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Letter dated 20 February 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached fifth report from Viet Nam 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*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 16 February 2006 from the Permanent Mission of Viet Nam to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of the Socialist Republic of Viet Nam to the United Nations presents its compliments to the Security Council Committee established pursuant to resolution 1373 (2001) and with reference to the letter of the Chairman dated 29 July 2005, has the honour to transmit to the Committee the fifth report of the Socialist Republic of Viet Nam on the implementation of resolution 1373 (2001) (see enclosure).

Enclosure*

Socialist Republic of Viet Nam

Fifth report to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001)

Vietnam's response to the questions of the Counter-terrorism Committee of the United Nations Security Council contained in the letter No. S/AC.40/2005/MS/OC.503 dated 29/7/2005 regarding the implementation of the Security Council's Resolution 1373 (2001) appears as follows:

1. IMPLEMENTATION MEASURES:

Regarding the questions of the CTC at paragraphs 1.1 and 1.2 (on the criminalization of terrorist acts and acts of terrorist financing):

The previous reports of Viet Nam to CTC under Paragraph 6 of Resolution 1373 (2001), as well as the Report submitted to the Committee established under Resolution 1267 (1999) of the United Nations Security Council pursuant to paragraphs 6 and 12 of Resolution 1455 (2003), presented the comprehensive legal system of Viet Nam on the prevention from and suppression of terrorism. Although Viet Nam has not yet enacted separate legal instrument, wholly dealing with terrorism, outstanding provisions in various relevant legal instruments (such as on criminal matters, criminal proceedings, administration...) have helped to establish a relatively sufficient and effective legal framework for preventing and suppressing terrorism as well as for regional and international cooperation in this field.

Viet Nam has not yet enacted specific legal documents on criminalization of the financing of terrorism and other forms of terrorist support. However, according to Article 84 of the Penal Code of Viet Nam, terrorism is a crime. Therefore, any form of terrorist support shall be deemed as complicity according to Article 20 of this Code[1].

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

[1] ***Article 20 - Complicity***

1. Complicity is where two or more persons intentionally commit a crime.
2. The organizers, executors, instigators and helpers are all accomplices.
The executors are those who actually carry out the crimes.
The organizers are those who mastermind, lead and direct the execution of crimes.
The instigators are those who incite, induce and encourage other persons to commit crimes.
The helpers are those who create spiritual or material conditions for the commission of crimes.
3. The organized commission of a crime is a form of complicity with close collusion among persons who jointly commit the crime.

In the financial and monetary fields, Viet Nam has not yet enacted specific legal documents on the prevention from and suppression of the financing of terrorism. However, in 2005, Viet Nam has promulgated some legal documents relating to these fields, namely:

- Decree No. 74/2005/ND-CP of June 7, 2005 on prevention and combat of money laundering[2];
- Decree No. 131/2005/ND-CP of October 18, 2005 amending and supplementing a number of articles of the Government's Decree No. 63/1998/ND-CP of August 17, 1998, on foreign exchange management;
- Decree No. 133/2005/ND-CP of October 31, 2005 amending and supplementing a number of articles of the Government's Decree No. 105/2004/ND-CP of March 30, 2004 on independent audit;
- Decree 69/2005/ND-CP of the Government on amendment of and supplement to a number of articles of the Decree 48/2001/ND-CP dated 13/8/2001 of the Government on organization and operation of People's Credit Funds.

Viet Nam is step by step perfecting its legal system in the financial and monetary fields, including provisions for the prevention and suppression of the financing of terrorism. The promulgation of Decree No. 74/2005/ND-CP is a significant effort of Viet Nam. Although Viet Nam has not established a Financial Intelligence Unit (FIU), this Decree provided for the establishment of the Anti-Money Laundering Information Center (AMLIC) under the State Bank of Viet Nam. Up to now, the Director of the AMLIC has been appointed. The functions, specific tasks, powers, organizational structure and working regime of the AMLIC shall be soon stipulated by the Vietnam State Bank Governor.

This Decree provides for mechanisms and measures to prevent and combat money laundering in monetary or other property transactions in Vietnam; responsibilities of individuals, agencies and organizations for preventing and combating money laundering; and international cooperation in the prevention and combat of money laundering.

Under this Decree, in the process of preventing and combating money laundering, one of the following provisional measures may be applied:

a) Not to effect transactions;

b) To block accounts;

c) To seal up or seize property;

[2] Full text of the Decree appears as Annex 1.

d) To seize violators;

e) Other preventive measures provided for by law.

Also, this Decree provides for concrete measures to identify clients (Article 8), value levels of transactions subject to reporting (Article 9) and signs to recognize suspicious transactions (Article 10). According to paragraph 1 of Article 10, transactions shall be deemed suspicious when showing one of the following signs:

a) The parties involved in transactions supply inaccurate, incomplete and inconsistent information or persuade service-providing individuals or organizations not to report transactions to competent state agencies according to the provisions of law;

b) Transactions conducted under orders or authorization of individuals or organizations related to criminal activities on the warning list made by the Ministry of Public Security in order to prevent and combat money laundering and combat the use of money or property to facilitate or finance criminal activities inside or outside the Vietnamese territory;

c) Transactions with their involved parties being detected, through identification information or scrutinizing their economic and legal grounds, to have relationships with criminal activity or with individuals or organizations stated at Point b, Clause 1 of this Article;

d) Individuals and organizations enter into transactions with large amounts of money incommensurate with or not related to their routine activities or any lawful activities;

e) There are sudden changes in transaction turnovers on accounts; money deposited in and withdrawn quickly from accounts; transaction turnover is big in the day but the account balance is negligible or zero;

f) Transactions of transferring small amounts of money from different accounts into a large amount of money or through different accounts to a single account within a short period or vice versa; money crookedly transmitted through many accounts; the involved parties do not care about transaction charges;

g) Letters of credit and other commercial financing instruments of high value and at high discounts are used to transfer money between countries while these transactions are not related to routine activities of clients;

h) Legal persons fail to conduct transactions for a long time on their accounts as from the time of opening of such accounts; domestic enterprises open and use overseas accounts under the names of foreign legal persons or entities;

i) Large amounts of money are transmitted from enterprises' foreign-currency accounts to abroad after many small amounts of money are remitted into such accounts by means of electronic transfers, checks or drafts;

j) Foreign enterprises transmit money abroad immediately after receiving investment capital or make payments to abroad not suitable to the nature or demands of their business;

k) Insurance companies regularly pay indemnities or insurance sums in large amounts of money to the same client;

l) Securities organizations transmit money not in compatibility with their securities trading activities;

m) Any other transactions which financial institutions deem abnormal or having unreliable legal grounds.

Also under this Decree (Article 6), preventing and combating money laundering fall within the responsibility of all individuals and organizations, namely:

1. Financial institutions responsible for taking measures to prevent and combat money laundering under the provisions of this Decree include:

a) Institutions established and operating under the provisions of the Law on Credit Institutions;

b) Organizations engaged in monetary brokerage, investment or providing payment services in the Vietnamese territory;

c) Organizations issuing, listing, transacting, trading in, putting into custody or making clearing payment of, securities;

d) Registered foreign-currency, gold, silver or gem business organizations;

e) Insurance, insurance brokering companies, and organizations conducting activities related to pension, welfare, economic or social programs;

f) Vietnam-based organizations operating on behalf of or representing foreign financial institutions.

2. Other individuals and organizations responsible for preventing and combating money laundering under the provisions of this Decree include:

a) Lawyers, legal counseling firms, lawyers' offices, law partnerships when they conduct monetary or other property transactions on behalf of their clients;

b) Organizations dealing in luck games, casinos or lotteries; business organizations offering big sale promotion prizes to customers;

c) Registered real estate business service companies;

d) Individuals licensed to operate or do business like any of financial institutions stated in Clause 1 of this Article.

As mentioned above, the AMLIC is responsible to collect information about illegal transactions or transactions relating to illegal sources. The financial institutions are responsible to report on suspicious transactions (including transactions of foreign currencies). Besides, institutions outside the banking system, such as lawyers, legal counseling firms,

lawyers' offices, law partnerships, when conducting monetary or other property transactions on behalf of their clients, are responsible to report suspicious transactions.

The Decree 74/2005/ND-CP also stipulates functions and responsibility of relevant ministries and agencies in preventing and combating money laundering. Accordingly, the State Bank of Viet Nam assumes the prime responsibility for State management in this field and regularly reports to the Government; the Ministry of Public Security assumes the prime responsibility for the prevention from, combat and investigation of crimes relating to money laundering… Other relevant ministries are responsible for cooperation with the State Bank of Viet Nam and the Ministry of Public Security in the implementation of the Decree.

The main provisions of Vietnamese law for ensuring the legality of financial transactions were presented in the First and Second Supplementary Reports of Viet Nam to CTC. Regarding to the management of legally formed funds (e.g. the social funds, the charity funds, the people's credit funds…); Viet Nam updates the CTC on following information:

All the funds shall be formed, organized and operating in conformity with provisions of law[3]. The funds are to obey the regulation for financial and monetary management and have to regularly report to the competent authority.

According to Decree No. 177/1999/ND-CP of December 22, 1999 promulgating the regulation on the organization and operation of social funds and charity funds:

> *"The funds shall have to comply with the provisions of this Regulation and other law provisions on the establishment, operation, financial management, consolidation, division, splitting and dissolution of funds. They shall also have to make public all their revenues and expenditure according to the law provisions on financial publicity."* (Paragraph 3 of Article 4)
>
> *"To effect the publicity on the fund's revenues and use thereof, to supply necessary information to the State's functional agencies when so requested as prescribed by law;*
>
> *To be subject to the inspection and examination by the State agencies as prescribed by law;"* (paragraph 5, paragraph of Article 8).
>
> *"Social funds and charity funds shall be subject to the State financial management by the finance agencies of the levels competent to permit their establishment.*
>
> *The funds shall also be subject to the State professional management of their operations by the specialized management agencies."* (Article 16).

Also under this Decree, the social funds and charity funds may be stopped or suspended when violating law. According to Article 20:

[3] Decree No. 48/2001/ND-CP of August 13, 2001 on organization and operation of People's Credit Funds; Decree No. 177/1999/ND-CP of December 22, 1999 promulgating the regulation on organization and operation of the social funds and charity funds.

"1. A fund shall be stopped from operation when it has seriously violated laws or infringed upon the State's and/or people's interests.

2. A fund shall be suspended from operation when:

a) Operating for the wrong purposes and not in accordance with its principles and Charter already ratified by the State's competent agency;

b) Violating the financial management regulations of the fund and the State;

c) Organizing the fund management and administration in contravention of the current law provisions;

d) Using the purposed financial supports of organizations and individuals wrongly in a systematic or serious manner."

Decree No. 48/2001/ND-CP of August 13, 2001 on the organization and operation of People's Credit Funds and Decree No. 69/2005/ND-CP of May 26, 2005 amending and supplementing a number of articles of the Government's Decree No. 48/2001/ND-CP provide that the people's credit funds have to "conduct their business in conformity with the issued License; comply with State's regulations on monetary, credit and banking system" (paragraph 1 of Article 8) and have to fulfill obligations on inspection and report such as:

Article 56. Report

1. The People's credit funds have to regularly make financial reports as provided by laws on accountancy, statistics and regularly make reports on professional operations as stipulated by the Governor of the State Bank of Viet Nam.

2. Beside the regular reports, the People's credit funds are responsible for reporting to the State Bank of Viet Nam in following cases:

a) The overdue debt excesses the regulated rate and tends to increase;

b) A member draws his equity with the amount of more than 30% of the Charter capital or when this withdrawal makes the Charter capital of the fund lower than the authorized capital;

c) Customers draw more than 30% of their balance on bank deposit or the fund is at risk of insolvency;

d) Abnormal changes in organization and operation of the fund which seriously effect the operation of the fund.

…

Article 58. Banking Inspection

The People's credit funds shall be subject to the banking inspection in accordance with provisions under Section I, Chapter IX of the Law on the credit funds and other law provisions.

Article 59. Audit

The audit of the People's credit funds shall be carried out in accordance with regulations stipulated by the State Bank of Viet Nam.

Article 60. Special control

The special control of the People's credit funds shall be conducted in accordance with provisions under Section 1, Chapter V of the Law on credit funds and regulations stipulated by the State Bank of Viet Nam.

The People's credit funds may be dissolved according to the decision of State competent authority or when their Licenses of Establishment and Operation are withdrawn by the State Bank of Viet Nam (paragraph 3 of Article 62 of this Decree).

Regarding the questions of the CTC at paragraphs 1.3 and 1.4 (on the criminalization of terrorist acts against other States):

Under present provisions of Vietnamese law, terrorist acts or support to terrorist acts against other States shall be punished if these acts are conducted with an aim to cause difficulties to the international relations of the Socialist Republic of Vietnam. The guideline and policy of Viet Nam is to strongly condemn and fight against any terrorist act. Based on this policy, Viet Nam shall elaborate, amend, and supplement legal provisions corresponding to the interests and practical situation of Viet Nam.

Regarding the questions of the CTC at paragraphs from 1.5 to 1.7 (on Vietnamese law on money laundering):

Please refer to Viet Nam's answer to paragraph 1.2. above. The full text of the Decree No. 74/2005/ND-CP of June 7, 2005 on Prevention and Combat of Money Laundering appears as Annex 1 of this Report.

Regarding the questions of the CTC at paragraph 1.8 (on report of financial transactions):

According to Decree No. 74/2005/ND-CP of June 7, 2005 on Prevention and Combat of Money Laundering, the financial institutions are responsible for reporting on suspicious transactions. Besides, other institutions outside the banking system, such as lawyers, legal counseling firms, lawyers' offices, law partnerships, when conducting monetary or other property transactions on behalf of their clients, are responsible to report suspicious transactions. The suspicious transactions shall be reported to the AMLIC which is under the State Bank of Viet Nam. According to Article 12 of this Decree:

1. Individuals and organizations stated in Article 6 of this Decree must report transactions specified in Articles 9 and 10 of this Decree to the anti-money laundering information center or competent state agencies, specifically as follows:

a) Form of reporting: in writing, by electronic means or any lawful mode; in case of necessity, prompt reporting via telephone is acceptable but confirmation by one of the above-said modes is required thereafter; persons who make or sign such reports must be the very individuals who have effected the transactions or responsible officials or competent persons of the organizations or agencies required to report;

b) The contents of a report include: client identification information provided for in Clause 3, Article 8 of this Decree; time and time limit for effecting the transaction or issuing a transaction order; parties involved in the transaction; papers and documents used by the involved parties in the transaction; preventive measures already taken;

c) Reporting time: Within 48 hours as from the time when transactions defined in Article 9 arise or from the time when transactions defined in Article 10 of this Decree are detected or within 24 hours if traces of relationship between the requested transactions and criminal activity are detected. The Vietnam State Bank Governor shall stipulate the reporting time for each specific type of transaction.

2. Individuals, agencies and organizations stated in Article 6 of this Decree are not allowed to notify the parties involved in transactions of the reporting and reporting contents or supplied information.

Upon receiving information or reports on suspicious transactions as mentioned above, the AMLIC shall analyze the information or reports, compare the information and reports with statistical data and information available at the Center in order to issue warnings or make recommendations to financial institutions and competent authorities. When having grounds to determine that the transactions mentioned in the information or reports are possibly related to criminal activity, the AMLIC shall immediately notify the competent investigating agencies thereof and closely collaborate with them in the process of verifying the details of the cases.

Besides, regarding to the inspection and supervision of financial and monetary operations of organizations, the Vietnamese Government has enacted Decree No. 105/2004/ND-CP of March 30, 2004 on Independent Audit and Decree No.133/2005/ND-CP of October 31, 2005 Amending and Supplementing a Number of Articles of the Government's Decree No. 105/2004/ND-CP. Viet Nam updates the CTC on following information:

Decree No. 105/2004/ND-CP prescribes audit, cases of compulsory audit and other regulations related to independent auditing activities in order to ensure the truthful, rational and transparent supply of economic and financial information and satisfy the management requirement of State agencies and enterprises.

According to Article 10, the Decree prescribes compulsory audit for:

1. Annual financial statements of following enterprises and organizations must be audited by auditing enterprises:

a) Foreign invested enterprises;

b) Organizations engaged in credit and/or banking activities and the Development Assistance Fund;

c) Financial institutions and insurance business enterprises;

d) Particularly for joint-stock companies and limited liability companies which participate in listing and trading on the securities market, the audit shall be conducted according to the law provisions on securities trading; if they borrow capital from banks, the audit shall be conducted according the law provisions on credit.

2. Annual financial statements of following enterprises and organizations must be audited by auditing enterprises according to the provisions of this Decree:

a) State enterprises;

b) Reports on settlement of construction investment capital of group-A projects.

Also, this Decree permits foreign auditing organizations to operate in Viet Nam.

Regarding the questions of the CTC at paragraph 1.9 (on a Suspicious Transaction Reporting Office):

Please refer to Viet Nam's answer to paragraph 1.2. above.

Regarding the questions of the CTC at paragraph 1.10 (on the management of transfer and other banking services):

Viet Nam is collecting information on these fields and shall update the CTC as soon as possible.

Regarding the questions of the CTC at paragraph 1.11 (on the management and inspection of financial activities of social organizations and charity organizations):

In the answer to paragraph 1.2. above, Viet Nam has provided information on the reporting obligation of the social organizations and charity organizations. Besides, under Decree 177/1999/ND-CP promulgating the regulation on organization and operation of the social funds and charity funds:

- These funds must have the Fund Management Boards (nominated from founding members), the fund's Directors and the Fund Control Boards (appointed by the Fund Management Boards);
- The fund's directors are tasked to regularly report on the fund's operation to the Management Boards and the agency competent to decide the fund's establishment (Paragraph 4 of Article 11);
- The Fund Control Boards must be composed of at least 3 members, appointed by the Management Boards, shall operate independently and have following tasks: a) to

inspect and supervise the fund's operation in strict compliance with the Fund Charter and law provisions; b) to report and propose to the Fund Management Boards on the results of the control of the fund's activities and its financial situation (paragraph 3 of Article 12).

Regarding the questions of the CTC at paragraph 1.12 (on the management of firearms, explosives…):

In previous Reports, Viet Nam supplied a list of legal documents relating to this field. In this Report, Viet Nam updates the CTC on information of penalties imposed in this field

- Under the 1999 Penal Code of Viet Nam:

Article 230 - Illegally manufacturing, stockpiling, transporting, using, trading in or appropriating military weapons and/or technical means

1. Those who illegally manufacture, stockpile, transport, use, trade in or appropriate military weapons and/or technical means shall be sentenced to between one and seven years of imprisonment.

2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between five and twelve years of imprisonment:

a) In an organized manner;

b) Objects involved in the offense are in great quantity;

c) Conducting cross-border transport or trading;

d) Causing serious consequences;

e) Dangerous recidivism.

3. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between ten years and fifteen years of imprisonment:

a) The objects involved in the offense are in very great quantity;

b) Causing very serious consequences.

4. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between fifteen and twenty years of imprisonment or life imprisonment:

a) The objects involved in the offense are in particularly great quantity;

b) Causing particularly serious consequences.

5. The offenders may also be subject to a fine of between five million dong and fifty million dong, to probation or residence ban for one to five years.

Article 232.- Illegally manufacturing, stockpiling, transporting, using, trading or appropriating explosive materials

1. Those who illegally manufacture, stockpile, transport, use, trade in or appropriate explosive materials shall be sentenced to between one and five years of imprisonment.

2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between three and ten years of imprisonment:

a) In an organized manner;

b) Objects involved in the offense are in great quantity;

c) Conducting cross-border transportation and/or trading;

d) Causing serious consequences;

e) Dangerous recidivism.

3. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between seven and fifteen years of imprisonment:

a) The objects involved in the offense are in very great quantity;

b) Causing very serious consequences.

4. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between fifteen and twenty years of imprisonment or life imprisonment:

a) Objects involved in the offense are in particularly great quantity;

b) Causing particularly serious consequences.

5. The offenders may also be subject to a fine of between five million dong and fifty million dong, to probation or residence ban for one to five years.

Article 233.- Illegally manufacturing, stockpiling, transporting, using, trading in or appropriating rudimentary weapons or support devices

1. Those who illegally manufacture, stockpile, transport, use, trade in or appropriate rudimentary weapons or support devices, have already been administratively sanctioned for such acts, or have already been sentenced for such offense, not yet entitled to criminal record remission but continue to commit it, shall be sentenced to between three months and two years of imprisonment.

2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between one and five years of imprisonment:

a) In an organized manner;

b) Objects involved in the offense are in great quantity;

c) Conducting cross-border transportation and/or trading;

d) Causing serious consequences;

e) Dangerous recidivism.

3. The offenders may also be subject to a fine of between five million dong and fifty million dong, probation or residence ban for one to five years.

Article 234.- Breaching regulations relating to the management of weapons, explosive materials, support devices

1. Those who breach regulations on management of the production, repair, supply, use, maintenance, storage, transport and trading of weapons, explosive materials, support devices, causing the loss of lives or serious damage to the health and/or property of other persons, shall be sentenced to between one and five years of imprisonment.

2. Committing the crime and causing very serious consequences, the offenders shall be sentenced to between three and ten years of imprisonment.

3. Committing the crime and causing particularly serious consequences, the offenders shall be sentenced to between ten and fifteen years of imprisonment.

4. Committing the offense in cases where particularly serious consequences may actually occur if not warded off in time, the offenders shall be subject to non-custodial reform for up to three years or a prison term of between six months and three years.

5. The offenders may also be banned from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.

Article 333.- Breaching regulations on the use of military weapons

1. Those who breach regulations on the use of military weapons, causing serious consequences, shall be subject to non-custodial reform for up to three years or to a prison term of between six months and five years.

2. If the offense is committed in battle zones or entails very serious or particularly serious consequences, the offenders shall be sentenced to between three years and ten years of imprisonment.

- Viet Nam has promulgated Decree No. 64/2005/ND-CP[4], providing for acts of administrative violations, the competence and procedures for administrative sanctioning in management of industrial explosives. According to this Decree, violations of regulations on research, testing and manufacture of industrial explosives shall be sanctioned with fines ranging from VND 3.000.000 to VND 50.000.000, depending on specific case.

Besides, with regard to the management of import and export of explosives, toxic substances, the Ministry of Industries has promulgated following documents:

[4] Decree No. 64/2005/ND-CP of May 16, 2005 providing for the sanctioning of administrative violations in management of industrial explosives.

- *For the management of imported and exported chemicals for the period 2001-2005: Circular No. 01/2001/TT-BNC of April 26, 2001 guiding the import and export of chemicals for period 2001-2005.*
- *For the management of presubstances used in industry: Regulation on management of presubstances used in industry, promulgated with Decision No. 134/2003/QD-BCN of August 25, 2003.*
- *For the management of industrial explosives: Circular No. 02/2005/TT-BCN of March 29, 2005 guiding the management of production, trade, supply and use of industrial explosives.*

Regarding the questions of the CTC at paragraph 1.13 (on extradition):

Regarding the investigation of Vietnamese citizens committing a crime abroad: According to paragraph 1 of Article 6 of the 1999 Penal Code, Vietnamese citizens who commit offenses outside the territory of the Socialist Republic of Vietnam may be examined for penal liability in Vietnam, in accordance with the provisions of this Code. Moreover, paragraph 1 of Article 8 of this Code defines crime as follow:

> *"A crime is an act dangerous to the society prescribed in the Penal Code, committed intentionally or unintentionally by a person having the penal liability capacity, infringing upon the independence, sovereignty, unity and territorial integrity of the Fatherland, infringing upon the political regime, the economic regime, culture, defense, security, social order and safety, the legitimate rights and interests of organizations, infringing upon the life, health, honor, dignity, freedom, property, as well as other legitimate rights and interests of citizens, and infringing upon other socialist legislation."*

Therefore, one of the prerequisites is that a crime must be an act provided for in the Penal Code of Viet Nam.

Regarding the procedures which could be conducted against Vietnamese citizens committing a terrorist act against other State when they are outside the territory of Viet Nam:

As mentioned above, Vietnamese citizens who commit offenses outside the territory of the Socialist Republic of Vietnam can only be examined for penal liability in Viet Nam under the Penal Code if the offenses are crimes as defined by Article 8 (above).

In such a case that Vietnamese citizens commit terrorist offenses when they are outside Viet Nam's territory, the trial-procedural agencies of Viet Nam (investigating agency, the procuracy, the court) shall, according to provisions of the Criminal Procedure Code, investigate, prosecute and judge the offenders. In such a case that requires legal assistance from foreign trial-procedural agencies, the Vietnamese trial-procedural agencies shall base upon bilateral agreements on mutual legal assistance, extradition; upon multilateral treaties which have provisions for mutual legal assistance and extradition; or upon reciprocal basis to request relevant States to grant legal assistance or extradite the offenders to Viet Nam to examine for penal liability.

The 2003 Criminal Procedure Code has one part (Part 8) on international co-operation in criminal proceedings and extradition. Accordingly, these activities shall be conducted in accordance with agreements to which Viet Nam is a party and in accordance with Vietnamese law. In case Viet Nam has not concluded or acceded to relevant agreements (or treaties), the cooperation shall be carried out on the reciprocal basis, provided that it this is not contrary to Vietnamese law, international law and practices.

Regarding the extradition of an offender to Viet Nam, paragraph 1 of Article 343 of the Criminal Procedure Code provides that the trial-procedural agencies of Viet Nam may "request the foreign authorities with corresponding competence to extradite persons who have committed criminal acts or convicted under the legally valid judgments to the Socialist Republic of Viet Nam for being examined for penal liability or serving their penalties".

Regarding the political offenses: the present Penal Code of Viet Nam has no provision for the so-called "political offenses". Moreover, this concept does not exist in Vietnamese publications or theories on criminal science.

Regarding the questions of the CTC at paragraph 1.14 (on the coordination of ministries in anti-terrorism):

Viet Nam is of the view that the effective combat of terrorism requires a comprehensive approach and depends on the total elimination of the root causes of terrorism. Therefore, the prevention and elimination of terrorism requires the implementation of many measures in different fields (political, economic, security, military, international cooperation).

To date, Viet Nam has not established a specific mechanism for combating terrorism. However, all the ministries, agencies and local governments, based on the provisions of law and their purview of State management, take part in the prevention and combat of terrorism and are subject to the direction of the Prime Minister in this regard. In each legal document promulgated by the Government, there are provisions for the coordination between ministries and agencies on relevant matters. The case of analyzing the reports of suspicious transactions of the AMLIC (mentioned above) and its coordination with the investigating agencies is a typical example of anti-terrorism coordination.

Beside Article 84 (and some other relevant articles) of the Penal Code, it can be said that Viet Nam is yet to have a specific law on anti-terrorism or the financing of terrorism. The punishment of terrorist acts shall be based on the Penal Code and some relevant laws (such as the Criminal Procedure Code, the Law on National Security…) Therefore, the role of the Ministry of Public Security is very important, especially in border control to ensure border safety and security. Other ministries shall coordinate with the Ministry of Public Security within their own responsibility.

Regarding the questions of the CTC at paragraph 1.15 (on cooperation between the Ministry of Public Security and international police offices):

The Ministry of Public Security of Viet Nam has established contacts and mechanisms for mutual assistance, exchange of information with international and regional police organizations, such as Interpol, ASEANPOL, EUROPOL... The Ministry of Public Security of Viet Nam regularly exchanges information with these institutions. Viet Nam is collecting information on these fields and shall update the CTC as soon as possible.

Regarding the questions of the CTC at paragraphs 1.16 and 1.17 (on security of travel documents and border control):

As mentioned in Viet Nam's first and third reports, the Penal Code provides that the falsification of documents and seals constitutes a crime (the articles 266, 267, 268). The punishment for this crime is 1 to 7 years of imprisonment and a fine (depending on each specific case).

Besides, Viet Nam has promulgated the Decree No. 32/2005/ND-CP[5], stipulating the regulations on land border gates, the entry into, exit from and transit via the country, the import and export through the border gates of people, goods and facilities, in order to manage the border gates, protect national security and sovereignty. This Decree prohibits the usage of falsified passports, documents; the organization, instruction or transportation of illegal immigrants; the smuggling, illegal transportation or usage of money, goods, arms, explosives, flammable, radioactive or toxic substances… at the border gates (Article 15).

Regarding the questions of the CTC at paragraph 1.18 (on the accession to the international anti-terrorism instruments):

To date, Viet Nam has ratified and acceded to 8 out of 13 international conventions against terrorism. Besides, Viet Nam is considering the possibility of acceding to the 5 remaining conventions. The competent agencies are finalizing procedures of recommending the Government to approve the accession to the International Convention against Taking Hostages and the International Convention on Suppression of Terrorist Bombing.

Viet Nam has promulgated the Law on Conclusion, Accession and Implementation of International Treaties[6]. This Law reaffirms the seriousness of Viet Nam and provides for the implementation of treaties to which Viet Nam is a party.

Regarding the implementation of treaties, this Law provides that, on the basis of the requirement, contents and nature of the treaties, the competent authorities[7], in making decision to accept to be bound by the treaties, shall at the same time make decision on direct

[5] Decree of the Government of March 14, 2005 on the regulations on land border gates.
[6] This Law was adopted by the National Assembly on June 4, 2005 and entered into force from January 01, 2006.
[7] The National Assembly, the State President, the Government.

application of such treaties, in whole or in part, in case the provisions of the treaties are adequately detailed and clear for their implementation. Otherwise, these competent authorities shall make decision or proposal for amendment, supplement, repeal or promulgation of legal normative documents for the implementation of such treaties. (Paragraph 3 of Article 6).

It can be said that, to a certain extent, the above-mentioned provision is a development of Vietnamese law on the incorporation of international treaties into domestic law. This provision ensures the practical implementation of treaties to which Viet Nam is a party, including international conventions and protocols on anti-terrorism.

Moreover, this provision is not only applied to treaties which are concluded after the effective date of the Law, but also to those concluded previously. Under this Law, within a year from the effective date of the Law, taking into account the implementation of treaties, the agencies which assumed the prime responsibility of concluding of the treaties shall make recommendations on direct application, in whole or in part, of the treaties (concluded prior to the effective date of the Law) to the competent authorities for consideration and decision. (Article 106).

Regarding the questions of the CTC at paragraph 1.19 (on other efforts of Viet Nam in anti-terrorism):

Together with the enhancement of legal framework on anti-terrorism, the relevant agencies of Viet Nam have carried out specific activities to combat terrorism, such as the Model Operation of Anti-terrorism effected at the Tan Son Nhat International Airport, Ho Chi Minh City, on October 29, 2005. In this Model Operation, the Directing Board on Anti-terrorism (under the Minister of Public Security), in coordination with the Ministry of Transportation, the Southern Airport, relevant agencies of the Ministry of Defense… practiced activities, such as rescue, disarm mines and explosives…

Relating the combat of terrorism in transportation field, Viet Nam has fully implemented provisions of the International Ports and Ships Security Code (ISPS Code). Viet Nam sent delegation to the Conference on the Amendment of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA 1988) and Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (in October 2005).

Regarding the international cooperation in anti-terrorism, Viet Nam has been taking part in elaborating and implementing Declarations, Action Plans against terrorism within the framework of international organizations and fora, namely:

- Within the Asia – Europe Meeting (ASEM): Viet Nam has taken part in every anti-terrorism effort of ASEM, manifested through the Chairman's Statement of ASEM V (Ha Noi, October 2004) and the participation of Viet Nam in ASEM conferences on anti-terrorism (the

most recent is the 3rd ASEM Conference on Anti-terrorism, held in Semarang, Indonesia in November 2005).

- Within the framework of the Association of Southeast Asia Nations (ASEAN): As a member of ASEAN, Viet Nam has actively contributed to the anti-terrorism efforts of ASEAN[8] as well as between ASEAN and its counterparts, manifested through joint declarations on anti-terrorism between ASEAN and the USA, EU, Japan, Republic of Korea, Russia, India… ASEAN is now in the process of elaborating its Convention on Anti-terrorism. At the East Asia Summit (December 2005), Viet Nam and other countries discussed many international issues among which anti-terrorism is an important one.

- Within the Asia – Pacific Economic Co-operation Forum (APEC): Viet Nam worked out "Counter-Terrorism Action Plan" (CTAP) and sent to the APEC Secretariat. The Plan contains a list of measures which are being carried out in order to realize the Declaration of APEC Leaders on anti-terrorism and to identify the need for anti-terrorism capacity building of Viet Nam. In 2006, Viet Nam shall organize APEC Summit. In this Summit, concrete initiatives to combat terrorism such as export control, security of travel documents… shall be discussed.

- Within the regional process of anti-terrorism (the Bali process): Viet Nam has taken part in and has contributed to this process, namely: attended 2 workshop on international legal cooperation against terrorism (held in Thailand in January and June 2005) and the Regional Counter-terrorism Training Workshop on Practical Aspects of International Cooperation" (held in Indonesia in December 2005).

- Viet Nam sent delegation to the 2nd Conference of Member States of the Convention on the Transnational Organized Crimes (held in Vienna, Austria in October 2005). Anti-terrorism is one topic of this Conference.

- Viet Nam sent delegation to the Seminar on Promotion of the Accession to the International Counter-Terrorism Conventions and Protocols (held in Japan in January 2006).

- Viet Nam takes part in the Radio Threat Reduction Program (RTR) which was initiated by the USA in order to enhance the management of use of high risk radioactive sources, prevent their illegal use including terrorist activities.

- Viet Nam cooperates with IAEA and other countries in ensuring the safety of nuclear materials and facilities, fully implements the Safeguards Agreement.

- Viet Nam is considering the possibility and has planned to accede to the IAEA Code of Conduct on the Safety and Security of Radioactive Sources. Simultaneously, Viet Nam has plan for the approval of the Initiative on Securing and Managing Radioactive Sources. These

[8] See more at http://www.aseansec.org/14396.htm.

are international agreements directly relating to the security of dangerous radioactive resources and make direct contribution to the fight against terrorism.

- Viet Nam has participated in the Project of Security of Radioactive Sources, initiated by the Australian National Science and Technology Organization (ANSTO). The main target of this Project is for the insurance of the security of radioactive sources and counter terrorism.

- Viet Nam is considering the accession to some international instruments relating to nuclear such as the Additional Protocol to Nuclear Safeguard Agreements (between IAEA and member states), the Convention on the Physical Protection of Nuclear Material, Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management.

Moreover, Viet Nam regularly cooperates with international organizations and fora, such as Interpol, Aseanpol, UNODC, ICAO, APEC, ARF… and Viet Nam is active in information exchange with other countries (including the USA, the United Kingdom, Japan, Republic of Korea…) through which we obtained useful information and documents relating to terrorist groups or groups suspected to involve in terrorist activities.

2. ASSISTANCE AND GUIDANCE

Viet Nam highly appreciates the assistance from donor states and international organizations in enhancing the anti-terrorism capacity. Viet Nam is consent to the proposal raised in paragraph 2.4 of the Note No. S/AC.40/2005/MS/OC.503.

Viet Nam has the need for technical assistance and training with regard to the AMLIC on specific skills, namely: analysis of financial transactions and detection of suspicious transactions.

The relevant agencies of Viet Nam will directly contact with agencies assigned by the CTC on the above-mentioned issues.