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Letter dated 3 March 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 10 April 2002 (S/2002/379).

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

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*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex to the letter dated 3 March 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

[Original: Arabic]

Letter dated 20 January 2003 from the Permanent Representative of Egypt to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have the honour to attach herewith the additional supplementary report prepared by the Egyptian authorities in response to the request of the Counter-Terrorism Committee regarding additional information related to the Egyptian national report presented previously to the Committee (see enclosure).

(*Signed*) Ahmed **Aboul Gheit**
Ambassador
Permanent Representative

Enclosure

[Original: Arabic]

Additional supplementary report

Reply to the questions on the supplementary report on measures to combat terrorism submitted by Egypt to the Security Council's Counter-Terrorism Committee

Subparagraph 1.2

Question

Paragraph 10 (c) of the first report (S/2001/1237) states that socialist public prosecutor law No. 34, as amended by law No. 95 of 1980, permits the imposition of custodianship over an individual's property if there is substantial evidence that his assets have grown as a result of unlawful operations. The supplementary report (S/2002/601) states that custodianship is a matter of judicial decision and freezing of assets is left to the discretion of the competent authorities as provided by the socialist public prosecutor law and the bank secrecy law. The CTC would be grateful for a detailed explanation of the circumstances under which the authorities can freeze assets without court intervention.

Reply

1. *Law No. 34 of 1971 organizing the imposition of custodianship and ensuring the safety of the people*

Law No. 34 of 1971 organizing the imposition of custodianship and ensuring the safety of the people contains provisions organizing the imposition of custodianship over the assets of persons. Article 1 stipulates that custodianship may not be imposed save by a judicial decision, in the circumstances laid down by this law, in accordance with the rules laid down therein and for the reasons set forth in articles 2 and 3 thereof. It should, however, be noted in this regard that, although the imposition of custodianship as a judicial measure may not be effected except pursuant to a decision handed down by the competent judicial authorities, some cases require the speedy adoption of decisions to seize assets as a precautionary measure that comes within the category of preventive measures taken by the competent authorities in such matters. This was the aim of the Egyptian legislator, and it has been incorporated in the relevant legislation. This includes the above-mentioned law, inasmuch as article 7 of law No. 34 of 1971 organizing the imposition of custodianship and ensuring the safety of the people provides that:

> "The public prosecutor may, where he has cogent evidence that a person has committed any of the acts mentioned in articles 2 and 3 of this law, bar such person from disposing of or administering his assets and take such preventive measures as he deems appropriate in the matter. He may order the adoption of such measures in respect of the assets of such person's spouse and minor or adult children, where he deems it necessary.

"The public prosecutor shall provide in the order barring such person from administration of his assets for the appointment of a proxy to administer those assets. ...

"The public prosecutor shall bring the suit before the court competent to impose custodianship within 60 days from the date of the order referred to in the first paragraph. Failing this, the order shall be deemed null and void."

This provision permits the adoption of precautionary or preventive measures by the competent authorities in the form of a ban on disposing of or administering assets until such time as custodianship is imposed pursuant to a judicial decision by the competent court. As stated in the explanatory memorandum to the draft of the above-mentioned law, that is perhaps consistent with the nature of such acts, their grave impact on society and the need to take prompt and speedy measures so that the person in question does not succeed in disposing of the assets surreptitiously. The purpose of the requirement in the article cited that the public prosecutor bring the suit before the court competent to impose custodianship within not more than 60 days from the date of the issuance of his order is to ensure that the imposition of custodianship is always accompanied by all the safeguards laid down in the draft and that the legislation laid down to organize the imposition of custodianship takes this type of custodianship from the sphere of administrative authorities to the law courts within legal rules that ensure that it can be appropriately applied by a judicial body.

2. Law No. 80 of 2002 on the combating of money-laundering

Article 2 of law No. 80 of 2002 on the combating of money-laundering provides for the establishment of an independent unit in the National Bank of Egypt specifically to combat money-laundering.

Article 4 defines the powers of this unit, which include receiving notifications of transactions suspected of involving money-laundering, establishing a database and exchanging information with State oversight authorities and competent authorities in foreign countries and international organizations, in implementation of the international agreements to which Egypt is a party or of the principle of reciprocity.

Article 5 stipulates that the unit shall undertake investigation and inquiry operations and inform the Office of the Attorney-General thereof. It may ask the office of the Attorney-General to take preventive measures in the manner described in articles 208 bis (a), 208 bis (b) and 208 bis (c) of the Code of Criminal Procedure. These are the measures that provide for the seizure of the assets of an accused person, including a ban on his disposing of or administering them, by making it mandatory on the competent criminal court to hand down a decision to that effect. The Attorney-General may, where necessary or in case of urgency, issue a provisional order barring an accused person or his spouse or minor children from disposing of or administering his assets, by submitting the case to the competent criminal court within a maximum of seven days from the date of its issuance.

Articles 18 and 19 of the above-mentioned law permit the adoption of the necessary legal measures to track or freeze and to confiscate assets involved in or accruing from money-laundering crimes, within the framework of international judicial cooperation, and there is also law No. 162 of 1958 permitting the President

of the Republic to issue, for the purpose of preserving security and public order, decisions for the confiscation of any movable or immovable assets.

It is thus clear that Egyptian legislation, as represented in the Code of Criminal Procedure, law No. 162 of 1958, law No. 34 of 1971 organizing the imposition of custodianship and law No. 80 of 2002 on the combating of money-laundering, contains the legal provisions, rules and procedures governing imposition of custodianship and precautionary measures on the assets of accused persons, and that, consequently, the authorities competent to implement the above-mentioned laws have the right to take precautionary measures in respect of such assets before bringing the case before the competent court in accordance with the modalities laid down in those laws.

Subparagraph 1.3

Question

Effective implementation of paragraph 1 of the resolution requires that the legal obligation to report suspicious transactions for banks and financial institutions should extend to all professions engaged in financial transactions (such as lawyers and accountants) and that all such persons and entities should be subjected to penalties for non-compliance. Could Egypt please outline any measures achieving this objective, or comment on the action it intends to take in this regard?

Reply

Article 1 (c) of law No. 80 of 2002 on the combating of money-laundering defines the term “financial institutions” as follows:

“1. Banks operating in Egypt and their branches abroad and branches of foreign banks operating in Egypt;

2. Money-changing firms and other agencies authorized to deal in foreign currencies;

3. Entities engaged in the transfer of funds;

4. Agencies operating in the field of financial papers;

5. Agencies operating in the field of receipt of funds;

6. The post-office Savings Bank;

7. Agencies engaged in real-estate financing and real-estate registration;

8. Agencies engaged in leasing;

9. Agencies engaged in land division;

10. Agencies engaged in any kind of insurance activities, private insurance funds and insurance brokers.”

The above-mentioned law also lays down the necessary rules to enable financial institutions to give notice of suspect transactions and defines the penalties incurred in the event of failure to give notice of money-laundering offences and other related offences.

Article 8 provides as follows:

"Financial institutions shall be obliged to notify the unit to combat money-laundering of any transactions that it suspects of involving money-laundering within the meaning of article 4 of this law. They shall take the necessary measures to obtain the necessary data to determine, by official or acceptable customary means, the identity and legal status of the agents concerned and the actual beneficiaries, whether natural or legal persons, and shall record the evidence obtained in this process.

These institutions may not open accounts or accept funds or deposits ascribed to fictitious or imaginary clients".

Article 15 of the same law provides that:

"Any person who contravenes any of the provisions of article 8, 9 or 11 of this law shall be liable to imprisonment and a fine of not less than 5,000 and not more than 20,000 Egyptian pounds or by one of these penalties."

Article 16 of the same law provides that:

"If the offence is committed by a legal person, the natural person responsible for the actual administration of such legal person shall be liable to the same penalties laid down for acts committed in violation of the provisions of this law if it is proven that he was aware of the offence and the offence occurred because of his negligence of the duties of his office.

"If the offence committed in violation of the provisions of this law was committed by an employee of such legal person and in its name and in its interest, the legal person shall be jointly liable in respect of financial penalties and damages imposed".

Subparagraph 1.4

Question

Please provide a progress report on the establishment of a central agency under the draft money-laundering law that is, according to the first report, to be mandated to obtain data, conduct inquiries, exchange information with other States and coordinate with control authorities on matters relating to money-laundering.

Reply

Decision of the President of the Arab Republic of Egypt No. 164 of 2002 was issued establishing a unit to combat money-laundering in the Central Bank to exercise the powers set forth in the law to combat money-laundering. Pursuant to that decision, the unit has a governing board which manages its affairs, lays down its general policy and follows up policy implementation so as to ensure the attainment of the goals of the unit in accordance with the law on the combating of money-laundering. In particular, the unit:

1. Adopts the necessary forms for the implementation of the provisions of the law on the combating of money-laundering;

2. Prepares the necessary means to verify the compliance of financial institutions with the rules and regulations established by law for the combating of money-laundering;

3. Ensures that the judicial authorities and other entities responsible for the implementation of the provisions of the law on the combating of money-laundering are supplied with the information that they request;

4. Adopts the rules for the exchange of available information with peer units in other States and international organizations in accordance with the provisions of the international agreements to which Egypt is a party or in accordance with the principle of reciprocity;

5. Suggests regulations and measures to combat money-laundering at the national level.

It should be mentioned that the establishment of a unit to counteract money-laundering was effected in implementation of the law on the combating of money-laundering (No. 80 of 2002). This law states, inter alia:

> "An independent special unit shall be established in the Central Bank to combat money-laundering and shall include representatives of the agencies concerned. It shall assume the powers laid down in this law.
>
> "It shall have attached to it an adequate number of experts and specialists in areas relating to the implementation of this law and shall be equipped with the requisite number of qualified and trained personnel. The President of the Republic shall issue a decision on its statute, the composition of its administration and the regulations governing its work and its personnel, which shall not necessarily be subject to the rules and regulations applicable in the Government, the public sector and the public business sector."

The same law provides that the unit shall receive reports from financial institutions about transactions suspected of involving money-laundering. The unit is also entrusted with the task of establishing a database of the information available to it and taking measures to ensure that the judicial authorities and other entities responsible for the implementation of the provisions of this law have access to such information. Its tasks also include the exchange of this information and coordination with national oversight bodies and competent entities in foreign countries and international organizations to which Egypt belongs or in accordance with the principle of reciprocity.

The law also provides that the unit shall undertake to investigate and check the reports and information it receives concerning transactions suspected of involving money-laundering and shall notify the office of the Attorney-General of any evidence resulting from such investigation that points to the commission of any of the offences covered by this law. Members of the staff of the unit, whose composition shall be established by a decision taken by the Minister of Justice on the recommendation of the Governor of the Central Bank, shall have, in respect of their functions and, with regard to the offences covered by this law, the capacity of public officials responsible for criminal investigation.

The organs responsible for the implementation of the laws and regulations relating to oversight of financial institutions and for devising the necessary modalities must verify the institutions' compliance with the anti-money-laundering

rules and regulations laid down by law, in particular by reporting any transactions suspected of involving money-laundering.

Financial institutions must notify the unit of financial transactions suspected of involving money-laundering, as defined in article 4 of this law, or they must make the necessary arrangements to obtain data to determine the identity and legal status of the agents and actual beneficiaries, whether natural or legal persons.

Subparagraph 1.5

Question

Effective implementation of subparagraphs 2 (d) and (e) of the resolution requires a State to criminalize the use of its territory for the purpose of committing terrorist acts against other States or their citizens or for the purpose of financing, planning, facilitating of terrorist acts against other States or their citizens, even if no related terrorist act has actually been committed or attempted. Articles 77 (f) and 86 (d) of the Penal Code do not appear to meet these requirements entirely. Please explain how Egypt intends to deal with these requirements.

Reply

The Egyptian legislator has striven to confront all forms of terrorism by means of amendments to penal laws and penal procedure and by the enactment of many pieces of legislation to that end, as described in Egypt's report.

Article 40 of the Egyptian Penal Code enumerates the various forms of complicity in an offence, whether incitement, conspiracy or assistance and states that:

> "The following shall be deemed to be accomplices to an offence:
>
> (a) Any person who incites others to commit the act constituting the offence, if such act occurs as a result of the incitement;
>
> (b) Any person who conspires with another to commit the offence, where the offence is committed as a result of this conspiracy;
>
> (c) Any person who knowingly provides the perpetrator or perpetrators with a weapon, implement or any other object used in the commitment of the offence or assists them in any other way in acts preparatory to, facilitating or completing its commission. The successive provisions set forth in the section on complicity lay down the penalty for complicity in an offence."

The Egyptian Penal Code also penalizes the attempt to commit an offence. Article 45 thereof defines this as undertaking an act for the purpose of committing a serious or less serious offence which is halted or aborted for reasons independent of the will of the perpetrator. Mere intent to commit an offence or preparatory acts is not deemed to constitute an attempt to commit an offence.

It is thus clear that the Egyptian Penal Code is sufficiently comprehensive to cover all criminal acts, as well as attempted offences and complicity, including incitement, conspiracy and assistance.

In addition, paragraph 1 of article 3 of law No. 162 of 1958 permits the competent authorities to arrest any suspect person or persons presenting a threat to security and public order and to search them and search their homes.

Subparagraph 1.6

Please explain how Egypt would deal with a foreigner who has committed a terrorist act outside Egypt against another State or its citizens and is found in the territory of Egypt. Would Egypt prosecute the terrorist if he or she were not extradited, in order to fulfil the requirement of subparagraph 2 (e)?

As laid down by the law and in accordance with the provisions of articles 1, 2 and 3 of the Egyptian Penal Code and the amendments thereto, provisions have been laid down determining its personal and territorial scope, as explained in Egypt's supplementary report.

It is clear from those articles that the Egyptian Penal Code applies to the acts and categories of persons referred to above. Hence, where a foreigner commits a terrorist act outside Egypt or against another State or one of its citizens and the perpetrator is apprehended in Egypt, the decision to extradite or not is subject to the bilateral and multilateral agreements on extradition and counter-terrorism, while in all other cases it is governed by the principle of reciprocity and international civility.

It should be mentioned here that the Arab Republic of Egypt has concluded a number of agreements on judicial cooperation in criminal matters with Arab, African and other States, as stated in the annex to Egypt's report.

Subparagraph 1.7

Question

Please provide a progress report and a detailed outline of the bill on judicial cooperation.

Reply

With regard to judicial cooperation, all the agreements on judicial cooperation in criminal matters concluded by Egypt with Arab and other States function smoothly and in harmony with the universally recognized rules and provisions established on the model of the European texts on extradition, which has become the reference point for dealings with all States in this matter. Again, in accordance with the principle of reciprocity, the Arab Republic of Egypt spares no effort in providing legal assistance to all States with which it has not concluded legal assistance agreements. A special law on judicial assistance in criminal matters is currently being finalized to cover all aspects of this kind of cooperation (exchange of offenders, judicial assistance, transfer of convicts from one prison to another and the enforcement of foreign judgements). This draft law, on which a special committee is working, is expected to be completed in the near future.

Subparagraph 1.8

Question

Paragraph 3 calls upon all States to become parties as soon as possible to all 12 international conventions and protocols relating to terrorism. The report states that Egypt has signed and ratified, or is in the process of completing, all formalities relating to 11 of the United Nations conventions and protocols, the exception being that on the physical protection of nuclear material. While noting the comment in paragraph 10 of the supplementary report in that regard, the CTC would be grateful for comment on the long-term intentions of Egypt in regard to the signing and ratification of that Convention.

Reply

1. Paragraph 3 of Security Council resolution 1373 (2001) calls upon States to become parties to the conventions and protocols relating to terrorism. As we have said, Egypt has signed or ratified all the agreements except for the Convention on the Physical Protection of Nuclear Material. This indicates Egypt's stance on the issue of the combating of terrorism.

2. Article 101 of the Egyptian Constitution states that the People's Assembly is required to approve any agreement relating to rights of sovereignty or imposing any extrabudgetary expenditures on the State Treasury. Since this Convention relates to rights of sovereignty and also imposes extrabudgetary expenditures on the Treasury, Egypt must first obtain the approval of the People's Assembly.

3. The competent authorities are currently being consulted with a view to arriving at a final opinion on the matter.

Subparagraph 1.9

Question

According to the supplementary report, article 151 of the Egyptian Constitution provides for the incorporation and implementation in domestic law of the conventions and protocols to which Egypt is a party. Please explain how Egypt is able to impose penalties for the commission of the offences referred to in the relevant international conventions and protocols relating to terrorism.

Reply

The principle in the Egyptian system is that international agreements become law and applicable in Egypt upon ratification, under article 151 of the Constitution, which means that they can be applied by the courts directly and that all the authorities must abide by the courts' decisions. There is, however, an exception to this principle whereby the status of an agreement in national law depends on the nature of the provisions of the agreement or treaty. Agreements that contain penal provisions require the promulgation of legislation defining the nature of the penalties and the acts criminalized, in accordance with the principle of penal legality. Egypt has enacted numerous pieces of legislation providing for the punishment of the acts covered by international agreements, and this is the case with regard to the conventions on terrorism. The Egyptian Penal Code and law No. 80 of

2002 against money-laundering and other criminal laws for the criminalization and punishment of the acts set forth in those conventions, as is set forth in detail in the first report (paragraphs 11 (b) and (d) and 12 (a), (b) and (e)).

Part 2 of the questions, entitled "Assistance and guidance"

Subparagraph 2.1

Egypt welcomes receiving all kinds of technical assistance and is currently studying the technical requirements of the specialized bodies concerned. As soon as these have been defined, Egypt will then consult on them with the Committee in order to consider the types of assistance that Egypt might receive in this matter. It might be useful to shed some light on the types, forms and modalities of assistance that might be provided by the Committee.

Subparagraph 2.2

At the current stage of implementation of the resolution, Egypt does not feel the need to request the assistance of the Committee's experts, but should the need arise it will contact them.

Subparagraph 2.3

With regard to the assistance that Egypt might provide, it should be mentioned that Egypt is fully prepared to provide any assistance requested of it within the framework of judicial and security cooperative arrangements. The Committee will be notified of any arrangements made in this regard.