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Letter dated 6 November 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 11 June 2003 (S/2003/646).

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

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

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

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Annex

Letter dated 14 October 2003 from the Permanent Representative of Ukraine to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

In response to your letter dated 6 June 2003, I have the honour to submit the information on the comments/questions that were agreed by the Counter-Terrorism Committee after the consideration of the supplementary report of Ukraine, submitted to the Committee on 13 September 2002 pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).*

(*Signed*) Valeriy **Kuchinsky**
Ambassador
Permanent Representative

* Annexes are on file with the Secretariat and are available for consultation.

Enclosure

[Original: Russian]

Supplementary report on the measures taken in Ukraine to implement Security Council resolution 1373 (2001)

Replies to questions contained in the letter from the Counter-Terrorism Committee, S/AC.40/2003/MS/OC.227

Paragraph 1.2

The Act "on combating terrorism" was adopted by the Ukrainian Parliament on 20 March 2003 (No. 638-IV), was signed by the President of Ukraine and entered into force on the day of its official publication, 22 April 2003.

To ensure its implementation, the Act "on revisions to certain legislative instruments of Ukraine in connection with the adoption of the Act on combating terrorism" (No. 965-IV of 19 June 2003) was drafted and adopted, in order to bring existing legislation — the Code of Criminal Procedure of Ukraine and the Acts "on operational investigations", "on the Security Service of Ukraine" and "on the State Border Service of Ukraine" — into line with the Act "on combating terrorism".

The Act "on measures to prevent and counteract the legalization (laundering) of proceeds of crime" (No. 249-IV) was adopted by Parliament on 28 November 2002, was signed by the President of Ukraine and entered into force on 11 June 2003.

In order to align its provisions with the requirements of the Financial Action Task Force on Money Laundering (FATF), a number of amendments were made (Acts No. 345-IV, of 24 December 2002 and No. 485-IV, of 6 February 2003), which introduced amendments to the following Acts:

– "On banks and banking activities";

– "On financial services and State regulation of financial service markets";

– "On measures to prevent and counteract the legalization (laundering) of proceeds of crime"; and to the Criminal Code of Ukraine.

These amendments lay down a clear-cut procedure for the identification of clients by banks and financial institutions, which are also given the right to obtain the relevant information about their clients from State agencies. There is also a clear exposition of the rules concerning an exemption from liability for colleagues of persons placed under initial financial monitoring in respect of the lawful disclosure of information constituting a banking or commercial secret to the bodies exercising regulation and control over the activities of financial institutions and to the specially authorized executive agency for financial monitoring.

The Act "on amendments to the Criminal Code and the Code of Criminal Procedure of Ukraine" (No. 430-IV, of 16 January 2003, which entered into force on 12 June 2003) introduces new wording for article 209, which is entitled "Legalization (laundering) of proceeds of crime":

"1. The execution of a financial transaction or the conclusion of an agreement involving funds or other property obtained as the result of a socially dangerous unlawful act that preceded the legalization (laundering) of the proceeds thereof, or other actions aimed at concealing or disguising the illegal origin of such funds or other property, or the possession of or title to such funds or property, or their origin, location or transfer, or the acquisition, possession or use of funds or other property obtained as the result of a socially dangerous unlawful act that preceded the legalization (laundering) of the proceeds of crime, shall be punishable by imprisonment for a term of three to six years, with the deprivation of the right to occupy certain positions or engage in certain activities for a period of up to two years and the confiscation of the funds or other property obtained through crime and the confiscation of property.

2. The actions referred to in paragraph 1 of this article shall, if committed repeatedly or by prior agreement by a group of persons, or in respect of large sums, be punishable by imprisonment for a term of 7 to 12 years, with the deprivation of the right to occupy certain positions or engage in certain activities for a period of up to three years and the confiscation of the funds or other property obtained through crime and the confiscation of property.

3. Actions referred to in paragraphs 1 or 2 of this article shall, if committed by an organized group of persons or in respect of particularly large sums, be punishable by imprisonment for a term of 8 to 15 years, with the deprivation of the right to occupy certain positions or engage in certain activities for a period of up to three years, and the confiscation of the funds or other property obtained through crime and the confiscation of property.

Note:

1. For the purposes of this article, a socially dangerous unlawful act preceding the legalization (laundering) of the proceeds of crime is an act punishable under the Criminal Code of Ukraine by imprisonment for three years or more (except for acts committed under articles 207 and 212 of the Criminal Code of Ukraine), or any act which is a criminal offence under the criminal law of another State and is also punishable under the Criminal Code of Ukraine, and which results in the acquisition of the proceeds of crime.

2. The legalization (laundering) of the proceeds of crime shall be considered to have been committed in respect of large sums where it involves funds or other property amounting to more than six thousand times the minimum income in Ukraine before tax.

3. The legalization (laundering) of the proceeds of crime shall be considered to have been committed in respect of especially large sums where it involves funds or other property amounting to more than 18 thousand times the minimum income in Ukraine before tax."

Paragraph 1.3

Ukraine's report in response to the questionnaire circulated by the Council of Europe's Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (PC-R-EV) concerning Ukraine's achievements in combating the laundering of the proceeds of crime in 2001-2002 is enclosed herewith.

Paragraphs 1.4 and 1.5

Article 64 of the Act “on banks and banking activities” and article 18 of the Act “on financial services and State regulation of financial service markets” provide that financial institutions may not, in executing or providing financial services, enter into contractual relations with anonymous persons or hold or operate anonymous (numbered) accounts.

Under articles 4, 5 and 6 of the Act “on measures to protect and counteract the legalization (laundering) of proceeds of crime”, the financial monitoring system comprises two levels: the initial and the State level.

The institutions responsible for initial financial monitoring are:

– Banks, insurance companies and other financial institutions;

– Payroll institutions, members of payment systems and acquisition and clearing institutions;

– Commodity, stock and other exchanges;

– Professional operators in the securities market;

– Joint investment institutions;

– Gambling institutions, pawnbrokers and legal persons conducting various kinds of lotteries;

– Enterprises and organizations that manage investment funds or non-State pension funds;

– Communications companies and associations and other non-credit organizations that execute money transfers;

– Other legal persons that process financial transactions in accordance with the law.

The institutions responsible for State financial monitoring are:

– The central executive authorities and the National Bank of Ukraine, which, in accordance with the law, regulate and supervise the activities of legal persons processing financial transactions;

– The specially authorized executive agency for financial monitoring, a State administrative body operating within the Ministry of Finance of Ukraine (the State Department for Financial Monitoring, or Authorized Agency).

Under the Act, the institutions responsible for initial financial monitoring are required, in implementation of the Act:

– To establish the identity of persons who engage in financial transactions that are subject to financial monitoring pursuant to this Act or open an account (including a deposit account) on the basis of documents submitted in the prescribed manner, or where there is reason to consider that the information concerning the identification of such persons requires clarification;

– To detect and register financial transactions that are subject to financial monitoring under this Act;

– To submit to the Authorized Agency information on financial transactions that are subject to compulsory financial monitoring within three working days from the time of registration;

– To assist the staff of the Authorized Agency in their investigation of financial transactions that are subject to compulsory financial monitoring;

– To provide, in accordance with the law, additional information at the request of the Authorized Agency on financial transactions that have become the object of financial monitoring, including banking and commercial secrets, within three working days from the time of receipt of the request;

– To assist the institution responsible for State financial monitoring in the investigation of financial transactions that are subject to financial monitoring;

– To take steps to prevent the disclosure (including disclosure to persons whose financial transactions are being checked) of information submitted to the Authorized Agency or other information concerning financial monitoring (including information concerning the submission of such information);

– To retain documents relating to the identification of persons conducting financial transactions that, under this Act, are subject to financial monitoring, and all documentation concerning financial transactions for a period of five years after the execution of such transactions.

The institution responsible for initial financial monitoring, taking into account the requirements of existing legislation and the normative and legal acts of the Authorized Agency, establishes the regulations for conducting internal financial monitoring and assigns a staff member to be responsible for such monitoring.

The staff member must be independent in his activities and accountable only to the head of the institution responsible for initial financial monitoring, whom he is obliged to inform at least once a month of the uncovering of financial transactions that are subject to financial monitoring and of measures that have been adopted, which may include:

– Drafting and regular updating of the regulations and programmes for internal financial monitoring and their taking into account the requirements of existing legislation and the normative acts of the Authorized Agency;

– Training of personnel in the detection of financial transactions that are subject to financial monitoring under the provisions of this Act through instruction and practical measures;

– Conducting of internal financial monitoring.

The institution responsible for initial financial monitoring has to identify, on the basis of original documents or duly certified copies, persons engaged in financial transactions that are subject to financial monitoring under this Act.

The following are required for the identification of residents:

– In the case of natural persons, surname, first name and patronymic, date of birth, series and number of passport (or other identification document), date of issue and issuing body, residence, identification number under the State register of individuals — tax payers and makers of other compulsory payments;

– In the case of legal persons, company name, legal address, State registration documents (including statutory documents and information concerning officials and their functions), identification code under the Unified Register of enterprises and organizations of Ukraine, bank account number and details of the bank holding the account.

The following are required for the identification of non-residents:

– In the case of natural persons, surname, first name, patronymic (if any), date of birth, series and number of passport (or other identification document), date of issue and issuing body, nationality, residence or place of temporary residence;

– In the case of legal persons, full name, location, bank account number and details of the bank holding the account.

The institution responsible for initial financial monitoring must also be provided a certified copy of an extract from a commercial, banking or legal register, or a notarized registration certificate issued by an authorized agency of a foreign State confirming the registration of the legal person concerned.

Identification is not compulsory in cases involving:

– Financial transactions by persons previously identified;

– Agreements between banks registered in Ukraine.

Where a person acts as the representative of another person, or the institution responsible for the initial financial monitoring becomes suspicious that the person is acting on his own behalf or that the beneficiary is a third person, the institution responsible for initial financial monitoring is obliged, under this article and the provisions of other legislation regulating this procedure, to establish also the identity of the person on whose behalf the financial transaction is conducted or who is the beneficiary.

Under article 17 of the Act, those guilty of breaching the provisions of the Act bear criminal, administrative and civil liability. Such persons may also, in accordance with the law, be deprived of the right to engage in certain activities.

Legal persons conducting financial transactions to legalize (launder) the proceeds of crime or funding terrorism may be liquidated by order of a court.

An institution responsible for initial financial monitoring that fails to fulfil the requirements of this Act, or does so in an improper manner, may, in accordance with the law, be punished with a fine of up to one thousand times the minimum taxable income of citizens. In the absence of agreement concerning payment of the fine, a decision to impose or reject such a fine is taken by the courts at the request of the authority that regulates the activities of the institution concerned and issues licences or other special permits.

Repeated failure by institutions responsible for initial financial monitoring to fulfil the requirements of this Act entails, through a court decision, restrictions on or the temporary suspension of activity and confiscation of the licence or other special permit to conduct specific activities in the manner prescribed by law.

In addition, the Act “on amendments to the Criminal Code and Code of Criminal Procedure of Ukraine” (No. 430-IV, of 16 January 2003) introduces a new legal regulation — article 2091, entitled “Intentional violation of requirements of

legislation on preventing and counteracting the legalization (laundering) of proceeds of crime" — which states:

> "1. Repeated intentional failure to submit to the specially authorized executive agency for financial monitoring information concerning financial transactions or repeated intentional submission of deliberately false information concerning financial transactions subject to internal or compulsory financial monitoring shall be punishable by a fine of one thousand to two thousand times the minimum income before tax or by restriction of freedom for up to two years, or by imprisonment for the same period and the deprivation of the right to occupy certain posts or engage in certain activities for up to three years.
>
> 2. Illegal disclosure, in any form, of information submitted to the specially authorized executive agency for financial monitoring by a person in possession of such information in connection with his professional or official activities shall be punishable by a fine of two thousand to three thousand times the minimum income before tax or by restriction of his freedom for up to three years, or by imprisonment for the same period and the deprivation of the right to occupy certain posts or engage in certain activities for up to three years."

In view of the fact that this legal regulation entered into force on 12 June 2003, it is not yet possible to provide information on its implementation in practice.

It should be noted that the State Department for Financial Monitoring has drafted and submitted for legal assessment to the Ministry of Justice of Ukraine a draft Act "on amendments to certain laws of Ukraine on questions relating to the implementation of the Forty Recommendations of the Financial Action Task Force on Money Laundering (FATF)", one provision of which would introduce amendments to article 4, part 2, tenth paragraph, of the Act "on measures to prevent and counteract the legalization (laundering) of proceeds of crime", namely by replacing the paragraph with the following paragraphs:

> "Other legal persons that, in accordance with the law, provide financial services; traders in immovable property (real estate companies); dealers in precious metals and precious stones; notaries, lawyers and independent companies offering legal services;
>
> "Auditors, auditing firms and independent companies offering bookkeeping services; and fiduciary societies;
>
> "Independent companies providing services for the establishment and registration of enterprises, and the management of enterprises and property."

Paragraph 1.6

Paragraph 4 of article 258, entitled "Terrorist act", of the Criminal Code establishes criminal liability in respect of the "formation of a terrorist group or terrorist organization, the leadership of such a group or organization, or participation therein, as well as material, organizational or any other form of assistance to the formation or activity of a terrorist group or terrorist organization".

In order to stiffen the legislative provisions establishing liability for the wilful provision or collection of funds for the direct or indirect financing of terrorist activity, the President of Ukraine issued the Decree "on measures for developing the

system to counteract the legalization (laundering) of proceeds of crime and the financing of terrorism" (No. 740/2003 of 22 July 2003).

Paragraph 4, subparagraph 1 (b), of the Decree provides for the tabling in the Supreme Council of a draft law on the introduction of legislative amendments related to the ratification of the International Convention for the Suppression of the Financing of Terrorism (which was signed by Ukraine on 8 June 2000 and ratified by Act No. 149-IV of 12 September 2002).

It is intended that the recommendations contained in the above-mentioned United Nations Convention and in paragraph 1 (b) of Security Council resolution 1373 (2001) should be implemented through the drafting of the appropriate legislative acts.

Paragraph 1.7

In addition to article 126 of the Code of Criminal Procedure, which regulates the confiscation of property, including accounts and assets held in banks or financial institutions, national legislation entitles law enforcement agencies (the Ministry of Internal Affairs and the Security Service) to seize (block) funds and other assets of natural and legal persons for a period of 10 days:

– Article 12, paragraph 4 (b), of the Act "on the organizational and legal bases for combating organized crime" gives such a right to special units of internal affairs agencies and the Security Service which fight organized crime;

– Article 25 of the Act "on the Security Service of Ukraine", has been supplemented by a paragraph 5, which, in particular, gives such a right to the organs of the Security Service when measures are taken to combat terrorism or the financing of terrorist activities (Act No. 965-IV of 19 June 2003).

Legislative provisions regulating the blocking of funds, financial assets and other economic resources of persons who carry out, or attempt to carry out, terrorist acts are also to be found in the Presidential Decree "on measures for developing the system to counteract the legalization (laundering) of proceeds of crime and the financing of terrorism" (No. 740/2003 of 22 July 2003).

Paragraph 1.8

In order to comply with the requirements of Security Council resolutions 1333 (2000), 1390 (2002) and 1455 (2003), Ukraine is implementing measures to block the funds and other financial resources of Osama bin Laden and his supporters. In particular, Cabinet of Ministers resolutions No. 351 of 11 April 2001 and No. 749 of 1 June 2002 prohibit, as laid down by the Security Council Committee established pursuant to resolution 1267 (1999):

1. The direct or indirect supply, sale or transfer to Taliban-controlled territory in Afghanistan of:

– Weapons, ammunition, arms technology and equipment;

– Technical advisory services or training services related to military activities;

– Acetic anhydride.

This prohibition applies to Ukrainian nationals and legal persons, but also bans other persons from engaging in such activities from Ukrainian territory.

2. The take-off from Ukrainian territory, its overflight, or the landing therein by aircraft which have taken off from, or are scheduled to land in, Taliban-controlled territory in Afghanistan is prohibited, unless such flights are approved in advance by the Security Council Committee.

3. Funds and other financial assets of Osama bin Laden and of persons and organizations linked to him, including the funds and assets of the Al-Qaida organization and also those received from the use, or on account of, property under the influence or control of Osama bin Laden, or of persons or organizations linked to him are to be seized.

4. The entry into Ukrainian territory of Osama bin Laden and his supporters is prohibited, and also the entry into, or transit through, Ukraine of senior officials of the Taliban movement is restricted.

5. Activities in Ukrainian territory by units of the Taliban movement are banned.

Information regarding the ban on the activities of Osama bin Laden and of persons or organizations linked to him and regarding the action taken by State organs in connection with that ban has been updated in other useful documents produced by the Government and the National Bank (some of which are enclosed).

Paragraph 1.9

Insurance organizations are among the institutions responsible for initial financial monitoring under the financial monitoring system established by the Act "on measures to prevent and counteract the legalization (laundering) of the proceeds of crime" (described in the replies to paragraphs 1.4 and 1.5). The provisions of this Act precisely define the obligation of institutions responsible for initial financial monitoring to identify financial transactions and the persons or organizations conducting them and to provide timely information about them to the State financial monitoring bodies, i.e. the Ministry of Finance and the State Financial Monitoring Department and Chief Auditing Office, which are attached to the Ministry, the National Bank of Ukraine and the State Commission for the Regulation of Financial Services Markets.

Article 17 of the above-mentioned Act and articles 39 to 44 of the Act "on financial services and the State regulation of financial services markets" (which entered into force on 11 June 2003) govern liability for non-compliance with legislative provisions, including those on furnishing information on suspicious financial deals. In particular, the latter Act lays down measures for bringing pressure to bear on enterprises providing financial services, which include insurance companies. These measures include the imposition of penal sanctions, temporary suspension of activity or revocation of the licence to operate, dismissal of the management of enterprises, judicial liquidation of enterprises and determining the administrative or criminal liability of natural persons involved in violations of legislative provisions in this area.

Paragraph 1.10

The State Auditing Service of the Ministry of Finance carries out the next stage of checks on the use of funds and assets, their safekeeping and status and the trustworthiness of accounting and bookkeeping in ministries, departments, State committees, State funds, and budgetary institutions and in enterprises and organizations which receive funds from budgets at any level, or from State foreign currency funds.

Furthermore, pursuant to the Act "on the State Auditing Service in Ukraine" (which entered into force on 26 January 1993 and was amended on 15 May 2003) and to instructions which regulate auditing procedure (inspection and verification) and which are registered with the Ministry of Justice, organs of the State Auditing Service may, at the request of law-enforcement agencies investigating criminal cases, inspect and examine other organizations, including those engaged in the collection of funds for charitable, social or cultural objectives.

Under Presidential Decree No. 740 of 22 July 2003 "on measures for developing the system to counteract the legalization (laundering) of proceeds of crime and the financing of terrorism", law-enforcement agencies and the Chief Auditing Office are instructed:

– To carry out systematically joint measures to uncover and halt suspicious financial transactions conducted by natural and legal persons, to detect concealment of the illegal provenance of funds or other property and to identify their sources;

– To study and disseminate, using the resources of departmental scientific institutions, international experience in the field of preventing and counteracting the legalization (laundering) of proceeds of crime and to prepare recommendations on methods for improving work to prevent, detect and halt offences related to the legalization (laundering) of such income.

Paragraph 1.11

Article 1 of the Act "on combating terrorism" defines as one of the characteristics of terrorist activity the intentional financing of terrorist groups (organizations), or any other form of assistance to them. A terrorist organization is defined as a stable association of three or more persons which has been set up for the purpose of carrying out terrorist activities. An organization is deemed to be a terrorist organization if only one of the units forming part of its structure engages in terrorist activities with the knowledge of only one of the leaders (or management bodies) of the entire organization.

Pursuant to article 24 of this Act, entitled "Liability of organizations for conducting of terrorist activity", an organization which is responsible for perpetrating a terrorist act and is deemed by a court ruling to be a terrorist organization is subject to liquidation and the confiscation of its property. If a Ukrainian court finds that the activity of an organization (or of a section, branch or office thereof) which is registered outside Ukraine constitutes terrorist activity, its activity is prohibited in Ukrainian territory, its Ukrainian section (branch or office) is closed on the basis of a court decision and its property and the property of the above-mentioned organization located in Ukrainian territory is confiscated. The application to prosecute the organization for terrorist activities is accordingly lodged

with the court by the Procurator General of Ukraine, the public prosecutors of the Autonomous Republic of Crimea, the Ukrainian regions and the cities of Kiev and Sevastopol, in the manner prescribed by the law.

Furthermore, article 17 of the Act, "on measures to prevent and counteract the legalization (laundering) of proceeds of crime" (referred to in the replies to paragraphs 1.4 and 1.5) regulates the liability of legal persons for the financing of terrorist activity.

As for the criminal liability of legal persons for terrorist actions or actions related thereto, Ukrainian legislation has reached the stage at which this legal innovation, which has only recently appeared in international practice, is being studied. Hence no provision has been made as yet for such liability. At the same time, it must be emphasized that article 5 of the International Convention for the Suppression of the Financing of Terrorism provides for not only criminal liability in respect of such actions, but also "effective, proportionate and dissuasive criminal, civil or administrative sanctions" and for monetary sanctions.

Paragraph 1.12

The adoption by the Verkhovna Rada of the new Criminal Code containing the article entitled "Terrorist Act" of the special Act "on combating terrorism" and of the Programme of State Counter-terrorism Measures 2003-2005 is a decisive feature of an active standard-setting process aimed at adapting national laws and the system of anti-terrorist measures to the norms of international law in the field of counter-terrorism.

The notion "terrorist act" is defined in article 258 of the Criminal Code. Moreover, the Criminal Code contains a number of articles focusing on anti-terrorism, which, to some extent, relate to efforts to combat this crime (list enclosed).

The Act "on combating terrorism", which entered into force on 23 April 2003, defines the basic terms and their meaning, for example, terrorism, a terrorist act, technological terrorism, terrorist activity, international terrorism, a terrorist, a terrorist group, a terrorist organization, combating terrorism, an anti-terrorist operation, a hostage, etc.

Hence, terrorist activity is defined as activity encompassing:

– The planning, organization, preparation and commission of terrorist acts;

– Incitement to commit terrorist acts, to engage in violence against natural persons or organizations, or to destroy physical objects for terrorist purposes;

– The establishment of illegal military units, criminal gangs (criminal organizations) or organized criminal groups for the perpetration of terrorist acts, as well as participation in such acts;

– The recruiting, arming, training and use of terrorists;

– Spreading terrorist propaganda and the ideology of terrorism;

– The intentional financing of terrorist groups (organizations) or giving any other form of assistance to them.

A terrorist organization is defined by the Act in question as a stable association of three or more persons which is formed for the purpose of conducting terrorist activities and within which functions are assigned and specific rules of conduct are laid down, which are binding on these persons during the preparation and perpetration of terrorist acts. An organization is deemed to be a terrorist organization if only one of the units forming part of its structure engages in terrorist activity with the knowledge of only one of the leaders (or management bodies) of the entire organization.

According to article 2 on "The legal bases for combating terrorism", the Constitution, the Criminal Code, the Act in question, other Ukrainian laws, the European Convention on the Suppression of Terrorism of 1977, the International Convention for the Suppression of Terrorist Bombing of 1997, the International Convention for the Suppression of the Financing of Terrorism of 1999, other international agreements entered into by Ukraine, Presidential decrees and orders, resolutions and orders of the Cabinet of Ministers and other normative and legal acts adopted in implementation of Ukrainian laws form the legal basis for combating terrorism.

Section IV of the Act "on combating terrorism" provides for the liability of persons who are guilty of terrorist activity (article 23) and for the liability of organizations in respect of terrorist activity. In particular, an organization held liable for the commission of a terrorist act and deemed in a court ruling to be a terrorist organization shall be subject to disbandment and to the confiscation of its property.

In addition, article 25 specifically provides for liability for promoting terrorist activities. Hence the heads and officials of enterprises, institutions and organizations and citizens who have promoted terrorist activity bear liability in accordance with the law if, in particular:

– They have financed terrorists or terrorist groups (terrorist organizations);

– They have supplied or collected funds directly or indirectly with the intention of using them for the perpetration of terrorist acts or crimes with a terrorist purpose;

– They have carried out operations with funds and other financial assets;

– They are natural persons who have committed, or attempted to commit, terrorist acts or crimes with a terrorist purpose, or have taken part in or abetted their commission;

– They are legal persons whose property is directly or indirectly in the possession or under the control of terrorists or of persons who promote terrorism;

– They are legal or natural persons who act on behalf of or on instructions from terrorists or persons who promote terrorism, while employing funds received or acquired with the use of property which is directly or indirectly in the possession, or under the control of, persons who promote terrorism, or of legal or natural persons connected with them;

– They have supplied funds, financial assets or other economic resources, or corresponding services, directly or indirectly for use in the interests of natural persons who commit terrorist acts, or who abet or take part in their

commission, or in the interests of legal persons whose property is directly or indirectly in the possession or under the control of terrorists or persons who promote terrorism, or of legal or natural persons acting on behalf of or on instructions from the above-mentioned persons;

– They have rendered assistance to persons who have taken part in the commission of terrorist acts;

– They have recruited natural persons for the pursuit of terrorist activities, have helped to set up channels for supplying terrorists with weapons, or to move terrorists across the State border of Ukraine;

– They have harboured persons who have financed, planned, supported or committed terrorist acts or crimes with a terrorist purpose;

– They have used the territory of Ukraine for the purpose of preparing or committing terrorist acts or crimes with a terrorist purpose against other States or aliens.

Paragraph 1.13

Article 447 (Mercenarism) of the Criminal Code provides for criminal liability in respect of the recruitment, financing, equipping and training of mercenaries in order to use them in armed conflicts in the territory of other States, or in violent acts designed to overthrow the State order or violate territorial integrity, or in order to use them in military conflicts.

In addition, Ukraine has ratified the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (which has not yet been ratified by the requisite number of States).

Ukrainian legislation prohibits the setting up of militarized or armed units that are not provided for by law and gives them a precise definition (article 260 of the Criminal Code).

Paragraph 1.14

In order to prevent the entry into Ukrainian territory, ostensibly for study, medical treatment or official or personal reasons, of persons involved in terrorist activities, the Ministry of the Interior is participating in the establishment of a single standardized form for issuing invitations to foreigners to enter Ukraine and of a mechanism for prompt agreement with Interior Ministry agencies on the issue of such invitations.

In addition, the Ministry is compiling a computerized databank (including automated fingerprint reading) for documenting and keeping records of persons arrested for unlawfully crossing the State frontier or for being present unlawfully in Ukrainian territory. This will make it possible, following checking against the corresponding records of law-enforcement agencies of foreign States and international police organizations, to identify persons involved in planning, furthering or perpetrating terrorist acts. With a view to the further implementation of this provision of the Security Council resolution, the Ministry is planning to provide in the draft Act “on arrangements for providing asylum in Ukraine to aliens and

stateless persons" for the imposition of restrictions on the granting of asylum and issue of the corresponding documents to persons suspected of involvement in the activities of terrorist or extremist organizations. There is also a plan to elaborate on the detail of the provisions of article 10 (Circumstances under which refugee status shall not be granted) of the Act "on refugees".

Paragraphs 1.15 and 1.18

During the ratification process, Ukraine did not enter any reservations to any articles of the 1977 European Convention on the Suppression of Terrorism, which it signed on 8 June 2000 and ratified on 17 January 2002.

Article 25 of the Constitution of Ukraine guarantees its citizens the statutory right not to be extradited to another State. However, the Criminal Code provides for the extradition of persons charged with a crime and persons convicted of a crime. Article 8 of the Criminal Code extends the Act's scope to aliens or stateless persons not residing permanently in Ukraine who have committed a crime beyond its borders. Such persons bear criminal liability in accordance with domestic legislation in the cases in which Ukraine's international obligations apply. Furthermore, article 7 provides for the criminal liability of Ukrainian citizens and stateless persons residing permanently in Ukraine in respect of crimes committed outside Ukraine's borders.

> "Article 10. Extradition of persons charged with a crime and persons convicted of a crime.
>
> 1. Citizens of Ukraine and stateless persons residing permanently in Ukraine who have committed a crime outside the borders of Ukraine shall not be extradited to a foreign State with a view to criminal prosecution and trial.
>
> 2. An alien who has committed a crime in Ukrainian territory and has been convicted of that crime in accordance with this Code may be transferred to serve his sentence to the State of which he is a national if such transfer is provided for in the international treaties to which Ukraine is a party.
>
> 3. Aliens and stateless persons not residing permanently in Ukraine who have committed a crime outside Ukraine's borders and are in Ukrainian territory may be extradited to a foreign State with a view to criminal prosecution and trial or transferred to serve a sentence if such extradition or transfer is provided for in the international treaties to which Ukraine is a party."

According to a number of international treaties on legal assistance in criminal matters (on extradition), for example, the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, concluded in Minsk in 1993, and its new version, signed by Ukraine on 7 October 2002 (not yet entered into force), in the event of a refusal to extradite a person, the competent judicial agency of the requested Contracting Party shall rule in accordance with its legislation, in the light of the application and the documentary evidence submitted by the competent judicial agency of the requesting Contracting Party, on the question of the criminal prosecution of the person whose extradition has been refused.

The obligation to ensure criminal prosecution is established in article 72 of the 1993 version of the Convention, which is currently in force, according to which

every Contracting Party is obliged, at the request of another Contracting Party, to institute criminal proceedings in accordance with its legislation against any of its own citizens who are suspected of committing a crime in the territory of the requesting Party.

The new 2002 version of the Convention further provides that criminal proceedings shall also be instituted by the Contracting Parties against stateless persons and foreign citizens in their territory in the event of refusal to extradite.

Criminal proceedings may be instituted in the requested Contracting Party provided that the act in question is a criminal offence in that Contracting Party as well.

The sentence handed down on conviction for an offence shall not be more severe than the sentence provided for in the legislation of the requesting Contracting Party.

In addition, articles 26, 27 and 28 of the Act "on combating terrorism" lay down the foundations of international cooperation in the fight against terrorism, the provision of information to foreign States on matters connected with the fight against international terrorism, and participation in joint measures with foreign States to combat terrorism. And article 29 provides the legal basis for the extradition of persons who have taken part in terrorist activities.

Thus, the participation of aliens or stateless persons not residing permanently in Ukraine in terrorist activities may constitute grounds for their extradition to another State with a view to criminal prosecution.

The extradition of persons referred to in the first part of this article for the purpose of criminal prosecution and/or the execution of compulsory acts by a foreign State must be effected in accordance with the legislation adopted and the obligations entered into by Ukraine as a result of its ratification of the 1957 European Convention on Extradition, the 1977 European Convention on the Suppression of Terrorism, and the other international treaties whose binding status has been confirmed by the Verkhovna Rada of Ukraine, and on the basis of reciprocity.

Paragraph 1.16

Ukraine furnishes legal assistance in criminal matters pursuant to the international treaties to which it is a party or in accordance with the principle of reciprocity under an ad hoc agreement with a foreign State submitting a request for legal assistance which it needs. According to the general rule of the international treaties to which Ukraine is a party, such legal assistance shall be denied if its provision may impair Ukraine's sovereignty or security or clashes with the fundamental principles of its legislation.

In addition, the cases in which requests for legal assistance may be refused are set out in the Act of 16 January 1998 "on ratification of the European Convention on Extradition of 1957, the Additional Protocol of 1975 and the Second Additional Protocol of 1978" (as amended and supplemented by the Act of 15 December 1999) and in the Act of 16 January 1998 "on ratification of the European Convention on Mutual Assistance in Criminal Matters of 1959 and the Additional Protocol of 1978" (as amended and supplemented by the Act of 15 December 1999).

Pursuant to article 9 of the Constitution, the international treaties on legal assistance to which Ukraine is a party form part of its domestic legislation.

In connection with the entry into force for Ukraine of a number of European conventions on matters of criminal proceedings, in particular the European Convention on Extradition (1957) and the European Convention on Mutual Assistance in Criminal Matters (1959) and their Additional Protocols, as well as the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990) and the European Convention on the Transfer of Proceedings in Criminal Matters (1972), two central executing agencies have been designated by legislative Act: with respect to pre-trial proceedings — the Office of the Procurator-General of Ukraine; and with respect to trial proceedings — the Ministry of Justice of Ukraine.

Extradition matters are regulated:

On a multilateral basis, by the European Convention on Extradition of 1957, the Additional Protocol of 1975 and the Second Additional Protocol of 1978. Relations between the States members of the Commonwealth of Independent States (CIS) are governed by the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, concluded in Minsk in 1993.

On a bilateral basis, by the treaties on extradition and the treaties on legal assistance in civil and criminal matters which contain provisions on extradition, in particular:

The Treaty between Ukraine and the People's Democratic Republic of China on Extradition of 11 December 1998;

The Treaty between Ukraine and the Republic of Poland on Legal Assistance and Legal Relations in Civil and Criminal Matters of 24 May 1993;

The Treaty between Ukraine and the Republic of Lithuania concerning Legal Assistance and Legal Relations in Civil, Family and Criminal Cases of 7 July 1993;

The Treaty between Ukraine and the Republic of Moldova on Legal Assistance and Legal Relations in Civil and Criminal Matters of 13 December 1993;

The Treaty between Ukraine and the Republic of Estonia on Legal Assistance and Legal Relations in Civil and Criminal Matters of 15 February 1995;

The Treaty between Ukraine and Mongolia on Legal Assistance in Civil and Criminal Matters of 27 June 1995;

The Treaty between Ukraine and the Republic of Georgia on Legal Assistance and Legal Relations in Civil and Criminal Matters of 9 January 1995;

The Treaty between Ukraine and the Republic of Latvia concerning Legal Assistance and Legal Relations in Civil, Family and Criminal Cases of 23 May 1995;

The Treaty between Ukraine and the Socialist Republic of Vietnam on Legal Assistance and Legal Relations in Civil and Criminal Matters of 6 April 2000;

The Treaty between Ukraine and the Republic of India on Extradition of 3 October 2002.

In addition, where succession to treaties is concerned, pursuant to the Act "on legal succession of Ukraine, 1991" and the provisions of the Vienna Convention on Succession of States in Respect of Treaties of 1978, Ukraine applies the following bilateral international treaties of the former USSR on legal assistance in civil and criminal matters which contain provisions on extradition:

The Treaty between the USSR and the Democratic People's Republic of Korea concerning the Provision of Legal Assistance in Civil, Family and Criminal Cases of 16 December 1957;

The Treaty between the USSR and the Romanian People's Republic concerning the Provision of Legal Assistance in Civil, Family and Criminal Cases of 3 April 1958;

The Treaty between the USSR and the People's Republic of Albania concerning the Provision of Legal Assistance in Civil, Family and Criminal Cases of 30 June 1958;

The Treaty between the USSR and the Hungarian People's Republic concerning the Provision of Legal Assistance in Civil, Family and Criminal Cases of 15 July 1958;

The Treaty between the USSR and the Republic of Iraq on Legal Assistance of 22 June 1973;

The Treaty between the USSR and the Republic of Tunisia on Legal Assistance in Civil and Criminal Matters of 26 June 1984;

The Treaty between the USSR and the People's Democratic Republic of Algeria on Mutual Legal Assistance of 23 February 1982;

The Treaty between the USSR and the Republic of Cuba on Legal Assistance in Civil, Family and Criminal Matters of 28 November 1984.

Paragraph 1.17

An Instruction on the procedure for implementing the six European conventions on matters of criminal proceedings has been in force for Ukraine's judicial bodies since 7 July 1999. However, the provisions of this Instruction are also applied to the processing of requests for international legal assistance from other States when such assistance is not regulated by a bilateral agreement with Ukraine. If there are no circumstances which prevent compliance with the request pursuant to current Ukrainian legislation or the provisions of its international treaties, the Instruction specifies the following time limits for its processing:

(a) Extradition: on receipt of information about the arrest in a foreign State of a person liable to extradition to Ukrainian law-enforcement agencies, these agencies shall as soon as possible, but within 10 days, prepare an application with an explanation of the grounds for the person's extradition; pursuant to article 2.14 of the Instruction, the processing of requests for extradition must not take longer than 45 days;

(b) Legal assistance in criminal matters: pursuant to article 3.10 of the Instruction, the processing of requests must not take longer than 30 days;

(c) Transfer of convicted persons: pursuant to articles 6.2 and 6.8, the assembly of the documents required for the initiation of the transfer proceedings (both for transfer to Ukraine of its citizens convicted abroad and for transfer to foreign law-enforcement agencies of persons convicted in Ukraine) must not take longer than one month;

(d) Laundering, search and confiscation of the proceeds of crime: pursuant to article 7.5, the processing of requests must not take longer than 30 days.

The practical application of the provisions mentioned above depends in each specific case on the complexity and detail of the request but, if the established time limits cannot be met, a processing timetable is always agreed with the requesting party.

Paragraph 1.19

As explained above, the Act "on combating terrorism" defines the basic terms relating to terrorist activities. Legal persons are prosecuted in accordance with article 24 of the Act. The criminal liability of natural persons for terrorist activity is addressed in article 258 of the Criminal Code, which stipulates the following penalties:

1. A term of imprisonment of 5 to 10 years is imposed in respect of the commission of a terrorist act, i.e. the use of firearms, detonation of explosive devices, arson or other acts which occasion a risk to human life or health or acts producing significant damage to property or other serious consequences if such acts are committed for the purpose of impairing public safety, intimidating the population or provoking an armed conflict or international complications, or for the purpose of bringing pressure to bear on decision-making or commission or omission of acts by organs of State power or organs of local self-government or by officials of such organs, civilian associations or legal persons, or for the purpose of drawing public attention to certain political, religious or other opinions of the perpetrator (the terrorist), as well as the threat of committing such acts for these purposes;

2. A term of imprisonment of 7 to 12 years is imposed in respect of these same acts if they are repeated or if they are committed by prior agreement by a group of persons or if they produce significant damage to property or other serious consequences;

3. A term of imprisonment of 10 to 15 years or life imprisonment is imposed in respect of the acts specified in paragraphs 1 and 2 above if they result in the loss of human life;

4. A term of imprisonment of 8 to 15 years is imposed in respect of the formation of a terrorist group or terrorist organization or the leadership of or membership in such a group or organization, or the provision of material, organizational or other assistance for the formation or operation of a terrorist group or terrorist organization;

5. Criminal liability in respect of the acts specified in paragraph 4 above does not obtain in the case of persons, except for the organizer and leader, who voluntarily give information about him to a law-enforcement agency and assist with the termination of the existence or activity of a terrorist group or organization or with the detection of crimes committed in connection with the formation or

operation of the group or organization, provided that the actions of such persons do not contain elements of a different crime.

According to article 22 of the Criminal Code, persons aged at least 14 years at the time of commission of a terrorist act are liable to criminal prosecution.

Paragraph 1.20

The following steps have been taken in connection with Ukraine's final accession to the remainder of the 12 international conventions and protocols on matters related to terrorism:

– International Convention for the Suppression of the Financing of Terrorism (signed by Ukraine on 8 June 2000, and ratified on 12 September 2002 with the following declaration: "Ukraine exercises its jurisdiction with respect to the offences mentioned in article 2 of the Convention in the cases specified in article 7, paragraph 2, of the Convention");

– European Convention on the Suppression of Terrorism of 1977 (signed by Ukraine on 8 June 2000 and ratified on 17 January 2002);

– Protocol of 2003 amending the European Convention on the Suppression of Terrorism (Ukraine signed on 15 May 2003 and is completing its ratification procedures).

Paragraph 1.21

As part of the exchange of experience and conduct of joint activities, a gathering of senior personnel of the anti-terrorist units of the CIS law-enforcement agencies and special services was held on 9 and 10 June of this year in Ukraine under the auspices of the CIS Anti-Terrorist Centre, in conjunction with the "Azov-Antiterror-2003" special tactical exercise carried out jointly with the Federal Security Service of the Russian Federation (the Ministry of Foreign Affairs of Ukraine reported on this to the CTC in July 2003).

Paragraph 2.1

Ukraine is interested in receiving assistance with the expert assessment of its legislation and in conducting joint instruction and training exercises for anti-terrorism experts. Ukraine would like to take part in the bilateral and multilateral consultations on questions connected with identifying and combating the latest methods used in money-laundering and the financing of terrorism.

Paragraph 2.4

With regard to the assistance which Ukraine might offer to other States in connection with the implementation of Security Council resolution 1373 (2001), it should be noted that the Government is currently trying to reach a decision on the possibility of using the training grounds of its Security Service's Anti-Terrorist Centre for the training of special anti-terrorist units of other countries.