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Letter dated 9 September 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 11 June 2003 (S/2003/650).

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

[Original: Spanish]

Letter dated 8 September 2003 from the Permanent Representative of Mexico to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I hereby transmit the report of the Government of Mexico giving its responses to the letter from the Chairman of the Committee on Counter-Terrorism of the United Nations Security Council dated 6 June 2003 (see enclosure).

This additional report supplements the first and second reports submitted by Mexico on 27 December 2001 (S/2001/1254) and 15 July 2002 (S/2002/877) and should be read in conjunction with them.

(*Signed*) Adolfo **Aguilar Zinser**
Permanent Representative of Mexico to the United Nations

Enclosure

[Original: Spanish]

Working paper for the elaboration of the third report of the Government of Mexico to the Committee established pursuant to resolution 1373 (2001), submitted in response to the request by the Chairman of the Committee contained in his note dated 6 June 2003

This report of Mexico responds to the letter from the Chairman of the Committee on Counter-Terrorism dated 6 June 2003, which requested additional information on the measures Mexico had taken to date to combat and eradicate terrorism.

This additional report supplements the first and second national reports submitted by the Government of Mexico on 27 December 2001 (document S/2001/1254) and 15 July 2002 (document S/2002/877) and should be read in conjunction with them.

1. Implementation measures

1.2 Please outline the legal provisions in force in Mexico which regulate the alternative money transfer agencies or services (include licensing and registration) or in their absence, what steps does Mexico intend taking in order to incorporate this aspect of the resolution into its domestic law.

In Mexico, the alternative money transfer agencies or services ("money transmitters") are subject to two different types of registration, the first with the Bank of Mexico, which standardizes the information concerning the money transfer services offered for funds coming from abroad by credit institutions and companies which offer this service professionally. The second type of registration is the "Public Commercial Register", which lists commercial transactions and actions related to those commercial transactions as required by law.

In addition to the above, the purpose of the rules established by the Bank of Mexico is to establish a registry of institutions and companies participating in this market. They are required to provide monthly reports on the total amount and number of remittances received from abroad, as well as the number of entities residing abroad and the companies that have requested their participation in the transfers, including operations in foreign currency, in addition to the total amount and number of money orders presented for payment to foreign financial institutions.

To that effect, the Central Bank establishes various formats that allow it to administer effectively the database of information coming in for that purpose, which should include corporate data on the money transmitters. It should be noted that the information supplied is used for purposes of statistical analysis.

The Public Commercial Register is under the supervision of the Ministry for Economic Affairs and the authorities responsible for the property register in the States and the Federal District. There are offices of the Public Commercial Register in each federal entity for this purpose. The persons in charge of the Public Commercial Register offices are obligated to facilitate the monitoring of the effectiveness of their operations by the Ministry for Economic Affairs.

There is a file in the Register for each business owner or company containing the following information:

I. Name, firm name or title;

II. Type of business or operations conducted;

III. Date on which operations began or will begin;

IV. The domicile, specifying the branch offices it may have established, without prejudice to listing the branch offices in the place where they are domiciled;

V. The incorporation documents for the company, whatever its purpose or designation, as well as documentation of amendment, abrogation, dissolution, or break-up of those companies; the general power of attorney, names of signatories, and revocation of the power of attorney if any, conferred on directors, agents, dependents and any other representatives.

Illegal commercial activity by an individual or company results in immediate dissolution, without prejudice to any possible criminal liability.

The Federal Government has prepared and will transmit to the Congress of the Union an initiative to reform the General Act on Credit Organizations and Related Activities, with the goal of making the regulations clearer concerning “currency exchange centres” and “money transmitters”.

The reform initiative authorizes the Ministry of Finance and Public Credit to issue general regulations to ensure that credit-related organizations, currency exchanges and centres for foreign exchange and money transmitters:

(a) Adopt measures and procedures to prevent and detect transactions, omissions or operations that could foster or provide aid, assistance or cooperation of any nature for the commission of the crime of terrorism or which could be detected in the data of operations with resources from illegal sources;

(b) Submit to the Ministry reports on transactions, operations or services carried out with their clients or users, as well as reports on activities of their administrators, directors, officials, employees, agents and representatives.

These provisions will include guidelines for identifying and providing information about clients and users, and determine the modalities and models for submission of the reports referred to in subparagraph (b) above. They will also deal with such matters as the amounts, frequency and nature of the transactions; operations and services; and information protection, storage and security.

Furthermore, the provisions will include mechanisms to train the relevant staff in their application and interpretation.

The General Act on Credit Organizations and Related Activities will impose a penalty for violating these regulations in the form of a fine of up to 100,000 times the daily minimum wage. This penalty may be imposed on both the entities and their administrators, directors, officials, employees, agents and representatives.

At the same time, their compliance will not imply any infringement of the legal obligation of confidentiality, or a violation of contractual restrictions on disclosure of information.

The staff of the Ministry of Finance and Public Credit, the National Banking and Securities Commission, and the Tax Administration Service will be under obligation to maintain strict confidentiality for reports and related documentation and information, both for the entities mentioned and for their administrators, directors, officials, employees, agents and representatives; they may give the information only to the officials expressly authorized in the relevant regulations.

1.3 The Committee would appreciate receiving a progress report on the issuing of administrative rules applicable to the non-financial sector for the prevention of money-laundering and the financing of terrorist activities. The Committee notes that, as mentioned in the supplementary report in reply to question 4 (at page 8), these administrative rules will cover the activities of attorneys, notaries and other non-financial intermediaries.

The laws regulating financial intermediaries encompass the issuance by the Ministry of Finance and Public Credit of rules establishing procedures to prevent and detect, among the respective financial intermediaries, transactions or operations that could be considered money-laundering and include the obligation by those intermediaries to submit to the appropriate oversight commission reports on the operations and services they conduct with their clients and users in the amounts and according to the models established in those rules.

The rules include criteria for identification of clients and users of operations and services that take account of their specific circumstances and economic or professional activity; the amounts, frequency, type and nature of the operations, the monetary instruments with which they are carried out and their relationship to the activities of the clients or users; the markets in which they operate and the trade practices which prevail; due and appropriate training of their staff; and specific security measures in the management of the operations of the intermediaries themselves.

To date, the rules concerning credit institutions, limited finance companies, bond institutions, mutual insurance institutions and companies, stock brokerages, securities specialists, currency exchanges and administrators of retirement funds have been issued.

1.4 In reply to question 5 (also on page 8), the supplementary report states that "the federal executive branch is scheduled to submit the proposed initiative on amendments and additions to the Federal Penal Code, the Federal Code of Criminal Procedure and the Federal Organized Crime Act for approval by Congress". The Committee would appreciate receiving a progress report on Congress' consideration of these matters, including an outline of the proposed draft legislative provisions and, in particular, details of the proposed increase to the minimum penalties for the crime of terrorism.

The reform initiative originally prepared by the Office of the Attorney-General of the Republic has undergone a substantial revision by the units of the Federal Public Administration involved in its implementation, in order to ensure that it will provide the authorities with the tools necessary to combat terrorism and to reflect Mexico's international commitments. It is expected that the initiative will be submitted formally to the Congress of the Union during the session to begin 1 September 2003.

The initiative includes, inter alia:

(a) An increase in the minimum penalty for the crime of terrorism. If approved, anyone convicted of that crime will receive a prison sentence of 18 to 40 years and 500 to 1,000 days' fine (under the law currently in effect the penalty is between 2 and 40 years and the fine up to 50,000 pesos);

(b) Anyone convicted of the crime of terrorism cannot benefit from early release;

(c) The crime of financing of terrorism is classified in conformity with the International Convention for the Suppression of the Financing of Terrorism;

(d) Threatening to commit terrorism is penalized separately;

(e) Recruitment of members for terrorist groups has been made a criminal offence;

(f) The use of national territory to prepare an act of terrorism committed abroad has been made a criminal offence;

(g) Conspiracy to commit terrorism has been made a criminal offence;

(h) Concealment of the activities or identity of a terrorist has been made a criminal offence;

(i) The jurisdiction of Mexican courts over individuals accused of terrorism outside national territory is established, when those individuals are located in Mexico, have not been tried in the country where they committed the crime and have not been extradited to the country which has requested them.

1.5 Effective implementation of subparagraph 1 (b) of the resolution requires a State to have in place provisions specifically criminalizing the wilful provision or collection of funds by its nationals or in its territory, by any means, directly or indirectly 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 are 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 transfer of funds from one country to another takes place; or**
- **The funds are legal in origin.**

The current provisions of the law of Mexico do not appear to meet the above-mentioned requirements adequately. The Committee would welcome receiving an indication of the steps which Mexico intends taking in that regard.

The initiative mentioned in the reply to question 1.4 provides for the criminalization of the financing of terrorism in conformity with the requirements of the International Convention for the Suppression of the Financing of Terrorism.

Criminal penalties are provided for anyone who, directly or indirectly, finances, supplies or collects funds or resources of any type with the intention of utilizing them fully or in part to commit terrorist acts. It is not required that the terrorist act be carried out or attempted, nor does it matter where the terrorist act was intended to take place, what the origin of the funds was, or whether the transfer took place, for the activities in question to be considered a criminal offence.

1.6 Subparagraph 1 (c) of the resolution requires that States freeze without delay the funds of persons who commit, attempt to commit, participate in or facilitate the commission of terrorist acts. The initial and supplementary reports mention a procedure that is available in relation to funds that are "the instruments, objects or products of the crime". However, Mexico would appear to have no domestic legal provision for the freezing of funds, regardless of origin, that are:

- **Held in the names of persons and entities identified in lists such as those approved for the purpose of Security Council resolution 1267 (1999), as being linked to terrorist activities; or**
- **Suspected of being linked to terrorists, but not yet used for the commission of a terrorist act.**

In its reply to question 8 in its supplementary report, Mexico states that "lawfully acquired assets belonging to terrorists that are not used for the purpose of committing a crime may not be seized". Please provide particulars of how Mexico currently meets, or proposes to meet, the requirements of the resolution.

Mexican law allows the seizure for purposes of confiscation of the assets of members of organized criminal groups. This seizure covers all their assets, not just the instruments, objects and products of a crime.

Terrorism is a crime punishable under the Federal Organized Crime Act, which authorizes the Public Prosecutor's Office to order, with judicial authorization, the seizure of the assets of terrorists, including assets with respect to which they exercise ownership.

Assets may be seized at any time during the preliminary investigation or the trial.

The Federal Organized Crime Act provides for release of the assets when their legitimacy is established.

In addition to the Federal Organized Crime Act, the Federal Penal Code establishes the grounds for confiscation of assets instrumental in an act of terrorism, the object of such an act, or its product. In accordance with article 40 of the Federal Penal Code, which states: "The instruments of a crime, as well as the objects or products thereof, shall be confiscated if their use is prohibited. If their use is legal, they shall be confiscated if the crime is intentional", and the funds of individuals who commit, or intend to commit, acts of terrorism or participate in or facilitate their commission, may be frozen, whatever their origin. The crime of terrorism is always of an intentional nature.

It should be noted that among the legislative reforms the Federal Government is currently promoting is a proposed initiative on money-laundering, which

stipulates that, when the product of a crime has disappeared or cannot be located, the body with jurisdiction may, in the corresponding judgement, order the confiscation of other assets of a value equivalent to that of the product of the crime.

1.7 Effective implementation of paragraph 1 of the resolution also requires the establishment of an appropriate monitoring mechanism (involving for example registration and auditing requirements) to ensure that the funds collected by organizations which have or claim to have charitable, social or cultural goals are not diverted to purposes other than their stated purposes, in particular to the financing of terrorism. The supplementary report, in relation to subparagraph 1 (d), states in reply to question 9 (at page 9) that "the fiscal authorities may penalize those associations that engage in activities other than those declared, which must not, of course, involve an unlawful purpose such as support for terrorist activities". The Committee would appreciate receiving further information about the legal provisions which Mexico has put in place to deal with this aspect of the resolution. In particular, the Committee would appreciate receiving more information about the Mexican legal provisions establishing the appropriate monitoring mechanism, including an account of the legal obligations which those provisions impose on the organizations concerned.

The Federal Civil Code regulates the establishment of permanent associations or societies for purposes not prohibited by law and which are formed for purposes which are not mainly economic.

Among such associations or societies are charitable, social or cultural institutions, which are established in accordance with the laws of the place in which they are located. Each of the States in the Federation has the authority to make its own laws on the subject.

In general, there are common elements in the state laws in effect. They establish bodies, usually called "Private Assistance Boards" which are responsible for supervising the establishment and operation of charitable organizations.

In order to be able to operate, charitable organizations must meet a series of requirements and be authorized by the Private Assistance Boards. Those requirements include submission of an application to the appropriate Board which contains, inter alia, information on the founders, purpose and name of the association, its legal domicile, the type of assistance it wishes to provide, the type of property which constitutes its assets, the form in and terms on which it accepts contributions; the names of the individuals who will act as patrons or, as the case may be, the members of the board or council which represents and administers its funds, and the general administrative guidelines for the association.

The Private Assistance Boards review the applications and either authorize or deny authorization for the establishment of associations. Once an association has been established, its directors must prepare draft statutes, which must include specific rules on fundraising and the type of operations that will be conducted, subject to the requirements of the applicable law.

The Boards review the draft statutes and if they are inadequate or deficient, they make the appropriate comments to the founder or founders so that they can be corrected. Once the statutes are approved by the competent board, it issues a

certified copy for registration with a notary public and entry of the relevant documents in the Public Property Register.

The statutes of the private associations or charitable groups take effect only if they are entered in the Public Property Register.

The Private Assistance Boards also supervise the legal administration of the resources of the charitable or private assistance institutions. Their duties include inspection, site visits and/or audits of the associations and review of their financial statements. They also have the obligation to inform the competent authorities of possible violations of the law. Violation of the conditions of operation, in particular diversion of resources, incurs penalties and, when the violations are particularly serious, may potentially involve suspension or dissolution of the institution.

Some non-profit associations can take the form of commercial corporations, which must be entered in the Public Commercial Register mentioned in the reply to question 1.2. In accordance with the General Commercial Corporations Act, a company which conducts illegal activities, support for terrorist activities clearly being an illegal activity, shall be considered null and void and shall be immediately liquidated, without prejudice to any possible criminal liability.

Finally, both commercial corporations and non-profit organizations are subject to supervision by the tax authorities in order to determine that they have met their obligations in this area.

1.8 Subparagraph 2 (a) of the resolution requires each Member State, inter alia, to criminalize the recruitment within its territory to terrorist groups which intend carrying out their operations inside its territory or abroad. It will not always be the case that the person carrying out the recruitment will actually belong to a criminal or terrorist organization. It is always possible that the recruitment to terrorist bodies will arise as the result of deception, such as a representation that the putative purpose of the recruitment (e.g. teaching) is different from its true purpose. In this connection, the supplementary report states, in reply to question 11, that "unless it is proved that a crime of terrorism was attempted or carried out and that the person in question participated in it, the recruitment of members of terrorist groups is not a punishable offence". Please indicate whether the proposed amendments to the Federal Penal Code will fully meet the requirements of subparagraph 2 (a) as regards recruitment.

As indicated in the answer to question 1.4, the initiative encompasses the criminalization of the offence of recruitment of members of terrorist groups. In accordance with this initiative, "a sentence of 9 to 20 years' imprisonment and 200 to 500 days' fine will be imposed on anyone who recruits individuals for the purpose of membership in criminal associations to commit terrorist acts". According to the language used, it is irrelevant whether the recruiter belongs to a terrorist or criminal organization, or if deception is used in the recruitment.

1.9 Effective implementation of subparagraph 2 (d) and (e) of the resolution requires each State to make it a criminal offence for anyone to use its territory for the purpose of committing a terrorist act against another State or its citizens or for the purpose of financing, planning and facilitating the commission of terrorist acts against another State or its citizens, whether or not a related terrorist act has been committed or attempted. Addressing subparagraph 2 (e), the supplementary report states (at page 13) that "Mexican

courts have no jurisdiction over acts committed abroad by foreign citizens, whether or not they normally reside in Mexico, unless Mexican citizens are among the victims". The Committee would appreciate receiving a report on the steps which Mexico intends taking in order fully to comply with this aspect of the resolution.

The reform initiative mentioned above (question 1.4) criminalizes the planning in Mexican territory of terrorist acts committed abroad. The initiative also makes federal courts competent to initiate proceedings against persons presumed responsible for terrorist acts committed abroad, provided that the accused are in Mexico, that a final verdict has not been rendered in the country where the crime was committed and that extradition to the requesting State has not been granted.

1.10 Please provide a progress report on the implementation of the 12 international instruments relating to terrorism to which Mexico has yet to become a party. The Committee would also appreciate receiving an account of the penalties prescribed in Mexican criminal law in relation to the offences which are required to be established as crimes under the provisions of the universal conventions and protocols to which Mexico is a party.

Mexico deposited its instruments of ratification of the International Convention for the Suppression of the Financing of Terrorism and the International Convention for the Suppression of Terrorist Bombings with the Secretary-General of the United Nations on 20 January 2003.

By so doing, Mexico became a contracting party to all 12 of the universal international counter-terrorism instruments. In addition, its Federal Penal Code contains a definition of terrorism which covers virtually all the acts of terrorism mentioned in those treaties. Under Mexican law, the following are considered terrorism: the use of explosives, toxic substances, firearms or any other form of violence to attack persons, property or public services in a manner causing alarm, terror or fear among the population or a sector thereof for the purpose of disturbing the peace, attempting to undermine State authority or bringing pressure to bear on the authorities to take a particular decision. Such offences are punishable by 2 to 40 years' imprisonment and a fine of up to 50,000 pesos; however, the proposed reform would raise the minimum sentence to 18 years' imprisonment.

This definition covers the offences envisaged in the great majority of counter-terrorism conventions. The following offences are also covered by Mexican law:

– Involvement in the clandestine importation into Mexican territory of explosives subject to control (5 to 30 years' imprisonment and a daily fine of 20 to 500 days);

– Manufacture of explosives without the required permit; permits establish the conditions for the manufacture, sale and transport of explosives (5 to 15 years' imprisonment and a daily fine of 100 to 500 days);

– Management of a factory, industrial plant or other establishment in which activities involving explosives are conducted without meeting the safety regulations established by law (2 months' to 2 years' imprisonment and a daily fine of 2 to 100 days; the relevant permits may also be suspended or revoked);

– Carrying for unlawful purposes of an offensive weapon not used in work- or recreation-related activities (3 months' to 3 years' imprisonment);

– Unauthorized use of harmful substances or residues which pose a threat to public health (6 months' to 6 years' imprisonment);

– Seizure or diversion from its route or destination of a ship, aircraft, automobile, train or other means of transport through the use of physical violence, threats or deception (3 to 20 years' imprisonment and a daily fine of 100 to 400 days);

– Destruction using explosives or incendiary devices or by any other means of a ship, aircraft or other vehicle which is State-owned or provides services to the public (5 to 20 years' imprisonment; the sentence is increased to 20 to 30 years' imprisonment if the vehicle is occupied);

– Infringement of the inviolability of a sovereign or representative of another nation (3 days' to 2 years' imprisonment, without prejudice to any penalties imposed for other offences); and

– Hostage-taking with threat to kill or harm in order to induce the authorities or an individual to act or cease to act in some way (15 to 40 years' imprisonment and a daily fine of 500 to 2,000 days).

Once the amendments to the Federal Penal Code have been adopted, the offence of financing terrorism will be punishable by 18 to 40 years' imprisonment and a daily fine of 500 to 1,000 days.

At the regional level, Mexico deposited its instrument of ratification of the Inter-American Convention against Terrorism with the Secretary General of the Organization of American States (OAS) on 9 June 2003.

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

Due note has been taken of the Committee's interest in learning of efforts to implement international best practices, codes and standards in the area of counter-terrorism; this information will be communicated to the Committee in due course.

2. Assistance and guidance

2.1 The Committee is eager to facilitate the provision of assistance and advice in connection with the implementation of the resolution. The Committee would encourage Mexico to let it know if there are areas in which assistance or advice might be of benefit to Mexico in its implementation of the resolution or of any areas in which Mexico might be in a position to offer assistance or advice to other States on the implementation of the resolution.

Mexico considers that it would be useful to receive assistance with the development of systems or mechanisms to speed up the exchange of operational information, particularly concerning the activities and movement of terrorists or terrorist groups, for preventive purposes.

It would also be useful to receive international assistance with the development of detection systems based on the use of advanced technology for the identification of illegally altered or forged travel documents; monitoring of the traffic in weapons, explosives and hazardous materials; and the communications technology used by terrorist groups.

Mexico has requested the International Monetary Fund (IMF) to provide assistance with the regulation of its remittance services and exchange bureaux. The timely reply received from IMF is reflected in the draft amendment to the Credit Bureaux and Related Activities Act.

Mexico would be in a position to offer assistance or advice in the areas in which it has experience to other countries upon request.