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Letter dated 16 July 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 23 April 2003 (S/2003/459).

The Counter-Terrorism Committee has received the attached third report from Colombia 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*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 11 July 2003 from the Permanent Mission of Colombia to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: Spanish]

The Permanent Mission of Colombia to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism and has the honour to refer to his note of 11 April 2003.

In this connection, the Permanent Mission of Colombia to the United Nations is pleased to transmit to the Committee an additional report (see appendix), with attachments, as requested in that note.

Appendix

Additional report to the report submitted by Colombia on 16 September 2002 to the Counter-Terrorism Committee

1. Implementation measures

1.2. ... The supplementary report indicates that the Government of Colombia is ready to submit whatever draft legislation is needed to bring Colombian legislation into line with the requirements of the Convention for the Suppression of the Financing of Terrorism and other international instruments, a question that it has already begun to study. Please therefore provide a progress report on that review and a detailed outline of any proposed amendments to the Penal Code in this regard.

(a) Adoption of the International Convention for the Suppression of the Financing of Terrorism

To fulfil the commitments made to the international community to prevent and suppress terrorism, particularly with regard to the financial aspect, the Congress of the Republic adopted the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999, by means of Act No. 808 of 27 May 2003. In conformity with Colombia's constitutional system, the Act was approved by the President of the Republic and later sent to the Constitutional Court, where its enforceability is currently being evaluated. Once this process is complete, the national Government will deposit the instrument of ratification with the Secretary-General of the United Nations.

Article 2 of the Convention contains the following provision:

"Article 2

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used in the knowledge that they are to be used, in full or in part, in order to carry out:

(a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.

(…)

3. For an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, subparagraph (a) or (b).

4. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.

5. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1 or 4 of this article;

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 4 of this article;

(c) Contributes to the commission of one or more offences as set forth in paragraph 1 or 4 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or

(ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article."

According to article 2, paragraph 1 (a), the punishable acts defined in the treaties listed in the annex constitute offences within the meaning of the Convention.

(b) Domestic norms

Article 345 of the current Penal Code (Act No. 599 of 2000) defines the offence of "Management of resources linked to terrorist activities":

"Article 345. Management of resources linked to terrorist activities. Any person who manages money or assets linked to terrorist activities shall be liable to a term of imprisonment of between six (6) and twelve (12) years and a fine of between two hundred (200) and ten thousand (10,000) times the minimum statutory monthly wage."

Article 340 of the Penal Code provides as follows:

"Conspiracy to commit an offence. When a number of persons conspire for the purpose of committing offences, each of them shall, for that act alone, be liable to a term of imprisonment of between three (3) and six (6) years.

When the conspiracy involves the commission of the crimes of genocide, enforced disappearance, torture, forcible displacement, homicide, **terrorism**, trafficking in toxic or narcotic drugs and psychotropic substances, kidnapping, extortive kidnapping, extortion, unlawful enrichment, **money laundering** or fronting and related crimes, or the organization, promotion or **financing of illegal armed groups**, the penalty shall be a term of imprisonment of between six (6) and twelve (12) years and a fine of between two thousand (2,000) and twenty thousand (20,000) times the minimum statutory monthly wage.

The penalty of deprivation of liberty shall be increased by one half for any person who organizes, encourages, promotes, directs, heads, establishes or **finances** a conspiracy for the purpose of committing an offence." (our bold)

Furthermore, in December 2002 the Congress of the Republic adopted Act No. 793 derogating from Act No. 333 of 1996 and establishing rules governing termination of ownership rights, under which, by means of a simple procedure, ownership of assets used in or derived from the commission of punishable acts may be terminated in favour of the State (attachment 1).

Because Colombia is aware of the magnitude of the terrorist phenomenon and the need to take all kinds of effective measures to eradicate it, it continues to implement the juridical and legal instruments required to that end. Progress made in that regard will be reported to the Committee in due course.

1.3. Subparagraph 1 (c) of the resolution requires, inter alia, that States freeze without delay the funds of persons who commit, attempt to commit, participate in or facilitate the commission of terrorist acts. The first and supplementary reports indicate that any restriction of any right of ownership must be effected by court order and the supplementary report states that "freezing" by definition implies a restriction on the right of ownership. Please describe, in particular, the procedure for freezing funds, financial assets, etc., even if the funds are of a legal origin, of persons or entities suspected of terrorist activities as distinct from freezing funds, financial assets, etc. of persons suspected of engaging in money-laundering activities.

The following are considered juridical instruments permitting compliance with the request to freeze financial assets intended for terrorist activities:

Criminal confiscation as defined in article 100 of the Penal Code and regulated by article 67 of Act No. 599 of 2000 (Code of Criminal Procedure):

> "Article 67. Criminal confiscation. The instruments and assets used to commit the punishable act, or which are derived from the commission of such act and are not freely tradable, shall be appropriated by the Office of the Prosecutor-General or an entity designated by that Office, unless the law provides for their destruction or different disposition.
>
> A similar measure shall be applied to intentional offences, when the assets that are freely tradable and belong to the criminally liable person **are used to commit a punishable act**, or are derived from the commission of such act." (our bold)

With regard to this procedure, the provision complies with the recommendation that it be effected by court order, after first imposing a precautionary measure such as seizure or impoundment. However, this legal instrument is subject to serious constraints, depending on the stage reached in the proceedings, namely, with respect to the appropriation of property or assets in the prior stage of criminal investigation. This situation is remedied by the following juridical instrument, which achieves the goal of termination of ownership sought by international recommendations:

Action for termination of ownership rights: precautionary measures provided for in article 12 of Act No. 793 of 27 December 2002:

> "Article 12. Initial stage. The prosecutor competent to hear the action for termination of ownership rights shall begin the investigation, of his own initiative or based on information provided to him under article 5 of this Act, in order to identify the assets in respect of which such action could be initiated, according to the grounds established in article 2.
>
> During this stage, the prosecutor may order precautionary measures or request the competent judge to adopt these measures, as appropriate. Such measures shall comprise suspension of the power to dispose of such assets, impoundment and seizure of assets, of money deposited with the financial

system, of securities, and of the earnings thereon, and the order not to pay them when they cannot be physically impounded. In any event, the National Narcotics Directorate shall be the impounder or depositary of the seized or intercepted assets."

This constitutionally based action is intended to track down assets whose origin or intended use is illicit, and it applies to property, not persons. Act No. 793 of 2002 introduced the possibility of appropriating property or assets in the initial stage of this special procedure, thereby avoiding the constraints of the criminal procedure. This novel approach was motivated by the need to appropriate property or assets intended for terrorist activities, in keeping with the international requirements noted in the Committee's communication.

This type of appropriation is characterized by the following:

- It is effected by court order (decision of a delegated prosecutor);
- It is an interim measure, prior to the start of adversarial proceedings;
- It envisages the application of legal and material precautionary measures that are different from and far broader than those in a criminal procedure, such as suspension of the power to dispose of assets and seizure and impoundment of the property or assets that are the object of the procedure for termination of ownership;
- It is effected on the basis of specific grounds related to the origin of the assets or their intended use for certain illicit activities. Terrorism is not included among these grounds, since it is an offence against public safety (article 2, paragraph 2 (3) of Act No. 793 of 2002);
- Being an action *in rem*, it is effected independently of the criminal liability of those with ownership rights over the assets to which the procedure applies;
- It is always initiated by the Office of the Prosecutor-General of the Nation, either of its own initiative or based on a report submitted by any individual or legal entity, whether public or private, national or international.

1.4. The supplementary report mentions that "although Colombian legislation has no special legislation for freezing funds or financial assets of persons or entities suspected of supporting terrorist activities, any assets linked to criminal activities, including terrorism, are subject to confiscation in the context of a criminal procedure, as provided in article 67 of the Code of Criminal Procedure". Please explain whether the provisions referred to in relation to subparagraph 1 (c) are applicable in the following situations, even if the funds are of a legal origin: funds held in Colombia that are suspected of being linked to terrorism but have not (yet) actually been used for the commission of a terrorist act; funds held in Colombia that are requested to be frozen by a State that considers the funds to have links to terrorism; or funds held in the name of persons and entities identified in lists, such as those approved for the purposes of Security Council resolution 1267 (1999), as being linked to terrorist activities.

Concerning the hypothetical situations outlined above, we can state the following:

(a) With respect to funds held in Colombia that are suspected of being linked to terrorists but have not yet actually been used for the commission of terrorist acts, the following comments can be made:

The use of the criminal confiscation procedure envisaged in article 67 of the Code of Criminal Procedure is, in our view, subject to the declaration of criminal liability of the owner of the assets. Substantial evidence as to the potential use of assets or resources in terrorist activities is required here and mere suspicion is not enough.

Nevertheless, it should be pointed out that this hypothetical situation is envisaged in the third ground for termination of ownership rights (Act No. 793 of 2002), which provides for that legal consequence when: "The assets in question have been used as a means or instrument for the commission of unlawful activities, **are intended for such activities** or are the object of the offence".

However, it should be noted that while the Act does not stipulate substantial evidentiary requirements for the imposition of a measure to secure such assets, since it suffices that there be evidence pointing to, or reason to believe in, the existence of the ground that is invoked, the same is not true of the evidentiary requirements for issuing a ruling of termination of ownership rights, in which the existence of the invoked ground must be proved by conventional evidentiary means, since the Act provides for the weighing of evidence as a precondition for the declaration of termination of ownership rights.

The fact that the assets or resources belonging to the alleged terrorists have not yet been used for terrorist activities also raises a problem of evidence that must be considered on a case-by-case basis rather than from the general standpoint of the above-mentioned legal instruments. Otherwise, even in the best of cases, that would amount to a presumption of bad faith and would be contrary to our legal and constitutional system.

(b) The hypothetical situation of funds held in Colombia that are requested to be frozen by a State that considers the funds to have links to terrorism does not present any problem, since there is an express norm authorizing judicial cooperation, either through criminal confiscation as provided in article 507 of the Code of Criminal Procedure (Act No. 600 of 2000) or through termination of ownership rights as provided in article 21 of Act No. 793 of 2002.

Code of Criminal Procedure (Act No. 600 of 2000):

"Article 507. Measures requested by a foreign authority with respect to assets. Termination of ownership rights or any other measure involving loss or suspension of the power to dispose of assets may be effected in Colombia by order of the competent foreign authority.

The decision ordering termination of ownership rights, confiscation or any definitive measure shall be communicated to the Office of the Prosecutor-General of the Nation. The Office shall decide, by interlocutory decision, whether there are grounds for the requested measure. If so, it will send the decision to the competent judge for him to issue a judicial ruling.

The Prosecutor-General may set up an international judicial assistance fund in which to deposit those resources.

In no case may the powers granted by Colombian law to persons affected by the decision to terminate ownership rights be impaired."

Action for termination of ownership rights, Act No. 793 of 2002:

"Article 21. Cooperation. Judicial cooperation agreements and treaties signed, adopted and duly ratified by Colombia shall be fully applicable for obtaining cooperation with respect to the appropriation of assets when their content is compatible with the action for termination of ownership rights".

The foregoing is without prejudice to existing diplomatic channels or the provisions of the different bilateral, regional or multilateral agreements, treaties or conventions on this issue signed and ratified by Colombia.

(c) With respect to the appropriation of funds held in the names of persons or entities identified in lists, such as those approved for the purposes of Security Council resolution 1267 (1999), as being linked to terrorist activities, the following comments are in order:

Colombia's legal system imposes clear, specific preconditions for the waiver by the State of constitutional and legal protection for assets connected with criminal activities and thus for the adoption of measures of confiscation or termination of ownership rights.

Those procedural or causal preconditions are related to the illicit origin or intended use of such assets and are confirmed by articles 34 and 58 of the Constitution.

Therefore, our legislation does not accept limitations on the right of ownership based on the identification of the owner of the assets as a terrorist in a list, since that would involve applying a measure of forfeiture of assets, a penalty prohibited in Colombia under article 34 of the Constitution.

Moreover, the penal or judicial scope of "blacklists" in our legislation is limited by the constitutional principles set forth in articles 15 and 29 of the Constitution (*habeas data* and due process), observance of which is mandatory since they govern all kinds of judicial and administrative action.

In any case, appropriating assets simply because their owners appear on a certain list contravenes our domestic legal order, unless their inclusion on such list is accompanied by objective information pointing to the illicit origin or intended use of the assets.

1.5. Both the initial report and the supplementary report indicate that Colombia has some legislation dealing with the requirement of subparagraph 1 (d) of the resolution. The supplementary report mentions Colombia's need to receive feedback from countries that have developed mechanisms to monitor funds received by associations and by non-governmental and non-profit organizations, with a view to ensuring that funds are not diverted to terrorist activities. The CTC would, accordingly, be grateful to know what legal and institutional mechanisms are in place in Colombia to monitor and audit the collection and use of funds by associations and other organizations. Please furnish a progress report on the steps taken by Colombia to incorporate the full requirements of subparagraph 1 (d) into its domestic law.

The Information and Financial Analysis Unit (UIAF),[1] through its information systems, monitored the foreign exchange, cash and notarial transactions carried out in 2002 by non-profit and non-governmental organizations, with a view to identifying behaviour suggesting the existence of money-laundering. A database was also set up in the Unit enabling it to keep a record of non-profit and non-governmental organizations registered with the Chambers of Commerce[2] of the country's main cities.

1.6. Effective implementation of paragraph 1 of the resolution requires that financial institutions and other intermediaries (for example, lawyers, notaries and accountants, when engaged in brokering activities, as distinct from the provision of professional advice) should be under a legal obligation to report suspicious transactions. From the supplementary report, it appears that only entities under the supervision of the Superintendence of Banks and notaries (when performing an activity as a public service) are under an obligation to report suspicious transactions. The CTC would welcome a list of the classes of persons and entities required by current legislation to report suspicious transactions and would like to be informed about the penalties for non-compliance with requirements to report suspicious transactions. Please outline the relevant legal provisions.

Sector	*Legislation*
Customs brokers Aimed at public and private warehouses, customs brokerage companies, harbour companies, user-operators and industrial and commercial users of free zones, shipping companies, international cargo agents, postal traffic and urgent consignment brokers, messenger companies, permanent customs users, export-oriented users, other ancillary customs operators and foreign currency exchange professionals.	**Circular No. 170 of 2002** by which the Directorate of National Taxes and Customs (DIAN) establishes norms for the "Prevention and control of money-laundering" and reporting of suspicious operations.

[1] The Information and Financial Analysis Unit was established by Act. No. 526 of 12 August 1999 as a special government technical unit attached to the Ministry of Finance and Public Credit, with legal personality, administrative autonomy, independent capital assets and special regimes in the areas of personnel administration, nomenclature, classification, wages and benefits, whose functions would be to act on behalf of the State to detect practices associated with money-laundering.

[2] Chambers of Commerce are private business associations, although they are set up by the Government of its own initiative or at the request of businesses in the place where they are to operate (article 78C of the Commercial Code). In addition to performing functions related to their activities as business associations, they perform the public function of maintaining a business register and certifying the documents included in it (articles 123 and 365 of the Penal Code and 86 of the Commercial Code). Article 22 of Act. No. 80 of 1993 gave Chambers of Commerce an additional public function: the registration of bidders, a precondition for individuals or legal entities wishing to conclude contracts with State entities for building work, consultancy, supplies and sales of movable property to be able to take part in bidding and selection processes.

Sector	*Legislation*
Financial institutions Aimed at banking establishments, financial corporations, savings and housing corporations, commercial financing companies, trust companies, general storage warehouses, livestock funds, higher-level cooperative organizations, reinsurance companies, capital endowment companies, insurance brokers, general insurance companies, life insurance companies, insurance cooperatives, offices representing foreign financial agencies in Colombia, special official institutions, pension and unemployment fund administrators, unified average premium regime administrators, offices representing foreign reinsurers in Colombia, full-fledged foreign exchange companies, Bank of the Republic, cooperatives (transferred by Dancoop), financial cooperatives.	**External circular No. 046 of 2002** by which the Superintendence of Banks establishes rules on the "Prevention and control of money-laundering", reporting of suspicious operations and reporting of cash transactions.
Entities of the unified sector (cooperatives). Aimed at multi-asset cooperatives, savings and loan cooperatives and full-range cooperatives with a savings and loan section.	**External circulars Nos. 0014 of 2000 004 of 2001 and 007 of 2003** by which the Superintendence of the Unified Economy establishes rules on the "Prevention and control of money-laundering", reporting of suspicious operations and reporting of cash transactions.
Foreign exchange professionals	**Circular No. 170 of 2002** by which the DIAN establishes norms for the "Prevention and control of money-laundering" and reporting of suspicious operations.
Foreign exchange brokers and stockbrokers authorized by the foreign exchange regime	**Resolutions Nos. 8 of 2000, 3 of 2002 and 1 of 2003** by which the Bank of the Republic establishes that persons residing in the country and persons residing abroad who carry out a foreign exchange operation in Colombia must present a foreign exchange declaration through foreign exchange brokers; in the case of operations carried out through the countervailing mechanism, the declarations must be presented directly to the Bank of the Republic.

Sector	*Legislation*
	Report to the Information and Financial Analysis Unit (UIAF) of the Ministry of Finance, in the manner stipulated by it, any cash operation, in pesos or foreign currency, in excess of US$ 10,000. Also report to the Unit, as stipulated by it, any operation suspected of constituting money-laundering or of involving money whose origin is illicit.
Securities brokers	**Circular No. 4 of 1998** of the Superintendence of Securities on mechanisms for the prevention and control of criminal activities through the securities market.
Notaries	**Decree No. 1957 of 2001, Circulars Nos. 02-01 and 02-07 of 2002, Instructions for the prevention of money-laundering in notarial operations** by which the Superintendence of Notaries and Registries and the UIAF issue instructions for the reporting of suspicious operations and the reporting of notarial transactions.
All sectors	**Decree No. 1497 of 2002** partially regulating Act No. 526 of 1999 and stipulating provisions for the reporting of suspicious operations, reporting deadlines, etc.

In Colombia, failure to comply, in full or in part, with the obligation to report suspicious operations will give rise to the imposition of criminal and administrative penalties by the competent supervisory, oversight and monitoring authorities, both on the entity and on the responsible officials who fail to comply with this legal obligation, without prejudice to the corresponding penal consequences.

In the financial institutions sector, article 107 of Decree No. 663 of 1993 (Organic Statute of the Financial System) stipulates the administrative penalties applicable in the event of non-adoption or non-application of control mechanisms, without prejudice to the corresponding penal consequences. Articles 209 and 211 of the Statute stipulate the monetary penalties for both individuals and institutions that fail to adopt the necessary control measures to prevent money-laundering.

Sector	*Legislation*	*Penalty*
Entities overseen by the Superintendence of Banks Banking establishments, financial corporations, commercial financing companies, trust companies, general storage warehouses, higher-level financial cooperatives, pension and unemployment fund administrators, pension fund administrators, social security funds or entities administering the unified average premium with defined benefits regime, Findeter, insurance companies, insurance cooperatives, reinsurance companies, capital endowment companies, non-profit companies that may assume risks arising from occupational diseases and industrial accidents, insurance and reinsurance brokers and insurance agencies. Bank of the Republic Financial Institutions Guarantee Fund Fund for the Financing of Development Projects (FONADE) Foreign exchange companies	Organic Statute of the Financial System (Decree No. 663 of 1993) Basic legal circular of the Superintendence of Banks	(a) Warning (b) Fine. Up to 117,689,000.00 pesos (2003) for individuals and up to 1,863,765,800.00 pesos for institutions for infringing the norms on prevention of money-laundering. The Superintendence of Banks may also order the fined establishment to pay up to 1,863,765.00 pesos towards the implementation of internal corrective mechanisms. (c) Suspension or revocation for up to five (5) years of authorization to perform functions that require such authorization in entities overseen by the Superintendence of Banks. (d) Dismissal of managers, directors, legal representatives or financial auditors of persons overseen by the Superintendence of Banks. This penalty applies without prejudice to those established by special norms.

In addition, article 325 of the Penal Code (Act No. 599 of 2000) defines the offence of failure to control, establishing that: “Any employee or director of a financial institution or savings and loan cooperative who, with a view to concealing or covering up the illicit origin of the money, fails to comply with the control mechanisms established by the legal system for cash transactions shall, for that offence alone, be liable to a term of imprisonment of between two (2) and six (6) years and a fine of between one hundred (100) and ten thousand (10,000) times the minimum statutory monthly wage”.

Moreover, the individuals and entities required to report suspicious activities to the DIAN are: public and private warehouses, customs brokerage companies, harbour companies, user-operators and industrial and commercial users of free zones, shipping companies (not included in the resolution), international cargo agents, postal traffic and urgent consignment brokers, messenger companies, permanent customs users, export-oriented users, other ancillary customs operators and foreign currency exchange professionals.

1.7. The supplementary report mentions that the operation of “informal” banks in Colombian territory is expressly forbidden by financial legislation. The CTC would be grateful for an account of the action taken, or proposed, in

relation to the regulation of alternative money transmission agencies, not only in relation to money laundering but also in relation to other criminal activity, especially terrorism.

Under Colombia's Constitution, financial, stock market, insurance and other activities related to the management, use and investment of public resources are considered to be in the public interest and can be carried out only with the authorization of the State. Therefore, the Superintendence of Banks, as a government technical body, is responsible for giving authorization to engage in financial activities, including those conducted through banks.

This system of prior authorization and comprehensive oversight of the activities of financial entities is designed to ensure confidence in the financial system and that operations are carried out securely, transparently and efficiently.

In keeping with the foregoing, the Organic Statute of the Financial System (Decree No. 663 of 1993) empowers the Superintendence of Banks to impose various precautionary measures if financial activities are carried on without authorization.[3]

With regard to money transfers, we should first mention that article 4 (d) of Act No. 9 of 1991, the framework law governing international exchange operations, characterizes as operations subject to the foreign exchange regime "entries to or departures from Colombia of foreign currency or Colombian legal tender and drafts representing such monies", while article 1 of Decree No. 1735 of 1993 defines as foreign exchange operations "all those included in the categories indicated in article 4 of Act No. 9 of 1991 …", and especially, inter alia, "all those that involve or may involve payments or transfers of foreign currency between residents and non-residents of the country", as well as "all operations carried out by Colombian residents with foreign residents and involving the use of foreign currencies, such as deposits and other foreign operations in a foreign currency".

It is clear from the foregoing that under Colombian legislation, an international money transfer operation is a foreign exchange operation, an activity carried out by **foreign exchange brokers** as defined in article 58 of External Resolution No. 8 of 2002 of the Board of Governors of the Bank of the Republic, the current Foreign Exchange Statute:

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[3] Decree No. 663/93. Article 108. Precautionary measures. The Superintendence of Banks is responsible for imposing one or more of the following precautionary measures on individuals or legal entities that carry on without authorization activities restricted exclusively to institutions subject to oversight:

(a) Immediate suspension of such activities, under threat of successive fines up to [...];

(b) Dissolution of the legal entity; or

(c) Rapid, progressive liquidation of the illegal operations, for which the relevant administrative procedures set forth in this Statute for cases of seizure of the assets, holdings and business of financial institutions shall be followed.

Paragraph 1. The Superintendence of Banks shall institute precautionary actions in such cases so as to effectively safeguard in good faith the rights of third parties and shall, under its responsibility, immediately take the necessary measures to inform the public.

Paragraph 2. The Superintendence of Banks may impose the penalties stipulated in articles 209 and 211 on any person that obstructs or prevents administrative action designed to establish that activities restricted solely to entities subject to oversight are being carried on illegally, as well as on persons that provide it with false or inaccurate information.

> "Article 58. Authorized brokers. The following entities are foreign exchange brokers: commercial banks, mortgage banks, financial corporations, commercial financing companies, the Financiera Energética Nacional (FEN), the Banco de Comercio Exterior de Colombia S.A. (BANCOLDEX), financial cooperatives, stockbroking companies and foreign exchange companies.
>
> In their capacity as foreign exchange brokers, the above entities shall be subject to the rules and obligations established in this resolution."

The institutions listed are authorized to carry out foreign exchange operations on the terms stipulated in article 59 (1) and (2) of the resolution, and they alone can carry out such operations *professionally*.

Thus, under Colombia's foreign exchange regime, the customary legal means of receiving a foreign currency transfer in the country is through operations carried out by brokers as defined above. Under foreign exchange regulations, those entities channel remittances from abroad to beneficiaries in Colombia and in so doing must implement the controls required for such transactions, including foreign exchange controls (for instance, they must require presentation of the corresponding foreign exchange declaration) and controls designed to prevent criminal activities.

It should be emphasized here that the foreign exchange brokers mentioned above, with the exception of stockbroking companies, are subject to control and oversight by the Superintendence of Banks. They must obtain its prior authorization for carrying on the operations specific to each type of entity, including their foreign exchange brokerage operations, and they are subject to the regime for the prevention of criminal activities laid down in the Organic Statute of the Financial System and to the instructions issued by the Superintendence of Banks in this connection.

This being so, the design and implementation of a comprehensive system for the prevention of money-laundering, the primary obligation of financial institutions and foreign exchange companies which, together, account for the bulk of money transfers to and from the country, is intended to control that risk effectively by preventing the use of such institutions by, inter alia, terrorist organizations.

With a view to preventing entities monitored by it from being used by terrorist networks, the Superintendence of Banks has issued various sets of instructions (see table 1 attached), the most noteworthy being Circular Letter No. 25 of 2002 advising that: "the mechanisms put in place by law by the Colombian financial system to prevent and control criminal activities must be sufficient to successfully detect any suspicious operation that may be linked to the channelling of resources of illicit origin towards the perpetration of terrorist activities or that is intended to conceal assets derived from such activities and to report promptly thereon to the Information and Financial Analysis Unit of the Ministry of Finance and Public Credit (UIAF)".

It should be noted with regard to foreign currency exchange that, according to Circular DCNI 30 of the Board of Governors of the Bank of the Republic, all foreign currency exchange professionals must record, on a form designed specifically for that purpose, information on cash transactions of US$ 500 or more or the equivalent in pesos or other foreign currency. Such information must include the full name and identity document details of the payer and indicate whether he represents a legal entity, in which case the company name and registration number must also be recorded, the amount and currency of the payment, and whether it is in the form of cash or a bank draft. In the latter case, the number and amount of the

draft and the financial entity on which it is drawn must be noted in the "Comments" section. The Foreign Exchange Subdirectorate is responsible for monitoring these users and thereby detecting suspicious operations that might be connected with the financing of terrorism.

1.8. The Committee would be grateful if Colombia could provide an outline of the legal provisions that criminalize the use of Colombian territory to plan, finance, organize and/or facilitate the commission of terrorist acts against another State.

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

> "Article 341. Training for illicit activities. Any person who organizes, instructs, trains or equips persons in military tactics, techniques or procedures for the purpose of conducting **terrorist activities** or operating death squads, private justice groups or gangs of hired murderers, or who recruits them, shall be liable to a term of imprisonment of between fifteen (15) and twenty (20) years and a fine of between one thousand (1,000) and twenty thousand (20,000) times the minimum statutory monthly wage." (our bold)
>
> "Article 342. Aggravating circumstance. When the acts described in the preceding articles are committed by active or retired law enforcement officers or members of State security bodies, the penalty shall be increased by between one third and one half."

With regard to the financial aspect of the crime of terrorism, the Penal Code provides for the offence of "management of resources linked to terrorist activities":

> "Article 345. Management of resources linked to terrorist activities. Any person who manages money or assets linked to terrorist activities shall be liable to a term of imprisonment of between six (6) and twelve (12) years and a fine of between two hundred (200) and ten thousand (10,000) times the minimum statutory wage."
>
> Instigation to commit an offence for terrorist purposes is also penalized:
>
> "Article 348. Instigation to commit an offence. Any person who publicly and directly incites another person or persons to commit a specific offence or type of offence shall be liable to a fine.
>
> If the act is engaged in for the purpose of committing the crimes of genocide, enforced disappearance, extortive kidnapping, torture, forcible displacement or homicide or for terrorist purposes, the penalty shall be a term of imprisonment of between five (5) and ten (10) years and a fine of between five hundred (500) and one thousand (1,000) times the minimum statutory monthly wage."

It is also worth noting, in this respect, that the offence of "compulsion to commit an offence" includes among the aggravating circumstances the objective of inciting persons to become members of terrorist groups.

> "Article 184. Compulsion to commit an offence. Any person who compels another person to commit a punishable act, provided that such act does not

constitute an offence entailing a higher degree of punishment, shall be liable to a term of imprisonment of between one (1) and three (3) years.

Article 185. Aggravating circumstance. The penalty shall be increased by between one third and one half when:

1. The objective of the act is to induce persons to become members of terrorist groups, groups of hired murderers, death squads or private justice groups;

2. The persons who are the objects of the act are minors under eighteen (18) years of age or active or retired law enforcement officers or members of State security bodies."

Mention should also be made of the offence of "illicit use of transmitting or receiving equipment", since this activity may be for terrorist purposes.

"Article 197. Illicit use of transmitting or receiving equipment. Any person who, for illicit purposes, possesses or makes use of wireless or television equipment or any electronic means designed or adapted for transmitting or receiving signals shall, for that act alone, be liable to a term of imprisonment of between one (1) and three (3) years.

The penalty shall be increased by between one third and one half when the act described in the preceding paragraph is carried out for terrorist purposes."

1.9. Please provide a progress report on the ratification by Colombia of the 8 international instruments relating to terrorism which are in the process of being ratified. Please outline the provisions that give effect to those instruments in domestic legislation.

Name of international instrument	*Enacting legislation*	*Date of entry into force*	*Draft legislation*	*Depositary and observations*
Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 24 February 1988)	Act No. 764 of 31 July 2002			International Civil Aviation Organization (ICAO) Declared enforceable by the Constitutional Court in judgement C-354/03 of 6 May 2003
International Convention against the Taking of Hostages (New York, 17 December 1979)				United Nations Approved by the Congress of the Republic Awaiting Presidential approval
Convention on the Physical Protection of Nuclear Material (Vienna, 3 March 1980)	Act No. 728 of 27 December 2001	27 April 2003		International Atomic Energy Agency (IAEA) Instrument of accession deposited on 28 March 2003 with the Director General of IAEA
Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, 10 March 1988)				International Maritime Organization (IMO) Approved by the Congress of the Republic Awaiting Presidential approval
Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Rome, 10 March 1988)				IMO Approved by the Congress of the Republic Awaiting Presidential approval
Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal, 1 March 1991)				ICAO Approved by the Congress of the Republic Awaiting Presidential approval
International Convention for the Suppression of Terrorist Bombings (New York,15 December 1997)	Act No. 804 of 1 April 2003			United Nations Currently under constitutional review
International Convention for the Suppression of the Financing of Terrorism	Act No. 808 of 27 May 2003			United Nations Currently under constitutional review

In addition, it should be mentioned that, on 7 May 2003, the national Government submitted to the Congress of the Republic bill No. 206/03 “approving the Inter-American Convention against Terrorism, signed in Bridgetown, Barbados, on 3 June 2002 at the thirty-second session of the General Assembly of the Organization of American States (OAS)”.

1.10. Subparagraph 3 (g) of the resolution requires States not to refuse extradition of alleged terrorists on grounds of claims of political motivation. According to article 35 of the Political Constitution of Colombia, as amended by Legislative Act No. 01 of 1997, extradition shall not be granted for political crimes. Please confirm that this exception is not a bar to the extradition of a person for terrorist acts that have political motivation.

Under Colombia’s legislative framework, political crimes are typified expressly in Title XVIII, “Crimes against the constitutional and legal regime”, of the Penal Code (Act No. 599 of 2000) as “rebellion”, “insurrection”, “rioting”, “conspiracy” and “corruption, unauthorized assumption and unlawful retention of command”.

The constitutional amendment in Legislative Act No. 01 of 1997[4] provides for an exception to the application of extradition in the case of “political crimes”.

Therefore, for the crime of terrorism, any “political motivation” there may be for the commission of that crime is not a bar to extradition.

2.1. The Counter-Terrorism Committee is eager to facilitate the provision of assistance and advice in connection with the implementation of the resolution. It encourages Colombia to inform the Committee of any areas (other than those set out below) in which assistance or advice might be of benefit in taking forward the implementation of the resolution in Colombia.

There are a number of areas in which personnel training might be of benefit, such as:

– Counter-terrorism investigation techniques

– Techniques for the investigation of the financing of terrorism

– Analysis of information relating to the financing of terrorism.

Training in these techniques would help strengthen investigative capacity in the context of legal proceedings against the financing of terrorist groups.

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[4] Article 1. Article 35 of the Constitution will read as follows:

“Article 35. Extradition may be requested, granted or offered in accordance with public treaties or, failing that, with the law.

Moreover, the extradition of native-born Colombians shall be granted for offences committed abroad which are considered as such in Colombian criminal legislation. the law shall regulate the matter.

Extradition shall not be granted for political crimes.

Extradition shall not be granted when the offences were committed prior to the promulgation of this norm.”