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Letter dated 2 January 2002 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

The Counter-Terrorism Committee has received the attached report from Chile, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

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

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

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Annex

[Original: English and Spanish]

Letter dated 27 December 2001 from the Chargé d'affaires a.i. of the Permanent Mission of Chile to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have the honour to send, for your information and relevant purposes, the response of the Government of Chile to the questionnaire prepared by the Committee against terrorism, in accordance with paragraph 6 of resolution 1373 (2001) adopted by the Security Council on 28 September 2001 (see enclosure).

(*Signed*) Cristián **Maquieira**
Ambassador
Chargé d'affaires, a.i.

Enclosure

Response of the Government of Chile to the questionnaire prepared by the Counter-Terrorism Committee in accordance with paragraph 6 of Security Council resolution 1373 (2001)

Introduction

Chile considers that terrorism strikes at the most basic principles of human coexistence and the international community should therefore take decisive action to confront it. This call for international cooperation is based on our view that we are faced with a common enemy who defies the principles of human coexistence underpinning peace, development and international security, to which Chile is committed through its membership of the United Nations and the Organization of American States (OAS).

Chile attaches great importance to delivering a collective response in the face of terrorism. It has therefore worked with deep determination to promote consensus among the countries of the Rio Group, at the inter-American level. Our efforts bore fruit in the successful convocation of the twenty-third and twenty-fourth Meetings of consultation of OAS Ministers of Foreign Affairs, acting as the Organ of Consultation of the Inter-American Treaty of Reciprocal Assistance (TIAR), held in Washington on 21 September 2001.

United Nations

In respect of United Nations activities, Chile has adopted measures in implementation of Security Council resolution 1373 (2001). Further details appear below. We have also participated with determination in the elaboration of a comprehensive convention against international terrorism. We believe that the most comprehensive possible text should be formulated with all speed.

The Minister for Foreign Affairs of Chile has also directed to the appropriate quarters, such as the Offices of the Under-Secretary for Finance and of the Under-Secretary for the Interior, information received in connection with Security Council resolutions on individuals and organizations suspected of links with terrorism and the financing of terrorism.

Organization of American States

At the twenty-third Meeting of Consultation of OAS Ministers of Foreign Affairs emphasis was placed on identifying practical measures for working together to combat terrorism in order to strengthen democracy and the rule of law; it was noted that the fight against terrorism was governed by national and international law. That was the framework for the adoption of resolution RC.23/RES.1/01, the stated aims of which were to deny terrorist groups the ability to operate within national territories; to strengthen cooperation, at the regional and international levels, to pursue, capture, prosecute and punish and to extradite the terrorists or their sponsors; to strengthen mutual legal assistance and exchange information in a timely manner; to promote widespread tolerance and social harmony within their societies, in recognition of the racial, cultural, ethnic and religious diversity of the communities making up the Hemisphere; to urge all American States to sign or

ratify the International Convention for the Suppression of the Financing of Terrorism, adopted in New York on 9 December 1999; to entrust the Permanent Council with preparing a draft inter-American convention against terrorism with a view to presenting it to the next session of the OAS General Assembly; and to instruct the OAS Committee on Hemispheric Security to expedite preparations for the Special Conference on Security, taking into account the contributions of the Inter-American Committee against Terrorism (CICTE).

Chile contributed to the first special session of the latter Committee, held on 15 October, by sending experts from Santiago to report on measures taken with regard to terrorism and on the implementation of the resolutions adopted by multilateral bodies. At the same time, Chile reaffirmed its support for OAS as the hemisphere's coordinating body for counter-terrorism policy and made a voluntary financial contribution to the Committee. At the meeting, the United States was elected as Chair and Argentina as Vice-Chair. In addition, three subcommittees were set up: on the CICTE Work Plan (chaired by El Salvador), on Financial Controls (chaired by Colombia) and on Border Controls (chaired by Peru), to which Chile made a particular contribution. The second special session was arranged for 29 November and the second regular session for 28 January 2002.

As for the draft inter-American convention on the prevention and elimination of terrorism, which the Ministers for Foreign Affairs had requested the Permanent Council to prepare, a working group of the Committee on Juridical and Political Affairs has begun discussions on the basis of an OAS draft dating from 1996 and new proposals by Peru and Argentina.

Inter-American Treaty of Reciprocal Assistance

At the 24th meeting of consultation of OAS Ministers of Foreign Affairs, acting as the Organ of Consultation of TIAR, Chile gave full support to the adoption of the declaration concerning continental solidarity, whereby an attack against one American country is an attack against all. Pursuant to resolution RC.24/RES.1/01 [States Parties] shall: provide effective reciprocal assistance to address such attacks and the threat of any similar attacks against any American State and to maintain the peace and security of the continent; use all legally available measures to pursue, capture, extradite and punish terrorists; and render additional assistance and support to the United States and to each other, as appropriate, to address the September 11 attacks and also to prevent future terrorist acts.

Rio Group

As pro tempore secretariat of the Rio Group, it has been Chile's task to coordinate the Group's positions in the above-mentioned multilateral forums, in which connection a number of specific initiatives have been undertaken, including the organization, at the beginning of November, of a meeting of legal experts from the member countries with a view to considering legal issues relating to the prevention and suppression of terrorist acts, particularly in the framework of Security Council resolution 1373 (2001).

The meeting approved a working paper for the Ministers for Foreign Affairs which, in addition to condemning terrorist acts, drew attention to the challenge that terrorism poses to existing legal structures and emphasized that the fight against terrorism should be conducted with all due respect for the rule of law, international

law and human rights. The text resulted from a useful exchange of opinions concerning current national laws on terrorism, which revealed that the Rio Group countries have set up special procedures to implement the decisions of Security Council resolution 1373 (2001); that they are clearly disposed to endorse the 12 conventions on the subject adopted under the auspices of the United Nations; that legal cooperation and extradition procedures should be strengthened; that more work is needed with regard to classifying terrorist acts in criminal law and setting penalties in keeping with the gravity of the crime; that work should be done in areas where financial aspects have not been duly recognized; that a new inter-American convention against terrorism should be elaborated; and that a comprehensive checklist of information on each member's legislative and administrative procedures in this area should be compiled.

MERCOSUR

At the end of September 2001, a meeting of the Ministers of the Interior of the member countries of MERCOSUR was held in Montevideo, with the aim of setting up a regional scheme — in which Chile and Bolivia were invited to join — to coordinate counter-terrorist activities. This scheme was established on the basis of the mandate contained in paragraph 3 of the ministerial declaration, which related to the establishment of a Permanent Working Group to assess joint and coordinated operations against terrorism and study initiatives for inclusion in the Regional Security Plan.

The Working Group met in Montevideo on 3 and 4 October, alongside the meeting of the Subcommittee for Follow-up and Control of Specialized Groups of the Technical Committee of the MERCOSUR Ministers of the Interior. The delegation of Chile included the Head of the Coordination Division of the Public Security and Information Directorate. It was decided that the under-secretaries or senior officials in each ministry should be designated as national coordinators and given the task of coordinating the technical and police intelligence departments attached to their ministries and exchanging information with their foreign counterparts.

On 8 October at its twentieth meeting, the Forum for Consultation and Political Coordination of MERCOSUR, Bolivia and Chile adopted a joint communiqué again condemning the terrorist acts of 11 September and supporting the relevant United Nations and OAS resolutions, stating that they were intended to prevent and eradicate international terrorism and were not directed against any ethnic, religious or cultural group but simply aimed at re-establishing international security within the framework of the Charter of the United Nations.

International cooperation

Chile shares the view that the best chance of coming up with an effective means of preventing and eradicating this new form of warfare, which affects international peace and security and threatens the development of nations is through multilateralism. Chile will participate in all appropriate forums with the message that it totally rejects terrorism, without any kind of qualification that might undermine the treatment of an issue involving values fundamental to the peaceful coexistence of the international community.

Measures at the domestic level

The resolutions against terrorism adopted at the United Nations and at the hemispheric regional level have led to the adoption of a series of domestic measures that will enable Chile, in cooperation and coordination with other States, to counter terrorism effectively.

The Executive has submitted two United Nations conventions relating to terrorism, the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism, to Parliament for ratification.

The International Convention for the Suppression of Terrorist Bombings, adopted by the United Nations General Assembly on 15 December 1997, is predicated on the urgent need to prevent, suppress and eliminate a form of terrorism that has become increasingly common in recent years, namely terrorist bombings, and envisages a series of regulations aimed at achieving that objective. The text contains a series of regulations that States parties must incorporate in their domestic legislation in order to suppress the crimes defined and described therein.

The International Convention for the Suppression of the Financing of Terrorism, which the General Assembly adopted in December 1999 and to which Chile acceded in May 2001, is predicated on the urgent need for increased cooperation among States in devising and adopting effective measures and practices for preventing the financing of terrorism, and suppressing it through the prosecution and punishment of its perpetrators.

The Congress processed the two agreements with exceptional speed, with the result that President Ricardo Lagos was able to deliver to the Secretary-General of the United Nations the instruments of accession and ratification, together with related documents, when he attended the General Assembly on 10 November 2001.

Implementation of resolution 1373 in Chile

(a) Issuance of the Supreme Decree

We have adopted the necessary measures for the implementation of resolution 1373 (2001) in Chile. To that end, the President of the Republic issued Decree 488 of 4 October 2001, attached hereto, which provides for the implementation of Security Council resolution 1373, adopted on 28 September 2001. It also stipulates that the authorities and public entities will see to it that the provisions of the resolution are carried out in the areas within their competence. It also calls for the publication of the authorized complete text of the resolution in the Official Journal.

(b) Establishment of the Inter-ministerial Group

At the governmental level, Chile has established an inter-ministerial group to be coordinated by the Minister for Foreign Affairs, with the participation of the Ministries of the Interior, Justice, Finance, the General Secretariat of the Presidency and the respective legal counsels of each of those ministries. The group has analyzed the measures Chile might adopt to implement the resolution and the relevant international agreements to which it is a party, separating out those that can be immediately implemented from those that require legislative reform. As regards the

latter, draft laws are being prepared and will be submitted to Parliament for approval.

Consideration is being given to amending provisions concerning terrorist acts, terrorist organizations, persons that support and finance terrorist organizations, and other aspects of the struggle against terrorism, particularly criminal laws, criminal procedure laws and laws on finance. A financial intelligence unit will be established.

Replies to specific questions formulated by the Counter-Terrorism Committee.

Paragraph 1

Paragraph 1 (b) of Security Council resolution 1373 stipulates that all States must criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories 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.

Subparagraph (a) — What measures if any have been taken to prevent and suppress the financing of terrorist acts in addition to those listed in your responses to questions on 1 (b) to (d)?

The Chilean Congress is now debating an amendment to the law on the illicit traffic in narcotics and psychotropic substances, which would provide for the establishment of a Financial Analysis and Intelligence Unit aimed at preventing and halting the use of the financial system and other sectors of the economic system for the commission of any of the offences defined therein. It is envisaged that the Unit will investigate the financing of terrorist activities and expand measures used to combat the drug traffic, in particular financial operations that might be used to fund terrorist activities.

Banks and financial institutions have been instructed to implement certain recommendations that expand the concept of illegal activities such as money-laundering to terrorism and related activities. The list of persons and organizations linked to international terrorism transmitted to the Government in accordance with Security Council resolutions has been issued, distributed and investigated by the competent bodies.

From the standpoint of criminal law, a study has been carried out to determine which aspects of the mandate to criminalize the financing of terrorism contained in the Convention must be written into the domestic criminal law (in this regard, see the reply to paragraph 1 (b) of the questionnaire prepared by the Committee). At the time of the submission of this report, Chile is in a position to announce that it will submit to Parliament for action, as soon as possible, a draft law incorporating into national law a special offence of provision or collection of funds for terrorism.

Subparagraph (b) — What are the offences and penalties in your country with respect to the activities listed in this subparagraph?

To determine the actual scope of this international obligation it is necessary to review existing legal provisions governing the treatment of financing of terrorism. Such a review must take into consideration the Penal Code, and in particular Act 18.314 of 17

May 1984, which defines terrorist conduct and establishes penalties. The current situation is as follows:

(a) Financing the commission of a terrorist offence. Depending on the circumstances of the case, persons who engage in such conduct are currently punishable as perpetrators of, or at least as accomplices in, the terrorist offence (by application of articles 15, no. 3, and 16 of the Penal Code, whose provisions cover perpetration and participation). Such conduct is punishable only when the commission of the terrorist offence amounts to, at the very least, an attempt; according to the law, a serious and credible threat and conspiracy both constitute an attempt, which is subject to the same penalty as the completed act, even where attenuated (article 7, Act 18.314). In sum, such conduct is punishable only if it can be linked to a concrete terrorist offence involving at least a serious and credible threat or a conspiracy.

Punishments vary considerably, depending on the terrorist offence committed, and it would be difficult to describe in detail each of the penalties (our terrorist legislation covers more than 25 possible situations, from minor terrorist injuries to terrorist homicide and damage). In general, however, the punishments are the same as for ordinary crimes, increased by 1, 2 or 3 degrees. As a general rule, whatever the specific situation, ordinary imprisonment and long-term rigorous imprisonment apply (from 5 years and one day to 20 years to life imprisonment).

(b) A second variant arises when the provider of funds belongs to an unlawful terrorist organization. In such a case, and without prejudice to any possible responsibility he may have for a specific terrorist act as described in paragraph (a), above (article 294 b, Penal Code), the punishment of rigorous imprisonment applies, either short-term or medium-term, depending on whether the association was formed for the perpetration of crimes or simple offences (article 294, Penal Code), in both cases increased by one degree (article 3, Act 18.314; from 541 days to 3 years in the first case and from 3 years and a day to 5 years in the second). All this on the understanding that the person providing the funds does not exercise control over or abet the unlawful terrorist organization, in which case the punishments provided in article 293 apply, increased by two degrees (in other words, simple rigorous imprisonment for life and qualified rigorous imprisonment for life: from rigorous imprisonment for life, in which conditional liberty may be granted after 20 years of imprisonment to rigorous imprisonment for life, in which conditional liberty may be granted after 40 years), when the purpose of such unlawful organizations is the commission of crimes; and rigorous imprisonment, from short-term to long-term (5 years and a day to 15 years), when the purpose of such unlawful organizations is the commission of simple offences.[1]

[1] This description, when considered in relation to the definitions required under the international obligation, reveals that existing Chilean law must be supplemented to cover the following matters:

(a) The provision of funds that cannot be linked either to an unlawful terrorist organization or to concrete terrorist offences; and

(b) The previous collection of funds.

The analysis and proposal mentioned in the reply to the question asked under subparagraph (b) have been undertaken in consideration of these legislative gaps.

Subparagraph (c) — What legislation and procedures exist for freezing accounts and assets at banks and financial institutions? It would be helpful if States supplied examples of any relevant action taken.

From the point of view of domestic law, although the term "to freeze an account" is not specifically regulated under Chilean criminal procedure legislation, the Penal Code and the Penal Procedure Code provide mechanisms to ensure the financial responsibility of the defendant and of third parties liable under civil law. Property linked to terrorism can be seized, impounded or confiscated by invoking a specific criminal offence and instituting legal proceedings.

In this context, the Penal Code and the Penal Procedure Codes currently in force contain a number of provisions that allow for full compliance with the requirement under discussion.

Under the Penal Code, confiscation constitutes an additional and obligatory punishment for all crimes and simple offences (articles 21 and 31[2]).[3]

Moreover, the Penal Procedure Codes contain the necessary provisions to allow for the impoundment (seizure) of property linked to terrorism during the investigation and trial (New Penal Procedure Code: under *Investigative Proceedings*, third paragraph, of Chapter I of the Second Book, in particular articles 187,[4] 215,[5] 217;[6] and article 114, Penal Procedure Code[7]). Similarly, both legal texts empower

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[2] Article 31. Any punishment meted out for a crime or a simple offence shall entail the loss of the property arising therefrom and the instruments used to carry it out, unless they belong to a third party not liable for the crime or simple offence.

[3] It should be borne in mind that the Chilean political constitution does not prohibit the penalty of confiscation in cases involving unlawful associations (article 19, no. 7 g).

[4] Article 187. *Objects, documents and instruments*. The 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, sealed and stored. In all cases, a record shall be made of the procedure, in accordance with the usual rules.

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. All objects, documents and instruments found in the possession of an accused who is detained in accordance with article 83 (b), shall be impounded immediately.

[5] 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 stored by the prosecutor's office.

[6] 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 jeopardizes the outcome of the investigation.

If the objects and documents are found in the possession of a person other than the accused, instead of ordering their impoundment, or rather, prior to their impoundment, the judge can 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.

[7] Article 114 (135). The instruments, weapons and objects of any kind that appear to have been

the court to order effective protective measures to ensure the civil or financial responsibility of the defendant, such as attachment, seizure or a prohibition on the conclusion of legal agreements or contracts (New Penal Procedure Code: article 157;[8] Penal Procedure Code: Chapter X of Second Book, article 380 et seqq.).

Articles 380 of the Penal Procedure Code et seqq. deal with the seizure of property and other measures. For example, property belonging to the accused or to third parties liable under civil law are seized, in order to protect any financial claims that might be raised against them; for so long as no final sentence is pronounced, the seizure shall be considered simply protective in nature (Penal Procedure Code, article 382). The Penal Procedure Code also provides for the adoption of protective measures regarding the belongings of the accused and of third parties liable under civil law; such measures are described in Chapter V of Book II of the Penal Procedure Code. Such protective measures include: impoundment of the thing that is the subject of the suit, the appointment of one or more custodians, the attachment of certain property, and the prohibition from concluding legal agreements and contracts regarding those items. Lastly, during a criminal investigation a judge may seize (impound) the instruments, weapons or objects of any kind that appear to have been used, or to have been intended for use in the commission of the offence, and any goods arising from the offence, whether in the possession of the accused or of another person (article 114, Penal Procedure Code). Such instruments or goods arising from the offence may be definitively confiscated under the terms of the sentence (article 504, Penal Procedure Code) and later remitted to the competent authority, destroyed or put up for public auction, as appropriate (article 672 et seqq., Penal Procedure Code).

With respect to special legal provisions, it should be borne in mind that article 19 of Act 19.366, which governs the illicit traffic in narcotics and psychotropic substances, expressly provides that once a criminal action is concluded with regard to any of the offences established in article 12 of that legal text, the presiding judge may, among other measures, place in banks or other financial entities deposits of any kind.

Finally, it should be borne in mind that the Chilean Political Constitution does not prohibit the penalty of confiscation in cases involving unlawful organizations (article 19, paragraph 7 (g)).

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used or were intended to have been used in the commission of the offence, and the goods arising therefrom, whether in the possession of the accused or of another person, shall be impounded by the judge, who shall order them to be sealed and shall make a record of the procedure, which shall be signed, where possible, by the person in whose possession they were found.

The judge shall take appropriate measures to ensure that the items impounded are maintained in the best possible condition.

[8] Article 157. *Legitimacy of effective precautionary measures*. During the investigative phase, the public prosecutor or the victim may submit a request, in writing, to the judge (*juez de garantia*) for adoption, respect to the accused, of any of the protective measures authorized in Chapter V, Second Book, Civil Procedure Code. Such requests shall be considered and implemented in accordance with the provisions of Chapter IV of that Book. Once the measure is approved, the limit for the submission of a request shall be extended in accordance with the provisions of article 60.

On filing a civil complaint, the victim may likewise request the adoption of one or more such measures.

Aside from the provisions described above, which exist within the framework of the criminal process, it should be noted that there are no special laws within the Chilean legal system that allow for the administrative freezing of ordinary bank accounts or assets.

In sum, in order to establish any measure for the freezing of assets, the judge would have to institute a criminal trial for offences subject to the jurisdiction of the Chilean courts.

The foregoing does not prevent Chile from processing requests for the freezing of assets from abroad, if such requests arise within the context of a judicial procedure being heard by a foreign court, and if such request is transmitted by way of letters rogatory. It should be borne in mind that the authority that determines the admissibility of the request is the Supreme Court of Justice and that, if it is deemed admissible, the competent judge will handle its processing.

Legislative reform is currently being considered with respect to the matter of freezing accounts and other assets in banks and financial institutions.

Subparagraph (d) — What measures exist to prohibit your nationals or any persons or entities within your territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons?

This requirement arises from the criminalization of the funding of terrorism. Our entire body of law, which is in keeping with human rights, is democratic and punishes terrorist actions, fulfils this requirement without any need for a separate criminal definition. Moreover, this prohibition is reflected in both the provision on unlawful associations contained in article 294 of the Penal Code (which punishes any individual who takes part in an unlawful association and, in particular, any one who knowingly and voluntarily provides means and instruments for the commission of crimes, or a shelter, hiding place or meeting place), as well as in the general provisions governing complicity and harbouring contained in the body of law.

Paragraph 2

Subparagraph (a) — What legislation or other measures are in place to give effect to the provisions of paragraph 2 (a) of Security Council resolution 1373 (2001), which provides "that all States shall refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists". In particular, what offences in your country involve (i) recruitment to terrorist groups and (ii) the supply of weapons to terrorists? What other measures help prevent such activities?

Penal legislation includes the following:

(i) The recruitment of members of terrorist groups is punished by reason of unlawful association. Recruitment, by its very nature, presupposes the existence of an unlawful association. Within this context, such conduct is

unquestionably punishable under that heading on the basis of article 2 (unlawful terrorist association), paragraph 5 of Act No. 18.314, on terrorist offences, in connection with articles 292 et seq. of the Penal Code. See also the remarks given below, in connection with article 294 of the Penal Code and article 8 of the Arms Control Act.

(ii) Concerning the supplying of arms: article 294 of the Penal Code provides for the punishment of any person who has taken part in the association (not as chief or leader, for which a more severe punishment is provided under article 293), but simply as a collaborator) and in particular anyone who knowingly (in other words, being aware of the unlawful character — the objectives — of the association) and voluntarily provides means and instruments for committing crimes, shelter, or hiding or meeting places. This provision is significant in the context of the punishment of terrorist offences in general. In particular, the reference to the suppliers of means and instruments necessary for committing crimes should be noted. It should be borne in mind that the wording of the article used to be more specific "horses, arms, munitions and instruments", but was amended by Decree-Law 2621 of 1979 in order to broaden its scope by including the present generic formula "means and instruments". Consequently, judging from the documented history of the provision, it can be concluded that the supplying of arms is certainly a punishable offence.

It could also be argued that the recruitment of members of terrorist groups could be punished on the grounds that it constituted supplying of means (though this interpretation is open to question). Similarly, the notion of providing a hiding or meeting place might be useful for punishing the offences of harbouring or covert collaboration — acts which are normally associated with a State or Government — although the penalty, naturally, applies only to natural persons.

Finally, reference should be made to an offence defined in Act No. 17.798, on Arms Control, which proves applicable — apparently in concurrence with the offence of unlawful terrorist association — in many of the conceivable hypotheses relating to recruitment and supplying of weapons. We are referring here to the offence dealt with in article 8 of the said Act, designated as unlawful association under the Arms Control Act, which provides that "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 items referred to in article 3 (in general, firearms and explosives), shall be liable to any of the degrees of long-term rigorous imprisonment.

"Persons who knowingly assist in the creation and operation of private militias, combat groups or militarily organized parties armed with any of the items referred to in article 3 shall incur the same penalty, diminished by one degree."

...

"If the offences defined in the preceding paragraphs are committed by members of the armed forces or the police and security forces, whether in active service or retired, the penalty shall be increased by one degree.

...

"In times of foreign war, the penalties established in subparagraphs 1 and 3 of this article shall be, respectively, long-term rigorous imprisonment (medium degree) to rigorous imprisonment for life and long-term rigorous imprisonment (minimum degree) to rigorous imprisonment for life."[9]

The relevance of the rule invoked with a view to sanctioning the acts in question is clear. There are, in fact, numerous cases in which the aforesaid offence has been applied (unfortunately with some excess, inasmuch as the offence of unlawful terrorist association and that of unlawful association under the Arms Control Act have been applied jointly, in respect of the same act; fortunately, in recent cases there has been a tendency to solve the problem through the application of the theory of concurrence, apparently on the basis of the principle *non bis in idem*).

(iii) Regarding the question what other measures might prevent the activities dealt with under (i) and (ii), it should be pointed out that, as regards prevention, the main thing is to establish a cooperation and intelligence network for the identification or recognition of assets derived from or intended for the financing of terrorist offences. The future National Intelligence Agency (ANI)[10] will play the main role in this regard. Also essential in this regard is to establish legal and/or administrative rules aimed at requiring banks and financial entities to adopt safety measures (such as monitoring, follow-up and reporting of suspicious financial or banking transactions; thorough and rigorous identification of holders of bank accounts, especially in the case of legal entities; and conservation of documents and records that explain banking operations).

Subparagraph (b) — What steps are being taken to prevent the commission of terrorist acts, and in particular, what early warning mechanisms exist to allow exchange of information with other States?

The Government has coordinated with the police a series of State actions aimed at preventing terrorist acts in its territory and offering collaboration internationally. These special measures are basically the following:

(a) Intensification of the work of the inter-agency counter-terrorism team consisting of specialists from the Chilean police, the Criminal Investigation Department and the Directorate of Public Security and Information, the latter serving as coordinator;

(b) Strengthening of border controls at authorized and unauthorized crossing points;

(c) Strengthening of security for embassies, residences, enterprises and public personalities;

(d) Review of the policy on visa requirements and exemption;

(e) Implementation of an inter-ministerial commission for the analysis of threats of bioterrorism and adoption of an apposite contingency plan;

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[9] Article 8 of Act No. 17.798, on Arms Control.

[10] It should be borne in mind that the Government has sent the bill for the creation of the National Intelligence Agency to Parliament.

(f) Ongoing analysis at the level of members of the Intelligence Consultative Committee that is made up of civilian and military authorities;

(g) Participation in the Inter-American Committee against Terrorism (CICTE) created under the Organization of American States (OAS);

(h) Participation in the Permanent Working Group on terrorism created in the context of the meetings of the Ministers of the Interior of the Southern Cone Common Market (MERCOSUR);

(i) Ongoing analysis of developments in the current international conflict.

The Chilean police, for their part, have reported that they have permanently redirected their information search schemes, maintaining constant monitoring of groups or persons suspected of being connected with terrorist activities and performing intelligence analyses on the basis of available records.

As for the Criminal Investigation Department, its tactical and strategic units have been reinforced and it has established ongoing communications and coordination with the International Criminal Police Organization (Interpol) and the Intelligence, Drug Control and Immigration offices, not just through the administrative system but also through the use of a direct-communication "technical channel", thus making it possible to keep tabs on aliens suspected of connection with terrorism or unlawful acts.

As one way of exchanging experience in the area of international terrorism, police intelligence officers have taken part in seminars conducted in Uruguay and Brazil, coordinating the strategies applied in each country to counter terrorism. The purpose was to have an overall view of the subject that would make it possible to standardize policies concerning investigation and the exchange of necessary information.

To prevent persons connected with terrorism from entering the country, instruction was given to the staff of the National Central Bureau of Interpol, which has an officer of the Criminal Investigation Department permanently assigned to the Secretariat General of Interpol, whose headquarters is at Lyon, France, and two officers assigned to the Sub-Regional Bureau in Buenos Aires, Argentina, thus maintaining smooth administrative and technical contact with their counterparts throughout the world, so as to make appropriate use of mechanisms for the safe and rapid exchange of information and records on the subject, communicating all international terrorist information to the border controls placed under our institution. This is a system of recognized utility for the neutralization of terrorism, given its early-warning character.

From the standpoint of national security, the Criminal Investigation Department of Chile is constantly coordinating, both administratively and through the "technical channel", with the Directorate of Public Security and Information (DISPI), making it possible to anticipate and take appropriate action should there be any incident exhibiting terrorist characteristics.

Concerning the exchange of intelligence information, regular contact exists with counterparts in various countries, providing background to enrich further the existing knowledge of terrorist groups operating on an international scale, especially those of Islamic origin, thus strengthening and facilitating the exchange of operational information.

In the area of bioterrorism, coordination takes place with the competent agencies on the handling of unknown substances. Work is already being done on the investigation of the origin of questionable letters.

Questions relating to asylum and safe haven

Paragraph 2 (c): What legislation or procedures exist for denying safe haven to terrorists, such as laws for excluding or expelling those who finance, plan, support, or commit terrorist acts or provide safe havens? It would be helpful if States supplied examples of any relevant action taken in this regard.

Paragraph 3 (f): What legislation, procedures and mechanisms are in place for ensuring asylum seekers have not been involved in terrorist activity before granting refugee status. Please supply examples of any relevant cases.

Paragraph 3 (g): What procedures are in place to prevent the abuse of refugee status by terrorists? Please provide details of legislation and/or administrative procedures which prevent claims of political motivation being recognized as grounds for refusing requests for the extradition of alleged terrorists. Please supply examples of any relevant cases.

It should be borne in mind that our immigration legislation, contained in Decree-Law No. 1094 of 1975 and Supreme Decree 597 of 1984, provides for the denial of entry into and expulsion from the country as well as for the denial and revocation of residence permits in respect of aliens involved in the commission of terrorist acts.

The channels through which such information is received or obtained with a view to deciding or decreeing any of the immigration measures mentioned are, on the one hand, the respective police authorities, which report all criminal conduct or infractions that come to their attention in the exercise of their duties or when requested by the immigration authority. Such police reports deal not only with acts committed in the country, but also all information compiled through Interpol and coming from various countries throughout the world.

Such information is also received from the courts of law, which are required under our immigration laws to report to the immigration authorities any offences committed by foreign nationals.

Finally, MERCOSUR, Bolivia and Chile have agreed to exchange information on rejections, expulsions and wanted persons in the member countries. Such coordination furnishes the region’s immigration authorities with more information for deciding on applications for residence permits filed in their respective countries.

On the subject of asylum and safe haven in our country, such matters are governed by the Convention relating to the Status of Refugees, adopted at Geneva on 28 July 1951, and the Protocol relating to the Status of Refugees, adopted in 1967, as well as Decree-Law No. 1094 of 1975, Immigration Act, amended by Act No. 19,476 of 1996, and Supreme Decree 597 of 1984, Immigration Regulation, as amended in respect of this subject by Supreme Decree 2518 of 1997.

Our domestic legislation refers in a general way to the international conventions on the subject that have been signed by the Government of Chile.

Consequently, the grounds for the rejection of applicants for asylum or refugee status are enshrined in article 1 (c), (d), (e) and (f) of the Convention on the Status of Refugees.

Furthermore, and as an additional safeguard, Act 19.476 of 1996 incorporated in the legislation on this subject the Commission on the Granting of Refugee Status whose mandate is to advise the authority responsible for ruling on applications. The Commission is empowered to request and obtain any information it considers relevant in order to ensure the best possible decision by the higher authority.

The information requested by the Commission includes an applicant's police and judicial records — these are sought through Interpol throughout the world — and information from Chile's consular missions in various countries. The information obtained by those means is complemented by reports issued by UNHCR.

Lastly, it is necessary to bear in mind that, as with an application for a residence permit filed by an alien, the grounds for rejection and cancellation provided for under our immigration laws also apply to safe haven. Action may be taken to expel or prohibit the entry of a refugee as a result of adverse information that makes such action appropriate.

Subparagraph (d) — What legislation or procedures exist to prevent terrorists acting from your territory against other States or citizens? It would be helpful if States supplied examples of any relevant action taken.

In this connection, the general rules to prevent and punish terrorist acts are applied, as detailed in this report.

In addition, it is necessary to draw attention to the creation of the National Intelligence Agency which will have a preventive function through the establishment of an intelligence network for the prevention of terrorist acts. It is also worth mentioning the creation of the Financial Intelligence Unit whose mandate will be to anticipate and prevent the utilization of the financial system and other sectors of economic activity for the commission of any of the specified crimes. It is envisaged that the functions of the Unit will include investigation of the financing of terrorist acts and that the action contemplated to combat drug-trafficking will be extended to cover financial operations that may be carried out to finance activities of a terrorist nature.

Subparagraph (e) — What steps have been taken to establish terrorist acts as serious criminal offences and to ensure that the punishment reflects the seriousness of such terrorist acts? Please supply examples of any convictions obtained and the sentence given.

As has been made clear in the body of this report, Act 18.314 (of 17 May 1984) which characterizes terrorist acts and establishes the penalty for them is the source that establishes terrorist acts as serious criminal offences that are punished on a scale in proportion to their seriousness. As was stated above, as a general rule sentences greater by l, 2 or 3 degrees than those for ordinary crimes are envisaged. It must also be added that Act 18.314 provides for the punishment of an attempt to commit terrorist acts, the threat of such acts and conspiracy to commit them. Furthermore, it precludes the possibility of release on bail (during the trial) as well

as the possibility of any alternative sentence not involving loss of liberty or of prison privileges.

It would exceed the scope of this report to provide an exhaustive account or enumeration of convictions for terrorist acts arising from the national jurisprudence. Such judgements are extremely numerous.

In general terms it may be stated that the majority of convictions for unlawful terrorist association involve on average long-term rigorous imprisonment (medium degree), in other words 10 years and one day (for example the judgements of the Court Martial under which some 10 defendants were all sentenced to 10 years and one day of penal servitude).

Other sentences for terrorist homicide have been rigorous imprisonment for life or a term of imprisonment of 15 years and one day.

There have also been other sentences of a term of imprisonment of 10 years and one day for terrorist arson.

Lastly, there have been convictions for the throwing and placing of bombs and explosives which are punished by rigorous imprisonment for 10 years and one day.

Subparagraph (f) — What procedures and mechanisms are in place to assist other States in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings? Please provide any available details of how these have been used in practice.

In general terms, it may be stated that the procedures applicable in a judicial context are those relating to letters rogatory. The rule which regulates judicial action taken in Chile at the request of a foreign court or prosecutor — including requests for the production of evidence — is article 76 of the Code of Civil Procedure, which also applies in criminal matters. Under that provision, such requests are handled as prescribed by treaties in force or, in the absence of such treaties, in conformity with the relevant general principles of international law. The Ministry of Foreign Affairs receives communications from foreign courts through the respective embassies and, after verifying their formal characteristics, forwards them to the Supreme Court, the body that is competent to assess the lawfulness of judicial requests from abroad. If the Supreme Court orders that effect shall be given to the letters rogatory, the latter are referred to a court that is competent to take the action requested. Lastly, when the action requested has been taken, or when it has been certified that it cannot be taken, the letters rogatory are returned through the same channels.

In the absence of a treaty, the Supreme Court applies in this matter, as principles of international law, the provisions of the Convention on International Private Law (the Bustamante Code) adopted at Havana on 20 February 1928. Article 389 of the Code provides that: “It is up to the judge issuing the letters rogatory to decide as to his own competence and the legality and propriety of the action or evidence, without prejudice to the jurisdiction of the judge to whom said letters are addressed.” Article 390 states that: “The judge to whom such letters rogatory are sent shall decide as to his own competence *ratione materiae* in respect to the action which he is asked to take”. Similarly, article 391 provides that: “The one receiving the letters rogatory should comply, as to the object thereof, with the law of the one

issuing the same, and as to the manner of discharging the request he should comply with his own law".

With respect to extrajudicial collaboration, jurisdiction and procedure are a matter for the police (internal administrative procedures), and will in the future be the responsibility of the National Intelligence Agency and the Financial Analysis and Intelligence Unit.

Subparagraph (g) — How do border controls in your country prevent the movement of terrorists?

With respect to the prevention and control of terrorism at border controls, it should be pointed out that Chile has control posts at borders with neighbouring countries that are staffed throughout the year. In addition, there are temporary border crossings with the Argentine Republic which are impassable in winter because of weather conditions.

The main border control linked to the prevention of terrorism is immigration control. This operates essentially through two types of action: (a) direct communication between immigration authorities with their opposite numbers in neighbouring countries (Peru, Bolivia and Argentina) concerning the movement of persons crossing the border; (b) international police cooperation through Interpol. In addition, persons entering and leaving the country have their documents checked and use is made of national computer systems and databases.

Paragraph 3

Questions relating to exchange of information

Subparagraph (a) — What steps have been taken to intensify and accelerate the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups?

Subparagraph (b) — What steps have been taken to exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts?

The Ministers of the Interior of MERCOSUR, Bolivia and Chile hold regular meetings and carry out a series of joint activities designed to improve the security of the region. One of these activities has been the creation of an information exchange system in order to carry out the action set forth in the General Plan for Reciprocal Cooperation and Coordination for Regional Security, chapter VII of which covers terrorism.

At their most recent meeting, last November, they agreed, inter alia:

(i) To set up a specialized forum for the exchange and analysis of information on terrorism in the framework of the Meeting of Ministers of the Interior of MERCOSUR, convening regular meetings of political and technical staff of specialized agencies and/or of the intelligence services

of each of the Member States; the meetings would be organized by whichever State held the temporary presidency;

(ii) The forum will initially consist of the Permanent Working Group and its subsidiary body the Specialized Working Group on Terrorism;

(iii) To create an integrated system for information exchange comprising available data on persons or organizations that have the ability or potential to support or commit terrorist acts. This system will comprise all information arising from the activities carried out at the various operational levels which will be incorporated in the system after evaluation;

(iv) To establish a system for rapid consultation between the specialized agencies and/or intelligence services of the States parties enabling collaboration to be set up quickly in the event of actual situations entailing the risk of terrorism, with specific safeguards and access to information;

(v) To exchange experience and to train technicians and specialists, with additional input from third countries, in order to improve the professionalism of the human resources of the signatory countries;

(vi) To make an analysis or search to identify actors whose interests are related to the activities of international terrorism;

(vii) To establish a standard form for the exchange of information for the purpose of investigations into terrorist activities to facilitate the exchange of information between States parties;

(viii) To establish prevention mechanisms for combating bioterrorism. In order to achieve this objective, information will be exchanged on laboratories or industries that produce inputs or technologies that could be used to make chemical and biological weapons;

(ix) To study the legislation concerning terrorism in the States parties to MERCOSUR, comparing it with the legislation in force in Latin America as a whole and in other parts of the world;

(x) To share information on the impact of terrorist acts on the population of each State party and of associated States to provide an updated view of the development of this criminal activity.

In addition to the above, it is to be noted that Chile took part in the first special meeting of the Inter-American Committee on Terrorism (CICTE) with a delegation of experts which reported on measures taken by our country in connection with terrorism and the implementation of the resolutions of multilateral bodies. In that connection Chile reaffirmed its support for OAS as the coordinating body of the hemisphere for policy on counter-terrorism, and also made a voluntary budgetary contribution to the Committee. It also offered special collaboration with respect to the exchange of information within the third Subcommittee on Border Control (presided over by Peru) which was established on that occasion.

Subparagraph (c) — What steps have been taken to cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against the perpetrators of such acts?

Following the deposit on 10 November 2001 of its instrument of accession to the International Convention for the Suppression of Terrorist Bombings of 1997 and the deposit, on the same date, of its instrument of ratification of the International Convention for the Suppression of the Financing of Terrorism of 1999, both of which were adopted by the United Nations General Assembly, Chile became a party to all the multilateral instruments of a universal nature on that subject. A list of those instruments is annexed to this report giving the date of ratification or accession by Chile, as appropriate. Our country has also participated, in coordination with the Rio Group, in negotiations under the auspices of the United Nations concerning a general convention against terrorism and another convention relating to nuclear terrorism. In the same context, Chile has actively participated in negotiations in the framework of the Organization of American States with a view to the adoption of an inter-American convention against terrorism.

Subparagraph (d) — What are your Government's intentions regarding signing and/or ratifying the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of Financing of Terrorism of 9 December 1999?

As indicated above, Chile is a party to all international conventions and protocols relating to terrorism of universal application, including the International Convention for the Suppression of Financing of Terrorism of 9 December 1999.

Subparagraph (e) — Provide any relevant information on the implementation of the conventions, protocols and resolutions relating to terrorism, such as Security Council resolutions 1269 (1999) and 1368 (2001).

The Government of Chile has adopted the measures necessary to comply with its related international obligations. Our country has intervened actively, condemning acts of terrorism in all international forums in which it has had occasion to participate. It has also acceded to and/or ratified the international conventions referred to in the resolutions of the United Nations Security Council.

Paragraph 3 (g): How do procedures for the issuance of identity papers and travel documents help prevent the movement of terrorists? What measures exist to prevent the forgery of those documents?

Regarding the issuance of identity papers and travel documents, attention may be drawn to the forthcoming implementation by the Civil Registry Service of the new system for identification, identity documents and passports. This is a high-level project on which work has been in progress for a considerable time and which will receive the collaboration of the private sector through the system of competitive tendering. The Civil Registry Service expects the new identity document and the new passport to be in operation towards the middle or end of next year.

The objectives of the new system include:

(a) Making available a new identity document and a new passport that offer an advanced level of security, high durability, comply with international standards and are technologically updatable;

(b) Implementing a central computerized identification system with an identity database which stores images of the photograph, signature and fingerprints of each person;

(c) Enabling the automatic verification of identity through one-to-one matching using the automated fingerprint identification system (AFIS 1:1);

(d) Equipping and maintaining a set of workstations in the offices of the Service for taking live digital pictures;

(e) Setting up a system for cancelling identity documents and passports in order to reduce the impact of the loss of such documents;

(f) Including a system to support the work of fingerprint experts to assist them in their task of classifying and retrieving fingerprints contained in the manual archives of the Service;

(g) Digitalizing on a massive scale the index-finger print files and ten-print fingerprint files, currently in existence.

In addition, there is a need for appropriate and effective coordination between police forces and head offices of customs and border services.

3.3 States may include in their reports additional relevant information, including information on the issues covered by paragraph 4 of resolution 1373 (2001). They may also include general observations on the implementation of the resolution, and outline any problems encountered.

In its capacity as pro tempore Secretary of the Rio Group, Chile organized in November a special meeting of legal experts and advisers of the ministries of foreign affairs of the members of the Group in order to make a joint analysis of Security Council resolution 1373 (2001), exchange experience on ways in which the various member countries of the Group could implement the resolution, and also to make a coordinated proposal to their respective authorities on certain measures and actions. The participating countries were urged to ratify or accede to the various international instruments relating to the subject matter and to implement the provisions of the resolution domestically. Emphasis was also placed on the need to participate in the meetings to be held in Washington to negotiate a future inter-American convention against terrorism. The terrorist attacks on the United States of America were strongly condemned and the need for more effective cooperation among all States was noted.