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Letter dated 11 April 2004 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 16 January 2004 (S/2004/60). The Counter-Terrorism Committee has received the attached fourth report from Brazil 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

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Annex

Letter dated 8 April 2004 from the Permanent Representative of Brazil to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

In response to your letter dated 9 January 2004, I have the honour to enclose herewith the fourth report of the Brazilian Government to the Counter-Terrorism Committee, pursuant to operative paragraph 6 of resolution 1373 (2001) of the Security Council (see enclosure).

(*Signed*) Ronaldo Mota **Sardenberg**
Ambassador
Permanent Representative of Brazil to the United Nations

Enclosure*

Ministry of Foreign Relations — Federative Republic of Brazil
Fourth Report to the Counter-Terrorism Committee, 2004

1. Implementation measures

EFFECTIVENESS IN THE PROTECTION OF FINANCIAL SYSTEM

1.1 - Effective implementation of paragraph 1 (d) of the Resolution requires having efficient machinery in place 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, particularly, to the financing of terrorism. The CTC notes from the third report (at pages 5-6) and from the supplementary report (at page 8) that different Brazilian agencies (the Court of Account of the Union, the Ministry of Justice, the Central Bank of Brazil, the Public Prosecutor's Office, etc.) are entrusted with this function. The CTC would be grateful for an account of how those agencies coordinate with each other as well as with the bodies charged with undertaking criminal investigations in Brazil. Are there procedures in place to respond to requests from foreign Governments to investigate specific organisations which are suspected of being linked to terrorism? Has Brazil ever taken judicial action against a non-profit organization based on its suspected involvement in terrorist financing? If yes, please outline the procedures which were followed and provide an account of the outcome of such actions.

Several Brazilian Agencies are entrusted with the function of ensuring that the funds collected by non-profit institutions are not diverted to illicit purposes, particularly, to the financing of terrorism.

1.1.1 - The Brazilian Government coordinates the action of such agencies through the National Strategy on Money Laundering ("ENCLA") for the year 2004 (see annexed document). ENCLA created a new system to fight money laundering in Brazil which is based on the principle of permanent consultation among public organisations on three levels: strategic, intelligence and operational. On a strategic level, ENCLA created the "Integrated Management Office for Prevention and Combat against Money Laundering" (GGI-LD), being responsible for the definition of public policy and goals in this area. GGI-LD is coordinated by the Department of Judicial Cooperation and Assets Recovery of the Ministry of Justice.

As regards the intelligence area, the Brazilian Financial Intelligence Unit is the Council for Financial Activities Control ("COAF"), created by Act 9613/98.

Operations for prevention and combat against money laundering are kept within the scope of the competent organisations, and must be coordinated on a case by case basis by means of specific task forces.

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

Integrated Management Office for Prevention and Combat against Money Laundering – Participating Organisations:

- Agência Brasileira de Inteligência do Gabinete de Segurança Institucional da Presidência da República ("ABIN") / Brazilian Intelligence Agency of the Institutional Security Cabinet of the Presidency of the Republic[1];
- Advocacia-Geral da União ("AGU") / Republic General Attorney Office[2];
- Banco Central do Brasil ("BACEN") / Central Bank of Brazil[3];
- Casa Civil da Presidência da República ("Casa Civil") / Civil Cabinet for the Presidency of the Republic[4];
- Controladoria-Geral da União ("CGU") / General Comptroller Office of the Republic[5];
- Conselho de Controle de Atividades Financeiras do Ministério da Fazenda ("COAF") / Council for Financial Activities Control of the Ministry of Finance[6];
- Conselho da Justiça Federal ("CJF") / Federal Justice Council[7];
- Departamento de Polícia Federal do Ministério da Justiça ("DPF") / Federal Police Department of the Ministry of Justice[8];
- Departamento de Polícia Rodoviária Federal do Ministério da Justiça ("DPRF") / Federal Highway Police Department of the Ministry of Justice[9];
- Departamento de Recuperação de Ativos e Cooperação Jurídica Internacional do Ministério da Justiça ("DRCI") / Assets Recovery and International Mutual Legal Cooperation Department of the Ministry of Justice[10];
- Gabinete de Segurança Institucional da Presidência da República ("GSI") / Institutional Security Cabinet of the Presidency of the Republic[11];
- Instituto Nacional de Seguridade Social ("INSS") / National Social Security Institute[12];
- Ministério Público Federal ("MPF") / Federal Public Prosecutor Office[13];
- Ministério das Relações Exteriores ("MRE") / Ministry of Foreign Relations[14];
- Procuradoria-Geral da Fazenda Nacional do Ministério da Fazenda ("PGFN") / Attorney General Office for the National Treasury of the Ministry of Finance[15];
- Secretaria de Direito Econômico do Ministério da Justiça ("SDE") / Economic Law Office of the Ministry of Justice[16];

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1 See homepage at <http://www.abin.gov.br/abin>.
2 See homepage at < http://www.agu.gov.br/agu.htm>.
3 See homepage at <http://www.bcb.gov.br>.
4 See homepage at <http://www.presidencia.gov.br/casacivil/site/static>.
5 See homepage at <http://www.presidencia.gov.br/cgu>.
6 See homepage at <http://www.fazenda.gov.br/coaf>.
7 See homepage at <http://www.cjf.gov.br>.
8 See homepage at <http://www.dpf.gov.br>.
9 See homepage at <http://www.dprf.gov.br>.
10 See homepage at <http://www.mj.gov.br>.
11 See homepage at <http://www.planalto.gov.br/gsi>.
12 See homepage at <http://www.inss.gov.br>.
13 See homepage at <http://www.pgr.mpf.gov.br/pgr/index.jsp>.
14 See homepage at <http://www.mre.gov.br>.
15 See homepage at <http://www.pgfn.fazenda.gov.br>.
16 See homepage at <http://www.mj.gov.br/sde>.

- Secretaria de Previdência Complementar do Ministério da Previdência Social ("SPC") / Complementary Social Security Office of the Ministry of Social Security[17];
- Secretaria Nacional Antidrogas do Gabinete de Segurança Institucional da Presidência da República ("SENAD") / National Anti-Drug Office of the Institutional Security Cabinet of the Presidency of the Republic[18];
- Secretaria Nacional de Justiça do Ministério da Justiça ("SNJ") / National Office of Justice of the Ministry of Justice[19];
- Secretaria Nacional de Segurança Pública do Ministério da Justiça ("SENASP") / National Public Security Office of the Ministry of Justice[20];
- Secretaria da Receita Federal do Ministério da Fazenda ("SRF") / Federal Tax and Revenue Office of the Ministry of Finance[21];
- Tribunal de Contas da União ("TCU") / Federal Court of Audit[22].

Assets Recovery and International Mutual Legal Cooperation Department

The Ministry of Justice created a Department for Assets Recovery and International Mutual Legal Cooperation, which has the following rights and competences in accordance with Decree 4991 of 18 February 2004:

> Art. 13. It is competence of the Department of Assets Recovery and International Mutual Legal Cooperation:
>
> I – to articulate, integrate and propose policies to the Government in aspects related to the combat against money laundering, transnational organized crime, assets recovery, and international mutual legal cooperation;
>
> II – to promote the coordination of Executive, Legislative and Judicial organs, including State and Federal Prosecutor's Offices for the combat against money laundering and transnational organized crime;
>
> III – to negotiate arrangements and coordinate the execution of international mutual legal cooperation;
>
> IV – to work as central authority to process mutual legal cooperation requests;
>
> V – to coordinate the Brazilian State's action in international forums on prevention and combat against money laundering and transnational organized crime, assets recovery and international mutual legal cooperation;

[17] See homepage at <http://www.inss.gov.br/08.asp>.
[18] See homepage at <http://www.senad.gov.br>.
[19] See homepage at <http://www.mj.gov.br/snj>.
[20] See homepage at <http://www.mj.gov.br/senasp>.
[21] See homepage at <http://www.receita.fazenda.gov.br>.
[22] See homepage at <http://www.tcu.gov.br>.

VI – to instruct, comment and coordinate the execution of active and passive international mutual legal cooperation, including rogatory letters; and

VII – to inform about assets recovery and mutual legal cooperation, prevention and combat against money laundering and transnational organized crime.

Council for Financial Activities Control

COAF has received, including from international sources, lists with names of persons and entities that are involved or are suspected to be involved in terrorist activities. Since then, COAF has included such names in its database and has disclosed those lists to governmental agencies such as the Federal Police Department, the Federal Tax and Revenue Office, the Brazilian Intelligence Agency, the Central Bank of Brazil, the Securities and Exchange Commission ("CVM")[23], and the Superintendence of Private Insurance ("SUSEP")[24], to take appropriate measures.

Furthermore, COAF verifies every suspect name contained in the CPF/CNPJ database in order to check if the natural person or legal entity referred to has legally operated in Brazil[25]. After that, if any indication is detected, COAF sends immediately the referred information to DRCI.

Central Bank of Brazil

The Central Bank of Brazil discloses the lists to all financial institutions in order to check if any person or legal entity in the list has operated in the financial system or has accounts or any other kind of assets.

BACEN's role in this matter is to monitor foreign exchange transactions and operations involving bank deposits maintained by non-residents in Brazilian banks. Among several kinds of transactions, donations and other types of transference of assets made by non-profit

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[23] See homepage at <http://www.cvm.gov.br>.

[24] See homepage at <http://www.susep.gov.br>.

[25] In the Brazilian legal system any natural or legal person must have a taxpayer identification number (CPF/CNPJ) in order to make commercial or financial operations. The Taxpayer Registry is mandatory for individuals or legal persons residing in Brazil or abroad who own goods or rights in Brazil subject to public registration including real state; vehicles; ships; aircraft; stock shares; banking accounts; financial market investments and capital market investments. Every year the Federal Tax and Revenue Office imposes re-registration for anyone who has a number and does not present annual tax information in aiming at preventing against crimes, for example, fraud. Thus, it is possible for intelligence authorities to trace any kind of financial movement using the CPF/CNPJ database which provides the requested information by the number of the CPF/CNPJ of the person or legal entity under investigation. The access to this database is restricted to competent authorities. These regulations allow FIU and competent authorities to identify and trace property that is, or may become, subject to confiscation or is suspected of being the proceeds of crime or used to finance terrorism.

organisations or non-governmental entities are subject to analysis. Overseas donations are also subject to specific regulations (Official Communiqué 9068 of BACEN of 4 December 2001).

Moreover, the Central Bank of Brazil has carried out research in the financial market, especially in the banking sector, about the existence of assets in the name of supposed terrorists or terrorist organisations under the request of foreign Governments and agencies.

1.1.2 - There are two ways of answering requests from foreign States on criminal matters. One of them is based on provisions of multilateral or bilateral treaties in mutual legal cooperation. The other way is based on the guarantee of reciprocity. Such procedures are applicable to any kind of offence, including those related to terrorism.

Chapter IV of Decree 2799/98 establishes COAF's duties and powers regarding the exchange of information and cooperation arrangements. Information can be shared with competent authorities of other countries and international organisations based on reciprocity or agreements. Articles 12 and 13 of Decree 2799/98 establish the following:

> Art. 12. COAF may share information with pertinent authorities of other countries and international organisations based on reciprocity or agreements.
>
> Art. 13. Whenever COAF receives requests for information concerning the crimes defined in Article 1 of Act 9613/98, from competent authorities or entities abroad, it shall respond or forward the requests, as the case may be, to the competent agencies, so that the necessary measures are taken for a response.

As a member of the Egmont Group, COAF can exchange information with other financial intelligence units. Any request for information from abroad is responded directly by COAF to the requesting party, on specific forms, and implies the transfer of responsibility for the preservation of confidentiality. COAF can also forward requests for information to other agencies in Brazil for necessary action (Article 11, Paragraph 4, and Article 13 of Decree 2799/98).

COAF has already signed Memoranda of Understanding with its counterparts in Argentina, Belgium, Bolivia, Colombia, France, Guatemala, Panama, Paraguay, Portugal, Russia, Spain, South Korea, and Thailand. COAF is also negotiating similar Memoranda with its counterparts in several other States.

1.1.3 - There has not been any confirmation of non-profit organisations operating in the Brazilian territory involved in financing terrorist organisations. Thus, there are no applicable judicial lawsuits. Within the existing co-operation frameworks, the Brazilian Government is ready to investigate requests from foreign Governments concerning allegations that may be formulated in that respect provided that corroborating evidence is provided.

1.1.4 – With respect to the last part of the question, by means of the Brazilian Intelligence Agency, the Brazilian Government exchanges information related to terrorism with equivalent agencies from several countries, and produces specific and strategic analytical reports about organisations connected to terrorism. So far, there has been no confirmation of suspicions concerning the involvement of such organisations in terrorist financing in Brazil. Nevertheless,

Brazilian authorities investigate any suspect activities of such organisations which come to their knowledge.

1.2 - As regards the suppression of the financing of terrorism as required by sub-paragraph 1 (a) of the Resolution, the CTC would appreciate learning whether the Financial Activities Control Council (COAF) has sufficient resources (human, financial and technical) to carry out its mandate. Please provide appropriate data in support of your response.

The Council for Financial Activities Control, the Brazilian FIU, was created by Act 9613/98, under the jurisdiction of the Ministry of Finance, for the purpose of receiving pertinent information, examining and identifying any suspicious occurrence of the illicit activities defined therein. Decree 2799 of 19 December 1998, and Administrative Rule 330 of 18 December 1998, respectively approved COAF´s Statute and Internal Working Procedures.

The Brazilian Anti-Money Laundering Law ("AML") was modified by Act 10701 of 9 July 2003 in order to include the financing of terrorism as a predicate offence to money laundering. Thus, economic sectors subjected to AML have now to scrutinize and report transactions suspected to be related to the financing of terrorism.

COAF is an administrative-model FIU and has been a member of the Egmont Group since 1999. The structure comprises a Plenary and an Executive Secretariat.

COAF is a collegiate decision-making body, whose jurisdiction includes the whole Brazilian territory. It is part of the structure of the Ministry of Finance. Its headquarters are located in the Federal District. The plenary of COAF is composed by a Chairperson, appointed by the President of the Republic, by indication of the Minister of Finance, and by 10 (ten) Council Members, chosen among the effective staff of the Central Bank of Brazil, the Securities and Exchange Commission, the Superintendence of Private Insurance, the General Attorney Office for the National Treasury, the Federal Tax and Revenue Office, the Brazilian Intelligence Agency, the Federal Police Department, the Ministry of Foreign Relations, the Ministry of Justice, and the General Comptroller's Office.

The structure of COAF Plenary gives broad scope for interaction and cooperation among the several organs in charge of different aspects of combating against money laundering. Legal means and resources are considered to be adequate by the Brazilian authorities. Since its creation, COAF has developed several initiatives to train its own technical staff, with specific courses concerning the execution of internal activities for combating against money laundering.

The Council has the support of an Executive Secretariat, directed by an Executive Secretary, who is appointed by the Minister of Finance.

COAF maintains local branches using the regional units of the offices to which the Council members belong with the purpose of providing adequate coverage of the whole Brazilian territory.

The expenses for the installation and functioning of COAF and its Executive Secretariat are provided for in the budget of the Ministry of Finance (Article 24 of Decree 2799/98).

COAF may request information and issue instructions to Financial Institutions ("FIs") directly, but as a matter of practice, all requests for information are made through the supervisory authorities with regard to regulated entities[26].

Moreover, Act 10701/03 added the following words to Article 5 of Act 9613/98:

> Paragraph 3. COAF may request from other governmental agencies banking or financial registering information on people involved in suspicious activities.

The ability to trace and monitor activities carried out by COAF will be fostered by the implementation of the National Registry of Banking Accounts which is being managed by the BACEN (Act 10701/03)

COAF has been working on three pillars: (*i*) technological development, (*ii*) personnel training, and (*iii*) improvement of information exchange. The Executive Secretariat has been improving its technological capacity by using international cooperation for the acquisition of new technology. The institutional structure of COAF facilitates cooperation among authorities in the exchange of information related to money laundering. The resources of COAF are generally compatible with resources available to other organs in the Public Administration.

Since its creation, COAF has developed many initiatives to train its own technical staff. Since 2001, COAF has been supporting specific courses concerning the modalities of combating the financing of terrorism, and has been promoting special training programmes directed to law enforcement and judicial authorities on those matters.

COAF continues to develop communication arrangements with law enforcement and judicial authorities. In accordance with legal provisions, COAF established agreements with 118 judicial authorities, public prosecutors, police, and other governmental agencies in Brazil, aiming at the exchange of information about money laundering cases.

In order to achieve the aforementioned purpose, COAF implemented, in 2002, the System of Information Request ("SISPED"), which allows any domestic authority to access all

[26] COAF has access to the following governmental databases: 1) National Registry of Legal Entities (on-line access); 2) National Registry of Natural Persons (on-line access); 3) Declaration of Real Estate Operations (on-line access); 4) The Information System of the Central Bank (on-line access); 5) Registry of Tourism Services Providers (on-line access); 6) Registry of Governmental Tourism Projects (on-line access); 7) Registry of Aircraft (access via batch); 8) National Registry of Vessels (access via batch); 9) Information System of the National Registry of Auto-motor vehicles (on-line access); 10) National Registry of Driver licenses (on-line access); 11) National System of Rural Registry (on-line access); 12) ICONE Service of the Presidency of the Republic (on-line access); 13) Integrated System of Governmental Staff Administration (on-line access); 14) System of Analysis of Foreign Trade Information (on-line access); 15) Database of Punished Civil Servants (access via Microsoft Excel); COAF is negotiating access to the following databases: 1) Database of the Attorney-General for the National Treasury; 2) Registry of Commercial Establishments; 3) National Registry of Electors – Personal Information; 4) Database of the Commercial Unions of the Brazilian Federative States; 5) Database of the National Council of Prosecutors; 6) National Registry of Social Security Information; 7) National System of Foreigners Registry; 8) National System of Passports; 9) National System of Wanted and Travel-banned People; 10) System of Prosecution Follow-up; 11) National System of Criminal Information; 12) National System of Procedures; 13) National System of International Traffic; 14) National System of Chemical Products Control; 15) National System of Statistical Data related to Anti-Drug Enforcement; 16) System of Generative Information of Tax Action; 17) Registry and Tracing of Customs Mediators' Actions; 18) Line of Foreign Trade Information; 19) Declaration of Income Tax of Natural Persons and Legal Entities; 20) Database of Tax Payers' Dossiers.

information available in the System referred to, including those involving secrecy. Thus, any authority can access the information by entering a registering form, inserting specific data which is analysed by COAF, and receiving a password provided by COAF to have permission to research. SISPED makes the access faster and safer as well as safeguards COAF's database.

1.3 - As regards the implementation of sub-paragraph 1 (a) and (d), could Brazil please provide the CTC with statistics on the number of cases where sanctions for providing support to terrorists or terrorist organisations were imposed against financial and non-financial institutions. Do Brazilian authorities audit financial institutions to verify compliance with requirements to submit suspicious transactions reports? Are bureaux de exchange and remittance agencies routinely audited? How often are financial institutions subject to such audits?

The Central Bank of Brazil checks the compliance of financial institutions with Anti-Money Laundering and Combating the Financing of Terrorism ("AML/CFT") requirements by a continuous "internal controls and compliance evaluation" programme ("ACIC"). These evaluations are applied to financial institutions under Central Bank regulation and cover several aspects, such as institutional policy, AML/CFT framework, AML/CFT procedures and tools, "know your customer", "know your employee" and training policies and internal and external audits roles.

Under AML/CFT, the Central Bank of Brazil evaluates: the quality of systems and procedures for detecting, selecting, analysing and reporting suspicious transactions and for managing this process; the existence of specific routines for high-risk products, such as private banking, internet banking, correspondent banking and branches located in vulnerable places; and the quality of information reported to COAF.

The Central Bank of Brazil, considering the size of financial institutions and their share in the financial market, established as main targets for this programme banks, foreign exchange brokers and credit cooperatives, carrying out, in the case of travel agencies and hotels, which performed bureaux de exchange activities, an inspection based in off-site monitoring of transactions performed by these entities and non-regular on-site inspections.

So far the Central Bank of Brazil has undertaken 107 on-site financial institutions examinations and has issued 6 (six) letters of commitment (warnings) related to non-compliance with AML/CFT provisions. There is no specific frequency for these evaluations, which depend on the kind and the size of the financial institution.

1.4 - Effective implementation of sub-paragraph 1 (a) of the Resolution, as well as Article 18 of the International Convention for the Suppression of the Financing of Terrorism, require the legal provisions which oblige financial intermediaries (such as lawyers, accountants, notaries and other professionals, when engaged in financial transactions) to identify their clients and to report suspicious transactions to the relevant authorities. The third report of Brazil (at page 7) refers to a consultation process conducted in this regard by the Council for Financial Activities

Control. The CTC would appreciate a progress report and an outline of the further steps Brazil intends to take in order to comply in full with this aspect of the Resolution.

The ratification process of the Convention for Suppression of the Financing of Terrorism is under way at the National Congress and is linked to goal 20 of ENCLA, under the responsibility of GGI-LD, as follows:

> Goal 20. To evaluate and to suggest changes in the draft legislation that: (*i*) broaden the types of the money laundering crimes in order to avoid the exhaustive list of antecedent crimes; (*ii*) introduce administrative measures to freeze illicit assets; (*iii*) define criminal organisation; (*iv*) typify the crimes of terrorism and terrorism financing; (*v*) modify Act 9613/98. The task force (consisting of representatives of AGU, COAF, DRCI, CJF, MPF, CGU and ABIN) must be responsible for following-up the drafts at the National Congress, having as a goal their approval until October 2004. The task force must also follow-up the consideration of the international treaties signed by Brazil, which relate to anti-money laundering policies, up to their approval.

Article 9 of Act 9613/98 requires individuals who are involved in financial operations to identify their clients and report any suspicious operations to COAF:

> Article 9. The obligations set forth in Articles 10 and 11 hereof shall apply to any legal entity that engages on a permanent or temporary basis, as principal or secondary activity, together or separately, in any of the following activities:
>
> I – reception, brokerage, and investment of third parties' funds in Brazilian or foreign currency;
>
> II – purchase and sale of foreign currency or gold as a financial asset;
>
> III – custody, issuance, distribution, clearing, negotiation, brokerage or management of securities;
>
> Single Paragraph. The same obligations shall apply to the following:
>
> I – stock, commodities, and future exchanges;
>
> II – insurance companies, insurance brokers, and institutions involved with private pension plans or social security;
>
> III – payment or credit card administrators and *consórcio* [consumer funds commonly held and managed for the acquisition of consumer goods][27];
>
> IV – administrators or companies that use cards or any other electronic, magnetic or similar means that allow fund transfers;
>
> V – companies that engage in leasing and factoring activities;

[27] Translator's note.

VI – companies that distribute any kind of property (including cash, real estate, and goods) or services, or give discounts for the acquisition of such property or services by means of lotteries or similar methods;

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

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

IX – any and all Brazilian or foreign individuals or entities that operate in Brazil in the capacity of agents, managers representatives or power of attorney, commission agents, or represent in any other way the interests of foreign legal entities that engage in any of the activities referred to in this article;

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

XI – individuals or legal entities that engage in the commerce of jewelry, precious stones and metals, works of art, and antiques;

XII – individuals or legal entities that trade luxury items or items of high value or deal with any activity that involves large sums of money in cash.

1.5 - Effective implementation of sub-paragraph 1 (a) of the Resolution requires financial institutions and other intermediaries to identify their clients and to report suspicious financial transactions to the relevant authorities. In this regard, would Brazil please provide the CTC with the number of suspicious transactions reports (STRs) received by the COAF and other competent authorities, with particular regard to STRs from:

- **Insurance sector;**
- **money remittance/transfer services**
- **bureaux de exchange?**

Please also indicate the number of STRs analyzed and disseminated as well as the number of these which have led to investigations, prosecutions or convictions.

Taking into consideration the period between 1999 and 2003 (until September), the statistics are the following:

Suspicious transaction report							
Deadline considered for 2004: 29 February 2004							
Non-Financial Institutions	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**TOTAL**
Bingo lotteries	35	1.412	960	55	19	5	2.486
Commodities exchanges	1	1	0	0	0	0	2
Credit and debit cards	0	3	42	58	96	1	200
Real estate, including the promotion, purchase and sale (of such properties)	206	769	610	741	635	77	3.038
Factoring	32	20	37	1	1	0	91
Jewelry, precious stones and metals dealers	6	7	1	1	0	1	16
Lotteries	0	133	167	97	152	13	562
Objects of art and antiques dealers	0	0	0	0	1	0	1
Subtotal COAF	**280**	**2.345**	**1.817**	**953**	**905**	**97**	**6.397**

Suspicious transaction report							
Financial Institutions	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**TOTAL**
Banking and non-banking financial institutions (Central Bank of Brazil)	544	4.308	4.521	4.697	5.212	1.137	20.419
Cash Transactions (Central Bank of Brazil)[28]	0	0	0	0	32.608	10.610	43.218
Insurance Companies (SUSEP)	0	0	7	361	876	208	1.452
Stock Exchange (CVM)	0	0	10	9	13	1	33
Pension Funds (SPC)	0	1	9	0	2	3	15
Subtotal	**544**	**4.309**	**4.547**	**5.067**	**38.711**	**11.959**	**65.137**
				2002	**2003**	**2004**	
TOTAL	**824**	**6.654**	**6.364**	**6.020**	**39.616**	**12.056**	**71.534**

[28] Money remittance companies/cash transfer services can only operate in Brazil through a financial institution, and depending upon the authorization of the Central Bank of Brazil. And, in this case they follow the same rules for all these sectors.

Taking into consideration the period between 1999 and 2003 (until September), the statistics are the following:

- STRs received and evaluated by COAF: 24.557;

- STRs disclosed to competent authorities: 128;

- Requests for assistance received by COAF from foreign authorities: 255;

- Number of responses provided to the requests received from foreign authorities: 255.

With the creation of GGI-LD and the establishment of ENCLA and its goal 17, under the responsibility of CFJ and to be achieved by 31 October 2004, Brazil will be able to provide the required data:

> Goal 17. To publish, coordinated with the MPF, DPF, DRCI, and State Courts of Justice, monthly statistics on the number of investigations, criminal procedures, convicting, acquittals and the number of judicial decisions related to the crime of money laundering, on both federal and state levels. This information must be separated by geographical areas.

1.6 - Within the context of the effective implementation of sub-paragraph 1 (a) of the Resolution, please explain the rules for identifying persons or entities who maintain bank accounts, on whose behalf a bank account is maintained (i.e. the beneficial owners), or who are the beneficiaries of transactions conducted by professional intermediaries, as well as any other person or entity connected with a financial transaction. Please outline any procedures which enable foreign law enforcement agencies or other counter-terrorist entities to obtain such information in cases where terrorist links are suspected.

Act 8021 of 12 April 1990 requires that every owner or beneficiary of shares, securities or any kind of deposit or financial investment be properly identified.

Article 64 of Act 8383 of 30 December 1991 establishes that account managers and other financial institutions' employees commit a crime in case they allow accounts opening or funds transfers carried out by non-existent natural persons or legal entities, or customers with fictitious names.

According to Article 10 of Act 9613 of 3 March 1998, financial institutions covered under Article 9 of the aforementioned Act shall identify their customers and maintain updated records in compliance with the provisions set forth by competent authorities requirements for the identification of customers and record-keeping.

Concerning this subject, the Central Bank of Brazil has issued several procedures to be adopted by financial institutions under its regulation. Prior to the enactment of Act 9613, the Central Bank of Brazil had issued Administrative Rule (*Resolução*) 2025 of 24 November 1993, amended by Administrative Rule (*Resolução*) 2747 of 28 June 2000, setting minimum identification requirements

for opening deposit accounts. These requirements include information such as customer's name, address, occupation, nationality, identity card, natural persons registry number ("CPF": income tax register number) for natural persons, and legal name, main activity, address and legal entities national registry number ("CNPJ") for legal entities. Customer identification requirements for legal entities include the individuals who are legally authorized to represent them, as well as their owners.

The Central Bank of Brazil, by its Administrative Rule (*Circular*) 3006 of 5 September 2000, established that financial institutions must check the status of account owners or their representatives in the Natural Persons Registry during the account opening process.

According to Administrative Rule (*Circular*) 2852 of 3 December 1998 issued by the Central Bank of Brazil, financial institutions and other institutions authorized to operate by the Central Bank of Brazil shall maintain updated records of their respective customers and consolidated internal controls and records that make it possible to verify not only the precise customer identification, but also the compatibility among the respective customer's fund transfers, economic activity and financial status.

Other rules issued by the Central Bank of Brazil have established identification procedures for payment and receipt of cash transactions (Administrative Rule –*Resolução* – 1946 of 29 July 1992), non-resident clients (Administrative Rule – *Circular* – 2677 of 10 April 1996), opening and transacting on deposit accounts through electronic means including through the internet (Administrative Rule – *Resolução* – 2817 of 22 February 2001), check transactions and other instruments for transfer of funds (Administrative Rule – *Circular* – 3030 of 12 April 2001) and foreign exchange transactions (Foreign Exchange Rules Consolidation, commonly known as "CNC").

Identification takes place at the time a business relationship is established and requires the presentation of appropriate original documentation and written confirmation by authorized bank staff. Identification is also required when there is suspicion that a transaction involves money laundering or when there is reason to suspect that the client or prospective client is circumventing the identification procedures.

Non-resident clients have similar identification requirements as domestic clients and financial institutions require copies of documents presented as identification to be certified by a public notary or a Brazilian Embassy official abroad.

Act 9613/98 requires records to be kept in a manner and form that allows financial institutions to readily and speedily reproduce the records, information or documents in usable form. The Central Bank of Brazil accesses financial institutions' internal controls and compliance with identification and due diligence requirements during the course of its on-site examinations programme.

Numbered accounts are not allowed in the Brazilian Financial System.

According to Brazilian law, evidence must be obtained through legal authorization in order to be considered valid in a judicial proceeding. Such legal authorization can be granted by Brazil in response to a mutual legal cooperation request (based on a treaty or based on a guarantee of reciprocity) made by a foreign State.

1.7 - In relation to money laundering and the financing of terrorism, could Brazil provide an outline of any special strategy which it may have developed with a view to enabling its investigation agencies to effectively prevent resources from being transferred to terrorists (to prevent, for example, under-invoicing of exports and over-invoicing of imports, manipulation of high value goods like gold, diamonds, etc.)?

In accordance with the rules and procedures established by the Central Bank of Brazil, all foreign exchange operations in Brazil must be registered in the Central Bank Information System ("SISBACEN"), as well as all operations involving bank deposits maintained by non-residents in Brazilian banks of R$ 10,000 (ten thousand reais) or more. Daily, approximately 300 international transfers in national currency ("reais"), and 15,000 foreign exchange contracts are registered in the Central Bank Information System.

The Central Bank of Brazil uses this data base for analysing operational processes used in the foreign exchange market, their instruments and mechanisms, as well as specific operations, with the aim of preventing or identifying illegal transactions or situations related to money laundering or terrorism financing.

In order to monitor these daily registers, the Central Bank of Brazil uses a computerized system that selects operations for further analysis based on predefined parameters. Among other criteria, selection depends on the classification of the operation and includes atypical transactions, customers without tradition or newly established, transfers in amounts not compatible with the customer's financial status, financial transfers to and from abroad for real estate acquisitions, transactions with gold, transactions settled in cash, import and export prepayments by companies without tradition or whose financial evaluation is not compatible with the amounts traded, transactions with entities established in tax havens and donations. In addition, the Central Bank of Brazil traces individuals' and entities' funds under request (including those linked to terrorist organisations and terrorism financing according to the United Nations Security Council lists).

Furthermore, the Ministry of Finance issued Administrative Rule 350 of 16 October 2002 according to which the Federal Tax and Revenue Office and the Central Bank of Brazil established, under their respective jurisdiction, special procedures for control and investigation in order to restrain fraud in foreign trade transactions.

1.8 - The CTC notes from the third report of Brazil (at page 6) that legal provisions it has put in place allow for the freezing and seizure of the proceeds of crime. Brazil also refers to Act 9613/98 which makes terrorism a money laundering predicate offence and allows the freezing and seizure of terrorism related funds. In this regard, the CTC notes that, for the purposes of the effective implementation of sub-paragraph 1 (c) of the Resolution, the legal provisions in place should provide for the freezing of funds, regardless of origin, even if they are:

- **suspected of being linked to terrorism, but have not as yet been used to commit a terrorist attack;**
- **linked to terrorist activities which have not as yet caused any material damage;**
- **to be frozen at the request of another State.**

The CTC would appreciate receiving an outline of the legal provisions, if any, which enable Brazil to meet these requirements. In their absence, what steps does Brazil intend taking to remedy the situation?

Brazilian law allows provisional remedy. A judicial decision may determine the freezing of funds to prevent a crime from happening, as well as to attend a request made by another State with this objective. In any case, an accurate listing of people involved and their assets, as well as evidence of the connection of such people with criminal activity, should be attached to the presentation of such request.

Moreover, goal 20 of the National Strategy on Money Laundering aims at introducing administrative procedures to freeze illicit assets, which will allow quicker response to suspicious financial transaction[29].

1.9 - The CTC also notes from the first report of Brazil (at page 13) that, for the purposes of implementation of the Resolution and preventing terrorist activities, Brazil uses the list of terrorists and terrorist organisations issued by the United States of America. Does Brazil have the authority to freeze the assets of terrorists and terrorist organizations which are not on the list drawn up in accordance with the provisions of Security Council Resolution 1267 (1999)? Could Brazil please provide the CTC with copies of the laws and regulations which are relevant to this area? In regard to compliance with sub-paragraph 1 (c), could Brazil provide the CTC with statistics showing how much property was frozen, seized, and/or confiscated in relation to the financing of terrorism? Could Brazil provide the relevant information as regard to individuals or entities designated in list produced by:

- **the Security Council;**
- **Brazil;**
- **other states or international organisations?**

The existing procedural provisional remedy in Brazil allows for the freezing of assets, though there are not any specific legal provisions for the cases related to terrorists and terrorist organisations, whether or not their names are included in a list. Up to 1 March 2004 no assets had been forfeited or seized in Brazil relating to the financing of terrorism.

[29] See annexed document.

The lists of individuals and entities connected to terrorist activities issued by the Committee of Resolution 1267 (1999) and any other pertinent United Nations organs are immediately forwarded by the Ministry of Foreign Relations to the Central Bank of Brazil and the Federal Police Department in order to search for financial transactions involving those individuals and entities and to prevent those individuals from entering and/or leaving the country.

1.10 - In regard to the effective implementation of sub-paragraphs 1 (a) and (c) of the Resolution as well as Article 8 of the International Convention for the Suppression of the Financing of Terrorism, the CTC would be grateful if Brazil could outline its principal legal procedures concerning the confiscation of assets or the operation of other deprivation mechanisms. Please describe how these procedures operate in practice and please indicate the authorities which are responsible for their implementation. Under Brazilian law, is it possible to confiscate the proceeds of a crime without first obtaining the conviction of its perpetrator (i.e. *in rem confiscation*)? If not, does Brazil envisage introducing such a system? The CTC would welcome receiving an account setting out any appellate provisions, allowing for the review of the decisions taken by the authorities referred to earlier in this paragraph. Please describe how Brazil deals, in its laws and procedures, with requests from foreign states for international legal assistance in relation to confiscation measures arising out of terrorist offences.

Brazil understands that the attainment of goal 20 of ENCLA will be appropriate for the establishment of the measures referred to in question 1.10. Investigations underway have not been conclusive as to whether there are operations to finance terrorism in Brazil or not.

PL 6764/02 (draft law) was annexed on 28 May 2002 to PL 2462/91 (draft law), which defines the crimes against the democratic rule of law within the State and against mankind. Both of them are under consideration of the Foreign Relations and National Defence Commission of the House of Representatives.

The National Security Act[30], refers to "acts of terrorism" as a crime to be punished with imprisonment of their perpetrators, even though it does not present a definition of such acts, as mentioned in the previous reports.

1.11 - The CTC would be pleased to receive a progress report on:

- **the adoption of an additional measures to fully implement the International Convention for the Suppression of the Financing of Terrorism as stated in the third report (at pages 4-5), particularly, its articles 5, 8 and 18;**

- **the enactment of PL 6.764/2002 as well as of PLS-117/2002;**

[30] Act 7170 of 14 December 1983.

- **the ratification of the three remaining international conventions and protocols relating to terrorism to which Brazil has yet to become a party;**

- **the implementation in domestic law of the international instruments relating to terrorism, which Brazil has already ratified, with particular regard to a list of the penalties prescribed for offences created in order to meet the requirements of the Conventions and Protocols.**

With reference to this question, please check the establishment of ENCLA for the year 2004 and the DRCI, according to the answer provided to question 1.1.

PLS 117/02 entered into force as Act 10701/03, which establishes, among other measures, terrorism financing as a predicated offence to money laundering.

Brazil has already ratified 9 out of the 12 treaties related to terrorism included in the list of Resolution 1373 (2001). Brazil has already signed the 3 remaining treaties, but has not ratified them yet as they are under consideration by the National Congress. Approval by the National Congress is an indispensable procedure to authorize the Government of Brazil to ratify international treaties that establish obligations to the country. In January, the Brazilian Government sent to Congress a formal request to speed up the examination of the 3 remaining treaties: (*i*) International Convention for the Suppression of the Financing of Terrorism, adopted by the United Nations General Assembly on 9 December 1999; (*ii*) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation dated 10 March 1988; and (*iii*) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf dated 10 March 1988.

EFFECTIVENESS OF COUNTER-TERRORISM MACHINERY

1.12 - Effective implementation of 1373-related legislation covering all aspects of the Resolution requires States to have in place effective and coordinated executive machinery as well as to create and utilize adequate national and international antiterrorist strategies. In this context, does Brazil's counter-terrorism strategy and/or policy targeting (at national and/or sub-national level) deal with the following forms or aspects of counter terrorist activity:

- **criminal investigation and prosecution;**

- **counter-terrorist intelligence (human and technical);**

- **special forces operations;**

- **physical protection of potential terrorist targets;**

- **strategic analysis and forecasting of emerging threats;**

- **analyzes of efficiency of anti-terrorist legislation and relevant amendments;**

- **border and immigration control, control preventing the trafficking in drugs, arms, biological and chemical weapons, their precursors and the illicit use of radioactive materials;**

- **coordination of States agencies in all those areas.**

If possible, could Brazil please outline the legal provisions and other administrative procedures as well as the best practices in this regard?

Act 9807 of 13 July 1999 establishes general rules and foundation for organisation and maintenance of witness protection programmes and threatened witnesses, and also institutes the Federal Programme for Assistance to Victims and Threatened Witnesses, among other measures.

Article 144 of the Federal Constitution of Brazil states that "public security, a duty of the State and the right and responsibility of all, is carried out in order to preserve public order, the protection of persons and property. The entities in charge of this task are: (*i*) Federal Police Department; (*ii*) Federal Highway Police Department; (*iii*) Federal Railway Police Department; (*iv*) Civil Police; (*v*) Military Police and Fire Brigade". Under this constitutional provision, several bodies work (local or federal levels) to maintain order in the Brazilian State. The Federal Police Department is in charge of investigating cases of national relevance such as: international illicit trafficking in drugs, smuggling, trafficking in weapons, crimes against the environment in areas protected by federal legislation, human rights, terrorism and other matters. Moreover, DPF is also responsible for controlling entrance and exit of non-Brazilians, issuing Brazilian passports and protecting foreign dignitaries in official visits to Brazil.

Regarding protection of potential targets of presumed terrorist acts (such as embassies and consulates), DPF operates (when ordered by its Director-General, according to legal rules) in co-ordination with the military police of each state. These forces are in charge of the protection of the external areas of the buildings while DPF is accountable for physical safety of personnel (ambassadors and diplomats). At present, the subdivision responsible for this kind of protection is the General Co-ordination of Institutional Defence, which plans and manages all actions to provide physical protection to potential terrorist targets. Armed Forces facilities have their own system of protection.

In addition to this kind of protection of people and institutions, the Brazilian Government also promotes intelligence actions in order to prevent terrorist attacks as well as to obstruct their financing. In order to achieve this goal, different governmental bodies of the Brazilian Intelligence System ("SISBIN") carry out intelligence activities. Such activities include the exchange of information with foreign intelligence bodies, satisfying, hence, sub-paragraphs 3(a) and (b), of the United Nations Security Council Resolution 1373 (2001).

The Brazilian legal system includes the following acts concerning terrorism: Act 7170/83 (National Security Act); Act (*Decreto-Lei*) 2848/40 (Penal Code); Act 9613/03 (criminalizes money laundering offences); Act 10744/03 (regulates Government's civil responsibility with regard to a third party in the case of terrorist attacks, war acts or similar acts against Brazilian aircraft operated by Brazilian airlines, excluding "air taxis"); Act 8072/90 (on the inadmissibility of amnesty, clemency, mercy, bail or temporary freedom for those who perpetrated terrorist acts); Act 9034/95 (on repression against organised crime) with the adjustment of Act 10217/01 (on intelligence and police agents infiltration).

Immigration control is carried out by DPF, which is responsible for registering the entrance and exit of foreigners in and out of the country. A new system – "*Sentinela*" (Sentinel) – is now being set up for this purpose. This new system has currently been tested in Fortaleza and Recife and will be introduced progressively in all airports, harbours and borders.

With regard to illicit trafficking in drugs, at present, DPF has been carrying out a strict control of chemical precursors necessary for the production of narcotics substances. The legislation in force is Act 10409/02 and Act 6368/73. Moreover, drug trafficking has been confronted on a daily basis. Specific legislation (Act 10826/03) increases the maximum imprisonment term for some offences. Control and inspection of items potentially useful for the manufacture of chemical and biological weapons are carried out by the Army Command by means of the Department for the Inspection of Restricted Substances.

Concerning the use of illicit radioactive material, its monitoring is carried out by the National Commission for Nuclear Energy ("CNEN"), which undertakes inspections on radioactive and nuclear materials based on Act 9765/98.

The Brazilian Government is a signatory to practically every international agreement pertaining to the combat against terrorism, regional, subregional or multilateral, signed within the Southern Common Market ("MERCOSUR"), the United Nations ("UN") and the Organisation of American States ("OAS").

The Brazilian Intelligence Agency directs specific efforts to information search and analysis, and identification of possible threats, in order to recommend prevention and protection procedures in general in the domestic context. ABIN exchanges information and knowledge with similar foreign services.

Special forces from the federal and state police, as well as the Brazilian Armed Forces, may work together if necessary, under the coordination of the Institutional Security Cabinet of the Presidency of the Republic, which is the Executive Office of the Chamber of Foreign Relations and National Defence ("CREDEN")[31].

Border and customs controls are permanent, and may be increased according to the situation.

1.13 - As regards the reference in Brazil's third report to PL 2.858/2000 and Article 288 of the Penal Code (at page 9), please outline how the relevant provisions in Brazilian law address recruitment to terrorist bodies, including:

- **through deception, such as representation that the purpose of recruitment is one (e.g. teaching) different from the true purpose;**

- **through other activities undertaken by people who do not actually belong to an unlawful association.**

[31] Decree 4801 of 6 August 2003 created the Chamber of Foreign Relations and National Defence.

On the one hand, Brazilian law does not have any specific provision addressing "recruitment to terrorist bodies". On the other hand, as referred to in the third report to the Counter-Terrorism Committee, Article 288 of the Brazilian Penal Code criminalises any association for the purposes of the commission of an offence, regardless the existence of any structure, job division, use of violence, intimidation, corruption or other similar means. In case there is suspicion that a legally constituted organisation is deviating from its original purposes and is recruiting people to terrorist bodies, for instance, competent police and intelligence units carry out an investigation in order to verify the genuine purposes of such an organisation and confirm or not the commitment of the crime under Article 288, followed by appropriate judicial proceedings.

1.14 - In the context of the effective implementation of sub-paragraph 2 (e), please indicate which special investigative techniques may be used in Brazil in relation to terrorism (e.g. interception of communications; electronic surveillance; observation; undercover operations; controlled delivery; "pseudo-purchases" or other "pseudo-offences"; anonymous informants; cross-border pursuits, bugging in private or public premises and etc.). Please explain what these techniques consist of, as well as the legal conditions which govern their use. The CTC is interested in finding out whether these techniques may only be applied to suspects, whether they may only be utilised with the approval of a court, and whether there is a limit to the time-period for which they may be used, etc. Could Brazil indicate whether those techniques could be used in cooperation with another State?

Brazil has no confirmation of cases of terrorist activities in the territory, financing of terrorist activities, recruiting of people for terrorist activities or support to terrorists or terrorist organisations. Thus, there are no judicial proceedings under way. Information leading to the suspicion that certain operations may be related to the financing of terrorist activities is being investigated.

In the field of intelligence, as well as in investigations conducted by law enforcement agencies, the Brazilian Government has attempted to investigate suspect terrorism-related activities. In order to do so, Brazil employs well-known operational techniques available – subject to the limits set by national laws – and applies agreements with bordering countries. In addition, there are agreements between Brazil and other countries in place aimed at carrying out specific joint actions in relation to information search and exchange regarding suspects of terrorist practice.

The techniques implemented by the Federal Police Department within the limits of the law with the purpose of repressing terrorist acts and related crimes are:

- communication interception;
- target surveillance;
- electronic surveillance;
- undercover operations;
- anonymous informants;
- control of the entrance and exit of foreigners;
- enforcement of judicial orders ("search, seizure and arrest warrants");
- access to private property (with proper legal authorisation);
- information exchange with other intelligence bodies.

Communication interception is permitted by the Federal Constitution of Brazil (1988), Article 5, XII. However, this practice always depends on court authorisation and its specific rules are set by Act 9296/96.

In Brazil, cross-border monitoring may occur only if there is a bilateral agreement. There are no bilateral agreements concerning this kind of surveillance yet.

In order to enter private premises, the DPF relies on resident's consent or, during day time, judicial order, according to Article 5 of the Federal Constitution of Brazil.

The entrance and exit of foreigners, as well as the procedures to apply for a permanent visa or to become naturalised are listed in Act 6815/80, which rules the legal status of foreigners in Brazil, creates the National Council for Immigration and establishes other measures.

The interception of phone calls, electronic surveillance and the right of entrance in private properties may be carried out in case of suspicion with a judicial authorisation.

The Federal Constitution does not allow the use of such procedures by another country inside Brazilian territory. Article 144 states that it is the duty of the Federal Police to investigate offences against social and political affairs, which encloses terrorist acts and its financing.

1.15 - With a view to bringing terrorists and their supporters to justice, please indicate whether Brazil has taken measures to protect vulnerable targets in the prosecution of terrorist crime (e.g. protection of victims, of persons collaborating in the pursuit of justice, of witnesses, of judges and prosecutors)? Please describe the legal and administrative provisions put in place to ensure this protection. Could Brazil outline whether these measures could be utilised in cooperation with, or at the request of another State?

Act 9807 of 13 July 1999 establishes general rules and foundation for organisation and maintenance of witness protection programmes and threatened witnesses, and also institutes the Federal Programme for Assistance to Victims and Threatened Witnesses, among other measures.

Articles 7 and 9 of Act 9807/99 establish the measures that may be taken in order to protect vulnerable targets, such as victims and witnesses, in the prosecution of terrorist crime, as follows:

> Art. 7. The programmes [of protection] comprise, among other things, the following measures, to be applied separately or simultaneously in the benefit of the protected person, according to the gravity and circumstances of the case:
>
> I – home safety, including communications control;
>
> II – escort and safety while moving, including commuting and to attend hearings;
>
> III – home transfer or provisional accommodation compatible with proper protection;

V – monthly financial aid in order to provide for individual and family basic needs, in case the protected person is not able to carry out regular work or lack another source of income;

VI – temporary suspension of professional activities, with no effect on corresponding earnings and advantages, if a public servant or military;

VII – social, medical and psychological assistance;

VIII – privacy with respect to the acts carried out under protection;

IX – assistance from the executive organ of the programme in order to facilitate the observance of civil and administrative obligations that demand personal attendance;

Single Paragraph. Monthly financial aid shall have a maximum amount to be established by the deliberative council at the beginning of each financial term.

Art. 9. In exceptional cases and considering the characteristics and gravity of coercion and threat, the deliberative council may forward requests from the protected person to the competent judge in order to change the full name at the public registry.

1.16 Brazil refers in the third report (at page 4) to the criminalizing, by Article 24 of Act 7.170/83, of maintenance, support and finance of terrorist organisations. Please outline the procedure used to proscribe foreign terrorist organisations (other those listed by the Security Council), if any, as well as data regarding the number of organisations involved and/or corresponding examples. How long does it take to proscribe a terrorist organisation at the request of another State or based on information supplied by another State?

The proscription of terrorist organisations at the request of other States is not a current practice in Brazil. Response time to specific requests depends on the situation. Emergencies and regular investigations are addressed in different ways. Answers to requests are provided as fast as possible.

Despite the continuous efforts made by the Brazilian Government to gather information about suspect events, so far no evidence has been attained regarding the existence of terrorism-related activities in Brazil.

1.17 - In the context of the effective implementation of sub-paragraph 2 (e), could Brazil provide the CTC with information relating to the number of persons prosecuted in Brazil for:

- **terrorist activities;**
- **the financing of terrorist activities;**
- **recruiting to terrorist organisations;**
- **providing support to terrorists or terrorist organisations.**

How many of these persons have been prosecuted for inviting support (including recruitment) for:

- **proscribed organisations; and**
- **other terrorist groups or organisations?**

People under suspicion of connection with any sort of terrorism-related activity have been investigated. However, so far there has been no confirmation of their actual involvement in terrorist activities.

EFFECTIVENESS OF CUSTOMS, IMMIGRATION AND BORDER CONTROLS

1.18 -Effective implementation of sub-paragraphs 2 (c) and (g) of the Resolution requires the enforcement of effective customs, immigration and border controls so as to prevent the movement of terrorists and the establishment of safe havens. In this regard, please outline the legal and administrative procedures developed by Brazil in order to protect its port facilities and ships, persons working in those port facilities and ships, cargo, cargo transport units, offshore installations as well as ships' stores from the risks of a terrorist attacks. Have the competent Brazilian authorities put procedures in place to review and update transport security plans periodically? If yes, please outline.

Surveillance of Brazilian harbours and control of arrivals, moorings and departures are carried out in co-ordination with the following bodies: (*i*) the Brazilian Navy is responsible for providing the permission that allows vessels to enter Brazilian territory; (*ii*) the Federal Police Department is in charge of investigating smuggling, trafficking in arms, trafficking in drugs, among others, and accountable for the entrance and exit of foreigners; (*iii*) the Brazilian Army controls the export and import of armament and restricted material; (*iv*) the Federal Tax and Revenue Office promotes the inspection of goods that arrive and/or leave the country.

The Government of Brazil is trying to ensure that all port facilities and ships in Brazil meet the requirements established by the new International Ship and Port Facility Security Code ("ISPS Code") adopted by the International Maritime Organization ("IMO"), which is set to enter into force in July 2004. Ships are inspected and given certificates by the "Directorate of Ports and Coasts" under the Navy of Brazil[32]. So far, around 60% (sixty percent) of the Brazilian ships have already met the requirements referred to in ISPS Code and will soon be granted a formal certification. With respect to port facilities, the National Commission of Public Safety in Ports,

[32] In Portuguese, "*Diretoria de Portos e Costas*". See its homepage at <http://www.dpc.mar.mil.br>.

Port Facilities and Waterways ("CONPORTOS")[33] under the Ministry of Justice issued Administrative Rule (*Resolução*) 18 of 18 December 2003 on ways of auditing, amending, updating and reviewing the Plans for Public Safety of Port Facilities[34].

1.19 - In the context of the implementation of sub-paragraphs 2 (b) and (j), has Brazil implemented the standards and recommendations of the International Civil Aviation Organisation (ICAO) as described in Annex 17? Please inform the CTC as to whether ICAO has conducted a safety audit of Brazil's international airports.

Brazil has implemented the standards and recommendations as described in Annex 17, with the following specific provisions:

(*i*) Standard 2.1.3: the principles governing measures designed to safeguard against acts of unlawful interference with international civil aviation are not yet applied to domestic operation in Brazil. The policy adopted by the Government of Brazil is that civil aviation security countermeasures must be commensurate to the threat levels and risks identified.

(*ii*) Standard 2.3.1: request from other States for special security controls for a specific flight or specified flights by operators of the requesting States shall be granted on a conditional basis related to the additional costs incurred. The policy of the Government of Brazil is that the operators of the State requesting special security controls must bear the corresponding additional costs incurred in the provision of those controls.

(*iii*) Standard 2.3.2: Brazil will cooperate with other States in relation to the respective national aviation security programmes, but on the basis of appropriate terms of agreement. The policy of the Government of Brazil is that cooperation in security matters must be attained through the establishment of appropriate terms of agreement among the States involved.

(*iv*) Standard 3.4.1: Brazil cannot yet ensure this standard, because legal and technical difficulties do not allow for background checks on individuals. Since this appears to be the case in many contracting States, the Government of Brazil believes this Standard should be reversed to the status of a Recommended Practice.

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[33] Decree 1507 of 30 May 1995 created the National Comission of Public Safety in Ports, Port Facilities and Waterways ("CONPORTOS"), which was modified by Decree 1972 of 30 July 1996. CONPORTOS is comprised by the Ministry of Justice, Ministry of Defence (represented by the Navy Command), Ministry of Finance, Ministry of Foreign Relations and by the Ministry of Transport. The State Comissions on Public Safety in Port Facilities and Waterways ("CESPORTOS") also integrate CONPORTOS. CONPORTOS' main objective is to create and implement a system of prevention of and combat against unlawful acts in ports, port facilities and waterways. It is the competence of CONPORTOS: (*i*) to create and install State Comissions on Public Safety in Port Facilities and Waterways ("CESPORTOS"); (*ii*) to rule public safety in ports, port facilities and waterways; (*iii*) to request whenever necessary technical and financial assistance from donor countries and international financial institutions by means of the International Maritime Organisation ("IMO"); (*iv*) to suggest ways of perfecting the legislation in force to competent organs; (*v*) to analyse programmes of enhancing public safety activities in ports, port facilities and waterways; (*vi*) to produce statistical analyses about illicit acts in ports, port facilities and waterways and results of investigations and penalties; (*vii*) to forward periodical evaluations on public safety needs in ports, port facilities and waterways to competent organs; (*viii*) to assist CESPORTOS whenever necessary; and (*ix*) to analyse and approve Safety Plans made by CESPORTOS.

[34] For additional information on full implementation of the ISPS Code in port facilities, see homepage at <http://www.mj.gov.br/senasp/senasp/conselhos_conportos.htm>.

(*v*) Standard 3.4.4: the ICAO guidance material and documents about this subject are not ready yet. Brazil wishes to comply with this standard. After ICAO issues the necessary guidance material and documents, Brazil will implement the national civil aviation security quality control programme, as practicable.

(*vi*) Standards 2.1.1, 3.2.4, 3.2.5, 3.2.6, and Recommended Practices 2.1.4 and its note 1; 2.2.1, 2.3.6, 5.3.2: Brazil shall continue to adapt these provisions as related to international civil aviation.

Referring to the second part of the question, ICAO has not yet conducted a safety audit of Brazil's international airports.

EFFECTIVENESS OF CONTROLS PREVENTING ACCESS TO WEAPONS BY TERRORISTS

1.20 - Sub-paragraph 2 (a) of the Resolution requires each Member State, inter *alia*, to have in place an appropriate mechanism to deny access to weapons to terrorists. With regard to this requirement of the Resolution as well as to the provisions of the Convention on the Marking of Plastic Explosives for the purpose of Detection and the International Convention for the Suppression of Terrorist Bombings please provide the CTC with information relevant to the following questions:

- **Legislation, regulations, administrative procedures**

The Government of Brazil has already signed and ratified both treaties referred to in question 1.20: (*i*) the Government of Brazil signed the Convention on the Marking of Plastic Explosives for the Purpose of Detection on 1 March 1991, ratified it on 4 October 2001 and implemented it internally by means of Decree 4021 of 19 November 2001; and (*ii*) the Government of Brazil signed the Convention for the Suppression of Terrorist Bombings on 12 March 1999, ratified it on 23 August 2002 and implemented it internally by means of Decree 4394 of 26 September 2002.

There are two main pieces of legislation which establish norms for the proper use and handling of weapons in Brazil in its various aspects: (*i*) Decree 3665, enacted on 20 November 2000, regarding the supervision of activities carried out by individuals and legal persons (weapon stores/distributors) which involve products controlled by the Army. Those activities include, among others, the manufacturing, recovery, maintenance, industrial utilization and commercialization of weapons, usually those of high caliber and restricted use. The Directorate for the Supervision of Controlled Products ("DFPC")[35] subordinated to the Army Command under the Ministry of Defence is the main body in charge of implementing the provisions set forth by Decree 3665/00; (*ii*) Act 10826, enacted on 22 December 2003, lays down strict norms and regulations on registration, acquisition, possession and commercialization of weapons,

[35] In Portuguese, "*Diretoria de Fiscalização de Produtos Controlados*". Its homepage provides information in Portuguese on lists of products controlled by the Ministry of Defence (such as weapons, ammunitions, explosives, sensitive chemical goods, chemical goods of military use, pyrotechnic device, armour and bullet-proof vest); acquisition, import and export rules; general legislation; control; registry; legislation. See homepage at <http://www.dfpc.eb.mil.br>.

mainly those for individual use. It also confers more rigorous powers to the National Weapons System ("SINARM")[36] operated by the Federal Police Department under the Ministry of Justice. Based on this new law, also known as the "Disarmament Statute", only the Federal Police will be able to issue permits for the use of weapons; state police will no longer have that prerogative, as they used to under the previous law. Moreover, very few security agencies – aside from the police and armed forces – and individuals will be allowed to carry weapons, unless they prove to be involved in highly dangerous professional activities or have suffered reiterated threats to their physical integrity.

- What national measures exist to prevent the manufacture, stockpiling, transfer and possession of unmarked or inadequately marked:

- **firearms, their parts and components and ammunition;**
- **plastic explosives,**
- **other explosives and their precursors?**

Decree 3665/00 sets strict controls for preventing the manufacture, stockpiling, transfer and possession of unmarked or inadequately marked firearms, plastic explosives and other explosives and their precursors. Decree 3665/00 and its complementary rules (*Portarias*) also specify standards for the appropriate marking of weapons, which must be profound enough – according to technical criteria – so as to make it difficult to obliterate or remove them. Whenever unmarked or inadequately marked firearms from overseas are seized in Brazil, the Federal Police Department proceeds to their prompt destruction, unless they serve as evidence for crime investigations.

Aside from legislative measures, DPF carries out police intelligence-gathering operations aimed at identifying criminal organisations and illicit trafficking, as well as systematic crime-combating routines activities.

- **Export control**

- Please describe the system of export and import licensing or authorization, as well as measures on international transit, used by Brazil for the transfer of:

- **small and light weapons;**
- **other firearms, their parts and components and ammunition;**
- **plastic explosives;**
- **other explosives and their precursors.**

[36] In Portuguese, "*Sistema Nacional de Armas*".

Decree 3665 of 20 November 2000 updated rules regarding the inspection of goods under the control of the Directorate for the Supervision of Controlled Products of the Ministry of Defence (R – 105). The first Annex to Decree 3665/00 outlines its main objectives; definitions; general goals to be achieved through the inspection scheme; general rules on controlled goods and services related thereto; entities involved in the inspection scheme; responsibilities, powers and structure of the entities in charge of inspection; procedures related to the national registry[37]; conditions and requirements with respect to industries that produce controlled goods; inspection of national activities: production, packing, stockpiling, storage, safety, inspection, acquisition, transport, exhibition, transit[38] of and trade in controlled goods; foreign trade inspection: export, import, customs procedures; administrative proceedings and penalties for those who do not comply with the rules set by the Decree referred to; seizure and destruction of controlled goods.

According to Article 8 of Decree 3665/00, a product is included in the list of products under strict control of the Ministry of Defence if it has the potential to cause destruction or other risk characteristic which justifies that its use be restricted to legally authorised natural persons or legal entities with specific technical, moral and psychological competences in order to assure the safety of society and country.

Article 9 of Decree 3665/00 established specific requirements, such as the issuance of certificates and other documents, generally under the jurisdiction of the Ministry of Defence, in order to authorise manufacture, use, import, export, customs procedures, transit and trade in controlled products.

The international transit of weapons through the Brazilian territory is subject to specific procedures for authorization laid down by Decree 3665 of 20 November 2000, with the objective of preventing the possibility of weapon deviation schemes. As a matter of policy, no licenses for transit are being granted.

Act 9112 of 10 October 1995, entitled "Rules of the Export of Sensitive Goods and Services Directly Linked Thereto", is also an essential legal provision for Brazil's export control system. Article 1 provides definitions of "goods for use in times of war", "dual-use goods", "goods for use in the nuclear area", "chemical and biological goods" and lists the services directly linked to these goods which are subject to export controls. Article 2 states that the controlled items are compiled in Lists of Sensitive Goods, which are periodically updated and published in the Federal Government Official Gazette ("*Diário Oficial da União*"). Article 3 establishes specific licensing procedures. Article 4 establishes an Interministerial Commission on Controlling Exports of Sensitive Goods, under the Office of the President of the Republic, comprising representatives of the federal entities involved in the process of exporting the goods covered by Act 9112/95. Article 5 outlines the main duties and powers of the Commission referred to in Article 4. Articles 6 and 7 specify penalties for export control violations. Article 8 designates

[37] Article 39 of the Annex to Decree 3665/00 states that "register is compulsory for natural persons and legal entities, both from the public and private sectors, which produce, give industrial use, store, trade, export, import, handle, transport, keep in proper condition and fix sensitive goods controlled by the Ministry of Defence". Article 40 states that "the natural persons and legal entities, registered or not, which deal with sensitive goods controlled by the Ministry of Defence, are subject to inspection, control and penalties under this Statute and pertinent complementary legislation in force".

[38] Article 165 of the Annex to Decree 3665/00 states that "controlled goods subject to transit inspection shall only transit within the borders of the country after obtaining specific permission from the inspection authorities of the Ministry of Defence through a nationally valid document entitled GT, Annex XXIX".

the Ministry of Defence as the supervisory authority for all transactions involving sensitive goods and services. Article 9 empowers the Executive branch to regulate all export transactions involving sensitive goods and services. Article 10 states that the law enters into effect on 10 October 1995.

Act 9112/95 and the pertinent presidential decrees associated with joining the Nuclear Suppliers Group and the Missile Technology Control Regime together form the "National Policy of Exports of Military Goods" ("PNEMEN").

As for import licensing and authorization, it depends on the approval of the Ministry of Defence. All requests must include comprehensive documentation which is submitted to the approval of the Army Command. If it considers that a request fulfills the requirements, it then approves the import license under the Brazilian Integrated Foreign Trade System ("SISCOMEX")[39], a body subordinate to the Ministry of Finance.

After the import request is registered under SISCOMEX, another license is emitted for shipment authorization. As soon as the merchandise arrives in the country, it is retained for customs clearance, which is implemented through the presence of a certified official from the Ministry of Defence and another from the Brazilian Customs. The product is therefore twice verified and its content is confronted with the specifications described in the import document.

Export licensing or authorization also requires fully documented request by the interested party, who has to specify the country to which it intends to export and the product itself. If it regards weapons employed by the armed forces, authorization depends on a joint evaluation by the Ministry of Defence and the Ministry of Foreign Relations. Other weapons (low caliber) are contingent on Army Command approval.

- Please specify procedures of export control and existing mechanism of exchange of information of sources, routs and methods of traders in arms?

Sources, routes and methods of traders are analysed by police and armed forces intelligence agencies. For the purposes of export control procedures, Brazil currently does not allow transit of controlled weapons through its territory.

- Is it necessary to lodge and register or check of the Goods declaration and supporting documents relating to firearms prior to the import, export or transit movement of the goods as well as encourage importers, exporters or third parties to provide information to Customs prior to their shipment? Please outline also any appropriate mechanism to verify the authenticity of licensing or authorization documents for the import, export or transit movements of firearms?

Registering and checking functions are mainly conducted through SISCOMEX. Brazilian Customs, in coordination with the Army Command, relies upon SISCOMEX to keep records and ensure the fulfilment of Goods declaration and supporting documents relating to firearms prior to the import and export movement of goods. SISCOMEX has been one of the first worldwide systems to integrate Customs controls at seaports, airports and land borders,

[39] For additional information on SISCOMEX, see homepage at <http://www.receita.fazenda.gov.br/aduana/siscomex/siscomex.htm>.

allowing for the computerized collection of taxes. The system has been operating since 1994 for exports and since 1997 for imports.

By integrating controls of commercial, administrative, fiscal and currency exchange areas, SISCOMEX has rationalised the use of information and, as a consequence, eliminated paper documents. Thus, Goods Declaration relating to firearms must be submitted by means of electronic licensing under SISCOMEX prior to the import or export. The system checks the information and identifies the license, which has to be corroborated afterwards by physical and on-site checking.

- Has Brazil Custom Service implemented intelligence-based risk management on borders to identify high-risk goods? Please outline data elements required by Customs Administrations to identify high-risk consignment prior to shipment.

The Brazilian Customs uses intelligence-based risk management to identify all kinds of frauds, such as those concerning illicit trafficking in drugs and arms. Two assessment approaches are applied: (*i*) objective risk – determined by combining aspects like the nature of the goods, the means of transportation, country of origin and packing method; and (*ii*) subjective risk – estimated by interpreting patterns of behaviour and profiles of intervening agents, such as importers, carriers and brokers.

Procedures for effectively assessing risks include computer crosscutting evaluations, exchange of information between domestic customs units and other national and foreign agencies. Access to WCO Customs Enforcement Network ("CEN") has also proven to be a highly effective tool, along with the Brazilian Customs participation in the Regional Customs Intelligence Liaison Office ("RILO/WCO").

Brazilian Customs has increased its risk assessment capabilities by establishing a Central Intelligence Office and a network intertwining local intelligence officers who work with risk analysis instruments to identify potentially perilous goods and operations.

- **Brokering**

- Do Brazil's laws require disclosure on import and export licenses or authorization, or accomplishing documents, of names and locations of brokers involved in the transaction?

Brazilian legislation allows no secrecy whatsoever concerning commercial dealings with firearms and other weapons. The public is granted access to that kind of information without restrictions.

- Do legal provisions in place provide for share the relevant information with foreign counterparts to enable cooperation in preventing illegal shipments of firearms, their parts and components and ammunition as well as explosives and their precursors?

There is no legislative impediment for the sharing of information with foreign counterparts to enable cooperation in preventing illegal shipments of firearms and other products. On the contrary, sharing of information with that purpose is encouraged, even in the absence of bilateral agreements for mutual legal cooperation.

- **Stockpile management and security:**

- What national standards and procedures exist for the management and security of firearms and explosives stocks held by Government of Brazil (in particular, held by armoured forces, police, etc.) and other authorized bodies?

Brazil does not have a unified police force. Aside from the Federal Police, there is the Federal Highway Police as well as civil and military state police forces, covering all Federative units. Each of these police forces is fully in charge of its own standard and procedures for the management and security of firearms, even though all of them have to comply with proceedings set forth in Decree 3665/00 and other competent legislation[40]. If a weapon is missing, administrative proceedings are put in place.

- Has Brazil implemented, using risk assessment principles, any special security measures on the import, export and transit movement of firearms, such as conducting security checks on the temporary storage, warehouses and means of transport carrying firearms, and requiring persons involved in these operations to undergo security vetting? If yes, please give details.

Strict security checks are conducted in all of those phases, as described in previous responses concerning legislation and export/import procedures. As for storage and warehouses, police agents – whatever the specific force to which they belong – in charge of their surveillance must participate in constant rotation guarding-schemes, in which each officer has to check the amount of weapons left in the previous turn, subject to severe penalties in case of disappearance of goods.

- **Law enforcement / illegal trafficking:**

- What special measures are used by Brazil to prevent and suppress illegal trafficking in firearms, ammunitions, and explosives, utilized by terrorists?

Aside from keeping an updated database system to keep track of legal and illegal firearms, the Federal Police Department carries out joint intelligence operations with other national police forces as well as with foreign counterparts. DPF has established joint mechanisms with neighbouring countries in order to exchange techniques and information on potential arms traffickers. For instance, Brazil has an a formal agreement with Paraguay under which Paraguayan authorities have to constantly report lists of weapons acquired by Brazilian citizens in that country, and vice-versa.

DPF has also installed special Intelligence Facilities on the borders with Colombia and Paraguay so as to foster cooperation in tracing arms trafficking - among other types of crimes – often with logistical support from the Armed Forces.

Under the auspices of bilateral anti-drugs agreements, the Ministry of Foreign Relations – through the General-Direction for Combating Transnational Crimes ("COCIT/MRE") – organizes Anti-Drug meetings on an annual basis with the participation of representatives from

[40] For additional information on this subject, please see comments on "legislation, regulations, administrative procedures" and "export control" above.

several governmental bodies. In those *fora*, the prevention of and combating against arms trafficking constitutes one of the main topics of the agenda.

In 2003, DPF established a Directorate of Combat against Organized Crimes ("DCOR") in its headquarters, in Brasília, and included in such Directorate the Division of Combat against the Trafficking in Illicit Weapons ("DARM"). Besides, Offices of Combat against the Trafficking in Illicit Weapons ("DELEARM") were created in every Regional Superintendence, in each one of Brazil's 27 federative states. These offices carry out a systematic and effective combat against trafficking in weapons in Brazil by means of coordination with several national and international police units and using police intelligence techniques.

1.21 - With regard to the requirements of sub-paragraph 2 (a) of the Resolution, could Brazil outline its mechanisms and procedures in place to implement legal provisions or controls on the export of goods, the transfer of technologies, the provision of technical assistance overseas, and activities connected with the trade in controlled goods, with a view to preventing terrorists from gaining access to weapons or hazardous materials. The CTC would appreciate it if Brazil could provide it with statistics on the use of legal provisions to prevent terrorists from gaining access to weapons.

No statistics are available in that respect since Brazil has not yet identified any case of illicit arms trafficking related to potential access by terrorists, notwithstanding constant preventive measures, as described in previous responses. Organised crime groups in Brazil have specific characteristics generally associated with profit-making schemes that have shown no connection so far with terrorist activities, in spite of investigation of some leads.

1.22 - Please outline legal provisions which Brazil has put in place to prevent terrorists from acquiring, by legal or illegal means, hazardous materials, such as radiological, chemical and biological materials, their waste products, as well as nuclear, chemical and biological weapons. Has Brazil established a national reporting or auditing procedure to detect the loss or theft of hazardous materials mentioned above, whether held by government or private bodies?

Act 9112 of 10 October 1995 rules on the export of sensitive goods and services directly linked thereto, namely goods for use in times of war, dual use goods, and goods for use in the nuclear, chemical and biological areas. The law provided for the establishment of Lists of Sensitive Goods, whose items are subject to prior governmental export authorisation.

An Inter-Ministerial Commission on Controlling Exports of Sensitive Goods was also established by Act 9112/95, being responsible for the maintenance of the Lists referred to, the proposition of control criteria and procedures, and the application of stipulated penalties. These Lists were updated twice in 2001 (Administrative Rule MCT/MD 631 of 13 November 2001 and Administrative Rule MCT 804 of 13 December 2001), providing for the inclusion of chemical substances listed in the Chemical Weapons Convention (CWC).

According to Decree 4214 of 30 April 2002, the Ministry of Science and Technology coordinates the Inter-Ministerial Commission on Controlling Exports of Sensitive Goods,

which comprises representatives of the following ministries: (*i*) Ministry of Science and Technology[41]; (*ii*) Ministry of Defence[42]; (*iii*) Ministry of Development, Industry and Foreign Trade[43]; (*iv*) Ministry of Finance; (*v*) Ministry of Justice; (*vi*) Ministry of Foreign Relations.

Article 4 of Decree 4214/02 states that:

> Art. 4. It is the competence of the Commission:
>
> I – to set administrative rules, criteria, procedures and control mechanisms to be adopted regarding exports of sensitive goods and services directly related thereto under Act 9112 of 1995;
>
> II – to set, update and make public the list of sensitive goods;
>
> III – to impose administrative penalties under Article 6 of Act 9112 of 1995;
>
> Paragraph 1. The Commission, in the exercise of its competence, shall:
>
> I – analyse any potential occurrence of activity prohibited by international conventions or regimes that rule the transfer of sensitive goods, in particular:
>
> a) the Convention for the Prohibition of Chemical Weapons[44];
>
> b) the Convention for the Prohibition of Biological Weapons[45];
>
> c) the Missile Technology Control Regime; and
>
> d) the Nuclear Suppliers Group;
>
> II – analyse and debate on proposals and relevant research to achieve its goals;
>
> III – initiate due administrative proceedings in order to investigate the occurrence of potential activities which are prohibited regarding sensitive goods;
>
> IV – forward, in case of evidence of a crime, a copy of the administrative proceeding to the Federal Public Prosecutor's Office for due investigation;
>
> V – set its own internal working procedures.

[41] See homepage at <http://www.mct.gov.br>.
[42] See homepage at <http://www.defesa.gov.br>.
[43] See homepage at <http://www.desenvolvimento.gov.br>.
[44] "Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction".
[45] "Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction".

The General Direction of Sensitive Goods of the Ministry of Science and Technology plays a fundamental role in licensing exports of controlled dual-use goods and technologies[46]. Exporters send their license applications through SISCOMEX information system, which contains comprehensive profiles of all Brazilian exporters and importers. Brazilian authorities pay special attention to end-use and end-user statements while analysing license applications. An import certificate issued by an authorised Government agency of the importing country is an important document in any application to export goods to foreign private companies. It states that the company is legally authorised to import sensitive goods and that the company shall not re-export such goods to a third country without due authorisation of the importing country. Regarding sales to other States, the Government of Brazil requires that foreign governments which import sensitive goods do not re-export them to a third country without formal authorisation and use those goods only within their borders.

Paragraph 3, Article 3 of Act 9112/95 extends the application of the provisions of the Act stating that "the competent federal entities may apply the provisions of this Article to other goods and services not covered by Items I and II [items on the List of Sensitive Goods and services related to them], provided that they are deemed to contribute either fully or partially to development, production or use of weapons of mass destruction – nuclear, chemical or biological – or delivery systems, including missiles capable of carrying such weapons".

Other provisions in specific areas include:

(*i*) Nuclear materials

The National Commission on Nuclear Energy ("CNEN"), established in 1956, is Brazil's main controlling body on nuclear activities, exercising also the monopoly on mining, production and trade in nuclear materials. The Commission has, since September 11th attacks, determined additional control and security measures on access and monitoring of nuclear installations. Decree 2413 of 4 December 1997 established the functions of CNEN, such as authorising imports and exports of materials that are required to produce nuclear energy.

Besides, the Brazilian Government fully applies the guidelines of the International Atomic Energy Agency's document INFCIRC 225/Rev.4, on physical protection of nuclear material and nuclear facilities.

Export of nuclear material is subject to regulation in accordance with provisions of the Nuclear Suppliers Group since 1996. Decree 1861 of 15 April 1996 established a set of rules for the Export of Goods Used in the Nuclear Area and Services Directly Linked Thereto with the purpose of preventing the proliferation of nuclear weapons. According the Article 2, "export transactions are transfers, from the Brazilian territory to any place outside national jurisdiction or control, of any piece of equipment, material or technology related and referred to in the List

[46] According to Article 1 of Decree 4724 of 9 June 2003, the Ministry of Science and Technology has the competence to "VII – control exports of sensitive goods and services related thereto". Article 9 of Decree 4724/03 states that it is the competence of the International Affairs Department, under which is located the General Direction of Sensitive Goods, "I – to give support to other units of the Ministry, research units and entities linked to activities related to cooperation and implementation of international agreements on science and technology, in particular with respect to space, nuclear and sensitive goods programmes", and "IV – to coordinate the control of the implementation of international agreements and the authorisation of imports and exports under the nuclear and sensitive goods programmes".

of Nuclear Equipment, Material and Technology and in the List of Double-Use Equipment and Material and Technology related Thereto of Use in the Nuclear Sector".

Act 10308/01 set rules concerning deposits for nuclear waste products, specifically with reference to appropriate selection of places, building, licensing, use, inspection, costs, compensation, civil responsibility and guarantees. These provisions are applied by CNEN[47].

(*ii*) Chemical materials

Decree 2074 of 14 November 1996 established the Inter-Ministerial Commission for the Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, which comprises representatives of the Ministry of Justice, Ministry of Defence, Ministry of Finance, Ministry of Foreign Relations, Ministry of Development, Industry and Foreign Trade, Ministry of Science and Technology. Administrative Rule (*Portaria*) MCT 704 of 30 October 2002 presented the current list of representatives of each Ministry.

Legislation on administrative and criminal sanctions in case of production, development, stockpiling, transfer and use of chemical weapons is in consideration by the Brazilian Senate (PL 2863/97). According to this proposal, the new legislation would extend sanctions to Brazilian nationals who contribute, inside or outside the territory, to activities prohibited or banned by the CWC.

(*iii*) Biological materials

Brazil has been a party to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction since 1976, which was implemented internally by Decree 77374 of 1 April 1976. Different Ministries, such as Ministry of Health and Ministry of Agriculture, have been in charge of the implementation of its provisions and monitoring in the biological area.

Further regulation was established by Act 8974/95, which rules on genetic engineering and living modified organisms, but also applies to materials which may be used in terrorist activities.

A working group on biological defence (GTB) was created in 2003 to evaluate and follow up preventive measures on biological terrorism among other matters (Administrative Rule CH/GSI 3 of 24 July 2003).

1.23 - The CTC is aware that Brazil may have covered some or all of the points in the preceding paragraphs in reports or questionnaires submitted to other organisations involved in monitoring international standards. The CTC would be content to receive a copy of any such report or questionnaire as part of Brazil's response to these matters as well as details of any

[47] For additional information on this subject and access to specific legislation in Portuguese, please see <http://www.mct.gov.br/legis/ativ_nucleares.htm>.

efforts to implement international best practices, codes and standards which are relevant to the implementation of resolution 1373.

Brazil has submitted reports to the OAS during meetings held under the auspices of the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials.