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Letter dated 8 June 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 19 December 2003 (S/2003/1193).

The Counter-Terrorism Committee has received the attached third report from Serbia and Montenegro 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*) Alexander V. **Konuzin**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 2 June 2004 from the Permanent Representative of Serbia and Montenegro to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

Pursuant to the letter of the Chairman of the Counter-Terrorism Committee dated 15 December 2003, I have the honour to forward herewith the further report of the Government of Serbia and Montenegro on the implementation of resolution 1373 (2001) (see enclosure).

(*Signed*) Nebojša **Kaludjerović**
Permanent Representative

Enclosure

REPORT SUBMITTED BY THE COUNCIL OF MINISTERS (GOVERNMENT) OF SERBIA AND MONTENEGRO TO THE COUNTER-TERRORISM COMMITTEE ESTABLISHED BY THE SECURITY COUNCIL OF THE UNITED NATIONS IN PURSUANCE OF ITS RESOLUTION 1373

1.1. The CTC has agreed on further questions and comments for the consideration of the Government of Serbia and Montenegro with regard to the implementation of the Resolution, as set out in this section.

1.2. The CTC notes that the Constitutional Charter of Serbia and Montenegro was adopted and promulgated by the Assembly of the Federal Republic of Yugoslavia on 4 February 2003. The CTC also notes that the Charter regulates the relationship between Serbia and Montenegro, as indicated at page 12 of the supplementary report. The CTC would welcome receiving a detailed explanation regarding the effect of the Charter as regards the obligations of the Republic of Serbia and the Republic of Montenegro in implementing the Resolution, especially the implementation measures, referred to in both the first and supplementary reports, submitted to the Committee by the Federal Republic of Yugoslavia. The CTC would also appreciate receiving an outline of the provisions governing the relationship between the Republic of Serbia and the Republic of Montenegro. In particular, the Committee would appreciate more detailed information concerning the manner in which the two Republics coordinate the implementation of the international obligations which were undertaken by the Federal Republic of Yugoslavia before the adoption of the Constitutional Charter, including the measures aimed at combating terrorism.

Following the adoption of the Constitutional Charter and application of provisions contained in the Law on the Implementation of the Charter, a number of government bodies that existed at the federal level have been abolished. Among such bodies were the Federal Ministry of the Interior and the Federal Ministry of Justice. This fact has resulted in the redistribution of competencies between the member States of the State Union of Serbia and Montenegro, i.e. the Republic of Serbia and the Republic of Montenegro. In this regard, the competence for matters related to the fight against terrorism and for adopting counter-terrorism laws and by-laws has passed to the member States.

In the Chapter of the Charter entitled "Establishment of the competences of the State Union of Serbia and Montenegro", Article 17 stipulates:

"Serbia and Montenegro shall have those competences entrusted to it by the present Constitutional Charter.

The member States may jointly entrust to Serbia and Montenegro the carrying out of additional affairs from their competences."

Article 63, which relates to the transfer of rights and obligations, says:

"Once the Constitutional Charter comes into force, all the rights and obligations of the Federal Republic of Yugoslavia shall be transferred to Serbia and Montenegro in accordance with the Constitutional Charter."

The provision relating to the implementation of the laws of the Federal Republic of Yugoslavia (Article 64) regulates that:

"The laws of the Federal Republic of Yugoslavia regarding the affairs of Serbia and Montenegro shall be applied as the laws of Serbia and Montenegro.

The laws of the Federal Republic of Yugoslavia, except for the laws that the Assembly of a member State decides not to be applicable, shall be applied as the laws of the member States pending the adoption of new regulations by the member States."

The Charter provides for the existence of a Ministry of Defence of Serbia and Montenegro. Its Article 41, which refers to the Minister of Defence, specifies that the Minister "shall coordinate and implement the defined defence policy and shall run the Armed Forces in accordance with the law and the powers vested in the Supreme Defence Council".

Within the competences of the Parliament of Serbia and Montenegro (Article 19), the Charter provides for the passing of laws and other acts on policies of immigration and asylum, visa system and integrated border management in accordance with the standards of the European Union.

Also, the Law on the Implementation of the Constitutional Charter of the State Union of Serbia and Montenegro, in its article 18 subparagraph 4.2, provides that the Ministry of Human and Minority Rights of Serbia and Montenegro shall take over the responsibilities of the Federal Ministry of the Interior that concern foreigners, migration, immigration and asylum, passports, visa regime, border and integrated border management.

On the basis of the above-mentioned principles of organization and competencies of the State Union of Serbia and Montenegro and having regard to the provisions of the Law on the Implementation of the Constitutional Charter (Article 16 thereof) stating that in addition to other governmental agencies, the Federal Ministry of the Interior, the Federal Ministry of Justice and many other government authorities shall cease to operate on the date of the entry into force of the Charter, it transpires that the competencies related to counter-terrorism have been largely transferred to the authorities in the member States. In this context, the two Ministries of the Interior in the Republics of Serbia and Montenegro closely coordinate the activities aimed at combating terrorism under the obligations undertaken in the Cooperation Protocols, or through the National INTERPOL Office in Belgrade. The same applies to the competencies concerning the Commission on the Prevention of Money Laundering (see reply under 1.8 below). As far as criminal proceedings are concerned, the relevant laws in the member States govern all these matters.

1.3. The CTC would welcome receiving a progress report on the amendments to the laws proposed by the Government of Serbia and Montenegro, referred to at page 3 of the supplementary report to bring them in line with the Resolution and other relevant international conventions.

See reply under 1.4 below.

1.4. The CTC notes the proposed article 155g on the 'financing of terrorism' in the Bill on the Amendment of the Criminal Code of the Government of Serbia and Montenegro, submitted for enactment to the Federal Assembly which, as explained at page 3 of the supplementary report, criminalizes the financing of the commission of criminal acts referred to in articles 155a, 155b or 155v. In that regard, the CTC would like to emphasise that the effective implementation of sub-paragraph 1(b) of the Resolution requires Member States to have in place provisions specifically criminalizing the wilful provision or collection of funds by its nationals or in its territory by any person, by any means, direct or indirect, with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts. For an act to constitute an offence as described above it is not necessary that the funds be actually used to carry out a terrorist offence (see article 2, paragraph 3, of the International Convention for the Suppression of the Financing of Terrorism). The acts sought to be criminalized are thus capable of being committed even if:

- **The only related terrorist act takes place or is intended to take place outside the country;**
- **No related terrorist act actually occurs or is attempted;**
- **No tranfer of funds from one country to another takes place; or**
- **The funds are legal in origin.**

Could the Government of Serbia and Montenegro therefore explain to the CTC how it intends giving effect to articles 2(3) of the International Convention for the Suppression of the Financing of Terrorism, which it ratified on 1 July 2002, as indicated at page 12 of the supplementary report.

The Ministry of Justice of the Republic of Serbia would like to point out that article 2(3) of the International Convention for the Suppression of the Financing of Terrorism has not been incorporated into national law. The Ministry of Justice and the Council of Europe have signed a Cooperation Protocol envisaging that the criminal legislation of the Republic of Serbia including its Criminal Code, Code of Criminal Procedure and the Law on the Execution of Penal Sanctions, should be aligned with European and international standards in the field.

In sofar as Montenegro is concerned, its Criminal Code (Official Gazette of the Republic of Montenegro, No. 70/2003) makes criminal the act of financing terrorism as a crime against humanity and other acts against the property protected under international law. This section of the Code reads as follows:

"Article 449 Financing terrorism

1) Whoever provides or raises funds to finance the commission of criminal acts under articles 447 and 448 shall be imprisoned for one to ten years.

2) The funds referred to in paragraph 1 above shall be confiscated."

The criminal acts under articles 447-448 are

"International terrorism Article 447

1) Whoever, intending to harm a foreign country or an international organisation, kidnaps a person or commits any other act of violence, causes a bomb explosion or fire or undertakes any other action endangering the general public or threatens to use a nuclear, chemical, bacteriological or another similar weapon shall be imprisoned from three to fifteen years.

2) In case the acts referred to in paragraph 1 above have resulted in the death of one or more persons, the offender shall be imprisoned from five to fifteen years.

3) If in the commission of any of the acts referred to in paragraph 1 above, the perpetrator has killed another person wilfully, he/she shall be imprisoned for at least ten years or receive a custodial sentence of thirty years.

Taking of hostages Article 448

1) A person who abducts another person and threatens to kill, hurt or hold him/her hostage with the intent to force a country or an international organisation to take action or not to take action shall be imprisoned between two and ten years.

2) The offender referred to in paragraph 1 above who voluntarily frees the captive, even though the aim of the hostage taking has not been achieved, may receive a lighter sentence.

3) If as a result of any of the acts referred to in paragraph 1 above the captive dies, the captor shall be imprisoned for three to fifteen years.

4) If the captor has wilfully killed his captive as a result of any of the acts referred to in paragraph 1 above, he/she shall get a minimum sentence of ten years' imprisonment or thirty years in prison."

1.5. The CTC would welcome receiving a progress report as regards the enactment of the Bill on the Amendment of the Criminal Code submitted to the Federal Assembly, as indicated at page 3 of the supplementary report, including an outline of the provisions in this Bill corresponding to the obligations outlined in the international instruments to which the Government of Serbia and Montenegro is already a party.

After the Constitutional Charter was adopted, the competence in the field of criminal justice legislation has been transferred to the member States, i.e. the Republic of Serbia and the Republic of Montenegro.

1.6. The CTC notes that article 82 of the new Law on Criminal Procedures provides for a possible temporary seizure of 'items' which may be used in criminal proceedings, as referred to at page 4 of the first report. The CTC also notes that article 234 of the same new law authorizes the investigating judge to order, at the request of the Prosecutor, a financial institution to provide information about business and personal accounts, as set out in the explanation provided at page 4 of the supplementary report. The CTC however notes that the Government of Serbia and Montenegro does not have a specific law which serves as the legal basis for the freezing of accounts held in banks or other financial institutions, as referred to at page 4 of the first report and page 3 of the supplementary report. As the effective implementation of sub-paragraph 1(c) of the Resolution requires Member States to freeze without delay the funds of persons who commit, attempt to commit, participate in or facilitate the commission of terrorist acts, the CTC would, therefore, be grateful for a progress report from the Government of Serbia and Montenegro in relation to the steps which it has taken, or proposes taking, in order to give effect to this subparagraph of the Resolution.

See the replies under 1.4 above and 1.8 below.

1.7. Could the Government of Serbia and Montenegro provide the CTC with an outline of the legislative and regulatory provisions contained in the law on Donations and Humanitarian Aid, referred to at page 4 of the supplementary report and aimed at regulating alternative financial remittance systems; in particular those regulating financial transactions performed by intermediaries outside the main financial sector.

According to the information furnished by the Serbian National Bank (central bank), neither the said Law nor any by-laws contain provisions to that effect. Enactment of such legislation was formerly the responsibility of the now defunct Federal Ministry of Finance. The Ministry of Foreign Economic Relations in the Republic of Serbia, on its part, drew up a draft Law during the course of 2002. The Law was meant to regulate ways in which donations are given, received and used, as well as how donations are overseen and similar matters. The National Bank judges that provisions governing major issues related to the efforts to counter terrorism could be inserted into the draft Law.

1.8. Could the Government of Serbia and Montenegro outline for the CTC the domestic legislative and regulatory measures contained in the Law on Money Laundering, which became applicable as of 1 July 2002, in relation to obligations concerning the reporting of suspicious financial transactions, as well as the measures to be undertaken against the persons engaged in such transactions, as referred to at page 4 of the supplementary report.

The Law on the Prevention of Money Laundering was adopted on 27 September 2001 and became applicable, as state above, as of 1 July 2002. This date was also the date on which the Federal

Commission charged with the task of suppressing money laundering began its work. The Law was a federal-level law.

After the adoption of the Constitutional Charter, the Commission has become a body of the Republic of Serbia and money laundering responsibilities have passed on to the Serbian Ministry of Finance and the Economy. Thus, the Commission has been turned into the Office for the Prevention of Money Laundering Operations with the federal Money Laundering Law being applied as a Republican legislation.

For its part, the Republic of Montenegro enacted its relevant law on 24 September 2003, so that a Financial Intelligence Agency for the Republic is being put in place at the moment.

Under the Money Laundering Law, applied as a regulation of the Republic of Serbia, taxpayers are obliged to report to the Office for the Prevention of Money Laundering Operations any cash transactions (CTRs) in excess of 600,000 local currency. The amount was equivalent of 10,000 euros at the exchange rate applicable at the time the Law was passed. They are also obligated, under the same law, to notify any suspicious transactions (STRs) irrespective of the amount involved. The Law says that the taxpayer shall designate a person who shall be liable in case STR turns out to be a money laundering operation. Under article 15 of the Law, the authorized person shall be under the obligation to order temporary suspension of a transaction believed to be a money laundering scheme for a maximum period of 48 hours. The authorized person shall bring this to the attention of the Office for the Prevention of Money Laundering Operations. Sub-paragraph 2 of the same article envisages that the Office shall inform the competent judicial, inspection and law enforcement authorities of the suspension of the transaction, so that they could take measures within their responsibility. Furthermore, under article 18 the Office may request data and information that are deemed necessary for the detection of money laundering from other government bodies and organizations.

Article 27 of the same Law defines money laundering as a criminal offence carrying a prison sentence, while the money or the proceeds of the operation are seized from the offender. Article 28 thereof provides for punishment of white-collar crime. The punishment is imposed on both the juridical person and the responsible, authorized physical person within the juridical person concerned.

By-laws determine ways and periods for notification of the Office for the Prevention of Money Laundering Operations and methodologies for internal checks and balances in the transactions performed by the taxpayers.

For the purpose of detecting in time all money laundering-related transactions, the Office has listed indicators of such transactions. They have been made known to the banks, stockbrokers and insurance agents to increase their effectiveness in detecting STRs.

In addition, the Office undertakes within its own competencies certain measures designed to combat and suppress the financing of terrorism and organised crime. To this end, the Office has been working together with the Anti-Organised Crime Office and the Association of Banks and Other Financial Institutions. The Office keeps them regularly up to date with the lists of terrorists and terrorist

organizations subject to UN sanctions under UNSC Resolutions 1267,1333,1363,1373,1390,1452 and 1455, relating to the efforts to deal with terrorism. The Banks' Association is duty-bound to transmit these lists and their updated versions further to commercial banks. In case a person or an organisation listed in SCR 1267 appears as a party engaged in a transaction performed via the bank or institution concerned, the transaction should be suspended immediately and funds frozen in the account, in accordance with the instructions received from the Office. These actions should be communicated to the Office. The latter, following the normal procedure, notifies the Serbian Ministry of the Interior, which investigates the matter further.

The Office has prepared a draft Money Laundering Law which has been submitted for adoption. The draft has been fully consistent with the international standards applicable to money laundering. It widens the competencies of the Office and, *inter alia*, empowers the Office to order the taxpayer to suspend a transaction if it is believed to be money laundering. The period of suspension has also been extended to 72 hours. The threatened penalties have been more severe in comparison with the law that is currently being applied.

Under the Criminal Code of the Republic of Montenegro, money laundering has been criminalized in the following manner:

"Article 268 Money laundering

1) He who by way of bank, money or any other business transactions hides how the money or other assets have been acquired knowing that they have been acquired by criminal activity, shall be imprisoned for six months to five years.

2) In case the person referred to in paragraph 1 above is at the same time the perpetrator and accomplice to a criminal act bringing money or any other material benefits as referred to in paragraph 1 above, he/she shall be imprisoned between one and eight years.

3) In case the monies and assets referred to in paragraphs 1 and 2 above are so huge, the person shall receive a custodial sentence ranging from one to ten years.

4) In cases where several persons have conspired to commit an act referred to in paragraphs 1 and 2 above, they shall be imprisoned from three to twelve years.

5) In cases where the person has committed any of the acts referred to in paragraphs 1 and 2 above involuntarily, he/she shall be imprisoned up to three years.

6) The monies and assets referred to in paragraphs 1,2 and 3 above shall be seized."

In addition, it should be pointed out that the Assembly of the Republic of Montenegro adopted the Law on preventing money laundering (Official Gazette of the Republic of Montenegro, No. 55/2003) in September 2003. The Law specifies measures and the activities to be taken to detect and prevent money laundering. The Law also stipulates the tasks and obligations of organisations; the tasks and

powers of the administrative authority in charge of preventing money laundering; the obligations of government authorities, of organisations having public authority, lawyers, law offices, audit firms, independent auditors and legal or physical persons providing accountancy or any other similar services; protection and safekeeping of information and keeping of records; surveillance and punitive sanctions provisions.

As regards the obligation to report suspect financial transactions, this Law stipulates as follows:

"Notification
Article 13

The organisation shall provide to the administrative authority responsible for the prevention of money laundering information referred to in article 43, paragraph 1, subparagraphs 1,2,3,6,7,8,9,10 and 11 of the Law on any transaction in excess of 15,000 euros as well as on multiple interrelated transactions of a combined value in excess of 15,000 euros.

The organisation shall provide the administrative authority concerned with the information referred to in article 43, paragraph 1 of this Law whenever there is reason to believe that the transaction is money laundering or that the person is involved in money laundering, in particular:

1) if the pattern or the amount of the transaction is out of the ordinary;

2) if the transaction has no clear financial purpose;

3) if the transaction is inconsistent with the financial situation or business activity of the party;

4) if a business relationship is established with a party in the country which does not apply the standards necessary for the prevention and detection of money laundering.

The manner in which the information referred to in paragraphs 1 and 2 of this article is provided shall be regulated by the administrative authority charged with preventing money- laundering operations.

The administrative authority dealing with money laundering may spell out conditions in which the parties, the transactions of which are ordinarily in excess of 15,000 euros, shall not be required to provide information on transactions referred to in paragraph 1 of this Article."

"Article 14

In cases referred to in article 13 of this Law, the organisation shall be required to provide the administrative authority with information immediately after the transaction has been performed.

In cases referred to in article 13, paragraph 2 of this Law, the organisation shall be required to provide the administrative authority with information before the transaction has been performed, along with the period of time within which the transaction is to be completed.

The information referred to in paragraph 2 of this Article may be provided also over the telephone, but has to be provided to the administrative authority concerned in writing, not later than the next working day.

If, due to the nature of the transaction or because the transaction has not been completed in full or for any other justified reason, the organisation is not able to comply with paragraph 2 of this Article in cases referred to in article 13, paragraph 2 of this Law, it is required to provide the administrative authority with information immediately after it has become aware of a suspected money laundering. In its notification, the organisation shall explain the reasons why it has not complied with paragraph 2 of this Article."

As to measures taken against persons involved in suspect financial transactions, the Law contains the following provisions:

"Notification of suspect transactions
Article 26

If the administrative authority against money laundering, on the basis of the data, information and documents on the transaction or person provided in accordance with the provisions of this Law, is satisfied that there is reason to believe that the transaction is money laundering, it shall notify the competent authorities and submit the necessary documentation.

In its notification submitted in pursuance of paragraph 2 of this Article, the administrative authority shall not provide the details on the authorized person or any other employee from the organisation providing the information referred to in article 13, paragraph 3 of this Law, unless the organisation or its employee is suspected of committing the criminal act of money laundering, or if the competent court has ordered the submission of such information.

The administrative authority shall be required to provide information to the competent government authorities in writing even in cases where it is satisfied, on the basis of the data, information and documents provided under the provisions of this Law, that there is suspicion that another criminal act has been committed in connection with the transaction or the person concerned."

The Law on preventing money laundering provides for the establishment of an administrative authority tasked to prevent money laundering., Such an authority has been set up under the Regulation on Amendments to the Regulation on the Organisation and Method of Work of Government Administration (Official Gazette of the Republic of Montenegro, No. 67/2003). It is called the Department of Money Laundering Prevention. It has been assigned specific tasks that within its remit.

1.9. Could the Government of Serbia and Montenegro outline for the CTC the existing domestic legal provisions controlling the import and export of explosives, arms and ammunition which are not intended for the use by armed forces, as indicated at page 5 of the supplementary report?

The legal provisions controlling the import and export of weapons and *materiel*, explosives, arms and ammunition are as follows:

1. Law on the manufacture of and trade in arms and military equipment (Official Gazette of the Federal Republic of Yugoslavia, 1996), as subsequently amended;

2. Law on the transport of hazardous stuffs (Official Gazette of the Socialist Federal Republic of Yugoslavia, 1990), as subsequently amended;

3. Law on the crossing of the State border and movements in the border zone (Official Gazette of the Socialist Federal Republic of Yugoslavia, 1979), as subsequently amended;

4. Law on foreign trade operations (Official Gazette of the Federal Republic of Yugoslavia, 1992), as subsequently amended;

5. Customs Law (Official Journal of the Republic of Serbia, 2003); and

6. Law on arms and ammunition (Official Journal of the Republic of Serbia, 1992), as subsequently amended.

In April 2003 a new draft text of a Bill on foreign sales of arms, military equipment and dual-purpose products including strategic dual-purpose goods saw the light of day. The Bill did not include the manufacture of weapons and military equipment, as this field of activity will be dealt with in another law.

The Bill, among other things, incorporated a major advice that the Ministry of Defence should not be in charge of licensing insofar as weapons and military equipment are concerned. Licensing should be the responsibility of another departmental authority at the union level. The Ministry of International Economic Relations of Serbia and Montenegro has been recommended as such an authority.

Other procedures that have previously been of an internal nature have been introduced and it has been recommended that other regulations and legal acts in the field should be harmonized with EU regulations.

In the case of trade in weapons, military equipment and dual-purpose products, both the Ministries of Foreign Affairs and of Defence of the Union of Serbia and Montenegro, under the Bill, give their opinion to the Ministry of International Economic Relations on each license applicant. The Ministry of Foreign Affairs may decline to approve the liecence, but if the Ministry of Defence does it too, the

licence will not be issued. If one of the two Ministries objects to the licensing, final decision will be taken by the Council of Ministers (Government) of Serbia and Montenegro.

In deciding on whether to approve a licence, the Ministry of Foreign Affairs will take into account any sanctions being instituted by the Security Council of the United Nations or OSCE recommendations, the international obligations undertaken by and the foreign-policy interests of Serbia and Montenegro, EU rules of conduct relating to the export of weapons and military equipment, as well as at the level of threat to and/or respect for human rights and fundamental freedoms in the country of end-use.

The Bill on foreign sales of arms, military equipment and dual-purpose products is currently being harmonized. Once it gets to be signed into a law, it will include all types of weapons.

1.10. The CTC notes that the Minister of the Interior of the Republic of Serbia carries out and supervises the effective implementation of laws and by-laws concerning the combating of terrorist activities in areas such as the manufacture and trade in arms, ammunition and explosives, as provided for at page 5 of the supplementary report. In that regard, the CTC would welcome being provided with a more detailed outline of the special Counter-Terrorism Law, as enacted and referred to at page 5 of the supplementary report. The CTC would also be grateful if it could be provided with a similar outline of the measures adopted by the Ministry of the Interior of the Republic of Montenegro, including an indication as to how the two Ministries of the Interior coordinate their work in this respect.

The Ministry of the Interior of the Republic of Montenegro, acting within its responsibilities for controlling the manufacture and trade in arms, ammunition and explosives, applies the following laws through its organizational units and officials:

The Law on the crossing of the State border and on movements in the border zone, Official Gazette of the Socialist Federal Republic of Yugoslavia Nos. 34/79, 56/80, 53/85 and Official Gazette of the Federal Republic of Yugoslavia Nos. 24/94 and 28/96;

The Law on the transport of hazardous stuffs, Official Gazette of the Socialist Federal Republic of Yugoslavia No. 27/90 and Official Gazette of the Federal Republic of Yugoslavia No. 28/96;

The Law on the manufacture and trade in arms and military equipment, Official Gazette of the Federal Republic of Yugoslavia No. 41/96;

The Law on explosives, inflammable liquids and gases, Official Gazette of the Socialist Republic of Montenegro Nos. 44/76, 49/79, 34/86, 11/88 and 29/89;

The Law on trade in explosives, Official Gazette of the Socialist Federal Republic of Yugoslavia No. 30/85;

The Regulation on the transport of arms and military equipment, Official Gazette of the Federal Republic of Yugoslavia No. 49/97;

The Rules concerning modes of transport of toxic chemicals by road, Official Gazette of the Socialist Federal Republic of Yugoslavia No. 82/90, and

The Rules concerning the carrying of toxic chemicals by sea and inland waterways, Official Gazette of the Socialist Federal Republic of Yugoslavia No. 12/97.

Controlling the manufacture and trade in explosives, arms and ammunition is the task entrusted to the Ministry's Inspection Office for the Protection from Fire, Explosions and Industrial Accidents which directly liaises with the Assistant Minister responsible for public security.

The Montenegrin Ministry of the Interior coordinates its activities aimed at countering the threat of terrorism with the Ministry of the Interior of the Republic of Serbia, based on the obligations undertaken by them under the Cooperation Protocol and via the INTERPOL Office in Belgrade.

1.11. The CTC would welcome a progress report in relation to the Draft Law on Asylum. If the law is already in force, could the Government of Serbia and Montenegro outline its final provisions regarding the conditions for denying asylum, referred to at page 9 of the supplementary report?

Redefining the relationship between the Republic of Serbia and the Republic of Montenegro and adoption of the Constitutional Charter has affected the procedure of passing the Asylum Law. Among other things, the Federal Ministry of the Interior, which was responsible for asylum seekers, has ceased to exist and its competencies have been redistributed. The task of drafting a new Asylum Law has been entrusted to an interdepartmental Working Group, composed of representatives from the Ministry of Foreign Affairs and the Ministry of Human and Minority Rights at the union level and the Ministries of the Interior in the union member States. The Group is working in cooperation with NGOs and UNHCR. It has produced the final draft that is now subject to discussion among experts. Consequently, it is expected that the Asylum Law will get through parliament and be adopted very soon.

1.12. Please indicate to the Committee whether the Law on Criminal Procedure, referred to at page 11 of the supplementary report, applies the principle *aut dedere aut judicare* in relation to the offences referred to in sub-paragraph 2(c) of the Resolution?

The *autdedere aut judicare* principle is applied in accordance with article 540 of the Code of Criminal Procedure.

In Chapter 33 of the Code, relating to the procedure for extradition of accused and convicted or sentenced persons, it is stipulated (article 540):

"(1) Preconditions for extradition shall be as follows:

1) The requested person is other than a Yugoslav citizen;

2) The extradition offence has not been committed in or against the Federal Republic of Yugoslavia or any of its citizens;

3) The extradition offence is made criminal both under national law and the law of the State where it has been committed;

4) No statutory limitations may be applicable to either prosecution or the execution of the penalty, or the offence may be amnestied under national law;

5) The requested foreign citizen has not already been convicted or acquitted of the same offence by a fully enforceable decision of a domestic court of law, unless conditions for a retrial as set out in the present Code have been met, or unless the foreigner has already been prosecuted for the same offence committed against the Federal Republic of Yugoslavia, or in the case of the foreigner facing charges for an offence committed against a Yugoslav citizen, a bond has been posted to ensure success of the compensation claim by the aggrieved party;

6) The identity of the requested person has been established beyond doubt;

7) Evidence is sufficient to believe that the requested person did the criminal offence indicated in the request, or a legally valid court decision was rendered in the case;

(2) A national law referred to in sub-paragraph 1.3 above shall mean a federal-level law or a law of a union member State where the court competent for deciding on the extradition request is located;

(3) Subject to sub-paragraphs 1.3,1.4 and 1.6 above, and unless the person has not been convicted by a domestic court, a foreigner or a Yugoslav citizen may be surrendered to an international court recognized by the Federal Republic of Yugoslavia under an approved international treaty.

The Ministry of Justice of the Republic of Serbia draws attention that the forthcoming amendment of the Code of Criminal Procedure would bring it into conformity with the Extradition Convention of the Council of Europe. Furthermore, the legal and technical text of the draft Code will be refined to take into account the Constitutional Charter and the Implementation Law as well s the fact that the Code has become the responsibility of the Republic of Serbia.

Regarding this principle, it should be observed that the final and transitional provisions of the Montenegrin Code of Criminal Procedure (Official Gazette of the Republic of Montenegro, No. 71/2003), *inter alia*, state:

Article 537

The present Code shall supersede the Law on Criminal Procedure (Official Gazette of the Socialist Federal republic of Yugoslavia, Nos. 4/77, 14/85, 74/87, 57/89 and 3/90 and Official Gazette of the Federal republic of Yugoslavia, Nos. 27/92 and 24/94), except for the provisions of chapters XXX and XXXI which shall be applied pending the adoption of a separate law".

Chapter XXXI concerns extradition procedure for indicted or sentenced/convicted persons which contains, among other, the following provisions:

"Article 524

Extradition of indicted or convicted persons shall be sought and shall be carried out in accordance with the provisions of this Law, unless otherwise provided for under an international treaty.

Article 525

(1) Preconditions for extradition shall be as follows:

1) The requested person is other than a citizen of the Socialist Federal Republic of Yugoslavia;

2) The extradition offence has not been committed in or against the Socialist Federal Republic of Yugoslavia or any of its citizens;

3) The extradition offence is made criminal both under national law and the law of the State where it has been committed;

4) No statutory limitations may be applicable under national law to either prosecution or the execution of the penalty before the foreign citizen is arrested or the suspect is interrogated;

5) The requested foreign citizen has not already been convicted or acquitted of the same offence by a fully enforceable decision of a domestic court of law, unless conditions for a retrial as set out in the present Code have been met, or unless the foreigner has already been prosecuted for the same offence committed against Yugoslavia, or in the case of the foreigner facing charges for an offence committed against a Yugoslav citizen, a bond has been posted to ensure success of the compensation claim by the aggrieved party;

6) The identity of the requested person has been established beyond doubt;

7) Evidence is sufficient to believe that the requested person did the criminal offence indicated in the request, or a legally valid court decision was rendered in the case;

(2) A national law referred to in sub-paragraph 1.3 above shall mean a federal-level law or a law of a constituent Republic or an Autonomous Province where the court competent for deciding on the extradition request is located;

Article 527

1) The Federal Ministry for Foreign Affairs shall forward the extradition request via the Republic or provincial administrative judicial authority to the investigating judge where the foreigner resides or where he/she may find himself/herself.

Article 531

Where the competent court finds that the legal prerequisites for the extradition of foreign citizens have been met (article 525), it shall do so in a written decision.

Article 532

Where the court decides on the appeal and rules that the legal prerequisites have been met for a foreign citizen to be handed over, and unless an appeal has not been lodged against the first-instance decision, the case shall be referred to the head of the federal authority in charge of the judiciary, who shall be the one to decide to ahead with extradition or not.

Article 533

The head of the federal body responsible for the judiciary shall make a decision to extradite or not to extradite.

Article 535

1. The requesting foreign country shall be notified of the extradition decision through diplomatic channels.

2. The decision allowing extradition shall be transmitted to the Federal Secretariat of the Interior which shall direct the foreigner to be escorted to the border, where he/she shall be turned over to the officials of the requesting State at a mutually agreed place.

Article 536

1. In case extradition of the same person is requested by several countries for the same criminal offence, the request made by the State of his/her nationality shall be given priority. If his/her State is not requesting extradition, priority shall be given to the request made by the State where the criminal offence has taken place. In the case of the criminal offence being committed in more than one country or where there is no knowledge where it has occurred, the request made by the State which had requested the extradition first shall have priority.

2. In case extradition of the same person is requested by more than one foreign country for various criminal offences, priority shall be accorded to the request of the country of his/her nationality. If the latter has not requested his/her extradition, the request of the country where the most serious criminal offence has occurred shall be given priority, or to the request of the State which has requested extradition first in the case of the offences of the same gravity.

Article 537

1) In case a person being prosecuted in Yugoslavia or who has been convicted by a domestic court is in a foreign country, the head of the federal authority in charge of the judiciary may submit an extradition request.

Article 540

1. In case extradition is requested between two foreign countries and the requested person is to escorted via the Socialist Federal Republic of Yugoslavia, escorting may be allowed by the head of the federal authority responsible for the justice system on request from the interested country provided the requested person is not a national of the Socialist Federal Republic of Yugoslavia and the extradition is not related to a political or military criminal offence.

1.13. The CTC notes that the Government of Serbia and Montenegro applies the principle of reciprocity in relation to the execution of the ruling of a foreign country in criminal proceedings, as referred to at page 11 of the supplementary report. Please outline the legal procedures which the courts in Serbia and Montenegro use to give effect to that principle in cases before them.

The legal procedures concerning the execution of court rulings of a foreign country have been set out in article 534 of the Code of Criminal Procedure.

Article 534 reads:

"(1) Domestic courts shall not act upon the request of a foreign body for the execution of a foreign judgment reached in criminal proceedings;

(2) Without prejudice to sub-paragraph (1) above, a domestic court shall execute an enforceable ruling of a foreign court in relation to a sanction, if such a provision is made under an international treaty, or if the reciprocity principle is applied between the two countries, or if the domestic court has also imposed the sanction under the criminal legislation of the Federal Republic of Yugoslavia;

(3) The competent court shall sit in camera as referred to in article 24, paragraph 6 of the Code. The State Prosecutor and the defence counsel shall be informed of the sitting.

(4) The court competent to hear the case shall be the court where the convicted person had his/her last registered address in the Federal Republic of Yugoslavia. In case the convicted person had no habitual residence in the Federal Republic of Yugoslavia, the competent court shall be the court in his/her place of birth. In case the convicted or sentenced person has had no habitual residence or was not born in the Federal Republic of Yugoslavia, the Federal Court shall designate a competent court before which he/she will appear;

(5) A de facto competent court is the court which has been designated as such by the law of either Republic, whereas the military personnel shall have their cases tried before a military court in the first instance;

(6) In rendering its ruling referred to in sub-paragraph (3) above, the court shall enunciate all the counts and cite the name of the court as indicated in the foreign ruling, and it shall impose its sanction. The explanation of the ruling shall contain the reasons which have made the court impose the sanction;

(7) Any of the following persons may appeal against the ruling: the Prosecutor, the convicted person or his/her counsel or the persons referred to in article 346, paragraph 2 of the Code;

(8) If a foreign citizen convicted by a domestic court or a person authorized by a contract applies to a court in the first instance for leave to transfer the convicted person to his/her country to serve his/her sentence there, the first-instance court shall act under the terms of an international treaty or on the basis of reciprocity.

The Official Gazette of the Federal Republic of Yugoslavia - International Treaties, No. 13/2002 of 20 December 2002 published the Law ratifying the European Convention on the International Validity of Criminal Judgments as amended. However, no instrument of ratification on the Convention has been deposited yet. Furthermore, national legislation needs to be harmonized with this Convention of the Council of Europe as well.

Regarding the previously quoted article 573 of the Code of Criminal Procedure, it should be noted in relation to the questions under this item that chapter XXX lays out the procedure for international legal assistance in the implementation of international treaties related to criminal justice cases. The procedure, *inter alia*, implies as follows:

"Article 517

International legal assistance in criminal matters shall be rendered under this Law, unless otherwise agreed to by an international treaty.

Article 518

1. Requests for legal assistance in criminal cases by domestic courts shall be submitted to foreign authorities through diplomatic channels. The same channels shall be used to send the requests of foreign authorities for legal assistance to domestic courts.

2. A regulation of the Republic or the Autonomous Province shall determine which courts shall be competent for rendering international legal assistance in criminal matters. A court of law may be designated to render such assistance on behalf of all the courts in the same area.

Article 519

1) The Federal Secretariat for Foreign Affairs shall refer the request of a foreign authority for legal assistance to the Republic or provincial administrative authority responsible for the judicial system. The latter shall sent it on to the court where the person to be served the document on resides or where such person should be questioned or confronted or where another investigative action should be taken.

2) The court shall decide on the admissibility and execution of the action being requested by the foreign authorities under national legislation.

Article 522

1. In case a foreigner resident in another country has committed a criminal offence in the Socialist Federal Republic of Yugoslavia, all files related to the prosecution and trial of the person may be handed over, outside the terms of article 525 of the Law, to that country, if it raises no objection.

2. The relevant decision shall be made by the competent public prosecutor prior to the order to start investigation. Once the investigation has been underway, the decision shall be in the hands of an investigating judge upon the recommendation of the prosecutor, or the panel of judges if the case is in the stage prior to the main hearing.

3. Cases may be transferred if they involve criminal offences that carry up to ten years' imprisonment or endanger public transport.

4. In the case of a national of the Socialist Federal Republic of Yugoslavia being the aggrieved party, transfer shall not be allowed if he/she objects to it, unless a bond has been posted to ensure the success of his/her compensation claim.

5. If the suspected person is in custody, the foreign country shall be requested to inform as soon as possible, and not later than fifteen days, whether it shall take on prosecution or not.

Article 523

1. The requesting State shall submit its request for the Socialist Federal Republic of Yugoslavia to take on the prosecution of a Yugoslav national or a person resident in the Socialist Federal Republic of Yugoslavia for a criminal offence committed in a foreign country to the prosecutor where the person is resident. The request shall be accompanied by relevant documents.

2. The requesting State shall be informed of the refusal to accept prosecution, or of the legally valid decision rendered in a criminal case.

1.14. The CTC would welcome receiving a report concerning the progress achieved by the Counter-Terrorism Council, referred to at page 12 of the supplementary report; as well as an account of the work undertaken in the fight against terrorism in the context of the Constitutional Charter.

Ever since its inception the (Federal) Government of the Federal Republic of Yugoslavia on 1 August 2002, the Counter-Terrorism Council, as an advisory body of the Federal Government, has reviewed, on a continuous basis, issues of relevance to the formulation and conduct of the policies in the field. These included the fight against terrorism, organisation, methods and ways and means of effectively dealing with terrorist activities, as well as other aspects of the international efforts to internationalize the struggle against terrorism, coordination of international and national concerns in combating this scourge. In this respect, it is worth noting that the work of the Council has been somewhat affected by the fact that relations between Serbia and Montenegro have been restructured, and that under the new Constitutional Charter and the related documents the Federal Ministry of the Interior has ceased to exist. (The Federal Interior Minister presided over the Council.) Consequently, the burden or responsibility in various fields has been shifted to the union member States, as explained in replies under other items contained in this report. Additionally, the Council has been particularly active in preparing reports under UNSC resolutions (supplementary report under resolution 1373 and a report under SCR 1455). Reconstitution of the Council, as a result of the changes to the organisation of government authorities, is currently underway.

1.15. The CTC would welcome receiving a progress report in relation to the ratification of the four remaining international instruments related to the prevention and suppression of terrorism to which the Government of Serbia and Montenegro is not as yet a party.

Serbia and Montenegro ratified the International Convention on Prevention of Terrorist Bomb Attacks on 16 December 2002, while the 1988 Convention for Suppression of Unlawful Acts against the Safety of Maritime Navigation was ratified by it on 5 March 2004. The ratification processes for the 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection and the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms are near completion.

1.16. The CTC notes the organisational chart of the Ministry of the Interior of the Republic of Serbia, provided at pages 13 and 14 of the supplementary report as well as in Enclosure 4. The CTC would be grateful if it could be provided with a similar organisational chart for the Republic of Montenegro.

Organisational chart for the Ministry of the Interior of the Republic of Montenegro, hereinafter referred to as MUP.

Tasks:

MUP carries out the tasks related to the security of the Republic within the government administration through:

- uncovering and preventing activities aimed at undermining and overthrowing the constitutional system;

- protecting life, personal safety and security of citizens;

- suppressing and discovering criminal offences, locating and arresting offenders and handing them over to the competent authorities;

- physical protection of personages and guarding of facilities of special significance, safety of traffic;

- protection and management of the border, controls at the border crossings, controlling movements and visits in the border zone;

- checking the movement and residence of foreigners;

- licences for possession and holding of weapons and ammunition, inspection of the manufacture and trade in explosives, inflammable liquids and gases;

- issuing citizenship documents, identification numbers, ID cards, passports, residence permits for citizens;

- deciding in the second instance on administrative matters concerning refugees; and

- performing other duties envisaged under the law.

The organisational set-up of MUP has been regulated by the Government of the Republic of Montenegro in accordance with the Rules governing its internal organisation and post schemes.

The MUP of Montenegro is organised and operates as:

Public Security Service;
State Security Service; and
Service for Legal, Technical and General Affairs.

In the field, police work is done by:

security centres (seven)
security departments (fourteen).

Each of the services has its subdivisions, sections, departments and other organisational units. Public Security Service is principally focused on policing and includes:

Criminal Police

Police

Special Anti-Terrorist Squad and

Special (Riot) Police Unit.

In the fight against terrorism, Montenegro's MUP uses the following units:

On the Criminal Police:

Section for the Suppression of Terrorism and Crimes Related to Arson, Bombings and Industrial Accidents, which is coordinated, organised and controlled through the chain of subordination;

Section for the Suppression of Terrorism and Crimes Related to Arson, Bombings and Industrial Accidents that exists at each of the 7 security centres in the field in order to ensure preemption and prevent criminal acts against general safety of people and property as well as to investigate these criminal acts and acts of terrorism;

Detective Inspectors, charged with suppressing crimes and criminality related to arson, bomb attacks and industrial accidents, who work in the security departments.

On the Anti-Terrorism Police Force:

One special anti-terrorist unit with a ramified command structure, teams and appropriate equipment;

One special police unit having a developed chain of command, sub-units and equipment that may be used against terrorists;

Crack police squads at the security centres that may be used as a back-up to counter-terrorism forces;

One demining team that may be deployed as technical experts to destroy bombs and other explosives in controlled explosion.

1.17. The CTC is aware that the Government of Serbia and Montenegro may have covered some or all of the points in the preceding paragraphs in reports or questionnaires submitted to other organisations involved in monitoring international standards. The CTC would be content to receive a copy of any such report or questionnaire as part of Serbia and Montenegro's response to these matters as well as details of any efforts to implement international best practice, codes and standards which are relevant to the implementation of Resolution 1373.

A copy of the report that Serbia and Montenegro has submitted regarding the implementation of SCR 1455* and a copy of its response to the questionnaire of the Council of Europe Committee of Experts on Counter-Terrorism are enclosed with this report.**

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* See S/AC.37/2003 (1455)/54.

** The response is filed with the Secretariat and is available for circulation.