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Letter dated 29 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/2003/458).

The Counter-Terrorism Committee has received the attached third report from Chile 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

Letter dated 11 July 2003 from the Permanent Representative of Chile to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: Spanish]

I have the honour to transmit to you herewith the second supplementary report of Chile, submitted pursuant to Security Council resolution 1373 (2001) in accordance with the request contained in your letter of 11 April 2003 (see enclosure).

I should be grateful if you could arrange for this report to be circulated as a document of the Security Council.

(*Signed*) Heraldo **Muñoz**
Ambassador
Permanent Representative

Enclosure

Second supplementary report submitted by Chile pursuant to Security Council resolution 1373 (2001)

[Original: Spanish]

1. Introduction

On 11 April 2003, the Counter-Terrorism Committee sent a letter to the Government of Chile expressing its thanks for the supplementary report submitted by Chile on 24 September 2002 in response to the Committee's request of 24 July 2002 pursuant to paragraph 6 of Security Council resolution 1373 (2001).

The Committee stated that its experts had given careful consideration to both Chile's supplementary report and its original report with regard to the measures taken by Chile to implement the resolution and the issues relating to assistance and guidance for implementing it.

In that connection, the Committee prepared further questions and comments for consideration by the Government of Chile with regard to the implementation of resolution 1373 (2001). Chile hereby submits its response to the Committee's new set of questions.

2. Implementation measures

1.2 Progress report on the enactment of the bill which establishes penalties for collecting or providing funds for terrorist acts; adaptation of domestic legislation to bring it into line with the International Convention for the Suppression of the Financing of Terrorism.

The ratification by Chile of the above-mentioned Convention requires the amendment of Chilean legislation on terrorism in order to define as specific offences the activities described in the Convention. To that end, a bill specifically designed to penalize the collection or provision of funds for terrorism has been sent to the National Congress.

The bill is currently before the Joint Committee[1] in the third and final phase of the legislative approval process stipulated by the Constitution. Therefore it is almost certain that it will be approved and enter into force no later than August 2003.

The bill imposes a penalty on anyone who solicits, collects or provides funds by any means, directly or indirectly, for use in the commission of any terrorist offence (as defined in Act No. 18,314 on counter-terrorism). The penalty for this offence is medium-term rigorous imprisonment in the minimum or medium degree (up to 3 years).

[1] At this stage the Senate and Chamber committees work together (as the Joint Committee) and resolve only the points of difference in the positions of the two Committees. In this case, there were only two such differences, which are of technical interest but do not involve substantive disagreements on criminal policy.

It should be noted that this offence is quite subsidiary in application. Under the Chilean criminal justice system, it would usually be appropriate to apply the penalty for the offence of unlawful terrorist association, which carries a heavier sentence, or, where appropriate, for the specific terrorist offence for which the person provided the funds and, is therefore regarded as an accessory before the fact or even, if aware of the specific offence for which the funds are provided, as a co-perpetrator; if none of these situations apply, the penalty for the financing offence in question would be applied or, if unlawful association were involved, the penalty for that offence would be applied.

1.3 The Counter-Terrorism Committee would appreciate a progress report on the enactment of the bill establishing the Financial Analysis and Intelligence Unit, which also introduces the concept of a suspicious financial operation or transaction.

On 12 June 2002, the executive branch introduced in the Chamber of Deputies a bill that, inter alia, extends the definition of the offence of money-laundering to include other underlying offences, such as those included in the act defining terrorist conduct, the act on the control of firearms and the legislation on child pornography and prostitution, and also amends the subjective elements of the definition of the offence in question. Under the new bill, the offence could be committed through negligence and not, as provided for by the previous text, simply where fraudulent intent is involved.

Following an exhaustive legislative approval process, the bill was adopted by the Chamber of Deputies in late 2002 and referred to the Senate for the second phase of the legislative approval process stipulated by the Constitution. It is currently before the Senate and has been approved in both general and specific terms. However, the Senate has made a number of recommendations with respect to the bill and it is hoped that, once they have been approved, the bill will be promulgated and published as an act of the Republic.

1.4 Does the bill establishing the Financial Analysis and Intelligence Unit impose a legal obligation on financial institutions and other intermediaries, such as lawyers, accountants and notaries, when engaged in brokering activities, to report suspicious transactions? The Committee would further appreciate receiving copies of the relevant provisions.

The bill establishing the Financial Analysis and Intelligence Unit and amending the offence of money-laundering requires all the following natural and legal persons to report to the Unit any suspicious acts, transactions or operations identified in the course of their activities:

– Banks and other financial institutions

– **Factoring firms**

– Leasing companies

– Foreign Investments Committee

– Foreign exchange firms and other entities authorized to handle foreign currency

– Credit card issuers and operators

– Currency and securities transfer and transport firms

– Stock exchanges

– Stockbrokers

– Securities agents

– Insurance companies

– Mutual fund administrators

– Operators of futures markets and options exchanges

– **Legal representatives of duty-free zones**

– Casinos, bingo halls and racetracks

– Customs agents

– Auction houses

– **Real estate agents**

– Notaries and registrars.[2]

In addition to establishing this obligation, the bill states that information provided in good faith by such persons absolves them of liability.

1.5 The Committee would be grateful to have an outline of the legal and other mechanisms available for regulating alternative money remittance.

In this respect, the Superintendency of Banks and Financial Institutions has published chapters 1 to 7 of the updated compilation of the regulations governing electronic transfer of information and funds relating to the provision of banking services and the carrying out of interbank transactions through the transmission of messages or instructions to a computer connected to information networks.

The services include not only electronic transfers of funds but other transactions as well. “Electronic transfer of funds” means transactions carried out by electronic means which result in debits or credits to accounts, such as the automatic transfer of funds by a client from one account to another, payment orders to credit third party accounts, use of debit cards, the withdrawal of funds by debiting current accounts, money transfers carried out using automated teller machines and so on. Detailed information on the specific regulations is attached.

1.6 Freezing of assets

A. Offence of money-laundering: provisions of Act No. 19,806 concerning the procedure for freezing assets

(1) Without prejudice to the applicability of the general rules on impoundment of objects and assets in connection with any terrorist offence, including unlawful association, as well as other offences under ordinary law,[3] the issue of the freezing of assets as it relates to the offence of laundering the proceeds of terrorism is addressed in the bill establishing the Financial Analysis and Intelligence Unit and amending the provisions of the Penal Code relating to money-laundering and in Act

[2] The entities in bold and underlined were included by the Senate.

[3] See section B on the general rules.

No. 19,366 on the traffic in narcotic drugs, as recently amended in that regard by Act No. 19,806.

(2) In general terms, it should be noted that the aforementioned bill, as well as the other rules alluded to, provide comprehensively for the freezing of assets with no restrictions on the items covered — in other words, they are not limited to assets or funds deposited in accounts — with the sole, constitutionally mandatory restriction that such a procedure requires judicial authorization.

(3) Below is an outline of the rules that, under the bill, would apply to the offence of money-laundering and are already largely applicable to other offences under the Chilean legal system:[4]

(a) Article 25 of the bill establishing the Financial Analysis and Intelligence Unit and amending the provisions of the Penal Code relating to money-laundering (*Official Gazette* No. 2975-07, second phase of the legislative approval process required under the Constitution) provides that all the rules contained in Act No. 19,366 on the illicit traffic in narcotic drugs and psychotropic substances and the provisions of any other act superseding or amending it that deal with the following matters shall be applied in respect of the offences described in articles 20 and 21 (laundering of proceeds from, inter alia, terrorism):

1. Investigation: in particular, collaboration by State agencies; the power of the Public Prosecutor's Office to institute proceedings outside the national territory or without the prior knowledge of the individual concerned and international cooperation in general; the lifting of banking secrecy; no charge for information required during the investigation; special investigative techniques, such as monitored delivery or transactions, the use of undercover agents and informers, the interception of communications and other technical methods; protection of individuals assisting the investigation, including disguising their identity and appearance, changing their identity, maintaining confidentiality regarding certain proceedings, records or documents as a protective measure where their safety is at risk, imposing penalties in case of violation and allowing them to testify in advance (…)

2. Precautionary measures and impoundment: option of ordering precautionary measures without first notifying the individual concerned, items susceptible to impoundment and confiscation and the intended use of the impounded property or proceeds therefrom.

(b) With respect to this issue, Act No. 19,366 on the illicit traffic in narcotic drugs and psychotropic substances, as amended by Act No. 19,806, provides that the authorities and the officials or employees of any of the State administrative services or of private-law entities in which the State or its institutions have a majority or equal stake or interest must actively collaborate with the Public Prosecutor's Office in the investigation of the offences the Act describes (article 16).

Article 16 goes on to state that the Public Prosecutor's Office may make enquiries and institute proceedings abroad with a view to obtaining information about the source or origin of the property, assets, money, profits, advantage or benefit referred to in article 12 and may request direct assistance from Chilean diplomatic missions and consular posts.

[4] See section B on the general rules.

The rule goes on to state that the Public Prosecutor's Office may request the judge to order the following precautionary measures without the need for prior notification of the individual concerned, before the investigation becomes official:

1. Prevent, for a maximum of sixty days, persons who, with good reason, are suspected at least of being linked to one of the acts referred to in article 12 of the Act (laundering of assets) from leaving the country. To that end, the restraint and the lifting of it must be communicated to the *Policía de Investigaciones* and the *Carabineros*. In any event, the order shall expire after sixty days by operation of law and the aforementioned police force must take official note of that fact;

2. Order any precautionary measure against property necessary to prevent the use, exploitation, benefit or allocation of any type of property, assets or cash deriving from the offences forming the basis of the proceedings. To that end, and without prejudice to the other powers conferred by law, the judge may, inter alia, issue a restraining order against the conclusion of certain deeds and contracts and the recording thereof in any type of register; order the retention in banks or other financial bodies of deposits of any type; block transactions involving shares, bonds or debentures; and, in general, prevent unlawful proceeds from being converted in such a way that their criminal origins are concealed or disguised.

Lastly, article 16 of Act No. 19,366 also provides that, with the authorization of the judge responsible for procedural safeguards (*juez de garantía*), to be granted in accordance with article 236 of the Code of Penal Procedure, the Public Prosecutor's Office may take the following steps without first notifying the individual concerned:

– Order the handing over of information or copies of documents relating to current accounts, deposits or other operations subject to secrecy or confidentiality, belonging to natural or legal persons or groups under investigation. Banks and other entities and natural persons authorized or empowered to operate in the financial, securities, insurance and exchange markets must provide that information promptly (…).

B. General rules currently in force concerning the impoundment and preservation of objects of all kinds (including all types of assets) in connection with proceedings for any serious or ordinary offence (Code of Penal Procedure of 2000)

1. Without prejudice to the special rules that apply to money-laundering, as presented in section A, it should be recalled that the Chilean legal system currently provides — with judicial authorization — for the freezing of funds or assets of all kinds in connection with any serious or ordinary offence. The legal concept of acting as accessory after the fact, in this case in relation to a terrorist offence, by profiting from its effects (as defined in article 17, No. 1, of the Penal Code), allows for the application of such measures in cases involving the laundering of proceeds of terrorist offences.

2. The relevant rules are to be found in the Code of Penal Procedure of 2000 and the General Banking Law (Ministry of Finance Decree-Law DFL No. 3 of 1997). The particular measure permitting the freezing of assets is impoundment.

3. The first of these provisions is in article 187 of the Code of Penal Procedure of 2000, which reads as follows:

> "Article 187. *Objects, documents and instruments*. Objects, documents and instruments of any kind that appear to have been used or to have been intended for use in the commission of the act under investigation, or those that arise from that act, or those that might serve as evidence, as well as those found at the scene of the incident referred to in paragraph (c) of article 83, shall be collected, identified and kept under seal. In all cases, a record shall be made of the procedure, in accordance with the usual rules.[5]
>
> "If the objects, documents or instruments are found in the possession of the accused or in that of another person, they shall be impounded in accordance with this chapter. However, objects, documents and instruments found in the possession of an accused who is detained in accordance with article 83 (b), may be impounded immediately."

From the provisions of article 220 of the Code of Penal Procedure of 2000, which specifically excludes certain items from the impoundment procedure, it is clear that impoundment does apply to funds, assets and economic resources of all kinds. As can be seen below, the only objects that the Chilean legal system excludes are those whose impoundment might compromise the right to a defence or the family ties, privacy or honour of the individual. Article 220 of the Code of Penal Procedure of 2000 reads as follows:

> "Article 220. *Objects and documents not subject to impoundment*. No order may be given to impound or require the handing over, as provided in article 217, second paragraph, of:
>
> "(a) Communications between the accused and persons who may refuse to testify because they are related to the accused or by virtue of the provisions of article 303;
>
> "(b) Notes that persons mentioned in item (a) above may have taken down about communications from the accused or about any circumstance regarding which they have the right to refuse to testify; and
>
> "(c) Other objects and documents, including the results of examinations or diagnostic tests related to the health of the accused, to which, by their nature, the right not to testify applies.
>
> "(…)"

The impoundment procedure described in article 187 above, which, as mentioned, includes the freezing of current accounts or funds in general, is governed by article 217 of the Code of Penal Procedure of 2000, which states:

> "Article 217. *Impoundment of objects and documents*. The objects and documents related to the act under investigation, those that may be subject to the penalty of confiscation and those that might serve as evidence, shall be impounded by court order at the request of the prosecutor, when the person in whose possession they are found does not hand them over voluntarily or if the requirement that they should be handed over voluntarily would jeopardize the outcome of the investigation.

[5] Note that the rule expressly refers to objects of any kind.

> "If the objects and documents are found in the possession of a person other than the accused, instead of ordering their impoundment, or before proceeding to impoundment, the judge may order that person to hand them over. In such a case, the enforcement measures applicable to witnesses shall obtain. However, such an order cannot be given to persons who are permitted by law to refuse to testify.
>
> "When the information available supports a reasonable presumption that the objects and documents are to be found in a place of the sort mentioned in article 205, the procedure described in that article shall be followed."

Article 188, first paragraph, of the Code of Penal Procedure of 2000 provides, in relation to the preservation of property, that items collected during the course of the investigation shall be kept in the custody of the Public Prosecutor's Office, which must take the measures necessary to prevent any deterioration.

Lastly, the Code of Penal Procedure of 2000 contains a rule of considerable practical scope whereby even objects unrelated to the act under investigation may be impounded. The article reads as follows:

> "Article 215. *Objects and documents unrelated to the act under investigation.* If, during the inventory, objects or documents are discovered that suggest the existence of a punishable act different from that which formed the basis of the case from which the order arose, they may be impounded by court order. Such objects and documents shall be kept by the prosecutor's office."

4. Also relevant are some of the specific rules contained in the General Banking Law (Ministry of Finance Decree-Law DFL No. 3 of 1997) that constitute exceptions to the rule of banking secrecy, in view of the overriding public interest that judicial proceedings entail.

To begin with, the Law establishes a general duty on the part of public officials responsible for the oversight of banks and financial institutions to report crimes. Article 10 of the Law provides that the Superintendent of Banks and Financial Institutions must report to the Public Prosecutor's Office actions that appear to be criminal of which he learns in the course of exercising his oversight function at any institution under his supervision.

With specific reference to banking secrecy, exception is expressly made for cases that are the subject of an investigation in connection with judicial proceedings. Article 154 of the Law, after providing for secrecy or confidentiality for deposits or investments of any kind accepted by banks, specifies that ordinary and military courts, in the cases before them, may order information to be submitted relating to specific transactions that have a direct bearing on the case in relation to deposits, investments or other operations of any kind involving persons who figure in the proceedings as party or accused, or may order their examination, if necessary.

Lastly, Article 154 provides that public prosecutors, with authorization from the judge responsible for procedural safeguards (*juez de garantía*), may also examine or ask for the submission of information of the kind mentioned in the foregoing paragraph that is directly related to the investigations being carried out under their responsibility.

C. Freezing of assets on reasonable suspicion of links with terrorist acts

In the light of sections A and B above, there can be no doubt that the freezing of assets or funds would be allowable in such a situation. Only two conditions must be fulfilled: the existence of a crime (well-founded suspicion thereof) and judicial authorization. Moreover, when the bill discussed above becomes law, so that laundering of proceeds of terrorist activities is defined as a crime, there will be more instances in which the measure may be applied, although most of them would already be subsumed under the heading of profiting as accessory after the fact as defined in article 17, No. 1, of the Penal Code, described above.

D. Ability to freeze assets upon the request of a foreign State

It is indeed possible to freeze assets upon presentation of such a request to the Public Prosecutor and his corresponding application to the competent judge of procedural safeguards (*juez de garantía*). In general, the procedures and formalities to be followed are to be found in the reply regarding implementation of paragraph 2(f) of the resolution in the initial report of the Government of Chile to the Committee (S/2002/5).

1.7 Criminalization of recruitment of members of terrorist groups

It should recalled that a person may be held criminally liable not only for unlawful terrorist association but for any form of unlawful association under articles 292 ff of the Penal Code.

In that regard, the argument that it is not always the case that the person responsible for recruitment is a member of the unlawful association is debatable. In the Chilean view, the recruiter is necessarily a member of the association.

The situation would be different if a person were operating from Chile, for example, and delegated the task of recruitment to other persons operating abroad who did not belong to the organization and were unaware of its true purpose, as postulated in the Committee's question. Although this is a somewhat laboured hypothesis, since successful recruitment would be difficult under those conditions, it should be borne in mind that, in accordance with the ubiquity principle now commonly accepted in comparative law, as well as Chilean law,[6] an offence can be considered to be committed in any of the countries in which a part of the offence was carried out. That being the case, if the incitement proceeded from Chile, the conduct could certainly be prosecuted in Chilean territory.

A different question arises, however, in the case of organizations that intend to commit terrorist acts only in foreign territory. In such cases, the ubiquity principle, which, as already mentioned, is widely recognized in comparative law,[7] would make it possible to prosecute the act by invoking either the law of the country where one

[6] The ubiquity principle (according to which both the country in which an action was initiated and the country in which it produced its effects have jurisdiction to try the offence) is the predominant doctrine in Chilean law (and in comparative law). In Chile, the principle of ubiquity is upheld in *Novoa* I, p. 167 ff; *Cury* I, p. 193; and *Politoff* I, p. 121; *Garrido* I, p. 133, considers it predominant. It is significant that of these authors Cury and Garrido are currently serving on the Supreme Court of Chile. The principle has long been recognized in Chilean jurisprudence (see, for example, the Supreme Court decision of 14 September 1964).

[7] For example, article 6 of the Italian Penal Code and article 9 of the German Penal Code — to mention just two of the comparative systems that have had a major influence in Chile — enshrine the ubiquity principle in legislation.

or more members of the unlawful association are to be found or the law of the country where the offences in question are to be committed. The foregoing would apply, that is, assuming that unlawful association were defined as an offence in all legal systems of the world or that terrorist offences were penalized in all legal systems from the conspiracy or incitement stage. In such case, moreover, if one of the participants happened to be temporarily in Chile, that person could be extradited on request in accordance with the general rules.

1.8 Outline of the provisions of Act No. 17,798 on arms control (Arms Control Act), with particular reference to the provisions limiting acquisition

A. Arms control; authority responsible and categories of arms or materials subject to controls

With regard to arms control, the Arms Control Act provides that the Ministry of Defence, acting through the Directorate of National Mobilization, shall be responsible for oversight and control of weapons, explosives, fireworks and pyrotechnic articles and other similar devices covered by the Act (article 1).

The Act goes on to list the types of arms or materials that are subject to the controls established by the Act (article 2), namely:

(a) Military materiel, meaning weapons of any kind manufactured for use in wartime by the armed forces, and means of land, sea and air combat, manufactured or specially adapted for this purpose;

(b) Firearms of all calibres and their parts and components;

(c) Ammunition and cartridges;

(d) Explosives, bombs and other similar devices and their parts and components;

(e) Chemicals essentially capable of being used to manufacture explosives or to serve as a basis for the production of ammunition, projectiles, missiles or rockets, bombs, cartridges and tear-producing or biological weapons;

(f) Facilities intended for the manufacture, assembly, stockpiling or storage of such elements; and

(g) Fireworks, pyrotechnic articles and other similar devices and their parts and components. In the latter case, the provisions of articles 8, 14A, 19 and 25 of this Act do not apply.

B. Restrictions on the possession and manufacture of weapons

General restrictions on access

1. First of all, there is an absolute prohibition: in no case may anyone possess or hold what are designated as “special weapons”, that is, chemical, biological and nuclear weapons (article 3, last paragraph).

2. Then there is a general subjective prohibition. No one (except persons authorized by law) may possess or hold sawn-off shoulder weapons; side arms of any calibre that are totally automatic; camouflaged weapons, that is, weapons disguised to appear harmless; machine guns; sub-machine guns; tommy guns and any other automatic or semi-automatic weapon that is highly destructive or effective, whether because of its power, the calibre of its projectiles or its targeting

mechanisms. In addition, no one may possess or hold weapons manufactured on the basis of asphyxiating, paralysing or poisonous gases, corrosive substances or metals that splinter when the gases expand, or devices for launching or activating them (article 3, first and second paragraphs).

3. Exceptions to the general subjective prohibition mentioned in point 2 above are made for specific institutions that perform law enforcement and national defence functions, namely, the Chilean armed forces and the *Carabineros* (paramilitary police). The *Policía de Investigaciones* (investigative police), the *Gendarmería* (prison guards) and the Directorate of Civil Aviation are excepted only with respect to the possession of light automatic and semi-automatic weapons, chemical, tear-producing, paralysing or explosive deterrent agents and grenades, in the quantities authorized by the Ministry of Defence on the recommendation of the director of the particular service. Such weapons may be used in the manner specified in their respective statutes and operating rules.

Restrictions on the possession or holding of authorized weapons (those not included in the list of prohibited weapons)

The following restrictions apply to the possession or holding of authorized weapons (articles 5 and 7 of the Act):

1. Any firearm (ordinary or authorized) must be registered with the appropriate authority in the name of its possessor or holder (article 1).

2. Registration authorizes the possessor or holder to keep the weapon only at the declared premises, which may be the place of residence, place of work or premises to be protected.

3. The authorities shall allow registration of the weapon only if, in their judgement, it can be presumed from the background of its possessor or holder that he or she will comply with the provisions of the foregoing paragraph.

4. The authorities may not grant authorizations and permits for or allow registration of more than two firearms per person, except in the case of eligible natural or legal persons upon special decision of the Directorate of Recruitment and Mobilization of the Armed Forces.

5. The Directorate of Recruitment and Mobilization shall keep a national register of arms registrations (National Arms Register).

With regard to the carrying of authorized weapons, the Act provides (in articles 6 and 7) that:

1. The possessors of registered weapons (see above) may carry weapons outside the authorized premises (place to be protected) only with a permit from the appropriate authorities.

2. Such permits shall be recorded in the National Arms Register.

3. The permit to carry shall be valid for a maximum of one year and authorizes only the permit holder to carry a weapon.

4. The authorities may not grant authorizations and permits for or allow registration of more than two firearms per person, except in the case of eligible natural or legal persons upon special decision of the Directorate of Recruitment and Mobilization.

5. The Directorate and other authorities mentioned may deny, suspend, attach conditions to or restrict the authorizations and permits the Act provides for without having to state a reason, except in the case of registration of possession or holding.

With regard to the manufacture of authorized weapons, the Act (article 4) provides that:

1. The authorization of the Directorate of National Mobilization is required in order to manufacture, assemble, import or export weapons of the types subject to control under the Act or to establish facilities for the manufacture, assembly, stockpiling or storage of such weapons.

2. No person, natural or legal, may possess or hold the weapons and devices listed in items (a), (b), (c), (d) and (e) of the second paragraph of section A above or transport, store, distribute or conclude contracts regarding such weapons and devices without the authorization of the Directorate of National Mobilization or the appropriate authorities.

3. The authorization required pursuant to the foregoing paragraph is to be issued by armed forces garrison commands or the highest-ranking *Carabineros* authority, designated in either case by the Minister of Defence on the recommendation of the Director of National Mobilization, who may also recommend other military or *Carabineros* authorities for that purpose at the local level.

4. Without prejudice to the foregoing, the national testing office (*Banco de Pruebas de Chile*) shall advise the Directorate of National Mobilization, through the Army Research and Control Institute (IDIC), in evaluating the level of hazard, stability and quality of the weapons and devices under its oversight. In the case of military materiel, the level of hazard, stability and quality is tested and certified by the Armed Forces Specialized Services.

5. The Director of National Mobilization, through the Minister of Defence, may request the technical advice of agencies or staff belonging to the armed forces institutions in monitoring the process of manufacture, production and inventory at plants authorized to produce military materiel.

C. Offences

1. Offence of unlawful association as defined in the Arms Control Act (organization of armed parties) (article 8)

Penalties are imposed on those who organize, belong to, finance or equip or who instruct, incite or induce others to create and operate private militias, combat groups or militarily organized parties armed with any of the materials or weapons mentioned in the Act.

Penalties are also imposed on those who knowingly assist in the creation and operation of private militias, combat groups or militarily organized parties.

If the groups are armed with prohibited materials or devices, the penalty is greater (long-term rigorous imprisonment in any degree, ranging from 5 years and a day to 20 years imprisonment). Otherwise (if conventional or authorized weapons are involved), the penalty ranges from medium-term rigorous imprisonment or internal exile in the maximum degree to long-term rigorous imprisonment or internal exile in the minimum degree (from 3 years and a day to 10 years of rigorous imprisonment or internal exile).

2. Offence of unlawful possession or holding of weapons (articles 9, 12 and 13)

Penalties are imposed on those who possess or hold, without the proper authorization, any of the devices or weapons subject to control under the Act. The penalty ranges from medium-term rigorous imprisonment in the minimum degree to long-term rigorous imprisonment in the minimum degree (from 61 days to 10 years of rigorous imprisonment).

In the case of possession of prohibited weapons and devices (including special weapons), the penalty is increased and ranges from medium-term rigorous imprisonment in the medium degree to long-term rigorous imprisonment in the medium degree (from 3 years and a day to 15 years of rigorous imprisonment).

If the offence in question involves more than two firearms, the penalty is increased by one or two degrees.

There is a substantial reduction of the penalty (fine) if it can be shown that the reason for possessing or holding the weapons or devices was not to cause a public disturbance, to attack the armed forces or the forces of order and public security or to perpetrate some other crime. The reduction does not apply in the case of possession of prohibited weapons.

It is considered a ground for exemption from criminal liability for unlawful possession or holding of prohibited weapons if the possessor or holder surrenders them to the competent authority before proceedings are instituted.

3. Offence of unlawfully carrying weapons (articles 11, 12 and 14)

Penalties are imposed on those who carry firearms without the requisite permit. The penalty ranges from medium-term rigorous imprisonment in the minimum degree to long-term rigorous imprisonment in the minimum degree (from 61 days to 10 years of rigorous imprisonment).

In the case of possession of prohibited weapons and devices (including special weapons), the penalty is increased to long-term rigorous imprisonment in the minimum or medium degree (from 5 years and a day to 15 years of rigorous imprisonment).

If the offence is committed with more than two firearms, the penalty is increased by one or two degrees.

The same reduction of penalty allowed in cases of unlawful possession is allowed for this offence on the same conditions. The reduction does not apply if prohibited weapons are involved.

4. Offence of unlawful manufacture of weapons (articles 10 and 12)

Penalties are imposed on those who, without the proper authorization, manufacture, assemble, import, bring into the country, export, transport, store, distribute or conclude contracts regarding the weapons or devices subject to control under the Act. The penalty ranges from medium-term rigorous imprisonment in the medium degree to long-term rigorous imprisonment in the medium degree (from 541 days to 15 years of rigorous imprisonment).

If the offence is committed with more than two firearms, the penalty is increased by one or two degrees.

The same reduction of penalty allowed in cases of unlawful possession is allowed for this offence on the same conditions.

5. Confiscation (article 15)

Without prejudice to the personal or pecuniary penalty, the sentence may also order the confiscation of the items subject to control under the Act, which shall be handed over to the military arsenal.

The most recent version of the text is that of 31 May 2002.

1.9 Implementation of paragraphs 2 (d) and (e) of resolution 1373 (2001)

A. Criminalization of the financing, planning, facilitation and commission of terrorist acts aimed at other States or their citizens

This issue (ordinary unlawful association and unlawful terrorist association) was discussed at length in Chile's initial report to the Committee in the replies concerning paragraph 1 (b) and paragraph 2 (a) of the resolution.

Secondly, note should also be taken of the information given under point 1.2 above concerning the bill penalizing the collection of funds for and the financing of terrorism.

Thirdly, it should be pointed out that under the Chilean legal system accessories to a crime are held criminally liable along with the principals (articles 14, 15, 16 and 17 of the Penal Code). Penalties for accessories before and during the fact are one degree less than those for principals, and penalties for accessories after the fact, are two degrees less.

Instigators and "intellectual perpetrators" are considered principals. All cases of mediated perpetration are covered by the definition (article 15, No. 2 and part of No. 3 of the Penal Code).

Moreover, penalties are imposed not only for offences that have been carried out but also for those that have been attempted. In determining the penalty, a distinction is drawn between completed but frustrated attempts and incomplete attempts (attempts in the narrow sense). Frustrated attempts are subject to a penalty one degree less than that applicable to the corresponding completed offence, and incomplete attempts are subject to a penalty two degrees less.

Furthermore, on an exceptional basis, the law provides for punishment for acts that are preparatory or not related to execution (prior to any attempted offence) such as conspiracy or incitement. This applies to all terrorist offences, in respect of which, pursuant to Act No. 18,314 (article 7), conspiracy to commit a terrorist act and serious and plausible threat to commit such an act are penalized. It is therefore possible to penalize the planning of a terrorist offence and even other activities which precede those related to actual execution.

Lastly, with respect to cases involving the planning of terrorist acts aimed exclusively at other States or their citizens, see the response given under point 1.7 above concerning terrorist recruitment and in particular the ubiquity principle and the jurisdiction of affected foreign States.

B. Prosecution of a Chilean or foreign national found in Chilean territory who cannot be extradited

The Chilean authorities may refuse a request for extradition on the grounds that the defendant is a Chilean national only if such a right is conferred by treaty,

since there are no constitutional or legal rules stating that a request for extradition may be refused because the defendant is a Chilean national.

The multilateral and bilateral treaties to which Chile is a party that accord the right to refuse extradition on the grounds of nationality also provide for the obligation to prosecute the accused in Chile in application of the principle of *aut dedere aut judicare* (extradite or prosecute).

Furthermore, with regard to foreign nationals, there are no reasons other than those of a purely criminal-law nature to refuse requests for extradition. Therefore, an extradition request would be refused only because certain objective conditions binding on Chile in any case were not met. It would be impossible to proceed, for instance, because of the lack of double criminality, inadmissibility for minor offences carrying penalties of less than one year, and so on.

1.10 Report on the outcome of the study conducted by Chile in order to determine which conducts described in the international instruments to which Chile is a party have not yet been criminalized under Chilean law

The above-mentioned study has not been conducted exhaustively. A preliminary description of the conventions implemented, fully or partially, by means of the Chilean Act establishing penalties for terrorist conduct was contained in Chile's response to the Financial Action Task Force on Money Laundering (FATF) self-assessment questionnaire (attached). Generally speaking, most of the types of conduct described in those instruments are covered by the Act.

1.11 The Committee would be grateful to receive a copy of any reports or questionnaires submitted to other organizations involved in monitoring international standards

Attached is a copy of response to the self-assessment questionnaire designed to obtain information about the extent to which States have implemented the FATF recommendations on terrorist financing, which was submitted to the Financial Action Task Force for South America (GAFISUD) by the Chilean Government on 9 May 2002. The document was produced by the National Council for the Control of Narcotic Drugs in collaboration with other relevant Government departments.

2. Assistance and guidance

Chile is grateful for the assistance and advice offered by the Committee in connection with the implementation of resolution 1373 (2001).

In this respect, and as mentioned in the report recently submitted to the Security Council Committee established pursuant to resolution 1267 (1999), Chile would be grateful for information on comparative law and the constitutional, legal and administrative principles allowing other legal systems to freeze assets without recourse to criminal proceedings. Although this issue does not, strictly speaking, fall within the Committee's sphere of competence, it is closely linked to its function.

Lastly, the Government of Chile wishes to express its thanks to the Committee for its efforts and reiterates its willingness to continue cooperating in the necessary areas.