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Letter dated 3 March 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 3 May 2002 (S/2002/522).

The Counter-Terrorism Committee has received the attached third report from Finland submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 25 February 2003 from the Permanent Representative of Finland to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

With reference to your letter of 25 November 2002 on behalf of the Counter-Terrorism Committee (CTC) regarding the implementation of resolution 1373 (2001), I have the pleasure to enclose herewith further information received from the Government of Finland, as requested in the aforementioned letter (see enclosure).

The Government of Finland has given its permission to CTC to circulate the enclosed further report as a document of the Security Council.

(*Signed*) Marjatta **Rasi**
Ambassador
Permanent Representative

Enclosure

Report to the Counter-Terrorism Committee in response to the further questions and comments presented in its letter of 25 November 2002*

1.2. It is stated in the supplementary report that the Penal Code has been amended to include the financing of terrorism as an offence and that further amendments to the Penal Code are in process. The CTC would be grateful to be informed of progress in the enactment of those amendments and the amendments to the Act on the Detention and Prevention of Money Laundering. Please provide a detailed outline of the proposed amendments.

The Penal Code

The amendment (Act No 559/2002) to the Penal Code, adding a new section 9b to Chapter 34 to the effect of establishing the financing of terrorism as a criminal offence, entered into force in July 2002.

A Government Bill (188/2002) for the enactment of new provisions on terrorist offences, to be added to the Penal Code and to the Coercive Measures Act, was submitted to Parliament in October 2002. The Bill was passed in January 2003, subject to certain changes made on the basis of the comments given by the Law Committee (Committee Report 24/2002; Parliament Reply 241/2002). The amendments were ratified by the President of the Republic with effect as of 1 February 2003 .

The last-mentioned amendments include the incorporation of a separate Chapter (34a) concerning terrorist offences in the Penal Code. The new Chapter provides for the sentences applied to terrorist offences and their planning, to the directing of a terrorist group, to the promoting of a terrorist group, and to the financing of terrorism. The Chapter also contains a provision defining terrorist offences, a provision on the right of prosecution and a provision on corporate liability. Thus, the provision concerning the financing of terrorism (the above-mentioned section 9b) was transferred, subject to slight modifications, from the existing Chapter 34 to the new Chapter 34a.

At the same time, a new provision on sanctions applicable to violations of the prohibition on chemical weapons was added to the Penal Code, the existing provisions prohibiting the hijacking of aircraft or vessels were adjusted, and the attempt of aggravated criminal damage was established as an offence. The amendment to the Coercive Measures Act increases in some respects the coercive means available to the police in the context of criminal investigations.

* Enclosures are on file with the Secretariat and are available for consultation.

The Act (No 61/2003) to amend, *inter alia*, the provisions of Chapter 32 of the Penal Code (Government Bill 53/2002) on money laundering was passed by Parliament in January 2003. The Act introduces separate and partly revised provisions on money laundering which was previously criminalised as a receiving offence under the same Chapter of the Penal Code. The Act will enter into force on 1 April 2003. The Chapter provides for the sentences applied to money laundering, negligent and aggravated money laundering, to conspiracy to commit aggravated money laundering as well as to money laundering violations. An attempt is also punishable. The new provisions further introduce heavier penalties.

The Act on Money Laundering

The Government Bill (173/2002) for the amendment of the Act on the Detection and Prevention of Money Laundering (68/1998; hereinafter referred to as the Act on Money Laundering), submitted to Parliament in October 2002, was passed in January 2003. The amendments will be ratified by the President of the Republic with effect as of 1 June 2003. The competent authority responsible for the preparation of the amendment of the Act on Money Laundering was the Ministry of the Interior.

The Act implements, *inter alia*, Directive 2001/97/EC of the European Parliament and of the European Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering, and partly the special counter-terrorist recommendations of the FATF concerning the prevention of the financing of terrorism.

The most relevant amendment is the extension of the scope of the Act, whereby the reporting obligation will concern not only suspected cases of money laundering but also suspicions of financing of terrorism. If there is a suspicion that transaction has a connection to the financing of terrorism the money does not need to originate from criminal activities. The Act will also apply to accountants, book-keepers, dealers and suppliers of valuables, auctioneers and persons assisting in legal matters through a business or professional practice, placing them under an obligation to report on suspicious transactions. Furthermore, the amendment will extend the competence of the Money Laundering Clearing House. On the one hand, the Financial Supervision Authority and other supervisory authorities have a duty to ensure that the supervised entities comply with the relevant provisions of law and, on the other hand, they are under an obligation to inform the Money Laundering Clearing House if they find, in the context of supervision or in the performance of other duties, that there is reason to believe that certain transactions involve money laundering or financing of terrorism.

The amendment to the Act also makes it necessary to change certain rules and regulations that have been issued under it. The competent supervision authorities will take the amendment into account in their supervisory practice and in the relevant rules and regulations issued by them. Furthermore, training and other guidance have been planned for the staff of the Financial Supervision Authority and the Money Laundering Clearing House as well as for providers of financial services.

The Act (No 63/2003) amending the Act on Money Laundering (Government Bill 53/2002) was approved by Parliament in January 2003. As anticipated in the second report to the CTC (sub-paragraph 1 (a)), the act incorporates the provisions on the failure to report a suspicion of money laundering in the Act on Money Laundering as a new section 16 a. Any person failing to comply with the reporting obligation could then be sentenced to a fine. The Act will enter into force on 1 April 2003.

1.3. It is stated in the supplementary report that the existing Finnish legislation does not permit the freezing of assets of individuals and entities unless the obligation is based on a sanction imposed by the UN Security Council or the Council of the European Union. That being the case, how would Finland deal with the following situations:

- *funds held in Finland that are, or are suspected of being, linked to or used by terrorists, whether individuals or entities, that are not listed by the UN or the EU;*
- *funds held in Finland that are requested to be frozen by a State, whether a member of the EU or not, which considers those funds to have links to terrorism.*

The International Convention for the Suppression of the Financing of Terrorism

The International Convention for the Suppression of the Financing of Terrorism was implemented in Finland by a Decree of the President of the Republic in July 2002. Thereby the financing of terrorism falls within the scope of application of the Penal Code. A new paragraph 18 was added to the Decree on the application of Chapter 1, section 7, of the Penal Code, defining certain offences as international crimes. Under the new paragraph, the financing of terrorism within the meaning of the Convention shall be considered an international crime. A punishable attempt of or participation in any of the offences referred to in the Decree, including the financing of terrorism, shall also be considered an international crime. In cases of offences set forth in Article 2 of the Convention, the police may initiate investigations and, in that context, may resort to coercive measures in accordance with the provisions of the Coercive Measures Act, including seizure and restraint on alienation. These protective measures may, under the existing legislation, provide for the freezing of funds related to terrorist offences.

The Act on Money Laundering

In the existing legislation concerning money laundering,[1] money laundering is defined as meaning such transactions where the money originates from criminal activities. According to the Act on Money Laundering, money laundering means acts referred to in subsection 2 of section 1 in Chapter 32 of the Penal Code. Money laundering is punishable as a receiving offence where the origin of the proceeds of crime is concealed or laundered. Thus, in order for it to be punishable, it is necessary that an offence has actually been committed. However, it is possible that terrorism is also financed with funds or assets having a lawful origin. The use of such funds or assets may only be prevented within the limits of the afore-mentioned Act.

[1] See also information given under paragraph 1.2. on the amendments to the Act on Money Laundering.

Under the existing Act on Money Laundering, all financial institutions are under an obligation to report on cases where they, in compliance with their duty to exercise care as required by the same Act or for some other reason, have suspicions as to the origin of funds or financial assets. In such cases, the institution in question must without delay inform the Money Laundering Clearing House of the National Bureau of Investigation and submit, upon request, all the relevant information and documents to the latter, for the purpose of investigation. At the same time, the said institution may suspend or refuse the transaction until the case has been further investigated. A police officer in charge of the case at the Money Laundering Clearing House may order the institution to refrain from the transaction for at most five working days if necessary for the purposes of investigation. Such an order may be given even where there is no reason to believe that an offence has taken place, as it is a measure relating to police investigations the purpose of which is to establish whether the money transaction in question may be classified as money laundering, be it a criminal act or a business transaction.

Where it is suspected that certain funds or financial assets have connections with individual terrorists or terrorist groups, and there is reason to believe that they originate from criminal activities, the money transaction in question may be ordered to be suspended for a five-day period defined by law, for the purpose of finding further evidence. Terrorism has often links with several states and therefore cooperation between the authorities of different states plays an important role in the suppression of terrorism.

The Money Laundering Clearing House is responsible for the exchange of information relating to money laundering. In cases where the investigations do not disclose any such facts as would support the suspicions as to the criminal origins of the funds or financial assets, the transaction must be allowed to continue.

International co-operation

Effective exchange of information is vital for the purpose of suppressing the financing of terrorism. As regards police cooperation in this respect, there are international agreements applicable to the cooperation between investigative and judicial authorities, such as the European Convention on Extradition, the European Convention on Mutual Assistance in Criminal Matters and the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime. In addition, exchange of information takes place within the framework of relevant international cooperative bodies, in particular Interpol and Europol.

The Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime, done at Strasbourg on 8 November 1990, was implemented in Finland by a Decree. Under the Decree, the Finnish authorities shall, upon a request made by an authority of a State Party to the Convention, provide legal assistance in accordance with the Convention and the Finnish Act (4/1994) and Decree (13/1994) on International Legal Assistance in Criminal Matters.

In cases where a State Party to the afore-mentioned Convention presents a request for the freezing of funds or financial assets relating to terrorism, on the basis of an order given by a court of the said State, the court order shall be enforced in Finland in accordance with the provisions of the Convention and of the Finnish Act on International Cooperation in the Enforcement of Certain Penal Sanctions (21/1987).

It is possible for Finnish authorities to take protective measures (seizure or restraint on alienation) on the basis of a request made by the competent authority of another State if the request is accompanied by adequate evidence on that the funds or assets have links with the financing of terrorism.

1.4. Effective implementation of paragraph 1 of the Resolution requires an appropriate monitoring mechanism to ensure that the funds collected by organizations which have or claim to have charitable, social or cultural goals are not diverted to terrorist purposes. Please provide a progress report on the results of the working group that has been set up to review the existing legislation in this regard.

The working group set up by the Ministry of the Interior, to review the existing legislation and to make recommendations on how the enhance the control of fundraising by organizations which have charitable, social or cultural goals, will most likely be able to give its report so that a Government Bill may be submitted to Parliament in 2004.

1.5. [...] The supplementary report states that, in government Bill HE 183/1999 vp, it is proposed to make participation in criminal organizations punishable and that, under that proposed provision, recruitment of members to terrorist organizations would be subject to punishment. In the same paragraph of the report, it is stated that participation in such organizations could be punished if the main offence is actually committed. This does not seem to be in full compliance with the requirements of sub-paragraph 2 (a) to criminalize recruitment to terrorist groups, regardless of the occurrence of any related terrorist act. Please explain how Finland proposes to comply with this requirement.

Section 4 of the new Chapter 34a added to the Penal Code prohibits promotion of terrorist groups. It is applied to participation in terrorist groups, including recruitment of members, instead of the general provision prohibiting participation in criminal organizations referred to by the CTC in its question. The latter provision has already been adopted.

As far as recruitment of members to terrorist organizations is concerned, the relevant part of section 4 of Chapter 34a reads as follows:

> 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 organises the group, or recruits or attempts to recruit members to such a group,

[...]

shall be sentenced, 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, for *promotion of a terrorist group,* to imprisonment for at least four months and at most eight years.

According to a new subsection 3 of section 7 in Chapter 1 of the Penal Code, Finnish law shall apply to an offence referred to in Chapter 34a, committed outside of Finland, irrespective of the law of the place of commission.

It was not required in the Government Bill that, in order for the promotion of a terrorist group to be punishable, the main offence must actually be committed or its planning or attempt be actually effected. This requirement was added to the provision by Parliament. It seems that the added requirement is in essence based on an opinion of the Constitutional Law Committee which has as its duty to ensure that provisions of law are in conformity with the Constitution (Opinion No 48/2002). In its Opinion, the Constitutional Law Committee referred to section 8 of the Constitution, providing for the principle of legality in criminal cases, to Article 7, paragraph 1, of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and to Article 15, paragraph 1, of the International Covenant on Civil and Political Rights. According to the Constitutional Law Committee, the principle of legality entails a requirement for precise provisions of law. Prohibiting participation in criminal organizations is, in the Committee's view, is a new element in the Finnish criminal law and, therefore, there are several uncertainties relating to the limits of the prohibition. Consequently, the Constitutional Law Committee found it necessary to require that such participation may only be punished where the conduct of the terrorist group amounts, as a minimum, to the planning of terrorist offences.

In view of the important reasons presented during the Parliament discussions, relating to the protection of fundamental freedoms and human rights, the Government finds the outlined requirement of the existence of a plan to commit a terrorist offence appropriate. The Government wishes to draw attention to the fact that promotion of a terrorist group may be punished even if an offence has not actually been committed or attempted, provided that the group has planned to commit terrorist offences.

1.6 The CTC would be grateful to receive a progress report of the Aliens Act.

The Government Bill (HE 265/2002) for an overall reform of the Aliens Act was submitted to Parliament on 20 December 2002. The discussion of the Bill by the relevant Parliament committees has not been completed yet. As Parliament has not been able to discuss the Bill in a plenary session and pass it before the upcoming Parliament elections in March, the Bill will be dropped and the new Government will have to decide on the submission of a new Bill to Parliament and on its schedule. The Act was originally planned to enter into force into force at the beginning of 2004 but this is no more likely.

1.7. Effective implementation of sub-paragraphs 2 (d) and (e) of the Resolution requires a State to criminalize the acts of financing, planning and facilitating terrorist acts aimed at other States or their citizens by using the territory of Finland, even though no related terrorist acts have actually been attempted or committed. The proposed provisions in Finnish law do not seem to adequately meet this need. Could Finland please indicate how it proposes to comply with this requirement.

The financing of terrorism is covered by section 5 in the new Chapter 34a of the Penal Code. The Government notes that, in order for the financing of terrorism to be a punishable offence, it is not necessary that the funds have actually been used for the commission or an attempt of a terrorist act.

The planning of terrorist acts mainly falls within the scope of application of section 2 in the new Chapter 34a (*planning of a terrorist offence*). Punishable planning may include, *inter alia*, an agreement entered into with another person, or making a plan for the commission of a terrorist offence. In order for the planning to be punishable, it is not necessary that the offence is actually committed or attempted.

The facilitation of terrorist acts is covered, firstly, by the general provisions prohibiting participation in an offence, including aiding and abetting. In order for such participation to be punishable, it is necessary that there has been at least an attempt to commit the main offence. Secondly, facilitation not amounting to participation is covered by the provision prohibiting promotion of a terrorist group (section 4 in Chapter 34a of the Penal Code). In this respect, the reference is made to the information given under paragraph 1.5, including the reasons for the requirement that the promotion of a terrorist group may only be punished where there is a plan to commit a terrorist offence.