United Nations S/2003/871

Security Council

Distr.: General
10 September 2003

Original: English

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 6 June 2003 (S/2003/624).

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

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

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 30 July 2003 from the Deputy Permanent Representative of the Libyan Arab Jamahiriya to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: Arabic]

I am pleased to transmit to you herewith the responses of the Libyan Arab Jamahiriya to the questions and comments received from the Counter-Terrorism Committee concerning the supplementary report attached to our letter dated 28 August 2002 addressed to you as Chairman of the Committee (S/2002/1021).

I take this opportunity to assure you once again of our full cooperation with the Counter-Terrorism Committee as a contribution to the eradication of international terrorism.

Accept, Sir, the renewed assurances of my highest consideration.

(*Signed*) Ahmed A. **Own**
Deputy Permanent Representative

Enclosure

Responses of the Great Jamahiriya to the questions received from the Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The note dated 30 May 2003 (S/AC.40/2003/MS/OC.268) from the Chairman of the Counter-Terrorism Committee asks for responses to the questions and observations by members of the Committee concerning the supplementary report submitted by the Great Jamahiriya on 28 August 2002. The responses are given below.

Implementation measures

1.2 Effective implementation of paragraph 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, to carry out terrorist acts.

Response

The collection and provision of funds for the purpose of carrying out terrorist acts is criminalized under the Libyan Penal Code, irrespective of whether the terrorist act takes place, and whether it occurs inside the country or abroad. Article 322 of the Penal Code penalizes any person “who harbours or supplies provisions to any participant in a criminal gang”. Article 321 deems a criminal gang to be formed “if three persons or more form a gang to commit one or more crimes or misdemeanours”. It is clear from the text that it is not a condition that the members of the gang actually commit the crime; it is sufficient that they deliberately formed the gang for the commission of crimes. Article 206 criminalizes “any person who provides assistance or receives funds or facilities, whether directly or indirectly, from any body or person with a view to establishing a prohibited grouping, organization or formation or with the intention of facilitating such establishment whether such grouping is based in the country or abroad”. Criminal gangs are undoubtedly prohibited organizations and are therefore covered by the text.

Accordingly, the Penal Code criminalizes the collection of funds in Libyan territory, whether by a Libyan or an alien, and the text is of general application in that it covers the collection of funds both in the country and abroad. Moreover, there is no requirement that the act takes place since the text criminalizes the collection of funds for the purpose of establishing a grouping or organization or of facilitating such establishment. Since terrorist acts are committed with the knowledge of the organization or grouping that has been established it is clear from the text there is no requirement that the terrorist acts are actually committed. The text also covers the other cases addressed in the questions in that it criminalizes fund-raising even if the funds are not transferred from one country to another. The text criminalizes the collection of funds as such, in other words, the act of fund-raising whether or not the funds are transferred, whether the funds or a part thereof originate abroad, or whether all the funds are collected in the country. The text is not concerned with whether the funds are of legal origin or not but with the collection of funds and the purpose for which they are collected. While in most cases terrorist acts are

committed on an organized basis, the text includes criminal organizations even if they are not terrorist organizations. However, where terrorist acts are committed by a single individual, the text does not cover the collection of funds for such an individual. Accordingly, the new draft Penal Code specifies that the collection of funds for the purpose of committing terrorist acts shall be regarded as a crime of terrorism whether the perpetrator is an individual or a grouping.

1.3 Paragraph 1 of the resolution requires financial institutions and other intermediaries (for example, lawyers, nurses and accountants, when engaged in financial transactions) to identify their clients and to report suspicious financial transactions to the relevant authorities. The Committee requests an outline of legal provisions which oblige lawyers, notaries and accountants to report suspicious transactions.

Response

The provisions of Libyan legislation relating to the obligation to report suspicious transactions are general and wide ranging and are not restricted to specific categories, occupations, trades or callings or to persons connected with such transactions. Article 18 of law No. 10 of 1994 concerning "purification" makes it obligatory for "any person having knowledge of illegal gains to make a report to the purification committees". Article 6 of the same law provided that "illegal gains shall mean any funds or commission acquired by a person through the exploitation of his job or position, or through such person's exercise of a prohibited activity". Similarly, Article 7 of law No. 3 of 1986 on financial accountability entitled "Where did you get that from?" provides that "any person having knowledge of the illegal gains of an individual or of the commission of any other breach of the provisions of this law shall notify the Office of the Public Prosecutor".

Illegal gains are defined in Article 1 of the law as follows: "Gains shall be deemed to be illegal if they originate in cronyism, coercion, violation of the law or the misuse of a person's profession, trade, position or influence, or where the origin or reason for such gains is unknown or where they are not in accordance with the legitimate resources of the individual".

Needless to say, illegal gains as defined by the law include suspicious transactions because suspicion implies doubt as to origin or legality. Consequently, funds of unknown origin are clearly illegal and it is the duty of any person having knowledge thereof to notify the competent authorities, particularly where the person having knowledge of the situation is a lawyer or other person having a connection with the suspicious transaction. It follows that this paragraph is covered by the Libyan laws referred to.

The draft law on money-laundering (article 4.3) criminalizes failure to report suspicious deals and provides penalties for any official of a financial, commercial or economic institution who is in breach of the duty to report such deals. Article 1 of the draft defines financial institutions as banks, finance companies, currency exchanges and financial intermediaries or any entity authorized to engage in such activities, including insurance companies and related service offices, such as lawyers and so forth.

1.4 Effective implementation of paragraph 1 (c) of the resolution requires the State, inter alia, to freeze without delay the funds, financial assets and other economic resources of persons and entities, both resident and non-resident, who commit, attempt to commit, participate in or facilitate the commission of terrorist acts. ... The funds and other economic resources need not be the proceeds of crime but could be of lawful origin and yet be used for terrorist purposes either within or outside the territory of the Libyan Arab Jamahiriya. ... In that respect, it suffices that the funds and other economic resources could be connected to terrorist acts and may require to be frozen so as to prevent their use in the furtherance of terrorism.

Response

Any funds that are illegal in terms of their source, reason, purpose or the use that is made of them can be seized under Libyan law. It follows that funds used for terrorist operations can be seized, by being frozen or confiscated. The funds referred to, if they are indeed connected with criminal acts, including acts of terrorism and so forth, can therefore be confiscated and, a fortiori, frozen.

With respect to what are described as terrorist acts — which are not criminalized under current Libyan legislation — it will be possible to seize funds used in connection with terrorism after the enactment of the new draft Penal Code which will cover terrorist acts.

The freezing of funds with a possible link to terrorist acts is a matter that is currently being studied and discussed by specialists and will be the subject of a large scale seminar in September 2003 in the framework of the final study of the draft Penal Code in view of the difficulties entailed by this aspect of the Committee's questions. The difficulties arise largely because the concept of "link" and "terrorism" have not been defined and because there is a conflict with well-established legal principles, chief among which is the sanctity and inviolability of personal property. It has been pointed out that the freezing of funds merely because of a link of one kind or another with terrorist acts will give rise to efforts to determine the extent of the link between the funds and terrorism and may be exploited for political reasons in order to make an example of certain people or to be a source or means of blackmail by certain employees of banks. It may also induce some people not to deposit their funds in banks and could therefore have an adverse effect on the banking and economic sectors in general and produce a result which is the opposite of what is desired which is to restrict the ability of individuals to use their funds in furtherance of terrorism. The latter may choose to move their funds and hold them well away from banking institutions and in unknown places isolated from any form of control. It may be that subjecting suspect funds to strict and continuous monitoring, which is something that can be achieved by administrative means, would achieve the desired outcome in a better way than by freezing funds merely on grounds of suspicion. However, irrespective of the foregoing, it may become clear from the study referred to above that it will be possible to provide for the freezing of funds linked to terrorism.

Concerning the request to any State to freeze funds suspected of being connected with terrorism, this can be done through conventions on the subject concluded between States and in accordance with the principle of reciprocity. However, the request of the State can sometimes be treated as a notification and

appropriate action can therefore be taken with respect to it. If the subject matter of the notification is a crime under Libyan law, the legal measures will be taken with respect to it even in the absence of a convention on the subject. The Jamahiriya has concluded conventions in this connection with a number of States to which reference is made below (see 1.6).

With respect to the stage reached by the draft law on money-laundering, the law is in final draft form and has been forwarded to the secretariat of the General People's Congress for submission to the legislature at the next session.

1.5 Paragraph 2 (a) of the resolution requires each Member State, among other things, to criminalize recruitment in its territory to terrorist groups operating either inside or outside its territory. It is not always the case that the recruiter actually belongs to a criminal or terrorist organization. The possibility always exists that recruitment to terrorist bodies may involve deception, such as representation that the purpose of recruitment is one (e.g. teaching) different from its real purpose.

Response

Article 168 of the Penal Code criminalizes in general terms the recruitment of forces against a foreign State and the perpetration of any hostile act against such State, irrespective of the form and means of such recruitment, whether it assumes the guise of teaching or anything else. The point is the true nature of the activity and not its name or outward appearance; it follows that recruitment and hostile acts are explicitly criminalized and that terrorist acts are regarded as hostile acts. This was specifically taken into account in the draft Penal Code: article 168 of the Penal Code was replaced by article 142 of the new draft which specifies that "a term of imprisonment shall be imposed on any person who, without the permission of the competent authorities, recruits persons in opposition to a foreign State or perpetrates any other hostile act ...". There is thus no requirement concerning the recruitment or assembling of forces; the crime consists in the recruitment or assembling of persons in opposition to a foreign State, under whatever guise such activity takes place. Since terrorist acts by their nature endanger the existence of a State, the State against which the recruitment has taken place has a means of responding to such acts and to those who support them. The text therefore covers this part of the question.

1.6 Effective implementation of paragraph 2 (b) of the resolution requires a State to take steps to prevent the commission of terrorist acts by, inter alia, providing early warning to other States through the exchange of information. In its first report (at page 7), in reply to paragraph 2 (b) of the resolution, the Libyan Arab Jamahiriya indicates that it has signed or acceded to several international, regional and bilateral instruments and undertakes to provide details of these instruments at a subsequent date. The CTC would be grateful to receive an outline of the provisions contained in these instruments.

Response

It goes without saying that the Committee is fully cognizant of the provisions of the international conventions relating to counter-terrorism and there is therefore no need, in this context, to summarize the provisions contained in them. At the regional and bilateral levels, the conventions concluded by the Libyan Arab

Jamahiriya contain provisions dealing with the provision of assistance in investigations and court proceedings in cases relating to terrorism, including the Arab Convention for the Suppression of Terrorism which provides as follows in articles 13, 14, 15, 16, 17 and 18:

The Contracting States undertake to promote the exchange of information between and among them concerning:

The activities and crimes of terrorist groups and of their leaders and members, their headquarters and training; the means and sources by which they are funded and armed; the types of weapons, munitions and explosives used by them;

The means of communication and propaganda used by terrorist groups, the movements of their leaders and the travel documents that they use;

Each Contracting State undertakes to notify any other contracting State in an expeditious manner of the information it has concerning any terrorist offence that takes place in its territory and is intended to harm the interests of that State or of its nationals;

The Contracting States undertake to cooperate with each other in the exchange of information for the suppression of terrorist offences and to notify other Contracting States of any information or data in their possession that may prevent the occurrence of terrorist offences in their territory, against their nationals or residents or against their interests;

The Contracting States also undertake to promote cooperation among themselves and to provide assistance with respect to measures for the investigation and arrest of fugitives suspected or convicted of terrorist offences.

In the same context, the Libyan Arab Jamahiriya is a party to the Convention of the Organization of the Islamic Conference on Combating International Terrorism the provisions of which stress the necessity of the exchange of information among the Contracting Parties and the undertaking of the Contracting States to notify any other State expeditiously of information available to them concerning terrorist crimes directed against the interest of those States or their nationals and also the undertaking of the Contracting States to provide any other State Party with information and data available to them relating to terrorist activities. The Contracting States undertake to promote cooperation among themselves and to provide assistance with respect to measures for investigation and arrests in the context of combating terrorist offences.

The Libyan Arab Jamahiriya has also signed the Convention of the Organization of African Unity which also promotes regional cooperation among the signatories, emphasizes the question of early warning of terrorist crimes and commits the Contracting States to make efforts in that context.

The Libyan Arab Jamahiriya has also signed a number of bilateral conventions with other States in the framework of preventing the commission of acts of terrorism. These conventions emphasize the necessity of cooperation and the exchange of information. Examples that may be cited in this context are the Treaty of Cooperation with Algeria, concluded in 2001, under the provisions of which the two States commit themselves to security cooperation and the exchange of information, and the Convention of Cooperation in the field of counter-terrorism with Italy, signed in 2000 in Rome which defines procedures and measures for

combating terrorist activity and what can be achieved by international cooperation to put an end to terrorist crimes, particularly through the exchange of information and data.

1.7 Paragraph 2 (c) of the resolution requires States to deny safe haven to those who finance, plan, support or commit terrorist acts or provide safe haven to terrorists. In response to that subparagraph, in its first report (p. 8) the Libyan Arab Jamahiriya indicates that aliens may be deported under the terms of article 225 of the Penal Code. Article 16 of law No. 6 of 1987 provides for the cancellation of the visa of a person who presents a threat to the State. These legal provisions do not appear adequately to comply with the said subparagraph.

Response

The Libyan legislature, in article 322 of the Penal Code, addressed the question of the harbouring and funding of a participant in a criminal gang. That text clearly and unequivocally meets the requirements of paragraph 2 (c) of the resolution in that it criminalizes the provision of safe haven to anyone who funds terrorist activities. Similarly, the legislature has ordained the expulsion of an alien who is sentenced to a penalty involving deprivation of liberty for committing one of the offences specified in Book II, chapter I, including supplying provisions or safe haven to a criminal gang. Article 158 of the Penal Code also provides that: “The judge shall ensure the expulsion of any alien who is sentenced to a term of imprisonment of not less than 10 years; the expulsion of an alien shall also be permitted in other cases as prescribed by law. An alien who violates an expulsion order shall be subject to the application of the laws relating to the violation of expulsion orders issued by the administrative authorities”. Expulsion is also possible by virtue of decisions of the administrative authorities without the necessity of a judicial sentence in accordance with the provisions of article 17 of law No. 6 of 1987 concerning arrangements for the entry or stay of aliens in, and their departure from, the Libyan Arab Jamahiriya. That article provides for expulsion on the basis of a decision of the Director-General for Passports and Nationality. However: “A residence visa issued to an alien may be cancelled at any time, thus necessitating the expulsion of the alien, if such person’s presence constitutes a threat to the security and integrity of the State, whether domestically or abroad.” It is well known that terrorist acts threaten the security and integrity of the State both domestically and abroad.

Similarly, article 4 of Decision No. 247 of 1989 on the implementing regulation for law No. 6 of 1987 regulating the entry and stay of foreigners in, and departure from Libya specifies that an entry visa shall not be granted to foreigners:

(a) Who have been the subject of an expulsion order in accordance with the provisions of article 17 of law No. 6 of 1987;

(b) Who have a clearly established link with crime, international terrorism or smuggling, or who belong to organizations or entities hostile to freedom.

Consequently, persons in those two categories are not permitted to remain in Libya and must be expelled because the reason for preventing their entry is also the reason for preventing their remaining in Libyan territory.

1.8 In connection with paragraph 2 (e) the Libyan Arab Jamahiriya is requested to provide an outline of the new draft Penal Code and a progress report on its enactment.

Response

With respect to the submission on outline of the crimes that qualify as terrorist acts under the new draft Penal Code, article 260 of the draft enumerates several actions that are regarded as terrorist acts the perpetrators of which are liable to the penalties laid down in the said article, as follows:

1. The use or threat of force or violence, and the spreading of propaganda by an offender in furtherance of an individual or collective criminal enterprise that endangers the integrity or security of society or of individuals, or spreads fear or panic among members of the public or endangers their lives, freedoms or security.

2. Hijacking or seizing a means of air, sea or land transport, damaging or destroying such means of transport, placing explosives on board, attacking persons on board or subjecting them to danger in any form whatsoever.

3. Seizing or holding of persons as hostages with the intention of influencing the public authorities in the conduct of their work or of influencing the hostages themselves with the intention of obtaining a benefit or advantage of any kind.

4. Establishing an association, gang, entity or organization that uses terrorism to attain or give effect to the objectives it professes or is committed to, or forcing other persons to join such a grouping or preventing them from leaving it.

5. Working for an association, entity, organization, grouping or gang based abroad, or communicating with any persons working on behalf of any such body, or corresponding with such persons or bodies in the furtherance of any terrorist act inside the country or directed against its interests, including interests abroad.

6. Membership of any terrorist association, organization or entity, howsoever called, based abroad and using terrorism and military training to attain its objectives, even where its activities are not directed against the Libyan Arab Jamahiriya.

7. Placing bombs or other explosives or explosive devices for the purpose of taking human life or damaging facilities or communications networks, inflicting serious economic loss, causing confusion or anarchy or spreading fear.

8. Possession of weapons and munitions for the purpose of carrying out a terrorist act.

9. Terrorizing persons or institutions using the telephone or messages of any kind whatever.

10. Offering, collecting or providing voluntary funds by any means whatever for use in the commission of terrorist acts, or the provision of such funds to others, even if the funds are not actually used.

It is clear from the study of the acts criminalized by this text that it covers the contents of the counter-terrorism conventions and meets the requirements of the paragraph in question.

With respect to the progress report on the enactment of the new draft Penal Code it was decided that the draft should be submitted to the Basic People’s

Congresses at its last session for adoption. However, it was held over for further study to the next session because it is a major piece of legislation which deals with crime and punishment in Libya as a whole. It will be submitted to the next session of the People's Congresses (the legislative authority) for adoption after a seminar has been convened to make a final study of the text. As already stated, it was decided that this would be in September 2003.

1.9 What is the competence of the courts of the Libyan Arab Jamahiriya to deal with criminal acts in each of the following cases:

- **An act committed outside the Libyan Arab Jamahiriya by a Libyan citizen or by a person habitually resident in the Libyan Arab Jamahiriya (whether that person is currently in the Libyan Arab Jamahiriya or not);**
- **An act committed outside the Libyan Arab Jamahiriya by a foreign national who is currently resident in the Libyan Arab Jamahiriya.**

Response

The issue of the competence of the Libyan courts to deal with criminal acts committed abroad is linked with the question whether the act is subject in principle to Libyan law. The fundamental principles in the Penal Code have defined the scope of the provisions of the Libyan law, whether substantive or procedural (articles 4, 5 and 6 of the Penal Code). With respect to the first part of the question, Libyan justice is competent to deal with all offences committed by a Libyan national abroad. However, measures are not taken against such person unless he returns to the country and provided the offence is punishable under the law of the country in which it was committed and provided he has not been sentenced in a foreign court, or he has served his sentence or has been found innocent. With respect to the second part of the question, Libyan justice has no jurisdiction to deal with crimes committed by a foreigner outside the country, whether or not he is resident in the country, unless the crime is one of those specified in article 5 of the Code. Terrorist crimes have been included in the acts specified in article 5 of the new draft Penal Code in order that any person committing a terrorist crime can be tried whether such person is Libyan or an alien and whether the crime is committed in Libya or abroad.

1.10 The subparagraph asks for information to be submitted to the Counter-Terrorism Committee on the legal and administrative measures that are in force in the Libyan Arab Jamahiriya to assist requesting States in criminal investigations and judicial proceedings as required under paragraph 2 (f) of the resolution.

Response

There is no Libyan legislation governing legal and administrative measures to assist requesting States in criminal investigations and judicial proceedings. The issue is dealt with under conventions on judicial cooperation concluded between the Libyan Arab Jamahiriya and other States and on the basis of the principle of reciprocity in each individual case. In this connection, the Libyan Arab Jamahiriya has concluded several bilateral and multilateral conventions which were referred to in our response to paragraph 1.6.

1.11 In its reply to paragraph 3 (d) of the resolution, the Libyan Arab Jamahiriya indicates in its first report (at page 11) that it has acceded to or ratified seven of the 12 international instruments related to the prevention and suppression of international terrorism. It also indicates in its supplementary report (at pages 10 and 11) that it will deposit the ratification instruments for the remaining five conventions as soon as possible. The CTC would welcome a progress report on the penalties and other measures which have been prescribed for the offences established in accordance with the provisions of the various conventions and protocols relating to terrorism which the Libyan Arab Jamahiriya has ratified or acceded to. The CTC would also appreciate receiving a progress report on the ratification of the five remaining conventions.

Response

The penalties and other measures referred to in this paragraph of the questions have already been mentioned in the response to paragraph 1.8.

The Libyan Arab Jamahiriya has ratified the remaining five conventions, as follows:

1. International Convention for the Suppression of the Financing of Terrorism: the instrument of ratification was deposited with the Secretary-General of the United Nations on 9 July 2002.

2. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation: the instrument of ratification was deposited with the International Maritime Organization in London on 6 August 2002.

3. Convention on the Marking of Plastic Explosives for the Purpose of Detection: the instrument of ratification was deposited with the Secretary-General of the International Civil Aviation Organization on 10 October 2002.

4. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf: the instrument of ratification was deposited with the International Maritime Organization on 6 August 2002.

5. Protocol on the Suppression of Unlawful Acts of Violence at Airports serving International Civil Aviation: the instrument of ratification was deposited with the International Civil Aviation Organization on 26 July 1996.

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

Response

The Libyan Arab Jamahiriya refers to the circular issued by the Counter-Terrorism Committee concerning the identification by States of areas in which they require or would benefit from technical assistance or additional guidance in the context of their efforts to comply with their obligations. In that context, the Libyan

Arab Jamahiriya requests the Committee to give assistance in obtaining the following:

- Warning, radar and communications devices and instruments to strengthen surveillance of frontiers.
- Helicopters to secure the extensive Saharan frontiers in order to stop infiltration from and to the Libyan Arab Jamahiriya.
- Electronic equipment and devices at airports, seaports and main entry points in order to strengthen the surveillance capacity of the security bodies responsible for securing these facilities.
- Equipment and appliances for the protection system of the coastline of the Libyan Arab Jamahiriya in order to put an end to infiltration from and to the country.

It is worth pointing out that on 22 August 2003 a letter on this matter was sent to the Counter-Terrorism Committee under No. 1840.