United Nations S/2001/1285

Security Council

Distr.: General
27 December 2001
English
Original: French

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 Brazil, 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

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Annex

Letter dated 26 December 2001 from the Permanent Mission of Brazil to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: Spanish]

I have the honour to attach the Brazilian report to the Counter-Terrorism Committee, pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

(*Signed*) Enio **Cordeiro**
Minister Counsellor a.i.

Enclosure

Brazil

Report to the Counter-Terrorism Committee on the implementation of United Nations Security Council resolution 1373 (2001)

Contents

1. Introduction

Under the Brazilian Constitution of 1988, the repudiation of terrorism is one of the governing principles of Brazilian international relations. Thus, prior to the events of 11 September 2001, Brazil had already been implementing the measures set forth in Security Council resolution 1373 (2001) and had always sought to comply with United Nations General Assembly and Security Council resolutions on terrorism.

Multilaterally, the Government of Brazil has been taking the domestic steps necessary to link the country to all international agreements on terrorism. At the regional and bilateral levels, Brazil has signed and implemented police and judicial cooperation agreements, which are important tools in combating crimes related to terrorist activities.

This and other information is presented in detail in the present report, which is organized on the basis of the various paragraphs of resolution 1373 (2001) and the guidelines issued by the Counter-Terrorism Committee.

2. Paragraph 1

"*The Security Council* (…) *Acting* under Chapter VII of the Charter of the United Nations,

Decides that all States shall:

(a) Prevent and suppress the financing of terrorist acts;"

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)?

Brazil is fully committed to suppressing the financing of terrorist acts and actively participates in international efforts to combat money-laundering. The country's legislation on this subject is modern and quite complete.

Article 14 of Act 9613/98 created the Financial Activities Control Council (COAF), a financial intelligence unit responsible for regulating, enforcing administrative penalties, receiving reports and reviewing and identifying instances where there is a suspicion of crimes relating to the laundering or concealment of property, rights and assets. It is the Council's task to coordinate and propose cooperation mechanisms and exchange of information to enable quick, efficient action to be taken to combat the concealment and covering up of property, rights and assets.

Since 2000, COAF has been a member of the Egmont Group (an informal mechanism set up in 1995) and the Financial Action Task Force (FATF), a body established under the auspices of the Organization for Cooperation and Development in Europe. The twelfth plenary meeting of FATF, held in Paris in June 2001, considered Brazil, on the basis of the evaluation process, to be fully in compliance with the 28 evaluation criteria derived from the Task Force's 40 recommendations.

At the regional level, Brazil has been a leader in establishing the South American Financial Action Group (GAFISUD), whose secretariat is located in Buenos Aires. Mexico, Portugal, Spain, the United States of America and the Inter-American Development Bank participate in this Group as observers. At the second plenary meeting of GAFISUD, held in Montevideo in June 2001, arrangements were made to set up a mutual evaluation programme to control money-laundering.

In the context of the Southern Common Market (MERCOSUR), a standing working group on terrorism has been established to coordinate measures at the subregional level to prevent, combat and eliminate terrorism.

3. Paragraph 1 (b)

> "Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;"
>
> *What are the offences and penalties in your country with respect to the activities listed in this subparagraph?*

Act 9613 of 3 March 1998 criminalizes the offences of money-laundering or concealment of property, rights and assets and provides for prevention of the use of the financial system for the illegal actions covered by the Act.

Article 1 lists the various offences that give rise to money-laundering. These offences include terrorism (art. 1, para. II).[1] The list of illegal acts is exhaustive, i.e., it may not be expanded, unless a new Act includes other types of offences that result in the practice of money-laundering. The crime of money-laundering is considered a separate offence from that which generated the funds. The penalty for the crime of money-laundering is from three to 10 years' imprisonment and a fine (in addition to the forfeiture of the funds).

Article 1, paragraph 1, provides that:

> "The same punishment applies to anyone who, in order to conceal or disguise the use of the property, rights and assets resulting from the crimes set forth in this article:
>
> I. Converts them into licit assets;

[1] Act 9613 of 3 March 1998.
Chapter I — Crimes of money-laundering or concealment of property, rights and assets
Art. 1 — To conceal or disguise the true nature, origin, location, disposition, movement or ownership of property, rights and assets that result directly or indirectly from the following crimes:
I. Illicit trafficking in narcotic substances or similar drugs;
II. **Terrorism**;
III. Smuggling or trafficking in weapons, munitions or materials used for their production;
IV. Extortion through kidnapping;
V. Acts against the public administration, including direct or indirect demands, on behalf of oneself or others, for benefits as a condition or price for the performance or the omission of any administrative act;
VI. Acts against the national financial system;
VII. Acts committed by a criminal organization.

II. Acquires, receives, exchanges, trades, gives or receives as guarantee, keeps, stores, moves or transfers any such property, rights and assets;

III. Imports or exports goods at prices that do not correspond to their true value."

Paragraph 2 of the same article provides that:

"The same penalty also applies to anyone who:

I. Through economic or financial activity, makes use of property rights and assets derived from the crimes referred to in this article;

II. Knowingly takes part in any group, association or office set up for the principal or secondary purpose of committing crimes referred to in this Act."

4. Paragraph 1 (c)

"Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;"

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.

Complementary Act 105 of 10 January 2001 authorizes the lifting of banking secrecy rules of financial institutions in order to allow for the investigation of crimes, including acts of terrorism. Thus, it is not a violation of confidentiality to "communicate to the competent authorities the practice of criminal or administrative offences, including the provision of information on operations using resources derived from any criminal activity" (art. 1, para. 3 (IV)).

Article 1, paragraph 4, of the Complementary Act provides that:

"4. Banking secrecy may be lifted where necessary in order to uncover any illegal transaction, in the investigation or trial stage, in particular in the case of the following crimes:

I. Terrorism;

II. Illicit trafficking in narcotic substances or similar drugs;

III. Smuggling or trafficking in weapons, munitions or material used for their production;

IV. Extortion through kidnapping;

V. Acts against the national financial system;

VI. Acts against the public administration;

VII. Acts against the tax system and social security;

VIII. Money-laundering or concealment of property, rights or assets;

IX. Acts committed by a criminal organization."

Article 9 of the Act provides that:

"Where, in the exercise of its functions, the Central Bank of Brazil and the Securities and Exchange Commission verify the occurrence of a crime defined by law as a publicly actionable offence, or verify indications that such offences are being committed, they must so inform the Public Prosecutor's Office, attaching to the report the necessary documents for the investigation or confirmation of the facts;

1. The report referred to in this article shall be submitted by the Presidents of the Central Bank and the Securities and Exchange Commission, or their competent representatives, within 15 days of receipt of the information, attaching a statement by the relevant legal departments;

2. Irrespective of the provisions of the chapeau of this article, the Central Bank and the Securities and Exchange Commission shall notify the competent public bodies of any irregularities and administrative offences, to the best of their knowledge, or of any indications of the Commission of such offences, attaching the relevant documents."

Under article 14 of Act 9613/98, financial institutions are required to report to COAF any suspicious transactions. COAF, in turn, is required to take steps to initiate the appropriate procedures when it concludes that crimes have been committed or that sufficient evidence exists that a crime has been committed.

Article 4 of Act 9613/98 provides that:

"During investigations or judicial proceedings, upon the request of the Public Prosecutor's Office, or the competent police authority, after consulting the prosecutor within 24 hours, and with sufficient evidence, the judge may order the seizure or attachment of property, rights or assets that constitute the object of the crimes referred to in this Act, and belong to the accused or are registered under his or her name, in accordance with the procedure set forth in articles 125 to 144 of Decree-Law 3689 of 3 October 1941 — Code of Criminal Procedure.

4. In the event that the immediate implementation of the preventive measures referred to herein may compromise the investigations, the judge — upon consultation with the prosecutor — may issue an order suspending an arrest warrant or the seizure or attachment of property, rights or assets."

Act 9613/98 also provides, in article 8, that at the request of a competent foreign authority the judge must order the seizure or attachment of property, rights or assets resulting from crimes committed abroad, whether or not there is an applicable international treaty, provided that the Government of the requesting State undertakes to grant reciprocity of treatment to Brazil.

5. Paragraph 1 (d)

> "Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;"

What measures exist to prohibit the activities listed in this subparagraph?

Act 9613/98 criminalizes any act by which an individual or legal entity makes any funds, financial assets, economic or financial resources or other related financial services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts; or for the benefit of entities owned or controlled, directly or indirectly, by such persons; or for the benefit of persons and entities acting on behalf of or at the direction of such persons.

Article 1, paragraph 1, of that Act establishes that:

> "The same punishment (as for anyone who disguises or conceals the nature, origin, location, disposition, movement or ownership of property, rights and assets that result directly or indirectly, from the crimes in question[2]) shall apply to anyone who, in order to conceal or disguise the use of the property, rights and assets resulting from the crimes set forth in this article:
>
> I. Converts them into licit assets;
>
> II. Acquires, receives, exchanges, trades, gives or receives as guarantee, keeps, stores, moves or transfers them;
>
> III. Imports or exports goods at prices that do not correspond to their true value.
>
> 2. The same penalty also applies to anyone who:
>
> I. Through economic or financial activity, makes use of property, rights and assets derived from the crimes referred to in this article;
>
> II. Knowingly takes part in any group, association or office set up for the principal or secondary purpose of committing crimes referred to in this Act;"

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[2] I. Illicit trafficking in narcotic substances or similar drugs;
II. Terrorism;
III. Smuggling or trafficking in weapons, munitions or materials used for their production;
IV. Extortion through kidnapping;
V. Acts against the public administration, including direct or indirect demands, on behalf of oneself or others, of benefits, as a condition or price for the performance or the omission of any administrative act;
VI. Acts against the national financial system;
VII. Acts committed by a criminal organization.

Article 1, paragraph 4, establishes that:

"The sentence shall be increased by one third to two thirds in any of the instances set out in subsections (I) to (VI) of the chapeau of this article, when there is a pattern of crime or the crime is committed by a criminal organization."

Criminal responsibility for legal entities

The Constitution of the Republic establishes the criminal liability of legal entities and makes them subject to penalties compatible with their nature, for acts against the economic or financial order, the national economy or the environment (arts. 173, para. 5 and 225, para. 3).

Act 9613/98 establishes the administrative obligations of enterprises and other financial institutions operating in the marketplace, which are required to inform the Ministry of the Treasury Financial Activities Control Council (COAF) of any suspicious transactions.

"Article 9. The obligations set forth in articles 10 and 11 hereof shall apply to any legal entity that engages on a permanent or temporary basis, as a principal or secondary activity, together or separately, in any of the following activities:

I. Receiving, acting as a broker and investing third parties' funds, in national or foreign currency;

II. Purchase and sale of foreign currency or gold as a financial asset;

III Acting as securities custodian, issuer, distributor, clearer, negotiator, broker or manager;

Single paragraph: The same obligations shall apply to the following:

I. Stock, commodities and futures exchanges;

II. Insurance companies, insurance brokers and institutions involved with private pension plans or social security;

III. Payment or credit card administrators and *consórcios* (consumer funds commonly held and managed for the acquisition of consumer goods);

IV. Administrators or companies that use cards or any other electronic, magnetic or similar means, that allow the transferral of funds;

V. Companies that engage in leasing and factoring;

VI. Companies that distribute any kind of property (including cash, real estate and goods) or the rendering of services, or give discounts for their acquisition by means of lotteries or other similar methods;

VII. Branches or representatives of foreign entities that engage in any of the activities referred to in this article, which take place in Brazil, even if occasionally;

VIII. All other legal entities engaged in the performance of activities that are dependent upon an authorization from the agencies that regulate the stock, exchange, financial and insurance markets;

IX. Any and all national or foreign individuals or entities who operate in Brazil in the capacity of agents, managers, representatives or proxies, commission agents or who represent in any other way the interests of foreign legal entities that engage in any of the activities set forth in this section;

X. Legal entities that engage in activities pertaining to real estate, including the promotion, purchase and sale of properties;

XI. Individuals or legal entities that engage in the commerce of jewellery, precious stones and metals, objects of art and antiques.

Chapter VI
Customer identification and record-keeping

Article 10

The legal entities referred to in article 9 hereof shall:

I. Identify their customers and maintain an updated record in compliance with the provisions set forth by the competent authorities;

II. Keep an up-to-date record of all transactions, in national and foreign currency, involving securities, bonds, credit instruments, metals or any asset that may be converted into cash, and that exceeds an amount set forth by the competent authorities and in accordance with the requirements they may issue;

III. Comply with notices sent by the council established under article 14 hereof, within the time period stipulated by the competent judicial authority. The judicial proceedings pertaining to such matters shall be conducted in a confidential manner.

1. In the event that a customer is a legal entity, the identification mentioned in paragraph I of this article shall include the individuals who are legally authorized to represent it as well as its owners.

2. The reference files and records mentioned in paragraphs I and II of this article shall be kept during a minimum period of five years, counted from the date the account is closed or the date the transaction is concluded. The competent authorities may decide, at their own discretion, to extend this period of time.

3. The registration under paragraph II of this article shall also be made whenever an individual or legal entity or their associates execute, during the same calendar month, transactions with the same individual, legal entity, conglomerate or group that exceed, in the aggregate, the limit set forth by the competent authorities.”

Financing of terrorism (specific characterization of crime)

The International Convention for the Suppression of the Financing of Terrorism creates a new obligation not to provide funds to terrorist entities, including through legal means.

The suppression of the financing of terrorism thus has come to include not just the adoption of measures to prevent the concealment of the illicit origin of funds

obtained through crime, but also to prevent the use of measures aimed at concealing the origin of funds obtained legitimately but to be used for terrorist activities.

Brazil is committed to the suppression of this new form of crime, and has signed the International Convention for the Suppression of the Financing of Terrorism and approved the Decree on the implementation of United Nations Security Council resolution 1373 (2001). The provision of financial resources to terrorist entities can be dealt with under other types of crimes or criminal activities (criminal association, currency fraud, etc.).

6. Paragraph 2

"Decides also that all States shall:

(a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;"

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

Formation of a gang, armed group or criminal organization

Article 288 of the Penal Code deals with associations of more than three persons for the purpose of undertaking criminal activities. The recruitment of new members for terrorist groups would fall under the definition of that crime. Act 9034 of 3 May 1995, in article 2, paragraph V, allows for "infiltration by agents of the police or the intelligence services as part of an investigation undertaken by the relevant specialized bodies, and authorized by a reasoned judicial order delivered in secret". The Act also provides for the possibility of a reduced penalty in order to encourage voluntary cooperation on the part of a criminal leading to the dismantling of the organization.

Arms trafficking

With a view to controlling the importation and bearing of arms in Brazil, Act 9437 of 20 February 1997 was adopted, creating the National Weapons System (SNARM) and establishing the criteria for registering and bearing firearms.

Article 10

"It is forbidden to possess, keep, carry, manufacture, acquire, sell, rent, expose to view or provide, receive, hold on deposit, transport, transfer even free of charge, loan, remit, use, store or conceal a legal firearm without authorization and in violation of relevant legislation or regulations.

2. The penalty for violating the provisions of this article shall be two to four years' imprisonment and a fine, without prejudice to any penalty involving the crimes of smuggling or hijacking, if firearms or related materiel were used in a prohibited or restricted manner."

Other measures will be described below.

7. Paragraph 2 (b)

> "Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;"
>
> *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?*

National Public Security Plan

The National Public Security Plan, launched in June 2000, is a series of 15 commitments, which are taking the shape of 124 comprehensive activities, both high-priority and strategic. The Plan was conceived on the basis of the principles of interdisciplinarity, organizational and managerial pluralism, legality, decentralization, impartiality, transparency of actions, community participation, professionalism, attention to special regional features and strict respect for human rights. The commitments were assumed in the federal Government framework, and provided for intense cooperation with state and municipal governments, other authorities and civil society.

Commitment No. 1 — Control of drug trafficking and organized crime — provides for a series of 16 activities, including: operations to combat drug trafficking, smuggling and embezzlement; control of chemical precursors and narcotic substances; fighting of money-laundering; operational integration between federal and traffic police and between military and civilian police. Commitment No. 2 — Disarmament and weapons control — represents a real crusade to disarm society, which includes prohibiting the use and civilian trade of firearms and ammunition; controlling private security firms; creating a national comprehensive register of confiscated weapons; collection of illegal weapons; centralization of arms control; and a national disarmament campaign. In July 2001, the Government of the state of Rio de Janeiro ordered the simultaneous destruction of 100,000 weapons — a world record.

At the summit meeting of MERCOSUR, Bolivia and Chile, held in Florianopolis in December 2000, Brazil sponsored the establishment of a working group of MERCOSUR and associated States on firearms and munitions, whose first meeting, held in May 2001 in Asunción, furthered the discussion of topics such as the harmonization of laws on firearms and munitions, coordination of the topic in international forums, development of technologies for reducing accidents in the use of firearms and munitions and the link between illegal arms and munitions trafficking and drug trafficking. In September 2001, the Ministers of Justice and the Interior adopted a Declaration on Terrorism; this was followed by the creation of a standing working group on terrorism in October 2001, which will devote its work to cooperation in intelligence, studies and actions against terrorist activities. In addition, the MERCOSUR regional plan includes a chapter on terrorism, which provides for concrete counter-terrorism measures. Refresher courses on counter-terrorism will be offered; surveys will be conducted to identify persons or

organizations that support this criminal activity; mechanisms will be set up to prevent bioterrorism; and studies will be made of laws dealing with terrorism.

The Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials (CIFTA), to which Brazil is a party, is another mainstay of Brazil's national and joint efforts.

Bilaterally, Brazil maintains useful understandings with its neighbouring and bordering countries, in particular with Paraguay, which has been identified as the main source of weapons entering Brazil. The implementation of an agreement signed in 1996 between Brazil and Paraguay on facilitating control of the firearms trade, resulted in a technical meeting on illicit weapons trafficking, signed in Asunción in November 2000. At this meeting, immediate, practical measures were decided with the aim of strengthening the enforcement of the control mechanisms provided for in the 1996 agreement, so as to help track down the origin of the weapons seized during police operations.

The 1996 agreement and the recommendations of the technical meeting have been followed up through regular bilateral meetings of the Joint Anti-Drug Commission, the last of which was held in Brasilia on 29 November 2001.

Also with regard to bilateral cooperation in combating illicit arms trafficking, a Brazilian/United States working group was set up in December 2000 to establish streamlined mechanisms for exchange of information to help trace weapons that have been seized.

The National Public Security Plan, in Commitment No. 5, also provides for the expansion of the witness and victim protection programme, supported by appropriations from the National Public Security Fund, and for international exchanges when the case involves international organized crime. In the federal police force, a service for the protection of persons (witnesses with criminal records) who cooperate with the authorities is being set up, with the help of special protection units.

Security agencies

The Ministry of Defence, through intelligence centres of armed forces commandos, in cooperation with the federal police force and in coordination with the Brazilian Intelligence Agency, has been conducting a survey and cross-referencing of data for checking the list issued by the United States of America of more than 340 persons suspected of participating in terrorist activities, together with a follow-up of information on the existence of "sleeper cells" and shelters for foreigners under suspicion of supporting terrorism, and on the use of forged documents, fund-raising for terrorist causes or triangulation of communications with extremist organizations, including the al-Qa`idah movement of Osama bin Laden. Up to now, no international terrorist cells have been found in the country or surrounding areas, nor have reports been received of any transfer of funds originating in Brazil to finance criminal activities.

Act 9883 of 7 December 1999 provides that the Brazilian Intelligence System (SISBIN), the main organ of the Brazilian Intelligence Agency (ABIN), will carry out counter-terrorism activities.

The Brazilian Military Staff is holding bilateral meetings with a number of Brazil's South American neighbours to discuss security in the subregion.

Implementation measures in specific areas (domestic)

(a) Nuclear materials

Brazil has always maintained a high level of protection for its nuclear facilities and materials. It fully applies the physical protection guidelines elaborated by the International Atomic Energy Agency (IAEA), as contained in document INFCIRC 225/Rev.4, on the transport, use and storage of nuclear materials and the security of facilities. Following the terrorist acts of 11 September, the National Nuclear Energy Commission (CNEN) took further administrative steps to reinforce security, putting in place stricter procedures for controlling staff access to the facilities and increasing the number of security guards. These measures are enforced by the facilities/operators in each case.

(b) Chemicals

Bearing in mind the obligations undertaken by Brazil under the Chemical Weapons Convention, an interministerial commission was formed to implement the Convention domestically (Decree 2074/96), under the coordination of the Ministry of Science and Technology. The commission's work has had satisfactory results. Legislation on administrative and criminal penalties for the production, development, stockpiling, transfer and use of chemical weapons is being considered in Parliament (Bill 2863/97). In line with the Convention, the new legislation will extend penalties to Brazilian nationals (physical or moral persons) who conspire to commit abroad any activities prohibited under the Convention. Act 9112/95 provides for controls, under the provisions of the Convention, of exports of chemical substances that may be used in the production of chemical weapons. In Brazil, domestic control over chemicals is governed by Regulation 105, enacted in the 1930s and periodically revised (currently Decree 3665 of 20 November 2000). The national army must license and monitor activities using controlled materials, including the chemical weapons precursors listed in the Convention. The federal police force is responsible for enforcing the relevant criminal law.

(c) Biological materials

The controls currently being exercised in Brazil by the competent authorities (Ministries of Health and Agriculture, for example) are based on the provisions of the Biological Weapons Convention, in force since 1975, which provides that each State party "shall … take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition or retention of the agents, toxins, weapons, equipment and means of delivery … within the territory of such State, under its jurisdiction or under its control anywhere". Biological materials are regulated by Act 9112/95 (control of exports) and by Act 8974 of 5 January 1995, the latter of which provides guidelines for the use of genetic engineering techniques and for release into the atmosphere of genetically modified organisms; it also establishes the National Technical Commission on Biosafety. Although its purpose is to regulate genetically modified organisms, Act 8974 also applies to genetically modified pathogens that may be used in terrorist acts. More recently, on 16 October 2001, the Minister of Health signed Decree 1919/GM, which, in combination with

federal health regulations (Act 6437 of 20 August 1977) makes it obligatory to report the existence of samples of *Bacillus anthracis* in public and private laboratories. On the basis of these reports, the National Health Foundation will inspect the laboratories involved and recommend biosafety measures appropriate to each case.

Implementation measures in specific areas (international)

Brazil has participated in and supported talks in the competent forums on ways to strengthen, from the point of view of counter-terrorism, multilateral arrangements aimed at disarmament and non-proliferation of chemical, biological, nuclear and ballistic weapons (Organization for the Prohibition of Chemical Weapons (OPCW), Conference of the Biological Weapons Convention, IAEA and others).

At a meeting held in December 2001, the Executive Council of OPCW adopted a decision on the Organization's contribution to the global anti-terrorism effort, by which it stresses the objectives and provisions of the Convention that deserve priority implementation, namely, achieving universal adherence; enacting national implementating legislation for domestic control of dual-use substances; complete destruction of chemical stockpiles; international monitoring of the legitimate production of chemicals; and ensuring the ability of OPCW to respond to requests for assistance and protection against chemical weapons.

The Fifth Review Conference of the States Parties to the Biological Weapons Convention was held in Geneva from 19 November to 7 December 2001. The topic of national control of pathogens was given priority attention, and discussions on this topic will resume in 2002.

The forty-fifth session of the General Conference of IAEA, held in Vienna in September 2001, adopted resolution GC(45)/RES/14, on measures to improve the security of nuclear materials and other radioactive materials. Among other things, the resolution supports the Director General's efforts to set up an open-ended working group to consider expanding the scope of the Convention on the Physical Protection of Nuclear Material, in force since February 1987, to include the regulation of domestic transport, use and stockpiling of this type of material and prescribe safety measures for nuclear facilities. Currently, the Convention is limited to regulating the security of nuclear materials when they are being transported internationally. Brazil, which is implementing the measures stipulated in the Convention in respect of domestic transport and storage as well, supports the Director General's efforts and agrees with the proposals for strengthening the Convention under the terms being considered in Vienna. Talks on improving the Convention started in 1999, as a viable alternative to the impasse that had been reached in the negotiations of the Sixth Committee of the General Assembly on the drafting of an international convention for the suppression of acts of nuclear terrorism.

In the case of small arms and light weapons, the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials has been ratified by only 12 countries. In view of the link between arms trafficking and other international crimes such as terrorism, fresh efforts should be made to ensure that all States members of OAS accede to the Inter-American Convention, which will complement any future measures to be taken under a convention against terrorism. It might be acceptable, at

the inter-American level, to build on the outcome of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, held in New York from 9 to 20 July 2001. The Programme of Action of the Conference, whose preamble recognizes the link between the topic and the problem of terrorism, sets forth a series of preventive and cooperation measures to be adopted by States with a view to combating unlawful trafficking in small arms and light weapons. An important paragraph was left out of the Programme of Action, however, prohibiting the sale of weapons to agents or entities who are not duly authorized by States to purchase them. Brazil continues to believe that this is an important factor in the effort to combat the illicit trafficking of firearms.

In the area of ballistic missiles, the countries members of the Missile Technology Control Regime have prepared a draft code of conduct against the proliferation of ballistic missiles, which will also be open to negotiation with non-members in the first half of 2002, with a view to its adoption by the greatest possible number of countries at a diplomatic conference tentatively planned for July or August 2002. Brazil supports the full participation of non-members of the Regime in the negotiation and adoption of the code of conduct by consensus.

8. Paragraph 2 (c)

"Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;"

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.

Extradition[3]

Extradition is the most important form of international cooperation in connection with the fight against crime. Under Brazil's legal system, extradition requires the intervention of the executive and judicial authorities (Act 6815/80, arts. 76 to 94).

Political offences

The granting of extradition for political offences is expressly prohibited by article 5, paragraph LII, of the Federal Constitution ("extradition of a foreigner for a political or ideological crime may not be granted"). The judicial authorities determine whether the offence having given rise to the extradition process is of a political nature. In this connection, Celso Mello affirms that political offences do not include offences against society or offences or attacks against the life of a head of State. If the country cannot extradite an accused (because he or she is a national,

[3] Brazil has extradition agreements in force with the following countries: Argentina, Australia, Belgium, Bolivia, Chile, Colombia, Ecuador, Italy, Lithuania, Mexico, Paraguay, Peru, Portugal, Spain, Switzerland, United Kingdom, United States of America, Uruguay and Venezuela. Agreements with Canada, France, Germany and the Republic of Korea have been submitted to the National Congress for consideration.

for example), it must prosecute him or her, as described below ("no safe haven principle").

Article 77 of Act 6815/80 provides that extradition may be granted if the act in question is primarily a violation of ordinary criminal law or if an ordinary offence related to a political offence is the principal act in respect of which extradition is requested. In addition, paragraph 3 provides that the Federal Supreme Court may consider that attacks on heads of State or any other authority, as well as acts of anarchy, terrorism, sabotage, kidnapping, war propaganda and violent subversion of order, are not political offences. Money laundering, as an intermediate criminal activity, likewise cannot be considered a political offence.

Extradition of nationals

The 1988 Federal Constitution provides that no Brazilian may be extradited, except for naturalized Brazilians in the case of an ordinary offence committed prior to naturalization or proven involvement in unlawful trafficking in narcotics and similar drugs. Neither the Constitution nor ordinary law mention any obligation to bring legal proceedings against a Brazilian or foreign national whose extradition has been denied by the Federal Supreme Court.

Nonetheless, some of the bilateral extradition agreements signed by Brazil provide that, since extradition cannot be granted in respect of Brazilian nationals, such persons shall be prosecuted under the Brazilian judicial system for the criminal conduct that gave rise to the request for extradition. Likewise, a multilateral instrument signed recently by Brazil (the United Nations Convention against Transnational Organized Crime, adopted on 15 November 2000) envisages this possibility by providing that, if a request for extradition is denied, the requesting State shall submit the case to the competent Brazilian authorities for the purpose of prosecution with due process of law, and shall provide the Brazilian judicial authorities with copies of the procedural and evidentiary documents necessary for the latter's investigation. This procedure is consistent with Brazil's domestic laws, which establish the competence of the national judicial system to prosecute Brazilian citizens for offences committed abroad. Thus, under no circumstances can an offence committed by a Brazilian national in another country go unpunished.

Absence of a bilateral treaty

In accordance with international practice, Brazil may, in the absence of a bilateral treaty, consider requests for extradition on the basis of a promise of reciprocal treatment in similar cases. The applicable domestic law consists of the Statute on Aliens (Act 6815/80) and some provisions of the Federal Constitution, which contain the safeguards, present in most international extradition instruments, that prohibit the granting of extradition if the death penalty may be imposed or if the request is based on a political or ideological offence.

With respect to the new generation of requests for judicial cooperation in criminal matters, bilateral and multilateral instruments on the subject establish conditions (minimum information requirements that must accompany the request) for the provision of the requested assistance.

While Brazil has no legislation that consolidates, in an organic way, the provision of and requests for international judicial cooperation in criminal matters,

national laws do cover the procedures relating to such requests and establish the formal prerequisites for granting them, including the commitment to reciprocity, respect for public order, transmittal through the diplomatic channel and translation of the document into the country's official language.

Other compulsory measures: deportation and expulsion

In exercise of its right to grant selective access to its territory, the Brazilian Government may avail itself of two procedures: deportation and expulsion.

Deportation is a form of exclusion from the national territory applicable to aliens who are in Brazil as a result of an irregular, and usually clandestine, entry (article 56 of Act 6815/80). If deportation is deemed to be in the national interest, it may be effected rapidly at the initiative of police authorities, without the need for direct involvement by the higher levels of government.

Article 22 of Act 6815/80 provides that entry into the national territory may be effected only at places where the competent organs of the Ministries of Health, Justice and Finance have established checkpoints.

In deportation, aliens are usually excluded from the national territory immediately if they do not leave voluntarily within the non-extendable grace period (article 98 of Decree 86715/81).

Generally speaking, the alien is given eight days' notice in cases related to irregular entry or stay, when fraud is involved. In cases of national interest, the second paragraph of article 57 allows deportation with or without prior notice; this authorizes the Minister of Justice to ask the judicial authorities to detain the deportee immediately for up to 60 days.[4]

In principle, the deportee may choose the country of destination.

Expulsion is imposed on the ground that an individual's presence in Brazilian territory is undesirable because it is prejudicial to national expediency and interests; thus, the Government has greater discretionary power in such cases. It is imposed on the basis of an investigation under the authority of the Ministry of Justice, in which the alien's right of defence is fully guaranteed. The law does not establish a specific time frame for the completion of the investigation for expulsion, except in the case of the summary investigation provided for in article 71 of the Statute on Aliens. It cannot, however, be prolonged indefinitely. An administrative provision of the Ministry of Justice — opinion 06/81 of the Office of the Legal Counsel — provides that the investigation must be completed within about 50 days from the date of detention of the person to be expelled. This period cannot be extended unless a reasoned justification is provided by the person responsible for the investigation. Lastly, the President of the Republic issues a decision, in the form of a decree, on whether the alien's presence in the national territory would be detrimental to the country's interests. The judicial authorities cannot dispute the merit of this decision.

In expulsion proceedings, the Minister of Justice may ask the judicial authorities to authorize the alien's detention for a period of 90 days, which may be extended for another 90 days. This measure may be taken immediately after extradition proceedings if the request for extradition is denied.

[4] Mirtô Fraga, *El Novo Estatuto del Estrangeiro Comentado* (Rio de Janeiro, Forense, 1985).

As in the previous case, practice and jurisprudence have admitted as a basic principle that expulsion should not degenerate into extradition; accordingly, an individual cannot be expelled to the country of his or her nationality if he or she is wanted there for a previous offence, nor can the individual be handed over to a third State in which he or she is wanted for an offence or from which the individual may be extradited to his or her own country.

9. Paragraph 2 (d)

"Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens";

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.

See the comments in relation to paragraph 2 (b).

10. Paragraph 2 (e)

"Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;"

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.

Article 4, paragraph VIII, of the Constitution of the Republic establishes the "repudiation of terrorism" and imposes an obligation on the country to join efforts to combat terrorism. In article 5, paragraph XLIII,[5] the Constitution provides that "the law shall consider the practice of torture, unlawful trafficking in narcotics and similar drugs, terrorism and crimes defined as heinous crimes to be crimes not entitled to bail or to mercy or amnesty, and shall hold responsible individuals who order or commit such acts and those who, though in a position to stop them, refrain from doing so".

[5] Constitution of the Republic, article 5: "All persons are equal before the law, without any distinction whatsoever, and Brazilians and foreigners resident in Brazil are assured of inviolability of the right to life, liberty, equality, security and property, on the following terms:
(...) XLIII. the law shall consider the practice of torture, unlawful trafficking in narcotics and similar drugs, terrorism and crimes defined as heinous crimes to be crimes not entitled to bail or to mercy or amnesty, and shall hold responsible individuals who order or commit such acts and those who, though in a position to stop them, refrain from doing so;
XLIV. the acts of civilian or military armed groups against the constitutional and democratic order are crimes not entitled to bail or subject to the statute of limitations".

In addition, article 5, paragraph XLIV, provides that "the acts of civilian or military armed groups against the constitutional and democratic order are crimes not entitled to bail or subject to the statute of limitations".

These constitutional imperatives form the basis for the extensive complementary legislation on the subject. Worth noting, in particular, are Act 6815 of 18 August 1980 (provides that terrorism cannot be deemed a political offence); Act 7170 of 14 December 1983 (defines offences against national security and the political and social order; title II, "Offences and Penalties", establishes the penalty for "terrorist acts"); Act 8072 of 25 July 1990 (classifies terrorism as a heinous crime); and Act 9613 of 3 March 1998 (establishes as the offence of money-laundering any activity aimed at concealing or disguising the true nature, source, location, disposition, movement or ownership of property, rights or assets derived directly or indirectly from the crime of terrorism; offences against the national financial system; and offences committed by criminal organizations, among others).

Act 9613/98 does not expressly define the crime of terrorism, nor does Act 7170 of 14 December 1983, which characterizes offences against the political and social order and offences against national security. There is no precise and detailed legal description of the crime of terrorism in Brazilian legislation; there are only descriptions of conduct that constitutes a means of carrying out a terrorist act, as in the case of offences of collective endangerment (see, for example, article 373 of the Penal Code: "Attacking persons or property, for seditious, immoral or frivolous reasons, by means of serious threats, violence or harmful methods, for the purpose of spreading terror").

In specific cases, the judicial authorities are responsible for verifying the existence of an offence, in accordance with developments in the doctrine and case law and in application of the provisions of Act 8072 of 25 July 1990, which deals with heinous crimes and establishes stricter rules for the serving of sentences. Article 2 of that law provides that persons convicted of the crime of terrorism are not entitled to "I — amnesty, mercy or pardon; II — bail or interim release; paragraph 1 shall be carried out in its entirety under a closed prison regime".

11. Paragraph 2 (f)

> "Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;"
>
> *What procedures and mechanisms are in place to assist other States? Please provide any available details of how these have been used in practice.*

International cooperation

Pursuant to article 8, paragraph 1, of Act 9613/98, the existence of a treaty or an international convention is not a prerequisite for international cooperation and the seizure or attachment of property, rights or assets derived from the offences that are described in article 1 and committed abroad. A promise of reciprocity is sufficient.

Brazil signed certain treaties which deal directly or indirectly with cooperation in the detection and prosecution of money-laundering offences and in forfeiture

actions. Most of those instruments are under consideration by the Brazilian Congress.

The exchange of information among the financial intelligence units is flexible and informal, in keeping with the Egmont Group's rules. The Brazilian unit, the Financial Activities Control Council (COAF), exchanges information with its counterparts based on the principle of reciprocity. Memoranda of understanding, based on the Egmont Group's model, are signed as required to regulate the exchange of information.

Pursuant to the aforesaid agreements and treaties, requests should preferably be made in writing, and should comply with the requirements prescribed by law. In case of emergency, other, alternative methods can be used, provided that the request is subsequently formalized within a period of 15 to 30 days.

Public and secret documentation can be provided on the basis of a treaty, an international agreement, or a promise of reciprocity. Nevertheless, more information cannot be provided to foreign authorities than to national authorities.

The information provided is generally secret. Such information can only be used for the purposes expressly mentioned in the request. Any other eventuality implies prior consultation with the requested country. Two exceptions are provided in agreements on cooperation in criminal matters that have not yet entered into force. These are the cases provided for in article 7, paragraphs 3 and 4, and article 11, respectively, of the agreements concluded with the United States and Uruguay. In both cases, it was established that the barrier to the use or provision of secret information would disappear whenever the constitutional obligation of a requesting State to provide such information in a judicial proceeding so requires. The information thus made public can thereafter be used for any purpose.

Significant barriers

The greatest barriers to international cooperation involve the breach of bank secrecy and interception of the flow of communications through computer and data transmission systems that are equivalent to telephone communications. In order for both types of communications to be used as valid evidence, they must be obtained legally.

In the first instance, see the comments on bank secrecy under article 1 (c). In the second instance, prior judicial authorization is needed.

Forfeiture and preventive measures

International cooperation in respect of forfeiture and preventive measures is governed by articles 125 to 144 of the Code of Criminal Procedure and by specific provisions contained in international treaties and agreements. In order for such measures to be carried out, dual incrimination is required; in other words, requests for search and seizure must be based on offences that are criminalized in both the requesting and the requested country. These are generally the most sensitive provisions of the agreements, since they deal specifically with the enforcement of precautionary measures and foreign judgements on the basis of letters rogatory. The importance of the matter resides in the fact that, as such measures may result in restrictions on fundamental rights and guarantees, as provided in article 5, sections

XLVI, LIV and LV, of the Brazilian Constitution, [6] the Federal Supreme Court's interpretation of the matter is fairly restrictive. It is therefore important to keep in mind some important clarifications if prompt compliance with requests is not to be thwarted.

The Federal Supreme Court has "invariably rejected the legal possibility of pronouncing exequatur for the purposes of carrying out, in Brazilian territory, proceedings of an executory nature"[7] by means of a passive letter rogatory, the sole exceptions being the cases provided for in the international convention on judicial cooperation, as will be seen below.

"In general, therefore, letters rogatory sent to Brazilian courts should have as their objective only the performance of simple acts of information or procedural communication [(service of process, notification or summons)], with such procedure lacking any connotations of an executory nature."[8]

Nevertheless, the Brazilian legal model relating to passive letters rogatory underwent an appreciable change as regards compliance with requests of an executory nature as a result of the Protocol on Cooperation and Jurisdictional Assistance in Civil, Commercial, Labour and Administrative Matters, which Brazil signed on 27 June 1992 in the framework of the Southern Common Market (MERCOSUR).

"That international convention, called the Las Leñas Protocol, is formally incorporated into the Brazilian system of domestic positive law, since after being approved by the Congress (Legislative Decree 55/95), it was promulgated by the President of the Republic by means of Decree 2067, of 12 November 1996. With the Las Leñas Protocol, which is applicable only to interjurisdictional relations between States signatories to the Treaty of Asunción and members of MERCOSUR, it has become possible, by means of simple letters rogatory, to obtain the approval and enforcement in our country of judgements handed down by judicial bodies of Argentina, Paraguay and Uruguay."[9]

The objective of cooperation in criminal matters is to simplify the processing of precautionary measures and foreign judgements generated by any of the contracting parties, along the lines of what already exists in relation to the Las Leñas Protocol and the Protocol on Enforcement of Precautionary Measures — especially to enable them to be processed as though they were simple letters rogatory.

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[6] Brazilian Constitution, article 5: "XLVI. The law shall regulate the individualization of punishment and shall adopt, inter alia, the following: (a) deprivation or restriction of liberty; (b) loss of property; (c) fines; (d) alternative social service; and (e) suspension or prohibition of rights; ... LIV. No one may be deprived of his or her liberty or property without due process of law; LV. Litigants in court or administrative proceedings and defendants in general are assured of the use of the adversary system and of a full defence, with the means and remedies inherent therein; LVI. Evidence obtained through unlawful means is inadmissible in proceedings; LVII. No one may be considered guilty until the criminal sentence has become final and unappealable."

[7] (RTJ 52/299-RTJ 93/517-RTJ 95/518-RTJ 103/536-RTJ 110/55, v.g.), the sole exceptions being the cases provided for in the international convention on judicial cooperation (CR 7.618 (AgRg), Rel. Min. SEPULVEDA PERTENCE-CR 8.425, Rel. Min. CELSO DE MELLO).

[8] (RTJ 52/299-RTJ 87/402-RTJ 95/38-RTJ 95/518-RTJ 98/47-RTJ 103/536-RTJ 110/55).

[9] CR-7613, DJ 15/06/1999-p. 00001.

Nevertheless, in accordance with the Federal Supreme Court's restrictive interpretation, "a request for recognition and enforcement of judgements [and precautionary measures] by the jurisdictional authorities shall be processed by means of letters rogatory, through the central authority".

Article 18 of the MERCOSUR Protocol on Precautionary Measures states that: "A request for precautionary measures shall be formulated by means of letters requisitorial or letters rogatory, terms that shall be equivalent for the purposes of this Protocol".

It has been recommended that the formula used in article 19, paragraph 5, of the Protocol on Precautionary Measures, namely, "the approval procedure for foreign judgements shall not be applied in complying with precautionary measures", be included in the text of the agreement with the United Kingdom.

The aim is to avoid applying, in respect of agreements on cooperation in criminal matters, the formula established in the jurisprudence of the Federal Supreme Court, which has been repeatedly applied in connection with the processing of requests for enforcement of precautionary measures and judgements by means of letters rogatory; that would frustrate its objective, as can be inferred from the decision transcribed below:

> "In our law, the precautionary measure of attachment implies a judgement which orders it, since article 822 of the Brazilian Code of Civil Procedure states, in its preamble, that attachment can be ordered in the cases mentioned in that provision. It is obvious that, in the aforesaid rule, to order is the same as to pronounce. Accordingly, if Brazilian law does not permit attachment unless it is previously pronounced by means of a judgement, it can be concluded that the foreign judgement pronouncing such a measure cannot be enforced in Brazil unless it is approved by the President of the Federal Supreme Court (Constitution of 1967, Amendment 7 of 1977, art. 119, para. 3 (d); Code of Civil Procedure, art. 211; Rules of Procedure of the Federal Supreme Court, arts. 218 to 222).
>
> The letter rogatory is a means by which procedural judicial acts that do not depend on a judgement, such as summonses, service of process, assessments and the like, are complied with or enforced. Since the attachment of property is dependent upon a judgement which orders it, as required by our Code of Civil Procedure, article 822, preamble, it cannot be enforced in Brazil unless the foreign judgement pronouncing the measure is approved in our country. The reason for this is that a case may occur in which attachment is offensive to Brazilian public policy, national sovereignty or best practices in Brazil; such a case should be subject to monitoring by our courts (Act introducing the Brazilian Civil Code, art. 17; Rules of Procedure of the Federal Supreme Court, art. 219."[10]

Lastly, it should be noted that, while normal protocol has been simplified, the recognition of foreign judgements and requests for enforcement of precautionary measures generated by States parties (although carried out through letters rogatory) must observe and satisfy the formal requirements imposed by the aforesaid international agreement and not offend national sovereignty, public policy and

[10] Court of Letters Rogatory, Category CR-3237, reported by Minister Antônio Neder, adjudicated on 25 June 1980 and published in the Journal of Justice on 12 August 1980.

accepted practices. The President of the Federal Supreme Court, who is responsible, under article 102 (h) of the Constitution,[11] for approving foreign judgements and pronouncing "exequatur" on letters rogatory emanating from the judicial authorities of other countries, must verify compliance with the aforesaid requirements.

The conclusion of the Las Leñas Protocol and the cooperation agreement discussed earlier does not change the constitutional rule regarding competency, since acts of public international law, such as international treaties and conventions, are subject, in our legal system, to the supremacy and authority of the Brazilian Constitution.

In concrete terms, this means that requests from various Governments cannot be recognized directly by the magistrates responsible for the enforcement of the acts, unless the Federal Supreme Court is consulted as to their admissibility.

The innovation consists, therefore, in the fact that the aforesaid international conventions, by stipulating that the approval (i.e., the recognition) of a judgement generated by States parties must be carried out by means of a letter rogatory, allow the competent judicial authority of the forum of origin to take the initiative, thus enabling exequatur to be deferred, regardless of whether the requested party is served with a summons, without prejudice to its subsequent pronouncement.[12]

Nevertheless, an important question is raised by the fact that the vast majority of cooperation requests are based on promises of reciprocity, and not on treaties as such. In such cases there is no established jurisprudence with regard to the performance of the acts provided for in the money-laundering law, based on article 8, paragraph 2. It can therefore be assumed that, in such cases, the Federal Supreme Court can require the procedures mentioned above.

Division of forfeited property

With regard to the division of forfeited property with other Governments that have contributed to the success of the forfeiture action, the general rule, provided in articles 118 and 120 of the Code of Criminal Procedure, states that forfeited property shall revert to the nation, either by sale at public auction or by transfer to the national treasury, without prejudice to the rights of injured parties or bona fide third parties. In this case, the State can recover the assets in the proportion due to it.

Nevertheless, several treaties to which Brazil is a signatory contain a provision that authorizes the division of funds among several jurisdictions, on the basis of a number of criteria. This notwithstanding, article 8, paragraph 2, of Act 9613/98 is innovative and authorizes the division of the proceeds of the crime of money-laundering, even where there is no international treaty dealing expressly with the matter.

As indicated in the paragraph, "in the absence of a treaty or convention, the property, rights or assets forfeited or attached at the request of competent foreign authorities, or funds from the sale thereof, shall be divided in half between the

[11] "Article 102. The Federal Supreme Court is responsible primarily for safeguarding the Constitution, it being incumbent upon the Court to: I. Hear and adjudicate, originally:... (h) approval of foreign judgements and pronouncement of exequatur on letters rogatory, which may be referred by its rules of procedure to its president."

[12] Letter Rogatory No. 7,618 — Argentine Republic (AgRg), Rel. Min. SEPULVEDA PERTENCE).

requesting State and the Government of Brazil, without prejudice to the rights of injured parties or bona fide third parties".

Conversely, the barriers arising from taxation and conditions on the use of the property by whoever receives it are, in turn, a direct result of the principle of sovereignty and are undoubtedly subject to verification on a case-by-case basis.

Act 7560, of 19 December 1986, established the National Anti-Narcotics Fund and institutionalized a policy of using forfeited property and property acquired through the sale of proceeds of illicit drug trafficking and related activities. Article 5 of that Act sets out the procedure for the use of such funds.

12. Paragraph 2 (g)

> "Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;"
>
> *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.?*

Pursuant to article 22 of Act 6815/80, "entry into the national territory shall be permitted only at sites where control is exercised by the competent organs of the Ministry of Health, the Ministry of Justice and the Ministry of the Treasury". The Brazilian police and military authorities are responsible for controlling our borders. Illegal entry into Brazil may result in the following offences:

- **Counterfeiting a public document** (article 297: "counterfeiting a public document in whole or in part, or altering an authentic public document; penalty: two to six years");
- **Ideological forgery** (article 299 of the Penal Code; penalty: one to five years);
- **Use of a forged document** (article 304 of the Penal Code);
- **Fraud in violation of the Aliens Act** (article 309 of the Penal Code: "an alien uses a name that is not his or her own in order to enter or remain in the national territory"; penalty: one to three years);

In addition to the relevant federal legislation, the following agreements on border controls and transit of persons were adopted in the framework of MERCOSUR:

- Agreement on the implementation of integrated border controls among the MERCOSUR countries (CMC/JUL/1/1993);
- Agreement on cooperation and reciprocal assistance among the border administrations of the MERCOSUR countries for the control of customs trafficking (CMC/DEC/1/1997);
- "General security plan for the three-way border between Brazil, Argentina and Paraguay" (26 May 1998);

– "General cooperation and reciprocal coordination plan for regional security (sixth meeting of ministers of the interior)" (CMC/DEC/22/1999);

– General cooperation and reciprocal coordination plan for regional security within MERCOSUR, the Republic of Bolivia and the Republic of Chile (CMC/DEC/23/1999).

13. Paragraph 3

"Calls upon all States to:

(a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;"

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

The Ministry of Justice has created the National Programme for the Integration of Criminal Intelligence, which allows for the immediate sharing of criminal intelligence among security agencies throughout the country and speeds up police investigation of organized crime. This system is now being implemented in the MERCOSUR countries, facilitating the exchange of information on criminals and their operating methods.

14. Paragraph 3 (b)

"Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;

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

See commentary on paragraph 1 (a) and paragraph 2 (f).

15. Paragraph 3 (c)

"Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;"

What steps have been taken to cooperate in the areas indicated in this subparagraph?

In recent years, the Government of Brazil has expanded and improved the legislative framework for international judicial cooperation by negotiating and signing bilateral agreements and by participating more actively in multilateral efforts in that regard under the auspices of the United Nations and the Organization

of American States and with its MERCOSUR partners plus Bolivia and Chile. In assigning a high priority to legal assistance in criminal matters, the country is part of a worldwide trend towards a stronger commitment by government agencies in this area.

The assistance provided includes, among other things:

(1) Taking evidence or statements;

(2) Issuing documents;

(3) Examining property;

(4) Locating and identifying persons (natural or juridical) or assets;

(5) Effecting service of documents;

(6) Transferring persons in custody to testify;

(7) Executing requests for search and seizure;

(8) Executing procedures related to the freezing and confiscation of assets, restitution of assets and collection of fines.

At the bilateral level, Brazil has negotiated or signed cooperation agreements on criminal matters with some 25 countries, acquiring important partners in cooperation in the combating of transnational crime. At the regional level, in 1998 Brazil signed extradition agreements with MERCOSUR member countries and associate members Chile and Bolivia to allow for swift repatriation of fugitives from justice, under clear rules to facilitate criminal prosecution and allow for execution of a request for detention prior to extradition via Interpol.

At the multilateral level, Brazil resumed its consideration of accession to the OAS instrument on the topic and was represented at the ministerial level at the conference in December 2000 at which the United Nations Convention against Transnational Organized Crime was adopted.

International cooperation under these instruments allows for facilitated and expedited handling of requests from the competent authorities, with certain advantages over the traditional institution of letters rogatory, in view of the need to obtain information or evidence or have provisional measures applied to freeze property and assets during investigative and judicial proceedings conducted to elucidate and punish crimes characterized by a high degree of complexity and the involvement of transnational networks, as is the case with money-laundering, terrorism and drug trafficking.

Important legal instruments

Brazil has incorporated Security Council resolutions 1267 (1999), 1333 (2000) and 1373 (2001) in its law by Decrees 3267/99, 3755/01 and 3976/01, respectively.

Among the relevant international instruments signed by Brazil, the following deserve mention:

(1) United Nations Convention against Transnational Organized Crime, signed on 15 December 2000 (Palermo Convention). The text has been sent to the National Congress.

(2) Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, signed on 15 December 2000. The text has been sent to the National Congress.

(3) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, signed on 15 December 2000. The text has been sent to the National Congress.

(4) Agreement on Cooperation in Combating Organized Crime, signed on 11 July 2001. The text is under consideration by the National Congress.

(5) Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, signed on 11 July 2001. The text is under consideration by the National Congress.

Organisation for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997), ratified by the Government of Brazil.

Inter-American Convention on Mutual Assistance in Criminal Matters (1992); the text is under consideration by the Executive Branch.

Bilateral agreements

Brazil has signed bilateral agreements with a number of countries on combating transnational organized crime. The agreements basically concern topics related to exchange of information and assistance in criminal investigations, execution of provisional judicial measures involving search and seizure of property connected with the crime (instruments or proceeds of crime) and enforcement of criminal judgements.

Among the provisions of these bilateral instruments, the following deal specifically with terrorism:

(a) Exchange of information on the activities of terrorist groups, their organizational structure, members, financing and operating methods;

(b) Exchange of information on anti-terrorist methods and techniques;

(c) Exchange of scientific and technological experience relating to the protection and security of sea, air, road and railway transport, for the purpose of modernizing security and protection measures at ports, airports, railway stations and bus stops and other buildings and facilities vulnerable to terrorist attacks.

Leaving aside agreements on the transfer and extradition of prisoners, Brazil has concluded the following bilateral agreements on judicial cooperation and mutual assistance in criminal matters:

Agreement guaranteeing reciprocity in the transmission of information from the criminal register between the Government of the Federative Republic of Brazil and the Government of the Federal Republic of Germany. Entered into force on 15 May 1957. The agreement does not deal with money-laundering, but it

does lay the basis for bilateral cooperation by establishing a reciprocity commitment.

Treaty on mutual legal assistance in criminal matters between the Government of the Federative Republic of Brazil and the Government of Canada. The agreement, signed on 21 January 1995, is under consideration by the National Congress. It does not expressly mention the possibility of sharing the proceeds of crime. However, article 9 provides that "the requested State shall take such measures as are permitted by its legislation to freeze, seize and confiscate such proceeds".

Article 1.1 provides that mutual assistance shall be afforded "in the widest possible measure" and shall include, among other things, "search and seizure (d); provision of objects, including items of evidence (e); transmission of documents (g); and execution of measures to locate, freeze and confiscate the proceeds of crime. It thus serves the objectives involved in combating money-laundering (article 1.4 expressly mentions cooperation in the matter of international transfers of capital or payments)".

Agreement on judicial cooperation and mutual assistance in penal matters between the Government of the Federative Republic of Brazil and the Government of the Republic of Colombia. Entered into force on 29 June 2001. Article 2 (f) and the following subparagraphs provide for the execution of provisional measures on property and definitive transfer (confiscation) of property, and allow for other forms of assistance. The agreement promotes cooperation in combating money-laundering.

Agreement on judicial assistance in criminal matters between the Government of the Federative Republic of Brazil and the Government of the United States of America. Entered into force on 21 February 2001. This is a comprehensive agreement designed to cover all aspects of bilateral relations involving assistance in the areas of justice and criminal law. It focuses on combating serious criminal activities such as money-laundering and the illicit traffic in firearms, munitions and explosives. It makes it possible to execute orders for search and seizure and, where appropriate, for confiscation of property.

Agreement on judicial cooperation in criminal matters between the Government of the Federative Republic of Brazil and the Government of the French Republic. Entered into force on 1 February 2000. This agreement does not have as systematic a structure as the others, but it also provides for the execution of search and seizure orders and other investigative acts. This is the only agreement which requires orders to be accompanied by a sworn translation into Portuguese.

Agreement on association and cooperation in matters of public security between the Government of the Federative Republic of Brazil and the Government of the French Republic, of 12 March 1997; awaiting adoption in plenary session by Congress.

Treaty on judicial cooperation in criminal matters between the Federative Republic of Brazil and the Italian Republic. Entered into force on 1 August 1993. This agreement is very limited in scope, as it deals only with cooperation in criminal matters involving proceedings conducted by the judicial authorities; it does not provide for cooperation in investigative matters. However, since it does provide for the search and seizure of property, it may be updated. The convention was

concluded at a time of lesser awareness of the problem of the globalization of international crime.

Agreement on judicial assistance in criminal matters between the Federative Republic of Brazil and the Government of the Republic of Peru. Entered into force on 23 August 2001. This is the most modern and efficient agreement that Brazil has concluded in response to the need to combat transnational organized crime. Article 17 establishes that in each specific case, the parties shall agree on the division of property and proceeds according to the nature and scope of the cooperation provided.

Treaty on reciprocal assistance in criminal matters between the Government of the Federative Republic of Brazil and the Government of the Portuguese Republic. Entered into force on 7 May 1991. Article 11, paragraph 4, states that "proceeds confiscated ... shall be retained by the requested Party unless both Parties decide otherwise in a particular case".

Treaty on reciprocal judicial assistance in criminal matters between the Government of the Federative Republic of Brazil and the Eastern Republic of Uruguay. This treaty establishes that, to the extent permitted by law and in the manner deemed appropriate, either party may transfer confiscated property to the other party.

The Government of Brazil, duly authorized by Congress, is ready to ensure the entry into force of the signed agreement.

Agreement on judicial assistance between Brazil and Japan. Entered into force on 1 November 1940.

Convention concerning free legal aid between Brazil and Belgium. Entered into force on 14 July 1957.

Memorandums of understanding between the Financial Activities Control Council (COAF) and the financial analysis units of Belgium, Bolivia, Colombia, France, Panama, Paraguay, Portugal and Russia concerning cooperation in the exchange of financial information for the purpose of combating money-laundering. All of these are in force.

Multilateral agreements

Inter-American Convention on Mutual Assistance in Criminal Matters. Signed by Brazil on 7 January 1994. In force internationally since 14 April 1996. Promotes cooperation in investigations or court proceedings. Article 7 establishes its scope and application.

Optional protocol on tax crimes related to the Inter-American Convention on Mutual Assistance in Criminal Matters. Article 1 provides that the States parties to the Protocol may not exercise the right to refuse a request for assistance on the ground that the request concerns a tax crime where the offence is committed by way of an intentionally false statement for the purpose of concealing income derived from any other offence covered by the Convention.

Inter-American Convention against Corruption (Caracas Convention). Signed by Brazil on 29 March 1996. In force internationally since 6 March 1997.

The instrument is being considered by Congress. Articles XIV, XV and XVI make it possible to apply the Convention directly in combating money-laundering.

Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Organisation for Economic Cooperation and Development (OECD)). Ratified on 24 August 2000. In force internationally since 15 February 2000. Article 7 deals specifically with the crime of money-laundering.

Protocol on mutual legal assistance in criminal matters within the framework of the Southern Common Market (MERCOSUR) (Brazil, Argentina, Paraguay and the Eastern Republic of Uruguay). Adopted by Decision 2/96 of the Council of MERCOSUR. In force since 8 January 2000. Deals broadly with the requirements for combating offences linked to international crime.

Extradition agreement between the States members of MERCOSUR. Adopted by Decision 14/98 of the Council of MERCOSUR. Signed by Brazil on 10 December 1998. Under consideration by Congress. Articles 22, paragraph 6, and 24 call for the handing over of detainees and of the proceeds of crimes in order to combat money-laundering.

Extradition agreement between the States members of MERCOSUR, the Republic of Bolivia and the Republic of Chile. Signed by Brazil on 10 December 1998. Under consideration by Congress. Reproduces the provisions of the extradition agreement between States members of MERCOSUR.

In addition to the promises of reciprocity made through bilateral memorandums of understanding or other types of international agreements (including the exchange of notes verbales), there have been many attempts to promote cooperation in combating money-laundering at the international level. However, the initiatives mentioned below promote cooperation in combating money-laundering only in an indirect manner. Most of them are agreements on combating the crimes that precede “laundering”.

Narcotic drugs

Convention for the Suppression of the Illicit Traffic in Dangerous Drugs and the 1936 Protocol thereto. Signed by Brazil on 26 June 1936. In force internationally since 9 July 1933. Article 35 may serve as a basis for action to combat the illicit traffic in narcotic drugs.

Single Convention on Narcotic Drugs, 1961. Ratified by Brazil on 18 June 1964. In force since 18 December 1964. Updated the 1946 agreements, conventions and protocols on narcotic drugs. May be used as a basis for combating the illicit traffic in narcotic drugs.

Convention on Psychotropic Substances, 1971. Ratified on 14 February 1973. In force since 16 August 1976. Articles 20, 21 and 22 (2) (ii) provide a legal basis for the implementation of stricter control measures and for combating the illicit traffic in psychotropic substances.

Protocol amending the Single Convention on Narcotic Drugs of 1961. Ratified by Brazil on 12 September 2001.

South American Agreement on Narcotic Drugs and Psychotropic Substances (1973). Ratified on 29 January 1974. In force since 26 March 1977.

Brazil has existing bilateral agreements on combating the illicit traffic in narcotic drugs with the following countries: Argentina, Bolivia, Chile, Colombia, Cuba, Guyana, Italy, Mexico, Paraguay, Peru, Portugal, Romania, Russia, South Africa, Suriname, United Kingdom, United States of America, Uruguay and Venezuela. Agreements with Bolivia, Peru and Spain on this matter are under consideration by Congress. A similar agreement with Ecuador has been adopted and is awaiting adoption by the Ecuadorian Congress.

16. Paragraph 3 (d)

> "Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;"
>
> *What are your Government's intentions regarding signing and/or ratifying the conventions and protocols referred to in this subparagraph*?

Brazil has reiterated its total rejection of terrorism in all its forms and its understanding of the fact that efforts to combat international terrorism should include all measures compatible with the Charter of the United Nations and other norms of international law. In this regard, the Brazilian Government is taking the necessary internal measures towards Brazil's accession to all international treaties on combating terrorism.

Annex 1 includes a table of Brazil's status with regard to multilateral instruments relating to terrorism within the framework of the United Nations and the Organization of American States.

17. Paragraph 3 (e)

> "Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);"
>
> *Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this subparagraph*.

See comments under paragraph 3 (d).

18. Paragraph 3 (f)

> "Take appropriate measures in conformity with relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;"

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.

Article 3, paragraph III, of Act 9474/97 provides that:

"Refugee status shall not be granted to individuals who:

III. Have committed a crime against peace, a war crime, a crime against humanity or a particularly heinous crime, or have participated in terrorist acts or drug trafficking;

IV. Are considered guilty of acts contrary to the purposes and principles of the United Nations."

19. Paragraph 3 (g)

"Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists;"

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.

Article 1 of Act 9474 of 22 July 1997 ("to define mechanisms for the application of the 1951 Status of Refugees, and to create other provisions") provides that:

"Refugee status shall be granted to any individual who:

I. Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or unwilling to avail himself of the protection of that country;

II. Having no nationality and being outside the country where he previously had his usual residence, is unable or unwilling to return to that country for the reasons listed in the previous subparagraph;

III. Owing to serious and widespread human rights violations, has to leave his country of nationality to seek refuge in another country."

Article 3, however, particularly paragraph III, provides for exceptions:

"Article 3. Refugee status shall not be granted to persons who:

I. Are already receiving protection or assistance from United Nations agencies or bodies, such as the Office of the United Nations High Commissioner for Refugees (UNHCR);

II. Are resident in Brazilian territory and have rights and obligations related to Brazilian nationality;

III. Have committed a crime against peace, a war crime, a crime against humanity or a particularly heinous crime or have participated in terrorist acts or drug trafficking;

IV. Are considered guilty of acts contrary to the purposes and principles of the United Nations."

Even if the applicant for refugee status meets the requirements set forth in article 1 of Act 9474/97, he or she shall not be granted that status if his or her situation corresponds to any of the cases listed in the various paragraphs of article 3.

Requests for refugee status are submitted to the Committee only after the Federal Police have been consulted as to the applicant's background. Article 39, paragraph II, of the Act provides as follows:

"Article 39. Refugee status shall be lost under the following conditions:

I. Voluntary renunciation;

II. Proof of the false nature of the reasons invoked in order to obtain refugee status or the existence of facts which, had they been known when refugee status was granted, would have led to its refusal;

III. Activities contrary to national security or public order;

IV. Departure from Brazilian territory without prior authorization from the Brazilian Government.

Single paragraph: Those who lose refugee status under paragraph I or IV of this article shall come under the general provisions for foreigners resident in Brazil. Those losing it under paragraph II or III shall be subject to the compulsory measures provided for in Act 6815 of 19 August 1980."

Thus, refugee status may be lost at any time if the person's situation matches any of the criteria listed in that article. For example, if the refugee conceals his participation in activities corresponding to the exclusion clauses, such as terrorist acts, he will lose his refugee status as soon as that fact is known to the authorities.

Objective and frequently updated analysis of the situation prevailing in the applicant's country of origin, information given by the subject during his interview with the experts of the Committee, and information provided by the Office of the United Nations High Commissioner for Refugees (UNHCR) through the Ministry of Foreign Affairs and the Federal Police make it possible to verify whether the subject has committed acts contrary to the humanitarian spirit of the Act.

Thus, Brazil's legislation relating to refugees, although generous, provides mechanisms to prevent the granting of refugee status to those who have committed acts of terrorism, in accordance with the principles governing the Geneva Convention relating to the Status of Refugees of 1951, which is embodied in domestic legislation.