United Nations S/2003/774

Security Council

Distr.: General
30 July 2003

Original: English

Letter dated 29 July 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 25 April 2003 (S/2003/478).

The Counter-Terrorism Committee has received the attached third report from Venezuela 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*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

03-45095 (E) 220803 020903

Annex

Letter dated 25 July 2003 from the Permanent Representative of Venezuela 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 transmit to you, attached hereto, the second report supplementary to the report submitted by the Bolivarian Republic of Venezuela on 26 December 2001, pursuant to Security Council resolution 1373 (2001), containing replies to the comments and questions formulated by the Counter-Terrorism Committee (CTC) in the communication from its former Chairman, dated 2 April 2003.

This report includes the following annexes:

- Draft Special Law against Terrorist Acts
- Draft Act on Counter-Terrorism
- Draft Organic Act against Organized Crime

Mindful of its obligations as a member of the international community, the Bolivarian Republic of Venezuela is pleased to submit this second supplementary report, not solely in fulfilment of the requirements of the Security Council Counter-Terrorism Committee, but also as part of its effective commitment to the campaign against international terrorism.

On behalf of the Bolivarian Republic of Venezuela, I am glad to reaffirm the willingness of the National Government to expand or comment on any aspect of the report, and to provide to you, in addition to the draft laws annexed hereto, any other Venezuelan legal text that the Counter-Terrorism Committee might request.

(*Signed*) Milos **Alcalay**
Ambassador
Permanent Representative

Enclosure

Supplementary report of the Government of Venezuela pursuant to Security Council resolution 1373 (2001)*

1.2. In relation to paragraph 1 (a) of the resolution, the supplementary report states (on page 4) "that financial institutions, registries and public notaries are required to report to the criminal investigation authorities all banking transactions that are unusual or that exceed the amounts indicated". The CTC would be grateful for further information, as follows:

What are the criteria by which transactions are characterized as unusual?

Banks and other financial institutions must submit a Suspicious Activities Report to the National Financial Intelligence Unit, through the anti-money-laundering compliance officer or the responsible official, using form PMSBIF044/0497 (see annex A) and in electronic form, concerning any transaction carried out by a client which is unusual, unconventional, complex, in transit, or structured, and which, on analysis, is presumed to involve funds stemming from an illegal activity, or to have been carried out or attempted for the purpose of concealing or disguising monies or assets that stem from illegal activities or have no reasonable purpose, in violation of an anti-money-laundering law or regulation, or to avoid the requirement to report to the National Financial Intelligence Unit. The above-mentioned financial transactions must include those that may be linked to acts carried out by organized criminal groups and structured groups (as defined in the Act ratifying the United Nations Convention against Transnational Organized Crime) and those that may be linked to terrorism-financing activities.

In addition, when a client seeks to carry out a transaction that indicates or suggests a connection with money-laundering, the employee of the bank or financial institution may refuse to provide the service requested, but must immediately so inform the Unit for the Prevention and Control of Money-Laundering, via internal reporting channels. The Unit shall inform the anti-money-laundering compliance officer, who, in agreement with the Committee against Money-Laundering, will submit a report to the National Financial Intelligence Unit.

The Suspicious Activity Report must be submitted within 30 calendar days from the time when the transaction was initiated; the bank or financial institution does not need to be certain that a criminal activity is occurring or that the resources stem from such an activity. It is solely necessary for the bank or financial institution to deem such activities to be suspicious on the basis of its experience or of any examination it has carried out. The Suspicious Activities Report is not a criminal complaint and does not require the formalities and requirements associated with such a procedure, nor does it entail criminal or civil responsibility on the part of the bank or financial institution and its employees, or for the writer thereof. Clients may not invoke any effective rules of confidentiality or privacy to support a civil suit or criminal complaint against employees or the bank or financial institution concerned for disclosing such information, provided that the report informs the competent authorities of a well-founded suspicion of criminal activity, even if the presumed criminal activity has not been carried out.

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

The regular and systematic reports that banks and other financial institutions are required to submit are entered into the database of the National Financial Intelligence Unit. Such reports must be transmitted electronically within 15 days after the monthly closing, as follows:

- Deposits or withdrawals by clients into or from current accounts, savings accounts, liquid asset or other funds holding an amount equal to or greater than 4,500,000 bolívares.
- The purchase or sale of foreign currency in an amount equal to or greater than $10,000 or its equivalent in other currencies.
- Transfers equal to or greater than $10,000, or its equivalent in other currencies, originating in the Bolivarian Republic of Venezuela and having a foreign destination.
- Transfers equal to or greater than $3,000, or its equivalent in other currencies, to and from territories or regions that are not cooperating in matters of money-laundering and bank secrecy.
- Transfers equal to or greater than $750, or its equivalent in other currencies, to and from drug-producing territories or regions in the Americas.
- Electronic orders equal to or greater than $2,000, or its equivalent in other currencies.
- Sales of electronic money in foreign currencies using Stored Monetary Value Cards whatever the amount of the transaction.

Is a requirement to report suspicious transactions imposed on financial intermediaries, for example, real estate agents, lawyers and accountants?

Article 219 of the Organic Law on Narcotic Drugs and Psychotropic Substances provides that the national executive branch, through the Ministry of Justice (now the Ministry of the Interior and Justice) and the Division of Registries and Public Notaries, shall keep a computerized register of purchases or sales of real estate, or stock or shares, in order to ensure that such transactions follow normal market practice.

In addition, it shall monitor sale and purchase transactions in cash, purchases carried out by a single natural or legal person, if their repeated nature so warrants, and sales to non-resident foreigners in border areas. The registrars of the branch offices of registries and public notaries shall report such transactions to the Division of Registries and Public Notaries within 10 days from the date of the transaction. To that end they shall provide certified copies of all purchases and sales carried out by their offices. Registrars and notaries that fail to abide by these requirements shall pay a fine equalling from 1,670 to 2,670 days of urban minimum wage, and shall be dismissed from their posts in the case of a second offence.

The draft Organic Law on Organized Crime, which should soon be adopted, provides that — in addition to the financial institutions regulated by, inter alia, the General Law on Banks, the General Law on Insurance and Reinsurance and the Law on the Capital Market — bingo and slot-machine parlours, companies involved in the construction and sale of real estate, travel agencies, companies engaged in buying and selling livestock, automobiles, ships, aircraft, or securities, in providing

loans or in exploiting or marketing gold, metals or precious stones are also required to report any suspicious transactions.

What are the penalties for non-compliance with the requirement to report suspicious financial transactions?

The Organic Law on Narcotic Drugs and Psychotropic Substances imposes administrative sanctions on regulated entities that do not abide by articles 215, 216 and 220, which read as follows:

Article 215. In order to implement the operational plan to prevent the use of the banking and financial system for laundering money and other assets stemming from the commission of crimes prohibited under this Law or activities related thereto, the national executive branch shall establish general rules governing the identification of clients, registries, limitations on bank secrecy, the duty to report, and the protection of employees, institutions and internal programmes, on the basis of the following provisions:

1. Opening or holding an anonymous account or an account under a fictitious name is prohibited. When establishing or attempting to establish business relations or initiating transactions of any kind, such as opening accounts, engaging in fiduciary transactions, arranging to rent safety deposit boxes, or carrying out cash transactions, occasional or regular clients shall, if they are natural persons, be required to show an identification card; if they are legal persons, they shall be required to provide documents from the Business Registry or the Civil Registry and if they are foreigners, they shall be required to show official documents authenticated by the consulates of their countries of origin.

2. The records of such transactions, both national and international, must be kept for five years, so as to comply in a timely, effective manner with any request for information from the competent authorities regarding amount, type of currency, identity of the client, date of the transaction, account history, business correspondence, authorizations and any other information that the competent authorities may deem necessary. These documents must be accessible to the competent authorities in the event of a police or judicial investigation, and the principle of bank secrecy may not be invoked to elude these provisions.

3. All persons and entities subject to this Law, as provided above, must establish mechanisms for monitoring and controlling any complex, unusual or unconventional transaction, whether or not it has an apparent or visible economic purpose, as well as any in-transit transactions and any transaction whose amount so warrants, as determined by the institution or established by the national executive branch.

The purpose and destination of such transactions should be closely scrutinized, and any finding or determination should be noted in writing and made available to the monitoring and control agencies, the auditors of the Office of the Superintendent of Banks, the Ministry of Finance and the Judicial Police authorities.

The Office of the Superintendent of Banks and Other Financial Institutions shall impose fines equalling 3,335 to 5,000 days of urban minimum wage on persons who fail to fulfil the obligations established in these three paragraphs; the relevant procedure shall be initiated in accordance with the Organic Law on Administrative Procedures.

4. When they have a well-founded suspicion or indication that funds used in an operation or business within their purview may stem from an illegal activity in accordance with this Law, all persons and entities subject thereto shall report their suspicions to the competent Judicial Police authorities without delay. The clients, whether natural or legal persons, may not invoke any rules of bank secrecy or any privacy or confidentiality laws in force to support a civil suit or criminal complaint against officials or employees, or the institutions or firms in which they work, for disclosing any secret or any piece of information, provided the latter report a well-founded suspicion of criminal activity to the competent authorities, there being no obligation to provide any legal assessment of the acts, and even if the presumably criminal or irregular activity did not occur.

When bringing civil, commercial or criminal actions, no commitment of a contractual nature related to the confidentiality or secrecy of bank transactions or relations, or any use or practice related to such principles, may be invoked to avoid providing information pursuant to this Law. The employees of the institutions subject to this Law may not inform the client that the information has been reported, refuse to give him banking or financial assistance, suspend relations with him, or close his accounts while the police or judicial procedure is in process, unless the competent Judge has previously so authorized. All persons who fail to abide by this provision shall be considered to have committed the offence set forth in article 37 of this Law.

5. Programmes shall be designed and developed for the prevention of money-laundering, including, at a minimum:

(a) The development of internal policies, procedures and controls, including the designation of compliance officers at management level, and efficient, effective and adequate screening procedures to ensure high standards when hiring employees;

(b) The establishment of ongoing training programmes for officials and employees working in sensitive areas related to the matters regulated by this Law; and

(c) Efficient auditing mechanisms for testing systems and activities.

The Office of the Superintendent of Banks and Other Financial Institutions is responsible for the implementation of these provisions, as well as for enforcement and supervision.

The Ministry of the Interior and Justice shall establish, within the competent general division of the Judicial Police Technical Corps, a confidential data system providing financial and banking entities with effective, efficient and timely access to information — by any means of communication that can be registered — on suspicious or unusual clients, including the records of natural or legal persons with respect to the drug trade and money-laundering.

Banks and other financial institutions that fail to abide by this provision shall pay a fine equalling 1,335 to 1,670 days of urban minimum wage.

Article 216. The national executive branch shall establish supervision and control mechanisms to ensure that cash is not laundered through the banking or financial system by way of any mechanism or procedure, and shall, in particular, adopt measures to prevent the transfer of money or assets by any means to regions or locations where there are no applicable regulations similar to those set out in this

Law, and to return them to the country in secure form by wire transfer, electronic transfer or any other means. To that end, the national executive branch shall ensure that banking and financial institutions fulfil the following provisions:

1. They shall pay special attention to business relations and transactions with natural or legal persons from countries which do no apply banking or business regulations or where such regulations are inadequate; when such transactions have no apparent purpose, they shall be carefully examined and the results shall immediately be provided in writing to the competent authorities to ensure compliance with this Law. The Office of the Superintendent of Banks and Other Financial Institutions shall impose a fine equalling 3,335 to 5,000 days of urban minimum wage for the failure to abide by this provision.

2. They shall ensure that these provisions are applicable in branches and subsidiaries located abroad, when the applicable laws in force abroad do not provide for the enforcement and implementation of control and prevention measures. In such cases, the branches and subsidiaries shall so inform the headquarters of the banking or financial institution, so that computerized systems can be set up to adequately track money flows.

Representatives of other banks and finance companies shall inform their mother institutions, offices and branches that, if they wish to provide such services in Venezuela, they must abide by these provisions. Failure to abide by this provision shall be punished by a fine equalling 3,335 to 5,000 days of urban minimum wage.

The Central Bank of Venezuela shall design and develop a data system for all international currency transfers and bearer negotiable instruments, and make such data available to the Judicial Police authorities or to the competent agencies. Failure to abide by this provision shall entail, for any member of the Central Bank of Venezuela, a fine equalling 3,335 to 6,670 days of urban minimum wage.

Banks and other financial institutions shall be obliged to inform the Central Bank of Venezuela of their daily flow of currencies and bearer negotiable instruments.

The Central Bank of Venezuela shall impose strict security measures on any system it decides to adopt, in order to ensure the proper use of data without in any way hampering the free flow of capital. For failure to abide by this provision, a legal person shall be punished by a fine equalling 3,335 to 5,000 days of urban minimum wage.

The Central Bank of Venezuela shall adopt a decision setting the minimum amount that banks and financial institutions must report to it.

The Office of the Superintendent of Banks and Other Financial Institutions and the Central Bank of Venezuela shall be responsible for the enforcement and implementation of these provisions, shall supervise and monitor their implementation, and shall issue guidelines to assist banks and other financial entities in detecting suspicious patterns of conduct among clients. Both institutions shall provide courses to train and brief the personnel of banks and financial institutions responsible for these matters.

Article 220. In the event that a bank or credit institution fails for a second time to comply with these provisions, the Office of the Superintendent of Banks and Other Financial Institutions shall suspend bank transfers abroad for a period of one

to three months in respect of banks and financial institutions that fail to abide by the provisions of this Chapter, without prejudice to the imposition of any fines that might apply and any civil or criminal responsibility that might affect their workers and employees.

– **The obligation to report, imposed on financial institutions, would appear to involve notifying several different authorities. Is it envisaged that, in future, the National Financial Intelligence Unit (UNIF) would become the sole authority to which reports should be submitted? Is it also envisaged that sole responsibility for the assessment of reports and possible referral for further action to other agencies would be conferred on the National Financial Intelligence Unit?**

The National Financial Intelligence Unit is a national central agency, responsible for requesting and receiving financial data related to the offence of money-laundering and the financing of terrorism, from the entire Venezuelan financial system and for examining and transmitting it to the competent authority, i.e. the Public Prosecutor. Accordingly, the National Financial Intelligence Unit is the competent agency for assessing reports and referring them to other bodies. The duties of the National Financial Intelligence Unit can be summarized as follows:

- To develop norms for the prevention and control of money-laundering and the financing of terrorism.
- To assist, advise and monitor banks and other financial institutions regarding their compliance with the above-mentioned norms.
- To receive and examine the regular and systematic reports that banks and other financial institutions transmit electronically to the Unit.
- To receive and examine reports of suspicious activities provided by banks and financial institutions and refer them to the Public Prosecutor, with a view to assisting judicial investigations in cases where financial evidence is sufficient.
- To act as a liaison between the competent jurisdictional bodies and banks and other financial institutions.
- To request and exchange financial information with financial intelligence units of other countries, as requested, in order to assist in combating money-laundering and terrorism financing.
- To promote and participate in skills, training and exchange programmes with national agencies involved in the prevention of money-laundering and terrorism financing.

– **Does the obligation to report suspicious transactions relate solely to the prevention of money-laundering activities or does it also extend to transactions linked to the financing of terrorism?**

This obligation also extends to transactions linked to the financing of terrorism. To that end, the Office of the Superintendent of Banks and Other Financial Institutions issued the following circulars:

- No. SBIF-UNIF-DPC-0563
- No. SBIF-UNIF-DPC-7961
- No. SBIF-UNIF-DIF-03759

In circular No. SBIF-UNIF-DPC-0563, financial institutions are informed of their obligation to report transactions which they suspect or presume to be related to the laundering of money stemming from activities linked to organized crime, or to involve funds whose purpose is the financing of terrorism. Circular No. SBIF-UNIF-DPC-7961 of 23 September 2002 requires financial institutions under the Office's supervision to report to the National Financial Intelligence Unit any suspicious transaction or activity they suspect to be linked to actions by organized criminal groups or structured groups as defined in the Act endorsing the United Nations Convention against Transnational Organized Crime, published in Official Gazette No. 37,357 of 4 January 2002.

Circular No. SBIF-UNIF-DIF-03759 of 9 April 2003, aimed at universal, commercial and investment banks, currency exchanges, loan agencies, money market funds and savings and loan associations, describes the key characteristics of financial transactions that have been linked with terrorist activities and establishes norms to be enforced by the financial institutions and other enterprises under the supervision of the Office of the Superintendent of Banks and Other Financial Institutions, to recognize and detect techniques and methods used in the financing of terrorism.

1.3. Please outline the legal provisions in force in Venezuela which regulate alternative money transfer agencies or services or, in their absence, could Venezuela outline the steps which it intends taking in order to give effect to this aspect of the resolution in its domestic law.

Article 214 of the Organic Law on Narcotic Drugs and Psychotropic Substances stipulates that the entities governed by the General Law on Insurance and Reinsurance and by the Law on the Capital Market are required to cooperate with the executive branch in controlling and inspecting sums of money or other assets presumed to result directly or indirectly from the offences set forth in the Law, or from activities related thereto.

In view of the foregoing, and in accordance with the provisions of articles 1 and 10 of the Law on Insurance and Reinsurance Agencies and with articles 213, 214 and 215 of the Organic Law on Narcotic Drugs and Psychotropic Substances, the insurance oversight body adopted decision No. 99-2-2-2820 of 7 December 1999, published in Official Gazette No. 5,431 of 7 January 2000, concerning rules applicable to insurance and reinsurance operations on the prevention, control and inspection of money-laundering. The decision stipulates that, when banks and other financial institutions subject to this Law learn of operations or transactions having no apparent legitimate purpose the said transactions must be carefully examined by the Anti-Money-Laundering Unit and an internal report submitted to the chairman of the committee against money-laundering, who will evaluate the results and take a decision thereon. If sufficient evidence is present, it shall immediately be provided in writing to the competent authorities and to the police investigation bodies, with a copy to the Office of the Superintendent of Insurance, by means of a Suspicious Activities Report form. The Office of the Superintendent will then inform the National Financial Intelligence Unit.

Regarding companies regulated by the Law on the Capital Market, in accordance with the provisions of article 9 of the Law and with articles 213, 214 and 215 of the Organic Law on Narcotic Drugs and Psychotropic Substances, the

National Securities Commission adopted decision No. 510-97 of 12 December 1997, published in Official Journal No. 36,411 of 11 March 1998, concerning rules applicable to the Venezuelan capital market on the prevention, control and inspection of money-laundering operations.

It likewise requires banks and other financial institutions to report to the National Securities Commission any unusual or suspicious operations having no apparent legitimate purpose, using the Suspicious Activities Report forms. The National Securities Commission will then transmit the case to the National Financial Intelligence Unit.

1.4. Effective implementation of subparagraph 1 (b) of the resolution requires a State to have in place provisions specifically criminalizing the wilful provision or collection of funds by its nationals or in its territory, by any means, directly or indirectly, with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts. For an act to constitute an offence as described above it is not necessary that the funds should actually be used to carry out a terrorist offence (see article 2, paragraph 3, of the International Convention for the Suppression of the Financing of Terrorism). The acts sought to be criminalized are thus capable of being committed even if:

- **The only related terrorist act takes place or is intended to take place outside the country;**
- **No related terrorist act actually occurs or is attempted;**
- **No transfer of funds from one country to another takes place;**
- **The funds are lawful in origin.**

The current provisions of the law of Venezuela do not adequately appear to meet the requirements mentioned above. The CTC would welcome receiving particulars of the legal provisions which Venezuela has put in place in order to meet those requirements. In their absence the CTC would be grateful if Venezuela could provide it with an indication of the remedial steps which Venezuela intends taking in that regard.

The Venezuelan legal order currently contains no provisions in this regard; however, the situation will be regulated once the Act on Counter-Terrorism enters into force, as it stipulates that “anyone who by any means, directly or indirectly, provides, administers or collects funds or property with the intention of using them to commit any of the offences set forth in this Act shall be sentenced to a prison term of 15 to 25 years”.

1.5. Subparagraph 1 (c) of the resolution requires that States freeze without delay funds of persons who commit, attempt to commit, participate in or facilitate the commission of terrorist acts. The first and supplementary reports refer to a procedure which is available in relation to funds which “are connected with a crime that is being investigated”. However, Venezuela would appear to have no domestic legal provision for the freezing of funds, regardless of origin, which are:

- **Held in the names of persons and entities identified in lists, such as those approved for the purpose of Security Council resolution 1267 (1999), as being linked to terrorist activities; or**

- **Suspected of being linked to terrorism, but not yet used for the commission of a terrorist act.**

Please provide particulars of how Venezuela currently meets, or proposes to meet, that requirement.

Article 116 of the Constitution stipulates that property shall not be ordered confiscated except in cases permitted under the Constitution. It sets forth one exception, however. Pursuant to an enforceable judgement, the following may be confiscated: the property of natural or legal persons, whether nationals or foreigners, who are responsible for offences against public property, the property of persons who have illegally enriched themselves under government protection and property resulting from commercial, financial or other activities connected with the trafficking of psychotropic substances and narcotic drugs.

Article 66 of the Organic Law on Narcotic Drugs and Psychotropic Substances provides that movable and immovable property, assets, vehicles, ships or aircraft, apparatus, equipment, instruments and other articles which may have been used in the commission of the crimes described in the Law, including money-laundering, shall in all cases be confiscated and, pursuant to a final judgement of conviction, shall be handed over to the Ministry of Finance, which shall dispose of them. Pending the final court judgement, the confiscated property shall be delivered as a judicial deposit to the safekeeping and custody of persons authorized to that effect, and solely in exceptional cases shall be handed over to the Scientific, Criminal and Forensic Investigation Force attached to the Ministry of the Interior and Justice.

Another legislative instrument authorizing the freezing of funds is the General Act on Banks and Other Financial Institutions, article 235, paragraph 16 of which provides that one of the roles of the Office of the Superintendent of Banks is to require that the competent authorities, in accordance with the relevant constitutional and legal provisions, institute preventive measures for the freezing of an account, investment or financial transaction of any kind.

In addition, the Organic Code of Criminal Procedure stipulates in article 218 (cited in the second report) that in the course of the investigation of a criminal act, the Public Prosecutor's Office, with authorization from the examining magistrate, may order the seizure of documents, certificates, securities and sums of money held in bank accounts or safety deposit boxes or by third parties, when there are reasonable grounds for believing that they are connected with the criminal act that is being investigated.

It is important to note that although Venezuela has legislation for freezing funds of any origin, funds must be frozen in accordance with the system of rights and guarantees enshrined in the Constitution and the agreements and treaties signed and ratified by Venezuela, and such action consequently requires a prior decision or authorization from a judge. This does not preclude the freezing of funds suspected of being used to finance terrorism; although it is true that the Venezuelan legal order does not provide for such an offence, Venezuela has ratified the International Convention for the Suppression of the Financing of Terrorism, which has become part of Venezuelan law. Similarly, the United Nations Convention against Transnational Organized Crime, which Venezuela has also ratified, stipulates that "freezing" or "seizure" shall mean temporarily prohibiting the transfer, conversion,

disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority.

Article 36 of the draft Act against Organized Crime states that, during the course of an investigation into any of the offences committed in the context of organized crime, the Public Prosecutor's Office shall request the examining magistrate to authorize, as a preventive measure, the freezing or seizure of bank accounts that belong to the organization or individuals under investigation or that have been used to commit the offences, as well as the closure of any warehouse, shop, club, casino or night club.

1.6. Effective implementation of paragraph 1 of the resolution also requires the establishment of an appropriate monitoring mechanism (involving for example registration and auditing requirements) to ensure that the funds collected by organizations which have or claim to have charitable, social or cultural goals are not diverted to purposes other than their stated purposes, in particular to the financing of terrorism. The supplementary report in relation to subparagraph 1 (d) indicates (at page 7) that "the executive and legislative branches are discussing the adoption of legislation on that subject". The CTC would appreciate receiving a progress report on that point.

As stated earlier, the entry into force of the Act against Organized Crime will introduce regulations governing the activities of all entities that are not part of the formal financial system, but that also conduct activities of an economic nature.

1.7. The supplementary report states (at pages 4, 6 and 8) that "the National Assembly is currently debating a draft law against organized crime and a draft special law on terrorist acts, both of which would contain provisions for the suppression of activities connected with the financing of terrorism". The CTC would appreciate receiving a progress report of the enactment and an outline of the proposed draft laws.

The draft Act against Organized Crime was approved on first reading on 6 September 2002 and then submitted to the Standing Commission on Domestic Policy, Justice, Human Rights and Constitutional Guarantees for the preparation of a report to be used for the second reading. The report has been completed and is currently under discussion by the Commission plenary, with 93 of its 150 articles having been approved.

Concerning anti-terrorism legislation, on 29 November 2002 a bill entitled "Draft special law against Terrorist Acts" was approved on first reading by parliamentarians belonging to the Autonomous Parliamentary Bloc and submitted to the Standing Commission on Domestic Policy, Justice, Human Rights and Constitutional Guarantees for the preparation of a report to be used for the second reading. A proposal entitled "Act on Counter-Terrorism" was also submitted by the executive on 3 April 2003. Both proposals are under examination and a report is being prepared for the second reading by a technical team made up of professionals from the Office of the Vice-President of the Republic, Ministry of the Interior and Justice, Ministry of Foreign Affairs, Office of the Attorney-General and consultants from the Domestic Policy Committee of the National Assembly. This was done in conformity with rule 139 of the rules of procedure of the National Assembly, which stipulates that "once the examination process in respect of a draft law has begun,

should another draft law on the same subject be received, it shall be submitted, on approval, to the relevant committee for incorporation into the examination process".

Below is a brief outline of the above-mentioned draft laws, which are also contained in annexes to this document:

Draft Special Law against Terrorist Acts

The objective of this special law is to prevent and punish terrorist acts, i.e. offences committed with explosives, incendiary substances, weapons or other means intended to cause destruction, death or serious damage to the physical or mental health of an indeterminate number of persons, for the purpose of frightening the population or a specific group of persons, produce reprisals of a social, political or religious nature or obtain a measure or concession on the part of any representative of the public authorities; activities linked to terrorist groups, the manufacture, acquisition, theft, stockpiling or supply of weapons, munitions, explosives, inflammables, asphyxiating or toxic substances as well as any other kind of economic action, assistance or intervention undertaken for the purpose of financing terrorist groups or activities.

The Law also establishes the National Financial Intelligence Unit within the Ministry of Finance, the main function of which will be to implement protection systems and to put an end to financial activities that could be associated with terrorist activities.

It also imposes obligations and penalties on natural and legal persons and members of the financial sector involved in terrorist acts and on persons who cooperate in or finance such acts by laundering money deriving from drug trafficking or any other activity associated with organized crime.

Draft Act on Counter-Terrorism

The purpose of this Act is to characterize and punish any act or omission of a terrorist nature, for the purpose of guaranteeing respect for the constitutional order, peace and public health and of protecting the integrity of democratic institutions. To that end the law defines terrorism as meaning any action causing alarm, anxiety, fear or disturbance of the internal order with a view to endangering the lives or integrity of an indeterminate number of persons, subvert the constitutional order or adversely affect the public property or international relations of the Republic.

The draft Act imposes prison sentences of 10 to 20 years on anyone who provokes or maintains a state of terrorism in the country. It also provides for an aggravated offence when such an act is committed using inflammable, bacteriological or chemical substances or explosives or firearms.

Similarly, it provides that anyone who, by any means, direct or indirect, provides, administers or collects funds or property with the intention of using it to commit the offences set forth in the Law shall be sentenced to 15 to 25 years' imprisonment.

Article 24 of the draft Act states that the competent court may seize, on a preventive basis and without delay, funds, financial assets or movable or immovable property of natural or legal persons concerning whom there is sufficient evidence to presume that they have committed or will attempt to commit terrorist acts.

Finally, as mentioned earlier, a multidisciplinary commission is conducting a detailed analysis of these two draft laws with a view to preparing a single draft that meets both international and domestic requirements. This is because the drafts being submitted may contain some gaps in terms of types of offence, appropriate language and legislative technique, since they were drawn up by Parliament as a matter or urgency, in accordance with article 86, paragraph 3 of the National Public Service Law.

Organic Act against Organized Crime

The Organic Act against Organized Crime is aimed at preventing, investigating, prosecuting and punishing offences associated with organized crime and membership of such organized criminal associations and establishing the offences considered to be characteristic of or specific to such organizations.

In Title II of the Act the following are characterized as offences:

Offences against strategic material resources;

Offences against the socio-economic order;

Offences against the public order;

Offences against the public trust;

Offences against persons and individual freedom;

Offences against the administration of justice;

Offences against the preservation of public and private interests;

Sexual offences and offences against the family;

Offences against the public welfare;

Offences against government finance;

Offences against intellectual and industrial property rights;

Offences against freedom of industry and commerce.

Article 8 deals with terrorism, which carries a penalty of 10 to 15 years' imprisonment, and article 9 provides for aggravating circumstances, which carry a penalty of 18 to 20 years' imprisonment.

For offences associated with organized crime the procedure set forth in the Organic Code of Criminal Procedure will be followed, and provisions not appearing in the Code but contained in the Organic Act against Organized Crime will be applied, such as the principle of expediency in cases involving drug trafficking, weapons, terrorism, corruption and money-laundering. In such cases the competent judge may order the criminal proceedings stopped and order the accused to cooperate effectively with the investigation, provide information essential to avoid the continuation of the offence or the commission of other offences, assist in clarifying the incident being investigated or other related incidents or provide useful information for proving participation in the offence whose prosecution has been suspended.

Another provision set forth in the Act refers to the interception or recording of telephone conversations, in the course of investigation of the offences contained in

the Act. Following a reasoned request from the Public Prosecutor's Office, the examining magistrate may authorize the Office to interrupt, intercept or record telephone conversations and other radio-electric means of communications solely for the purposes of the criminal investigation.

1.8. Subparagraph 2 (a) of the resolution requires each Member State, inter alia, to criminalize the recruitment of terrorists within its territory whether the recruitment is concerned with the carrying out of terrorist activities inside Venezuela or abroad. Neither the first nor the supplementary reports make any reference to any current Venezuelan legislation which would cater for this aspect of the resolution. Please indicate how Venezuela intends fully to meet the requirements of subparagraph 2 (a) in relation to recruitment.

Section V, chapter IV, paragraphs 294, 295 and 296 of the Venezuelan Penal Code, concerning individuals who incite civil war, organize armed groups or threaten the public, provide the following:

Article 294. Any person who has performed any act with the aim of exposing any part of the Republic to devastation or looting shall be sentenced to 18 months to 5 years' imprisonment. If the attempt is successful, even in part, the sentence shall be five to nine years' imprisonment.

Article 295. Anyone who forms an armed group in order to commit a certain punishable act or who occupies a senior position or performs a special function within such a group shall for this sole action be sentenced to one to four years' imprisonment.

Other persons who have participated in the armed group shall be sentenced to one to two years in prison.

The provisions of articles 163 and 290 of the present Code shall apply.

Article 296. Anyone who forms an armed group without legal authorization, even though such group was not established to commit punishable acts, shall be sentenced to three to six months in a penitentiary or political prison.

With respect to planned legislation, article 14 of the draft counter-terrorism law provides that anyone who organizes, instructs, trains or hires armed persons or groups in respect of technical tactics or procedures for carrying out terrorist activities shall be sentenced to 15 to 25 years in prison.

1.9. Effective implementation of subparagraph 2 (d) and (e) of the resolution requires each State to make it a criminal offence for anyone to use its territory for the purpose of committing a terrorist act against another State or its citizens or for the purpose of financing, planning and facilitating terrorist acts against another State or its citizens, whether or not a related terrorist act has been committed or attempted. In addressing subparagraph 2 (e), the supplementary report draws attention (at pages 11 and 12) to the draft Act against Organized Crime and to the draft Special Law against Terrorist Acts, which have both been approved at first reading by the National Assembly. Please provide an outline of the relevant legislative proposals together with a progress report on their enactment.

An outline of the aforementioned draft laws was provided in the response to question 1.7. Information concerning all relevant draft laws currently under review has been attached to the present report.

1.10 Addressing subparagraph 2 (g), the supplementary report states (at page 14) that "there is no law on extradition in Venezuela and in practice extradition is governed solely by bilateral treaties or non-treaty arrangements". The CTC would be grateful if Venezuela could provide it with a list of those countries with which it has concluded bilateral extradition agreements.

Venezuela has signed the following bilateral extradition agreements:

- Venezuela and Belgium: extradition treaty signed at Caracas on 13 March 1884. Entered into force on 5 May 1884.
- Venezuela and Cuba: extradition treaty signed at Havana on 14 July 1910. Published in Official Gazette No. 11,886 of 14 April 1913.
- Venezuela and the United States of America: extradition treaty signed at Caracas on 19 January 1992. Entered into force on 14 April 1923.
- Republic of Venezuela and Republics of Bolivia, Colombia, Ecuador and Peru: signed the Bolivarian Extradition Agreement on 18 July 1911, which essentially provided that extradition may not proceed in the case of political crimes.
- Venezuela and Colombia: convention through exchange of notes interpreting article 9 of the Bolivarian Extradition Agreement. Exchange of notes took place in Caracas on 21 September 1928.
- Venezuela and Italy: treaty on extradition and legal assistance. Signed at Caracas on 23 August 1930. Published in Official Gazette No. 17,672 of 8 March 1932.
- Venezuela and Brazil: extradition treaty signed at Rio de Janeiro on 17 December 1938. Published in Official Gazette No. 20,114 of 21 February 1940.
- Venezuela and Chile: extradition treaty signed at Santiago, Chile, on 2 June 1962. Published in Official Gazette No. 27,790 of 19 July 1965. Entered into force on 27 August 1965.
- Venezuela and Spain: extradition treaty signed at Caracas on 4 January 1989. Published in Official Gazette No. 34,476 of 28 May 1990. Entered into force on 30 September 1990.
- Venezuela and Australia: extradition treaty signed at Caracas on 11 October 1988. Published in Extraordinary Official Gazette No. 4,477 of 14 October 1992. Entered into force on 19 December 1993.

1.11. Please provide a progress report on the ratification and implementation of the universal international instruments relating to terrorism to which Venezuela has yet to become a party. The CTC would also appreciate receiving an account of the penalties prescribed under Venezuelan criminal law in relation to those offences which are required to be established as crimes under the provisions of the universal conventions and protocols to which Venezuela is a party.

Venezuela has signed and ratified the following international instruments relating to terrorism:

- Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963. Published in Extraordinary Official Gazette No. 2,975 of 2 July 1982 and ratified on 4 February 1983.
- Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970. Published in Official Gazette No. 32,700 of 7 April 1983 and ratified on 7 July 1983.
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, opened for signature at Montreal on 23 September 1971. Published in Official Gazette No. 32,740 of 3 June 1983 and ratified on 21 November 1983.
- International Convention against the Taking of Hostages, adopted at the thirty-fourth session of the United Nations General Assembly in New York on 18 December 1979. Published in Official Gazette No. 34,069 of 10 October 1988. Venezuela acceded to the Convention on 13 December 1988.
- United Nations Convention against Transnational Organized Crime, signed on 14 December 2000 at Palermo, Italy. Approved by the National Assembly and published in Official Gazette No. 37,357 of 4 January 2003. The instrument of ratification was deposited at United Nations Headquarters in April 2002. Also deposited were its two supplementary protocols, the Protocol to Prevent, Punish and Suppress Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air.
- International Convention for the Suppression of Terrorist Bombings, adopted in 1997.Venezuela signed the Convention on 23 September 1988. The National Assembly approved the Act on 11 September 2002. The Act was then forwarded to the Office of the Attorney General of the Republic for approval and subsequent ratification. Published in Official Gazette No. 37,727 of 8 July 2003.
- International Convention for the Suppression of the Financing of Terrorism, adopted in New York on 10 January 2000. Venezuela signed the Convention on 16 November 2001. The National Assembly approved the Act on 11 September 2002. The Act was then forwarded to the Office of the Attorney General of the Republic for approval and subsequent ratification. Published in Official Gazette No. 37,727 of 8 July 2003.

Within the framework of the Organization of American States, Venezuela has signed and ratified the following anti-terrorism instruments:

- Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance, signed at the third special session of the Organization of

American States General Assembly, held at Washington, D.C., on 2 February 1971. Published in Official Gazette No. 30,223 of 5 October 1973 and ratified on 11 July 1973.

- Inter-American Treaty of Reciprocal Assistance ("Rio Treaty"), signed in Rio de Janeiro in September 1947 and ratified by Venezuela on 25 August 1948.
- Inter-American Convention against Terrorism, adopted at the Organization of American States General Assembly on 3 June 2002. Venezuela signed the Convention on that date.

The following offences and penalties set forth in the Venezuelan Penal Code deal with terrorist acts, which are required to be criminalized under the universal conventions and protocols to which Venezuela is a party:

Article 294. Anyone who carries out any action intended to expose any part of the Republic to devastation or looting shall be sentenced to 18 months' to five years' imprisonment. If the attempt is successful, even in part, the sentence shall be five to nine years' imprisonment.

Article 295. Anyone who, in order to commit a certain punishable act, forms an armed group or occupies a senior position or special function within such a group shall for this sole action be sentenced to one to four years' imprisonment.

Other persons who have participated in the armed group shall be sentenced to one to two years in prison.

The provisions of articles 163 and 290 of the present Code shall apply.

Article 296. Anyone who forms an armed group without legal authorization, even though such group was not established to commit punishable acts, shall be sentenced to three to six months in a penitentiary or political prison.

Article 297. Anyone who unlawfully imports, manufactures, possesses, bears, supplies or conceals explosive or incendiary devices shall be sentenced to two to five years' imprisonment.

Whoever, with the sole intention of terrorizing the public, creating a disturbance or causing public disorder, fires a weapon or throws explosive or incendiary substances at persons or property shall be sentenced to three to six years' imprisonment, without prejudice to the penalties corresponding to any offence they may have committed in using such weapons.

Article 298. If the explosion or threat occurs on the site of a public meeting and at the time when the meeting is being held, or if it occurs on an occasion when there is danger to the greatest number of people in times of public turmoil, calamity or disaster, the penalty shall be four to eight years' imprisonment.

Article 344. Anyone who sets fire to a building or other construction works, crops not yet harvested or stored or warehouses of combustible materials shall be sentenced to three to six years' imprisonment.

If the fire is set in dwelling places or in public buildings or those intended for public use, for a public utility company or for industrial plants; for the practice of religion; for storing or warehousing industrial or agricultural products, merchandise, raw materials or flammable or explosive materials or materials pertaining to mines,

railways, pits, arsenals or shipyards, the sentence shall be four to eight years in prison.

The same penalty shall be imposed on anyone who through some other means causes serious damage to industrial or commercial buildings or other installations.

Anyone who damages equipment intended for the transmission of electric energy or gas or who causes an interruption in their supply shall be sentenced to two to six years' imprisonment.

Article 345. Anyone who sets fire to farm buildings, crop fields or other plantations shall be sentenced to one to five years' imprisonment.

Article 346. Anyone who sets fire to animal pasture or grasslands without the owner's permission or to grasslands bordering forests which supply people with water, even though they are private, shall be sentenced to 6 to 18 months' imprisonment.

Article 347. The penalty established in article 344 shall be applied, respectively, to anyone who, with the intention of destroying, in whole or in part, the buildings or dwelling places indicated in the said article, prepares or causes the explosion of a mine, petard, bomb or other explosive apparatus or device, as well as to anyone who prepares or sets fire to flammable substances capable of producing a similar effect.

Article 348. Anyone who causes a flood shall be sentenced to three to five years' imprisonment.

Article 349. Anyone who, by damaging floodgates, dikes or other installations intended for the common defence against water flows or for recovery from a public disaster, creates the danger of flooding or of any other disaster shall be sentenced to 6 to 30 months' imprisonment.

If the flood or other public disaster does indeed occur, the penalty prescribed under the previous article shall apply.

Article 350. Anyone who sets fire to a vessel, airship or any other buoyant structure or who causes its destruction, submersion or sinking shall be sentenced to three to five years' imprisonment.

Article 351. If one of the offences set forth in the previous articles has affected military installations, buildings or depots, arsenals, rigs, vessels or airships belonging to the Republic or to one of its states, the sentence shall be four to eight years' imprisonment.

Article 352. Anyone who plans to cause a shipwreck by destroying, disrupting or causing any malfunction in a lighthouse or other signal, or using for that purpose a false signal or other contrivance, shall be sentenced to 6 to 30 months' imprisonment.

If the submersion or shipwreck of any vessel actually occurs, the provisions of the previous articles shall apply, depending on the case.

Article 353. Anyone who, in order to prevent a fire from being extinguished or to impede mechanisms intended to prevent submersion or shipwreck, removes, conceals or renders inoperable the materials, apparatus, rigging or other equipment used for extinguishing or prevention shall be sentenced to 6 to 30 months' imprisonment.

Article 354. The provisions of articles 344, 347, 348, 349, 350 and 351 shall also be applicable to anyone who, in a building or anything else belonging to him, commits one of the actions provided for in those articles and causes the damage referred to in those articles or endangers third parties or outside interests.

The indicated penalty shall increase by one sixth to one third if the act or event has the objective set out in article 466.

Article 355. Whenever the act or event provided for in the previous articles endangers another person's life, the penalties set forth in those articles shall be increased by up to one half.

Article 356. The penalties set forth in those articles shall be reduced to a prison sentence of one to three months if the cases provided for in the aforementioned articles concern an event of little significance and the offence does not endanger anyone's life or expose anything else to danger.

Article 358. Anyone who blocks the route of any means of transportation, opens or closes the communications of such routes, sends false signals or takes any action with the aim of threatening to cause a disaster shall be sentenced to four to eight years' imprisonment.

Anyone who causes an interruption of communications by means of explosives or who by the same means causes a derailment or failure of a means of communication shall be sentenced to 6 to 10 years' imprisonment.

Anyone who assaults or unlawfully takes possession of vessels, aircraft, or any means of transporting people or cargo, or the goods being transported, shall be sentenced to 8 to 16 years' imprisonment.

Anyone who assaults a taxi or any other means of public transport in order to rob its crew or passengers of their belongings or possessions shall be sentenced to 10 to 16 years' imprisonment.

Whenever several people are involved in the commission of the offences set forth in this article, the penalty shall increase by one third.

Article 359. Anyone who damages railways or the machines, vehicles, tools or other objects or equipment associated with them shall be sentenced to three to five years' imprisonment.

Article 360. Anyone who, through neglect or poor performance of his or her skill or occupation, or failure to observe regulations, orders or instructions, threatens to cause a disaster on a railway shall be sentenced to 3 to 15 months' imprisonment.

If the disaster actually occurs, the sentence shall be one to five years' imprisonment.

Article 361. Anyone who damages ports, quays, airports, oil pipelines, gas pipelines, offices, workshops, installations, equipment, pipes, pylons, cables or any other means used by transport or communications systems shall be sentenced to two to five years' imprisonment.

If the action causes serious harm to public security, the penalty shall be three to six years' imprisonment, and if it leads to a disaster, the penalty shall be four to eight years' imprisonment.

Article 362. For the due application of criminal law, ordinary railways shall be understood to mean any iron-track transport means having metallic or pneumatic wheels or wheels made of solid polythene or rubber or solid latex, and powered by steam, electricity or a mechanical or magnetic engine.

Similarly, telegraph shall be understood to include telephones intended for public use and other communications tools and facilities.

Article 363. Apart from the cases provided for in the above articles, anyone who by any means whatsoever destroys, in whole or in part, or renders impassable roads or works used for public communication by land or sea, or removes, for such purpose, objects intended to ensure the safety of such roads or works, shall be sentenced to 3 to 30 months' imprisonment; if the action has the effect of endangering human life, the sentence shall be 18 months' to five years' imprisonment.

Article 365. Anyone who endangers human life by polluting or poisoning public drinking water or items intended for public consumption shall be sentenced to 18 months' to five years' imprisonment.

Article 366. Anyone who contaminates or adulterates food or medical substances or other items intended for sale, thereby rendering them harmful to health, shall be sentenced to 1 to 30 months' imprisonment; the same penalty shall apply to anyone who in any way attempts to sell or make available to the public the aforesaid contaminated or adulterated substances.

Article 462. Anyone who abducts a person in an attempt to obtain ransom from that person, or from a third party, in the form of money, items, assets or documents that may have a favourable legal effect on the guilty party or any other person indicated by the guilty party, even though the attempt does not succeed, shall be sentenced to 10 to 20 years' imprisonment. If the abduction is intended to cause alarm, the penalty shall be two to five years' imprisonment.

1.12. Subparagraph 3 (g) of the resolution requires States not to refuse the extradition of alleged terrorists on the grounds that the latter claim to have acted from political motivation. According to the supplementary report (at page 15), Article 6 of the Venezuelan Penal Code states that the extradition of an alien may not be granted for political offences or for breaches of law relating to such offences, or for any action not established as an offence under Venezuelan law. Please confirm that this exception does not represent a bar to the extradition of a person for terrorist acts which he claims were politically motivated.

In this regard, Venezuelan legislators were aware of the difference between political crimes and terrorism. However, it is important to note that even if a terrorist act has a political purpose, it is still terrorism, and therefore extradition is applicable.

Accordingly, the Supreme Court of Justice decided as follows in the matter of the extradition of the Colombian dissident José María Ballestas (Sentence of the Criminal Court of 10 December 2001):

> "Terrorism is a treasonable, wicked and many-sided crime that especially victimizes the inhabitants of those States in which the barbarous terrorist acts are committed. In general, its victims are the world's peoples, who suffer from

the fear that such attacks will reoccur everywhere. Terrorism is considered an international violation of human rights, and hence universal coalitions to deal with it have been formed.

Terrorism is made up of a series of atrociously inhumane acts, which are not political offences and should therefore always lead to extradition. It is inadmissible for a political motive to be enough to justify any sort of crime. **Political aims do not justify certain forms of struggle. Political crimes, as idealistic as they are or should be, are opposed to the most serious crimes and, although they may have a political aim, or so their authors claim, the character of ordinary crime should predominate, based on the preponderance theory, and there should be no international immunity whatsoever.**

Therefore: If such an attack on innocent people or private rights is committed by means of an act of such violence and treachery that unnecessary evils, havoc and terror are produced, it is considered to be indiscriminate terrorism, i.e., it is non-selective in choosing its targets and deliberately attacks innocent victims.

Terrorism, and especially indiscriminate terrorism, ignores the precepts of humanitarian criminal law, endangers innocent lives and often destroys them, thereby threatening basic liberties and flouting human rights, and hence disturbing the peace and preventing human co-existence by damaging basic social institutions; it is therefore a crime against humanity or ‘delicta juris gentium’ and does not deserve the advantage of being treated as a pure or idealistic political offence. Terrorism is a counterfeit political crime. It does not represent a legitimate and sound political motive, but rather a spurious and corrupt one; it is not a legitimate political ideal to deliberately attack innocent victims and even kill them. Terrorism is not a political crime that deserves to be rewarded. Such a reward would contradict justice, criminal law and the moral sense of the peoples of the world.”