

**Security Council**

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Letter dated 2 September 2004 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 predecessor's letter of 21 November 2003 (S/2003/1123). The Counter-Terrorism Committee has received the attached fourth report from Costa Rica 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) Andrey I. Denisov
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

Annex

[Original: Spanish]

Letter dated 31 August 2004 from the Permanent Representative of Costa Rica to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I have the honour to attach herewith the fourth report of Costa Rica on measures adopted in implementation of Security Council resolution 1373 (see enclosure).

This report has been prepared in reply to the note from the Chairman of the Committee dated 12 November 2003.

(Signed) Bruno **Stagno Ugarte**
Ambassador
Permanent Representative

Enclosure

[Original: Spanish]

Fourth report of the Republic of Costa Rica to the Counter-Terrorism Committee of the United Nations Security Council**July 2004****1. Implementation measures****Effectiveness in the protection of financial system**

1.1 Effective implementation of subparagraph 1 (a) requires States to have in place effective executive machinery for preventing and suppressing the financing of terrorist acts. In this context the CTC would appreciate learning whether the SUGEF has sufficient resources (human, financial and technical) to enable it to carry out its mandate. Please provide appropriate data in support of your response.

The Office of the Superintendent of Financial Institutions (SUGEF), the Office of the Superintendent of Securities (SUGEVAL) and the Office of the Superintendent of Pensions (SUPEN) have been working with the Financial Analysis Unit of the Costa Rican Drug Institute to implement control mechanisms to prevent the laundering of the proceeds from serious drug-related offences (those penalized by four or more years' imprisonment). A three-pronged approach has been taken: the issuance of regulations to supervisory bodies on the prevention of money-laundering (under the provisions of Act No. 8204 (Law on Narcotics, Psychotropic Substances, Drugs of Unauthorized Use and Related Activities)); coordination between the relevant supervisory authorities; and continued collaboration with the Costa Rican Drug Institute, the lead agency.

In view of the specific nature of terrorism, however, international assistance is needed with regard specifically to training, as we have had limited experience with setting up mechanisms to detect terrorist activities within our financial system. Such training would enable us to determine objectively whether or not we have enough resources to meet the relevant international requirements.

1.2 Costa Rica, in its supplementary report in response to subparagraph 1 (a) of the Resolution, states (at page 3) that money transfer agencies have not been registered yet because of the absence of the necessary legal regulations. In this regard the CTC would appreciate receiving a progress report on the steps which Costa Rica intends taking in this regard. Could Costa Rica please outline the legal provisions which it has put in place to prevent informal money/value transfer systems from being used for the financing of terrorism. In the absence of such provisions, could Costa Rica indicate the steps which it intends taking in order fully to comply with this aspect of the resolution?

Article 15 of Act No. 8204 sets forth the activities that are subject to the controls stipulated therein:

“Article 15. Any persons who carry on, inter alia, the following activities shall also be subject to this law:

- (a) *Regular or substantial currency exchange transfer and operations using instruments such as cheques, bank drafts and bills of exchange;*
- (b) *Regular or substantial operations involving the issue, sale, encashment or transfer of travellers' cheques or postal money orders;*
- (c) *Regular or substantial transfers of funds carried out by any means;*
- (d) *The administration of trusts or any type of administration of funds by individuals or corporate entities that are not financial intermediaries.*

Individuals or corporate entities that carry on activities referred to in the preceding subparagraphs and are not supervised by any of the supervising bodies existing in Costa Rica, shall be required to register with SUGEF, whereby registration shall not be interpreted as meaning that they are licensed to operate; also, they shall be subject to the supervision of SUGEF in matters relating to the prevention of money-laundering as provided for in this Law. Registration shall be approved by the National Council for Supervision of the Financial System, subject to an affirmative report from SUGEF, once the applicable legal and regulatory provisions have been complied with. Costa Rican municipal authorities shall not issue new licences or renew existing ones for such activities if the aforementioned registration requirement has not been met.

SUGEF, SUGEVAL or SUPEN, as appropriate, shall ensure that individuals and corporate entities that, wherever they have their legal domicile or operate and on whatever basis, habitually engage without authorization in activities such as those referred to in this article do not operate within Costa Rican territory.

If, in the opinion of the supervising official, there are reasons to believe that an individual or a corporate entity is engaging in any of the activities referred to in this article, the supervisory body shall have, with regard to the suspected offenders, the same powers of search as it has, under this Law, with regard to institutions subject to the provisions of this part of this Law in matters relating to the prevention of money-laundering.”

Without prejudice to the statements made in the previous reply concerning measures to combat terrorist financing, it should be noted that regulations implementing Act No. 8204 were issued on 11 March 2004 through Decree No. 31684-MP-MSP-H-COMEX-S, which provided that the requirements to be met by natural or legal person transferring funds or carrying out operations such as those referred to in article 15 of Act No. 8204 would be spelled out in the form of rules to be adopted by the National Council for Supervision of the Financial System (CONASSIF). The Council considered these rules on 27 July 2004, at meeting No. 454-04, and agreed to open them to a public hearing for 10 working days as from their publication in the Official Gazette.

Nonetheless, SUGEF has been receiving applications for registration from a number of natural and legal persons carrying on activities such as those referred to in article 15 of Act No. 8204. In addition, some entities have submitted reports on certain natural or legal persons that have applied for registration as being engaged in suspicious activities.

The National Council for Supervision of the Financial System (CONASSIF) recently approved the new regulations implementing Act No. 8204 for bodies under the supervision of SUGEF, SUGEVAL and SUPEN. These regulations contain the following provision in the last paragraph of article 4:

“Lastly, if the financial institution determines that a customer is carrying on, inter alia, the activities referred to in Article 15 of Act No. 8204, such customer shall be required to register with the Office of the Superintendent of Financial Institutions.”

1.3 With regard to the implementation of subparagraph 1 (a) of the Resolution, could Costa Rica outline how its anti-money-laundering regime and the measures which it has taken to supervise its offshore sector, in particular as regards Internet gaming activities, result in the effective implementation of the relevant provisions of the Resolution? Please outline for the CTC the financial rules and laws in force in Costa Rica, aimed at preventing foreign-domiciled “offshore” banks from carrying out transactions linked to terrorist activities. In particular, the CTC would be interested in receiving information concerning banks which, although not directly engaged in financial operations in Costa Rica, are nevertheless involved in the receipt or transfer of funds, held in foreign currency, through the use of bank accounts in relevant countries.

With the entry into force of Act No. 8204 in January 2002 (known as Act No. 7786 prior to the amendments of December 2001), SUGEF was granted the powers to audit “offshore” financial groups for the purpose of detecting money-laundering. Article 14 of that Act provides that “(...) the obligations established under this Law shall apply to all firms and other entities belonging to financial groups supervised by the aforementioned bodies, including financial transactions that banks or financial institutions domiciled abroad conduct through a financial institution domiciled in Costa Rica. (...)”.

In addition, article 20 of the “Regulations governing the constitution, transfer, registration and operation of financial groups” and amendments thereto, adopted by the Governing Board of the Central Bank of Costa Rica, through article 4 of the minutes of meeting No. 4931-97, held on 24 October 1997, and published in the Official Gazette of 24 October 1997, provides as follows:

“Only Costa Rican financial institutions that are subject to the direct supervision of the national supervisory authorities and that are members of a financial group which also includes banks or financial institutions based abroad may carry out, on behalf of those foreign entities and at their own expense and risk, the following activities:

(a) Transfers of funds in foreign currency at the request of the customer of the foreign entity to one of its accounts outside Costa Rica. Such fund transfers shall be registered in an account specifically designated for that purpose in the accounting of the Costa Rican supervisory authority, and shall be justified by supporting documents clearly indicating the nature and details of the transaction, together with the name of the foreign bank or financial institution;

(b) Receipt of fund transfers in foreign currency on behalf of a customer of the foreign entity from one of its open accounts outside Costa Rica. Such fund transfers shall be registered in an account specifically

designated for that purpose in the accounting of the Costa Rican supervisory authority, and shall be justified by supporting documents clearly indicating the nature and details of the transaction, together with the name of the foreign bank or financial institution;

(c) Provision of safe-deposit facilities;

(d) International correspondent banking operations or legal representation in accordance with the agreement on correspondent banking, negotiations or mandates signed with the foreign-domiciled bank or firm.

The supervised Costa Rican entities shall submit to the supervisory authority all the information and supporting or justifying documents or records concerning the transfers referred to in subparagraphs (a) and (b) above which are registered in the account specifically designated for that purpose in the accounting of the supervised Costa Rican entity. These transfers shall be subject to all anti-money-laundering provisions that are applicable to the Costa Rican entity.”

By virtue of the powers set forth in the foregoing provision, SUGEF does on-site inspections to verify any transactions carried out by foreign-domiciled banks through a local bank. It primarily checks to see that the local bank is effectively in compliance with the provisions of Act No. 8204 and the prevailing regulations implementing the “Know your customer” policy. In cases where any kind of weakness is detected, the supervisory authority requires the institution to provide explanations and take corrective steps in due course. In addition, judicial warnings are issued in cases where serious weaknesses are found, in preparation for applying the administrative penalties set forth in article 81 of Act No. 8204.

Moreover, in connection with supervisory tasks, all services provided by member firms of the financial group are identified, and potential risks are assessed on the basis of Act No. 8204. A check is also made to verify whether such firms have a corporate compliance officer and whether the latter has conducted any reviews of the other members of the group, including foreign-domiciled banks. Internal auditing reports for each of the member firms of the financial group are analysed as well.

Even though the Office of the Superintendent oversees transactions carried out by foreign-domiciled banks through local banks, these banks are also subject to compliance with the anti-money-laundering laws in each of the countries where they are legally domiciled; note that none of these is on the list of non-cooperative countries compiled by the Financial Action Task Force on Money Laundering (FATF), as Panama, the Bahamas and the Cayman Islands were removed from the list in July 2001. It should be clarified that the financial group to which the only bank domiciled in Montserrat belonged was delisted by this Office in February 2004; hence this off-shore bank, as mandated by Act No. 7558, cannot operate through any local bank, and is now supervised directly by the Financial Services Commission of Montserrat.

Internet-based gaming activities are not regulated by SUGEF. Some entities supervised by the Office of the Superintendent do have a policy, however, of not maintaining commercial relations with firms or persons engaged in this type of activity, including casinos. Moreover, in a number of cases where such relations

have continued, the entities supervised by SUGEF have filed suspicious transactions reports on them and have at times closed their accounts.

Lastly, it should be noted that the draft Law on the Strengthening of Costa Rican Legislation against Terrorism, which was elaborated by an inter-agency commission appointed by the executive branch and was submitted to the Legislative Assembly for approval, includes amendments to various articles of Act No. 8204 for the purpose of expanding the powers of the Financial Analysis Unit of the Costa Rican Drug Institute and of the financial oversight offices and controls established in that Act to prevent the financing of terrorism. Accordingly, the draft law provides for the inclusion of a new article in Act No. 8204, which reads as follows:

“Article 15 bis. Individuals and corporate entities engaged in economic activities other than those referred to in articles 14 and 15 of this Law shall report to the Costa Rican Drug Institute any commercial transactions carried out regularly and in cash, including transfers to or from another country, in national or foreign currency, of amounts of ten thousand United States dollars (US\$ 10,000) or more, or the equivalent in colones. Such economic activities shall include the following:

- (a) The purchase, sale or conveyance of immovable property or movable property such as weapons, precious stones and metals, works of art, jewellery, automobiles and insurance policies;*
- (b) Casinos, wagers and other gaming operations;*
- (c) Credit card companies that are not part of a financial group;*
- (d) Professional services.*

For these purposes, the forms specified by the Costa Rican Drug Institute shall be used.”

1.4 As regards the implementation of subparagraphs 1 (a) and (c) of the resolution as well as Article 8 of the International Convention for the Suppression of the Financing of Terrorism, the CTC would be grateful if Costa Rica could describe the principal procedures embodied in its legal framework in relation to the confiscation of assets or the operation of some other deprivation mechanism. Please describe how the procedures operate in practice, indicating, inter alia, the authorities responsible for their implementation. Can Costa Rica confiscate the proceeds of a crime without first obtaining the conviction of the perpetrator (i.e. in rem confiscation)? If not, is the introduction of such a system envisaged? The CTC would also welcome an account of any appellate provisions allowing for the review of the decisions taken by any such authority or agency. Please indicate the financial magnitude of the assets frozen, seized or confiscated in regard to the prevention of financing of terrorism.

(a) Principal procedures embodied in its legal framework in relation to the confiscation of assets or the operation of some other deprivation mechanism

The Costa Rican Code of Criminal Procedure, Act No. 7594 of 10 April 1996, is the legal instrument that governs the confiscation of assets and other deprivation procedures. This Code establishes the following:

“Article 198. Warrant for seizure

The judge, Public Prosecutor’s Office and police may order the collection and retention of articles connected with the crime, those subject to confiscation and those that may be used as evidence; to that end, they shall, where necessary, arrange for the seizure of such articles. In urgent cases, this measure may be delegated to an official of the judicial police.”

This law clearly shows that the Costa Rican authorities have adequate legal mechanisms permitting them to order the confiscation of the proceeds or instrumentalities of a crime. Nonetheless, such confiscation is temporary and non-definitive, as a final judicial order is required for final disposal of the confiscated articles; indeed, the right to property is protected by the Constitution, and it may be confiscated only under due process of law. Until the final judicial order, such articles may remain in temporary judicial custody, either with the competent authority or with a party who appears before the court and claims a greater entitlement to them.

The foregoing is based on the above-mentioned law, which states the following:

“Article 465. Confiscation

When a final court decision orders the confiscation of an item, the court shall dispose of it depending on its nature, in accordance with the prevailing rules governing such matters. Where appropriate, the instrumentalities of the crime shall be consigned to the Criminological Museum of the Supreme Court of Justice.

Article 466. Restitution and retention of confiscated items

Items seized which are not subject to confiscation, restitution or embargo shall be returned to the person from whom they were sequestered, immediately following the signing of the final court decision. If they had been handed over into temporary custody, the depositary shall be notified of the final disposal of such articles.

Sequestered items owned by the convicted person may be retained as a guarantee for the costs of the trial and any fines imposed.

Article 367. Sentencing

The final court decision shall precisely establish the corresponding penalties and, where appropriate, shall provide for the conditional suspension of the penalty and the obligations that must be met by the convicted person.

The sentences or penalties shall be combined, where appropriate.

The final court decision shall also determine the costs and provide for the surrender of the confiscated items to the person who has a greater entitlement to them, without prejudice to any claims that may be brought before the civil courts.

It shall arrange for the confiscation and destruction provided for by law.”

The Costa Rican Code of Criminal Procedure also provides a mechanism known as “criminal indemnity action”, by which a victim or the State — where the latter is the victim — can become a party to the criminal procedure in order to seek compensation for damage suffered as a result of a crime.

With a view to ensuring sufficient and timely reparation of the damage, the victim may request the preventive attachment of the defendant’s or defendants’ property — prior to the final court decision — in order to preserve the availability of such property, through seizure and/or confiscation, for the purpose of preventing its disappearance and thus securing the future payment of appropriate compensation.

The basis of the foregoing is the section referring to preventive attachment of property that are set forth in the Code of Criminal Procedure, as illustrated by the following:

“Preventive attachment of property

Article 263. Embargo

The plaintiff may file a request for embargo in the original pleadings or later, without prejudice to the ability to request preventive attachment.

The embargo shall be granted by the court, at the party’s request, as security for the payment of compensation for damages and losses and for the reimbursement of costs.

Article 264. Supplementary application

The provisions of the Code of Civil Procedure, where applicable, shall govern the embargo and all its effects.”

In addition, Act No. 8204 sets out the current provisions specifically applicable to the forfeiture of financial assets suspected of being related to money-laundering. As explained in previous reports, the draft Law on the Strengthening of Costa Rican Legislation against Terrorism includes amendments to these articles to make them applicable to the financing of terrorism as well. These articles of Act No. 8204 are presented below, with the proposed new text in the draft Law underlined:

*“**Article 33.** When an offence relating to the laundering of money or to the financing of terrorism is being investigated, the Department of Public Prosecution shall request the competent court or authority, at any time and without any prior notification or hearing, to issue a seizure or attachment order or to take some other precautionary measure aimed at preserving the availability of related property, proceeds or instrumentalities with a view to possible confiscation.*

Such arrangements shall include the freezing of deposits under investigation at national or foreign institutions as referred to in Articles 14 and 15 of this Law, in compliance with the relevant statutory provisions.

Article 83. *All movable and immovable property, vehicles, instruments, equipment, assets, money and other objects used in the commission of offences provided for under this Law, or offences relating to the financing of terrorism, as well as property or assets derived from such acts shall be seized by way of precaution, by the competent authority hearing the case; the same shall apply*

in respect of shareholdings, capital investments and property of corporate entities involved in such acts.

Interested third parties that comply with the provisions of Article 94 of this Law shall have three months, from the date of the notifications referred to in Articles 84 and 90 of this Law, to claim seized property and objects; within that time limit they shall meet the necessary legal requirements, for each case, without prejudice to the provisions of the preceding articles.

Article 84. *If any of the measures referred to in the preceding article is ordered, the property shall be immediately placed in judicial deposit exclusively at the disposal of the Costa Rican Drug Institute. Once safe-keeping arrangements have been made for the value of the property in order to guarantee any possible indemnification for damage or destruction, the Costa Rican Drug Institute shall immediately assign the property exclusively for the purpose of fulfilling the aims described in this Law, except in highly justified cases approved by the Board of Directors; it may also administer the property or hand it over in trust to a bank of the State, as befits its interests. In the case of property registered with the National Registry, the authority hearing the case shall immediately order that the relevant entry be made and shall notify the Costa Rican Drug Institute. Income from the administration or trust shall be used for the achievement of the aims of the Institute.*

If it is not possible to proceed in accordance with the second paragraph of Article 90 of this Law, the Institute shall publish a notice in the official gazette, indicating the objects, merchandise and other property in its possession. If the time limit established in the preceding article has expired and the interested parties have not taken the necessary action, provided that a court decision exists, the seized property and objects of value shall become the permanent property of the Institute and shall be used for the aims set forth in this Law.

Article 86. *If an investigation is initiated by the competent authorities as a result of the commission of any of the illicit acts covered by this Law or related to the financing of terrorism, every financial entity or entity that forms part of a financial group shall have the obligation to protect any information, documents, assets and money that may be used as evidence or proof in the investigation or in judicial proceedings; the said financial entity shall freeze the money or assets that are deposited or held in safe-keeping or shall deposit them in the Central Bank of Costa Rica and inform the authorities of the measures taken. The foregoing obligations shall commence from the moment that the entities receive formal notification from the authorities indicating that an investigation or criminal proceedings have begun, or instructing the entities to file the appropriate report.*

Such measures shall not entail, either for the entities or the officials who implement them, any administrative, civil, criminal or other liability, provided that they have acted in good faith.

Article 123. *The Financial Analysis Unit shall request, compile and analyse records, forms and reports of suspicious transactions received from monitoring bodies and the institutions referred to in Articles 14 and 15 of this Law, with a view to centralizing and analysing such information in order to investigate*

money-laundering activities. Such information shall be brought to the notice of the Directorate-General, which shall communicate it to the Department of Public Prosecution for the appropriate purposes.

State organizations and institutions, in particular the Ministry of Finance, the Central Bank of Costa Rica, the Public Registry and public oversight agencies, as well as the entities referred to in Articles 14 and 15 of this Law, shall be obliged to furnish the information required for the investigation of the activities and offences covered by this Law, at the request of the Unit, with the countersignature of the Directorate-General.

The Financial Analysis Unit shall also be responsible for locating and tracing property of economic interest obtained in the crimes defined in this Law. The Department of Public Prosecution shall order financial investigations, which shall be conducted simultaneously with, or subsequent to, the investigation of the relevant offences.

Article 124. The information compiled by the Financial Analysis Unit shall be confidential and be used exclusively for investigations conducted by the Institute. It may also be disclosed to the Department of Public Prosecution, to judges of the Republic, to national and foreign police bodies, to similar financial analysis units and to the administrative and judicial authorities of other countries having competence in the matter. Any officials who fail to comply with this provision shall be subject to the penalties set out in the Penal Code.”

As explained in previous reports, the draft Law on the Strengthening of Costa Rican Legislation against Terrorism expands the scope of Act No. 8204 to the prevention and suppression of terrorist financing. As part of this strategy, amendments to the previous articles will also extend the relevant rules and procedures to the prevention and suppression of terrorist financing.

(b) Confiscation of the proceeds of a crime without obtaining the conviction of the perpetrator, procedures and appeal

As explained above, Costa Rica’s legislation on criminal procedure provides for the confiscation of the proceeds of a crime without obtaining the prior conviction of the perpetrator when such confiscation is a precautionary measure.

Two types of confiscation are possible: first, confiscation of property constituting the proceeds of a crime and, secondly, confiscation of property belonging to the perpetrator in order to meet legal costs and pay compensation.

Confiscating the proceeds of a crime without obtaining the prior conviction of the perpetrator is permissible under article 198 of the aforementioned Code of Criminal Procedure, which provides that a court, the police or the Public Prosecutor’s Office may order the confiscation of property connected with the crime and make provisions for its seizure. Such orders, which are urgent in nature on account of the need to preserve the evidence, have no remedy, because that preservation requirement means that appeal proceedings are not possible. The aforementioned organs may confiscate the property in question and any third parties claiming greater entitlement to it must appear at the proceedings and initiate the relevant actions either as victims of the crime or as plaintiffs claiming damages.

With regard to the confiscation of property under Act No. 8204, the following articles set out the mechanisms available to bona fide third parties:

“Article 93. The measures and penalties referred to in the articles preceding this chapter shall apply without prejudice to the rights of bona fide third parties.

In accordance with the law, notification of the possibility of appearing in the proceedings in order to assert their rights shall be communicated to any persons who can claim a legitimate legal interest in the property, proceeds or instrumentalities.

Article 94. The competent authority or court shall order the return of the property, proceeds or instrumentalities to the claimant if it is established and concluded that:

(a) The claimant has a legitimate interest in the property, proceeds or instrumentalities;

(b) The claimant cannot be charged with the commission of or any involvement in an offence of trafficking or related offences forming the subject of the proceedings;

(c) The claimant was, without any negligence being involved, unaware of the unlawful use of the property, proceeds or instrumentalities or, if aware, did not voluntarily agree to their unlawful use;

(d) The claimant did not acquire entitlement to the property, proceeds or instrumentalities of the person on trial in circumstances that reasonably allow the conclusion that entitlement thereto would have been transferred to him for the purpose of avoiding possible seizure and confiscation;

(e) The claimant took all reasonable steps to prevent the unlawful use of the property, proceeds or instrumentalities.”

(c) Financial magnitude of the assets frozen or seized

As previously stated, as a general rule frozen or seized assets are protected under Costa Rican legislation because they can be used for various purposes:

- As evidence in criminal investigations. To this end, they must remain in the custody of the Public Prosecutor’s Office or the criminal court. The relevant attachment order issued by the Public Prosecutor or court suffices for that purpose;
- As security for the payment of compensation and costs. In this case, the victim, either the State or an individual, must initiate a civil action for compensation and request the seizure of the property belonging to the perpetrator of the crime. As a precautionary measure, this must be ordered by a criminal court with a right of appeal before the relevant criminal court of first instance.

Article 85 of Act No. 8204 provides for confiscation as a precautionary measure in the following terms:

“Article 85. *The judicial authority shall deposit seized cash in the current account of the Costa Rican Drug Institute and immediately furnish it with a copy of the deposit made. Of the interest obtained, the Institute shall allocate:*

(a) *Sixty per cent (60%) for the implementation of preventive programmes; at least half of this amount shall be used for the consumption prevention, treatment and rehabilitation programmes carried out by the Alcoholism and Drug Dependence Institute;*

(b) *Thirty per cent (30%) for law enforcement programmes;*

(c) *Ten per cent (10%) for the safe keeping and maintenance of seized property to be assigned as specified in the preceding article.”*

As regards confiscation, Act No. 8204 provides as follows:

“Article 87. *If, in a final ruling, confiscation of movable or immovable property, cash or assets as referred to in the preceding articles is ordered in favour of the Costa Rican Drug Institute, the latter may retain such assets for the fulfilment of its aims, donate them to public welfare entities, in priority to organizations whose object is drug abuse prevention or control, or sell them at auction. In the case of cash assets or the proceeds from auctioned property, the Costa Rican Drug Institute shall allocate:*

(a) *Sixty per cent (60%) for the implementation of preventive programmes; at least half of this amount shall be allocated to the consumption prevention, treatment and rehabilitation programmes carried out by the Alcoholism and Drug Dependence Institute;*

(b) *Thirty per cent (30%) for enforcement programmes;*

(c) *Ten per cent (10%) for the safe keeping and maintenance of confiscated property.*

Article 88. *Perishable goods may be sold by the Institute before the final ruling is handed down in the respective criminal proceedings, in accordance with the regulations of the Institute; for such purpose, an expert appraisal shall be conducted by the competent office of the Ministry of Finance. The proceeds obtained shall be disposed of in accordance with the provisions of the preceding article.*

Article 89. *In the case of confiscated property subject to registration with the National Registry, an order from the competent judicial authority shall be sufficient for the relevant section of the Registry to carry out the registration or the transfer of the property in favour of the Costa Rican Drug Institute.*

As soon as the ruling is final, the competent authority shall transmit the registration or transfer order, to which the respective security voucher shall be attached, and shall be exempt from the payment of any of the property transfer taxes provided for under Law No. 7088, as well as from the payment of stamp duty and transfer or registration fees. In such cases, the respective note issued by the Department of Exemptions of the Ministry of Finance shall not be required.

Article 90. *If, one year after the confiscation of the property, it has not been possible to establish the identity of the perpetrator of or participant in the*

offence, or if the latter has abandoned property of economic interest, the elements and means of transport used, the competent authority shall order the permanent confiscation of such property, which shall become the property of the Institute for the aims set forth under this Law.

Similarly, when more than three months have elapsed following the completion or closure of criminal proceedings and no one has claimed a legitimate legal interest in the property of economic interest used in the commission of the offences provided for under this Law, or has taken any action to collect them, the interested party shall no longer be entitled to file claims, and the Institute shall dispose of the property, subject to authorization from the court that heard the case. For this purpose, the provisions of Article 89 of this Law shall apply.

Article 91. *In cases where the competent judicial authority orders, in a final ruling, the confiscation of property which, by its nature, is subject to registration or transfer in the National Registry and is in a state of deterioration that makes its repair or improvement impossible or excessively burdensome, the Institute may allocate such property for the purposes described in this Law, without any need for its registration or transfer in the National Registry. The assessment of the condition of the property shall be made by the Valuation Department of the Ministry of Finance.”*

1.5 In the context of implementation of Article 8 of the International Convention for the Suppression of the Financing of Terrorism, does Costa Rican law allow some or all confiscated property to be used to satisfy claims for damages brought by a person who claims to have suffered injuries as a result of the commission of an offence? Please describe how Costa Rica deals, in its laws and procedures, with requests from foreign States for international legal assistance in relation to confiscation measures arising out of terrorist offences.

(a) Does Costa Rican law allow confiscated property to be used to satisfy claims for damages brought by a person affected by the offence?

As explained in reply to the previous question, as a general rule, Costa Rican legislation allows confiscated property to be used to satisfy claims for damages brought by a person affected by the offence. In that connection, the Code of Criminal Procedure sets forth the persons empowered to intervene in the proceedings and submit claims for damages:

“Rights of the victim

Article 70. Victim

The victim shall be regarded as:

(a) *The individual directly affected by the offence;*

(b) *In the case of offences resulting in the death of the victim, the spouse, partner of more than two years, adoptive child or parent, relatives within the third degree of consanguinity or the second degree by affinity and the legally declared heir.*

Article 71. Rights of the victim

Even if he is not the plaintiff, the victim shall have the following rights:

(a) *To take part in the proceedings, in accordance with the provisions of this Code;*

(b) *To be informed of the final outcome of the proceedings, provided that he has made a specific request to that end and resides at a known address;*

(c) *To appeal against a final rejection or dismissal of the proceedings.*

The victim shall be made aware of his rights upon filing the complaint or during his first appearance at the proceedings.”

Such individuals may also appear at the criminal proceedings and request appropriate compensation by lodging a criminal indemnity action, the procedure for which is as follows:

“Criminal indemnity actions

Article 37. Exercise

Criminal indemnity actions seeking restitution of the item forming the subject of the offence or compensation for damages and losses incurred may be brought by the victim, his heirs, legatees, successors or, in the case of personal claims, his beneficiaries, against the perpetrators of and participants in the offence and, where appropriate, against the person bearing civil liability.

Article 38. Criminal indemnity actions for damages to society

In the case of offences affecting collective or widespread interests, criminal indemnity actions may be brought by the Office of the Public Prosecutor.

Article 116. Powers

Plaintiffs claiming damages shall participate in the proceedings solely on account of their civil interests. Their participation shall be limited to verifying the existence of the offence and identifying the perpetrators and participants, attributing that offence to whomever they consider responsible for it, describing the link to the third party bearing civil liability and determining the existence, extent and financial magnitude of the damages and losses for which they are seeking compensation.

Plaintiffs claiming damages may appeal against decisions only in respect of actions filed by them.

Plaintiffs claiming damages who appear in person shall not be exempt from making witness statements.”

Similarly, the State may intervene in the proceedings to request compensation when the offence has had a directly adverse effect on it or on the public interest by bringing a criminal indemnity action through the Public Prosecutor’s Office, which acts as the legal representative of the State.

In that connection, the Organic Act concerning the Office of the Public Prosecutor, Act No. 6815 of 27 September 1982, states:

“General principles: Article 1. Legal status

The Office of the Public Prosecutor is the highest consultative body for technical, legal and public administration issues and the legal representative of the State in matters falling within its competence.

It has functional and judgemental independence in the exercise of its powers.”

“Article 3. Powers

The Office of the Public Prosecutor of the Republic shall have the following powers:

(a) To represent the State in all matters which are heard or should be heard by the courts;

(d) To intervene in criminal cases, in accordance with the relevant provisions of this Act and of the Code of Criminal Procedure;

(k) To intervene, as the representative of State interests, in all other matters in accordance with national legislation;

(l) To protect the human rights of the inhabitants of the Republic.

For the purposes of these provisions, human rights shall mean the rights and guarantees enshrined in the Political Constitution and the civil and political rights defined in agreements on human rights signed and ratified by the State ...”

It is clear from the foregoing that both the victim and the State can be compensated for damages incurred as a result of an offence, including offences related to various acts of terrorism which are currently covered by Costa Rica’s Penal Code. With regard to the offence of terrorist financing, as previous reports have explained, under current criminal legislation, preparatory activities — including financing — may be regarded as a form of illegal association (articles 274 and 374 of the current Penal Code), and therefore the aforementioned provisions may be applied in order to compensate victims of terrorism or members of their families. The reforms proposed in the draft Law on the Strengthening of Legislation against Terrorism will result in a clearer definition of the offence of terrorist financing, thereby facilitating the application of the aforementioned principles.

(b) Please describe how Costa Rica deals, in its laws and procedures, with requests from foreign States for international legal assistance in relation to confiscation measures arising out of terrorist offences.

Costa Rica’s legislation on criminal procedure clearly sets out the procedures for requests for legal assistance from foreign States, in relation to not only confiscation measures arising out of terrorist offences but also all types of measures that may be required by foreign States. To that end, the Code of Criminal Procedure states:

“Article 154. Letters rogatory to foreign authorities

Requests addressed to foreign courts or authorities shall be made by means of letters rogatory and transmitted in the form established by the

Constitution and the provisions of international and community law in force in the country.

The registry of the Supreme Court of Justice shall refer communications to the Ministry of Foreign Affairs, which shall transmit them through the diplomatic channel.

However, in urgent cases, communications may be addressed to any foreign judicial or administrative authority, giving notice of the letter rogatory or of the reply to a request, without prejudice to the subsequent legalization of the process, in accordance with the provisions of the preceding paragraph.”

Similarly, the Judicial Authority Organization Act stipulates that the registry of the Supreme Court of Justice is the body responsible for coordination between the judicial authority and other State powers. Accordingly, it conveys requests from foreign States for judicial assistance which are addressed to the judicial authority and transmitted through the diplomatic channel by the Ministry of Foreign Affairs.

It is evident from the foregoing that Costa Rica’s legislation and procedures set forth the necessary regulations and channels for the transmission of requests from foreign States for international judicial assistance in relation to confiscation measures arising from terrorist offences described in national legislation (see Costa Rica’s first report to the Committee for details of offences connected with terrorism that are currently established in the Penal Code). Please refer to the replies below for information about requests for international cooperation in relation to the financing of terrorism.

1.6 With regard to the implementation of subparagraphs 1 (a) and (d) as well as Article 5 of the International Convention for the Suppression of the Financing of Terrorism, could Costa Rica please outline the Costa Rican legal provisions relating to the imposition of sanctions (whether criminal, civil or administrative) on entities and/or organizations which provide support for terrorists or terrorist organizations? Please also provide the Counter-Terrorism Committee with statistics on the number of relevant cases.

Under Act No. 8204, individuals and legal entities are subject to a number of penalties for wilfully facilitating the commission of crimes related to laundering the proceeds of serious crimes. As explained, the draft Law on the Strengthening of Costa Rican Legislation on Terrorism includes amendments to a number of articles of Act No. 8204 in order to ensure that the controls and penalties it sets out are also applicable to the financing of terrorism. The articles to which amendments have been proposed are transcribed below. New text is underlined for ease of reference:

*“**Article 61.** A penalty of imprisonment from three to ten years shall be imposed on any person who, by a promise of financial reward, tries to persuade a public official to enable persons under investigation or indicted in connection with or convicted of any of the offences established under this Law or offences related to the financing of terrorism to evade punishment or to escape.*

The same penalty shall be imposed on any person who alters, conceals, removes or causes the disappearance of traces, evidence or instrumentalities of such offences or takes into safe keeping the proceeds or revenues from such acts.

Article 62. A penalty of imprisonment from three to ten years and disqualification from holding public office for the same period shall be imposed on any public servant or official who, by whatever means, enables persons under investigation or indicted in connection with or convicted of any of the offences established under this Law or offences related to the financing of terrorism to evade punishment or to escape.

The penalty shall be imprisonment from eight to twenty years if the acts referred to in the preceding paragraph are committed by a judge or public prosecutor of the Republic.

If the aforementioned acts occur as a result of negligence on the part of the official or employee, a penalty of imprisonment from six months to three years shall be imposed under the circumstances envisaged in the first paragraph of this article and from two to five years under those envisaged in the second paragraph, with disqualification from holding public office for the same period in both cases.

Article 63. A penalty of imprisonment from three to eight years and disqualification from holding public office for up to five years shall be imposed on any public servant or any private individual employed on the stock market who, being entrusted with confidential information concerning drug trafficking or investigations of money-laundering, authorizes or carries out the destruction or removal of that information without complying with the statutory requirements.

Article 69. A penalty of imprisonment from eight to twenty years shall be imposed on:

(a) Any person who acquires, converts or transmits financial proceeds knowing that they derive from the crime of trafficking in minors, trafficking in children's organs, trafficking in persons, slavery, introduction and trafficking of prohibited materials, illegal manufacture, export of import of weapons, theft or robbery of vehicles, swindling, fraud, tax evasion, kidnapping with extortion, terrorism or any other crime punishable by a prison term of more than three years or commits any other act in order to conceal or disguise their unlawful origin or to help any person who participated in the offences in question to evade the legal consequences of his actions;

(b) Any person who conceals or disguises the true nature, the origin, the whereabouts, the disposition and the movement of, the rights with respect to and the ownership of financial proceeds knowing that they derive, directly or indirectly, from a serious crime.

The penalty shall be imprisonment from ten to twenty years if the financial proceeds derive from an offence connected with illicit trafficking in narcotics and psychotropic substances, money-laundering or the diversion of precursors or essential chemicals or from related offences, or from offences whose purpose is to finance acts of terrorism.

Article 70. A penalty of imprisonment from one to three years shall be imposed on an owner, director, administrator or employee of financial entities or on a representative or employee of any supervisory and oversight body who, through negligence in the performance of his duties, as assessed by the courts,

facilitates the commission of a money-laundering offence or an offence related to the financing of terrorism.

Article 72. *The offences established under this Law or related to the financing of terrorism may be investigated, tried or adjudicated by the competent court or authority irrespective of whether the illicit trafficking offence, the related offences or the money-laundering or terrorist offences occurred in another territorial jurisdiction, without prejudice to extradition, where applicable in accordance with the law.*

Article 80. *Financial institutions shall be responsible for acts of their employees, officials, directors, owners and other authorized representatives who, when acting as such, participate in the commission of any of the offences established under this Law or related to the financing of terrorism. Such liability shall be established and penalized in accordance with the rules and procedures previously laid down in the legislation regulating them.*

Article 81. *Institutions referred to in Articles 14 and 15 of this Law may be penalized, after a warning, by the competent control and oversight body as follows:*

(a) *By a fine of nought point nought five per cent (0.05%) of their assets if:*

1. *They do not record, on the form designed by the competent control and oversight body, each receipt from cash transactions in national or foreign currency exceeding ten thousand United States dollars (US\$ 10,000) or the equivalent in colones and, similarly, do not record transactions involving cash outgoings in foreign currency to amounts in excess of ten thousand United States dollars (US\$ 10,000);*
2. *In the case of multiple cash transactions as referred to in Article 23 of this Law, they do not record them on the form designed by the competent control and oversight body;*
3. *They do not comply with the deadlines set by the competent control and oversight body for submission of the form referred to in subparagraph 1 above;*
4. *They do not comply with the provisions relating to customer identification set forth in Article 16 of this Law;*
5. *They refuse to furnish legally authorized bodies with necessary information and documentation on suspect operations as provided for in Article 17 of this Law or furnish unauthorized persons with information in contravention of Article 18 of this Law;*

(b) *By a fine of nought point one per cent (0.1%) of their assets if:*

1. *The entities referred to in Article 15 of this Law refuse to register with SUGEF;*
2. *They have not implemented the procedures for tracing, monitoring and reporting on suspect or unusual financial transactions as provided for in Articles 24 and 25 of this Law;*

3. They do not adopt, develop or implement programmes, rules, procedures or internal controls for preventing offences established under this Law or related to the financing of terrorism; they do not appoint officials entrusted with ensuring compliance with such controls, programmes and procedures.

The fines referred to in this article shall be paid within eight working days from the time when they become effective. If the fine is not paid within the established period, a delay surcharge of three per cent (3%) shall be added each month to the original amount, which fact shall be made known by the appropriate higher body.

The money derived from fines shall be used for the preventive activities referred to in Article 5 of this Law.

Article 82. Individuals or corporate entities performing any of the acts listed in Article 36 of this Law shall be liable to the following administrative sanctions:

(a) Temporary removal from the register referred to in Article 42 of this Law in the event of the discovery of irregular situations that may be connected with one of the offences established under it or related to the financing of terrorism and that warrant the handing over of the investigation to the police responsible for the control of unauthorized drugs and related activities;

(b) Permanent removal from the register referred to in Article 42 if it is proven that any of the offences established under this Law or related to the financing of terrorism was committed by employees, officials, directors, owners or other persons acting as authorized representatives of the registered individual or corporate entity;

(c) Administrative confiscation, to the benefit of the Costa Rican Drug Institute, of imported, locally purchased, produced, recycled and other precursors or essential chemicals if the requirements established by this Law and other laws and regulations applying in this area have not been complied with.

Article 83. All movable and immovable property, vehicles, instruments, equipment, assets, money and other objects used in the commission of offences provided for under this Law or offences related to the financing of terrorism, as well as property or assets derived from such acts shall be seized by way of precaution, by the competent authority hearing the case; the same shall apply in respect of shareholdings, capital investments and property of corporate entities involved in such acts.

Interested third parties that comply with the provisions of Article 94 of this Law, shall have three months, from the date of the notifications referred to in Articles 84 and 90 of this Law, to claim seized property and objects; within that time limit they shall meet the necessary legal requirements, for each case, without prejudice to the provisions of the preceding articles.

Article 86. If an investigation is initiated by the competent authorities as a result of the commission of any of the illicit acts covered by this Law or related to the financing of terrorism, every financial entity or entity that forms part of a financial group, shall have the obligation to protect any information,

documents, assets and money that may be used as evidence or proof in the investigation or in judicial proceedings; the said financial entity shall freeze the money or assets that are deposited or held in safe keeping or shall deposit them in the Central Bank of Costa Rica and inform the authorities of the measures taken. The foregoing obligations shall commence from the moment that the entities receive formal notification from the authorities indicating that an investigation or criminal proceedings have begun, or instructing the entities to file the appropriate report.

Such measures shall not entail, either for the entities or the officials who implement them, any administrative, civil, criminal or other liability, provided that they have acted in good faith.”

With regard to statistics on the penalties applied to individuals or corporate entities linked to the financing of terrorism, thus far there have been no such cases.

1.7 With regard to the implementation of subparagraph 1 (c) of the resolution, Costa Rica states (at page 8) that “list prepared by the United Nations Security Council may be of use to the Costa Rican Drug Institute and the financial institutions conducting investigations” but in any case the freezing of funds may take place only on the basis of a judicial order when the person in question is being prosecuted in Costa Rica or abroad. So Costa Rica would appear to have no domestic legal provision for the freezing of funds, regardless of origin, when:

- **The funds are held in the names of persons and entities identified in lists, such as those approved for the purpose of Security Council resolution 1267 (1999), as being linked to terrorist activities;**
- **No related terrorist act actually occurs or is attempted.**

In this regard, please indicate the steps which Costa Rica intends taking in order to meet adequately this aspect of the resolution.

As a guarantee of the principle of due process, under the Costa Rican legal system, assets, property or financial resources of both nationals or foreigners may be frozen or confiscated only if there has been a judicial order authorizing such action. This rule has its origin in a number of constitutional provisions:

“Article 23. The domicile and any other private premises of inhabitants of the Republic are inviolable. They may be searched, however, by written warrant issued by a competent judge or in order to prevent the commission of crimes, to prevent impunity, or to prevent serious damage to persons or property, subject to the provisions of the law.”

“Article 24. The right to privacy, freedom and confidentiality of communications is guaranteed.

Private documents and written, oral or other communications of inhabitants of the Republic are inviolable. However, the draft Law, whose enactment and amendment will require a two thirds vote by the Deputies in the Legislative Assembly, shall determine those cases in which the courts may order the confiscation, search and seizure or examination of private documents when it is absolutely indispensable for the clarification of matters brought before them ...”

“Article 37. No one may be detained without substantial evidence that he or she committed an offence, and without a written warrant issued by a judge or authority responsible for public order, unless the person concerned is a fugitive from justice or is caught in the act; in any case, however, he or she must appear before a competent judge within a peremptory period of 24 hours.”

“Article 39. No one shall be sentenced to a penalty on any grounds other than an offence, unintentional tort or misdemeanour punishable under the previous law, as prescribed by a final verdict handed down by a competent authority, provided the defendant has had an opportunity to plead his or her defence and the necessary proof of guilt has been furnished.

The sale of attached property in civil or labour matters or detention that may be ordered for insolvency, bankruptcy or a meeting of creditors shall not constitute a violation of this article or the two preceding articles.”

“Article 45. Property is inviolable; no one may be deprived of his or her property without legal proof that it is in the public interest or without prior compensation under the law. In the case of war or internal strife, compensation does not have to be provided in advance. Nonetheless, payment shall be made not later than two years after the emergency situation has ended.

For reasons of public necessity, the Legislative Assembly may, by a two thirds vote of all its members, impose limitations on property in the public interest.”

It can be deduced from these constitutional norms that financial assets, which form part of the private property of persons, are protected by the principles of the protection of property and privacy. Accordingly, any measure affecting those rights must be authorized by the judiciary, as a guarantee of individual rights, based on the principle of checks and balances among the various branches of government. Moreover, under the principle of the separation of powers, enshrined in article 9 of the Political Constitution, the institutions of the executive branch may not arrogate the authority of the judicial branch.

Article 33 of Act No. 8204 incorporates this principle by clearly establishing that the freezing of funds or assets must be authorized by the judicial authority. It is precisely to this article that the draft Law on the Strengthening of Costa Rican Legislation against Terrorism contemplates an amendment, in order to ensure that this principle is also applied to the prevention and punishment of the financing of terrorism. Thus, the text of article 33, including the proposed amendment, which is underlined, would read as follows:

“Article 33. When an offence relating to the laundering of money or of offences relating to the financing of terrorism is being investigated, the Department of Public Prosecution shall request the competent court or authority, at any time and without any prior notification or hearing, to issue a seizure or attachment order or to take some other precautionary measure aimed at preserving the availability of related property, proceeds or instrumentalities with a view to possible confiscation.

Such arrangement shall include the freezing of deposits under investigation at national or foreign institutions as referred to in Articles 14 and 15 of this Law, in compliance with the relevant statutory provisions.”

This same principle is applied to the freezing of assets at the request of another State, as established in the response given to question 1.5. In this connection, article 8 of Act No. 8204 establishes the following:

“Article 8. In order to facilitate police or judicial investigations or proceedings in connection with offences established under this law, the national authorities may afford cooperation to and receive cooperation from foreign authorities for the following purposes:

- (a) Taking evidence or statements from persons;*
- (b) Furnishing certified copies of judicial or police documents;*
- (c) Executing searches and seizures and taking related safe-keeping measures;*
- (d) Examining objects and sites;*
- (e) Providing duly certified evidentiary items and information;*
- (f) Supplying authentic copies of relevant documents and records, including bank, financial and business records;*
- (g) Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes;*
- (h) Furnishing all statements in the case of a controlled delivery operation;*
- (i) Taking other measures provided for in the Vienna Convention and in any other international instrument adopted by Costa Rica.”*

Similarly, article 30 of Act No. 8204 contemplates the cooperation of the Costa Rican Drug Institute and the Costa Rican oversight bodies at the request of other States. The text of this article, including the reforms proposed by the draft Law on the Strengthening of Costa Rican Legislation against Terrorism (underlined) reads as follows:

“Article 30. The Costa Rican Drug Institute and bodies vested with supervisory and oversight powers over institutions subject to the provisions of this Law may cooperate closely with the competent authorities of other States in investigations, prosecutions and proceedings concerning offences established under this Law or related offences and infringements of administrative financial laws or regulations, as well as crimes related to the financing of terrorism.”

The following are other articles of Act No. 8204 relating to this issue. Two of them also incorporate the amendments proposed in the draft Law on the Strengthening of Legislation against Terrorism (underlined text):

“Article 25. If it is suspected that transactions described in the preceding article constitute or are connected with unlawful activities, including transactions arising out of transfers into or out of Costa Rica, financial institutions shall immediately report such fact confidentially to the relevant

supervisory and oversight body, which shall refer the matter immediately to the Financial Analysis Unit.”

“Article 123. The Financial Analysis Unit shall request, compile and analyse records, forms and reports of suspicious transactions received from monitoring bodies and the institutions referred to in Articles 14 and 15 of this Law, with a view to centralizing and analysing such information in order to investigate activities relating to money-laundering or the financing of terrorism. Such information shall be brought to the notice of the Directorate-General, which shall communicate it to the Department of Public Prosecution for the appropriate purposes.

State organizations and institutions, in particular the Ministry of Finance, the Central Bank of Costa Rica, the Public Registry and public oversight agencies, as well as the entities referred to in Articles 14 and 15 of this Law, shall be obliged to furnish the information required for the investigation of the activities and offences covered by this Law or relating to the financing of terrorism, at the request of the Unit, with the countersignature of the Directorate-General.

The Financial Analysis Unit shall also be responsible for locating and tracing property of economic interest obtained in the crimes defined in this Law or relating to the financing of terrorism. The Department of Public Prosecution shall order financial investigations, which shall be conducted simultaneously with, or subsequent to, the investigation of the relevant offences.”

The important point in this area, therefore, is that the inclusion of a natural or legal person in the Security Council’s lists of persons linked to terrorism makes it possible to conduct the internal investigation in the country’s financial system, to determine whether those persons possess assets in the country. Nonetheless, if such assets were detected, the financial entity would be required under article 25 of Act No. 8204 to bring the situation to the attention of the relevant supervisory authority (Superintendent), which in turn would pass on the information to the Financial Analysis Unit of the Costa Rican Drug Institute. The Financial Analysis Unit, under article 123 of the Act, will verify the existence of significant evidence and pass on the information to the Department of Public Prosecution, which will then order the appropriate investigation and the freezing of the funds.

The above measures may also be taken in response to a formal request for judicial cooperation from another State. Whether the freezing of funds results from a domestic investigation or from a process of judicial cooperation requested by another State, the financing of terrorism has to be defined as an offence in Costa Rica. Furthermore, so that funds can be frozen even if the terrorist act has not actually taken place, the definition under Costa Rican criminal law of the offence of financing of terrorism has to provide for this possibility. This is why the amendments to the Penal Code and to Act No. 8204 proposed in the draft Law on the Strengthening of Legislation against Terrorism will clarify these possibilities of domestic investigation or judicial cooperation with another State. Inasmuch as the proposed amendments to articles 274 and 374 (see answer to the next question) include the words “for the purpose of committing acts of terrorism”, it is understood that it is the intent to commit the act of terrorism which is to be penalized, even if the act does not actually take place.

1.8 In this context, could Costa Rica outline the procedures which it uses in order to proscribe foreign terrorist organizations (other than those featuring in lists drawn up by the Security Council) as well as data in regard to the number of such organizations and/or relevant examples? How long does it take to proscribe a terrorist organization at the request of or on the basis of information supplied by another State?

As has been explained in earlier reports, articles 274 and 374 of the Penal Code prohibit and penalize membership of any organization of two or more persons the purpose of which is to commit illegal acts, including acts of terrorism. In addition, the draft Law on the Strengthening of Legislation against Terrorism amends those articles to expressly prohibit the financing of terrorism and the recruitment of persons to commit acts of terrorism as the aims of the illegal association; this has the effect of prohibiting such organizations, whether they are Costa Rican or foreign organizations operating in Costa Rica. The text of those articles, with the amendments proposed in the draft Law, would be:

“Article 274. Unlawful association

A sentence of one to six years’ imprisonment shall be imposed on 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 penalty shall be six to ten years’ imprisonment if the aim of the association is to commit kidnapping with extortion or acts of terrorism, including the collection or provision of funds or the recruitment of persons for the purpose of committing terrorist acts.”

“Article 374. International crimes

A sentence of 10 to 15 years’ imprisonment shall be imposed on leaders or members of international organizations that engage in trafficking of slaves, women, children or drugs or commit kidnapping with extortion or acts of terrorism, within or outside the country, including the collection or provision of funds or the recruitment of persons for the purpose of committing terrorist acts, or that violate provisions of human rights treaties to which Costa Rica is a party.”

There are also legal rules to prevent the establishment of legal persons for illicit purposes. For example, the Associations Act provides as follows:

“Article 3. *The authorization provided for in this Act shall not apply to associations which are of a political nature or have a purpose which is physically or legally impossible under the terms of article 631 of the Civil Code.”¹*

“Article 4. *Administrative control of associations shall fall under the executive power, which shall be responsible for authorizing the establishment of associations in the country and the incorporation of foreign associations, for*

¹ Under article 631 of the Civil Code, “An obligation whose object is a thing or act which is physically or legally impossible shall also be without effect. Physical impossibility must be absolute and permanent, and neither temporary nor relative, in relation to the obligor. Legal impossibility exists: (1) In respect of things which by law may not be traded; (2) In respect of acts which are illegal because they are contrary to law, morality or public policy.”

monitoring their activities and for dissolving those that pursue unlawful purposes or undermine morality or public policy, in accordance with the provisions of this Act.”

“Article 28. The executive power shall have the authority to order associations to be dissolved in the circumstances described in article 34. Once that order is given, the courts shall proceed as indicated in the previous article.”

“Article 34. Associations shall be regarded as unlawful and therefore ordered dissolved if:

- 1. Their leaders have repeatedly been warned by the Ministry of Public Security, the Interior and Police that they are in the situation described in subparagraph 2 of the previous article, and have failed to take such warnings into account.*
- 2. They appear to be practising activities that are punishable by law, are contrary to morality or public policy, or are subversive.*
- 3. They appear to have been established in order to conceal aims other than those described in their statutes.”*

If an organization engaged in terrorism or other illegal activities has been established by means of some sort of legal entity, whether it is an association, a foundation or a limited company, the criminal court may, at the request of the Attorney-General’s office, order the closure of the premises, together with other preventive measures, provided that these measures are based on an investigation and on the rules established for this purpose by the Code of Criminal Procedure:

“Article 202. Closure of premises

When it is necessary, in order to verify an unlawful act, to close premises or remove movable items which, by their nature or dimensions, cannot be held in deposit, they shall be secured in accordance with the rules governing the searching of premises.”

It follows that, although Costa Rican legislation contains no rules penalizing organizations engaging in unlawful activities, it is indeed possible to dissolve them and close down their premises, in the course of a criminal investigation. Such procedures would also be followed at the request of another State, in the form of a request for judicial cooperation.

1.9 The CTC notes, from the third report of Costa Rica (at page 4), that the inter-agency commission formed to review Costa Rican anti-terrorist legislation has prepared a draft Law on the Strengthening of Legislation against Terrorism. The CTC would appreciate receiving a progress report on the enactment of this draft Law. Could Costa Rica outline the proposed legislative provisions addressed to the criminalization of the financing of terrorism, as well as the proposed legislative provisions aimed at implementing the other requirements contained in the resolution? As regards the criminalization of the financing of terrorism, the CTC would appreciate receiving from Costa Rica an outline of the legal provisions set out in Act No. 8257, of 18 April 2002. The Act was enacted to enable Costa Rica to ratify the Convention for the Suppression of the Financing of Terrorism. The CTC is particularly interested in the

provisions which are aimed at implementing articles 2, 5, 8 and 18 of the Convention.

The draft Law on the Strengthening of Legislation against Terrorism was submitted to the Legislative Assembly in November 2003 for consideration and adoption. Since much of its content concerns reforms to the Law on Narcotics, Psychotropic Substances, Drugs of Unauthorized Use and Related Activities (Act No. 8204), the draft Law was allocated to the Commission on Drug Trafficking for preliminary study. It is currently at the top of the Commission's agenda. Nonetheless, pursuant to the recommendation made by the Chairman of the Counter-Terrorism Committee in his note addressed to Costa Rica (S/AC.40/2003/MS/OC.341) dated 12 November 2003, technical assistance has been requested from the International Monetary Fund (IMF) so that, in accordance with the IMF/World Bank Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) programme, the draft Law can be studied and the appropriate recommendations made. In response, the IMF submitted a document dated 21 March 2004, containing a number of concrete suggestions to ensure that the draft Law does indeed comply with all the provisions of Security Council resolution 1373 (2001), the International Convention for the Suppression of the Financing of Terrorism, the Forty Recommendations of the Financial Action Task Force on Money Laundering (FATF) and its eight Special Recommendations on Terrorist Financing. The IMF note is annexed to this document, together with the recommendations, which include a proposal to define the financing of terrorism as a separate offence, using the same language as article 2 of the International Convention.

The Government of Costa Rica draws the attention of the Counter-Terrorism Committee to the fact that Act No. 8257 of 18 April 2002 approves the Convention but does not include measures for its implementation; that will in fact be done by the draft Law.

As for penalties for the physical and legal persons referred to in article 5 of the Convention, the response to question 1.6 of the questionnaire describes the amendments proposed in the draft Law for articles 61, 62, 63, 69, 70, 72, 80, 81 and 82 of Act No. 8204. Those amendments would fully comply with what is required. As for the provisions of article 8 of the Convention, our response to question 1.4 of the questionnaire contains articles 33, 83, 84 and 86 of Act No. 8204, including the amendments proposed by the draft Law, which would implement the provisions of article 8 in terms of the forfeiture and confiscation of funds and other property used or allocated for the purpose of committing terrorist offences, and of the proceeds derived from such offences. As for article 18 of the Convention, the response to question 1.8 describes measures to comply with the provisions of paragraph 1 (a) of that article. The remaining provisions of article 18 are already mostly covered by the current version of Act No. 8204, and various articles of that Act will be modified by the draft Law in order to cover the financing of terrorism. The relevant text, including the amendments proposed in the draft Law, which are underlined, is as follows:

“Article 14. Entities regulated, supervised or controlled, as appropriate, by the following bodies shall be considered entities subject to the obligations established under this Law:

(a) The Office of the Superintendent of Financial Institutions (SUGEF);

- (b) *The Office of the Superintendent of Securities (SUGEVAL);*
- (c) *The Office of the Superintendent of Pensions (SUPEN).*

In addition, the obligations established under this Law shall apply to all firms and other entities belonging to financial groups supervised by the aforementioned bodies, including financial transactions that banks or financial institutions domiciled abroad conduct through a financial institution domiciled in Costa Rica. To that effect, entities belonging to such financial groups need not comply again with the obligation to register provided for in article 15 below, but they shall be subject to the appropriate body in matters regarding the prevention of money-laundering and activities which may be used to finance terrorist activities.”

“Article 15. Any persons who carry on, inter alia the following activities shall also be subject to this Law:

- (a) Regular or substantial currency exchange transfer and operations using instruments such as cheques, bank drafts and bills of exchange;*
- (b) Regular or substantial operations involving the issue, sale, encashment or transfer of traveller’s cheques or postal money orders;*
- (c) Regular or substantial transfers of funds carried out by any means;*
- (d) The administration of trusts or any type of administration of funds by individuals or corporate entities that are not financial intermediaries;*
- (e) Financial remittances between countries.*

Individuals or corporate entities that carry on activities referred to in the preceding subparagraphs and are not supervised by any of the supervising bodies existing in Costa Rica shall be required to register with SUGEF, whereby registration shall not be interpreted as meaning that they are licensed to operate; also, they shall be subject to the supervision of SUGEF in matters relating to the prevention of money-laundering and activities which may be used to finance terrorist activities, as provided for in this Law. Registration shall be approved by the National Council for Supervision of the Financial System, subject to an affirmative report from SUGEF, once the applicable legal and regulatory provisions have been complied with. Costa Rican municipal authorities shall not issue new licences or renew existing ones for such activities if the aforementioned registration requirement has not been met.

SUGEF, SUGEVAL or SUPEN, as appropriate, shall ensure that individuals and corporate entities that, wherever they have their legal domicile or operate and on whatever basis, habitually engage without authorization in activities such as those referred to in this article do not operate within Costa Rican territory.

If, in the opinion of the supervising official, there are reasons to believe that an individual or a corporate entity is engaging in any of the activities referred to in this article, the supervisory body shall have, with regard to the suspected offenders, the same powers of search as it has, under this Law, with regard to institutions subject to the provisions of this part of this Law in matters relating to the prevention of money-laundering and the financing of terrorism.”

(NEW) “Article 15 bis. Individuals and corporate entities engaged in economic activities other than those referred to in articles 14 and 15 of this Law shall report to the Costa Rican Drug Institute any commercial transactions carried out regularly and in cash, including transfers to and from another country, in national or foreign currency, of amounts of ten thousand United States dollars (US\$ 10,000) or more or the equivalent in colones. Such economic activities shall include the following:

(a) The purchase, sale or conveyance of immovable property or movable property such as weapons, precious stones and metals, works of art, jewellery, automobiles and insurance policies;

(b) Casinos, wagers and other gaming operations;

(c) Credit card companies that are not part of a financial group;

(d) Professional services.

For these purposes, the forms specified by the Costa Rican Drug Institute shall be used.

“Article 16. With a view to preventing operations involving the concealment and movement of money of suspicious origin and other operations carried out with the aim of laundering money or financing terrorist activities derived from serious crimes, institutions that are subject to the provisions of this chapter shall comply with the following requirements:

(a) To obtain and preserve information concerning the true identity of persons for whose benefit an account is being opened or a transaction is being carried out if doubts exist as to whether such customers are acting for their own benefit, particularly in the case of corporate entities which are not conducting commercial, financial or industrial operations in the country where they have their headquarters or domicile;

(b) To maintain named accounts. Anonymous accounts, numbered accounts and accounts appearing under fictitious or false names may not be held;

(c) To record and verify, by reliable means, the identity, representational function, domicile, legal capacity, occupation or corporate objective of persons and other identification particulars concerning them, whether those persons be regular or occasional customers. In the case of legal entities, financial institutions shall require notarized certification concerning the judicial and extrajudicial representation of the entity and a copy, duly certified by a public notary, of the entry corresponding to each shareholder in the register of shareholders of the company, showing that the persons appearing in those entries are currently the only shareholders. Such verification shall be carried out by means of identity documents, passports, birth certificates, driving licences, articles of incorporation and association or any other documents, whether official or private. It shall be carried out especially when business relations are being established, particularly when new accounts are being opened, deposit books are being provided, fiduciary transactions are being conducted, safe-deposit boxes are being rented or cash transactions in excess of ten thousand United States dollars (US\$ 10,000) or

the equivalent in other foreign currencies are being executed, including transfers to or from foreign countries in national or foreign currency;

(d) To maintain throughout the course of an operation, and for at least five years following completion of the transaction, records of the information and documentation required under this article;

(e) To maintain for a minimum period of five years records of their customers' identity, books of account, commercial correspondence and financial operations so as to enable a transaction to be reconstructed or concluded."

*"**Article 17.** Financial institutions shall immediately comply with requests for information addressed to them by judges of the Republic concerning particulars and documentation required for investigations and proceedings relating to offences established under this Law or to the financing of terrorism."*

*"**Article 23.** Multiple cash transactions, both in local and in foreign currency, including transfers to or from foreign countries, that together equal or exceed ten thousand United States dollars (US\$ 10,000) or the equivalent in other foreign currencies shall be regarded as single transactions if they are carried out by a specific person or for that person's benefit in the course of a single day or over such other period as may be specified by the competent supervisory and oversight body. In such event, if the financial institution, its employees, officials or agents are aware of such transactions, they shall maintain the record referred to in the preceding article.*

It shall be left to the discretion of the financial institution to maintain such a record even in the case of operations not involving cash."

*"**Article 26.** Institutions subject to the provisions of this part of this Law shall, in compliance with the regulations and under the supervision referred to in it, adopt, develop and implement programmes, rules, procedures and internal controls for the prevention and detection of offences established under this Law or related to terrorist financing. Such programmes shall include at a minimum:*

(a) The establishment of procedures to ensure a high standard of personal integrity of the proprietors, senior management, administrative staff and employees of financial institutions and a system for evaluating personal, employment and financial particulars;

(b) Ongoing staff training and educational programmes concerning the responsibilities established under this Law."

*"**Article 28.** In accordance with the law, the bodies vested with supervisory and oversight powers shall have, inter alia, the following obligations:*

(a) Ensuring effective compliance with the record-keeping and reporting obligations established under this Law;

(b) Issuing instructions and determining the content of the forms for recording and reporting the operations referred to in Article 20 of this Law, with a view to submitting recommendations that will assist financial institutions in detecting suspicious patterns in the conduct of their customers.

These guidelines shall take into account modern and safe techniques for the handling of assets and shall serve as an educational tool for the personnel of financial institutions;

(c) Cooperating with the competent authorities and providing them with technical assistance in connection with investigations and proceedings relating to offences established under this Law or related to terrorist financing.”

“Article 30. The Costa Rican Drug Institute and bodies vested with supervisory and oversight powers over institutions subject to the provisions of this Law may cooperate closely with the competent authorities of other States in investigations, prosecutions and proceedings concerning offences established under this Law or related offences and infringements of administrative financial laws or regulations and offences related to terrorist financing.”

“Article 31. Entities of the national financial system shall endeavour to conclude international cooperation agreements available to them that will guarantee the free transfer of data relating to accounts opened in other States and connected with investigations, prosecutions and proceedings concerning offences established under this Law or related offences and infringements of administrative financial laws or regulations and offences related to terrorist financing.”

“Article 32. The statutory provisions relating to bank, stock exchange or tax secrecy shall not constitute an obstacle to compliance with the provisions of this Law if the judicial or administrative authorities entrusted with investigations of the offences established under this Law or related offences, or offences related to terrorist financing, request information.”

Effectiveness of counter-terrorism machinery

1.10 Effective implementation of 1373-related legislation, covering all aspects of the resolution, requires States to have in place effective and coordinated executive machinery as well as to create and utilize adequate national and international anti-terrorist strategies. In this context does Costa Rican counter-terrorism strategy and/or policy targeting (at the national and/or subnational levels) deal with the following forms or aspects of counter-terrorist activity:

- **Criminal investigation and prosecution**

The Costa Rican judicial system is equipped to investigate and prosecute individuals suspected of being linked to terrorism, whether pursuant to national investigations or pursuant to requests from other States. With respect to the prevention and suppression of terrorist financing, as stated in the responses to previous questions, if funds to be used for this purpose are found to be in the country, the judicial authorities become involved in the proceedings as soon as the funds are frozen.

- **Counter-terrorist intelligence (human and technical)**

In Costa Rica the Directorate of Intelligence and Security (DIS) is responsible for investigative procedures and the gathering of information in relation to matters of national security. The subject of terrorism is a permanent aspect of the work of

DIS, which is also part of a multinational counter-terrorist force, as a member of the Ibero-American intelligence community and the International Criminal Police Organization (Interpol), two tools that are essential to the counter-terrorist struggle. DIS coordinates on a permanent basis with the immigration authorities at the various border crossings in order to control the entry of persons into the country.

For the detection, investigation and analysis of this phenomenon, the smallest indication of subversive activities is pursued, and both Costa Rican nationals and nationals of countries where terrorist acts are committed are subject to investigation, with the latter also being subject to immigration controls. The next phase of the investigation consists of requesting the pertinent information from the Ibero-American intelligence community and Interpol and consulting with the intelligence services of the individuals' countries of origin. If an individual is connected with terrorist activities in his country of origin, but is not the subject of an Interpol alert notice and has not committed any offence, he is merely deported. If he has committed an offence he is prosecuted under national law, and then deported upon completion of his sentence. If the individual is the subject of an Interpol alert notice, he is seized and deported, in cooperation with the competent authority.

Because anti-terrorist intelligence is entirely preventive, DIS has been given complete and permanent competence for related proceedings, and employs skilled and highly trained personnel who are required to keep their skills up to date. It also employs technical resources which are not technologically advanced, but do facilitate intelligence and counter-intelligence efforts. It should be recalled, however, that the technical resources employed by terrorists to achieve their objectives are technologically advanced.

- **Special forces operations**

During the late 1970s and early 1980s the country experienced a wave of bomb attacks carried out by a subversive organization made up of Costa Ricans, and this led to the creation of a unit specialized in high-risk operations against terrorism and drug trafficking. In 1978 a process was begun to create a specialized unit and in 1982 the Special Intervention Unit, attached to DIS, was established, charged with fighting terrorism, bomb disposal operations, crisis management, analysis of counter-terrorism and anti-drug intelligence, sharp shooting operations, special operations (by land, sea and air), operations in mountainous terrain, the protection of dignitaries, the prohibition of arms, aerial photography, canine drug and explosives detection, and paramedical training. In 1994 the Police Act was adopted, under which UEI ceased to be attached to DIS, becoming an independent entity attached to the Ministry of the Presidency. UEI staff are highly trained and have acquired considerable experience through a number of operations in various areas.

- **Physical protection of potential terrorist targets**

The physical protection of terrorist targets is one of the main functions of UEI, covering the planning of security and protective measures for individuals of the three branches of government and for individuals who are defined as dignitaries by the President of the Republic, have a high security profile and may be the targets of terrorist organizations. It also covers the analysis of security at sensitive government buildings and facilities, such as telephone and electricity facilities, oil pipelines, dams, airports, bridges and main roads leading to urban centres and residences of high-ranking persons, who are always specific targets of the terrorist. Also, the

Administrative Police of the Ministry of Public Security is also responsible for ensuring the permanent protection of State facilities.

- **Strategic analysis and forecasting of emerging threats**

DIS has a unit for the analysis and evaluation of intelligence information, which originates from inside the country — through regional offices, collaborators, a network of informants, and regional intelligence services — and which is processed and disseminated to the principal agencies involved, always with a view to taking strategic measures, facilitated by access to DIS and Interpol files, for the prevention of potential internal and external threats. Also, within the context of the Association of Chiefs of Police of Panama, Central America and the Dominican Republic, of which DIS is a member, information concerning organized criminal activities is received and exchanged, providing early warning of potential threats to security in the country or region.

- **Analyses of the efficiency of anti-terrorist legislation and relevant amendments**

As mentioned in previous reports, in October 2001 an Inter-Agency Working Group on Terrorism was formed, in part to assist in the preparation of reports submitted to the Counter-Terrorism Committee. The Working Group was charged with reviewing Costa Rican legislation in this area, and prepared a draft Law on the Strengthening of Legislation against Terrorism, as mentioned in the responses to previous questions. In February 2004, through an Executive Decree, the working group became the Inter-Agency Commission on Terrorism (CISTE), comprising the Ministry of the Presidency; the Ministry of Foreign Affairs; the Ministries of Public Security, Justice, the Treasury and Transport; the Attorney-General of the Republic; the General Immigration Directorate; the General Customs Directorate; the Department of Civil Aviation; the Directorate of Shipping and Security; the Directorate of Intelligence and Security (DIS); the Costa Rican Drug Institute (ICD); the Office of the Superintendent of Financial Institutions (SUGEF); the Office of the Superintendent of Securities (SUGEVAL); and the Office of the Superintendent of Pensions (SUPEN). In addition to serving as the agency for the coordination of anti-terrorist policies, CISTE is also responsible for analysing the effectiveness of anti-terrorist legislation and proposing any necessary reforms, a task that is facilitated by the observations of the Counter-Terrorism Committee, through its questionnaires.

- **Border and immigration control, and prevention of trafficking in drugs, arms, biological and chemical weapons, their precursors and the illicit use of radioactive materials**

With respect to **immigration**, DIS, as an administrative measure, provides the Directorate of Migration and Aliens with intelligence data concerning persons suspected of being linked to terrorist organizations. This intelligence data comes from DIS sources and the Costa Rican office of Interpol. The Consolidated List of persons and organizations linked to the Taliban and the Al-Qaida network, prepared by the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban, has been incorporated into the databases of DIS and the Directorate of Migration and Aliens, so that a state of “permanent alert” is maintained with regard to such individuals.

In this way, if any such individual attempts to enter the national territory through any of the country's legal border crossings, the computerized system for checking the status of persons entering the country displays the phrase "DIS target", and the situation is immediately reported to DIS officials, who then proceed to check the individual's immigration status, inspect his documents and conduct the necessary interview. If the individual's profile matches the profile on the list, the matter is taken up with the competent authorities — in all likelihood the judicial authorities — which will arrange for his arrest and subsequent extradition to the requesting country, or for his return to his country of origin.

With respect to **civil aviation**, the General Directorate of Civil Aviation (DGAC), as the authority responsible for reporting to the International Civil Aviation Organization (ICAO) on national civil aviation matters, has established guidelines to ensure that international airports are armed with procedures and mechanisms for controlling access to restricted airport areas and facilities, as well as for protecting facilities servicing civil aviation, including air traffic control and radio navigation systems. The purpose of the guidelines is to prevent or deter potential terrorists from using facilities or aircraft to commit acts of illegal interference.

There is also a plan to establish a National Committee on Aviation Security with a view to setting up a risk-management mechanism to determine the level of potential threats to national airport operations.

With respect to **customs**, within the framework of the Customs Act and its Regulations, manuals on customs procedures have been prepared, covering the entire national customs system and the various customs arrangements, setting out the pertinent controls and defining the responsibilities of the various agencies that make up the National Customs Service (NSA) (transport firms, bailees, customs offices, and customs officers). These procedures include the various types of inspection procedures that customs services must perform in relation to documents and goods. At this point, these procedures are dictated by selective or random mechanisms defined by the automated system currently in place. Efforts are being made to ensure that in future they are dictated by mechanisms that are based on risk analysis.

However, there is a policy for inter-agency coordination concerning customs controls. Article 21 of the Customs Act, on "coordination in the implementation of controls", states that:

"... The customs, immigration, health and police authorities, and all those exercising control over the entry and departure of people, goods, vehicles and transport units into or out of the national customs territory shall perform their duties in a coordinated manner, collaborating with each other to ensure the effective implementation of legal and administrative procedures.

Wherever, in the course of a customs operation, special controls incumbent upon other agencies must be implemented, the customs authorities shall inform the appropriate office and shall not authorize the customs declaration until the relevant requirements have been fulfilled."

Thus, the customs authorities coordinate closely with the police or intelligence authorities connected with each of the types of offences related to trafficking in drugs, arms, chemical and biological weapons, their precursors, and the illicit use of

radioactive materials. Whenever the customs authorities detect the entry or departure of this type of goods, they notify the competent authority. Likewise, when that authority wishes to assist the customs authorities, in the event of such an irregularity, the customs authorities are required to provide the appropriate collaboration, and indeed do so in practice.

In the aforementioned proceedings, customs duties are used as a monitoring tool. The General Customs Directorate is responsible for keeping the customs duties system up to date. The system includes specific requirements with regard to the goods in question, whereby a certain customs regime may be selected for their entry into, or departure from the national territory, depending on the pertinent regulations. In practice, these requirements are concerned with the authorizations or permits that other competent entities must issue in advance. This is a fundamental requirement for dealing with the customs authorities. The following table shows the institutions competent to provide the necessary permits in the areas under consideration:

Technical note 51	Licence to import drugs and narcotics (with stamp)	Ministry of Health
Technical note 54	Customs clearance for hazardous substances	Ministry of Health
Technical note 58	Authorization to import chemical precursors and substances (with stamp)	Ministry of the Presidency
Technical note 59	Customs clearance for chemical and biological products and equipment	Ministry of Agriculture and Livestock
Technical note 70	Weapons import licence	Ministry of Public Security, the Interior and Police
Technical note 71	Ammunition import licence	Ministry of Public Security, the Interior and Police
Technical note 60	Explosives import licence	Ministry of Public Security, the Interior and Police
Technical note 52	Export or import licence of the National Authority on Chemical Weapons	Technical Department of the National Authority on Chemical Weapons

1.11 The CTC would be grateful if Costa Rica could provide it with information concerning its counter-terrorist efforts including, for example, an outline of any targeted programmes, the agencies involved, and any mechanism aimed at ensuring inter-agency coordination in the various areas specified in paragraphs 2 and 3 of the resolution.

In October 2001 an Inter-Agency Working Group on Terrorism was formed in Costa Rica, partly in order to ensure that the participating agencies were kept up to date concerning international requirements in the fight against terrorism, and partly in order to provide assistance in the preparation of the reports to the Counter-Terrorism Committee and similar agencies. One of the tasks of the working group was to prepare a draft Law on the Strengthening of Legislation against Terrorism, as mentioned in the responses to previous questions. Under Executive Decree No. 31659-MP-RE-SP-H-J-MOPT, published in Official Gazette No. 40 of 26 February 2004, the Working Group became the Inter-Agency Commission on Terrorism (CISTE), comprising the Ministry of the Presidency; the Ministry of Foreign Affairs; the Ministries of Public Security, Justice, the Treasury and Transport; the Attorney-General of the Republic; the General Migration Directorate; the General Customs Directorate; the Department of Civil Aviation; the Directorate of Shipping and Security; the DIS; the ICD; the Office of the Superintendent of Financial Institutions (SUGEFI); the Office of the Superintendent of Securities (SUGEVAL); and the Office of the Superintendent of Pensions (SUPEN). In accordance with the provisions of article 1 of the Decree, the functions of the CISTE are as follows:

“(a) To serve as a liaison between the various State agencies whose objectives are directly or indirectly related to combating terrorism or to ensuring the peace and security of the country and its citizens;

(b) To coordinate the necessary follow-up to international commitments made by the country in relation to security and combating terrorism;

(c) To recommend to the Ministry of Foreign Affairs and Worship, or to the competent authorities, the positions to be taken by Costa Rica at the various international forums in which the subject of security and terrorism are discussed.”

The CTC is particularly interested in the following areas:

• **Recruitment to terrorist groups**

Since the mid-1980s there has been no evidence of terrorist groups having been formed as the result of recruitment by regional or international terrorist organizations. However, since the creation of the São Paulo Forum (a Marxist organization whose main objective is to promote the doctrine of “anti-imperialism” in Latin America), Costa Rica’s universities have witnessed the emergence of student groups who espouse this doctrine and are being recruited, and who are worthy of follow-up and supervision, in order to prevent them from adopting subversive ideas. The most notable other development in this context has been the launching, by the International Front of the Revolutionary Armed Forces of Colombia (FARC), of a programme aimed at recruiting Costa Rican nationals to support the armed struggle in Colombia. This process led to the establishment of a FARC support group, under the cover of being a cultural and sporting association. The group still appears in the National Real Estate Registry, but is inactive, because its leaders have been unable to impose their doctrine effectively. They appear to have begun recruiting for their cause once more, but Costa Rica’s operational objectives against these groups remain in place.

• **Links between criminal activity (in particular, drug trafficking) and terrorism**

Organized crime has not been immune to the effects of globalization. Subversive forces have diversified in order to obtain the logistical support they require for their operations. Thus, subversive forces, drug trafficking and illegal arms trafficking have renewed their close relationship, with subversive forces based in other countries producing and selling drugs in order to buy arms for their own purposes. The increase in drug production has encouraged bartering in military items. Other common criminal elements, aware that these subversive forces need to acquire arms, have become small-scale suppliers, thereby making detection and seizure of “small-scale” contraband more difficult. Information provided by intelligence agencies with which DIS is in constant contact shows that most of the arms acquired in Central America are targeted at subversive groups in Colombia, while a small proportion goes to terrorist groups in Peru. As a result, the link between drug trafficking and terrorism has been clearly established, as has the link between drug trafficking and illegal immigration.

• **Denying the establishment of terrorist safe havens and any other forms of passive or active support for terrorists or terrorist groups**

The response to question 1.10 includes a description of the immigration controls applied to prevent access to the country by individuals linked to terrorism, as well as other, subsequent measures. The refugees section of the Directorate of Migration and Aliens is required to consult DIS regarding asylum requests before granting such status.

1.12 In the context of the effective implementation of subparagraph 2 (e), please indicate whether Costa Rica uses any special investigative techniques in terrorist cases (e.g. the interception of communications, undercover operations; controlled delivery; “pseudo-purchases” or other “pseudo-offences”; anonymous informants; cross-border pursuits etc). Please outline the legal provisions regulating to the use of special investigative techniques, specifying whether they can be used in cooperation with another State.

The Judicial Police has the power, with authorization from a judge, on its own initiative or at the request of the Public Prosecutor’s Office, to intercept communications, conduct undercover operations, controlled deliveries and controlled purchases, and use informers. To this end, the Act governing the Search and Seizure, Confiscation and Examination of Private Documents and Interception of Communications (Act No. 7425 of 9 August 1994 and its amendments), stipulates the following:

“Article 1. Competence

The courts may authorize the registration, confiscation or examination of any private document when it is absolutely indispensable for the clarification of criminal matters brought before them.

For the purposes of this Act, the following are considered to be private documents: correspondence by letter, fax, telex, electronic mail or any other means; video cassettes, audio cassettes, magnetic tapes, records, diskettes, writings, books, publications, registers, blueprints, drawings, paintings, X-rays, photographs and any other form of recording information of a private

nature, used in a representative or declarative manner, as illustration or evidence.”

“Article 2. Powers of the judge

When such action is essential for verifying the truth, the judge may order, on his own initiative or at the request of the police authority in charge of the investigation, of the Public Prosecutor’s Office or any of the parties to the proceedings, the search and seizure, confiscation or examination of any private document, provided it may serve as indispensable evidence that an offence has been committed. The judge shall conduct the proceedings personally, with some exceptions, in which cases, such proceedings may be delegated, as appropriate, to members of the Judicial Inquiry Agency or the Public Prosecutor’s Office, who shall inform him of the results.”

“Article 9. Authorization to intercept communications

As part of the steps taken in a police or court investigation, the courts may authorize the interception of oral, written or other types of communications, including fixed, mobile, wireless and digital telecommunications, when necessary to clarify the following offences: kidnapping with extortion, aggravated corruption, aggravated sex trafficking, manufacture or production of pornography, traffic in persons and trafficking in human organs; aggravated homicide; genocide, terrorism and offences covered in the Law on Narcotics, Psychotropic Substances, Drugs of Unauthorized Use and Related Activities (Act No. 8204 of 26 December 2001).

In the above-mentioned cases, the courts may authorize the interception of communications among those present, with the exceptions set forth in article 26, paragraph 1, of this Act; when they take place in private homes and areas, interceptions may be authorized only if there are sufficient indications that an offence is being committed.”

Act No. 7425 also adds a new article to the Code of Criminal Procedure, relating to the interception of communications:

“Article 263 bis. *The judge may order, on his own initiative or at the request of the parties, the interception of the oral or written communications of the accused, as well as the search and seizure, confiscation or examination of private documents. In doing so he shall act in accordance with the procedures and cases provided for in the legislation governing this area.”*

Act No. 8204 also stipulates the following:

“Article 8. *In order to facilitate police or judicial investigations or proceedings in connection with offences established under this Law, the national authorities may afford cooperation to and receive cooperation from foreign authorities for the following purposes:*

- (a) *Taking evidence or statements from persons;*
- (b) *Furnishing certified copies of judicial or police documents;*
- (c) *Executing searches and seizures and taking related safe-keeping measures;*
- (d) *Examining objects and sites;*

- (e) *Providing duly certified evidentiary items and information;*
- (f) *Supplying authentic copies of relevant documents and records, including bank, financial and business records;*
- (g) *Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes;*
- (h) *Furnishing all statements in the case of a controlled delivery operation;*
- (i) *Taking other measures provided for in the Vienna Convention and in any other international instrument adopted by Costa Rica.*

Article 10. *In any investigations conducted in connection with offences established under this Law, the police and judicial authorities may organize infiltration by undercover officers with a view to establishing the commission of the offences.*

Article 11. *In its investigations, the police may make use of collaborators or informants, in which case it shall keep their identity secret in order to guarantee their safety. Should any of them be present at the time of commission of the unlawful act, the competent judicial authority shall be informed of that fact without their identities being revealed. Except where declarations by them are considered essential at some stage of the proceedings, the court shall order that they appear but may, during the questioning for purposes of identification, omit any particulars that could give rise to risk for them or their families. Their evidence may be automatically included in the record of the plenary court proceedings through the reading out of a written statement, unless viva voce testimony is deemed essential, in which case their evidence shall be given before just the court, the public prosecutor, the accused and the accuser's defence counsel; for such purpose, orders shall be given for the courtroom to be temporarily cleared. The same procedure shall be followed if the person giving evidence is a foreign police officer who has been involved in the case under police assistance arrangements.*

Article 12. *Undercover police officers or police collaborators, whether Costa Rican or foreign, who take part in an undercover police operation shall hand over to the Department of Public Prosecution for confiscation any money, valuables or goods received by them from perpetrators of unlawful acts as a reward for their apparent collaboration in the offence. The public prosecutor shall record the hand-over and place the money, valuables or goods at the disposal of the Costa Rican Drug Institute, except in duly substantiated exceptional cases.*

Article 13. *Public prosecutors may propose to perpetrators of, accomplices in and accessories to offences covered by this Law that, in cases where a conviction is being sought against them, they request that consideration be given to granting them a suspended sentence or a reduction by up to one half of the penalties stipulated for offences provided for in this Law or to pronouncing a conditional sentence, where applicable, if they voluntarily provide information that may contribute significantly to resolving drug-*

trafficking offences. The Department of Public Prosecution may offer the aforementioned benefits until the preliminary hearing begins.”

Thus, the special investigative techniques mentioned in this question are used in Costa Rica, and could also be used in cooperation with another State, provided that the offences for which the persons involved are being prosecuted in the other State are also characterized as offences in Costa Rica, unless there is a bilateral or multilateral convention waiving this requirement in respect of double jeopardy.

1.13 Please indicate whether Costa Rica has taken measures to protect vulnerable targets against the background of terrorism (protection of witnesses, victims, prosecutors, judges and people collaborating with the judicial process). Please describe the legal provisions in place to ensure this protection. Could Costa Rica please indicate whether those measures can be utilized in cooperation with or at the request of another State.

Costa Rica has a cooperation agreement between the judicial branch and the Ministry of Public Security for the protection of prosecutors, judges, judicial officials in general and witnesses or victims in proceedings of key importance, who require special protection because of the nature of their testimony (organized crime, drug trafficking). In addition, because one of the functions of the Special Intervention Unit is to protect the members of the highest branches of government and dignitaries visiting the country (Police Act, section II, article 19), it is empowered to protect those State officials involved in judicial proceedings, principally in cases of political abduction, drug trafficking or terrorism. However, this police body intervenes on a restricted and exceptional basis, only as a last resort to resolve a situation involving the utmost danger to human life, or to protect strategic assets or extremely valuable national assets (Police Act, art. 20). There is extensive cooperation with other States in national security matters, as indicated by the inter-agency cooperation protocols concluded among the members of the regional intelligence community, which has made it possible to conduct joint operations with other police and intelligence bodies in the region.

1.14 As regards the reference in Costa Rica’s third report to new amendments to articles 274 and 374 of the Penal Code (at pages 4 and 12), please outline how the relevant provisions in Costa Rican law address recruitment to terrorist bodies, including:

- **deception, such as representation that the purpose of recruitment is one (e.g. teaching) different from the true purpose;**

It is obvious that the person who has been deceived has not committed an offence. On that subject, article 30 of the Penal Code states that “*No one may be punished for an offence established by law if the said offence has not been committed with malice or negligence, or preterintentionally.*” In the case of a person who deceives another in order to cause the other person to commit an offence, in this case to join a terrorist organization, the act of deceiving the other person would be regarded as a form of legal responsibility. Article 45 of the Penal Code states, “*Any person who commits a punishable act characterized as such, either alone or using another person or persons, shall be considered to be the perpetrator of that act, and the persons who commit the act together with him shall be considered to be co-perpetrators.*” Hence it is clear that the offences set forth in articles 274 and 374 would not apply to persons participating in an unlawful association if they were

unaware of that organization's unlawful purpose. Persons deceiving others for the purpose of persuading them to take part in an unlawful association could be punished under articles 274 and 374 provided that they were not only aware of the association's true purpose but also were persuading others to join the association.

- **other activities undertaken by people who do not actually belong to an unlawful association.**

The Costa Rican Penal Code sets forth a series of offences which cover most unlawful acts relating to terrorism. Details are given of such offences in Costa Rica's previous reports to the CTC. Persons who commit such offences, either as part of an organization or acting individually, could be prosecuted on the basis of those offences.

Effectiveness of controls preventing access to weapons by terrorists

1.16 As regards the prevention of the movements of terrorists, the CTC would be grateful for information as to whether Costa Rica has established any procedure for supplying advance information concerning international cargo and passengers to its own authorities as well as to those of other States to enable them to screen for prohibited cargo and suspected terrorists before disembarkation.

The Regulations implementing Customs Act No. 7557 stipulate:

“Article 220. Advance transmission of the cargo manifest

The shipper bringing goods through customs must supply to customs on entry information relating to the cargo manifest by means of electronic data transmission following the format defined by the General Customs Directorate. This information shall be supplied within the following deadlines:

- (a) Maritime traffic: the information shall be transmitted at least forty-eight hours in advance of the arrival of the vessel at the port;*
- (b) Air traffic: the information shall be transmitted at least two hours before the arrival of the aircraft;*
- (c) Land transport: the cargo manifest may be transmitted at the time the vehicle arrives at the land point of entry or earlier.”*

Furthermore, article 217 of the above-mentioned Regulations stipulates:

“Article 217. Documents to be presented by each vehicle

The shipper must submit the following documents to customs upon entry into the national territory, immediately after the arrival of the vehicle:

- (a) A copy of the cargo manifest describing the goods passing through the customs post;*
- (b) A report for each destination point of the goods in transit or any explosive, flammable, corrosive, contaminant or radioactive substances and other toxic materials or products or hazardous material, products or items and other similar goods, as defined by the General Customs Directorate;*
- (c) A list of passengers and crew, indicating if they intend to disembark.”*

Regarding trafficking in persons, as explained earlier, the Directorate of Migration and Aliens coordinates on a regular basis with the Directorate of Intelligence and Security as well as Interpol and their counterparts in the field and representatives of the accredited diplomatic corps in the country. This relationship includes receiving and exchanging information and coordination of actions in the event that they receive notice of or suspect the presence of a terrorist in the country. Through links with DIS and Interpol, the names of applicants for restricted visas are verified before the visa is issued.

1.17 In the context of the implementation of subparagraphs 2 (b) and (j), has Costa Rica implemented the standards and recommendations of the International Civil Aviation Organization (annex 17)? Please inform the CTC as to whether ICAO has conducted safety audits of Costa Rican international airports.

The Civil Aviation Directorate (DGAC) has developed and implemented the Costa Rican Aeronautical Regulations in the specific area of aviation safety. "RAC 17 Aviation Safety", which entered into force by means of Executive Order No. 31802-MOPT, is intended to implement the norms and recommended methods defined in the above-mentioned annex and delineate the responsibilities of airport operators (airport administration) and airline operators under DGAC as the aeronautical authority. RAC 17 contains the requirement to establish security controls both in the airports and in the operations of the airlines themselves.

Parallel to RAC 17, a unit within DGAC has been established to oversee the enforcement of RAC and existing international aviation safety norms, along with supervision of relevant controls and measures applied in airports.

To date, Costa Rica has not been informed that ICAO will be conducting an audit as part of its Universal Security Audit Programme (USAP) before the end of this year.

Effectiveness of controls preventing access to weapons by terrorists

1.18 Subparagraph 2 (g) of the resolution requires each Member State, among other things, to have in place appropriate mechanisms to prevent terrorists from gaining access to weapons. In this context, the CTC would appreciate it if Costa Rica could provide an outline of the steps which it has taken or which it proposes taking in this regard:

(a) The ratification and implementation of the United Nations Convention against Transnational Organized Crime and the supplementary Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition

The Convention against Transnational Organized Crime was adopted in Costa Rica by Act No. 8302 of 29 August 2002 and ratified on 24 July 2003. The supplementary Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition was adopted by Act No. 8317 of 3 October 2002 and ratified on 9 September 2003.

In application of the provisions of the Protocol, the Arms Directorate of the Ministry of Public Security drafted a bill which is currently under review by the Ministry's Office of Legal Affairs. In addition to introducing the requirement of

marking weapons to be imported, the bill aims to strengthen existing controls and expand the authority of the Arms Directorate as the specialized police agency in the area of weapons and explosives.

Currently an import permit must be secured from the Arms Directorate for the import of any weapons, munitions, explosives, related materials or raw materials for their manufacture. The permit notifies the country of origin that these goods will be accepted by Costa Rica. This document is issued to the applicant for the purpose of any necessary formalities in the country of origin of the items.

For goods in transit, documentation from the country of origin is required (export permit) as well as a certificate of final destination, both duly registered with the Costa Rican Consulate in the country of origin and subsequently by the Ministry of Foreign Affairs and Worship.

Owing to the absence of formal central contact points in some countries, the Arms Directorate has in some cases coordinated with its counterpart agencies to verify the information, but currently it is not possible to require certificates of transit through third countries.

When the goods enter national territory they must be held in a customs depot and stored until the Directorate has inspected them for clearance. The inspection must take place in the presence of a police officer, who will verify that what is described in the documents corresponds to what has physically arrived.

(b) The implementation of the recommendation of WCO concerning the above-mentioned Protocol

Concerning the implementation of the recommendations of the World Customs Organization regarding the supplementary Protocol against the Manufacturing and Illicit Trafficking in Firearms, Their Parts and Components and Ammunition, such items are classified for tariff purposes in chapter 93 of the Schedule of Tariffs. The following technical note implemented by the Customs Directorate must be added:

Technical note 72	Provisional arms import permit	Ministry of Public Security, the Interior and Police
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(c) The utilization of electronic reporting and the promotion of the security of the supply chain, as provided for in the General Annex to the revised WCO Kyoto Convention, as well as the standards of the World Customs Organization

Concerning “electronic reporting”, the Customs Act, promulgated in 1996, included in its title VIII, on Regular Procedures, the means of reporting that are to be used by the National Customs Service (SNA). Article 194 (a) includes electronic reporting and reads as follows:

“Article 194. Reporting methods

The National Customs Service shall report using any of the following methods:

(a) Electronic data transmission at the customs headquarters or in the domicile indicated by the customs service auxiliary. The report shall have effect twenty-four hours after the information is sent."

Moreover, following the adoption of the Second Protocol amending the Central American Uniform Customs Code, the customs services have computerized most of their transactions. The General Customs Directorate is working towards that target by implementing a new management model.

(d) The implementation of the Programme of Action (adopted by the United Nations Conference to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons)

The United Nations Programme of Action has been implemented by the Arms Directorate of the Ministry of Public Security.
