réduite de moitié si, ayant averti les autorités administratives ou judiciaires, il a permis de faire cesser les agissements incriminés ou d'éviter que l'infraction n'entraîne mort d'homme ou infirmité permanente et d'identifier, le cas échéant, les autres coupables. Lorsque la peine encourue est la réclusion criminelle à perpétuité, celle-ci est ramenée à vingt ans de réclusion criminelle.

Article 422-3⁹³

Les personnes physiques coupables de l'une des infractions prévues par le présent titre encourent également les peines complémentaires suivantes:

1° L'interdiction des droits civiques, civils et de famille, suivant les modalités prévues par l'article 131-26. Toutefois, le maximum de la durée de l'interdiction est porté à quinze ans en cas de crime et à dix ans en cas de délit;

2° L'interdiction, suivant les modalités prévues par l'article 131-27, d'exercer une fonction publique ou d'exercer l'activité professionnelle ou sociale dans l'exercice ou à l'occasion de l'exercice de laquelle l'infraction a été commise. Toutefois, le maximum de la durée de l'interdiction temporaire est porté à dix ans;

3° L'interdiction de séjour, suivant les modalités prévues par l'article 131-31. Toutefois, le maximum de la durée de l'interdiction est porté à quinze ans en cas de crime et à dix ans en cas de délit.

Article 422-4⁹⁴

L'interdiction du territoire français peut être prononcée dans les conditions prévues par l'article 131-30, soit à titre définitif, soit pour une durée de dix ans au plus, à l'encontre de tout étranger coupable de l'une des infractions

⁹³ Loi No 96-647 du 22 juillet 1996, art. 6, Journal Officiel du 23 juillet 1996.

⁹⁴ Loi No 93-1027 du 24 août 1993, art. 33, Journal Officiel du 29 août 1993; Loi No 98-349 du 11 mai 1998, art. 37, Journal Officiel du 12 mai 1998.

définies au présent titre. Les dispositions des sept derniers alinéas de l'article 131-10 ne sont pas applicables.

Article 422-5

Les personnes morales peuvent être déclarées responsables pénalement, dans les conditions prévues par l'article 121-2, des actes de terrorisme définis au présent titre.

Les peines encourues par les personnes morales sont:

- 1° L'amende, suivant les modalités prévues par l'article 131-38;
- 2° Les peines mentionnées à l'article 131-39.

L'interdiction mentionnée au 2° de l'article 131-39 porte sur l'activité dans l'exercice ou à l'occasion de l'exercice de laquelle l'infraction a été commise.

Article 422-6⁹⁵

Les personnes physiques ou morales reconnues coupables d'actes de terrorisme encourent également la peine complémentaire de confiscation de tout ou partie de leurs biens quelle qu'en soit la nature, meubles ou immeubles, divis ou indivis.

Article 422-7⁹⁶

Le produit des sanctions financières ou patrimoniales prononcées à l'encontre des personnes reconnues coupables d'actes de terrorisme est affecté au fonds de garantie des victimes des actes de terrorisme et d'autres infractions.

PROVOCATION ET APOLOGIE DU TERRORISME⁹⁷

Article 24⁹⁸

Seront punis de cinq ans d'emprisonnement et de 300 000 F d'amende ceux qui, par l'un des moyens énoncés à l'article précédent, auront directement provoqué, dans le cas où cette provocation n'aurait pas été suivie d'effet, à commettre l'une des infractions suivantes :

⁹⁵ Inséré par Loi No 2001-1062 du 15 novembre 2001, art. 33, Journal Officiel du 16 novembre 2001.

⁹⁶ Inséré par Loi No 2001-1062 du 15 novembre 2001, art. 33, Journal Officiel du 16 novembre 2001.

⁹⁷ Loi du 29 juillet 1881 modifiée – chapitre IV : des crimes et délits commis par voie de la presse ou par tout autre moyen de publication.

⁹⁸ Modifié par Loi 92-1336 16 Décembre 1992, art 246, 322, 326, 330, 331 JORF 23 décembre 1992 en vigueur le 1er mars 1994.

(...) Seront punis des peines prévues par l'alinéa 1er ceux qui, par les mêmes moyens, auront provoqué directement aux actes de terrorisme prévus par le titre II du livre IV du Code pénal, ou qui en auront fait l'apologie.

3. CODE DE PROCEDURE PENALE (partie législative)

TITRE XV: DE LA POURSUITE, DE L'INSTRUCTION ET DU JUGEMENT DES ACTES DE TERRORISME

*Article 706-16*⁹⁹

Les actes de terrorisme incriminés par les articles 421-1 à 421-5 du Code pénal, ainsi que les infractions connexes sont poursuivis, instruits et jugés selon les règles du présent code sous réserve des dispositions du présent titre.

Ces dispositions sont également applicables à la poursuite, à l'instruction et au jugement des actes de terrorisme commis à l'étranger lorsque la loi française est applicable en vertu des dispositions de la section 2 du chapitre III du titre Ier du livre Ier du Code pénal.

SECTION I : COMPETENCE

*Article 706-17*¹⁰⁰

Pour la poursuite, l'instruction et le jugement des infractions entrant dans le champ d'application de l'article 706-16, le procureur de la République, le juge d'instruction, le tribunal correctionnel et la cour d'assises de Paris exercent une compétence concurrente à celle qui résulte de l'application des articles 43, 52, 382 et du second alinéa de l'article 663.

En ce qui concerne les mineurs, le procureur de la République, le juge d'instruction, le juge des enfants, le tribunal pour enfants et la cour d'assises des mineurs de Paris exercent une compétence concurrente à celle qui résulte de l'application des dispositions de l'ordonnance No 45-174 du 2 février 1945 relative à l'enfance délinquante.

Lorsqu'ils sont compétents pour la poursuite et l'instruction des infractions entrant dans le champ d'application de l'article 706-16, le procureur de

⁹⁹ Loi No 86-1020 du 9 septembre 1986 art. 1 Journal Officiel du 10 septembre 1986 ; Loi No 92-1336 du 16 décembre 1992 art. 74 et 75 Journal Officiel du 23 décembre 1992 en vigueur le 1^{er} mars 1994 ; Loi No 96-647 du 22 juillet 1996 art. 8, art. 9 Journal Officiel du 23 juillet 1996.

¹⁰⁰ Loi No 86-1020 du 9 septembre 1986 art. 1 Journal Officiel du 10 septembre 1986 ; Loi No 92-1336 du 16 décembre 1992 art. 74 Journal Officiel du 23 décembre 1992 en vigueur le 1^{er} mars 1994 ; Loi No 2001-1062 du 15 novembre 2001 art. 33 Journal Officiel du 16 novembre 2001.

la République et le juge d'instruction de Paris exercent leurs attributions sur toute l'étendue du territoire national.

L'instruction des actes de terrorisme définis aux 5E° à 7E° de l'article 421-1 du Code pénal et à l'article 421-2-2 du même code peut être confiée, le cas échéant dans les conditions prévues au deuxième alinéa de l'article 83, à un magistrat du tribunal de grande instance de Paris affecté aux formations d'instruction spécialisées en matière économique et financière en application des dispositions du dernier alinéa de l'article 704.

Article 706-17-1¹⁰¹

Pour le jugement des délits et des crimes entrant dans le champ d'application de l'article 706-16, le premier président de la cour d'appel de Paris peut, sur les réquisitions du procureur général, après avis des chefs des tribunaux de grande instance intéressés, du bâtonnier de Paris et, le cas échéant, du président de la cour d'assises de Paris, décider que l'audience du tribunal correctionnel, de la chambre des appels correctionnels de Paris ou de la cour d'assises de Paris se tiendra, à titre exceptionnel et pour des motifs de sécurité, dans tout autre lieu du ressort de la cour d'appel que celui où ces juridictions tiennent habituellement leurs audiences.

L'ordonnance prise en application du précédent alinéa est portée à la connaissance des tribunaux intéressés par les soins du procureur général. Elle constitue une mesure d'administration judiciaire qui n'est pas susceptible de recours.

Article 706-18¹⁰²

Le procureur de la République près un tribunal de grande instance autre que celui de Paris peut, pour les infractions entrant dans le champ d'application de l'article 706-16, requérir le juge d'instruction de se dessaisir au profit de la juridiction d'instruction de Paris. Les parties sont préalablement avisées et invitées à faire connaître leurs observations; l'ordonnance est rendue huit jours au plus tôt après cet avis.

L'ordonnance par laquelle le juge d'instruction se dessaisit ne prend effet qu'à compter du délai de cinq jours prévu par l'article 706-22; lorsqu'un recours est exercé en application de cet article, le juge d'instruction demeure saisi jusqu'à ce que l'arrêt de la chambre criminelle de la Cour de cassation soit porté à sa connaissance.

¹⁰¹ Inséré par Loi No 97-1273 du 29 décembre 1997 art. 1 Journal Officiel du 31 décembre 1997.

¹⁰² Loi No 86-1020 du 9 septembre 1986 art. 1 Journal Officiel du 10 septembre 1986; Loi No 92-1336 du 16 décembre 1992 art. 74 Journal Officiel du 23 décembre 1992 en vigueur le 1er mars 1994; Loi No 93-2 du 4 janvier 1993 art. 216 Journal Officiel du 5 janvier 1993 en vigueur le 1er mars 1993; Loi No 2000-516 du 15 juin 2000 art. 83 Journal Officiel du 16 juin 2000 en vigueur le 1er janvier 2001.

Dès que l'ordonnance est devenue définitive, le procureur de la République adresse le dossier de la procédure au procureur de la République de Paris.

Les dispositions du présent article sont applicables devant la chambre de l'instruction.

Article 706-19 ¹⁰³

Lorsqu'il apparaît au juge d'instruction de Paris que les faits dont il a été saisi ne constituent pas une des infractions entrant dans le champ d'application de l'article 706-16 et ne relèvent pas de sa compétence à un autre titre, ce magistrat se déclare incompétent, soit sur requête du procureur de la République, soit, après avis de ce dernier, d'office ou sur requête des parties. Celles des parties qui n'ont pas présenté requête sont préalablement avisées et invitées à faire connaître leurs observations; l'ordonnance est rendue au plus tôt huit jours après cet avis.

Les dispositions du deuxième alinéa de l'article 706-18 sont applicables à l'ordonnance par laquelle le juge d'instruction de Paris se déclare incompétent.

Dès que l'ordonnance est devenue définitive, le procureur de la République de Paris adresse le dossier de la procédure au procureur de la République territorialement compétent.

Les dispositions du présent article sont applicables lorsque la chambre de l'instruction de la cour d'appel de Paris statue sur sa compétence.

SECTION II: PROCEDURE

Article 706-23 ¹⁰⁴

Pour l'application des articles 63, 77 et 154, si les nécessités de l'enquête ou de l'instruction relatives à l'une des infractions entrant dans le champ d'application de l'article 706-16 l'exigent, la garde à vue d'une personne majeure peut faire l'objet d'une prolongation supplémentaire de quarante-huit heures. Cette prolongation est autorisée soit, à la requête du procureur de la République, par le juge des libertés et de la détention, soit, dans les cas prévus par les articles 72 et 154, par le juge d'instruction.

¹⁰³ Loi No 86-1020 du 9 septembre 1986 art. 1 Journal Officiel du 10 septembre 1986; Loi No 92-1336 du 16 décembre 1992 art. 74 Journal Officiel du 23 décembre 1992 en vigueur le 1er mars 1994; Loi No 93-2 du 4 janvier 1993 art. 217 Journal Officiel du 5 janvier 1993 en vigueur le 1er mars 1993; Loi No 2000-516 du 15 juin 2000 art. 83 Journal Officiel du 16 juin 2000 en vigueur le 1er janvier 2001.

¹⁰⁴ Loi No 86-1020 du 9 septembre 1986 art. 1 Journal Officiel du 10 septembre 1986 ; Loi No 92-1336 du 16 décembre 1992 art. 74 Journal Officiel du 23 décembre 1992 en vigueur le 1er mars 1994 ; Loi No 2000-516 du 15 juin 2000 art. 49 Journal Officiel du 16 juin 2000 en vigueur le 16 juin 2002.

L'intéressé doit être présenté à l'autorité qui statue sur la prolongation préalablement à sa décision.

Dans le cas où la prolongation est décidée, un examen médical est de droit. Le procureur de la République ou, dans les cas prévus par les articles 72 et 154, le juge d'instruction est compétent pour désigner le médecin chargé de cet examen.

*Article 706-24*¹⁰⁵

Par dérogation aux dispositions de l'article 76, si les nécessités de l'enquête relatives à l'une des infractions entrant dans le champ d'application de l'article 706-16 l'exigent, le juge des libertés et de la détention du tribunal de grande instance peut, à la requête du procureur de la République, décider que les perquisitions, visites domiciliaires et saisies de pièces à conviction pourront être faites sans l'assentiment de la personne chez laquelle elles ont lieu. Si ces opérations ne concernent pas des locaux d'habitation, le juge des libertés et de la détention peut autoriser leur réalisation en dehors des heures prévues à l'article 59.¹⁰⁶

Si les nécessités de l'enquête¹⁰⁷ de flagrance l'exigent, les visites, perquisitions et saisies peuvent être opérées en dehors des heures prévues par l'article 59.

Les opérations prévues à l'alinéa précédent doivent, à peine de nullité, être autorisées sur requête du procureur de la République par le juge des libertés et de la détention du tribunal de grande instance,¹⁰⁸ les autorisations sont données pour des perquisitions déterminées. Chaque autorisation fait l'objet d'une décision écrite, précisant la qualification de l'infraction dont la preuve est recherchée ainsi que l'adresse des lieux dans lesquels les visites, perquisitions et saisies peuvent être effectuées, et motivée par référence aux éléments de fait justifiant que ces opérations sont nécessaires. Celles-ci sont effectuées sous le contrôle du magistrat qui les a autorisées, et qui peut se déplacer sur les lieux pour veiller au respect des dispositions légales.

¹⁰⁵ Loi No 86-1020 du 9 septembre 1986 art. 1 Journal Officiel du 10 septembre 1986 ; Loi No 92-1336 du 16 décembre 1992 art. 74 Journal Officiel du 23 décembre 1992 en vigueur le 1er mars 1994 ; Loi No 96-647 du 22 juillet 1996 art. 10 Journal Officiel du 23 juillet 1996 ; Loi No 96-1235 du 30 décembre 1996 art. 16 Journal Officiel du 1er janvier 1997 ; Loi No 2000-516 du 15 juin 2000 art. 49 Journal Officiel du 16 juin 2000 en vigueur le 16 juin 2002 ; Loi No 2001-1062 du 15 novembre 2001 art. 24 Journal Officiel du 16 novembre 2001.

¹⁰⁶ Les trois premiers alinéas de l'article 10 sont déclarés non conformes à la Constitution par décision du Conseil constitutionnel No 96-377 DC du 16 juillet 1996 dans la mesure où ils visent les cas d'enquête préliminaire.

¹⁰⁷ Dispositions déclarées non conformes à la Constitution par décision du Conseil constitutionnel No 96-377 DC du 16 juillet 1996.

¹⁰⁸ Dispositions déclarées non conformes à la Constitution par décision du Conseil constitutionnel No 96-377 DC du 16 juillet 1996.

Ces opérations ne peuvent, à peine de nullité, avoir un autre objet que la recherche et la constatation des infractions entrant dans le champ d'application de l'article 706-16.

Pour l'application des dispositions du présent article, le juge des libertés et de la détention du tribunal de grande instance est le juge des libertés et de la détention du tribunal de grande instance dans le ressort duquel les opérations sont effectuées ou le juge des libertés et de la détention du tribunal de grande instance de Paris, ce dernier exerçant alors ses attributions sur toute l'étendue du territoire national.

Article 706-24-1¹⁰⁹

En cas d'urgence, si les nécessités de l'instruction l'exigent, les visites, perquisitions et saisies peuvent être effectuées en dehors des heures prévues par l'article 59, pour la recherche et la constatation des actes de terrorisme prévus par l'article 706-16 et punis d'au moins dix ans d'emprisonnement:

- 1° Lorsqu'il s'agit d'un crime ou d'un délit flagrant;
- 2° Lorsqu'il existe un risque immédiat de disparition des preuves ou des indices matériels;
- 3° Lorsqu'il existe des présomptions qu'une ou plusieurs personnes se trouvant dans les locaux où la perquisition doit avoir lieu se préparent à commettre de nouveaux actes de terrorisme.

À peine de nullité, ces opérations doivent être prescrites par une ordonnance motivée du juge d'instruction précisant la nature de l'infraction dont la preuve est recherchée ainsi que l'adresse des lieux dans lesquelles ces opérations doivent être accomplies, et comportant l'énoncé des considérations de droit et de fait qui constituent le fondement de cette décision par référence aux seules conditions prévues par les 1°, 2° et 3° du présent article.

Cette ordonnance est notifiée par tout moyen au procureur de la République. Elle n'est pas susceptible d'appel.

Les dispositions du quatrième alinéa de l'article 706-24 sont applicables.

Article 706-24-2¹¹⁰

En cas d'information ouverte pour une infraction entrant dans le champ d'application de l'article 706-16 et afin de garantir le paiement des amendes

¹⁰⁹ Inséré par Loi No 96-1235 du 30 décembre 1996 art. 16 Journal Officiel du 1er janvier 1997.

¹¹⁰ Inséré par Loi No 2001-1062 du 15 novembre 2001 art. 33 Journal Officiel du 16 novembre 2001.

encourues ainsi que l'exécution de la confiscation prévue à l'article 422-6 du Code pénal, le juge des libertés et de la détention peut, sur requête du procureur de la République, ordonner, aux frais avancés du Trésor et selon les modalités prévues par le Code de procédure civile, des mesures conservatoires sur les biens de la personne mise en examen. La condamnation vaut validation des saisies conservatoires et permet l'inscription définitive des sûretés.

La décision de non-lieu, de relaxe ou d'acquiescement emporte de plein droit, aux frais du Trésor, mainlevée des mesures ordonnées. Il en est de même en cas d'extinction de l'action publique.

Pour l'application des dispositions du présent article, le juge des libertés et de la détention est compétent sur l'ensemble du territoire national.

*Article 706-25*¹¹¹

Pour le jugement des accusés majeurs, les règles relatives à la composition et au fonctionnement de la cour d'assises sont fixées par les dispositions de l'article 698-6.

Pour l'application de l'alinéa précédent, le juge d'instruction ou la chambre de l'instruction qui prononce la mise en accusation constate que les faits entrent dans le champ d'application de l'article 706-16.

*Article 706-25-1*¹¹²

L'action publique des crimes mentionnés à l'article 706-16 se prescrit par trente ans. La peine prononcée en cas de condamnation pour l'un de ces crimes se prescrit par trente ans à compter de la date à laquelle la condamnation est devenue définitive.

L'action publique relative au délit mentionné à l'article 706-16 se prescrit par vingt ans. La peine prononcée en cas de condamnation pour ce délit se prescrit par vingt ans à compter de la date à laquelle la condamnation est devenue définitive.

¹¹¹ Loi No 86-1020 du 9 septembre 1986, art. 1, Journal Officiel du 10 septembre 1986; Loi No 86-1322 du 30 décembre 1986, art. 1, Journal Officiel du 31 décembre 1986; Loi No 92-1336 du 16 décembre 1992, art. 74 et 76, Journal Officiel du 23 décembre 1992 en vigueur le 1er mars 1994; Loi No 2000-516 du 15 juin 2000, art. 83 et 136, Journal Officiel du 16 juin 2000 en vigueur le 1er janvier 2001.

¹¹² Inséré par Loi No 95-125 du 8 février 1995, art. 52, Journal Officiel du 9 février 1995.

XXXVII. GABON¹¹³

ELEMENTS DU DISPOSITIF LEGISLATIF ET REGLEMENTAIRE DU GABON

À défaut des dispositions expresses visant la prévention et la répression du terrorisme, le juge pénal gabonais peut se référer en cas d'actes terroristes, aux dispositions des articles 61 à 74 du Code pénal qui traitent des crimes et délits contre la sûreté intérieure et extérieure de l'État.

À titre indicatif, et pour avoir une idée de l'intransigeance du législateur gabonais sur cette question, qu'il suffise de relever que l'article 61, alinéa 10 du Code pénal punit de mort toutes personnes convaincues de tels crimes.

On peut se référer aux articles 193 et 194 du Code pénal qui traitent de l'association de malfaiteurs. À titre indicatif, l'article 194 dispose: «sera puni de la peine de mort quiconque se sera affilié à une association formée ou aura participé à une entente dans le but de préparer ou de commettre des crimes ou délits contre les personnes ou les propriétés».

XXXVIII. GAMBIA¹¹⁴

ANTI-TERRORISM ACT, 2002

ARRANGEMENT OF SECTIONS

SECTION

PART I - PRELIMINARY

1. Short title
2. Interpretation

PART II - ACTS OF TERRORISM AND RELATED OFFENCES

3. Prohibition of acts of terrorism
4. Proscribed organizations
5. Terrorist meetings
6. Supporting terrorism
7. Harboursing terrorists

¹¹³ Transmitted to the Secretariat by that Government on 31 March 2003 (S/2003/491, enclosure).

¹¹⁴ Transmitted to the Secretariat by that Government on 28 March 2003 (S/2003/434, enclosure).

8. Information about acts of terrorism
9. Obstructing terrorist investigations
10. International terrorism
11. Financing international terrorism
12. Providing or collecting property for certain activities
13. Collecting, providing, making available, etc., property or services for purpose of terrorism
14. Using or possessing property for purposes of terrorism
15. Hostages

PART III - TERRORIST FUNDS AND TERRORIST PROPERTY

16. Interpretation of this Part
17. Seizure and detention of terrorist funds
18. Terrorist funding
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PART V - FOREIGN INCURSIONS AND RECRUITMENT

34. Incursions into foreign State for purpose of engaging in hostile activities
35. Preparations for incursions to foreign States for purpose of engaging in hostile activities
36. Recruiting persons to join organizations engaged in hostile activities against foreign Governments
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PART VII - IMPLEMENTATION OF UNITED NATIONS ANTI-TERRORISM MEASURES

48. Interpretation of this Part
49. Prohibition against provision or collection of funds for terrorists
50. Prohibition against dealing with property of terrorists
51. Prohibition against provision of resources and services for benefit of terrorists
52. Prohibition against false threats of acts of terrorism
53. General prohibition
54. Duty to provide information
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PART VIII - INVESTIGATION

56. Power of investigation
57. Power of investigation in cases of urgency
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SCHEDULES

First Schedule - Custody Records

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AN ACT to provide for measures to combat terrorism and for related matters
[]

ENACTED by the President and National Assembly.

PART I - PRELIMINARY

- 1. This Act may be cited as the Anti-Terrorism Act, 2002.
- 2. In this Act, unless the context otherwise requires –
 - “act of international terrorism” has the same meaning as in section 10 (4);
 - “act of terrorism” includes an act which –
 - (a) may seriously damage a country or an international organization;
 - (b) is intended or can reasonably be regarded as having been intended to –
 - (i) intimidate a population,
 - (ii) seriously destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or any international organization, or otherwise influence a Government or any international organization;
 - (iii) otherwise influence a Government or an international organization;
 - (c) involves or causes, as the case may be –
 - (i) attacks on a person's life which may cause death,

- (ii) attacks on the physical integrity of a person, including rape,
- (iii) forcible deprivation or taking of a person's property, with or without the use of arms, including armed robbery against an individual or group of persons;
- (iii) kidnapping of a person,¹¹⁵
- (iv) extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property, likely to endanger human life or result in major economic loss,
- (v) the seizure of an aircraft, a ship or other means of public or goods transport,
- (vi) the manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons,
- (vii) the release of dangerous substance, or causing of fires, explosions or floods, the effect of which is to endanger human life, or
- (viii) interference with or disruption of the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life;
- (d) is designed to disrupt any computer system or the provision of services directly related to communication infrastructure, banking and financial services, utilities, transportation or key infrastructure;
- (e) is designed to disrupt the provision of essential emergency services such as the police, civil defence and medical services; or
- (f) involves prejudice to public security or national defence;

¹¹⁵ Numbering conforms with the text of the Government submission to the Counter-Terrorism Committee.

“bank”

- (a) has the same meaning as in the Financial Institutions Act; and
- (b) includes –
 - (i) a person engaged in deposit-taking business and authorised to do so under the Financial Institutions Act, and
 - (ii) any person who carries on any business or activity regulated by the Central Bank of The Gambia;

“cash dealer” means a person authorized under the Central Bank Act to carry on the business of foreign exchange dealer or money changer;

“financial institution” has the same meaning as the Financial Institutions Act;

“Inspector General” means the Inspector General of Police;

“Proscribed organization” means an organization which has been declared to be a proscribed organization under section 4;

“Secretary of State” means the Secretary of State responsible for Defence

“State” includes the Republic of The Gambia and any other State;

“Terrorist or terrorists” means a person or persons who, individually or collectively carry out an act of terrorism;

“Terrorist investigation” means an investigation of

- (a) the commission, preparation or instigation of an act of terrorism or any other offence under this Act;
- (b) any act or omission reasonably suspected to have been done preparatory to or in furtherance of an act of terrorism or any other offence under this Act;
- (c) the resources of a proscribed organization;

"terrorist property" includes property which –

- (a) has been, is being, or is likely to be used for any act of terrorism;
- (b) has been, is being, or is likely to be used by a proscribed organization;
- (c) is the proceeds of an act of terrorism; or
- (d) is gathered for the pursuit of, or in connection with, an act of terrorism;

"trustee" includes a person *de jure* or *de facto* acting in trust.

PART II - ACTS OF TERRORISM AND RELATED OFFENCES

3. (1) A person who –

- (a) does an act of terrorism commits an offence and is liable on conviction to be sentenced to death; or
- (b) threatens to do, or does an act preparatory to or in furtherance of, or omits to do anything that is reasonably necessary to prevent an act of terrorism, commits an offence and is liable on conviction to imprisonment for a term of not less than ten years.

(2) When a member of the Armed Forces of The Gambia is charged with an offence under subsection (1) he or she shall be tried by a Court Martial and shall be liable on conviction to be sentenced to death.

4. (1) Where any two or more persons associate for the purpose of, or where an organization engages in –

- (a) participating, or collaborating, in an act of terrorism;
- (b) promoting, encouraging or exhorting others to commit an act of terrorism; or
- (c) setting up or pursuing acts of terrorism,

a Judge in Chambers may, on an application made by the Inspector General, declare the organization to be a proscribed organization.

(2) An order made under subsection (1) shall be published in the *Gazette*, in two newspapers and at such other places, as the Judge shall determine.

(3) A publication made under subsection (2) shall contain such relevant particulars as the Judge may specify.

(4) A person who belongs, or professes to belong, to a proscribed organization commits an offence and is liable on conviction to imprisonment for a term of not less than ten and not more than twenty years.

(5) It is a defence for a person charged under subsection (4) to prove that the organization had not been declared a proscribed organization at the time the person charged became, or began to profess to be, a member of the organization and that he or she has not taken part in the activities of the organization at any time after it has been declared to be a proscribed organization.

(6) The Judge in Chambers may –

(a) on application by the proscribed organization or by any person affected by a declaration made under subsection (1); and

(b) on being satisfied that a proscribed terrorist organization has ceased to engage in any of the acts specified in subsection (1) and that there is no likelihood of the organization engaging in any of the acts specified in subsection (1) in the future,

cancel the declaration made under that subsection.

5. (1) A person who –

(a) arranges, manages, or assists in arranging or managing or participates in a meeting, or an activity, which he or she knows is concerned with an act of terrorism;

(b) provides logistics, equipment or facilities for meeting, or an activity, which he or she knows is concerned with an act of terrorism; or

(c) attends a meeting, which he or she knows is to support a proscribed organization, or to further the objectives of a proscribed organization,

commits an offence.

(2) A person who arranges, manages or assists in arranging or managing a meeting which he or she knows is to be addressed by a person who belongs or promises to belong to a proscribed organization commits an offence.

(3) A person who addresses a meeting and the purpose of his or her address is to encourage support for a proscribed organization or to further its activities commits an offence.

(4) Where a person is charged with an offence under subsection (2), in respect of a private meeting, it is a defence for him or her to prove that he or she had no reasonable cause to believe that the address mentioned in subsection (2) would support a proscribed organization or further its activities.

(5) A person who commits an offence under this section is liable on conviction to imprisonment for a term of not less than ten years and not more than twenty years.

(6) In this section –

(a) “meeting” includes a meeting of two or more persons, whether or not the public is admitted; and

(b) a meeting is private if the public is not admitted.

6. (1) A person who, in any manner or form –

(a) invites or solicits support for, or tenders support in relation to, an act of terrorism;

(b) solicits support for, or tenders support to, a proscribed organization,

commits an offence.

(2) A person who, by any means, directly or indirectly, provides or collects funds, intending, knowing or having reasonable grounds to believe that the funds will be used in full or in part to carry out an act of terrorism commits an offence.

(3) A person who commits an offence under this section is liable on conviction to imprisonment for a term of not less than ten years and not more than twenty years.

(4) For the purposes of subsection (1), “support” includes –

(a) offer or provision of material assistance, weapons including biological, chemical or nuclear weapons, explosives, training, transportation, false documentation or identification;

(b) offer or provision of moral assistance, include invitation to adhere to a proscribed organization.

7. (1) A person who harbours, conceals, or causes to be harboured or concealed, a person whom he or she knows has committed or been convicted of an act of terrorism, or against whom he or she knows a warrant of arrest or imprisonment has been issued for an act of terrorism, commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction to imprisonment for a term of no less than ten years and not more than twenty years.

8. (1) Subject to subsection (2), a person who has information which she or she knows or believes might be of material assistance –

(a) in preventing the commission by another person of an act of terrorism; or

(b) in securing the apprehension, prosecution or conviction of another person for an offence under this Act, and

(c) fails to disclose the information to a police officer at any police station, or to any other State security officer, as soon as reasonably practicable,

commits an offence and is liable on conviction to imprisonment for a term of not less than ten years and not more than fifteen years.

(2) It is a defence for a person charged under subsection (1) to prove that he or she had reasonable excuse for not making the disclosure.

9. (1) A person who –

(a) discloses to another person anything which is likely to prejudice a terrorist investigation or

(b) interferes with any material which is likely to be relevant to terrorist investigation,

commits an offence and is liable on conviction to imprisonment for a term of not less than ten years and not more than fifteen years.

(2) It is a defence for a person charged with an offence under subsection (1) to prove that he or she –

(a) did not know and had no reasonable cause to suspect that the disclosure was like to affect a terrorist investigation; or

(b) had a reasonable excuse for the disclosure or interference.

10. (1) Where the Secretary of State reasonably –
- (a) suspects that a person –
 - (i) is or has been concerned in the commission, preparation or instigation of acts of international terrorism;
 - (ii) is a member of, or belongs to, an international terrorist organization; or
 - (iii) has links with an international terrorist organization; and
 - (b) believes that the person is a risk to national security,
- he or she may declare that person to be a suspected international terrorist.
- (2) The Secretary of State shall, as soon as is reasonably practicable, cause a declaration made under subsection (1) to be notified to the person declared to be a suspected international terrorist in such manner as he or she considers appropriate.
- (3) When a person declared a suspected international terrorist under subsection (1) is a citizen of The Gambia and at the same time a citizen of any other country or State, the Secretary of State may apply to the High Court for an order depriving that person of his or her citizenship on the ground of the declaration.
- (4) For the purposes of this section –
- (a) a group is an international terrorist organization if it is subject to the control or influence of any person or organization outside The Gambia, and the Secretary of State reasonably suspects that it is concerned in the commission, preparation or instigation of acts of international terrorism; and
 - (b) "an act of international terrorism" means an act of terrorism involving a person or organization that –
 - (i) is ordinarily resident The Gambia, or
 - (ii) is ordinarily resident in The Gambia but has connection with a person or an organization resident outside The Gambia.
11. (1) A person who, wilfully and unlawfully, directly or indirectly, provides or collects funds with the intention, or knowledge, that they will be used, in full or in part, in order to –

- (a) commit an offence under section 10;
- (b) do any other act intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, civil strife or any other related terrorist activity, when the purpose of the act, by its nature or context, is to –
 - (i) intimidate a population, or
 - (ii) compel a Government or an international organization to do or abstain from doing any act;

commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction, in the case of –

- (a) an individual, to imprisonment for a term of not less than ten years; and
- (b) an organization, to a fine of not less than ten million dalasis.

(3) For an act to constitute an offence under subsection (1), it shall not be necessary that the funds were actually used to commit the offence.

12. (1) A person who, directly or indirectly, willfully and without lawful justification or excuse, provides or collects property pretending that it be used or knowing that it will be used, in whole or in part, in order to carry out –

- (a) an act or omission that constitutes an offence under section 3;
- (b) any other act or omission intended to cause death or serious bodily harm to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, if the purpose of that act or omission, by its nature or context, is to –
 - (i) intimidate the public, or
 - (ii) compel a government or an international organization to do or refrain from doing any act,

commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction, in the case of –

(a) an individual, to imprisonment for a term of not less than ten years; and

(b) an organization, to a fine of not less than ten million dalasis.

(3) For an act to constitute an offence under subsection (1), it shall not be necessary that the property was actually used to commit the offence.

13. (1) A person who, directly or indirectly, collects property, provides or invites a person to provide, or make available property or financial or other related service –

(a) intending that it be used, or knowing that it will be used, in whole or in part, for the purpose of facilitating or carrying out an act of terrorism, or for the purpose of benefiting any person who is facilitating of carrying out an act of terrorism; or

(b) knowing that, in whole or part, it will be used by or will benefit a proscribed organization,

commits an offence and is liable to imprisonment for a term of not less than ten years.

(2) A person who commits an offence under subsection (1) is liable on conviction, in the case of-

(a) an individual, to imprisonment for a term of not less than ten years; and

(b) an organization, to a fine of not less than ten million dalasis.

(3) For an act to constitute an offence under subsection (1), it shall not be necessary that the property or service was actually used to commit the offence.

14. A person who –

(a) uses property, directly or indirectly, in whole or in part, for the purpose of facilitating or carrying out an act of terrorism; or

(b) possesses property intending that it be used or knowing that it will be used, directly or indirectly, in whole or in part, for the purpose of facilitating or carrying out an act of terrorism, commits an offence and is liable on conviction to imprisonment for a term of not less than ten years.

15. (1) A person who –

(a) seizes or detains; or

(b) threatens to kill, injure or continue to detain,

another person as hostage, in order to compel a third party to do or abstain from doing an act, as an explicit or implicit condition for the release of the hostage, commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction to imprisonment for a term of not less than ten years and not more than thirty years.

(3) In this section, "third party" means a State, an international Governmental organization, a natural or juridical person or a group of persons.

PART III – TERRORIST FUNDS AND TERRORIST PROPERTY

16. (1) In this part –

“terrorist property includes –

(a) money or other property which is likely to be used for the purposes of terrorism (including any resource of a proscribed organization);

(b) proceeds of the commission of an act of terrorism; and

(c) proceeds of an act carried out for the purposes of terrorism.

(2) In subsection (1), a reference to –

(a) proceeds of an act, includes a reference to any property which wholly or partly, and directly or indirectly, represents the proceeds of the act, including payments or other rewards in connection with its commission; and

(b) the resource of a proscribed terrorist organization, includes a reference to any money or other property which is applied or made available, or is to be applied or made available, for use by the organization.

17. (1) Where the Inspector General has reasonable grounds to suspect that any funds –
- (a) are intended to be used for the purposes of terrorism;
 - (b) belong to, or are held on trust for a proscribed organization; or
 - (c) are or represent property obtained through an act of terrorism,
- he or she may seize the funds.
- (2) The Inspector General may seize trust funds, even if he or she reasonably suspects that part only of the funds is terrorist funds, where it is no reasonably practicable to seize that part only of the funds.
- (3) The Inspector General may exercise his or her powers under subsection (1), whether or not any proceedings have been brought for an offence in connection with the terrorist funds.
- (4) The Inspector General shall, as soon as is reasonably practicable, apply to a Judge in Chambers for a detention order with respect to the funds seized under subsection (1).
- (5) The Judge in Chambers shall not make an order for detention of the funds unless he or she is satisfied that there are reasonable grounds for suspecting that the funds –
- (a) are intended to be used for the purposes of terrorism;
 - (b) are part of the resources of a proscribed organization; or
 - (c) are or represent property obtained through acts of terrorism.
- (6) Subject to subsection (8), an order made under subsection (5) shall remain valid for a period of ninety days, and may be renewed for further periods of ninety days by the Judge in Chambers, until production of the funds before the court in proceedings against any person for an offence with which the funds are connected.
- (7) The Inspector General shall deposit any funds detained under this section in an interest-yielding account.
- (8) The funds, with the interest accruing thereto, may be released to the person or organization concerned by an order of the Judge in Chambers where –
- (a) the person or organization satisfies the Judge that the conditions under subsection (5) do not apply; or

(b) no proceedings are brought by the Inspector General in connection with the funds detained within the hundred and eighty days of the order of the Judge.

(9) Any funds not released under this section shall be paid into a special account to be administered by the Secretary of State and used by combating terrorism.

(10) For the purposes of this section, "funds" includes –

- (a) coins and notes in any currency;
- (b) postal orders;
- (c) traveller's cheques;
- (d) banker's drafts; and
- (e) bearer bonds and bearer shares.

18. (1) A person who, for the purposes of terrorism, or for a proscribed organization –

- (a) solicits, receives, provides or possesses money or other property; or
- (b) enters into, or becomes concerned in, an arrangement as a result of which
- (c) money or other property is made available or is to be made available,

commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction, in the case of –

- (a) an individual, to imprisonment for a term of not less than ten years; and
- (b) an organization, to a fine of not less than ten million dalasis.

19. (1) A person who enters into, or becomes concerned in, an arrangement which facilitates the retention or control by, or on behalf of, another person of terrorist property, in any manner, including by –

- (a) concealment;
- (b) removal from the jurisdiction; and
- (c) transfer to any other person,

commits an offence and is liable on conviction to imprisonment for a term of not less than ten years and not more than twenty years.

(2) It is a defence for a person charged under subsection (1) to prove that he or she did not know and had not reasonable cause to suspect that the arrangement related to terrorist property.

20. (1) A person who –

- (a) invites another to provide money or other property; and
- (b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism,

commits an offence.

(2) A person who –

- (a) receives money or other property; and
- (b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism,

commits an offence.

(3) A person who provides money or other property, knowing or having reasonable cause to suspect that it will or may be used for the purposes of terrorism, commits an offence.

(4) A person who commits an offence under this section is liable on conviction to imprisonment for a term of not less than ten years and not more than twenty years.

(5) In this section, a reference to the provision of money or other property is a reference to its being given, lent or otherwise made available, whether or not for consideration.

21. (1) A person who enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available to another knowing or having reasonable cause to suspect that it will or may be used for the purposes of terrorism, commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction to imprisonment for a term of not less than ten years and not more than twenty years.

22. A person who –

(a) uses money for the purposes of terrorism, or

(b) possesses money intending that it should be used, or having reasonable cause to suspect that it may be used, for the purposes for terrorism,

commits an offence and is liable on conviction to imprisonment for a term of not less than ten years and not more than twenty years.

23. (1) This section applies to a person who –

(a) believes or suspects that another person has committed an offence under section 19, 20, 21 or 22; and

(b) bases his or her belief or suspicion on information which comes to his or her attention in the course of a trade, profession, business or employment.

(2) A person who does not disclose to a police officer or another security officer, as soon as is reasonably practicable –

(a) his or her belief or suspicion under subsection (1); and

(b) the information on which it is based,

commits an offence.

(3) A person who commits an offence under subsection (2) is liable on conviction to imprisonment for a term of not less than ten years and not more than fifteen years.

(4) It is a defence for a person charged with an offence, under subsection (2) to prove that he or she had a reasonable excuse for not making the disclosure.

(5) Where –

(a) a person is in employment;

(b) his or her employer has established a procedure for the making of disclosures of the matters specified in subsection (2); and

(c) he or she is charged with an offence under that subsection,

it is a defence for him or her to prove that he or she disclosed the matters specified in that subsection in accordance with the procedure.

24.

(1) Where a person is charged or about to be charged with an offence under this Act, the Inspector General may apply to a Judge in Chambers for a provisional order attaching in the hands of the suspect or in the hands of any other specified person, all moneys and other property due, or owing, or belonging to, or held on behalf of, the suspect.

(2) An order made under subsection (1) may –

(a) prohibit a person from making money or other property available to or for the benefit of the suspect;

(b) provide for the granting of authority to make money or other property available to such persons and on such conditions as may be specified in the order;

(c) require the suspect to provide such information or produce such document as may be required or reasonably needed for an investigation under this Act;

(d) include such other condition as the Judge may impose.

(3) The Judge in Chambers may appoint an Official Receiver or any other suitable person to manage the assets of the suspect during the period of operation of an order made under this section.

(4) The Inspector General shall –

(a) cause notice of the order to be published in the next issue of the *Gazette* and in at least two newspapers; and

(b) give notice of the order to –

(i) banks, financial institutions and cash dealers, and

(ii) any other person who may hold or be vested with property belonging to or held on behalf of the suspect.

(5) An order made under this section shall remain in force until the determination of any charge or intended charge under subsection (1) and, in the event of a conviction, until the Court makes an order for forfeiture, or the proceedings relating to the forfeiture are concluded.

(6) Where an order made under this section ceases to have effect, the Inspector General shall cause notice of the cessation to be published in the *Gazette* and at least two newspapers.

(7) Any payment, transfer, pledge or other disposition of property made in contravention of an order under this section shall be void.

25. (1) Where the Inspector General has reasonable grounds to suspect that a person has committed, is committing or is about to commit an act of terrorism or is in possession of terrorist property, he or she may, for the purposes of an investigation under this Act, apply to a Judge in Chambers for an order –

(a) compelling the suspect to deliver to him or her any document relevant to identifying, locating or quantifying any property belonging to, or in the possession or control of that person;

(b) requiring a bank or other financial institution, trustee, cash dealer or custodian, to produce to him or her all information and deliver to him or her all documents regarding any business transaction conducted by or on behalf of the suspect.

(2) Where a person fails to comply with, is delaying or is otherwise obstructing an order made under subsection (1)(a), the Judge in Chambers may, on information sworn to that effect by the Inspector General of Police or any other police officer not below the rank of Assistant Superintendent, authorize the Inspector General or any officer not below the rank of Assistant Superintendent to enter any premises, including a bank or financial institution, and search the premises and remove any document for the purposes of executing the order.

PART IV – PROHIBITION ON CHARITABLE STATUS

26. In this Part –

“applicant” means a body corporate, and organization or a trust, that applies to the Registrar General to become a registered charity;

“Attorney General” means the Attorney General of The Gambia;

“Judge” means a Judge of the High Court;

“registered charity” means a company registered under the Companies Act as a charitable organization.

27. The Attorney General may sign a certificate stating that, in his or her opinion, based on security or criminal intelligence reports, there are reasonable grounds to believe that an applicant or a registered charity –

(a) made resources available, directly or indirectly, to a proscribed organization whether or not the proscribed organization was at that time engaged or continues to be engaged in acts of terrorism or in activities in support of those acts; or

(b) makes or will make resources available, directly or indirectly, to a proscribed organization and the proscribed organization engages or will engage in acts of terrorism or activities in support of those acts.

31.¹¹⁶ The Attorney General shall, in a manner that mentions the original publication of the certificate, cause to be published in the *Gazette*, notice of the cancellation of a certificate.

32. Unless it is cancelled earlier, a certificate is valid for a period of seven years beginning on the day it is first determined to be reasonable under section 28.

33. The Attorney General may make any regulations that he or she considers necessary for carrying out the purposes and provisions of this Part.

PART V - FOREIGN INCURSIONS AND RECRUITMENT

36.¹¹⁷ (1) A person shall not, in The Gambia, recruit another person to become a member or to serve in any capacity with a body or association of persons the objectives of which are or include any of the objectives referred to in section 34(3).

(2) A person who contravenes a provision of subsection (1) commits an offence and is liable on conviction to imprisonment for a term of not less than ten years.

37. (1) A person shall not, in The Gambia –

(a) recruit another person to serve;

(b) publish an advertisement for the purpose of recruiting persons to serve;

(c) publish an advertisement containing any information relating to –

(i) the place at which, or the manner in which, persons may make applications to serve, or obtain information relating to service, or

¹¹⁶ Sections 28 to 30 of the Anti-Terror Act, 2002 have been omitted from the present publication for technical reasons.

¹¹⁷ Sections 34 and 35 of the Anti-Terror Act, 2002 have been omitted from the present publication for technical reasons.

(ii) the manner in which persons may travel to a foreign State for the purpose of serving; or

(d) except authorised by the Government of The Gambia at the request of a foreign State, do any other act or thing for the purpose of facilitating or promotion the recruitment of persons to serve,

in any capacity in or with an armed force in a foreign State, whether the armed force forms part of the armed forces of the Government of that State or otherwise.

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction, in the case of –

(a) an individual, to a fine of not less than two million dalasis or imprisonment for a term of not less than ten years or to both the fine and imprisonment; and

(b) a body corporate, to a fine of ten million dalasis.

(3) If the Secretary of State, by an instrument signed by him or her and published in the *Gazette*, declares that it is in the interest of the defence or international relations of The Gambia to permit the recruitment in The Gambia, either generally or in particular circumstances or subject to specified conditions, of persons to serve in or with a specified armed force, or to serve in or with a specified armed force in a particular capacity, subsection (1) does not apply, or does not apply in those circumstances or where those conditions are complied with, in relation to –

(a) the recruitment to serve;

(b) the publication of an advertisement containing information with respect to service

in or with that armed force, or in or with that armed force in that capacity, as the case may be.

(4) A person who recruits another person to enter into a commitment or engagement to serve in any capacity, in or with a armed force, shall be taken, for the purposes of this section, to recruit that other person to serve in or with that armed force, whether or not the commitment or engagement is legally enforceable and whether or not it constitutes a legal or formal enlistment in that force.

(5) For the purposes of this section, the publication of an item of news shall be deemed to constitute the publication of an advertisement if the publication was procured by the payment of, or by a promise to pay, or by the provision of, or by a promise to provide any other consideration.

PART VI - MUTUAL ASSISTANCE AND EXTRADITION

38. This Part applies in relation to mutual assistance in criminal matters between The Gambia and any foreign State, subject to any condition, variation or modification in any existing or future agreement with that State, whether in relation to a particular case, or class of cases or cases generally.

42.¹¹⁸ (1) The Secretary of State may, after consultation with the Attorney General, make a request to any foreign State –

(a) to provide evidence or information relation relevant to an offence under this Act;

(b) for the restraint and forfeiture of property located in that State and which is liable to be forfeited by reason of its being terrorist property.

(2) Where the foreign State to which a request for assistance is made under subsection (1) required the request to be signed by an appropriate authority, the Secretary of State responsible for foreign affairs shall, for the purposes only of making such a request, be considered as the appropriate competent authority.

(3) The Secretary of State may, in respect of any proceedings for an offence under this Act, apply to a Judge in Chambers for an order directed to any person resident in a foreign State to deliver –

(a) any document or material in his or her possession or under his or her control to the jurisdiction of the Court; or

(b) subject to the approval of the foreign State himself or herself for the purpose of giving evidence in relation to those proceedings.

43. (1) Evidence taken, pursuant to a request under section 42, in any proceedings in a Court of a foreign State may, if it is authenticated, be *prima facie* admissible in any proceedings to which the evidence relates.

(2) For the purpose of subsection (1), a document is authenticated if–

(a) it purports to be signed or certified by a Judge, Magistrate or officer in or of a foreign State; and

(b) it purports to be authenticated by the oath or affirmation of a witness or to be sealed with an official or public seal –

¹¹⁸ Sections 39 to 41 of the Anti-Terror Act, 2002 have been omitted from the present publication for technical reasons.

(i) of a Secretary of State, Department of State or officer in or of the Government of the foreign State, or

(ii) in the case of a territory, protectorate or colony, of the person administering the Government of the foreign territory, protectorate or colony, or of a person, a Secretary of State or a Department of that territory, protectorate or colony.

46.¹¹⁹ Where the Attorney General has made an application to the Court for an extradition order and the person who is the subject of the application- affirmation of a witness or to be sealed with an official or public seal –

(a) consents in writing to the making of the extradition order, the Court may, without any proceeding to determine his or her liability to be extradited under this Act, grant the order forthwith if it is satisfied that the person understands the applications of consent and that it was given voluntarily;

(b) does not consent or is silent, the court shall proceed to determine the person's liability to be extradited.

47. (1) Where the person who is the subject of an application for an extradition order is undergoing sentence in The Gambia for an offence against a law of The Gambia, the court may order the temporary extradition of the person to the foreign State if it is satisfied that –

(a) the person is liable to be extradited;

(b) it is in the interest of the administration of justice that the person be temporarily extradited; and

(c) the foreign State has given adequate undertakings to the Attorney General in relation to –

(i) the trial of the person in the foreign State for the offence of which the person is accused,

(ii) the return of the person to The Gambia to complete the sentence being served, and

(iii) the custody of the person while travelling to and from, and while in, the foreign State.

¹¹⁹ Sections 44 and 45 of the Anti-Terror Act, 2002 have been omitted from the present publication for technical reasons.

- (2) Where an order is made under subsection (1) in relation to a person –
- (a) the person may be released into the custody of the authorities of the foreign State for the purposes of the temporary extradition, but shall be taken into custody upon return to serve the remainder of the sentence in The Gambia as may remain to be served; and
 - (b) any time spent in the custody outside The Gambia for the purposes of the temporary extradition shall be deemed to be time served under sentence in The Gambia.

PART VII - IMPLEMENTATION OF UNITED NATIONS ANTI-TERRORISM MEASURES

48. (1) In this Part –

“funds” includes cheques, bank deposits and other financial resources;
“property” includes real and personal property, moveable or immoveable, including a lease of immovable property as well as a right or interest in the property;

“terrorist” means a person who –

- (a) commits or attempts to commit, a terrorist act; or
- (b) participates in or facilitates the commission of a terrorist act;

“terrorist act” includes the use or threat of action –

- (a) where the action –
 - (i) involves serious violence against a person,
 - (ii) involves serious damage to property,
 - (iii) endangers a person’s life,
 - (iv) creates a serious risk to the health or the safety of the public or a section of the public,
 - (v) involves the use of firearms or explosives,
 - (vi) involves releasing into the environment or any part of the environment, or distributing or otherwise exposing the public or any part of the public to any dangerous, hazardous, radioactive or harmful substance, any toxic chemical or any microbial or other biological agent or toxin,

(vii) is designed to disrupt any public computer system or the provision of services directly related to communications infrastructure, banking and financial services, public utilities, public transportation or key public infrastructure,

(viii) is designed to disrupt the provision of essential emergency services such as the police, civil defence and medical services, or

(ix) involves prejudice to public security or national defence; and

(b) Where the use or threat is intended or reasonably regarded as intending to –

(i) influence the Government or any other Government; or

(ii) intimidate the public or a section of the public.

(2) For the purposes of section (1) –

(a) “Action” includes action outside The Gambia; and

(b) a reference to the public includes a reference to the public of a country or territory, other than The Gambia.

49. No person in The Gambia and no citizen of The Gambia outside The Gambia shall –

(a) provide funds to any person by any means, directly or indirectly; or

(b) collect funds for any person by any means, directly or indirectly,

if he or she knows or has reasonable grounds to believe that the funds will be used to commit any terrorist act or facilitate the commission of any terrorist act.

50. No person in The Gambia and no citizen of The Gambia outside The Gambia shall –

(a) deal, directly or indirectly, in any property that is owned or controlled by or on behalf of any terrorist or any entity owned or controlled by any terrorist, including funds derived or generated from property owned or controlled, directly or indirectly, by any terrorist or any entity owned or controlled by any terrorist;

(b) enter into or facilitate, directly or indirectly, any financial transaction related to a dealing in property referred to in paragraph (a); or

(c) provide any financial services or any other related services in respect of any property referred to in paragraph (a), to or for the benefit of, or on the direction or order of, any terrorist or any entity owned or controlled by any terrorist.

51. (1) No person in The Gambia and no citizen of The Gambia outside The Gambia shall –

(a) make available any funds or other financial assets or economic resources; or

(b) make available any financial or other related services

for the benefit of any prohibited person.

(2) In subsection (1), “prohibited person” means –

(a) a terrorist;

(b) an entity owned or controlled by any terrorist; or

(c) a person or an entity acting on behalf of or at the direction of any person referred to in paragraph (a) or (b).

52. (1) No person in The Gambia and no citizen of The Gambia outside The Gambia shall communicate or make available by any means any information which he knows or believes to be false to another person with the intention of inducing in him or her or any other person a false belief that a terrorist act has been, is being or will be carried out.

(2) No person in The Gambia and no citizen of The Gambia outside The Gambia shall place any article or substance in any place whatsoever with the intention of inducing in some other person a false belief that –

(a) the article or substance is likely to explode or ignite and thereby cause personal injury or damage to property; or

(b) the article contains or the substance consists of –

(i) any dangerous, hazardous, radioactive or harmful substance,

(ii) any toxic chemical, or

(iii) any microbial or other biological agent, or toxin, that is likely to cause death, disease or personal injury or damage to property.

(3) No person in The Gambia and no citizen of The Gambia outside The Gambia shall dispatch any article or substance by post, rail or any other means whatever of sending things from one place to another with the intention of inducing in some other person a false belief that –

(a) the article or substance is likely to explode or ignite and thereby cause personal injury or damage to property; or

(b) the article contains or the substance consists of –

(i) any dangerous, hazardous, radioactive or harmful substance,

(ii) any toxic chemical, or any microbial or other biological agent, or toxin, that is likely to cause death, disease or personal injury or damage to property.

(4) For the purposes of subsections (1), (2) and (3), a reference to a person inducing in any other person a false belief does not require the first-mentioned person to have any particular person in mind as the person in whom he or she intends to induce the false belief.

53. No person in The Gambia and no citizen of The Gambia outside The Gambia shall knowingly do anything that causes, assists or promotes, or is intended to cause, assist or promote, an act or a thing prohibited by sections 49, 50, 51 or 52.

54. Every person in The Gambia and any citizen of The Gambia outside The Gambia who –

(a) has possession, custody or control of any property belonging to a terrorist or any entity owned or controlled by a terrorist; or

(b) has information about a transaction or proposed transaction in respect of any property belonging to a terrorist or an entity owned or controlled by a terrorist,

shall immediately inform the Inspector General of Police of such other person as the Secretary of State may designate of that fact or information and provide such further information relating to the property, or transaction or proposed transaction, as the Inspector General or designated person may require.

55. A person in The Gambia or a citizen of The Gambia outside The Gambia who contravenes the provisions of section 49, 50, 51, 52, 53 or 54 commits an offence.

PART VIII – INVESTIGATION

56. (1) A police officer not below the rank of Assistant Superintendent or a member of the National Guard may apply to a Magistrate for the issue of a warrant for the purpose of a terrorist investigation.
- (2) The Magistrate may issue a warrant authorising any police officer or a member of the National Guard to –
- (a) enter the premises specified in the warrant;
 - (b) search the premises and any person found in the premises;
 - (c) seize and retain any relevant material found in the premises.
- (3) The Magistrate shall not issue a warrant under subsection (2) unless he or she is satisfied that –
- (a) the warrant is sought for the purpose of a terrorist investigation; and
 - (b) there are reasonable grounds for believing that there is material on the premises which may be relevant to the terrorist investigation.
57. (1) Where, in a case of urgency, communication with a Magistrate to obtain a warrant would cause delay that may be prejudicial to the maintenance of public safety or public order, a police officer not below the rank of Superintendent or a member of the National Guard may, notwithstanding any other enactment, with the assistance of such other police officers as may be necessary –
- (a) enter and search any premises or place, if he or she has reason to suspect that, within those premises or at that place –
 - (i) there is evidence of the commission of an offence under this Act, or
 - (ii) an offence under this Act is being committed or likely to be committed;
 - (b) search any person or vehicle found on any premises or place which he or she is empowered to enter and search under paragraph (a);
 - (c) stop, board and search any vessel, aircraft or vehicle if he or she has reason to suspect that there is in it evidence of the commission or likelihood of commission of an offence under this Act;

(d) seize, remove and detain anything which is, or contains or appears to him or her to be evidence of the commission of an offence under this Act;

(e) arrest and detain any person whom he reasonably suspects of having committed or of being about to commit an offence under this Act.

(2) A police officer or a member of the National Guard may use such force as is reasonably justifiable for the exercise of the powers conferred by subsection (1).

(3) A person found on any premises or place or in any vessel, aircraft or vehicle may be detained by a police officer or a member of the National Guard until the completion of the search under subsection (1).

(4) Where a seizure is effected under this section, a list of all the articles, documents and other matters seized shall forthwith be delivered to –

(a) the person on whom the search is made; or

(b) the owner of the premises, place, vessel, aircraft or vehicle searched, as the case may be.

(5) Notwithstanding subsection (1), no woman shall be searched under this section except by a woman.

(6) For the purposes of this section, the degree of force which may be used shall not be greater than is reasonably necessary.

(7) Nothing in this section shall be construed as derogation from the lawful right of any person in the defence of person or property.

(8) A police officer, member of the National Guard or any other authorized officer who uses such force as may be necessary for any purpose, in accordance with this Act, shall not be liable, in any criminal or civil proceedings, for having, by the use of force, caused injury or death to any person or damage to or loss of any property.

58. (1) Notwithstanding any other enactment, the Secretary of State may for the purposes of the prevention or direction of offences, or the prosecution of offenders, under this Act, give such direction as may appear to him or her to be necessary to –

(a) communication service providers generally;

(b) communication service providers of a specified description; and

(c) any particular communication service provider.

(2) The Secretary of State may, before giving a direction under this section, consult any communication service provider he or she deems fit to consult.

(3) A direction under this section shall specify the maximum period for which a communication service provider may be required to retain communications data.

(4) In this section –

"communication service provider" means a person who provides postal, information or communication, including telecommunication, service;

"data" means information recorded in a form in which it can be processed by equipment operating automatically in response to instructions given for that purpose.

59. (1) An authorized person may issue a detention order in respect of an aircraft or vessel if he or she is of opinion that –

(a) a threat has been made to commit an act of violence against the aircraft or vessel, or against any person or property on board the aircraft or vessel; or

(b) an act of violence is likely to be committed against the aircraft or vessel, or against any person or property on board the aircraft or vessel.

(2) Where the operator of an aircraft or vessel fails to comply with a detention order under subsection (1), the authorized person may –

(a) enter, or authorize any other person to enter the aircraft or vessel;

(b) arrange for a person or thing to be removed from the aircraft or vessel; and

(c) may use reasonable force, or authorize the use of reasonable force by another person for the purpose of paragraphs (a) and (b).

(3) The authorized person shall give written notice to the generator of the aircraft or vessel mentioned in any detention order issued under this section.

(4) Where the operator of an aircraft or vessel objects to a detention order, the Secretary of State may, after hearing the interested parties, confirm, vary or cancel the order.

(5) A person who –

(a) without reasonable excuse, fails to comply with the requirement of a detention order; or

(b) intentionally obstructs or hinders a person acting in accordance with subsection (2),

commits an offence and is liable on conviction to a fine of two million dalasis or imprisonment for a term of not less than ten years.

(6) For the purpose of this section, the Secretary of State may, in writing, designate as an authorized person such person as he or she deems appropriate.

60. (1) Where any person is arrested under reasonable suspicion of having committed any of the offences under section 3, 4, 5, 6, 7, 11, 15, 18 or 19, a police officer not below the rank of Superintendent of Police, or a member of the National Guard may, subject to this section, direct that the person arrested be detained in police custody for a period not exceeding thirty-six hours from his or her arrest, without having access to any person other than a police officer not below the rank of Inspector, or a Government Medical Officer and the person shall be detained accordingly.

(2) No direction under subsection (1) shall be made unless the police officer or member of the National Guard has reasonable grounds to believe that the exercise of the right to consult a legal practitioner will–

(a) lead to interference with or harm to evidence connected with an offence under section 3, 4, 5, 8, 7, 11, 15, 18 or 19 to interference with, or physical injury to, another person;

(b) lead to the alerting of any other person suspected of having committed such an offence but not yet arrested for it; or

(c) hinder the tracking, search and seizure of terrorist property.

(3) As soon as a direction is issued under subsection (1), the person detained shall be informed that he or she may, if a Government Medical Officer so wishes, examine him or her.

61. (1) A custody record containing the information specified in the First Schedule shall be kept in respect of any person detained pursuant to the powers conferred by section 60.
- (2) A video recording shall be made and kept in the manner specified in the Second Schedule in respect of any person detained pursuant to the powers conferred by section 60.
- (3) A video recording under this section shall, notwithstanding the common law rule against hearsay, be admissible in evidence in the course of any judicial proceedings to the same extent and in the same manner any documentary evidence would be admissible.
- (4) In this section, "video recording" includes the recording of visual images or sound by electronic or other technological means.

PART VIII – PROSECUTION

62. (1) No prosecution for an offence under this Act shall be instituted except with the consent of the Attorney General.
- (2) A Court may, on a motion by or on behalf of the Attorney General, order that no person shall publish –
- (a) the name, address or photograph of any witness in any case tried or about to be tried before it for any offence under this Act; or
 - (b) any evidence or any matter likely to lead to the identification of the witness.
- (3) A Court may, on motion by or on behalf of the Attorney General, in the interest of public safety or public order, exclude from proceedings instituted for any offence under this Act, any person other than the parties and their legal representatives.
- (4) A person who contravenes an order made under subsection (3) commits an offence and is liable on conviction to a fine of five hundred thousand dalasis or imprisonment for a term of not less than ten years.
63. (1) The court trying an offence under this Act shall deliver its judgment not later than ninety working days from the date an accused person is charged with the offence.
- (2) The decision of a court shall not be set aside or treated as a nullity solely on the ground of non-compliance with the provisions of subsection (1) unless a court exercising jurisdiction by way of appeal from that decision is satisfied that the party complaining of non-compliance has suffered a miscarriage of justice by reason of the non-compliance.

64. (1) A Gambian Court shall have jurisdiction to try an offence and inflict the penalties specified in this Act where the act constituting the offence under section 3, 4, 5, 6, 7, 11, 15, 18 or 19 had been done or completed outside The Gambia and –
- (a) the victim is a citizen of The Gambia or has an effective link with The Gambia or is dealing with or on behalf of the Government of The Gambia;
 - (b) the alleged offender is The Gambia; or
 - (c) the alleged offender is in The Gambia, and The Gambia does not extradite him or her.
- (2) Notwithstanding anything in this Act or any other enactment, a person who, outside The Gambia, commits an act or omission that if committed in The Gambia would be an offence under this Act, shall be deemed to commit that act or omission the Gambia if
- (a) the act or omission is committed on a ship that is registered or licensed, of for which an identification number has been issued, pursuant to an Act of the National Assembly;
 - (b) the act or omission is committed on an aircraft –
 - (i) registered in The Gambia under the Civil Aviation Act or regulations made under it, or
 - (ii) leased without crew and operated by a person who is qualified under the Civil Aviation Act or regulations made under it to be registered as owner of an aircraft in The Gambia under that Act or those regulations;
 - (c) the person who commits the act or omission –
 - (i) is a citizen of The Gambia, or
 - (ii) is not a citizen of any state but ordinarily resides in The Gambia;
 - (d) act or omission is committed with intent to induce The President to commit or cause to be committed any act or omission;
 - (e) a person taken hostage by the act or omission is a citizen of The Gambia; or
 - (f) the person who commits the act or omission is, after the commission thereof present in The Gambia.

65. (1) Subject to subsection (3), any person who commits an offence under this Act shall, except otherwise provided in this Act, be liable on conviction –
- (a) in the case of an individual, to imprisonment for a term of not less than ten years and not more than twenty years; and
 - (b) in the case of body corporate, to a fine of two million dalasis.
- (2) The court before which a person is convicted of an offence under this Act may, in addition to any penalty imposed by the Court, orders the forfeiture of –
- (a) any terrorist funds, with any interest accruing thereto, or terrorist property;
 - (b) any article, substance, device or material by means of which the offence was committed;
 - (c) any vehicle or vessel used in the commission of the offence.
- (3) A person who has been convicted of a conspiracy to commit any of the offences under sections 3, 4, 5, 6, 7, 11, 15, 18 or 19 shall be exempted from the penalty specified for the offence or in subsection (1) and absolutely discharged if, having revealed the conspiracy to the police or the Court, he or she has made it possible to prevent the commission of the offence and to identify the other person involved in the conspiracy.
- (4) Notwithstanding the penalties specified for offences under this Act, the penalty incurred by a person convicted an offence shall be reduced in such inanner as the Court thinks just where that person has–
- (a) before any proceedings, made possible of facilitated the identification; or
 - (b) after the commencement of proceedings, made possible or facilitated the arrest,
- of any other person involved in the commission of the offence.
- (5) The Secretary of State may, by regulations, vary any fine specified for an offence under this Act.

66. (1) A person who –

- (a) conspires to commit or attempts to engage in;
- (b) aids, abets, counsels or procures, or is by an act or omission in any way directly or indirectly, knowingly concerned in, or party to; or
- (c) incites any person to commit, or urges or encourages,

any conduct that constitutes an offence under this Act commits an offence and is liable on conviction to the same penalty as would be applicable if the person were convicted of the offence as a principal offender.

(2) For the purposes of subsection (1) –

- (a) a person is guilty of conspiracy is –
 - (i) the person entered into an agreement with any other person or persons that one or more of them would commit the agreed offence, or
 - (ii) the person and at least one other party to the agreement intended that the offence would be committed, and
 - (iii) the person or at least one other party to the agreement committed an overt act pursuant to the agreement;
- (b) a person is not guilty of conspiracy if the person –
 - (i) withdrew from the agreement,
 - (ii) made a reasonable effort to prevent the commission of the agreed offence, and
 - (iii) as soon as possible after withdrawing, reported the matter to the Police;
- (c) a person may be guilty of conspiracy even though commission of the principal offence was impossible.

(3) A person who, while in The Gambia, conspires with any other person to do anything referred to in subsection (1) in a place outside The Gambia that is an offence under the laws of that place shall be deemed to have conspired to do that thing in The Gambia.

(4) A person who, while in a place outside The Gambia, conspires with another person to do anything referred to in subsection (1) in The Gambia shall be deemed to have conspired in The Gambia to do that thing.

(5) Where a person is alleged to have conspired to do anything that is an offence by virtue of subsection (3) or, (4) proceedings in respect of that offence may, whether or not that person is in The Gambia, be commenced in The Gambia, and the accused may be tried and punished, in respect of that offence in the same manner as if the offence had been committed in The Gambia.

(6) Where a person is alleged to have conspired to do anything that is an offence by virtue of subsection (3) or (4) and that person has been tried and dealt with outside The Gambia in respect of the offence in such a manner that, if the person has been tried and dealt with in The Gambia, he or she would be able to plead *autrefois* acquit, *autrefois* convict or pardon, the person shall be deemed to have been so tried and dealt with in The Gambia.

67. Notwithstanding the provisions of any other law, bail shall not be granted to a person arrested for or charged with an offence under this Act.

68. Where any offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or be attributed to any neglect on the part of any director, manager, secretary or other officer of the body corporate, or any person purporting to act in any such capacity, he or she as well as the body corporate is guilty of that offence and shall be proceeded against accordingly.

PART X – MISCELLANEOUS

69. A person may be excluded or removed from The Gambia if there are reasonable grounds to believe that the person has been, is or is likely to be involved in an act of terrorism.

70. (1) Subject to section 33, The Secretary of State may, for the purpose of this Act, make such regulations as he or she thinks fit.

(2) Regulations made under subsection (1) may provide for the amendment of the Schedules.

SCHEDULES

FIRST SCHEDULE (section 61 (1))

CUSTODY RECORDS

1. Entries shall be made in the Custody Record in respect of all matters relevant to the detention of the arrested person, and in particular, the entries shall be made in respect of the following –

- (a) an accurate record of the time and place of –
 - (i) the arrest,
 - (ii) the issue of the direction under section 60, and
 - (iii) each interview, including any interview immediately following his or her arrest, of the person detained;
- (b) the place or places where the interview takes place;
- (c) the time at which the interview begins and the time at which it ends;
- (d) any break during the interview;
- (e) the names of persons present at the interviews;
- (f) the time and reason for any transfer of the detained person from one place of custody to another as well as the time at which the detention ends;
- (g) any property secured from the person on his or her arrest or during his or her detentions;
- (i) the name and rank of the police officer or member of the National Guard upon whose authority any action in relation to the detained person is taken; and
- (j) the ground or grounds, set out in section 60(2), on which the detention is based.

2. The Custody Record shall be opened as soon as practicable after the start of a person's detention under section 60.

3. The person making an entry in the Custody Record shall insert the time at which the entry is made and his or her signature against the entry made.

4. The Custody Record or copy of the Record shall accompany a detained person to any other place where he or she is transferred.

5. A copy of the Custody Record shall be supplied to the person detained or his or her legal representative as soon as is practicable after he or she of the representative makes a request upon his or her release from detention or his or her being taken to court.
6. The person detained shall be allowed to check and shall be make to insert his or her signature in respect to any entry in the Custody Record.
7. An entry shall be made in respect of any refusal of the person detained to insert his or her signature where the signature is required.
8. Entries in the Custody Record shall be made as soon as practicable after the occurrence of the events to which they related.
9. A police officer not below the rank of Inspector shall be responsible for ensuring the accuracy and completeness of the Custody Record and that the Custody Record or a copy of the Record accompanies the detained person on his or her transfer.
10. Entries in a computerized Custody Record shall be timed and shall contain evidence of the computer operator's identity.

SECOND SCHEDULE (section (61 (2))

VIDEO RECORDINGS

1. The video recording of the detained person during his or her period of detention under section 60 shall be carried out in such manner as to constitute an accurate, continuous and uninterrupted record of the whole period of his or her detention, including his movements, interviews and statements.
2. When issuing the direction for detention under section 60, the police officer or member of the National Guard shall make arrangements for the video recording of the person detained during the whole of the period of his detention.
3. The police officer or member of the National Guard shall, for the purposes of the video recording, designate a recording officer under whose responsibility and control the video recording shall be conducted.
4. The recording officer shall be responsible for starting, without delay and immediately after a direction is issued under section 60, and for continuing the video recording without any interruption during the whole of the period of detention.
5. The recording officer shall, in respect of the video recording, keep a written record of the following –
 - (a) the name of the person detained;

- (b) the name and rank of the recording officer;
- (c) the name of the police officer or member of the National Guard who issued the direction under section 60;
- (d) the names of all the persons involved in the video recording;
- (e) the identification numbers of the video records used for video recording;
- (f) the date, time of commencement, duration and place of –
 - (i) the detention, and
 - (ii) the recording;
- (g) the place at which the video records are kept; and
- (h) particulars of the movement of the video records.

6. Where the person detained raises any objection during his or her period of detention or makes any statement, the whole of his or her objection or statement shall be recorded.

7. (1) The video record (referred to in this Schedule as “the master video record”) shall be sealed, with a label specifying that the record is the master video record, in the presence of the detained person at the end of his or her period of detention.

(2) The recording officer shall sign the label and ask the detained person and any third party present to sign the label.

(3) Where the detained person or the third party refuses to sign the label, another person may be asked to sign it.

8. Where more than one video record is used, the recording officer shall ensure that all the video records are properly identified and labeled by marking the video records with an identification number immediately after they are removed from the recorder.

9. The recording officer shall make arrangements for the video records to be kept securely under lock and key under the responsibility of an officer designated for that purpose.

XXXIX. GEORGIA¹²⁰

SUMMARY OF LEGISLATION OF GEORGIA RELATED TO TERRORISM

The Criminal Code of Georgia sets out a special chapter for the crime of terrorism, prescribing criminal liability for various forms of terrorist acts. Under the Criminal Code, terrorism falls within the category of especially grave crimes and is subject to severest of punishments.¹²¹

The Criminal Code prescribes liability not only for the terrorist act as a crime in general, which manifests the threat to human life, damage to property or any other grave consequence, but also differentiates terrorism according to means, facilities, consequences, and crime organization, and establishes respective punishments. For instance, technological terrorism, i.e. the use of, or threatening to use a nuclear, radiological, chemical or bacteriological (biological) arms or a component thereof, a pathogenic micro-organism, radioactive or any other substance hazardous for human health; assault on a political official of Georgia; assault on an internationally protected person or institution; taking possession of or blocking an object of strategic or special importance for terrorist purposes, etc.

The Criminal Code places attention on the issues related to participation in organized terrorist groups. The crime breaks down to such components as formation of or leading a terrorist organization, participation in a terrorist organization, accession and assistance to a terrorist organization of a foreign state or to such organization controlled by a foreign state. The Criminal Code prescribes specific severe punishments to each of these organized crimes.

Regarding the legal gaps in terms of supplying arms to terrorist groups, the Criminal Code deals with the arms-related issues in a general manner. Punishable are the illegal purchase, keeping, carrying, making, shipment and delivery of arms. In addition, punishment is prescribed for such arms-related actions that may be directed to carry out terrorist acts; for example, preparation of nuclear arms, illegal export of the technology, scientific-technical information or services used in the creation of the arms of mass destruction, illegally taking possession or extortion of arms for misappropriation purposes; neglectful keeping of arms, preparation, purchase, and sale of the arms of mass destruction, etc.

¹²⁰ Transmitted to the Secretariat by that Government on 26 December 2001 (S/2002/3, enclosure) and 15 October 2002 (S/2002/1185, enclosure).

¹²¹ The text of Penal Code articles 323 to 331, dealing with specific terrorism offences, was reproduced in Part I of the present publication (pp. 180-82).

XL. GERMANY¹²²

SUMMARY OF LEGISLATION OF GERMANY RELATED TO TERRORISM

The Prevention of International Terrorism Act that entered into force on 1 January 2002 (hereinafter "Prevention of Terrorism Act") bestowed the necessary powers on the German security authorities to effectively counteract the new form of international terrorism. Amendments have been made to numerous security statutes in order to:

- extend the powers of security authorities in the interest of preventing terrorism,
- enhance the necessary data exchange between the authorities,
- prevent terrorists from entering Germany,
- enhance the identification of extremists who have already entered the country and increase the options for terminating their residence,
- enhance identification measures in visa procedures,
- facilitate the deployment of armed air marshals on German aircraft,
- enhance border control facilities,
- enable security checks on staff employed in essential facilities and facilities that are vital for defence,
- create the legal basis for integrating biometric data into passports and identity documents,
- limit the right to use firearms on board civilian aircraft to police officers,
- take swifter measures to ban activities of extremist associations of foreigners in Germany.

Criminal prosecution of terrorist or criminal organizations acting in Germany is dependent upon whether there are sufficient grounds to deem that their activities are punishable according to section 129a of the German Criminal Code, which imposes criminal liability upon persons who form an organization whose

¹²² Transmitted to the Secretariat by that Government on 27 December 2001 (S/2002/11, enclosure), 22 October 2002 (S/2002/1193, enclosure) and 13 June 2003 (S/2003/671, enclosure).

objectives and activities are aimed at committing a number of specified and serious crimes.

The financing of terrorist activities can constitute a separate criminal offence (section 129a German Criminal Code). The penalties which can be imposed under this provision depend on the circumstances of the case: if the person who does the financing is considered a “backer”, for example, the law provides for a term of imprisonment of three to fifteen years for this alone, and for an “ordinary member” of the organization it makes provision for a term of imprisonment of one to ten years. If the person in question is not a member of the organization, the penalty imposed is imprisonment from six months to five years.

In addition, consideration can also be given to imposing punishment for the financing of terrorist activities under the rubric participation in the principal offence. For example, if the perpetrator finances the purchase of weapons used by others to kill people in an attack, imposing punishment for participation in the offence of murder may also be considered. The penalties imposed then depend on the penalties which can be imposed for the actual terrorist offences (in this example, the penalty for murder is life imprisonment).

Recruiting for terrorist organizations is a separate offence pursuant to section 129a of the German Criminal Code. Depending on the circumstances of the case the law provides for a term of imprisonment from six months to fifteen years. Recruiting for terrorist organizations may also be considered as participation in the actual offences themselves.

Section 129b of the Penal Code (StGB), effective as of 30 August 2002, extends the criminal offence of forming terrorist organizations (Section 129a StGB) to organizations based outside the country; the previous law required the existence of an independent branch organization within Germany for prosecution. Extending the criminal offence to include the founding, membership and support of a terrorist organization has created a tool geared to actual needs and to deal with the new kind of threat posed by international terrorism.

XLI. GREECE¹²³

SUMMARY OF LEGISLATION OF GREECE RELATED TO TERRORISM

The Provisions of the Greek Penal Code and the Code of Criminal Procedure were amended by Law 2928/01, aiming at protecting the citizens against criminal acts committed by criminal organizations.

¹²³ Transmitted to the Secretariat by that Government on 28 October 2002 (S/2002/857, enclosure) and on 7 July 2003 (S/2003/722, enclosure).

In paragraph 1 of Penal Code Article 187, the meaning of “criminal organization” is clearly defined. A sentence of up to 10 years imprisonment is provided for anyone “who sets up or becomes a member of a structured and active group consisting of 3 or more persons (organization) and aims at committing more crimes, such as counterfeiting, robbery, extortion, violations related to explosive substances etc.”

Moreover, the manufacture, the procurement or the possession of weapons, explosive substances and chemical or biological materials or materials emitting radiation harmful to the health, for the purposes of the a/m organization, constitute aggravating circumstances.

In Article 187-A¹ of the same Law, lenient measures are provided for everyone who essentially contributes to the breaking up of an organization or a gang, e.g. full exemption from sentence, suspension of a reduced/lower sentence, a 3 up to 10 year suspension of the sentence, etc.

The Law mentioned above also provides for the liability of legal entities and enterprises, the protection of witnesses as well as for the analysis of DNA.

Recruiting members of a terrorist group is punished as instigation or mere complicity in criminal act of setting up or participating in criminal organization. (Penal Code, Article 187, para. 1)

According to the definition of “criminal organization” given by the Penal Code Article 187 paragraph 1, a sentence of up to 10 years imprisonment is provided for everyone participating in an organization with the view of systematically committing specific criminal acts characterized by an increased denierit and unsociability.

According to this regulation, whoever joins someone else with the purpose of committing serious crimes is punished with a heavier sentence.

Although the main target of the above mentioned law is to counter the organized financial crime, its implementation field is not limited since the participation in “a criminal organization” includes the criminal terrorist action as well.

Moreover, Law 2168/1993, which is in compliance with EU regulation 91/477, constitutes the basic legislative framework covering all issues of weapons and ammunition. This law, in certain cases, contains strict provisions for illegal trafficking of weaponry. On the basis of this law, as well as other legislative measures derived from this law, there has been effective and systematic control of any possible transaction or activity in the trafficking of legally acquired weapons, explosive material and ammunition bound for the illegal market. Both the above law and article 272 of the Greek Penal Code, as amended by Law 2928/2001, contain strict penalties for illegal possession or trafficking of weaponry, destined to organizations or groups aiming to commit crimes or terrorist acts.

XLII. GUATEMALA¹²⁴

SUMMARY OF LEGISLATION OF GUATEMALA RELATED TO TERRORISM

(a) Political Constitution

Chapter V, article 245 of the Political Constitution of the Republic of Guatemala establishes the organization and operation of armed groups not regulated by the laws of the Republic as a punishable offence.

(b) Penal Code

Offence of illegal armed groups

The Guatemalan Penal Code, in its Book II, Title XII, Chapter V, establishes so-called offences against social peace; within this category, article 398 of this body of laws establishes the offence of illegal armed groups, providing that persons who organize, form or direct armed groups or militias other than those of the State shall be sentenced to 3 to 10 years' imprisonment.

Offence of militancy in illegal groups

Article 399 establishes the offence of militancy in illegal groups, providing that any person who is a member of the illegal groups referred to in the preceding article (398) shall be sentenced to two to eight years' imprisonment.

Offence of possessing and bearing firearms

Article 400 establishes the offence of possessing and bearing firearms, providing that the possession and bearing of firearms or weapons of war, or of ammunition or accessories for them, the use of which is reserved exclusively for the Army of the Republic, shall be penalized by six months' to three years' imprisonment and a fine.

Offence of stockpiling arms or ammunition

The Guatemalan Penal Code, Legislative Decree No. 17-73, in its Book II, Title XII, Chapter V, establishes so-called offences against social peace; within this category, article 401 establishes the offence of stockpiling arms or ammunition, providing that any person who has or establishes a stock of arms, ammunition or other military supplies, the use of which is reserved exclusively for

¹²⁴ Transmitted to the Secretariat by that Government on 12 December 2001 (S/2001/1272, enclosure). Information was also provided in respect of the Act Against the Laundering of Money or Other Assets.

the Army of the Republic, shall be sentenced to two to six years' imprisonment and a fine.

Offence of trafficking in explosives

Within the same category, article 402 establishes the offence of trafficking in explosives, providing that any person who illegally has in his possession, manufactures, transports, traffics in or supplies in any form explosive, flammable or incendiary or asphyxiating substances and instruments or devices for causing them to explode shall be sentenced to 10 to 15 years' imprisonment.

Support for offences of illegal armed groups

Article 398 of this body of laws penalizes by 3 to 10 years' imprisonment persons who provide assistance or economic cooperation for the maintenance of armed groups or militias other than those of the State.

Economic cooperation for the maintenance of terrorist groups is penalized by 3 to 10 years' imprisonment (Penal Code, art. 398, second paragraph).

XLIII. GUINEA¹²⁵

1. ELEMENTS DU DISPOSITIF LEGISLATIF ET REGLEMENTAIRE DE LA GUINEE

Les actes de terrorisme sont prévus et punis par les articles 505 et suivants du Code pénal. Les actes de terrorisme, tels qu'ils sont définis par l'article 505 du Code pénal, encourent une peine variant, selon les circonstances, de 10 ans de détention criminelle à la peine de mort.

Les faits qualifiés de terrorisme obéissent aux règles de poursuite d'instruction et de jugement définies pour les actes criminels de droit commun.

En plus des dispositions du Code pénal guinéen portant sur le terrorisme, les juridictions nationales du pays peuvent connaître de tout acte terroriste ou menace terroriste prévu et puni par les conventions internationales auxquelles la Guinée est partie. Cette disposition découle de l'article 79 de la loi fondamentale guinéenne qui place la norme du droit international au-dessus de la loi nationale et

¹²⁵ Transmitted to the Secretariat by that Government on 12 March 2002 (S/2002/276, enclosure) and on 6 February 2003 (S/2003/258, enclosure). Information was also provided in respect of: Act No. L/96/008 on weapons, ammunition, powders, and explosives; the Code of Criminal Procedure.

qui stipule : « Les traités ou accords régulièrement approuvés ou ratifiés ont dès leur publication une autorité supérieure à celle des lois sous réserve de réciprocité ». En cas de dualité, la loi nationale sera écartée ou adaptée à la norme du droit international.

Le financement des actes terroristes apparaît comme fait de complicité et puni par ses articles 51, 53 et 54 du Code pénal.

La démarche, pour ce faire, est la suivante :

- Qualifier de complices :
 - Ceux qui par dons, promesses, abus d'autorité et de pouvoir, machinations ou artifices, auront provoqué l'action terroriste ou donné des instructions pour la commettre (art. 54 al. 2 CP);
 - Ceux qui auront procuré des armes, des instruments ou tout autre moyen qui aura servi à l'action sachant qu'ils devaient y servir (art. 54 al. 3 CP);
 - Ceux qui, en pleine connaissance de cause, auront aidé ou assisté l'auteur principal ou les auteurs de l'action dans les faits, qui l'auront préparée, facilitée ou consommée, sans préjudice des peines prévues par des textes spéciaux (art. 54 al. 4 CP);
 - Ceux qui, connaissant la conduite criminelle des malfaiteurs exerçant des brigandages ou des violences contre la sûreté de l'État, la paix publique, les personnes ou les propriétés, leur fournissent logement, lieu de retraite ou de réunion (art. 54 al. 5 CP).

Aux termes de l'article 53 du Code pénal, les complices d'un crime ou d'un délit sont punis des mêmes peines que les auteurs principaux.

Il n'existe pas de mesures législatives en tant que telles qui répriment le recrutement de membres de groupes terroristes, mais de telles activités sont punissables en Guinée du chef « d'associations de malfaiteurs » (art. 269 et suivant du Code pénal).

En outre, l'approvisionnement en armes des terroristes est puni en Guinée par l'article 505, 3e, 4e, 5e et 6e alinéas et l'article 506 du Code pénal.

2. CODE PENAL

Article 505

Constituent des actes de terrorisme, lorsqu'elles sont en relation avec une entreprise individuelle ou collective ayant pour but de troubler l'ordre public par l'intimidation ou la terreur, les infractions suivantes :

1. Les atteintes volontaires à la vie, les atteintes volontaires à l'intégrité de la personne, l'enlèvement et la séquestration ainsi que le détournement d'aéronef, de navire ou de tout autre moyen de transport;
2. Les vols, les extorsions, les destructions, les dégradations et la détérioration ainsi que les infractions en matière informatique;
3. La fabrication, la détention et l'utilisation de machines, engins meurtriers ou explosifs;
4. La production, la vente, l'importation ou l'exportation de substances explosifs;
5. L'acquisition, la détention, le transport ou le port illégal de substances explosives ou d'engins fabriqués à l'aide desdites substances;
6. La détention, le port, ou le transport d'armes et de munitions des première et quatrième catégories spécifiées à l'article 2 de la loi L/96/008 du 22 juillet 1996.

Article 506

Constitue également un acte de terrorisme, lorsqu'il est en relation avec une entreprise individuelle ou collective ayant pour but de troubler gravement l'ordre public par l'intimidation ou la terreur, le fait d'introduire dans l'atmosphère, sur le sol ou dans les eaux, y compris celle de la mer territoriale, une substance de nature à mettre en péril la santé de l'homme ou des animaux ou le milieu naturel.

Article 507

Tout acte de terrorisme sera puni de la détention criminelle à temps de 10 à 20 ans. Lorsque cet acte aura entraîné la mort d'une ou plusieurs personnes, le ou les coupables seront punis de la peine de mort. La tentative du crime prévu au présent article sera punie comme le crime lui-même

XLIV. GUINEA-BISSAU¹²⁶

SUMMARY OF LEGISLATION OF GUINEA-BISSAU RELATED TO TERRORISM

Terrorist acts considered as offences under the Penal Code at Guinea-Bissau may be related to terrorism indirectly through attacks on the life and liberty of individuals (for example, abduction and kidnapping carry penalties of 2 to 10 years' and 2 to 8 years' imprisonment, respectively) or directly through crimes against the peace and public order (for example, participation in a terrorist organization is punishable by 5 to 20 years' imprisonment (art. 204), hostage-taking by 10 to 25 years' imprisonment (art. 204), diversion or hijacking of a ship or aircraft by 2 to 10 years' imprisonment (art. 205), possession of illegal weapons by up to 3 years' imprisonment or a fine and by 2 to 8 years' imprisonment in the case of weapons of war (art. 206) and consorting with criminals by 3 to 10 years' imprisonment (art. 207)).

Article 203 of the Penal Code, in the chapter on crimes against the peace and public order, states that anyone who promotes, establishes, finances, heads or leads a terrorist group, organization or association shall be sentenced to between 5 and 20 years' imprisonment.

Article 206 of the Penal Code provides that anyone who illegally manufactures, imports, transports, sells or transfers to another person firearms, chemical weapons, ammunition or any form of explosive shall be sentenced to up to three years' imprisonment or a fine. In the case of weapons of war, the sentence is increased to between two and eight years' imprisonment.

While there is no legislation which specifically prohibits recruitment to terrorist groups, article 203, headed "Terrorist conspiracy", criminalizes the act of promoting, establishing, financing, heading or leading a terrorist group, organization or association; prohibition of these acts under the law also implies the prohibition of recruitment. In addition, paragraph 3 of this article states that anyone who is a member of a terrorist group, organization or association or who in any other way commits or assists in the commission of a terrorist act shall be sentenced to between 3 and 15 years' imprisonment.

The Penal Code criminalizes not only the act of consorting with terrorists, but also the taking of hostages (art. 204) and the diversion or hijacking of a ship or aircraft (art. 205); the attempted commission of such acts is also punishable.

¹²⁶ Transmitted to the Secretariat by that Government on 24 March 2003 (S/2003/361, enclosure).

XLV. HAITI¹²⁷

ELEMENTS DU DISPOSITIF LEGISLATIF ET REGLEMENTAIRE D'HAITI

Le Code pénal haïtien ne dispose pas de provisions explicites en la matière. Néanmoins, certains actes ou faits assimilables au terrorisme sont prévus et punis par le Code pénal.

Aux termes de l'article 224 du Code pénal « Toute association de malfaiteurs envers les personnes ou les propriétés, est un crime contre la paix publique». Il est puni, selon l'article 226 dudit Code, à des travaux forcés à temps.

Tous autres individus chargés d'un service quelconque dans ces bandes et ceux qui auront sciemment et volontairement fourni aux bandes ou à leurs divisions, des armes, munitions et instruments de crimes seront punis de la réclusion (article. 227 du Code pénal).

XLVI. HUNGARY¹²⁸

PENAL CODE

CRIMES OF TERRORISM

Section 261¹²⁹

(1) Any person committing a violent felony against a person, a crime posing public threat, or a crime involving weapons as specified in subsection (9), with an intention to

(a) compel a government body, another state or an international organization to commit or to refrain from, or to endure any act,

(b) intimidate or coerce the civilian population;

(c) to change or interfere with the constitutional, social or economic order of another state, or to disrupt the operation of an international organization, is guilty of felony and is liable to imprisonment for a term between ten to fifteen years or life imprisonment.

¹²⁷ Transmitted to the Secretariat by that Government on 31 May 2002 (S/2002/614, enclosure).

¹²⁸ Transmitted to the Secretariat by that Government on 14 July 2003 (S/2003/787, enclosure).

¹²⁹ Established by Section 15 of Act II of 2003; effective from 1 March 2003.

- (2) Any person seizing significant tangible property with the intention defined in subsection a) above, and threatening to damage or retain such property unless a claim imposed on a government body or an international organization is satisfied, shall be liable to the same punishment as set forth in subsection (1).
- (3) The punishment of any person, who
- (a) discontinues the criminal act specified in subsections (1) and (2), before any severe consequences arising and
 - (b) reveals his/her act to the authorities may be reduced without limit, provided that the above actions facilitate the prevention or mitigation of the consequences of the offence, the identification of other offenders or the prevention of further criminal acts.
- (4) Any person making preparations for committing the criminal acts specified in subsections (1) and (2) above is guilty of felony and is liable to imprisonment for a term between five to ten years.
- (5) Any person soliciting, volunteering or undertaking to commit a criminal act specified in subsections (1) and (2) in a terrorist group or agreeing to commit such act jointly, or ensuring the conditions required for or supporting the act, providing or collecting tangible property for the purpose of enhancing the ability to carry out such acts, or supporting the activity of a terrorist group in any other way, is guilty of felony and is liable to imprisonment for a term between five to fifteen years.
- (6) Persons committing the offence set forth in subsection (5) but disclosing their act and the conditions thereof to the authority before the authority has gained cognizance thereof shall not be subject to punishment.
- (7) Any person threatening to commit the offence specified in subsections (1) and (2) is guilty of felony and is liable to imprisonment for a term between two to eight years.
- (8) Any person obtaining reliable information on preparations for a terrorist action, and failing to report it to the authority as early as possible, is guilty of felony and is liable to imprisonment for a term not exceeding three years.
- (9) For the purposes of this Section:
- (a) the following shall classify as a violent felony against a person, a crime posing public threat, or a crime involving weapons: murder (Section 166 (1)-(2)), bodily harm (Section 170 (1)-(5)), wilfully causing danger in the scope of professional activities (Section 171 (3)), violation of personal freedom (Section 175), kidnapping (Section 175/A), criminal offence threatening the safety of transportation (Section 184 (1)-(2)), endangering transportation by railway, air or water (Section 185 (1)-(2)),

violence against official persons (Section 229), violence against a person holding a public office (Section 230), violence against a person assisting an official (Section 231), violence against an internationally protected person (Section 232), endangering the general public (Section 259 (1)-(3)) interfering with the operation of a public facility (Section 260 (1)-(2)), taking possession of an aircraft, or vehicles suitable for the mass transportation of passengers or goods by rail, water or road (Section 262), abuse of explosive materials and substances (Section 263/A (1)-(3)), trafficking with weapons (Section 263/B), abuse of radioactive materials (Section 264 (1)-(3)), abuse of weapons prohibited under international conventions (Section 264/C (1)-(3)), criminal offence against computer systems and data (Section 300/C), causing damage (Section 324) and robbery (Section 321),

(b) terrorist group means a group consisting of three or more persons established over a period of time and acting in concert to commit the criminal offences specified in subsections (1) and (2).

XLVII. ICELAND¹³⁰

SUMMARY OF LEGISLATION OF ICELAND RELATED TO TERRORISM

Under Article 100 c of the Penal Code, terrorism is criminalized, subject to penalty of a maximum of life in prison. In order to fall under the scope of Article 100 a, acts committed must fulfill several criteria or conditions. Their purpose(s) must be at least one of the following:

- (a) To cause considerable fear among the public;
- (b) To force Icelandic authorities, foreign authorities or international organisations to take action or to remain passive;
- (c) To weaken or cause harm to constitutional, political, economical or social foundations of any state or international organisation.

Acts must involve at least one of the following crimes which are subject to penalty according to the Penal Code:

- (a) Manslaughter;
- (b) Assault;

¹³⁰ Transmitted to the Secretariat by that Government on 30 August 2002 (S/2002/1020, enclosure).

- (c) Deprivation of liberties;
- (d) Threat to traffic safety, causing disorder to public transport or causing considerable damage to property, and be committed in such way that they threaten human life and could cause considerable damages to property;
- (e) Hijacking of aircraft or causing threat to people staying in international airports;
- (f) Arson, causing explosions, circulation of dangerous gases, causing of flooding, shipwreck, accident or failure of trains, cars or aircraft, general shortage of drinking water or contaminating water sources or water pipes or poisoning or placing dangerous substances in merchandise or objects for public use.

It is a further condition that the acts, considering their nature and circumstances when and where they were committed, must have the potential possibility to seriously harm a State or international organization.

Under this article it is also subject to same penalty to threaten to commit terrorist acts.

Article 101 b applies to the financing of terrorist acts and terrorist groups. The article declares it as criminal activity to support, both directly and indirectly, by granting money or other financial means to a person, association or group of people that aim to commit terrorist acts as defined in Article 101 a. Furthermore, it is unlawful to provide or collect capital for such person, association or group of people or make capital available to them in any other way. The penalty for committing these kinds of acts is a maximum of ten years imprisonment.

Article 100 c makes it subject to penalty to assist, by words or actions, persuasion, motivation or by some other means to support the criminal acts described in Articles 100 a and 100 b or to express support for the policy of an association or group which have committed such crimes as described in Articles 100 a and 100 b and which activities or policy imply that such crimes are committed. The maximum penalty for such crimes is six years imprisonment.

It is deemed that that the recruitment of members for terrorist groups in Iceland falls within the scope of Article 100 c of the Penal Code.

XLVIII. INDIA¹³¹

SUMMARY OF LEGISLATION OF INDIA RELATED TO TERRORISM

(a) Prevention of Terrorism Act, 2002

The salient provisions of the Prevention of Terrorism Act, 2002 are as follows:

(i) It shall extend to the whole of India. It shall remain in force for a period of 3 years. It's salient provisions are as follows:

(ii) Section 3 of the Act defines "Terrorist Act" as any act or thing done by using bomb, dynamite or other explosive substances or fire arms or lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of hazardous nature or by other means in such a manner as to cause or likely to cause death or injuries to any person or persons or loss or damage to or destruction of property or disruption of any supplies or services essential to the life of the community or causes damage or destruction to any property or equipment used or intended to be used in the defence of India in order to compel the Government or any other person to do or abstain from doing any act.

Membership of a terrorist gang or a terrorist organisation involved in terrorist acts shall also constitute a terrorist act. It is provided to proscribe terrorist outfits under the procedure prescribed for making additions or deletions in the list of such terrorist organisations. A person commits an offence if he invites support for a terrorist organisation. A person also commits an offence if he arranges, manages or assists in arranging or managing a meeting which he knows is:

- (a) to support a terrorist organisation,
- (b) to further the activities of a terrorist organisation, or

¹³¹ Transmitted to the Secretariat by that Government on 12 July 2002 (S/2002/883, enclosure). Information was also provided in respect of: the Indian Penal Code, 1860; The Code of Criminal Procedure, 1973; The Arms Act, 1959; The Explosives Act, 1884; The Explosive Substances Act, 1908; The Indian Telegraph Act, 1885; The Armed Forces (Special) Powers Act, 1958; The Unlawful Activities (Prevention) Act, 1967; The Anti-Hijacking Act, 1982; The Merchant Shipping Act, 1948; and the United Nations Security Council Act, 1947.

(c) to be addressed by a person who belongs or professes to belong to a terrorist organisation.

A person commits an offence if he addresses a meeting and the purpose of his address is to encourage support for a terrorist organisation or to further its activities.

A person also commits an offence under the Act if he wears an item of clothing, or wears, carries or displays an article in a public place in such a way or in such circumstances as to arouse reasonable suspicion that he is a member or supporter of a terrorist organisation.

Further, whoever is or continues to be a member of an association declared unlawful under the Unlawful Activities (Prevention) Act, 1967, or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property, commits a terrorist act.

Possession of certain unauthorised arms or other explosive substances or other lethal weapons capable of mass destruction and/or use in biological or chemical warfare without authorization in a notified area constitutes an offence under this Act. However possession of hazardous explosives or such lethal weapons in any area whether notified or not shall also constitute an offence under this Act.

Terrorist acts also include acts of fund raising by persons/organizations if such funds are intended for the purposes of terrorism. There are also provisions of seizing properties, assets etc. of terrorist organisations.

(iii) Provision under Section 3(6) seeks to punish those persons who may knowingly come in possession of property derived or obtained from commission of any terrorist act or has been acquired through the terrorist funds.

(iv) In Section 3(7) a new provision has been made for punishment of whoever threatens any person who is a witness or any other person in whom such witness may be interested. This is a salutary provision for protection of witnesses.

(v) Section 14 provides a new provision which makes it obligatory to furnish information in respect of a terrorist offence. Failure to furnish the information called for or deliberately furnishing false information to investigating officer shall be punishable with imprisonment for a term which may extend to three years or fine or both. The investigating

officer can call for such information only with prior approval in writing of an officer not below the rank of Superintendent of Police.

(vi) Section 27 provides a new provision wherein a Police Officer investigating a case under the Act can request the Court in writing for obtaining samples of handwriting, finger-prints, foot-prints, photographs, blood, saliva, semen, hair of any accused person who is reasonably suspected to be involved in the commission of an offence under this Act. If any accused person refuses to give such samples, the Court shall draw adverse inference against the accused. This is a salutary provision keeping in view the technological advances in Forensic Sciences and the desirability of promoting scientific investigation of cases.

(vii) Section 29(2) provides that a Special Court may try an offence which is punishable with imprisonment for a term not exceeding three years or fine or both in a summary way. In such cases the punishment prescribed on conviction would be one year imprisonment with fine up to Rs 5 lakhs.

(viii) Section 30 makes special provisions for the protection of witnesses which include holding of the Court proceedings in camera.

(ix) Section 32 provides for admissibility of confessions made to a Police Officer.

(x) Bail Provision:

Section 49(6) of the Act provides that no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond unless the Court gives the public prosecutor an opportunity of being heard. Section 49(7) of the Act requires the magistrate to satisfy himself only regarding the innocence of the accused before granting bail to him.

Section 49(9) also provides that bail shall not be granted to a person accused of an offence punishable under this Act if he is not an Indian citizen and has entered the country (India) unauthorizedly / illegally except in exceptional circumstances and for reasons to be recorded therefore.

(xi) Protection for action taken in good faith and punishment for corrupt and malicious prosecution of any person under this Act:

Section 57 of the Act provides for protection to public servants for their actions under the Act in good faith while at the same time providing for punishment which extends to two years or fine or both against any Police Officer who knowingly or maliciously proceeds

against any person for an offence under this Act when there are no reasonable grounds for proceedings against him. Further, Section 58 also provides for compensation to a person who has been corruptly and maliciously proceeded against under the Act. These are salutary provisions which will go a long way in curbing misuse of the Act.

(xii) Trial by Special Courts:

The Act retains the provisions regarding trial by Special Courts as in the TADA (P) Act, 1987 and Criminal Law (Amendment) Bill, 1995 and also provides that trial by Special Courts will have precedence over the trial by any other courts and shall be concluded in preference to trial in any other case. Section 28 and 29 provide for appointment of a Public Prosecutor and procedures and powers of Special Courts respectively.

(xiii) Provisions have been made under Part V to provide for special powers of interception of wire, electronic or oral communication and the admissibility of such evidence with a view to make the provisions more effective while dealing with organised crime/terrorist activity. These are on the lines of provisions existing in Maharashtra Control of Organised Crime Act, 1999.

(xiv) Provisions have been made under Section 60 of the Act for constitution of Review Committees by the Central Government as well as by the State Governments. The Chairperson of the Committee shall be a person who is, or who has been, a judge of a High Court.

Specific safeguards have been provided for in the Act with a view to prevent the possibility of the misuse of the special powers given to the investigating authorities and address the concern of violation of human rights raised in different quarters while also seeking to ensure that the provisions of the Act are not so diluted as to render them ineffective in combating terrorism.

(b) Indian Penal Code, 1860

Indian Penal Code, 1860 is the comprehensive criminal law of the country which deals with all the general offences. It deals with offences against human body, offences relating to religion, offences against property, offences relating to criminal breach of contracts of service, offences relating to marriage, offences against public tranquillity, State, elections, public justice, etc.

However, the Indian Penal Code does not provide for preventive action against terrorists. It only prescribes punishment for criminal acts after the commission of such acts. However, after the commission of the crime/terrorist act, the offenders are charged under relevant sections of the Penal Code along with relevant sections of specific laws relating to that offence (if any).

(c) The Code of Criminal Procedure 1973

This is the uniform law of criminal procedure for the whole of India. The various sections of the Code provide for conduct of criminal proceedings in the courts of law.

The provisions for preventive action against terrorists/criminals are very mild in Cr.P.C. As per section 41, a Police Officer may arrest a person without warrant provided there is information that the person is likely to commit a cognizable offence (Section 109, 110 Cr.PC). However, the offender has to be produced before Executive Magistrate within 24 hours of detention.

Section 151 Cr.P.C. provides for arrests to prevent the commission of cognizable offence. A Police Officer knowing of a design to commit any cognizable offence may arrest without orders from the Magistrate and without a warrant the person so designing if it appears to such officer that the commission of the offence cannot be otherwise be prevented. However, no person arrested under this section shall be detained in custody for more than 24 hours.

(d) The Unlawful Activities (Prevention) Act, 1967

The object of this Act is to make powers available for dealing with activities directed against the integrity and sovereignty of India. "Unlawful activity" has been defined in relation to an individual or association as an action taken by such individual or association:

- which is intended, or supports any claim to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession;
- which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India;

"Unlawful association" has been defined as any association which has for its object any unlawful activity or encourages any unlawful activity or any activity punishable under section 153(A) or 153(B) of Indian Penal Code.

Section 7 of the said Act empowers the Central Government to prohibit the use of funds of an unlawful association. It effectively freezes the financial operations of an unlawful association.

Section 8 of the said Act empowers the Central Government to notify places used for the purpose of an unlawful association. It effectively restrains the use of moveable and immovable property by unlawful associations.

The punishment provided for unlawful activity is imprisonment up to seven years and fine. Any person assisting any unlawful activity is punishable for imprisonment up to five years or with fine or with both.

This was the first Act under which the assets of any terrorist organization could be frozen. The punishment provided for unlawful activity is also not commensurate with terrorist acts.

It provides for banning of organizations but it covers only those organizations who support cession or secession of a part of a territory of India from the Union or Acts which are intended to disrupt the sovereignty and territorial integrity of India.

XLIX. INDONESIA¹³²

SUMMARY OF LEGISLATION OF INDONESIA RELATED TO TERRORISM

The Indonesian Penal Code includes the following:

Book II on crimes, Chapter V on crimes against the public order

Article 160 which, inter alia, states:

“Any person who orally or in writing incites in public to commit a punishable act, a violent action against the public authority or any other disobedience, either to a statutory provision or to an official order issued under a statutory provision, shall be punished by a maximum imprisonment of six years ...”

Article 163 bis which, inter-alia, states:

“(1) Any person who by one of the means mentioned in Article 55 under 2 attempts to induce others to commit a crime, shall, if it does not result in the crime or a punishable attempt thereto, be punished by a maximum imprisonment of six years ...”

The above articles could be used as legal basis to prevent the recruitment of individuals for terrorist activities.

¹³² Transmitted to the Secretariat by that Government on 21 December 2001 (S/2001/1245, enclosure).

Book II on crimes, Chapter VII on crimes whereby the general security of persons or property is endangered

Article 187 which states:

“Any person who with deliberate intent sets fire, causes explosion or causes a flood, shall be punished: first, by a maximum imprisonment of twelve years if thereby general danger to property is feared; second, by a maximum imprisonment of fifteen years if thereby danger of life for another is feared; and third, by life imprisonment or a maximum temporary imprisonment of twenty years if thereby danger of life for another is feared and the act results in the death of someone.”

Article 187 bis which inter-alia states:

“(1) The person who produces, receives, tries to procure, has in store, conceals, transports or imports into Indonesia stuffs, objects or tools of which he knows or reasonably must suspect that they are intended or will occasionally be used to cause an explosion, whereby danger of life or general danger to property is feared, shall be punished by a maximum imprisonment of eight years or a maximum light imprisonment of one year.

“(2) The defectiveness of the stuffs, objects or tools referred to in the foregoing paragraph, in causing an explosion above described, shall not exempt from liability to punishment.”

This article could be applied against individuals or groups which supply weapons for terrorist activities. Both articles could be applied against terrorist activities carried out both by individuals or groups. Moreover, in certain cases these articles could be linked with other articles relating to criminal acts.

L. ISLAMIC REPUBLIC OF IRAN¹³³

SUMMARY OF LEGISLATION OF THE ISLAMIC REPUBLIC OF IRAN RELATED TO TERRORISM

There are a number of distinct laws in place in the Islamic Republic of Iran that criminalize certain acts that cover some forms of terrorism. These laws cover acts that intend to, or knowingly cause to result in, including but not limited to, murder, bombing or use of explosive or other means to cause destruction and insecurity and/or instill public fear, interference with safety of air navigation including hijacking, interference with safety of oil and other industries as well as

¹³³ Transmitted to the Secretariat by that Government on 27 December 2001 (S/2001/1332, enclosure) and on 19 February 2003 (S/2003/266, enclosure).

of public utilities, and counterfeiting. The short titles of some of these laws are as follows:

- The Islamic Penal Code of 1991 and 1996
- Extradition of Criminals Act of 1960
- Punishment of Perpetrators of Misdemeanor and Felony Against Other Countries Act of 1971
- Entry and Residency of Foreign Nationals in Iran Act of 1921 and Amendments
- Passport Act of 1972 and Amendments
- Punishment of Trafficking of Unauthorized Individuals at Borders Act of 1988
- Augmenting Punishment for Arm Trafficking and of Armed Traffickers Act of 1969
- Augmenting Counter-Measures Against Acts of Terrorism by US Administration Act of 1989
- Combating Narcotic Drug Act of 1998 and Amendments
- Punishment of Saboteurs in Iran's Oil Industry Act of 1959
- Punishment of Saboteurs in Industries Act of 1959
- Punishment of Saboteurs in Electricity, Water, Gas and Telecommunications Infrastructures Act of 1974
- Punishment of Saboteurs in aircraft safety and sabotage in the equipments and facilities thereto Act of 1970
- Punishment of Offences in the Railway Act of 1932
- Iran's Atomic Energy Organization Act of 1974
- Presidential Election of the Islamic Republic Act of 1985
- Political and Professional Parties, Societies and Associations Act of 1981
- Punishments for Smuggling of Goods and Foreign Currency Acts of 1995

- The National Aviation Act of 1949
- The Punishments for Saboteurs in Industries Act of 1974
- The Punishment for Kidnapping Act of 1975

Combating the financing of terrorism is addressed in the collection of laws and regulations of the Islamic Republic of Iran as follows:

- Article 43 of the Islamic Penal Code stipulates that whoever encourages, incites, threatens or entices (including financing terrorism) another party to commit a crime or facilitate it, whether the action of each of them is adequate for committing the crime or not and whether the effects of their action are equal or not, he/she shall be considered as an accomplice and shall receive the same punishment as the independent perpetrator of the crime.
- Under Article 610 of the Islamic Penal Code in the case where two or more people come together and collude to act against the internal and external security of the country or acquire means to carry such acts out, they shall be punishable by 2 to 5 years of imprisonment provided that they are not indicted as enemy combatant.

Other provisions related to terrorism include:

- Article 512 of the Islamic Penal Code stipulates that whoever entices or instigates people to wage war or commit murder (including directing them to terrorist acts) with a view to perturbing the security of the State, shall be sentenced to 1-5 years of imprisonment, no matter his/her act leads to loss of life and plunder or not.
- Under Article 183 of the Islamic Penal Code, whoever resorts to arms to wage terror and panic and perturb peace and security shall be considered as “enemy combatant”.
- According to Articles 42 and 43 of the Islamic Penal Law, an accomplice to a crime shall be considered to be culprit and the punishment may be the same as for the main perpetrator(s) of crime.

As regards the recruitment of members of terrorist groups, reference is made to the following provisions:

- Under Clause 5 of Article 156 of the Constitution, legal authorities shall suppress the recruitment by terrorist groups by enforcing crime-preventing mechanisms.
- Under Article 498 of the Islamic Penal Code, whoever, holding any belief, establishes or leads a group, or its affiliates, of more than two

people, inside or outside Iran, under any name or title, with the aim of perturbing the security of the country, other than those considered to be “enemy combatants”, shall be subject to 2-10 years of imprisonment.

– Under Article 499 of the above-mentioned Code, anybody becomes member of those groups or their affiliates, referred to in Article 498, shall be sentenced to 3 months to 5 years of imprisonment, unless it is established that she/he has been unaware of group’s objectives. In addition, recruiting to this effect constitutes a crime in the first place.

– Under Article 507 of the Islamic Penal Code, members of the groups referred to in Article 499 of this Code who cooperates with the legal authorities in identifying criminals or their criminal intentions shall receive pardons.

LI. IRELAND¹³⁴

SUMMARY OF LEGISLATION OF IRELAND RELATED TO TERRORISM

Irish law has not defined terrorism, which has been addressed through the criminal law, in particular the *Offences against the State Acts 1939-1998*. Reference is also made below to aspects of general criminal law which have application to terrorist crime, as well as to legislation giving effect to international conventions to which Ireland is party.

The *Offences Against the State Acts 1939-1998* make provision in relation to actions and conduct calculated to undermine public order and the authority of the State and to regulate and control in the public interest the formation of associations. The Irish Republican Army (IRA) and the Irish National Liberation Army (INLA) have been declared unlawful organizations in accordance with, and for the purposes of, the provisions of those Acts. The *Criminal Law Act 1976* makes it an offence for a person to incite or invite another person to support or assist the activities of such organizations.

The *Offences Against the State Acts 1939-1998* make it an offence to be a member of an unlawful organization. Those Acts also make special provision in relation to evidentiary matters connected with the question of membership of such organizations. The *Criminal Law Act 1976* makes it an offence 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. Other

¹³⁴ Transmitted to the Secretariat by that Government on 21 December 2001 (S/2001/1252, annex).

relevant offences include the offence of directing an unlawful organization and training persons in the making or use of firearms or explosives for which provision was made in the *Offences Against the State (Amendment) Act 1998*.

An overview of the penalties provided under the relevant legislation related to some multilateral counter-terrorism conventions is as follows:

(a) *Convention on Offences and Certain Other Acts Committed on Board Aircraft* and *Convention for the Suppression of Unlawful Seizure of Aircraft*: The criminal acts referred to in these Conventions are established as offences by section 11 of the *Air Navigation and Transport Act 1973* and punishable by a maximum sentence of imprisonment for life;

(b) *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*: The criminal acts referred to in the Convention are established as offences by section 3 of the *Air Navigation and Transport Act 1975* and punishable by a maximum sentence of imprisonment for life;

(c) *Convention on the Physical Protection of Nuclear Material*: The criminal acts referred to in the Convention are established as offences by section 38 of the *Radiological Protection Act 1991* and punishable by a maximum sentence of imprisonment for life;

(d) *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Aviation, complementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Aircraft*: The criminal acts referred to in the Convention are established as offences by section 3 of the *Air Navigation and Transport Act 1975* and section 51 of the *Air Navigation and Transport (Amendment) Act 1998* and punishable by a maximum sentence of imprisonment for life.

Dedicated offences under the *Offences Against the State Acts 1939-1998* also attract severe maximum penalties: membership of an unlawful organization (7 years); recruiting etc. for an unlawful organization (10 years); directing an unlawful organization (life imprisonment); training persons in the making or use of firearms etc. (10 years). The maximum penalties which apply to offences commonly associated with terrorist actions, including explosives and firearms offences, have also been pitched at the higher end of the scale for deterrence purposes.

LII. ISRAEL¹³⁵

SUMMARY OF LEGISLATION OF ISRAEL RELATED TO TERRORISM

General legislation on the matter of terrorism exists in the *Defence Regulations (State of Emergency)* (1945), the *Prevention of Terrorism Ordinance* (1948) and the *Penal Law* (1977). Beyond these laws, there are specific provisions relevant to the terrorism in other legislation, such as the *Firearms Law* (1949) and the *Air Navigation (Security in Civil Aviation) Law* (1977).

(a) Prevention of Terrorism Ordinance (1948)¹³⁶

– Section 4(d) of the Prevention of Terrorism Ordinance provides that a person who gives money or moneys worth for the benefit of a terrorist organization is guilty of a crime and is liable to be imprisoned for a term not exceeding three years and/or a fine currently, pursuant to Section 61(3) of the Penal Law, up to 49,800 NIS (approximately U.S. \$11,580).

– Sections 4(e) and (f) of the Prevention of Terrorism Ordinance establish as an offence punishable by three years in prison, the provision of a location or an article to a terrorist organization for its use:

4. (e) a person who...puts a place at the disposal of anyone in order that that place may serve a terrorist organization or a member of a terrorist organization or its members, regularly or one particular occasion, as a place of action, meeting, propaganda or storage; or

(f) puts an article at the disposal of anyone in order that article may serve a terrorist organization or a member of a terrorist organization in carrying out an act on behalf of the terrorist organization.

– A public act of identification with or support for a terrorist organization, is an offence punishable by three years imprisonment, according to section 4(g) of the *Ordinance*.

¹³⁵ Transmitted to the Secretariat by that Government on 27 December 2001 (S/2001/1312, enclosure). Information was also provided regarding the Criminal Procedure (Arrest and Search) Ordinance (5729-1969); the Prohibition on Money Laundering Law (2000); and the International Legal Assistance Law (1998).

¹³⁶ The full text of the Prevention of Terrorism Ordinance is contained in Part I of the present publication (ST/LEG/SER.B/22, pp. 204-210).

(b) Penal Law (1977)

- Section 145 of the Penal Law (1977) defines an “unlawful association” as an association which incites to subversion or to bring down, by force or violence, the lawful government of Israel or of another country”.
- Section 146 establishes as an offence punishable by three years imprisonment, incitement or encouragement to perform any of the above acts.
- Section 147 establishes as an offence punishable by one year imprisonment, membership in a prohibited association.
- Section 148 establishes as a criminal offence punishable by six months imprisonment, the payment of membership dues to an unlawful organization, as defined in that law.
- Section 165 establishes as an offence punishable by 10 years imprisonment the attempt to destroy the political order of another state. Incitement to hostilities against a friendly state is an offence punishable by three years imprisonment (Section 166).
- Section 499 provides that conspiracy to commit a felony or misdemeanour is an offence. For our purposes, this section would apply even if the conspiracy is to commit the offence outside the territory of Israel.

Additionally, the standard provisions of the Penal Law also apply to acts of terrorism. Among the most relevant in this regard include causing death (Article 1 of chapter 10); harm with aggravating intent (Section 329); and unlawful military exercises (Section 143).

Under section 34(d) of the Penal Law, the punishment for the attempt to commit an offence is equal to the punishment for the commission of the offence itself.

Under section 32 of the Penal Law, the punishment for assisting in the commission of an offence is one half of the punishment for the main offence.

(c) Defence Regulations (State of Emergency) (1945)

Regulation 85 of the Defence Regulations establishes a number of offences relating to unlawful associations, including membership, holding an office, performing services, attending meetings, providing a place for meeting to be held, possessing propaganda or acting as a representative of such an organization.

LIII. ITALY¹³⁷

SUMMARY OF LEGISLATION OF ITALY RELATED TO TERRORISM

Under Decree Law No. 374 of 18 October 2001, enacted as Law No. 438 of 15 December 2001 (Decree Law 374/2001), Italy adopted urgent measures to combat international terrorism. Section 7 of that Decree, referring to section 18 of Law 152/1975, applies the provisions of the Anti-mafia Act (Law 575/1965) to international terrorism. This measure extends the application of pre-emptive and preventive measures involving restrictions on personal freedom (internal exile, surveillance), the investigation of economic and financial assets extended to those of family members; the sequestration and confiscation of goods acquired as a result of illegal activities or of assets into which illegally acquired assets have been reinvested, to anyone performing any action in preparation for the commission of terrorist crimes, whether domestic or international.

In addition to existing legislation, Decree Law 374/2001 criminalizes the financing of both international and domestic terrorist activities. Section 1 ("Provisions relating to conspiracy for the purposes of domestic or international terrorism") updates article 270-bis of the Criminal Code and provides that "anyone promoting, instituting, organising, managing or financing organisations whose purpose is to propose acts of violence for the purposes of terrorism or for subverting the democratic order shall be liable for a term of imprisonment of between seven and fifteen years", and that "anyone participating in the aforementioned organisations shall be liable for a term of imprisonment of between five and ten years", specifying that "the pursuit of terrorism shall also apply when the acts of violence are directed against a foreign state, or an international organisation or institution". The same article 1 also contemplates the crime of "providing assistance to associated persons" in article 270-ter of the Criminal Code, for which the penalty is a term of imprisonment of a maximum of four years.

Law 152/1975 for the protection of public order, empowers the members of the judicial police force and the ordinary police force, in cases of necessity and when urgently required, to conduct spot checks and/or search individuals and/or vehicles in order to ascertain whether they are in possession of offensive weapons and/or tools for the purposes of breaking and entering. These provisions also apply to anyone performing actions to subvert the State and/or to anyone instigating, master-minding and/or financing them.

Furthermore, Decree Law 374/2001 makes it a crime merely to take part in any preparatory activities in association with others for the commission of acts of terrorism. In particular, it expands the application of the regime for judicial

¹³⁷ Transmitted to the Secretariat by that Government on 27 December 2001 (S/2002/8, enclosure) and 9 July 2003 (S/2003/724, enclosure).

wire-tapping and the searching of buildings or blocks of buildings to cover cases of crimes committed for the purposes of international terrorism (section 3); it introduces ad hoc provisions to permit undercover operations, and to delay the issue of arrest warrants, the arrest of individuals and the seizure of property in this connection (section 4); it extends to counter-terrorism investigations the possibility of carrying out preventive wire-tapping (section 5) and the interception of communications between persons present, in connection with the search for fugitives from the law (section 6).

With regard to the issue of recruitment of individuals who would engage in terrorist activities, the new legislation opens up new scope for intervention by creating new criminal offences.

With regard to preventing the supply of weapons to members of associations or groups with the purpose of terrorism, Italian legislation provides suitable legislative measures for effectively controlling the circulation of weapons (Law 895/1967, Law 110/1975 and Law 185/1990), through a tightly controlled system of issuing permits for imports and exports, the registration of companies and data, prior investigations of individuals and the imposition of stringent criminal penalties on offenders. It should be noted that the aforementioned Decree-Law 374/2001 incorporates (in section 1(2)) the list of "weapons of war" referred to in Law 110/1975, to include "aggressive biological and radioactive substances". It should also be noted that Section 22 of law 93/2001 has introduced into the Italian legal system the crime of "organising the traffic in waste", with penalties of imprisonment for between three and eight years in the case of highly radioactive waste. This provision is particularly useful for combating the transfer of any kind of radioactive materials that are not specifically classifiable as "aggressive".

There are additional provisions of the Criminal Code which warrant being mentioned. Article 110 makes any person aiding and abetting crime liable for that same crime, and therefore makes it possible to prosecute anyone financing individual acts of terrorism. Article 240(1) involves the seizure of funds of this kind; the illegal establishment of and participation in international conspiracies constitute crimes punishable under articles 273 and 274. Other cases, such as terrorist bombing, devastation, looting and multiple murder, and attacks against constitutional organs of the State and regional assemblies are provided by articles 280, 285 and 289. Article 289-bis introduces the punishment for abducting individuals for terrorist purposes; article 294 deals with the political rights of the citizens, article 306 provides penalties for establishing or taking part in armed gangs, and, lastly, article 312 sanctions the expulsion of foreign nationals who have been found guilty of these crimes.

The Decree Law previously mentioned has, among other things, updated article 270-bis of the Criminal Code and has further strengthened the system of the criminal law provisions already in force. In particular, the most relevant rules for combating domestic terrorism are contained in article 270 of the Criminal Code, which contemplates the crime of setting up subversive organisations; in article 270-bis which contemplates the crime of conspiracy for the purposes of terrorism

and subversion of the democratic order; in articles 285 and 286 regarding devastation, multiple murder, looting, and civil war; in article 306 governing armed organisations; in article 280 which lays down the penalties for attacks designed for the purposes of terrorism and subversion; in article 289-bis relating to the abduction of persons for terrorist purposes or to subvert democratic order.

Pursuant to Decree Law 374/2001, Italy's legislation to protect law and order and to combat the subversion of the democratic system are now also applicable to crimes that are committed for the purposes of international terrorism. In particular, mention should be made of the following measures: the possibility of conducting police searches to discover weapons and explosives, without requiring the intervention or authority of the Courts (Section 4 of Law 152/1975); the seizure and confiscation of buildings in which weapons have been discovered (Section 5 of Law 533/1977); the detention of persons refusing to provide personal particulars or who are without identity documents (Section 11 of Law 191/1978); the statutory requirement to notify the authorities of assignments of property or the use and enjoyment of a building (Section 12 of that same Act).

In addition to this, the Italian legal system makes provision pursuant to Section 1 of law 15/1980 for aggravating circumstances, so that it is possible to proceed not only in respect of specified crimes related to this field, but also by charging suspects of ordinary crimes with the aggravating circumstances of having acted with the intention to commit acts of terrorism or the subversion of the democratic order.

LIV. JAPAN¹³⁸

SUMMARY OF LEGISLATION OF JAPAN RELATED TO TERRORISM

As regards Japanese counter-terrorism legislation and executive measures, reference is made to the following:

- Foreign exchange and foreign trade law (law no. 228 of 1949)
- Export trade control order (executive order no. 414 of 1949)
- Foreign exchange order (executive order no. 260 of 1980)
- Law concerning prevention of injury to persons caused by sarin (law no. 78 of 1995)

¹³⁸ Transmitted to the Secretariat by that Government on 27 December 2001 (S/2001/1306, enclosure) and 29 January 2003 (S/2003/269, enclosure).

- Narcotics and psycho tropics control law (law no. 14 of 1953)
- Law of opium (law no. 71 of 1954)
- Hemp control law (law no. 124 of 1948)
- Stimulants control law (law no. 252 of 1951)
- Law controlling possession, etc. of firearms and swords (law no. 6 of 1958).
- The act regarding the control of organizations which committed indiscriminate mass murder (law no. 147 of 1999)
- Subversive activities prevention act (law no. 240 of 1952)
- Law for punishment of organized crimes, control of crime proceeds and other matters (law no. 136 of 1999)
- Immigration control and refugee recognition act (law no. 319 of 1951)
- The three principles on arms export (declaration at the diet session in 1967)

As regards the financing of a crime, under the Penal Code, when a principal offender commences the commission of a crime, the provision or collection of funds is punishable as aiding and abetting, or as complicity. However, if the principal did not commence the commission of a crime, the provision or collection of funds is not punishable under the Penal Code.

The “Law concerning Prevention of Injury to Persons Caused by Sarin” (Law No. 78 of 1995) stipulates that, regardless of whether a principal offender commences the commission of a crime, the provision of funds for emission, production and importation of the prohibited substances including sarin, with the knowledge that the funds would be used for such action, is by itself punishable. Similar stipulations are provided in “Narcotics and Psycho tropics Control Law” (Law No. 14 of 1953), “Law of Opium” (Law No. 71 of 1954), “Hemp Control Law” (Law No. 124 of 1948), “Stimulants Control Law” (Law No. 252 of 1951), “Law Controlling Possession, etc. of Fire-Arms and Swords” (Law No. 6 of 1958) and other laws.

Generally, the financing of criminal acts, according to the Penal Code in Japan, is regarded as aiding and abetting such acts; therefore, under Japan's Penal Code the financing of an act regarded as an act of terrorism is also punishable, once the commission of the act is commenced. Under the current legal system in Japan, the crime of financing is stipulated with regard to the several specific

criminal acts, and in cases where particular terrorist acts constitute such criminal acts, the financing thereof may be subject to punishment.

As regards the recruitment for terrorist groups, reference is made to “The Act Regarding the Control of Organizations Which Committed Indiscriminate Mass Murder (Law No. 147 of 1999)”, which stipulates that a group which has committed indiscriminate mass murder as an organizational activity is to have its activities investigated and placed under observation and that necessary measures will be taken to prevent the recurrence of such act.

Action for prevention of recommitment of indiscriminate mass murder is taken in cases where conditions require that an organization be placed under surveillance, and in cases where officials or members of the organization concerned have forced or attempted to force a person to join that organization concerned. The measure includes:

- 1) prohibition of acquisition of land or buildings;
- 2) prohibition of use of specific land or building owned or managed by the organization concerned;
- 3) ban on a person who participated in the said indiscriminate mass murder or who was an official of the organization concerned at the time the said indiscriminate mass murder was carried out from participating in or engaging in all or a part of the activities of the organization concerned;
- 4) prohibition against forcing or soliciting entry into the organization concerned;
- 5) prohibition or restriction of receipt by organization of donation of money, articles or other property interests.

Any person who contravenes the above-mentioned measures shall be liable to penalties.

Furthermore, the “Subversive Activities Prevention Act (Law No. 240 of 1952),” in order to contribute to the maintenance of public safety, stipulates necessary regulatory measures against an organization that is engaged in subversive activities that were intrinsic activities of the organization.

In June 2002, the “Act on Punishment of Financing to Offences of Public Intimidation” (hereinafter referred to as “the Act”) was enacted as a measure to implement the International Convention for the Suppression of the Financing of Terrorism. Under this Act, financing of terrorism was criminalized and included in the list of predicate offences in the Anti-Organized Crime Law.

It became possible thereafter to regard funds collected or provided in order to carry out terrorism acts as crime proceeds, and to secure the funds for confiscation and collection of equivalent value. Financial institutions are also required by the Anti-Organized Crime Law to report to the Japanese Financial Intelligence Officer (JAFIO) transactions that they suspect are related to the financing of terrorism. The JAFIO classifies and analyzes the information on the reported suspicious transactions, and provides law enforcement authorities with information relevant to their investigation.

LV. JORDAN¹³⁹

SUMMARY OF LEGISLATION OF JORDAN RELATED TO TERRORISM

(a) Penal Code

On 8 October 2001, the Government promulgated an act amending the Jordanian Penal Code and imposing severe penalties on any action regarded as an act of terrorism. This amendment criminalizes the use of force or threat of force to carry out an individual or collective act aimed at disturbing public order or endangering public safety and security, where such act is liable to spread alarm and terror among the populace or jeopardize their lives and security, causing damage to the environment, public facilities or property, private property, international facilities or diplomatic missions, occupying or taking over such premises, endangering national resources or causing suspension of the application of the provisions of the Constitution and laws.

It imposes the penalty of hard labour for life where such an act results in any of the following:

- (a) Damage, even partial, to a public or private building, an industrial establishment, a vessel, aircraft or any means of transport or other facilities;
- (b) The disabling of means of communication and computer systems, the disruption of their networks or the total or partial disabling or damaging of means of transport.

Moreover, it imposes the death penalty in any of the following cases:

- (a) If the act results in the death of a person;

¹³⁹ Transmitted to the Secretariat by that Government on 28 January 2002 (S/2002/127, enclosure) and 11 December 2002 (S/2003/16, enclosure).

(b) If the act causes the total or partial destruction of a building in which one or more persons are present;

(c) If the act is committed using explosive or inflammable materials or poisonous, incendiary, infectious, bacteriological, chemical or radioactive agents or the like.

In addition, a term of hard labour is imposed on any person who manufactures or knowingly procures or transports any explosive material or any of the materials mentioned in subparagraph (c) or any of the components of such materials in the execution of terrorist acts or in order to enable another person to use them for that end.

This amendment also criminalizes banking transactions related to terrorist activities, inasmuch as article 147, paragraph 2, of the Jordanian Penal Code (No. 16 of 1960 and amendments thereto) provides as follows:

“Any act relating to any banking transaction, in particular the deposit of funds in any bank in the Kingdom or in any financial institution engaging in banking operations or the transfer of such funds by them to any party whatsoever shall be deemed a terrorist offence if it emerges that such funds are suspect and related to a terrorist activity. In this case the following measures shall apply:

“(a) Preventive seizure of such funds by a decision of the Prosecutor General and prohibition of their use until such time as investigatory measures have been taken;

“(b) Investigation of the case by the Prosecutor General, acting in coordination and cooperation with the Central Bank and any domestic or foreign party concerned; if he finds that the banking transaction in question is related to a terrorist activity, the case shall be referred to the competent court;

“(c) Any person who commits such a crime shall be liable to a term of hard labour, and the staff member of the bank or financial institution who was responsible for effecting the transaction, if he had a knowledge of the facts, shall be liable to imprisonment. The funds seized shall be permanently confiscated.”

The Penal Code also incorporates provisions criminalizing and penalizing persons who form gangs and groups for a criminal or terrorist purpose. Any recruitment activities are deemed an offence punishable under article 141 of the Penal Code, which provides as follows:

“Any person who, without the consent of the authorities, proceeds to assemble armed factions, enrol or recruit troops or equip or supply them with weapons and ammunition shall be liable to imprisonment for a term of not less than five years.”

Articles 143, 144 and 159 of the Penal Code also criminalize the formation of armed gangs or unlawful groups that aim at the destruction of government assets and property and the commission of terrorist acts, inasmuch as the Code makes the perpetrators of such acts liable to a term of hard labour.

Article 145 of the Penal Code also lays down the inadmissibility of the acquisition of weapons, explosive or inflammable materials, poisonous or incendiary agents or components used in their assembly or fabrication, inasmuch as it punishes the perpetrator of such acts by a term of hard labour, even if such acts are not completed or produce no result.

The collection of funds by terrorist organizations and other illegal organizations is punishable under the above-mentioned article 162 of the Penal Code.

(b) Other legislation

With regard to the activities and aims of societies, associations and civil society institutions, the Societies and Associations Act governs the way in which they are monitored. This Act stipulates that the statutes of any association must set forth in detail its main aims and the way in which they are to be attained, as well as details of oversight of its financial affairs and the manner of disposal of its funds, assets and income (article 6 of the Law).

Article 14 of the Act also gives the competent minister the power to examine periodically the financial records of licensed societies and associations and the power to dissolve any society, association or union that denies the examiners permission to check its financial records or in the event of financial activity at variance with the purposes for which it was founded, as set forth in its statutes and the licence issued to it. Again, under article 7 of the Companies Act in force, the Minister of Industry and Trade has the right to monitor non-profit companies insofar as their aims, the sources of their financing and their expenditures are concerned.

Furthermore, the Arms and Ammunitions Act prohibits the carrying or acquisition of firearms except by the regular armed forces and public security personnel. Under this Act, the transport, manufacture and trafficking of such weapons is prohibited. Article 11 (a) of this Act provides as follows:

“(a) Any person who manufactures, imports, obtains, transports, sells or brokers the purchase or sale of any gun or automatic weapon without a licence for the purpose of its use in an unlawful manner shall be liable to execution, and the weapon shall be confiscated.”

With regard to the prohibition of the circulation and possession of nuclear weapons or radioactive sources used in the manufacture of such weapons, the Government has promulgated a special act regulating issues relating to the use

of nuclear energy. The Act on Nuclear Energy and Radiation Protection (No. 29 of 2001) prohibits any person setting up, operating or administering a nuclear installation in the Kingdom or circulating, importing, exporting, using, dealing in, obtaining, trafficking in, operating, leasing, transporting, stockpiling, destroying, disposing of or producing any radioactive materials or any radioactive sources. This includes research, pulverization, fission, extraction, conversion, mining or fabrication (article 15). The ban imposed by this legislative provision is of a comprehensive nature. With regard to the penalties provided for a violation of article 15 of the above-mentioned Act, article 23 therein reads:

“Any person who contravenes the provisions of articles 15 and 18 of this Act shall be liable to a term of imprisonment of not less than one year and not more than three years or a fine of not less than 10,000 dinars and not more than 30,000 dinars, or both these penalties.”

LVI. KAZAKHSTAN¹⁴⁰

1. SUMMARY OF LEGISLATION OF KAZAKHSTAN RELATED TO TERRORISM

The Act “On combating terrorism”, adopted on 13 July 1999, relates directly to anti-terrorism issues and lays down the legal and organizational bases for combating terrorism in Kazakhstan, the operating procedure for State bodies and organizations, irrespective of their form of ownership, and citizens’ rights, obligations and safeguards in matters relating to the campaign against terrorism.

According to article 10 of the Act, the advocacy of terrorism and the establishment, registration or operation of terrorist organizations and unlawful militarized groupings are prohibited in the territory of the Republic of Kazakhstan. In accordance with article 20, persons taking part in terrorist activity incur criminal liability as envisaged in the respective legislation.

In addition, the Criminal Code establishes the list of offences to be considered as terrorist offences, which carry sanctions ranging from four to fifteen years’ imprisonment, including in the following articles:

- *Article 162*: Recruitment, training, funding or other material support of a mercenary;
- *Article 163*: Attack on a person or organization enjoying international protection;

¹⁴⁰ Transmitted to the Secretariat by that Government on 26 December 2001 (S/2001/1307, enclosure), 17 September 2002 (S/2002/1087, enclosure) and 4 September 2003 (S/2003/862, enclosure).

- *Article 167*: Endangering the life of a government or public figure;
- *Article 233*: Terrorism;
- *Article 234*: Hostage-taking;
- *Article 238*: Seizure of buildings, installations, means of transport and means of communication;
- *Article 251*: Unlawful procurement, transfer, sale, storage, transport or carrying of weapons, ammunition, explosive substances and explosive devices.

The Criminal Code of Kazakhstan does not provide for criminal liability for the wilful provision or collection of funds by its citizens or in its territory for the purpose of using such funds, or with the suspicion that they may be used, to commit terrorist acts.

Under article 233 of the Criminal Code, terrorism involves acts that threaten the lives of people (even if it is one person), cause significant property damage or have other harmful effects on society.

Article 223 of the Criminal Code contains an amendment that provides legal incentives for persons to actively repudiate their association with terrorism. Thus, anyone involved in the preparation of a terrorist act shall be exonerated if he gives State organs timely warning, or uses other means, to prevent the terrorist act, and if he has not committed any other crime.

In accordance with article 20 of the Act of 13 July 1999 on measures to combat terrorism, a person who has taken part in the preparation of a terrorist act is exempt from criminal liability if he provides a timely warning to the authorities or by some other means enables the terrorist act to be prevented, provided that he has not committed other offences.

Pursuant to the Act of 17 February 2002 on amending and supplementing certain legislative acts of Kazakhstan on questions of counter-terrorism, supplementary provisions were added to the Criminal Code. By this means, new categories of offences were introduced and criminal liability established for advocacy of terrorism and public incitement to commit an act of terrorism (article 233-1), as well as the establishment or leadership of a terrorist group, and participation in its activities (article 233-2).

Article 162 of the Code defines a mercenary as a person who acts in order to obtain material compensation or other personal advantage, is not a national of a State participating in the armed conflict, is not a permanent resident in its territory, and has not been sent by another State to carry out official duties. Further, under article 233 of the Criminal Code, terrorism is defined as carrying out an explosion, fire or other acts that jeopardize human life, cause significant

property damage or have other dangerous consequences for society, where those acts are committed to violate public security, cause panic or influence decision-making by government authorities of Kazakhstan, a foreign State or international organization, including the threat to commit such acts for those purposes. In this connection, the purposes constituting definitive grounds for the commission of such an offence are varied. Closest to terrorism in the corpus delicti is sabotage (article 171): committing an explosion, fire or other act aimed at causing massive loss of life, injury to health, destruction of or harm to businesses, buildings, roads and communications or essential services, with the aim of undermining the security or defence capabilities of Kazakhstan, or, for the same purposes, mass poisoning or propagation of epidemics or episodic diseases. In addition, article 250 of the Criminal Code establishes criminal liability for smuggling items withdrawn from circulation, or items with restricted circulation (narcotic substances, weapons, military technology, explosive devices, ammunition, weapons of mass destruction, etc.).

2. CRIMINAL CODE

Article 233. Terrorism

1. Causing an explosion or fire or other acts that jeopardize human life, resulting in significant property damage or have other dangerous consequences for society, where such acts are committed for the purposes of violating public security, causing panic or influencing decision-making by the government authorities of Kazakhstan, a foreign State or an international organization, including the threat to commit such acts for those purposes, are punishable by imprisonment for 4 to 10 years.

2. Those same acts, when committed:

(a) Repeatedly;

(b) With the use of firearms;

– are punishable by imprisonment for 7 to 12 years.

3. Acts provided for in paragraphs 1 and 2 of this article, if they:

(a) Are accompanied by the use of, or threat to use, weapons of mass destruction, radioactive materials, and the commission of, or threat to commit mass poisonings, spread epidemics or episodic diseases, or other acts capable of causing mass deaths;

(b) Have negligently caused a person's death or entailed other serious consequences;

– are punishable by imprisonment for 10 to 15 years.

4. An attempt on a person's life, committed for the purposes of violating public security, causing panic or influencing decision-making by the government authorities of Kazakhstan, a foreign State or an international organization, including an attempt on the life of a government or public official, committed for the same purposes, as well as for the purposes of bringing his government functions or other political activity to an end, or taking revenge for such activity, are punishable by imprisonment for 15 to 20 years, or capital punishment, or life imprisonment.

Note: A person who has participated in the preparation of an act of terrorism is exempt from criminal liability if he has provided a timely warning to the authorities or by some other means has enabled an act of terrorism to be prevented, provided that he has not committed other offences.

Article 233-1. Advocacy of terrorism or public incitement to commit an act of terrorism

1. Advocacy of terrorism or public incitement to commit an act of terrorism, as well as the dissemination of materials with such contents, is punishable by imprisonment for up to 5 years.

2. The same acts, committed by a person using his official status, by the head of a public association or through the mass media, is punishable by imprisonment for 3 to 8 years.

Article 233-2. Establishment or leadership of a terrorist group and participation in its activities

1. The establishment of a group for the purposes of committing offences for terrorist purposes (or by a terrorist group), as well as the leadership of such a group, is punishable by imprisonment for 8 to 15 years with or without confiscation of property.

2. Participation in the activities of a terrorist group or in acts of terrorism that may be committed by it is punishable by imprisonment for 6 to 12 years, with or without confiscation of property.

3. Acts referred to in paragraphs 1 and 2 of this article, carried out by a person using his official status or by the head of a public association, are punishable by imprisonment for 10 to 15 years, with or without confiscation of property.

Article 234. Hostage-taking

1. The taking or holding of hostages for the purposes of coercing a State, organization or citizen to commit, or to refrain from committing, an action, as a condition for the release of the hostage is punishable by imprisonment for 3 to 8 years.

2. The same acts committed:

- (a) By a group of people by prior agreement;
- (b) Repeatedly;
- (c) With the use of force, jeopardizing human life or health;
- (d) With the use of weapons or objects that may be used as weapons;
- (e) Against a person known to be a minor;
- (f) Against a woman whom the guilty party knows to be pregnant;
- (g) Against a person known to be in a helpless state;
- (h) Against two or more persons;
- (i) For mercenary motives or upon being hired;

– are punishable by imprisonment for 7 to 12 years.

3. The acts referred to in paragraphs 1 and 2 of this article, when committed by an organized group or if they have negligently caused loss of life or brought other serious consequences, are punishable by imprisonment for 10 to 15 years.

Note: A person shall be exempt from criminal liability if he has voluntarily, or at the request of the authorities, released a hostage and has not committed other offences.

LVII. KUWAIT ¹⁴¹

SUMMARY OF LEGISLATION OF KUWAIT RELATED TO TERRORISM

The Penal Code, as amended, considers as criminal offences a number of acts and activities that can be classified as terrorist acts. The relevant provisions and their respective penalties are as follows:

- *Article 170* - The crime of hijacking ships, aircraft or any other means of maritime or air transport for the purpose of causing harm to persons or things; five to 15 years' imprisonment.
- *Article 171* - The crime of threatening the lives of persons or things transported on public roads with destruction thereof or with the giving of hijacking instructions or exhortations; five to 15 years' imprisonment.
- *Article 249/250* The crime of destroying public facilities and public resources; imprisonment.
- *Article 251* The crime of sinking or damaging ships; seven to 10 years' imprisonment.
- *Article 252* - Acts of piracy at sea, consisting in the attacking of vessels on the high seas for the purpose of taking possession thereof or of goods carried thereon; imprisonment.
- *Article 4* - The crime of assembling an army without the permission of the Government; not less than 3 years' imprisonment.
- *Article 29* - The crime of incitement to overthrow the regime by force; more than 10 years' imprisonment.
- *Article 30* - The crime of participating in banned organizations; ten to 15 years' imprisonment.
- *Article 34* - The crime of participating in assembly for the purpose of committing crime or assembly involving a breach of public order; one to 5 years' imprisonment.
- *Article 35* - The crime of using explosive substances to kill persons, to create panic or to cause destruction; imprisonment.

¹⁴¹ Transmitted to the Secretariat by that Government on 19 December 2001 (S/2001/1221, enclosure) and 17 July 2002 (S/2002/886, enclosure 1).

Law No. 1991/13 Prohibition against the unauthorized possession of weapons and ammunition of any type or size; five to seven years' imprisonment, with doubling of the penalty in case the offence is repeated.

In addition, the Penal Code criminalizes terrorist acts and curbs terrorism under the text of articles 48 and 52; although the text does not explicitly mention or identify "terrorist crimes", article 48 specifies:

"The following shall be regarded as an accomplice in the crime before it is committed:

1. Any person who instigates the commission of an act constituting a crime ...
2. Any person who agrees with another to commit an act constituting a crime ...
3. Any person who, by any means whatever, knowingly assists the perpetrator in actions in preparation for a crime ..."

Similarly, paragraph 1 of article 52 of that law specifies that "any person who participates in a crime before it is committed shall be liable to punishment, except where the law prescribes otherwise".

Under these two provisions, terrorist acts may be included among the crimes to which these punishments apply since such acts are considered to be one form of participation in the crime by instigating it, consenting to it or assisting in it.

As regards the recruitment for terrorist groups, article 4, paragraph 1, of law No. 31 of 1973 amending certain provisions of the Penal Code, provides that "any person who without authorization from the Government assembles an army or commits any other act of aggression against a foreign State such as may expose Kuwait to the risk of war or severance of diplomatic relations shall be punished by not less than three years' imprisonment".

As regards the possession and use of weapons and explosives without authorization, articles 1 to 5 of law No. 35 of 1985 on explosives offences lays down penalties ranging from fixed-term or life imprisonment to death for any person who commits any of the following crimes:

1. Use of or attempted use of explosives for the purpose of killing persons, creating panic or damaging buildings or utilities;
2. Use of or attempted use of explosives in such a manner as to endanger the lives of persons or their property;

3. Acquisition, possession, manufacture, procurement, importation, exportation, transportation of or trafficking in or any attempt at the aforementioned acts before obtaining authorization on the conditions laid down by the Minister of the Interior;

4. Training or inciting persons to manufacture or use explosives for the purpose of using such persons for the achievement of an unlawful end, or any attempt at such acts;

5. Failure to notify the competent authorities of knowledge of the existence of a plan to commit any of the offences set forth in the preceding clauses or knowledge of the occurrence thereof or assisting the offender to flee from justice by hiding him or by concealing or destroying evidence of the offence or concealing the objects used or prepared for use in commission of the offence or emanating from it.

Under the provisions of these legislative texts and the provisions relating to complicity in a crime prior to its commission, recruitment to terrorist groups and the provision of weapons, ammunition or explosives to terrorists are covered by Kuwaiti criminal law.

In addition, article 48 (3) of the Penal Code provides that any person shall be regarded as an accomplice “who, by any means whatever, knowingly assists the perpetrator in actions in preparation for a crime and the crime occurs on the basis of such assistance”.

Article 53 of the Code provides that “an accomplice in the crime before it is committed shall be liable to the penalty laid down for the crime, even if it is committed other than in the manner intended or if the crime committed is other than the one in which he intended to participate, where the manner of implementation or the crime actually committed is a probable result of the acts of participation committed by him”.

LVIII. KYRGYZSTAN¹⁴²

SUMMARY OF LEGISLATION OF KYRGYZSTAN RELATED TO TERRORISM

Anyone who commits a crime against public security (relating to terrorism) is liable under Kyrgyzstan’s criminal legislation and in particular the following provisions of the Criminal Code: articles 226 (Terrorism), 227 (Taking of hostages), 228 (Intentional supplying of false information about a terrorist act), 229 (Organization of or participation in illegal armed groups), 230 (Banditry), 231

¹⁴² Transmitted to the Secretariat by that Government on 25 February 2002 (S/2002/204, enclosure) and 22 July 2003 (S/2003/776, enclosure).

(Creation of a criminal association (criminal organization)), 232 (Hijacking of air or maritime transport or of railway rolling stock) and 233 (Mass disturbances). Furthermore, the following provisions are also relevant: articles 375 (Mercenarism), 229 (Organization of an illegal armed unit or participation in it, article 231 (Organization of a criminal association), article 241 (Illegal acquisition, transfer, sale, storage, transport or carrying of firearms, ammunition, explosive substances and explosive devices), article 242 (Illegal manufacture of weapons) and article 245 (Theft or extortion of firearms, ammunition and explosive substances).

Under the Criminal Code, terrorism is defined as “carrying out an explosion, arson or other acts that create the danger of loss of life, cause extensive property damage or lead to other publicly dangerous consequences, if these actions are committed in order to breach public security, frighten the population or influence the taking of decisions by the Government bodies, and also the threat of these actions for such purposes”

The recruitment of persons is considered a crime if it is conducted in order to involve such persons in the commission of criminal acts and is punishable by imprisonment for up to five years; in cases in which this offence has caused injury to the life and health of a person, it is punishable by imprisonment for up to 10 years.

In accordance with article 375 of the Criminal Code, “the recruitment, training, financing or other material assistance for a mercenary, or the use of a mercenary in an armed conflict or military operations” are punishable by imprisonment for up to eight years. The same acts carried out by a person using his official position or in respect of a minor are punishable by imprisonment for up to 15 years with confiscation of property.

The illegal creation of an armed unit (association, detachment, militia unit or other group), leadership of such a unit or participation in it are punishable by imprisonment for up to seven years (article 229 of the Criminal Code).

The creation of a criminal association (criminal organization) in order to commit serious or particularly serious crimes and also leadership of such an association (organization) or its component structural subdivisions, and also the establishment of an association of organizers, leaders or other representatives of organized groups for the purpose of drawing up plans and creating the conditions for committing serious or particularly serious crimes is punishable by imprisonment for a period of 10 to 15 years (article 231 of the Criminal Code).

Criminal liability has been established for “the illegal acquisition, transfer, sale, storage, transport or carrying of firearms, ammunition, explosive materials and explosive devices” (which are punishable by arrest for a period of six months or imprisonment up to three years with a fine amounting to 200 to 500 times the minimum monthly salary). The same acts, committed by a group of persons on the basis of prior agreement or repeatedly, are punishable by

imprisonment for a period of two to six years. Acts committed by an organized group are punishable by imprisonment for a period of three to eight years.

A reward is established for providing information to the law enforcement bodies leading to the arrest or conviction of persons who have taken part in terrorist activities as well as the prevention or stopping of a terrorist act, and steps are taken not to publicize information about persons who have provided assistance (article 8).

In suppressing terrorist activities or an individual terrorist act, special measures are used as established by the legislative enactments of the Kyrgyz Republic, including the physical elimination of terrorists (article 9).

Pursuant to article 13 of the Penal Code, terrorism (article 226 of the Penal Code) has been placed under the category of particularly serious crimes and is punishable by up to 20 years' imprisonment.

In accordance with the Penal Code:

(1) Terrorism, namely the carrying out of an explosion, arson attack or other acts that endanger the lives of people, cause significant destruction to property or other consequences hazardous to the public, if such acts are committed with the aim of undermining public security, terrorizing the population or influencing the decisions of government bodies including threats to commit the above-mentioned acts with the same aims are punishable by imprisonment for five to 10 years.

(2) The same acts, committed:

(1) By a group of individuals according to prior agreement;

(2) Repeatedly;

(3) With the use of firearms

are punishable by eight to 15 years' imprisonment.

(3) Acts provided for in the first and second sections of this article, if they are committed by an organized group or have caused through carelessness the death of a person, or have other grave consequences, are punishable by imprisonment for 15 to 20 years.

It should however be noted that criminal liability is waived if a person involved in preparing an act of terrorism gives timely warning to the authorities or by some other means helps to prevent the commission of the act in question, providing that he has committed no other crime.

In accordance with article 227 of the above-mentioned Code:

(1) Abduction of persons or hostage-taking with the aim of forcing a State, international organization, or legal or physical person to carry out or to refrain from carrying out a particular act as a precondition for freeing the hostage is punishable by five to 10 years' imprisonment.

(2) The same acts, if they are committed:

- (1) By a group of individuals by prior agreement;
- (2) Repeatedly;
- (3) By an organized group;
- (4) With the use of physical force endangering the lives or health of people, or by threat of murder;
- (5) With the use of weapons or other objects that may be used as weapons;
- (6) Against two or more persons;
- (7) Knowingly against a minor;
- (8) Against a woman, whom the perpetrator knows to be pregnant;
- (9) For mercenary motives or hiring,

are punishable by eight to 15 years' imprisonment.

(3) Acts envisaged in paragraphs (1) and (2) of this article, if they are committed by a criminal association or have caused through carelessness the victim's death, or have caused serious harm to his health or other grave consequences, are punishable by 12 to 20 years' imprisonment.

It should be noted that criminal liability is waived for a person who has voluntarily freed a hostage, providing that he has committed no other crime.

Article 228 of the Penal Code provides that a deliberately false communication concerning an imminent explosion, arson attack or other acts endangering the lives of people or causing significant destruction to property or other serious consequences is punishable by a fine of between 50 and 300 times the minimal monthly salaries, or 180 to 240 hours community work, or detention for three to six months, or imprisonment for up to three years.

In accordance with article 229 of the Criminal Code, the organization of or involvement in an illegal armed grouping,

(1) The establishment of an unlawful armed unit (association, brigade, militia or other group) and the leadership of such a unit are punishable by two to seven years' imprisonment.

(2) Involvement in an armed unit is punishable by up to six months' detention or up to five years' imprisonment.

It should be noted that criminal liability is waived for a person who has voluntarily ceased his involvement in an unlawful armed unit and has surrendered his weapons, providing that he has committed no other crime.

LIX. LATVIA¹⁴³

SUMMARY OF LEGISLATION OF LATVIA RELATED TO TERRORISM

Section 88 of the Criminal Law of Latvia foresees the criminal liability for committing terrorist acts in the Republic of Latvia in the following way:

“(1) For a person who commits causing an explosion or fire, or other intentional acts directed towards destruction of human beings or infliction of bodily injury to or other harm to the health of human beings, or commits destruction or damaging of enterprises, structures, oil or gas lines, power lines, transport routes and means of transport, telecommunications networks or other property with the purpose of harming the Republic of Latvia or its inhabitants, or commits, for the same purpose, mass poisoning, or spreading of epidemics and epizootic diseases,

the applicable sentence is life imprisonment or deprivation of liberty for a term of not less than eight and not exceeding twenty years, with confiscation of property.

(2) For a person who, employing explosion, fire or other generally dangerous means, intentionally commits violent acts, dangerous to life or health, against persons, or destruction or damaging of the property of another person, or commits the threatening of such acts, presented as a term of cessation of the violent acts, where there is reason to believe that these threats may be carried out, with purpose of inducing the State, its institutions or international organizations to take any action or refrain there from,

¹⁴³ Transmitted to the Secretariat by that Government on 28 December 2001 (S/2002/9, enclosure).

the applicable sentence is life imprisonment or deprivation of liberty for a term of not less than fifteen and not exceeding twenty years and confiscation of property”.

As far as the criminalization of wilful provision or collection of funds with the intention that these financial resources should be used in order to carry out terrorist acts, the Criminal Law foresees that such actions shall be criminalized as participation in the execution of acts stated in the Section 88 of the Law.

As regards the recruitment for terrorist groups, relevant provisions are contained in the law “On Social Organizations and Associations”. If in the process of the functioning of the social organization or association it contravenes with the aforementioned legislation and international agreements, the responsible state institutions shall dismiss such an organization on the grounds of article 37 of the aforementioned Law (including if the organization as an entity is purposely committing criminal offences). In addition, it is forbidden by the Law to establish military or armed units in the territory of Latvia. Furthermore, the social organizations and associations are forbidden to arm their members and to organize military training (article 17 of the Law).

LX. LEBANON¹⁴⁴

SUMMARY OF LEGISLATION OF LEBANON RELATED TO TERRORISM

Penalties for terrorist offences are provided by articles 314 to 316 of the Lebanese Penal Code. Articles 217 to 222 of the Code penalize anyone who incites, participates in or is an accessory to the commission of crimes, including terrorism. Lebanese jurisprudence regards the person who finances a crime as an accessory to it, and the penalty for the accessory is the same as for the perpetrator when it is evident that without his assistance the crime would not have been committed.

This rule is applied whether an act of terrorism is financed within or by way of Lebanese territory (such as bank financing through a bank in Lebanon). It is sufficient for this purpose for one of the elements of a crime of terrorism or attempted terrorism to be committed in Lebanese territory, or for a constitutive act of primary or secondary implication to occur there, or for its outcome to occur or be expected to occur there. It makes no difference whether the person providing funding is Lebanese or not (Penal Code, article 15).

¹⁴⁴ Transmitted to the Secretariat by that Government on 13 December 2001 (S/2001/1201, annex) and 21 June 2002 (S/2002/728, annex).

The same provisions apply to Lebanese nationals who finance terrorist operations from abroad, even if the acts are committed outside Lebanese territory (Penal Code, article 20).

They also apply to all foreigners or stateless persons residing or present in Lebanon who finance terrorist activities abroad if extradition is not requested or not granted.

Article 314 of the Penal Code, the Arms and Ammunition Law (No. 137/59) and Law No. 318/2001, stipulate that anyone suspected of a punishable offence in the terrorism field or of illegal possession of arms and ammunition must be investigated, arrested and prosecuted. Penalties are applied whenever persons involved in terrorist activities commit acts that constitute terrorist offences as understood by Lebanese law.

Lebanese legislative enactments impose penalties for terrorism that can include the death penalty. The law promulgated on 11 January 1958 imposes for every terrorist act a penalty of hard labour for life, and the penalty becomes death if the terrorist act causes the death of a person, or the partial or total destruction of a building in which a person is present, or the destruction, even the partial destruction, of a public building, industrial establishment, ship or other installation, or the disruption of information, communications or transport.

Complicity in the perpetration of crimes, generally speaking, is governed by articles 219 to 221 of the Penal Code.

Pursuant to article 219, the following are considered accessories to a felony or misdemeanour:

- Anyone who, by any means, strengthens the intention of the perpetrator;
- Anyone who, for material or immaterial advantage, accepts an offer by the perpetrator to commit a crime;
- Anyone who assists or supports the perpetrator in acts that prepare or facilitate the crime;
- Anyone who agrees with the perpetrator or any accessory to the crime prior to its commission or helps to conceal its character or to conceal or dispose of things derived from it;
- Anyone who is aware of the criminal conduct of wrongdoers who engage in brigandage or the perpetration of acts of violence against the State or public safety or against individuals or property and offers them food, shelter, a hiding place or a meeting place.

Under article 220, an accomplice without whose assistance the crime would not have been committed is subject to punishment as though he himself were the principal; all accomplices are sentenced to hard labour either for life or for a period ranging from 10 to 20 years if the principal receives the death sentence;

In addition, ways of preventing the financing of terrorist acts are included among the measures provided for in Law No. 318 of 20 April 2001 and decision No. 7818 of the Governor of the Bank of Lebanon of 18 May 2001, both of which relate to the suppression of money-laundering, including operations for the financing of terrorism.

Law No. 318 defines illicit funds as including, within the meaning of that Law, those connected with terrorist offences as provided in articles 314 to 316 of the Lebanese Penal Code, which also, in its articles 217 to 222, inclusive, provides penalties for the abetting of or participation or complicity in the commission of such offences.

Law No. 318 makes it incumbent both on institutions not subject to the Banking Secrecy Law (article 4) and on banking institutions subject to that Law (article 5) to monitor the transactions carried out by them with their clients, with a view to the elimination of any involvement thereof in suspicious transactions, and to report immediately (article 7) to the special board of inquiry created under the said Law (article 6), in detail, any transactions they suspect of concealing money-laundering operations, including operations for the financing of terrorism.

Lebanese legislation deals with the prohibition of financing of terrorism as distinct from money-laundering through the Penal Code, articles 217 to 222 of which provide penalties for anyone who abets, participates in or is an accessory to the commission of crimes, including terrorist offences. The latter offences are defined by articles 314 to 316 of the Code, which sets the penalties to be imposed on their perpetrators. According to Lebanese precedent, anyone who participates in the financing of such offences is considered an accessory thereto and is given a penalty equal to that of the principal, provided that such financing proves to have been of assistance in the commission of the offence.

On the basis of the Penal Code, the fact that recruitment of members of terrorist groups is an act of incitement to the commission of a crime entails the application of the provisions of articles 335 to 339, which establish the act of forming an unlawful association as a crime, and article 316, which relates to crimes against the internal security of the State and terrorism, coupled with articles 217 and 218 of the Penal Code, which criminalize incitement to the commission of a crime and make the inciter subject to a penalty identical to the punishment for the crime which he induces or attempts to induce another person to commit.

Consequently, anyone who recruits members of terrorist groups in Lebanon for the purpose of committing the crimes enumerated above is subject to the same punishment as for the crime of terrorism.

The relevant provisions are as follows:

Article 316

Any association established with intent to change the economic and social nature of the State or the fundamental conditions of society by any of the means referred to in article 314 shall be dissolved and its members condemned to a term of hard labour. The penalty for the founders and directors shall be not less than seven years.

Article 314

Terrorist acts means all acts aimed at creating a state of terror which are committed by means such as explosive devices, inflammable materials, poisonous or incendiary products or infectious or microbial agents likely to create a public hazard.

Inasmuch as the formation of unlawful or secret associations constitutes an offence punishable under the Lebanese Penal Code, recruiting, collecting funds or soliciting other forms of support for terrorist acts or terrorist activities inside or outside Lebanon constitutes an offence, since such acts consist either in incitement to or complicity in the crime of forming an unlawful or secret association.

Other relevant legal provisions from the Penal Code include:

Article 335, which provides penalties for anyone who forms an association or makes a written or verbal agreement with the intent to commit felonies against persons or property or to detract from the authority or dignity of the State.

Article 373, which provides that an association shall be considered secret if its purpose is incompatible with the law and it carries out all or some of its acts in secret.

Article 338, which provides for the dissolution and the confiscation of the property of any and all secret associations.

LXI. LIBYAN ARAB JAMAHIRIYA¹⁴⁵

SUMMARY OF LEGISLATION OF THE LIBYAN ARAB JAMAHIRIYA RELATED TO TERRORISM

(a) Penal Code

Despite the fact that Libyan legislation has yet to criminalize “terrorist acts” in the manner that has become customary at the international level, such acts are no different from the “criminal activities” penalized by Libyan criminal laws under other designations. This includes criminal activities relating to the direct or indirect provision or collection of funds to be used or intended to be used in “terrorist acts” Such activities are prohibited by law and are serious crimes, so that the judicial authorities may take the measures necessary to prevent them and may freeze any funds associated with them or take possession of them, prevent their use or even confiscate them.

Article 168 of the Penal Code makes it a criminal offence to enlist recruits or to engage in any acts of aggression against foreign countries. The provision is of a broad and general character, inasmuch as it covers any and all hostile activities against other States. There can be no doubt that terrorist acts and the supply of weapons to terrorists are in the forefront of such activities. Under article 100 of the Penal Code, to provide a criminal with a weapon is to be an accessory to the crime and is punishable by imprisonment for a term, life imprisonment or even the death penalty if there are aggravating circumstances.

Aggression against persons is considered an offence punishable under the law irrespective of whether the person against whom it is committed is a national or a foreigner, for the object of the protection of the law is the human being, regardless of his nationality, origin or religion. This is true whether the aggression is committed against the person, as in the case of crimes against his life or safety (Penal Code, articles 368-379), his dignity (articles 407-424), his freedom (articles 425-437) or his honour (articles 438-443), or whether it is committed against his property, as in the case of theft and other similar offences (articles 444-446). Inasmuch as the crime involves aggression against a right protected by law, it is irrelevant whether the victim of the aggression is a Libyan or a foreigner and no distinction is made between the two.

Moreover, under the provisions of Book Two, chapter III, of the Penal Code, which relates to felonies and misdemeanours against foreign States, those offences include aggression against foreign heads of State, which is punishable by imprisonment for a term ranging up to life, depending on the case (article 218);

¹⁴⁵ Transmitted to the Secretariat by that Government on 26 December 2001 (S/2001/1323, annex) and 28 August 2002 (S/2002/1021, enclosure). Information was also provided in respect of Law No. 6 of 1987 regulating the entry of aliens to Libya, their residence in the country and departure there from.

attacks against the freedom of foreign heads of State, the penalty for which is imprisonment (article 219); acts disgracing foreign heads of State in Libyan territory or attacks on their honour, which are punishable by imprisonment for a term of not less than five years (article 220); aggression against representatives of foreign States accredited in Libya, to which the provisions of the three preceding articles apply (article 221); and aggression against the flag of a foreign State or an international organization, which is punishable by imprisonment (article 222). As for article 168, it relates to the offence of recruitment or mobilization against a foreign State or the perpetration of hostile acts against such a State that are likely to expose the Libyan Arab Jamahiriya to the risk of war or the severance of diplomatic relations with the State concerned or to lead to retaliation against it or against its nationals, wherever they may be.

(b) Act No. 29/1994 concerning weapons and ammunition

Libyan Act No. 29/1994 prohibits the acquisition, possession and manufacture of and trade in weapons, ammunition and explosives of any kind by any person not licensed therefore by the competent authority. Detailed definitions of weapons are provided in lists annexed to the Act and are extended to include edged weapons, such as knives. The Act specifies the procedures for the granting of licences to individuals for the possession of weapons and establishes stringent conditions and restrictions in that regard.

The Act establishes the penalty of life imprisonment for anyone who possesses, acquires, buys, sells, delivers, transports or presents any arms, ammunition or explosives for the purposes of trafficking or traffics in them in any manner whatsoever outside of the cases specified in the Act.

LXII. LIECHTENSTEIN¹⁴⁶

1. LAW ON AMENDMENT OF THE CRIMINAL CODE (STRAFGESETZBUCH, StGB)

AMENDMENT OF EXISTING LAW

The Criminal Code (Strafgesetzbuch, StGB) of 24 June 1987, Liechtenstein Legal Gazette (Liechtensteinisches Landesgesetzblatt, LGBl.) 1988 No. 37, in the version of the Law of 25 October 2000, LGBl. 2000 No. 256, shall be amended as follows:

¹⁴⁶ Transmitted to the Secretariat by that Government on 21 December 2001 (S/2001/1253, enclosure), 24 June 2002 (S/2002/788, enclosure) and 10 February 2003 (S/2003/273, enclosure). Information was also provided in respect of the Due Diligence Act, the Refugee Law, the Law on Mutual Legal Assistance and the Law on Persons and Companies.

§ 20 para. 3

3) A perpetrator who has gained pecuniary advantages during the time connected to his membership of a criminal organization (§ 278a) or a terrorist group (§ 278b) shall be sentenced to pay an amount of money set by the Court's assessment to be equal to the enrichment obtained, if the assumption seems likely that such pecuniary advantages originate from criminal offenses and their lawful origin cannot credibly be shown.

§ 20b para. 1

1) Assets subject to the disposing power of a criminal organization (§278a) or a terrorist group (§278b) or that have been provided or collected as means to financing of terrorism (§ 278d) shall be declared as forfeited.

§ 20c para. 1 subpara. 1

1. the assets concerned are subject to legal claims of persons not involved in the criminal offense, the criminal organization, or the terrorist group, or

§ 64 para. 1 subpara. 9, 10, and 11

Liechtenstein criminal laws shall apply to the following offenses committed abroad, independently of the criminal laws of the place where the offense was committed:

9. participation (§ 12) in a criminal offense committed by the immediate perpetrator domestically, as well as receiving stolen goods (§ 164) and money laundering (§ 165) connected to a (predicate) offense committed domestically;

10. terrorist group (§ 278b) and terrorist offenses (§ 278c), as well as offenses committed in connection therewith according to §§128 to 131, 144, and 145, as well as 223 and 224, if

a) the perpetrator was a Liechtenstein citizen at the time of the offense or the perpetrator acquired Liechtenstein citizenship later and still holds Liechtenstein citizenship as the time criminal proceedings are initiated,

b) the domicile or usual residence of the perpetrator is in Liechtenstein,

c) the offense was committed for the benefit of a legal entity domiciled in the Liechtenstein,

d) the offense was committed against the Reigning Prince, the Parliament, the Government, a Court, or any other authority or the population of the Principality of Liechtenstein,

e) the perpetrator was a foreigner at the time of the offense, is on Liechtenstein territory, and cannot be extradited;

FINANCING OF TERRORISM (§ 278D)

If

a) the perpetrator was a Liechtenstein citizen at the time of the offense or the perpetrator acquired Liechtenstein citizenship later and still holds Liechtenstein citizenship at the time criminal proceedings are initiated, or

b) the perpetrator was a foreigner at the time of the offense, is on Liechtenstein territory, and cannot be extradited.

§165 para 1, 2 and 6

1) A person who hides parts of assets originating from a crime, an offense according to § 278d, §§ 304 to 308, or an offense according to the Narcotics Act, or conceals their origin, in particular by providing false information in a legal context concerning the origin or the true nature of, the ownership or other rights pertaining to, the disposing power over, the transfer of, or concerning the location of such parts of assets, shall be punished with imprisonment of up to three years or a fine of up to 360 daily rates.

2) A person who appropriates or takes into safe keeping parts of assets originating from a crime, an offense according to § 278d, §§ 304 to 308, or an offense according to the Narcotics Act committed by another person, whether with the intention merely to hold them in safe keeping, to invest them, or to administer them, or who converts, makes use of, or transfers such parts of assets to a third party, shall be punished with imprisonment of up to two years or a fine of up to 360 daily rates.

6) A person who appropriates or takes into safe keeping parts of assets of a criminal organization (§ 278a) or a terrorist group (§278b) on behalf of or in the interest of such of a criminal organization or terrorist group, whether with the intention merely to hold them in safe keeping, to invest them, or to administer them, or who converts, makes use of, or transfers such parts of assets to a third party, shall be punished with imprisonment of up to three years, or, if the value of the parts of assets is greater than 75 000 Swiss francs, with imprisonment of six months to five years.

§ 278a, para. 2

2) A person is considered a member of a criminal organization who commits a criminal offense within the context of the criminal aim of the organization or who participates in the activities of the organization by supplying information or otherwise with knowledge of the fact that such participation will contribute to the group or its criminal activities.

§ 278b

TERRORIST GROUP

1) A person who directs a terrorist group (para. 3) shall be punished with imprisonment of five to fifteen years. A person who directs a terrorist group that limits itself to the threat of terrorist offenses (§278c, para. 1) shall be punished with imprisonment of one to ten years.

2) A person who participates in a terrorist group as a member (§ 278a, para. 2) or who supports the group financially shall be punished with imprisonment of one to ten years.

3) A terrorist group is an association of more than two persons, established over a period of time and aimed at the commission of one or more terrorist offenses (§ 278c) by one or more of its members.

§ 278c

TERRORIST OFFENSES

1) Terrorist offenses are:

1. murder (§ 75),
2. bodily injury according to §§ 84 to 87,
3. extortionary kidnapping (§ 102),
4. severe coercion (§ 106),
5. dangerous threat according to § 107, para. 2,
6. serious damage to property (§ 126) and damage to data (§ 126a), if the life or property of others could thereby be greatly endangered,
7. offenses intentionally dangerous to public safety (§§ 169, 171, 173, 175, 176, 178) or intentional endangerment through pollution of water or air (§ 180),

8. air piracy (§ 185),
9. intentional endangerment of aviation safety (§ 186), or
10. a criminal offense according to art. 20 of the Weapons Act, if the act is likely to result in serious or enduring disruption of public life or serious damage to economic activity, and if the act is committed with the intent to intimidate the population in a grave way, to compel public authorities or an international organization to do, acquiesce in, or refrain from doing any act, or to seriously shake or destroy the fundamental political, constitutional, economic, or social structures of a state or international organization.

2) A person who commits a terrorist offense within the meaning of para. 1 shall be punished in accordance with the law applicable to the listed offense, whereby the maximum sentence for the offense shall be increased by half, but up to at most twenty years.

3) The offense is not considered a terrorist offense if it is aimed at the establishment or reestablishment of democracy and the rule of law, or if it aimed at the exercise or protection of human rights.

§ 278d

FINANCING OF TERRORISM

1) A person who provides or collects assets with the intention that they should be used, even in part, in order to carry out:

1. air piracy (§ 185) or intentional endangerment of aviation safety (§ 186),
2. extortionary kidnapping (§ 102) or a threat thereof,
3. an attack upon the person, life, or liberty of a person protected under international law or a violent attack upon the private accommodation, official premises, or means of transport of such a person likely to endanger his or her person, life, or liberty, or a threat to commit any such attack,
4. international endangerment through nuclear energy or ionizing radiation (§ 171), the threat thereof, a criminal offense to obtain nuclear or radioactive material, or a threat to steal or rob nuclear or radioactive material, in order to compel another person to do, acquiesce in, or refrain from doing any act,
5. a significant attack against the person or life of another person at an airport serving international civil aviation, the destruction of or serious

damage to such an airport or an aircraft located at such an airport, or the disruption of the services of an airport, provided that the offense is committed using a weapon or other device and is likely to endanger safety at the airport,

6. a criminal offense committed against a vessel or fixed platform, against a person on board a vessel or fixed platform, against the cargo of a vessel or against a maritime navigational facility, in a manner described in §§ 185 or 186,

7. the delivery of an explosive or other lethal device to a place of public use, a State or public facility, a public transportation system or an infrastructure facility, or the use of such means with the purpose of causing death or serious bodily injury to another person or extensive destruction of the place, facility, or system, where such destruction is likely to result in major economic loss,

8. a criminal offense intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population or to compel a government or an international organization to do or to refrain from doing any act,

shall be punished with imprisonment of six months to five years. The punishment shall not, however, be more severe in manner or extent than the law specifies for the offense financed.

2) The perpetrator shall not be punished in accordance with para. 1 if a different provision provides for a more severe sentence.

II. ENTRY INTO FORCE

The law enters into force on the day of its announcement.

2. LAW ON AMENDMENT OF THE CODE OF CRIMINAL PROCEDURE (STRAFPROZESSORDNUNG, StPO)

AMENDMENT OF EXISTING LAW

The Code of Criminal Procedure of 18 October 1988, Liechtenstein Legal Gazette (Liechtensteinisches Landesgesetzblatt, LGBl.) 1988 No. 62, in the version of the Law of 25 October 2000, LGBl. 2000 No. 257, shall be amended as follows:

§ 97a, para. 1 chapeau

1) If there is a suspicion of unlawful enrichment and if forfeiture of this enrichment is expected in accordance with § 20 of the Criminal Code (Strafgesetzbuch, StGB), or if there is a suspicion that assets are subject to the disposing power of a criminal organization or terrorist group (§§ 278a and 278b StGB), that they have been provided or collected as means for financing of terrorism (§ 278d), or that they originate from a criminally punishable act, and if forfeiture of these assets is expected in accordance with § 20 StGB, then the Court shall in particular take the following measures at the request of the Office of the Public Prosecutor to secure forfeiture of the enrichment or of the assets, if it is feared that otherwise the obtainment of the forfeiture would be endangered or complicated substantially:

§ 98a

1) By judicial decision, and if it appears necessary for the successful investigation of money laundering within the meaning of the Criminal Code (Strafgesetzbuch, StGB), of a predicate offense for the purposes of money laundering, or of an offense in connection with organized crime, banks and financial companies are required to:

1. reveal the name and other known information regarding the identity of the owner of a business relationship, as well as the owner's address;
2. provide information whether a suspected person maintains a business relationship with this institution, whether the person is the beneficial owner of this relationship or has been duly authorized, and, if this is the case, all information necessary for the exact designation of this business relationship, as well as all documents concerning the identity of the owner of the business relationship and concerning his disposing authority;
3. to submit all legal instruments and other documents concerning the nature and scope of the business relationship and any related business operations and other transactions during a particular past or future time period.

This also applies if certain facts lead to the assumption that the business relationship was or is used for transactions concerning a pecuniary benefit that has been gained through the criminal offenses or has been received for such offenses (§ 20 StGB), that is subject to the disposing power of a criminal organization or terrorist group, or that has been provided or collected as a means for financing of terrorism (§ 20b StGB).

2) Photocopies may be submitted instead of the original documents and other records, if there is no doubt concerning their agreement. If data carriers are used, the bank or financial company shall issue or manufacture permanent reproductions that are readable without further assistance; if the business relationship is conducted using automated data processing, an electronic data carrier in a generally usable file format shall be submitted by request of the Court.

3) A decision pursuant to para. 1 shall always be delivered to the bank or financial company. The delivery to other authorized agents evident from and known through the business relationship may be postponed as long as delivery would endanger the purpose of the investigation. The bank or financial company shall be informed of such a postponement, and the bank or financial company shall temporarily keep all facts and procedures relating to the judicial order secret from clients and third parties. Under these conditions, persons employed with the bank or financial company shall also not inform the contracting party or third parties of ongoing investigations.

4) If the bank or financial company is not willing to submit particular documents or other records or particular information, §§ 96 et seq. shall apply. The prohibition of information in accordance with para. 3 shall not be affected.

ENTRY INTO FORCE

This Law shall enter into force simultaneously with the Law on Amendment of the Criminal Code (Strafgesetzbuch, StBG).

3. LAW ON AMENDMENT OF DUE DILIGENCE ACT

AMENDMENT OF EXISTING LAW

The Law of 22 May 1996 on Professional Due Diligence in Financial Transactions (Due Diligence Act, Sorgfaltspflichtgesetz, SPG), Liechtenstein Legal Gazette (Liechtensteinisches Landesgesetzblatt, LGB1.) 1996 No. 116, in the version of the Laws of 14 September 2000, LGB1. 2000 No. 213, and of 14 March 2002, LGB1. 2002 No. 58, shall be amended as follows:

Article 1

OBJECT

This Act governs the assurance of due diligence in financial transactions and serves the suppression of money laundering and organized crime within the meaning of the Criminal Code (Strafgesetzbuch, StGB, §§ 165, 278, 278a or 278b).

Art. 20 para. 3

3) The Office of the Public Prosecutor shall notify the Financial Intelligence Unit (FIU), as well as persons subject to this Act who have submitted notification in accordance with art. 9 para. 2, in particular of any judgment or discontinuance of proceedings pursuant to art. 15 of this Act or in connection with §§ 165, 278, 278a or 278b StGB.

ENTRY INTO FORCE

This Act shall enter into force simultaneously with the Law on Amendment of the Criminal Code (Strafgesetzbuch, StGB).

LXIII. LITHUANIA¹⁴⁷

SUMMARY OF LEGISLATION OF LITHUANIA RELATED TO TERRORISM

Under the Penal Code of Lithuania conspiracy in the criminal act includes perpetrating, organizing, abetting and other accessory help in the criminal act (consulting, financing, supply of equipment, obviating obstacles). Thus, the willful provision or collection of funds with the intention that these funds should be used in order to carry out terrorist acts falls under the definition of conspiracy in connection with criminal acts provided by Article 227 “Criminal group” and Article 227 “Terrorist Act” of the Penal Code.

The criminal activities under Article 227 “Criminal group” are punishable by imprisonment from 4 years up to life imprisonment. The terrorist activities under article 227 are punishable up to life imprisonment.

The recently amended Articles 226 and 227¹⁴⁸ of the Penal Code expand the concept of a terrorist act by establishing criminal responsibility not only for planting explosives, bombing or arson but also for any other destruction or damage

¹⁴⁷ Transmitted to the Secretariat by that Government on 28 December 2001 (S/2001/2, enclosure), 27 August 2002 (S/2002/1019, enclosure) and 19 August 2003 (S/2003/842, enclosure). Information was also provided on Resolution No. 1281 of the Government of 31 October 2001 on the measures for the implementation of UN Security Council resolutions 1333 (2000) and 1373 (2001), the National Anti-Terrorism Programme (came into force on 22 January 2002), the Law on the Prevention of Money Laundering, the Law on Refugee Status, the Law of the Legal Status of Aliens, the Code of Criminal Procedure (approved on 14 March 2002), the Law on the Control of Arms and Ammunition (entered into force on 1 July 2003).

¹⁴⁸ On 4 July 2002 the Seimas (Parliament) of Lithuania adopted Law No IX-1036 which amended Articles 226(1) and 227(3) of the Penal Code. The amendments entered into force on 19 July 2002.

of a building or facility, or the spread of biological, radioactive or chemical substances, preparations or micro-organisms. In addition, criminal responsibility is established for the creation of a terrorist group consisting of three or more persons, the financing of or provision of any other support to such a group. Corresponding amendments will be made to Article 250 of the newly adopted Penal Code. Paragraph 5 of Article 227 provides that the creation of or participation in a terrorist group consisting of three or more persons for the commission of a terrorist act or the financing of such a group or the provision of any other support to it will be punishable by imprisonment from four to ten years.

Articles 194 and 195 allow the police investigator, the interrogator and the prosecutor to suspend the ownership rights to assets, including funds in bank accounts, or to seize the assets on a reasoned decision sanctioned by the Prosecutor General or the Deputies of the Prosecutor General of Lithuania, or by the chief prosecutors of regions or districts or their deputies. These measures may be applied to ensure the possible forfeiture of the assets. It is noteworthy that under Article 93 (1) of the Penal Code the instruments of the crime belonging to the defendant must be confiscated.

The Penal Code establishes the responsibility for the creation of a criminal group with the aim of common criminal activity - - perpetrating serious criminal acts, and involvement in the activity of such group. The creation of such group, acts of terror, involvement in them and attempts of acts of terror are serious criminal acts under the Lithuanian law. The supply of weapons to terrorist falls under the definition of conspiracy in a criminal act.

According to Article 6 of the Penal Code nationals and permanent residents of Lithuania are responsible under the Lithuanian law for the crimes committed abroad. Other persons can be brought to trial under Lithuanian law for crimes committed abroad only if the act is recognized as a crime both by the law of the country where the act was committed and the criminal law of Lithuania. The implementation of this sub-paragraph is also ensured by provisions of the Penal Code on the responsibility for the creation of a criminal group with the aim of common criminal activity perpetrating serious criminal acts, and involvement in the activity of such group.

Crimes under Article 227 of the Penal Code are attributed to the category of serious crimes. Under the criteria provided for in Article 11 of the new Penal Code a terrorist act is attributed to the very grave crimes.

Planting explosives, bombing or arson under paragraph 1 of Article 227 is punishable by imprisonment for up to ten years, whereas the qualified acts having caused injuries or casualties under paragraphs 2 and 3 are punishable by life imprisonment. In the National Anti-Terrorism Program, a terrorist act is punishable by imprisonment of up to ten years, a terrorist act causing a bodily injury or destruction or damage to a vehicle or a facility or the equipment in the facility is punishable by imprisonment from three to twelve years; a terrorist act creating a threat to the lives or health of a great number of people as well as the

spread of biological, radioactive or chemical substances, preparation or micro-organisms will be punishable by imprisonment from five to fifteen years; the same acts directed against an object of strategic significance or causing grave consequences will be punishable by imprisonment from ten to twenty years or imprisonment for life.

Article 6 of the current Penal Code stipulates that Lithuanian nationals and permanently residing stateless persons are liable under the criminal statutes of Lithuania for crimes committed abroad. Therefore, in cases when a Lithuanian national or a stateless person permanently residing in Lithuania commits a crime abroad, there are grounds to request, in accordance with the procedure established in international bilateral and multilateral agreements concluded or acceded by Lithuania, that he/she is extradited to Lithuania and brought to trial for the crimes committed. Other persons can be brought to trial under Lithuanian criminal statutes for crimes committed abroad only if the committed act is recognized as a crime and is punishable both under the laws of the place of the commission of the crime and the criminal law of Lithuania. At the same time, it must be noted that paragraph 2 of Article 6 of the Penal Code stipulates that in the case of a person who commits a criminal act abroad being prosecuted under the criminal statutes of Lithuania, it must be established whether there are no differences with regard to punishment under the laws of the two countries. In cases when the laws of one of the countries carry a more lenient punishment, the penalty applied should not exceed that provided for under the more lenient statute. Under paragraph 3 of the above Article, a person who commits a crime abroad is not held criminally liable in Lithuania, if he/she: 1) has fully served the sentence imposed by the court abroad; 2) has been acquitted or relieved from criminal liability by an effective judgement of a foreign court, or no penalty has been imposed by reason of the statute of limitations or other legal grounds which may be provided for in that foreign country.

Article 226(1) - Falsely reporting an impending threat to the public or an occurrence of such a threat

A false report by means of telephone, radio or any other means of news about a danger threatening the public or a major disaster, thereby causing an unnecessary callout of appropriate emergency services or confusion among people, shall be punishable by imprisonment for a term of up to 2 years and a fine or imprisonment without a fine or by a fine.

A false report by means of telephone or radio or any other means about a danger threatening the public, thereby causing disruption of mass gatherings, or a false report about a threat to state authority or administration institutions or a strategic facility, thereby causing a disruption of their activity or a major damage to property, shall be punishable by imprisonment for a term of up to 4 years.

Article 227(3) - An act of terrorism

Planting of explosives with the aim of causing an explosion, bombing or arson, where carried out in a dwelling, a working place, a place of public gatherings or a public place, shall be punishable by imprisonment for a term of up to 10 years.

The same act, where it causes bodily harm to the victim, or destruction or damage to a means of transport, or a building or equipment therein, shall be punishable by imprisonment for a term from 3 to 12 years.

An explosion, arson or any other destruction of or damage to a building or facility, where it causes danger to the life and health of a great number of people, or dissemination of biological, radioactive or chemical noxious substances, preparations or micro-organisms, shall be punishable by imprisonment for a term from 5 to 15 years.

Acts specified in paragraph 3 of this Article, where they are committed against a strategic facility or lead to grave consequences, shall be punishable by imprisonment for a term from 10 to 20 years or life imprisonment.

Creation of or participation in a terrorist group consisting of three or more persons for the commission of a terrorist act, also the financing of such a group or the provision of any other support to it shall be punishable by imprisonment for a term from 4 to 10 years.

LXIV. LUXEMBOURG¹⁴⁹

ELEMENTS DU DISPOSITIF LEGISLATIF ET REGLEMENTAIRE DU LUXEMBOURG

Le droit luxembourgeois ne connaît pas, à l'heure actuelle, des infractions visant *expressis verbis* le financement des actes de terrorisme.

En revanche, l'ensemble de ces actes est susceptible de correspondre à d'autres qualifications que le droit luxembourgeois définit comme infractions pénales.

Ainsi, le fait de former une association dans le but d'attenter aux personnes ou aux propriétés est punissable d'une peine de réclusion de cinq à 10

¹⁴⁹ Transmitted to the Secretariat by that Government on 21 December 2001 (S/2002/6, enclosure), 22 August 2002 (S/2002/1018, enclosure) and 16 October 2003 (S/2003/1014, enclosure). Information was also provided in respect of Loi du 20 juin 2001 sur l'extradition.

ans, et toutes personnes fournissant une aide relative à ces actes sont punissables soit comme coauteurs, soit comme complices de ces infractions (art. 66 à 69 et 322 du Code pénal).

S'y ajoute que suite à des modifications législatives récentes, les instruments légaux ayant pour but la répression des activités de blanchiment de fonds criminels ont été rendus applicables aux actes perpétrés par des organisations de malfaiteurs formées dans le but d'attenter aux personnes et aux propriétés.

Application territoriale

En application de l'article 5 du Code d'instruction criminelle, tout Luxembourgeois qui, hors du territoire, s'est rendu coupable d'un crime puni par la loi luxembourgeoise peut être poursuivi et jugé dans le Grand-Duché de Luxembourg.

En vertu de l'article 7 du même Code, tout étranger qui, hors du territoire du Grand-Duché, se sera rendu coupable notamment, pour autant que la lutte contre le terrorisme soit visée, d'un crime contre la sûreté de l'État ou la sécurité publique, de la falsification de certains documents officiels, d'homicide ou de lésions corporelles volontaires ou d'attentat à la liberté individuelle commis envers un Luxembourgeois ou un ressortissant d'un pays allié, pourra être poursuivi et jugé d'après les dispositions des lois luxembourgeoises s'il est trouvé soit dans le Grand-Duché de Luxembourg, soit à l'étranger et si le Gouvernement luxembourgeois obtient son extradition.

Finalement, le projet de loi du 29 avril 2002 portant répression du terrorisme et de son financement et approbation de la Convention internationale pour la répression du financement du terrorisme, vise à introduire au Code d'instruction criminelle une disposition en application de laquelle toute personne qui se sera rendue coupable à l'étranger d'une des infractions terroristes, qui seront introduites au Code pénal par le même projet de loi, pourra être poursuivie et jugée au Grand-Duché, lorsqu'une demande d'extradition est introduite et que l'intéressé n'est pas extradé.

