



## Security Council

Distr.: General  
27 December 2001  
English  
Original: French

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### **Letter dated 27 December 2001 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 France, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

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

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



**Annex**

[Original: French]

**Letter dated 24 December 2001 from the Permanent Representative of France 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 attach herewith the report, together with its annexes, submitted by France to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

*(Signed)* Jean-David **Levitte**

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**Enclosure****Report submitted by France to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) of 28 September 2001**

France has been the victim of international terrorism in its own territory and abroad and, for many years, has shown its determination to combat terrorism in all its forms regardless of the identity of the terrorists. In the 1980s, in response to the terrorist threat, France established a coordinated system of legislation and operational mechanisms and sought to enhance international cooperation. That determination was reaffirmed following the terrorist attacks of 11 September 2001 in the United States of America; preventive measures within France and international cooperation were strengthened pursuant to the provisions of Security Council resolution 1373 (2001), to whose implementation France attaches particular importance.

The country's fight against international terrorism is guided by certain basic principles: firstly, unequivocal condemnation of terrorism in all its forms, regardless of the identity and motives of those involved; and secondly, the need to take into account the grave human, political and social problems upon which terrorism feeds. France believes that the implacable struggle against terrorism must take place in a context of respect for human rights and fundamental freedoms. In all but a few exceptional cases, judicial and security measures remain the best response to terrorism. The French Government is opposed to simplistic assimilations of terrorism to organized crime, although it recognizes that there are increasingly strong links between the two phenomena, particularly financial links.

France has specific anti-terrorist legislation which has been progressively built up, and whose cornerstone is the Act of 9 September 1986, providing for the prosecution of all terrorist acts. Such acts have been defined as independent offences, subject to heavy penalties. Terrorist acts are generally defined by combining the existence of an offence under ordinary criminal law which appears on a restrictive list with "an individual or collective undertaking, the aim of which is to cause a serious disturbance to public order by means of intimidation or terror". Certain offences, however, such as acts of environmental terrorism, membership of terrorist groups and the financing of terrorism now have autonomous legal definitions. Terrorist offences come under a special form of legal proceedings characterized in particular by the centralized nature of investigation, prosecution and trial under a sole jurisdiction made up of specialized judges whose competence extends to the entire country. French legislation contains provisions which allow for compensation to the victims of terrorist acts. In November 2001, new provisions were enacted to facilitate the fight against terrorism.

France does not have a government department with sole responsibility for combating terrorism. The fight against terrorism involves the mobilization of all departments able to contribute to the prevention and suppression of terrorist acts. A number of entities have been set up to provide the necessary coordination between different levels of the State hierarchy, including the Anti-Terrorist Coordination Unit (UCLAT). France also has two operational police units designed to deal with serious threats to public safety, the "Groupe d'intervention de la gendarmerie nationale" (GIGN) and "Recherche, assistance, intervention et dissuasion" (RAID). These units

have been fully mobilized since the terrorist attacks of 11 September 2001, when the national contingency plan “Vigipirate renforcé”, which involves heightened levels of security measures, was immediately activated.

Appropriate measures at the national level to strengthen operational cooperation, monitor the movements of terrorist individuals or groups and block the financing of movements or activities which may be used for terrorist purposes are clearly necessary in combating terrorism. France supports closer cooperation within the various multilateral bodies, particularly the United Nations, with its European Union partners and with certain other partners.

France welcomes the counter-terrorist activities of the United Nations. The resolutions adopted following 11 September 2001 laid the foundations for a durable strengthening of international anti-terrorist cooperation, which should be accompanied by dialogue and assistance to States. France is prepared to play its part at both bilateral and multilateral levels.

France also considers that the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 has played a vital part in elaborating the two most recent international anti-terrorist agreements. France attaches particular importance to the entry into force of the International Convention for the Suppression of the Financing of Terrorism, which provided a comprehensive and effective response in the areas of prevention and suppression. France supports the rapid adoption of the draft comprehensive convention on international terrorism and the draft international convention for the suppression of acts of nuclear terrorism.

The fight against terrorism has for a number of years been the object of institutional cooperation within the European Union. That cooperation was enhanced by the adoption at an extraordinary meeting of the Council of the European Union, held on 21 September 2001, of a substantial and comprehensive anti-terrorist plan of action, which France fully supports and which is being resolutely implemented.

#### **Paragraph 1**

- (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)?**

Since the early 1990s, France has established a specific mechanism for combating money-laundering; it has recently been adapted for the purpose of strengthening measures against the financing of terrorism.

- (1) Mobilization of competent departments and bodies**

France does not have an independent government entity responsible for the suppression of terrorism. The fight against terrorism, including its financing, requires the mobilization of all government departments and also of the financial system.

The suppression of the financing of terrorism is mostly based on preventing the use of the French financial system for that purpose. Various measures have been implemented, particularly for the application of international standards to combat money-laundering, to ensure that the French financial system fully complies with

the obligation of vigilance (identification of clients and economic beneficiaries, mechanisms for declaring suspicions). These monitoring measures are described in articles L-561-1, L-562-1 to L-562-10 and L-563-1 to 563-6 of the Monetary and Financial Code. The authorities responsible for the supervision and regulation of the French financial system ensure that the institutions under their control fully respect these obligations.

Article 3 of the Act of 12 July 1990 on the participation of financial bodies in combating money-laundering provides that such financial bodies shall declare to the French financial intelligence unit (TRACFIN) any suspect transactions which may be linked to drug trafficking or the activities of criminal organizations. TRACFIN transmits to the judicial authorities, where applicable, any positive results from their administrative investigations. In this context, the concept of organized crime is applied to terrorist organizations.

Activities to combat the financing of terrorism are carried out mainly by the Central Directorate of the Judicial Police (DCPJ). In autumn 2001 a unit to combat the financing of terrorism was created within the Directorate, to provide liaison with other financial authorities involved in preventing the financing of terrorism.

This mobilization has led to significant results. Since 1993, terrorist networks operating in a number of areas have been identified and shut down. Analysis of international financial flows and remittances has revealed the involvement of individuals who are considered to have instigated, through the supply of resources, the series of terrorist attacks which took place in France in 1995. Improved awareness among the specialized departments concerned has also made it possible to detect activities such as extortion or kidnapping for purposes of ransom, which certain organizations use in order to finance their activities. Legal proceedings are currently under way against organizations involved in money-laundering and the financing of known terrorist organizations.

## **(2) Identification and application of international rules**

France supports the development of new rules within the context of the European Union to combat the financing of terrorism. The Union has on several occasions reaffirmed that banking and fiscal secrecy rules were not binding in legal investigations, particularly those concerning money-laundering offences; this obviously extends to the financing of terrorism.

The Recommendation adopted by the Council of the European Union in December 1999 on cooperation in combating the financing of terrorist groups invited member States to further expand the exchange of information on methods and structures used for financing terrorist groups and to periodically evaluate measures for that purpose.

The conclusion of discussions within the European Union on the review of the 1991 directive on combating money-laundering, together with the Council statement confirming that terrorism is one of the serious offences covered by that instrument, reflect the commitment of France, together with its European partners, to strengthening its measures to prevent the financing of terrorist acts.

At the European Union level, a Common Position reproducing all the provisions of Security Council resolution 1373 (2001) was adopted on 10 December 2001.

In order to strengthen its activities to prevent the financing of terrorist acts, France took an active part in drafting the eight special recommendations of the Financial Action Task Force on Money-Laundering (FATF) on combating the financing of terrorism and has undertaken to implement them by June 2002. France believes that the scope of the declaration of suspicion, as recently defined by FATF, should be extended.

### **(3) National penal provisions**

Since 1986, French anti-terrorist legislation has provided for the prosecution of those involved in the financing of terrorism under the more severe offence of complicity in an act of terrorism. Indeed, the provision of funds is proof of complicity in the instigation of the offence or of aiding and abetting the offence by providing the means for it.

However, in order to strengthen and rationalize this provision, the Act of 15 November 2001 introduced new characterizations of offences, specifically including the financing of terrorism.

This legislation has:

- Established a special definition of the offence of financing terrorist activity;
- Brought insider trading and money-laundering within the list of acts of terrorism;
- Imposed an additional penalty involving the confiscation of the assets of terrorist offenders and a provision providing for interim protective measures against the offender's assets.

The offence of financing terrorist activities (art. 41-2-2 of the Penal Code), the definition of which refers back to the International Convention for the Suppression of the Financing of Terrorism, signed by France on 10 January 2000, is subject to 10 years' imprisonment and a fine of FF 1.5 million.

In comparison with the application of existing rules on complicity, the creation of an autonomous offence has the advantage of making it possible for the offence to be prosecuted as a separate case and be processed more quickly, and to combine the competence of financial magistrates and other judges specializing in combating terrorism.

Insider trading relating to terrorist activity (article 465-1 of the Monetary and Financial Code) is subject to seven years' imprisonment and a fine of 1.5 million euros. This provision penalizes transactions in funds or securities motivated by speculation based on privileged information on future terrorist attacks.

Money-laundering in connection with terrorist activity (article 421-1-6 of the Penal Code) is punishable by 10 years' imprisonment and a fine of FF 5 million. The fine may be increased to up to 50 per cent of the assets or funds being laundered. This additional definition of terrorist acts is intended to give legal recognition to the fact that an act of money-laundering may be committed in connection with terrorist activities. The offence can then be included in the prosecution case relating to a terrorist act, or the investigation can be conducted under a separate prosecution case to be processed in a coordinated manner.

An additional penalty of confiscation of the total assets of the terrorist offender has been introduced. The proceeds of the penalty may be paid into a compensation fund for terrorist acts (articles 422-6 and 422-7 of the Penal Code).

In practice, the creation of a provision enabling the seizure of assets is an essential precondition for the execution of forfeiture decisions pronounced by the competent court (article 706-24-2 of the Code of Criminal Procedure).

Lastly, the legislative body decided to encourage the sharing of competence by expressly providing for the joint appointment of magistrates specializing in terrorist matters and those specializing in financial issues (article 706-17 of the Code of Criminal Procedure).

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

All the activities listed are offences under French law.

Since 1986, French anti-terrorist legislation has provided for the prosecution of those involved in the financing of terrorism for the aggravated offence of complicity in an act of terrorism. Indeed, the provision of funds is proof of complicity in the instigation of the offence or of aiding and abetting the offence by providing the means.

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In comparison with the application of existing rules on complicity, the creation of an autonomous offence has the advantage of making it possible for the offence to be prosecuted as a separate case and be processed more quickly, and to combine the competence of financial judges and judges specialized in combating terrorism.

**(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.**

Accounts and financial assets may be frozen through administrative or judicial measures.

**(1) Administrative measures**

**Legal foundation**

France can freeze the accounts of natural or legal persons at the national level by decree issued on the basis of the report of the minister responsible for economic affairs in accordance with article L-151-2 of the Monetary and Financial Code. In particular, transfers abroad of the financial assets of persons or entities identified as being related to terrorism are prohibited.

That provision has been strengthened since the adoption on 10 December 2001 of a European Common Position on a common foreign and security policy and on justice and home affairs, as well as a Community Regulation on the threefold basis of articles 60, 301 and 308 of the Treaty establishing the European Community, which would allow for the freezing of the financial assets and economic resources (art. 2. (a)) of all persons or entities identified as being related to terrorism or as belonging to a terrorist organization. In addition, article 2 (b) of the Regulation prohibits all European Union nationals or residents from making funds or economic resources available to persons or entities linked to the financing of terrorism.

With regard to the combating of terrorist financing of the al-Qa'idah movement and the Taliban, this provision is covered, insofar as the freezing of financial assets is concerned, by the implementation at the European level of the Common Position adopted on 26 February 2001 and Community Regulations (EC) No. 467/2001 of 6 March, No. 1354/2001 of 4 July, No. 1996/2001 of 11 October, No. 2062/2001 of 19 October and No. 2199/2001 of 12 November 2001.

To date, France has frozen about 4.42 million euros' worth of funds belonging to Taliban members.

#### **Procedure for freezing assets**

Financial institutions are to notify the Treasury Department of all measures they have taken to freeze assets. If financial institutions are having trouble determining whether a person or entity is subject to the freezing of assets, these institutions are required to refer the case promptly to the Treasury Department, indicating the precise name of the account holder, together with any particulars that would facilitate identification. Following a speedy investigation, the Treasury Department will confirm in writing, if necessary, if the account should be frozen. While awaiting confirmation, the institutions are asked to exercise enhanced surveillance and to delay execution of unusual financial transactions.

The basic information (given and family names, amount of funds) relating to accounts frozen pursuant to Community regulations shall be transmitted to the European Commission for its information.

In order to strengthen coordination of the French economic and financial agencies in charge of implementing the measures on freezing assets, an ad hoc coordinating group ("Finater") was created in September 2001 by the Ministry of Economic Affairs, Finance and Industry with the task of ensuring that such measures are consistent and coordinated.

Lastly, the supervisory bodies and, in particular, the Banking Commission have undertaken an in-depth inquiry into the implementation by credit institutions of asset-freezing decisions.

## **(2) Judicial measures**

To participate knowingly in the financing of a criminal activity constitutes aiding and abetting. The same holds with even greater force in the case of the financing of an act of terrorism.

A natural or legal person who intentionally provides financial support to a terrorist group or organization thus incurs criminal liability as an accomplice and is



subject to seizure and confiscation of the assets in question in the course of criminal proceedings.

The introduction of specific provisions on terrorist financing has supplemented, reinforced and rationalized the grounds for prosecution.

The Act of 15 November 2001 introduced a provision allowing for the seizure of assets. In practice, such a measure is a necessary preliminary to the execution of a confiscation decision pronounced by the trial court (art. 706-24-2 of the Code of Criminal Procedure).

Thus, in the event an information is laid for an offence covered by article 706-16 of the Code of Criminal Procedure, in order to guarantee payment of the fines incurred and execution of confiscation as provided for in article 422-6 of the Penal Code, the judge responsible for release or detention may, at the request of the Public Prosecutor's Office, order provisional measures to conserve the assets of the person under investigation, with expenses advanced by the Treasury and in the manner provided for by the Code of Civil Procedure.

A verdict against the defendant has the effect of validating the provisional seizure and gives rise to a definitive posting of bond. A decision of discontinuance, dismissal or acquittal automatically lifts the measures ordered, the expense being borne by the Treasury. The same applies in the case of a limitation on prosecution. For the purposes of the article, the judge responsible for release and detention of the Paris Court of Major Jurisdiction is competent for the entire national territory.

**(d) What measures exist to prohibit the activities listed in this subparagraph?**

The legal instruments which the European Union decided to adopt on 10 December 2001 (the Common Position and Community Regulation referred to above) prohibit nationals or residents of European Union member States from making funds or economic resources available to persons or entities linked to the financing of terrorism (art. 2 (a) of the Regulation).

Since article 2 of the Regulation of 6 March 2001 provides for the freezing of funds without exception, a financial institution cannot allow any movement on the account (neither withdrawal nor deposit). Good practice in the matter of freezing financial assets is to freeze accounts in order to dry up the sources of financing of the identified persons, rather than closing bank accounts or cancelling insurance contracts.

Article 2 also provides that no funds shall be made available, directly or indirectly, to persons or entities subject to the freezing of assets.

At the national level, this requirement is helpfully reinforced by the provisions of article L-152-1 of the Monetary and Financial Code, which provides that all natural persons who transfer funds, securities or financial instruments worth 7,600 euros or more into or out of the country without the intermediary of a credit institution or service organization must file a declaration with the customs administration.

Failure to comply is punishable by confiscation of the object in question or, if seizure is impossible, of an equivalent sum and a fine equal to no less than one fourth and no more than the total sum involved in the offence or attempted offence.

By allowing for control over physical transfers of capital, this obligation to declare, instituted on 1 January 1990, is an important tool for the French customs service in combating money-laundering, tax fraud, illegal drug trafficking and terrorist financing.

## **Paragraph 2**

- (a) What legislation or other measures are in place to give effect to this subparagraph? In particular, what penal provisions exist in your country to prohibit (i) recruitment to terrorist groups and (ii) the supply of weapons to terrorists? What other measures help prevent such activities?**

France, of course, refrains from providing any form of support for terrorism. It has also taken steps to prevent its nationals and residents from doing so.

French law considers as a terrorist offence not only a terrorist attack, which is the ultimate manifestation of terrorism, but many other offences committed “in relation to an individual or collective undertaking that has the aim of seriously disrupting public order through intimidation or terror” (article 421-1 of the Penal Code).

The law thus makes it possible to take vigorous action through a specific procedure against all illicit acts committed in preparation for the attack.

Similar provisions have been agreed in the context of the European Union. The Council Framework Decision of 6 December 2001 on combating terrorism makes participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way a punishable offence and seeks to harmonize the penalties for it (at eight years’ imprisonment).

### **(1) Prohibiting recruitment to terrorist groups**

Recruitment of members of terrorist groups is covered by French law under the offence of criminal conspiracy of a terrorist nature, which consists of participation in a group formed or an arrangement set up for the purpose of preparation involving one or more material elements of acts of terrorism. The offence is punishable by 10 years’ imprisonment and a fine of FF 1,500,000.

As a matter of regular practice, the judicial authorities institute proceedings when serious and corroborating evidence supports the presumption that a criminal conspiracy has been formed for the purpose of committing acts of terrorism.

French law also prohibits these offences under 1936 legislation outlawing combat groups and disbanded movements. Since 1996 such offences are subject to more severe penalties if they are related to a terrorist undertaking. The penalties applied range from five to 10 years’ imprisonment and associated fines, depending on whether the act entails participating in, maintaining or reconstituting a disbanded movement or combat group.

This consistently developed penal policy makes it easier to detect, at the earliest possible moment, conspiratorial activities that are likely to constitute a serious threat to public order and are carried out by individuals who would be harder to question at a later stage because they belong to international organizations with support networks based abroad.

In addition, the Act of 29 July 1881 prohibiting both incitement to racial hatred, discrimination and violence and advocacy of terrorism lays the groundwork for punishing not only the dissemination of propaganda for the purpose of recruitment, but also any natural or legal persons who seek to convert others to terrorism.

All such acts can be prosecuted in the same way regardless of whether the terrorist activity is meant to be carried out on French territory or abroad, and hence they are subject to judicial proceedings.

## **(2) Prohibiting the provision of arms to terrorists**

French legislation carries severe penalties for offences against the regulations on the sale and circulation of weapons. The penalties for the following offences are more severe if the offences are committed in connection with a terrorist undertaking and range from 5 to 7 years:

- Producing, selling, importing or exporting explosives (Act of 3 July 1970);
- Illegally acquiring, possessing, transporting or carrying explosives or explosive devices (Act of 3 July 1970);
- Possessing, carrying and transporting weapons and ammunition of the first (military weapons) and fourth categories (Decree-Law of 18 April 1939);
- The offences of developing, producing, possessing, stockpiling, buying and selling biological or toxin-based weapons (Act of 9 June 1972);
- Certain offences covered by the Act of 17 June 1998 concerning the implementation of the Convention of 13 January 1993 on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction;
- Receiving the proceeds of one of the offences set forth above.

## **(3) Other preventive measures**

France has in place a strict and time-tested system of controls on sensitive exports, one aim of which is to prevent such exports from being traded and diverted to terrorist groups. In the case of war materiel, including explosives, the national control system based on the Decree-Law of 18 April 1939 provides for a general ban, hence any such exports constitute an exception to the rule. The Ministry of Defence annually reports to Parliament.

France plans to supplement its legislation in the near future with provisions to control the brokerage of weapons deals.

The new law will set up a system for licensing all operations that might result in the transfer, through intermediaries in France, of materiel from one foreign country to another.

The bill also provides that brokerage licences, as well as import and export licences, may be suspended or withdrawn in application of an international agreement, a decision by the European Union or the United Nations Security Council or in the event that the fundamental interests of the nation are at stake.

This bill would bring national legislation into line with the international guidelines set by the United Nations and the European Union that aim at cutting off terrorist organizations' sources of supply and preventing shipments of arms to Governments that violate human rights or to regions that are unstable or in conflict.

In the case of dual-use items, and communication systems in particular, France implements the European legislation (Regulation (EC) No. 1334/2000) that subjects certain goods to export controls. In addition, France has a national "monitoring" system for exports of goods containing encryption technology, making it easier to trace such goods.

France is party to various international agreements and a member of a number of international bodies. In the framework of the European Union, it applies the code of conduct on arms exports, which calls for information exchange and consultation mechanisms on export rejections, in addition to the application of export criteria.

France is also party to the Wassenaar Arrangement, a forum made up of 33 countries that manufacture and export weapons and dual-use goods; it also takes an active part in the exchanges of views and information the Arrangement provides for.

France actively supports initiatives to promote and strengthen consideration of the problems of combating terrorism in the multilateral bodies responsible for control of sensitive exports.

**(b) What other 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?**

In order to effectively combat terrorism, France endeavours to work as closely and as extensively as possible with other States in this area, especially in the event of an imminent terrorist threat. Moreover, apart from its standing counter-terrorist mechanism, France has taken specific steps to prevent the commission of terrorist acts .

**(1) Early warning mechanisms for the exchange of information with other States**

All the French counter-terrorist services maintain permanent relations with their counterparts in other countries. Such cooperation involves, inter alia, the exchange of information on terrorist acts planned or committed in France or abroad, on the individuals involved in such acts, on their methods of operation and technical resources used for perpetrating attacks and on terrorist groups — their strategies and goals, their recruitment, organization and support networks (equipment, weapons, financing, training) and their membership.

France has begun such exchanges in a multilateral (international or European) or bilateral framework.

**International cooperation**

France is the host country of the International Criminal Police Organization (Interpol), which has a very effective and universal (179 member countries) communications infrastructure. It remains, among other things, a critical tool for official information on persons on global wanted lists and for communicating judicial assistance.

France is also a member of the Berne Club, which was established in 1971 as a multilateral forum for cooperation between the heads of security and intelligence services in a number of European countries.

France also participates in several multilateral forums such as the G-8, the Mediterranean Forum, the Conference of Ministers of the Interior of the Western Mediterranean and the Euro-Mediterranean Process, which facilitate the exchange of information among police services. Contact points were exchanged within the latter three forums.

### **Cooperation within the European Union**

The European Union Task Force of Chiefs of Police, on which France is represented by the Directors-General of the gendarmerie and the national police, is responsible for enhancing the exchange of operational information.

The European Police Organization (Europol) has been expanded to include terrorism, and a Task Force has been set up to support member States in their efforts to prevent and combat terrorism by providing assistance to the police and intelligence services. The Task Force focuses on cooperation between police and intelligence services, improving the exchange of information and on cooperation with the United States of America. France has appointed a counter-terrorism expert to the Task Force.

France actively participates in the working group on terrorism, which aims at initiating and developing cooperation and prepares a biannual report assessing threats of terrorism and identifying terrorist groups which pose a threat within European Union countries. It also proposes recommendations and measures on various critical aspects of the war on terrorism and regularly organizes thematic seminars.

France is also a member of the Police Working Group on Terrorism (PWGT), an informal working group where the heads of police counter-terrorist departments meet to discuss current cases under investigation in order to review concrete steps designed to enhance technical and operational cooperation with respect to the war on terrorism in Europe. The PWGT has its own coded communications network.

France also participates in the work of the liaison office, a communication network which provides confidential or operational information on individual States.

Within the European Union, the establishment of the European Judicial Network and Eurojust is also contributing to enhanced judicial cooperation and the coordination of prosecution between member States.

### **Bilateral cooperation**

The various French counter-terrorist agencies continuously exchange confidential bilateral information with many countries.

Intergovernmental agreements on police cooperation have been signed with 42 countries, and 13 others are under negotiation. They all provide for the exchange of intelligence on terrorism. France also has a network of attachés in the area of domestic security posted to its embassies abroad who are responsible for the traditional aspects of police cooperation.

In Europe, bilateral operational cooperation is facilitated through the assignment of liaison officers who are experts in counter-terrorism to counterpart agencies. France has assigned such officers to Belgium, Germany, Italy, Spain and the United Kingdom, which have also assigned counterparts to France.

The Directorate of Territorial Security plays the lead role in combating terrorism directed against France; its specialist investigators exchange intelligence with their foreign counterparts. The Central Intelligence Directorate deals with domestic terrorism.

Special emphasis is placed on bilateral cooperation through the promotion of the exchange of liaison magistrates, who get the opportunity to meet their counterparts from neighbouring countries to discuss difficult cases or cases under investigation in their respective countries. For many years, such magistrates have been helping to facilitate international mutual judicial assistance, especially the processing of requests.

Additionally, the French customs service initiated contacts and entered into agreements to establish European and global customs cooperation networks to facilitate and promote the exchange of information and operational contacts underpinned by a network of 15 customs attachés in French embassies abroad and various multilateral or bilateral legal instruments on mutual administrative assistance.

Thus, in addition to being party to European Union and World Customs Organization agreements, France has to date signed 33 bilateral agreements on mutual administrative assistance for the prevention, investigation and punishment of customs fraud and is continuing negotiations with several States.

## **(2) Specific measures to prevent the commission of terrorist acts**

Under the governmental decisions proposed and implemented by the Ministry of Defence, the counter-terrorism machinery mobilizes civilian and military resources. The Interministerial Liaison Committee Against Terrorism (CILAT) coordinates interministerial efforts. Since 1984, the goal of the Anti-Terrorist Coordination Unit (UCLAT) established within the Ministry of the Interior has been to coordinate the activities of all the agencies involved in the war on terrorism.

### **“Vigipirate renforcé” Plan**

The “Vigipirate renforcé” contingency plan was put into place on 11 September 2001. It aims at promoting enhanced awareness among all public services and private partners, enhancing security along highways, train stations, ports and airports as well as securing sensitive points and networks throughout the country.

In addition to the police (police and gendarmerie) and customs services, the armed forces contribute about 1,000 men to this plan.

### **Measures to strengthen security at nuclear facilities**

The contingency plan involved additional security measures at nuclear facilities, including controlling staff access to the most sensitive areas, further restriction of access to such facilities, surveillance and overflight of the facilities.

### **Measures taken in the field of mass transit security**

Air transport security measures have been considerably enhanced from 11 September 2001 and reviewed several times since then. They cover all international flights irrespective of the nationality of the carriers and passengers.

The measures basically involve enhanced procedures for the screening of passengers and their hand luggage, specifically a more thorough manual search, speeding up the introduction of the checked-in luggage inspection procedures, enhanced control of personnel access to restricted airport areas and introducing screening of such personnel at the hubs of major airports, enhanced aircraft access control and improved procedures for the inspection of freight and catering supplies.

The French customs service conducts special security inspections of all passenger, tourist vehicle, lorry and railway freight traffic going through the Channel Tunnel to the United Kingdom. The frequency of inspections, instituted by an interministerial security committee and endorsed by a bi-national Franco-British committee, has been considerably increased since 11 September 2001.

### **Specific measures to combat bioterrorism**

As a complement to the "Vigipirate" plan, France has adopted more specific plans of action. The Biotox plan on biological risk adopted by the Government in October 2001 is the fruit of interministerial efforts begun in 1999. The plan, which involves close cooperation between civilian and military agencies, provides for specific measures to be taken in the following areas: prevention, surveillance and early warning, and emergency action.

With particular respect to prevention, new arrangements have been put in place since 22 September 2001 with a view to enhancing security at facilities for the production, storage and transport of hazardous biological materials. These arrangements include the following:

- Order concerning the inclusion of several agents of infectious diseases and pathogenic micro-organisms on the list of poisonous substances;
- Order concerning the handling, import, export, possession, transfer, whether free or for a consideration, acquisition and transport of agents of certain infectious diseases, pathogenic micro-organisms and toxins. Eleven pathogens subject to particular conditions are listed thereunder.

Moreover, by Decree No. 2001-910 of 5 October 2001, anthrax was included on the list of reportable diseases. The procedures for the notification of human anthrax are laid down under an order of 5 October 2001.

- (c) **What legislation or procedures exist for denying safe haven to terrorists, such as laws for excluding or expelling the types of individuals referred to in this subparagraph? It would be helpful if States supplied examples of any relevant action taken.**

France fully abides by its international obligations as a State party to the Geneva Convention relating to the Status of Refugees and grants refugee status to persons who meet the requirements of the Convention and to any persons who are persecuted for their activities to promote freedom, if they are “freedom fighters” as defined by the French Constitution. The processing of requests for asylum and the granting of initial and continued residency are carefully scrutinized where an applicant is suspected of involvement in terrorist activities.

**(1) Admission to refugee status**

Requests for asylum are handled by the French Office for the Protection of Refugees and Stateless Persons (OFPRA), which processes applications and rules independently on the merits thereof.

Where OFPRA denies an application, the applicant may within a month appeal to the Refugee Appeals Board, a specialized court with full jurisdiction, whose decisions are binding. Those decisions are subject to appeal to the highest court.

In considering requests for asylum, the enduring concern of OFPRA has been to protect not only refugees but the status of refugees itself against any abuse. It is in that spirit that it applies the exclusionary clauses provided for by the Geneva Convention (article 1 F (a), (b) and (c)). In the light of French doctrine and case law, such clauses are indeed being applied. Anyone invoking such clauses would, however, have to put forward sufficiently compelling personal data, failing which their case will be rejected on appeal.

This interpretation of the provisions of the Geneva Convention in practice excludes any person with respect to whom there are reasons for considering that he has, directly or indirectly, helped to decide, prepare or carry out acts likely to be considered as serious non-political crimes (article 1 F (b)) — irrespective of the offence as charged under the French Penal Code — or as acts contrary to the purposes and principles of the United Nations (article 1 F (c)), where such acts were committed in the country of nationality or in a third country.

**(2) Granting of residency and expulsion**

**Asylum seekers**

Except for legal prohibitions against admission, which fall within the jurisdiction of criminal courts, the Ministry of the Interior has jurisdiction over the granting of residency and expulsion measures. An application for asylum filed with a prefecture is subjected to thorough investigations to determine whether the applicant has previously applied for a residence permit, whether an administrative or judicial order has been issued for his expulsion or whether he is wanted in connection with criminal investigations or he is on the wanted list of specialized law enforcement agencies.



In the light of the information collected, it may be decided not to grant the request for asylum on the grounds that the applicant represents a threat to public order. OFPRA will therefore have to take a prompt decision.

Where there is clear evidence that an asylum seeker has been convicted of terrorism, the prefect may either issue an order for him to be escorted to the border, or, if he has been convicted of a crime, an order may be issued for his deportation.

In implementation of the principle of non-refoulement of asylum seekers, where an expulsion order has been issued, it may not be executed before OFPRA rules on the case. The applicant may be put under house arrest pending a ruling by OFPRA.

Where OFPRA denies the application for refugee status, the expulsion order must be enforced, since an appeal before the Refugee Appeals Board does not operate to suspend proceedings. Then the problem of the country to which the person will be expelled arises, since under the European Convention on Human Rights, an alien may not be expelled to a country where he might be exposed to inhuman or degrading treatment.

Where the asylum seeker has been granted permission to stay and it becomes known subsequent to the issuance of the temporary residence permit that he is a known terrorist, such temporary permit may be withdrawn or not renewed. However, the asylum seeker has the right to remain on French soil until such time as OFPRA rules on his status.

#### **Statutory refugees**

Once a person has been granted refugee status, he is issued with a residence permit valid for 10 years, unless he engages in activities that jeopardize public order. In such case, the residence permit of a refugee whose presence poses a threat to public order may be withdrawn by the competent prefecture. The residence permit is automatically renewable; in other words, while it can be denied the first time, once granted, it may not be withdrawn at the time of renewal, even if the refugee represents a threat to public order, in which case the only possibility is a deportation order.

#### **Withdrawal of refugee status**

The refugee status granted by OFPRA may be withdrawn from any person who may have concealed information that might have made him ineligible under the Geneva Convention (including misrepresentation concerning terrorist activities prior to being granted refugee status, which are grounds for its withdrawal).

However, as far as the refugee status is concerned, while a refugee who commits an offence (including involvement in terrorist acts) on the territory of the host country may be subject to a criminal penalty and may, where necessary, be subject to expulsion under articles 32 and 33 of the Geneva Convention, under current case law such an offence does not constitute grounds for withdrawing his refugee status. In such case, the refugee retains his status and residence permit but may be expelled.

### **Expulsion of refugees**

Where terrorist activities charged to a refugee constitute a threat to public order, a deportation procedure may be initiated against him. Similarly, where the expulsion of the refugee is required by an extreme emergency or by compelling reasons of national security or public order, an order may be issued for his expulsion.

However, such an expulsion order may be executed only subject to the principle of prohibition of return to a country where the refugee would be exposed to persecution referred to in article 33, paragraph 1, of the Geneva Convention. Where the refugee cannot be returned to his country of origin or to a third country, a compulsory residence order may be issued under close supervision as necessary.

### **(3) Territorial asylum and the concept of terrorism**

Under French law, a foreigner may be granted asylum if he proves that his life or freedom is at risk in his country or that he may be subjected there to treatment prohibited by article 3 of the European Convention on Human Rights (article 13 of the Act of 25 July 1952 on the right of asylum as amended by the Act of 11 May 1998).

Under article 13 of the Act of 1952 on the right of asylum, the French authorities may deny a request for territorial asylum where such request is not compatible with the interests of France. Since the maintenance of public order is a requirement under the Constitution, it may be used as grounds for denying territorial asylum to any person convicted of terrorism.

Article 9 of the Decree of 23 June 1998 on territorial asylum provides, in the event of a threat to public order, for an emergency procedure which may result in the applicant being denied temporary residence.

Where there is evidence that the applicant has been convicted of terrorism, an expulsion order may be issued either during the processing of the request for asylum or upon notification of the denial of territorial asylum, subject to the provisions of article 3 of the European Convention on Human Rights.

### **(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.**

France takes specific measures to prevent the use of its territory as a “home base” by terrorist movements, and these measures have been strengthened recently.

### **(1) The creation of a specific offence: criminal conspiracy of a terrorist nature**

Within French legislation already in force, Act 96-647 of 22 July 1996 introduced an additional anti-terrorist measure by creating a new offence. Article 421-2 of the Penal Code was modified as follows: “The following shall also constitute a terrorist act: participation in a group or an understanding established for the purpose of preparing, by means of one or more material actions, one of the aforementioned terrorist acts.”

This provision is vital in order to prevent the use of French territory to commit acts against third States or their nationals. The offence of criminal conspiracy for the

purpose of planning terrorist acts is applicable to persons not only within French territory but also outside the country. This offence is also applicable when the terrorist organization is targeting the territory of a foreign State, not only French territory (article 706-16 of the Code of Criminal Procedure).

## **(2) Adoption of new measures**

A law on everyday security measures was adopted by the French Parliament on 15 November 2001. It contains new provisions for the purpose of:

(a) Combating more effectively those offences which may be connected with terrorist activities:

- Police and gendarmerie forces will be authorized to inspect vehicles in the context of offences particularly damaging to public safety, such as those relating to terrorism or the trafficking of arms, explosives or drugs;
- Unoccupied premises may be searched at night with a warrant from a magistrate in the context of offences relating to terrorism or the trafficking of arms, explosives or drugs.

(b) Intensifying the fight against terrorism in general terms:

- Video recordings may be made during interviews and videoconferencing technology may be used for witness confrontations for offences related to terrorism or drug trafficking, in order to ensure rapid transmission of information to the investigating magistrate and avoid unnecessary transfers;
- Personal files contained in police data-processing systems may be consulted by officials in the context of specific situations which will be listed in a decree;
- Internet connection data and other technical data are to be retained long enough to permit identification and prosecution of offenders.

The network of liaison officers set up by France and several other countries, particularly in Europe, facilitates exchanges among departments. Also, a number of specialized police units have been set up; one such has recently been established in Bayonne, near the frontier with Spain.

## **(3) Monitoring of legally incorporated and de facto entities**

The provisions of the Act of 1 July 1901 on freedom of association enable the French authorities to deal with the illicit activities of organizations which break the law or disturb public order and whose purpose is to support terrorist organizations, sometimes in the guise of cultural, religious, charitable or humanitarian activities.

The Act of 1 July 1901 enables the authorities to shut down organizations based on illicit causes or objectives contrary to the law or accepted standards of behaviour. The abolition of the organization is pronounced by judicial decision. In making its decision, the judicial authority takes into account not only the purpose as set forth in the organization's statute but also the goal it actually pursues. The Act does not require that illegal acts must actually have been committed.

The Act of 10 January 1936 provides for the abolition, by a Council of Ministers decree, of combat groups and private militias established as associations, whether declared or not, which call for armed demonstrations in the streets or

advocate discrimination or racial hatred or violence. In 1996 this provision was extended to groups which, within or from French territory, conspire to bring about acts of terrorism in France or abroad.

**(4) Prevention of the use by terrorist groups of new communication technologies**

France has set up a system to prevent the use for terrorist purposes of telecommunications and information networks. Under the Act of 10 July 1991, on the confidentiality of correspondence transmitted via telecommunications technology, interceptions by the security forces are authorized for the purpose of preventing terrorism. Such interceptions are carried out under the supervision of the National Commission for the Monitoring of Security Interceptions.

An automated system to monitor technological development has been set up at a national centre against high-technology crime. Following 11 September 2001, other departments, such as the customs or gendarmerie, have been focusing the activities of their technological monitoring units on terrorism.

In the legal field, jurisprudence and legislation consider that the law applicable in the area of press freedom (Act of 29 July 1881) is also applicable to the use of new information technologies. This makes it possible to penalize offences such as discrimination, xenophobia, incitement to racial hatred or advocacy of terrorism when messages are transmitted using these technologies.

**(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.**

France has adopted specific and comprehensive anti-terrorist legislation, whose cornerstone is the Act of 9 September 1986, and which has evolved in order to deal with the threat of terrorism.

**(1) A separate offence and a special regime outside ordinary criminal law.**

The French Penal Code (arts. 421-1 et seq.) defines acts of terrorism as independent offences, that is, a separate category of offences subject to more severe penalties than are violations of ordinary criminal law.

This legislation defines terrorism as an individual or collective undertaking, the aim of which is to cause serious damage to public order by means of intimidation or terror; terrorist activity is defined in criminal law, however, by combining two criteria:

- Firstly, the existence of an offence or serious crime under ordinary criminal law, as defined in the Penal Code. This concerns only certain offences and serious crimes included in a list established under the Penal Code. The list was added to in 1994 (new Penal Code) and lastly in 1996, and currently includes the following:
- Deliberate attacks upon the life or physical integrity of the person; abductions and sequestration; hijacking of aircraft, ships or any other means of transport;
- Theft, extortion, destruction, damage or deterioration, and certain computer-related crimes;

- Offences in relation to combat groups and disbanded movements;
- The manufacture or possession of deadly or explosive devices or machines (definition extended to biological or toxin-based weapons);
- Receiving the products of the aforementioned offences.

Insider trading and money-laundering were recently added to this list by the Act of 15 November 2001.

- Secondly, the connection between these offences or serious crimes and an individual or collective undertaking whose aim is to cause a serious disturbance to public order by means of intimidation or terror.

The following are specifically criminalized:

- Since 1994, acts of environmental terrorism (introduction into the atmosphere, upon or under the ground or into any waters, including those of the territorial sea, of a substance that is likely to endanger the health of persons or animals or the natural environment);
- Since 1996, criminal conspiracy of a terrorist nature (participation in a group or an understanding established for the purpose of preparing, by means of one or more material actions, one of the aforementioned acts of terrorism);
- The offences thus defined are considered acts of terrorism and criminalized as separate offences under the new Penal Code, with particularly heavy penalties.

They come under a special procedural regime with the following characteristics:

- Investigation, prosecution and judgement centralized under the Tribunal de grande instance of Paris (Central Anti-Terrorist Department of the Prosecution Service of Paris with specialized investigating magistrates);
- Extension to four days of the maximum duration of police custody;
- Authority to carry out searches at night under a special authority;
- Postponement to the seventy-second hour of police custody of the right to see a lawyer;
- Trial of terrorist crimes before a special criminal court composed of professional magistrates (Act of 16 December 1992);
- Availability of a special mechanism for “reformed” terrorists (remission of sentences for terrorists who change their minds and help to prevent the terrorist act, and halving of sentences for terrorists who enable the authorities to put an end to the illegal activities involved or who help the authorities in such a way that the offence in question is prevented from causing loss of life);
- Extension of the statute of limitation on prison sentences (from 20 to 30 years for serious crimes and from 15 to 20 years for other offences) and on bringing actions (from 10 to 30 years for serious crimes and from 3 to 20 years for other offences).

**(2) Imposition of severe penalties**

The Penal Code provides for the punishment for a given offence to be increased to the maximum sentence when the offence constitutes an act of terrorism. Under criminal law, the maximum is raised to life imprisonment where the sentence initially applicable was 30 years' imprisonment, 30 years when the initial penalty was 20 years, and 20 years where it was 15 years.

Where the maximum was initially 10 years' imprisonment, it becomes a sentence for a serious crime and is increased to 15 years' imprisonment.

The same mechanism applies at the magistrate's court level (*correctionnelle*), where the sentence is increased to the upper limit: from seven years' imprisonment to 10 years or from five to seven years; where the initially applicable penalty was between one and three years, it is doubled.

Rules of ordinary criminal law concerning aggravating circumstances are also applicable. Under the rules relating to the criminal responsibility of accomplices or of those who attempt to commit serious terrorist offences, life sentences are often imposed on those prosecuted for their participation in terrorist acts such as assassination, murder, serious terrorist attacks or abduction.

French courts are frequently called upon to hear such cases, and they impose severe sentences.

One example of the prosecution of a serious crime was the sentencing by the specialized Court of Assize of Paris, on 24 December 1997, of Ilitch Ramírez Sánchez, alias Carlos, to life imprisonment following a gunfight in Paris on 27 June 1975 during which three people, including two police officers, were killed and a third police officer was wounded. Another person who attempted to bomb the Paris-Lyon TGV (high-speed train) in 1995 was sentenced on appeal to 30 years' imprisonment on 26 October 2001. The court of first instance had sentenced his accomplice to 20 years.

As for magistrates' courts, many cases relating to the terrorist activities of various organizations have been heard in recent years, and the courts have imposed sentences up to the maximum of 10 years' imprisonment; in some cases, where the person convicted was a foreigner, the Court added an additional penalty of permanent or temporary banishment from French territory.

**(f) What procedures and mechanisms are in place to assist other States? Please provide any available details of how these have been used in practice.**

In addition to the exchanges of information on terrorism described under paragraph 2 (b), France provides legal assistance to other States and has entered into bilateral and multilateral agreements for that purpose.

**(1) Conditions for granting legal assistance**

France may grant legal assistance in criminal investigations concerning terrorism in two different types of situation.

### **Bilateral or multilateral conventions**

France is a party to a great number of multilateral instruments relating to particular types of criminal activity, and containing more or less detailed provisions in the area of legal assistance. France is also party to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, which constitutes the main basis of its relations concerning mutual assistance in criminal matters.

As for bilateral instruments, as of 1 January 2001, France was a party to about 50 existing agreements in the area of mutual assistance in criminal matters.

France is developing an active policy of negotiating new bilateral agreements to strengthen, simplify and improve the legal framework for mutual assistance in criminal matters.

Generally speaking, these agreements do not restrict legal assistance to certain named offences. Also, where an existing multilateral or bilateral convention is applicable, the conditions for the granting of assistance and any possible reasons for withholding it are determined by the instrument itself.

### **Where no convention exists**

Where no convention exists, France may nonetheless grant mutual assistance in criminal matters on a reciprocal basis, pursuant to the provisions of articles 30 et seq. of the Act of 10 March 1927. Again, the possibility of mutual legal assistance being granted is not restricted to specifically named offences.

## **(2) Conditions for the exercise of mutual assistance in criminal matters**

In principle, France does not subordinate compliance with a request for assistance to the rule of dual criminality. This condition does, however, apply under certain bilateral conventions, particularly regarding requests for assistance relating to coercive measures. Dual criminality is presumed to exist if the offence in respect of which the assistance is requested is covered under a multilateral instrument to which the requesting State and France are both parties (including the International Convention for the Suppression of the Financing of Terrorism).

In France, banking confidentiality may not be invoked against judicial authority, and it cannot therefore be used to justify denying mutual assistance. Furthermore, such assistance may also be granted when the liable party is a legal person.

Certain instruments may enable France to grant legal assistance for non-criminal proceedings of an administrative nature, provided that an appeal will be possible, particularly before a criminal court, against the decisions handed down by the administrative authorities if the applicable convention so provides.

On 23 June 1999, in order to strengthen judicial cooperation, a law was enacted in France to improve the efficiency of criminal proceedings. A section relating to international judicial assistance was thereby added to the Code of Criminal Procedure. The new text includes a provision (article 694) covering problems of compatibility between French law and the law of the requesting State. For example, it permits action on requests for assistance from foreign authorities in a manner which is as close as possible to that provided for in the legislation of the requesting State.

These provisions are also intended to streamline the processing of requests for judicial assistance, with particular attention to cooperation among States parties to the Schengen Convention of 19 June 1990 (articles 695 and 696 of the Code of Criminal Procedure).

France also considers that the efficiency of such cooperation would be improved by strengthening its national structures and mechanisms specifically devoted to cooperation, which may be used in the context of international judicial cooperation for the suppression of terrorism.

Particular efforts have been made on bilateral cooperation by developing exchanges of liaison magistrates but also by giving magistrates opportunities to meet their counterparts in neighbouring countries to discuss cases in which difficulties have arisen or those being investigated in both countries. For several years, these liaison magistrates have been working to expedite procedures for international mutual legal assistance, particularly by facilitating the transmission of requests.

At the European Union level, the establishment of the European Judicial Network and of Eurojust have also helped to enhance judicial cooperation and the coordination of legal proceedings among member States.

Lastly, training courses taught by the École Nationale de la Magistrature enable the provisions of France's anti-terrorist legislation to be disseminated in France and abroad.

In France, specialized investigating magistrates send and receive requests for assistance in the suppression of terrorism, the execution of which has led to the thwarting of a number of attempted terrorist attacks in France and abroad and made it possible to follow up to complement these counter-terrorist operations with investigations that have led to the identification and fullest possible punishment of all those who participated in the attacks.

**(g) How do border controls in your country prevent the movement of terrorists? How do your procedures for issuance of identity papers and travel documents support this? What measures exist to prevent their forgery, etc.?**

France has taken action in this field primarily in a European framework, in particular that of the Schengen Agreements, which eliminated internal cross-border controls and strengthened controls on the external borders of the countries of the Schengen area.

**(1) Border control, training and information**

**Control of external borders of the Schengen area**

The French agencies responsible for controlling the movement of foreigners into and out of France (border police (DCPAF), gendarmerie (DGGN) and customs) ensure that persons crossing the border meet common standards for admission into the territory; these agencies conduct checks with reference to the following:

- The Schengen Information System (SIS), including notification of measures of expulsion, bans on leaving the territory and denial of entry into the territory;
- Threats to the public order;



– Threats to national security.

Checks are also carried out during customs clearance of goods and control of passengers, carriers and merchandise by the Customs Administration, through inspection at points of entry and mobile controls throughout the territory, including the buffer zones. These controls enable the authorities to conduct targeted searches of sensitive materials and transport vehicles that may be used to organize trafficking and smuggling of persons or products.

Independently of this border control approach, since the Schengen Information System (SIS) may be consulted anywhere in the territory, the relevant agencies have made the checking of possible descriptions part of the daily exercise of their functions.

### **Compensatory measures at internal borders**

The abolition of the control of persons at internal borders under the Schengen Agreements has led to the adoption of a number of compensatory measures aimed at ensuring an optimum level of security in the common area as defined.

Specific controls for verifying obligations relating to the possession, carrying and presentation of identity papers and visas, where applicable, may be carried out by the police, gendarmerie and customs in an area within 20 km of the land borders with States parties to the Schengen Convention and in areas accessible to the public at ports, railway stations or coach stations open to international traffic.

These three agencies also participate, under cross-border cooperation agreements with neighbouring member States, in the gradual introduction of Police and Customs Cooperation Centres (CCPD), whose purpose is to strengthen bilateral operational cooperation, in particular with regard to security and combating illegal immigration and trafficking. These centres also help implement the rights of cross-border surveillance and hot pursuit established by the Schengen Agreements.

### **Training and information**

France is focusing on enhancing the skills of its border control agents. Thus, a national personnel network was set up in 2000 to improve the exchange of operational information and the training of agents, and to step up the dissemination of early warnings and information notes in real time.

Software to help detect forged documents was set up in 1993-1994 and is gradually being extended to all the agencies concerned.

France is actively cooperating with its European partners on a reciprocal basis in the exchange of data, in the form of dissemination of early warnings and participation in various international seminars and meetings.

Priority is currently being given to the upstream battle against drug rings, in cooperation with the Office of International Technical Police Cooperation (SCTIP), with training offered in the source countries and a reciprocal arrangement with consular officials in countries where SCTIP is not represented.

**(2) Procedure for issuance of identity documents and visas**

Various systematic controls are used for the issuance of these documents by the authority of the place of residence, for which applicants are required to appear in person. One of the purposes of these controls is to verify the civil status and identity of applicants, their possible registration in the file of wanted persons and, where appropriate, the prior issuance of the requested documents.

**(3) Ensuring the security of passports and other travel documents**

On 17 November 2000, the Council of the European Union adopted a resolution on ensuring the security of passports and other travel documents. The new French passport and the secure national identity card meet these new standards. These documents will be issued by French diplomatic and consular missions abroad starting in 2002 for the secure national identity card, and in 2003 for the passport.

Lastly, France is an active participant in the effort to combat forgery, in particular with its partners in the Group of Eight (G-8) and the Mediterranean Forum.

**Paragraph 3**

**(a) What steps have been taken to intensify and accelerate the exchange of operational information in the areas indicated in this subparagraph?**

In the area of operational information exchange, besides the internal procedures of the various agencies, the Anti-Terrorist Coordination Unit (UCLAT) is responsible for ensuring the cross-cutting exchange of information and analysis by coordinating the various actors in the fight against terrorism, thus giving it an inter-ministerial dimension. For their part, the armed services engage in frequent exchanges of information and awareness training which, under the auspices of the Ministry of Defence, have been formalized since 11 September.

**(1) Exchange of information on terrorist movements**

The steps taken by France in this area are described under paragraph 2 (b).

**(2) Exchange of information on travel documents**

The steps taken by France in this area are described under paragraph 2 (g).

**(3) Exchange of information on arms trafficking, explosives or sensitive materials and the use of information technologies**

Besides the steps referred to under paragraph 2 (d), France is helping to build, at the European level, a network of contact points designed to improve the ability to track firearms used in connection with offences and ensuring greater efficiency in the exchange of information between the police forces of the States members of the Union.

Moreover, France is making a significant contribution to external operations, in particular in the former Yugoslavia, both to the forces under the command of the North Atlantic Treaty Organization (NATO) and to United Nations peacekeeping

missions. Thus, its presence in conflict zones which generate arms trafficking enables it to gather and use information on drug rings and criminal groups.

France is now exchanging information on the protection of arms depots as well.

**(4) Exchange of information on weapons of mass destruction**

In addition to the steps mentioned under paragraph 2 (d), France participates every year in an exchange of information under the Biological Weapons Convention, which requires States parties to communicate to the United Nations Secretariat, on a voluntary basis, any information concerning their activities in the biological weapons field.

Moreover, France has complied with its reporting obligations under the Chemical Weapons Convention. States parties are required by the Convention to declare their entire stock of chemical weapons, their production facilities in operation, their past activities in that area, and all industrial sites that produce, in quantities exceeding the limits set by the Convention, substances that may be used for the production of chemical weapons.

**(b) What steps have been taken to exchange information and cooperate in the areas indicated in this subparagraph?**

**(1) Judicial cooperation**

The steps taken by France in this area are described under paragraph 2 (f).

**(2) Administrative cooperation in the area of finance**

The French financial intelligence unit (TRACFIN) has placed its techniques and experience in combating money-laundering at the service of efforts to stop the financing of terrorism, in view of the links between the financial bases of organized transnational crime and those of international terrorist networks.

TRACFIN is authorized to exchange information with its counterparts in other countries, provided that they meet the following three conditions: they must have a similar remit, namely, that of combating money-laundering; they must respect the principle of reciprocity; and they must abide by the same professional confidentiality requirements (article L.564-2 of the Monetary and Financial Code).

In addition, since 1996, TRACFIN has been authorized to use its right of discovery in relation to any financial institution concerned in order to provide information, in the above-mentioned conditions, to agencies of other States carrying out the same functions (article L.563-4 of the Monetary and Financial Code).

These provisions form the basis for day-to-day operational cooperation between TRACFIN and other financial intelligence units.

Moreover, TRACFIN has signed 21 administrative agreements on bilateral cooperation with various foreign partners to formalize their reciprocal commitment to the fullest possible cooperation. Negotiations on seven more agreements are currently under way.

TRACFIN is thus strengthening its cooperation initiatives, particularly within the Egmont Group, an informal structure that includes the 58 existing financial intelligence units.

In the current international context, the exchange of financial information among financial intelligence units should be further intensified. A secure computerized communication system is being planned within the European Union with a view, *inter alia*, to coordinating the response of these agencies in the framework of the campaign targeting assets linked to terrorism.

**(c) What steps have been taken to cooperate in the areas indicated in this subparagraph?**

**(1) Multilateral cooperation to prevent the use of weapons of mass destruction by terrorists**

The two instruments in force, the Biological Weapons Convention and the Chemical Weapons Convention, do not expressly refer to terrorism, but they nonetheless provide the legal basis for action to help combat terrorism. Their aim, which is to prevent the diversion and illegal use of such weapons, encompasses the prevention of terrorist acts.

**The Biological Weapons Convention**

France signed the Convention on 10 April 1972 and ratified it on 27 September 1984. However, as early as 1972, it adopted a national implementing act covering all the obligations laid down in the Convention (Act No. 72-467 of 9 June 1972). The law extends the scope of the Convention's prohibitions to any action aimed at inducing or assisting in any way a State, enterprise, organization or group of any kind, or an individual, to develop, produce, possess, stockpile, acquire or transfer such weapons for hostile purposes.

Each year, the States parties voluntarily provide the United Nations Secretariat with information on their activities in the field of biology. France participates every year in this exchange of information.

**The Chemical Weapons Convention**

This Convention was signed in Paris on 15 January 1993 and entered into force on 29 April 1997. The conditions in which the Convention is implemented in France are established by Act No. 98-467 of 17 June 1998, which provides for administrative and criminal penalties for the violation of, or the failure to meet, the obligations laid down in the Convention. Decree No. 98-36 of 16 January 1998 establishes the institutional framework for the Convention's implementation and divides responsibilities among the various ministries concerned.

France has met its reporting obligations under the provisions of the Convention. States parties to the Convention are required to declare their entire stock of chemical weapons, chemical weapons production facilities in operation and past activities in that area, as well as all industrial sites that produce, in quantities exceeding the limits set by the Convention, substances which could be used for the production of chemical weapons. France has submitted initial declarations in this regard, which are updated regularly.

### **Nuclear non-proliferation**

France fully supports the work being done in various international forums on issues relating to nuclear non-proliferation and the control of exports of sensitive nuclear materials. These efforts help, in particular, to prevent the misuse of such materials by terrorist groups.

Within the International Atomic Energy Agency (IAEA), it participates actively in the preparation of policy papers and recommendations on measures to be taken for the physical protection of nuclear material. It is a party to the Convention on the Physical Protection of Nuclear Material, which establishes physical protection standards for different categories of material. France also supports the Agency's missions to provide assistance to member States that request it (particularly in the Commonwealth of Independent States (CIS) countries and in Central and Eastern Europe) for the establishment and maintenance of national accounting and control systems for nuclear materials. It also contributes to the IAEA database on trafficking in nuclear materials.

Within the Nuclear Suppliers Group (NSG), France conforms strictly to the Group's directives on the control of exports of nuclear materials and equipment and of dual-use goods.

In the framework of "threat reduction" programmes among nuclear Powers or within the Group of Eight, France also plays an active role. It participates in efforts to solve the problem of the vast quantities of fissile materials resulting from disarmament treaties between the United States and the Russian Federation, which are at high risk of misuse. Particularly with respect to weapons-grade plutonium, France initiated the French-German-Russian programme AIDA, carried out since 1992 to convert such material into mixed oxide (MOX) fuel for use in civilian reactors. It also participates very actively in the global project to eliminate excess Russian weapons-grade plutonium, negotiated within the Group of Eight, and looks forward to the project's speedy completion.

### **Draft convention on the prevention and suppression of acts of nuclear terrorism**

From the outset, France, together with its Group of Eight and European Union partners, has supported the draft convention on the suppression of acts of nuclear terrorism, proposed by the Russian Federation. Such a convention would provide an appropriate response to a threat which is more topical than ever before, and would complement existing legal instruments in this area.

## **(2) Multilateral cooperation in the field of air safety**

France is involved in the work of international organizations dealing with air safety.

Air transport safety measures were strengthened substantially after 11 September 2001, and have been updated several times since then. The International Civil Aviation Organization (ICAO) Assembly, at its thirty-third session, adopted a resolution setting ambitious targets for improving global aviation safety. A new Annex 17 will enter into force in 2002. The participants in the high-level ministerial meeting to be convened in February 2002 in Montreal will determine arrangements for implementing and financing the ICAO Universal Safety Oversight Audit Programme.

Document No. 30 of the European Civil Aviation Conference (ECAC), which contains safety provisions, was strengthened in the light of the events of 11 September 2001. ECAC set up working groups to strengthen, both immediately and in the longer term, the safety measures implemented on the ground; to consider developments in terms of procedures and aircraft design with a view to improving flight safety measures; and to identify the quality control measures that should be put in place by States.

In addition, the Ministers of Transport of the European Union agreed, at their extraordinary meeting of 14 September 2001, that the strengthened security measures should be effectively and uniformly implemented. To that end, European regulations, on which the Council reached a common position under the co-decision procedure, will require member States to comply with the chief measures agreed upon at the pan-European level in the framework of ECAC. These regulations provide for the introduction of a Community control mechanism.

### **(3) Bilateral cooperation against terrorism**

Apart from the areas of cooperation already mentioned in its answer under paragraph 2 (b), France has concluded intergovernmental agreements on police cooperation with certain countries. The preamble to the text of these agreements clearly reflects the importance attached to efforts to combat terrorism: “Convinced of the importance of cooperation in the fight against crime and particularly against terrorism (...), Wishing to intensify their joint efforts to combat terrorism ...”.

Article 2 of the text provides that “In their efforts to combat terrorism, the parties shall:

- Exchange information on terrorist acts which have been planned or committed, on persons participating in such acts and on the modus operandi and technical methods used to perpetrate such acts;
- Exchange information on terrorist groups and on members of such groups that may operate, are operating or have operated in the territory of one of the parties against the interests of the other party”.

To date, France has concluded such intergovernmental agreements on police cooperation with 42 countries; 13 more agreements are currently being negotiated.

Special efforts are being made to enhance bilateral cooperation by stepping up the exchange of liaison magistrates, but also by giving magistrates the opportunity to meet with their counterparts from bordering countries on cases which raise difficulties or which are being investigated in both countries. For a number of years, liaison magistrates have helped to increase the flow of international judicial assistance by facilitating, in particular, the transmission of claims.

Likewise, the French customs service has established contacts and agreements to start customs cooperation networks at the European and global levels to facilitate and increase information exchanges and operational contacts. These arrangements are based on a network of 15 customs attachés within France’s embassies abroad and on the existence of various multilateral or bilateral legal instruments on mutual administrative assistance.

Thus, France not only is a party to the conventions adopted by the European Union and the World Customs Organization (WCO), but also has concluded, to date,

33 bilateral conventions on administrative assistance for the prevention, detection and punishment of customs fraud, and is still conducting negotiations with a number of States.

**(d) What are your Government's intentions regarding signing and/or ratifying the conventions and protocols referred to in this subparagraph?**

France is already party to 10 of the 12 conventions and protocols referred to in this subparagraph and has taken the requisite national transposition measures.<sup>1</sup>

On 29 November 2001 it completed the process of ratification of the International Convention for the Suppression of the Financing of Terrorism and will file the related instrument of ratification within the next few days.

In November 2001 it began the procedure for accession to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 14 December 1973.

**(e) Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this subparagraph.**

France fully implements the conventions, protocols and resolutions referred to in this subparagraph, as shown by the responses provided to the preceding questions.

Following the terrorist attacks of 11 September 2001, it undertook actions entailing the involvement of air, land and naval military capabilities. On 23 November it notified the Security Council, in accordance with article 51 of the Charter.

**(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.**

These questions have been examined under paragraph 2 (c).

**(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.**

The response to the first part of this question has been provided under paragraph 2 (c).

Concerning the second part of the question, France makes certain that invoking political motivations is not in itself considered as justifying the rejection of requests for the extradition of presumed terrorists. France is also party to a number of anti-terrorist conventions which prohibit invoking the political character of an offence in order to reject a request for extradition.

France is party to the European Convention on Extradition of 13 December 1957 as well as numerous bilateral conventions (49 as of 1 January 2001). Nevertheless, France's extradition relations are not subject to the existence of a

<sup>1</sup> See annexed table.

conventional juridical base, inasmuch as its domestic law, and specifically the Act of 10 March 1927, permits extradition, in the absence of any convention, on the basis of reciprocity.

Under French law, extraditable offences are generally determined by the quantity of penalty incurred, not according to the nature of the offence. However, certain bilateral conventions allow extradition solely for certain specified offences.

Extradition is always subject to the condition of dual criminality. This condition is fulfilled, for example, whenever the request for extradition is submitted by a State for an offence defined by an instrument to which both that State and France are parties.

Under French law, extradition may be refused whenever the crime or offence for which it is requested is of a political nature. However, court practice shows that the notion of “political offence”, which is not defined by any legal text, is in fact interpreted in a highly restrictive manner.

Even the 1927 law had manifested the intention to limit its scope to “odious, barbarous acts and acts of vandalism prohibited under the laws of war”, committed during an insurrection or a civil war (cf. art. 5, para. 2).

Numerous court decisions giving favourable opinions on requests for extradition have long stressed the gravity of the non-political acts committed by the person concerned on political or ideological grounds or pretexts.

Furthermore, in making their assessment, the courts have traditionally given particular weight to the fact that the acts were committed in a State respectful of fundamental rights and freedoms.

Precedent thus shows that extradition may be granted even if the deeds have been committed for political reasons, provided that the following conditions are met:

- Regarding the nature of the act committed: the offence must be particularly grave;
- Regarding the requesting State: the offence must have been committed in a State respectful of fundamental rights and freedoms.

These precedents can be illustrated by a number of specific decisions (cf., for example, Council of State, Galdeano, 26 September 1984: “The fact that the crimes, which do not constitute political offences by virtue of their nature, may have been committed within the framework of a struggle for the independence of the Basque Country does not, in view of their gravity, suffice in order for them to be regarded as having a political character”. Court of Appeal of Douai, Grasso, 29 November 1983: “The fact that those acts, which are not political as far as their object is concerned, may have been intended to destroy the democratic order and overthrow the economic and social order does not, in view of their gravity, suffice in order for them to be regarded as having a political character, especially in view of the fact that they were committed in a State respectful of fundamental rights and freedoms”).

In addition, France staunchly supports the work undertaken within the European Union with a view to facilitating judicial cooperation in criminal matters, including extradition, notably through the application of the principle of mutual recognition of judicial decisions.



Thus, the implementation of the framework decision on the European arrest warrant, which will replace extradition procedures between member States, will simplify and considerably speed up the process of handing over wanted persons. This instrument calls, among other things, for the abolition of the requirement of and check for dual criminality for certain offences, including terrorism.

Finally, judicial cooperation will be strengthened by the entry into force of the European Union conventions of 10 March 1995, on the simplified extradition procedure, and of 27 September 1996, on extradition, which should be ratified by France in the near future.

In another area, French nationality law provides for limits on the naturalization of foreigners who satisfy the legal requirements.

While in many cases the Civil Code allows a foreigner or a stateless person to acquire French nationality, its article 21-27, paragraph 1, establishing rules relating to certain manners of acquisition of French nationality, states that no person who has been convicted of a crime or offence constituting an act of terrorism or who has been sentenced to more than six months' imprisonment not coupled with a suspended sentence shall, irrespective of the offence concerned, be able to acquire French nationality.

Article 21-27 of the Civil Code constitutes an absolute obstacle to the acquisition of French nationality that does not violate the Convention for the Protection of Human Rights and Fundamental Freedoms. Indeed, naturalization is a prerogative of the public power, whose function it is to determine, under the conditions provided by law, the rules governing the acquisition of French nationality.

These provisions are in conformity with article 7 of the European Convention on Nationality, adopted by the Committee of Ministers on 14 May 1997 and drafted in turn in a spirit of respect for and in consideration of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and article 8 of the 1961 Convention on the Reduction of Statelessness. The reform of 16 March 1998 took the provisions of those texts into account.