

**SUPPRESSING THE FINANCING OF  
TERRORISM: A HANDBOOK FOR  
LEGISLATIVE DRAFTING**

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International Monetary Fund  
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## FOREWORD

In recent years, the IMF has become actively involved in international cooperation efforts to prevent the abuse of national financial systems and to protect and enhance the integrity of the international financial system. Since 2001, the IMF's involvement in these issues has been expanded beyond anti-money laundering measures to include efforts aimed at the suppression of the financing of terrorism. Although primary responsibility for the development and enforcement of measures to combat money laundering and the financing of terrorism will continue to rest with national authorities, the IMF is prepared to assist them in assessing the implementation of international standards related to members' anti-money laundering and combating the financing of terrorism (AML/CFT) frameworks, as well as in providing technical assistance in the form of advice.

In early 2001, the IMF, in cooperation with other organizations, began developing what was to become the Methodology for Assessing Compliance with Anti-Money Laundering and Combating the Financing of Terrorism Standards. The Methodology is an assessment tool to be used to assess the implementation of the Financial Action Task Force (FATF) Forty Recommendations on Money Laundering, as well as its Eight Special Recommendations on Terrorism Financing. The IMF, through the Special Financial Supervisory Issues Division of its Monetary and Financial Systems Department (MFDSF) and the AML/CFT Unit of the Legal Department, conducts assessments of domestic frameworks as they relate to anti-money laundering and combating the financing of terrorism. The AML/CFT Unit also carries out technical assistance work in the form of legislative drafting and training in AML/CFT matters.

This handbook is intended to facilitate the delivery of legal technical assistance in the CFT area. It provides essential legal materials and extensive background information to officials who are responsible for drafting legislation designed to combat the financing of terrorism. The relevant international standards and obligations are presented, together with examples of legislation designed to serve as bases for drafting the laws needed to meet these standards and obligations. The issues discussed in the handbook are relevant to all countries, and the examples of legislation are provided in two separate versions, one mainly for civil law countries, the other one mainly for common law countries.

The handbook has benefited from inputs from both internal and external sources. Within the IMF's Legal Department, Louis Forget drafted the handbook under the direction of Jean-François Thony and with the

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assistance of his colleagues Margaret Cotter, Ross Delston, Nadim Kyriakos-Saad, Moni Sengupta, Joy Smallwood, and Stuart Yikona. The useful comments of external readers Peter Csonka of the Council of Europe, Bess Johnson Michael of the World Bank, and Kimberly Prost of the Commonwealth Secretariat are gratefully acknowledged.

The views expressed in this handbook are those of the IMF's Legal Department and should not be attributed to the Executive Directors or the Management of the IMF.

*The General Counsel*  
FRANÇOIS GIANVITI



# 1

## INTRODUCTION

IMF member countries and other jurisdictions wishing to bring their legislation up to the norms and standards established by the international community in the area of combating the financing of terrorism face a number of choices. The sources of these norms and standards range from legally binding international norms, such as those contained in resolutions of the United Nations (UN) Security Council, and in international conventions, such as the International Convention for the Suppression of the Financing of Terrorism, to nonbinding standards established by groups of countries acting in concert, such as the Eight Special Recommendations on Terrorism Financing of the Financial Action Task Force (FATF). While there is considerable overlap among these sources, their scope varies. Implementation of some of the norms and standards requires legislation, but on many points, implementation can be effected in a number of different ways. As a result, in responding to their international obligations and meeting the standards, countries must make a number of choices as to the scope of the legislation and its contents.

The objective of this handbook is to assist IMF member countries and other jurisdictions in preparing legislation to implement the international obligations and to meet the international standards related to combating the financing of terrorism in a manner most appropriate to their circumstances.

### Context

The international community's efforts to prevent and punish the financing of terrorism are part of a larger effort to combat all aspects of terrorism. These efforts have been deployed at the global and at the regional levels. At the global level, the United Nations has been involved in the issue since 1970.<sup>1</sup> In 1972, the General Assembly established the first Ad Hoc Committee on International Terrorism,<sup>2</sup> and in 1994, it adopted a Declaration

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<sup>1</sup> Aerial Hijacking or Interference with Civil Air Travel, G.A. Res. 2645 (XXV), U.N. GAOR, 25<sup>th</sup> sess. 1914<sup>th</sup> mtg., Supp. No. 28, at 126, U.N. Doc. A/8028 (1970), reprinted in M. C. Bassiouni, 1 *International Terrorism: A Compilation of U.N. Documents (1972–2001)* 91 (Transnational Publishers 2001).

<sup>2</sup> "Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms and study of the underlying causes of those forms of  
(continued)

## 2 INTRODUCTION

on Measures to Eliminate International Terrorism.<sup>3</sup> In 1996, the General Assembly established a new ad hoc committee to elaborate international conventions on terrorism. It is in this ad hoc committee that the Convention on the Suppression of the Financing of Terrorism was elaborated. Since 2000, the ad hoc committee has begun work on a comprehensive convention on international terrorism.<sup>4</sup>

Since 1985, the Security Council has also been concerned with the issue of terrorism, and in 2001, it established its Counter-Terrorism Committee, which is charged with monitoring the response of member states to the requirements of Security Council Resolution No. 1373 (2001).<sup>5</sup> Earlier, in its Resolutions 1267 (1999)<sup>6</sup> and 1333 (2000),<sup>7</sup> the Security Council had decided that UN member countries would seize the assets of named terrorists and terrorist organizations. A number of conventions have also been adopted at the regional level.<sup>8</sup> There is thus a complex web of international

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terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes,” G.A. Res. 3034 (XXVII), U.N. GAOR, 27<sup>th</sup> Sess., 2114<sup>th</sup> mtg., Supp. No. 30, at 19, U.N. Doc. A/8730 (1972), reprinted in Bassiouni, *supra* note 1, at 121. The Ad Hoc Committee issued three reports, in 1973 (U.N. GAOR, 28<sup>th</sup> Sess., Supp. No. 28, U.N. Doc. A/9028); 1977 (U.N. GAOR, 32<sup>nd</sup> Sess., Supp. No. 37, U.N. Doc. A/32/37); and 1979 (U.N. GAOR 34<sup>th</sup> Sess., Supp. No. 37, U.N. Doc. A/34/37).

<sup>3</sup> G.A. Res. 49/60, U.N. GAOR, 49<sup>th</sup> Sess., 84<sup>th</sup> mtg., Supp. No. 49, U.N. Doc. A/49/60, (1994); and Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, G.A. Res. 51/210, U.N. GAOR, 51<sup>st</sup> sess., 88<sup>th</sup> mtg., Supp. No. 49, at 5, U.N. Doc. A/Res/51/210 (1996).

<sup>4</sup> See, Report of the Ad Hoc Committee established by General Assembly Resolution 51-210 of 17 December 1996, Sixth Session (28 January–1 February 2002), U.N. GAOR, 57<sup>th</sup> Sess., Supp. No. 37, U.N. Doc. A/57/37 (2002).

<sup>5</sup> U.N. SCOR, 56<sup>th</sup> Sess., 4385<sup>th</sup> mtg., U.N. Doc. S/INF/57 (2001) [hereinafter “the Resolution”]. The text is set out in Appendix IV of this handbook.

<sup>6</sup> U.N. SCOR, 54<sup>th</sup> Sess., 4051<sup>st</sup> mtg., U.N. Doc. S/INF/55 (1999) [hereinafter “Resolution 1267 (1999)”]. The text is set out in Appendix IV of this handbook.

<sup>7</sup> U.N. SCOR, 55<sup>th</sup> Sess., 4251<sup>st</sup> mtg., U.N. Doc. S/INF/56 (2000) [hereinafter “Resolution 1333 (2000)”].

<sup>8</sup> Among them are the Organization of American States (OAS) Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance (1971), the European Convention on the Suppression of Terrorism (1977), South Asian Association for Regional Cooperation (SAARC) Regional Convention on the Suppression of Terrorism (1987), the Arab Convention on the Suppression of Terrorism (1998), the Treaty on Cooperation among the States Members of the Commonwealth of Independent States in Combating Terrorism (1999), the Convention of the Organization of the Islamic Conference on Combating International Terrorism (1999), and the Organization of African Unity (OAU) Convention on the Prevention and Combating of Terrorism (1999). In June 2002 the OAS adopted the Inter-American Convention against Terrorism, which places emphasis on the suppression of the financing of terrorism.

instruments through which states have committed to combat terrorism. The combating of the *financing* of terrorism became a prominent part of this effort following the terrorist attacks in the United States in September 2001 and the subsequent adoption of the FATF Special Recommendations on Terrorist Financing and Resolution No. 1373 (2001) and the establishment of the Counter-Terrorism Committee. Thus, in addition to fostering international cooperation in the prevention and repression of terrorist offenses themselves, the international community has now embarked on an ambitious program intended to prevent terrorism by detecting and suppressing its sources of financing, and criminalizing the provision of financing for terrorism.

The handbook provides examples of legislative measures that may be used to draft laws implementing the international obligations related to combating the financing of terrorism set out in Resolutions 1373 (2001), 1267 (1999), and 1333 (2000) and in the International Convention for the Suppression of the Financing of Terrorism, as well as to meet the standards established by the Eight Special Recommendations on Terrorist Financing issued by the FATF. These instruments each address the combating of the financing of terrorism, but their exact scope varies. In particular, the Resolution takes a very broad approach to the measures states are to take to combat the financing of terrorism. It includes, for example, provisions related to the potential abuse of refugee status by terrorists. In this handbook, the contents of Resolution 1373 (2001) will be briefly described, but only those measures bearing directly on combating the *financing* of terrorism will be discussed. However, each of the substantive requirements of the Convention and the Special Recommendations will be addressed.

## Outline

Chapter 2 of this handbook presents the three main sources of international obligations and standards in the area of combating the financing of terrorism and discusses the main issues they raise. Chapter 3 presents the legislation that certain countries have already adopted in this regard and discusses the general issues involved in the preparation of such legislation. Chapter 4 offers detailed discussions of specific topics to be covered in the legislation. Examples of legislation are provided in Appendixes VII (for civil law countries) and VIII (for common law countries).

## **THE SOURCES OF INTERNATIONAL NORMS AND STANDARDS ON THE SUPPRESSION OF THE FINANCING OF TERRORISM**

The main sources of international obligations in the combating of the financing of terrorism are the Resolutions of the United Nations Security Council, and in particular, Resolution No. 1373 (2001) (hereinafter “the Resolution”) and the earlier resolutions requiring the freezing of assets of listed terrorists, and the International Convention for the Suppression of the Financing of Terrorism (hereinafter “the Convention”). In addition to these formal sources of international obligations, the Financial Action Task Force (FATF) issued a set of eight Special Recommendations on Terrorist Financing (hereinafter “the Special Recommendations”) on October 30, 2001 and invited all countries to implement them and to report to the FATF on their implementation.

There is considerable overlap among these various obligations and standards. For example, both the Resolution and the Special Recommendations call for countries to become parties to the Convention and to implement its provisions internally. Similarly, the Resolution, the Convention, and the Special Recommendations each deal with aspects of the freezing, seizure, and confiscation of terrorist assets. The Convention requires states parties to consider adopting some of the standards contained in the FATF 40 Recommendations on Money Laundering. Apart from these and other areas of overlap, each instrument contains provisions not found in the others. For example, the Special Recommendations contain references to alternative remittance systems, wire transfers and non-profit organizations—three topics that are not covered by the Resolution and the Convention.

The three main sources of international obligations and standards, namely the Convention, the Resolution and the FATF Special Recommendations, will be examined in turn.

## **The International Convention for the Suppression of the Financing of Terrorism**

The International Convention for the Suppression of the Financing of Terrorism is the result of a French initiative strongly supported by the Group of Eight (G-8).<sup>9</sup> In May 1998, the Foreign Ministers of the G-8 identified the prevention of terrorism fund-raising as a “priority [area] for further action.”<sup>10</sup> In the fall of 1998, France initiated the negotiations of the Convention, and proposed a text to the United Nations. In December 1998, the General Assembly decided that the Convention would be elaborated by the ad hoc committee established by Resolution 51/210.<sup>11</sup> The text of the Convention was adopted by the General Assembly on December 9, 1999.<sup>12</sup> The Convention has been signed by 132 states, and, as of April 30, 2003, it was in force among 80 states.

The Convention contains three main obligations for states parties. First, states parties must establish the offense of financing of terrorist acts in their criminal legislation. Second, they must engage in wide-ranging cooperation with other states parties and provide them with legal assistance in the matters covered by the Convention. Third, they must enact certain requirements concerning the role of financial institutions in the detection and reporting of evidence of financing of terrorist acts. Table 1, below, sets out a list of the substantive provisions of the Convention.

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<sup>9</sup> See Clifton M. Johnson, “Introductory Note to the International Convention for the Suppression of the Financing of Terrorism,” 39 ILM 268 (2000).

<sup>10</sup> *Conclusions Of G8 Foreign Ministers*, May 1998, paragraph 28, [http://www.dfait-maeci.gc.ca/g8fmm-g8rmae/bir\\_g8concl-en.asp](http://www.dfait-maeci.gc.ca/g8fmm-g8rmae/bir_g8concl-en.asp).

<sup>11</sup> Measures to Eliminate International Terrorism, G.A. Res. 53/108, U.N. GAOR, 53<sup>rd</sup> Sess., 83<sup>rd</sup> mtg. Supp. No. 49, at para. 12, U.N. Doc. A/Res/53/108 (1999).

<sup>12</sup> International Convention for the Suppression of the Financing of Terrorism, G.A. Res. 54/109, U.N. GAOR, 54<sup>th</sup> Sess., 76<sup>th</sup> mtg., Supp. No. 49, U.N. Doc. A/Res/53/108 (1999) [hereinafter “Convention”].

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**Table 1. Summary Contents of the Convention**

<b>Article</b>	<b>Contents</b>
Article 4	Criminalize the financing of terrorism (FT) as defined in Articles 2 and 3.
Article 5	Establish liability (criminal, civil, or administrative) of corporations for FT.
Article 6	Exclude excuses for FT based on political, philosophical, etc., considerations.
Article 7	Establish jurisdiction over FT offenses.
Article 8	Establish power of state to identify, detect, freeze, or seize assets used in committing FT offenses.
Articles 9, 17, and 19	Establish procedure for detention of persons suspected of FT (including notification of other jurisdictions).
Article 10	Implement principle of "prosecute or extradite."
Article 11	Implement provisions on extradition.
Articles 12–15	Implement provisions on mutual cooperation and extradition.
Article 16	Implement provisions on transfer of detainees and prisoners.
Article 18, 1	Take FT prevention measures, including:
(a)	Prohibit illegal encouragement, instigation, organization, or engaging in FT offenses.
(b)	Require financial institutions to utilize the most efficient measures available for customer identification, pay special attention to suspicious transactions, and report suspicious transactions, and, for this purpose, consider regulations on unidentified account holders and beneficiaries; on documentation for opening accounts for legal entities; on suspicious transaction reporting; and on record retention.
Article 18, 2	Consider:
(a)	Supervision measures, including, for example, licensing of all money transmission agencies; and
(b)	Feasible measures to detect or monitor cross-border transportation of cash.
Article 18, 3	Establish channels for exchange of information between competent agencies and services.
(a)	
(b)	Establish procedures for cooperating with other parties in enquiries on (i) persons and (ii) funds suspected of FT involvement.
Article 18, 4	Consider exchanging such information through Interpol.

### **Criminalization of Financing of Terrorist Acts**

The Convention requires each party to adopt measures (a) to establish under its domestic law the offenses of the financing of terrorist acts set out in the Convention, and (b) “to make [these] offences punishable by appropriate penalties which take into account the grave nature of the offences.”<sup>13</sup> Financing of terrorism is defined as an offense established when a person “by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they will be used in full or in part, in order to carry out [a terrorist act as defined in the Convention].” The mental element and material elements of the offense will be discussed in turn.

#### ***The mental element***

There are two aspects to the mental element of the financing of terrorism as defined in the Convention. First, the act must be done willfully. Second, the perpetrator must have had either the intention that the funds be used to finance terrorist acts, or the knowledge that the funds would be used for such purposes. In this second aspect, intent and knowledge are alternative elements. The Convention does not provide further information on these two aspects of the mental element, and therefore they are to be applied in accordance with the general criminal law of each state party.

#### ***The material elements***

The definition of the offense of terrorism financing in the Convention contains two main material elements. The first is that of “financing.” Financing is defined very broadly as *providing or collecting funds*. This element is established if a person “by any means, directly or indirectly, unlawfully and willfully, provides or collects funds [...]”<sup>14</sup>

The second material element relates to terrorist acts, which are defined in the Convention by reference to two separate sources. The first source is a list of nine international treaties that were opened for signature between 1970 and 1997, and which require the parties to them to establish various terrorism offenses in their legislation. The list is set out in the Annex to the Convention, and is reproduced in Box 1, below.<sup>15</sup> The Convention allows a state party to exclude a treaty from the list, but only if the state is not a party to it. The exclusion ceases to have effect when the state becomes a party to the treaty. Conversely, when a state party ceases to be a party to one of the

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<sup>13</sup> *Id.* Art. 4.

<sup>14</sup> *Id.* Art. 2, para. 1.

<sup>15</sup> See *infra* Annex to the Convention, Appendix II, p. 93.

## 8 SOURCES OF INTERNATIONAL NORMS AND STANDARDS

listed conventions, it may exclude it from the list of treaties applicable to it under the Convention.<sup>16</sup>

### Box 1. The Annex to the Convention

The Annex to the Convention sets out the list of the nine international treaties that contain terrorist crimes, as follows:

- (1) Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on December 16, 1970.
- (2) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on September 23, 1971.
- (3) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973.
- (4) International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979.
- (5) Convention on the Physical Protection of Nuclear Material, adopted at Vienna on March 3, 1980.
- (6) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on February 24, 1988.
- (7) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988.
- (8) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on March 10, 1988.
- (9) International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997.

The second source is a “self-contained” definition of terrorist acts set out in the Convention itself. It defines terrorist acts as: “Any [...] act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.”<sup>17</sup> Thus, under the

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<sup>16</sup> Convention, *supra* note 12, Art. 2, paras. 2(a) and (b).

<sup>17</sup> *Id.* Art. 2, para. 1(b).



general definition of the Convention, an act is an act of terrorism if it meets two conditions:

- It is intended to cause death or serious bodily injury to a civilian or a person not taking an active part in the hostilities in a situation of armed conflict; and
- Its purpose is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.

***Other aspects of the criminalization provisions***

Other aspects of the definition of the offenses set out in the Convention may be mentioned:

- For an act to constitute an offense under the Convention, it is not necessary that the funds be actually used to commit one of the defined offenses.<sup>18</sup>
- The fact of participating as an accomplice in the commission of an offense, and the fact of organizing or directing the commission of the offense are also criminalized in the same way as the offense itself.<sup>19</sup>
- Contributing to the commission of the offense by a group of persons acting with a common purpose is also considered as committing an offense under the Convention, provided the contribution is intentional, and provided either (i) it is made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offense under the Convention; or (ii) it is made in the knowledge of the intention of the group to commit an offense under the Convention.<sup>20</sup>
- Attempts to commit the acts are also criminalized in the same way as the offenses themselves.<sup>21</sup>
- The Convention does not apply where the offense was committed in a single state, the alleged offender is a national of that state and is present in its territory, and no other state has a basis under the Convention to exercise jurisdiction over the alleged offender.<sup>22</sup>

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<sup>18</sup> *Id.* Art. 2, para. 3.

<sup>19</sup> *Id.* Art. 2, para. 5.

<sup>20</sup> *Id.* Art. 2, para. 5(c).

<sup>21</sup> *Id.* Art. 2, para. 4.

<sup>22</sup> *Id.* Art. 3.

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- Legal entities may be held liable for the offenses set out in the Convention, but the liability need not be criminal; it may also be civil or administrative.<sup>23</sup>
- The financing of terrorism offense may not be excused by considerations of a political, philosophical, ideological, racial, ethnic, religious, or other similar nature.<sup>24</sup>

A state party must assume jurisdiction over the offenses at least when the offense is committed in its territory, on board a vessel flying its flag or an aircraft registered under its laws, and when it is committed by one of its nationals. A state may also take jurisdiction in other circumstances. A state that does not extradite an alleged perpetrator to another state party on the other party's request must, without exception, submit the case to its competent authorities for the purpose of prosecution.<sup>25</sup>

### **International Cooperation**

To ensure the greatest degree of cooperation between the parties with respect to the offenses set out in the Convention, the Convention contains detailed provisions on mutual legal assistance and extradition. These provisions tend to go further than the nine conventions listed in the Annex in what they require from states in providing each other mutual legal assistance and extradition. Indeed, the establishment of a uniform, detailed, and thorough framework for international cooperation in the area of terrorism financing may well be one of the most important achievements of the Convention.

#### ***Mutual legal assistance***

The states parties undertake to give each other “the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences [established pursuant to the Convention].”<sup>26</sup> Requests for legal assistance under the Convention may not be refused on the grounds of bank secrecy, and the offenses set out in it are not to be considered for purposes of extradition or mutual legal assistance as fiscal<sup>27</sup> or political<sup>28</sup> offenses.

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<sup>23</sup> *Id.* Art. 5, para. 1.

<sup>24</sup> *Id.* Art. 6.

<sup>25</sup> *Id.* Arts. 7 and 10.

<sup>26</sup> *Id.* Art. 12, para. 1.

<sup>27</sup> *Id.* Art. 13.

<sup>28</sup> *Id.* Art. 14.

### **Extradition**

The Convention contains detailed provisions on the obligations of states parties with respect to extradition, similar to those found in most of the other counterterrorism conventions. First, the offenses established by the Convention are deemed to be extraditable offenses in any extradition treaty existing between any states parties before the coming into force of the Convention, and the parties undertake to include these offenses in any such treaty to be concluded between them in the future.<sup>29</sup> Second, when a party that makes extradition conditional upon the existence of a treaty receives a request for extradition from a country with which it does not have such a treaty, the requested state may, at its option, consider the Convention as a legal basis for granting extradition for any offense established under the Convention.<sup>30</sup> Third, states parties that do not make extradition conditional upon the existence of a treaty are required to recognize the offenses established under the Convention as extraditable.<sup>31</sup> Fourth, for the purposes of extradition, to the extent necessary, the offenses are to be treated as having been committed not only in the territory of the state in which they occurred, but also in the territory of the state that has established jurisdiction under Article 7, paragraphs 1 and 2 of the Convention.<sup>32</sup> This provision is intended to ensure that extradition is not denied on the grounds that the offense has not been committed in the territory of the requesting state. Fifth, provisions of all extradition treaties and arrangements between states parties are deemed to have been modified as between these parties to the extent that they are incompatible with the Convention.<sup>33</sup>

The Convention also implements the principle of *aut dedere aut judicare* (either prosecute or extradite) with regard to the offenses set out in it. When a state party receives information that an offender or alleged offender is present in its territory, the state party must investigate the facts contained in the information. Upon being satisfied that the facts so warrant, the state party must take the person into custody and notify the other states parties that have jurisdiction over the offense and indicate whether it intends to exercise its jurisdiction and prosecute the person.<sup>34</sup> Unless it agrees to

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<sup>29</sup> *Id.* Art. 11, para. 1.

<sup>30</sup> *Id.* Art. 11, para. 2.

<sup>31</sup> *Id.* Art. 11, para. 3.

<sup>32</sup> *Id.* Art. 11, para. 4.

<sup>33</sup> *Id.* Art. 11, para. 5.

<sup>34</sup> *Id.* Art. 9, paras. 1 and 2.

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extradite the person to the state party that claims jurisdiction, the state party must, without exception, submit the case to prosecution authorities.<sup>35</sup>

### Preventive Measures

The criminalization of the financing of terrorism is mandatory in the Convention. By contrast, only a few general provisions of the Convention dealing with preventive measures, which are set out in Article 18, are mandatory. Most of the detailed provisions are expressed as obligations of the states parties to *consider* requiring certain things, rather than obligating them to do them. This reflects the fact that the preventive measures are borrowed from the FATF 40 Recommendations, which remain the international standard for money laundering, and which are not legally binding. Nevertheless, the Convention sets out a general duty of states parties to require financial institutions and other financial intermediaries to take measures necessary to identify their customers (including the beneficiaries of accounts), to pay special attention to unusual or suspicious transactions, and to report suspicious transactions.

The states parties are *required* to cooperate in the prevention of the offenses established by the Convention “by taking all practicable measures, *inter alia*, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories.”<sup>36</sup> Such measures include (a) “[m]easures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of the offences [established in the Convention],”<sup>37</sup> and (b) “[m]easures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity.”<sup>38</sup>

For this purpose, the states parties are required to *consider* adopting rules that are part of the FATF 40 Recommendations, including:

- prohibiting the opening of accounts, the holders or beneficiaries of which are unidentified or unidentifiable, and adopting measures to ensure that

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<sup>35</sup> *Id.* Art. 10, para. 1.

<sup>36</sup> *Id.* Art. 18, para. (1).

<sup>37</sup> *Id.* Art. 18, para. (1) (a).

<sup>38</sup> *Id.* Art. 18, para. (1) (b).

financial institutions verify the identity of the real owners of such transactions;

- with respect to legal entities, requiring financial institutions to verify the legal existence and the structure of the customer;
- requiring financial institutions to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith; and
- requiring financial institutions to maintain, for at least five years, all transaction records.

In addition, the states parties are *required* to establish and maintain channels of communication between their competent agencies and services (which could be the financial intelligence units) to facilitate the secure and rapid exchange of information concerning the offenses established under the Convention.<sup>39</sup>

#### **Becoming a Party to the Convention**

The Convention was open for signature by all states from January 10, 2000 to December 31, 2001. During that period, 132 states signed it. States that signed the Convention may become parties by presenting an instrument of ratification, acceptance, or approval to the Secretary General of the United Nations.<sup>40</sup> States that did not sign the Convention while it was open for signature may become parties to it by presenting an instrument of accession to the Secretary General.<sup>41</sup>

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<sup>39</sup> *Id.* Art. 18, para. 3(a).

<sup>40</sup> *Id.* Art. 25, paras. 1 and 2.

<sup>41</sup> *Id.* Art. 25, para. 3.

## United Nations Security Council Resolutions on Terrorism Financing

### Background

The Security Council has seized itself of the phenomenon of international terrorism as a result of several crises it had to face. Among the crises that have prompted the Security Council to deal with this issue are attacks against civilian aircraft, airports, and cruise ships, and political assassinations.<sup>42</sup> Box 2 sets out the main resolutions of the Security Council dealing with the financing of terrorism.

### Box 2. Selected Security Council Resolutions on Terrorist Financing

1267 (1999) of October 15, 1999 on the freezing of the funds and other financial resources of the Taliban.

1333 (2000) of December 19, 2000 on the freezing of the funds and other resources of Usama bin Laden and the Al-Qaida organization.

1363 (2001) of July 30, 2001 on the establishment of a mechanism to monitor the implementation of measures imposed by Resolutions 1267 (1999) and 1333 (2000).

1373 (2001) of September 28, 2001 on threats to international peace and security caused by terrorist acts, and mandating the formation of the Counter-Terrorism Committee.

1377 (2001) of November 12, 2001 calling upon states to implement fully Resolution 1373 (2001).

1390 (2002) of January 16, 2002 effectively merging the freezing measures of Resolutions 1267 (1999) and 1333 (2000).

1452 (2002) of December 20, 2002 allowing for some exclusions to the freezing requirements of Resolutions 1267 (1999) and 1333 (2000) to cover expenses for basic expenses, including food, rent, legal services, and charges for routine maintenance of assets, and for extraordinary expenses after approval of the "1267 Committee."

1455 (2003) of January 17, 2003 on measures to improve the implementation of the freezing measures of Resolutions 1267 (1999), 1333 (2000), and 1390 (2002).

Notes: The summary descriptions are not part of the resolutions. A more complete list is available on the Web at <http://www.un.org/terrorism/sc/htm>.

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<sup>42</sup> See Bassiouni, *supra* note 1, pp. 1–3 for a summary of the 24 resolutions, 6 presidential statements, and 2 verbatim records issued by the Security Council dealing with the problem of terrorism through the end of 2001.

Two aspects of the Security Council's approach to terrorism may be mentioned in the present context. First, the Security Council has recently characterized acts of terrorism as threats to international peace and security. Resolution 1373 (2001) expresses this characterization in very broad terms, stating that the terrorist acts of September 11, 2001, "*like any act of international terrorism*, constitute a threat to international peace and security" (emphasis added).<sup>43</sup> The legal consequence of characterizing acts of terrorism as threats to international peace and security is that when the Security Council establishes such characterization, it is entitled to take, if necessary, the collective measures (or "sanctions") envisioned by Chapter VII of the United Nations Charter. The measures that the Council decides to take in these circumstances are mandatory for all the members of the United Nations by virtue of Articles 25 and 48 of the Charter.<sup>44</sup>

Second, the collective measures adopted by the Security Council in reaction to terrorism as a threat to international peace and security require states to take action against individuals, groups, organizations, and their assets. Traditionally, the Security Council had directed the contents of its decisions toward the acts and policies of states.<sup>45</sup>

Resolution 1373 (2001) incorporates these elements of the Security Council's approach, but it is unique in a more profound way, given its quasi-legislative character.<sup>46</sup> Although the Resolution was adopted in reaction to

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<sup>43</sup> Earlier resolutions declared specific acts of terrorism of which the Security Council was seized as threats to peace and security. Resolution 1373 (2001) is the first one to declare that *any* act of terrorism represents such a threat. A similar statement was made in Resolution 1040 (2002) regarding the taking of hostages in a theater in Moscow on October 23, 2002.

<sup>44</sup> Article 25 of the Charter states that: "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter." Article 48 states: "1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine. 2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members." Charter of the United Nations (1945).

<sup>45</sup> See, e.g., Resolution 1171 (1998), U.N. SCOR, 53<sup>rd</sup> Sess., 3889<sup>th</sup> mtg., U.N. Doc. S/INF/54 (1998) regarding the measures taken against the former leading members of the military junta in Sierra Leone; Resolution 1127 (1997) U.N. SCOR, 52<sup>nd</sup> Sess., 3814<sup>th</sup> mtg., U.N. Doc. S/INF/53 (1997) regarding the measures taken against the senior officials of the Angolan movement UNITA; Resolution 917 (1994) U.N. SCOR, 49<sup>th</sup> Sess. 4376<sup>th</sup> mtg., at 47, U.N. Doc. S/INF/50 (1994) regarding the measures taken against the Haitian military and the participants to the coup d'Etat of 1991; and Resolution 942 (1994) U.N. SCOR, 49<sup>th</sup> Sess. 3428<sup>th</sup> mtg., at 30, U.N. Doc. S/INF/50 (1994) concerning the measures of sanctions against the assets of any entity in the areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces.

<sup>46</sup> See Paul Szasz, "The Security Council Starts Legislating," 96 Am. JI Int. Law 901 (2002) and Nicolas Angelet, "Vers un renforcement de la prévention et la répression du  
(continued)

the terrorist attacks of September 11, 2001 in the United States, the measures it includes are much broader in their terms and are not limited to the identification and punishment of the alleged perpetrators of the September 2001 attacks. These measures are general in character, and are directed at the prevention, prosecution, and punishment of all acts of financing of terrorism. Similarly, with respect to the freezing of assets of terrorists, no list of individuals or entities is mentioned or referred to in the Resolution. The Resolution requires the freezing of the assets of terrorists in general, leaving unchanged the special regime for requiring the freezing of assets of listed terrorists established under earlier resolutions of the Security Council.<sup>47</sup>

### **Contents of Resolution 1373 (2001)**

While decisions taken by the Security Council under Chapter VII of the Charter are binding on all members, the exact nature of the obligations they impose depends on the language used in the resolutions. It is generally accepted that decisions of the Security Council are mandatory while its recommendations (e.g. when the Council “calls upon” member states) do not have the same legal authority. Of the three operative paragraphs of the Resolution addressed to states, the first two are expressed as binding decisions of the Security Council, while the third paragraph is expressed as a recommendation. In practice, however, the distinction may not be significant for purposes of drafting implementing legislation, since the Security Council has expressed its determination to take all the necessary steps in order to ensure the “full implementation” of the Resolution,<sup>48</sup> and as the purpose of the Counter-Terrorism Committee established by the Resolution is to monitor the implementation of the resolution as a whole.<sup>49</sup>

Table 2, below, sets out in summary form the contents of the three operational paragraphs of the Resolution addressed to states. The Resolution takes a very broad approach to the suppression of the financing of terrorism, and only those parts of the Resolution dealing directly with the topic are discussed in this handbook.<sup>50</sup>

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terrorisme par des moyens financiers et économiques?” in Catherine Bannelier et al. (ed.), *Le Droit international face au terrorisme, après le 11 septembre 2001*, CEDIN-Paris I, Cahiers internationaux no. 17 (2003), Paris, Pedonne, p. 219.

<sup>47</sup> Some elements of Resolution 1373 (2001) were also contained in the earlier Resolution 1269 (1999) U.N. SCOR, 54<sup>th</sup> Sess. 4053<sup>rd</sup> mtg., U.N. Doc. S/INF/55 (1999), but that Resolution had not been adopted under Chapter VII of the Charter, and had thus no binding character.

<sup>48</sup> Resolution *supra* note 5, para. 8.

<sup>49</sup> *Id.* para. 6.

<sup>50</sup> For a discussion of the parts of the Resolution not discussed in this Handbook, see Commonwealth Secretariat, *Report of the Expert Working Group on Legislative and Administrative Measures to Combat Terrorism* (2002) (unpublished manuscript available from the Secretariat).



**Table 2. Resolution No. 1373 (2001) and Corresponding Provisions of the Convention**

<b>Resolution 1373 (2001)</b>	<b>Convention</b>	<b>Comments</b>
1. The Security Council decides that all states shall (a) prevent and suppress the financing of terrorist (FT) acts;	Purpose of the Convention is similar.	
(b) criminalize the provision or collection of funds for terrorist acts by their nationals or in their territories;	Art. 4 requires that states parties criminalize the financing of terrorism as defined in the Convention.	Implementing the Convention would satisfy this requirement of the Resolution.
(c) freeze assets of terrorists and of entities owned or controlled by them and of persons acting on their behalf; and	Art. 8 requires that states parties take appropriate steps to identify, detect, freeze, seize, or forfeit assets used in committing FT offenses.	States are to freeze assets of listed terrorists under Resolutions 1267, 1333, and 1390.
(d) prohibit their nationals and residents from making funds available to persons who commit terrorist acts.	The conduct described in the Resolution is distinct from the financing of terrorist acts criminalized under the Convention.	
2. Decides that all states shall		Implementation of paragraph 2 requires mainly administrative measures, and is not discussed in this handbook (except paragraph 2(f)).
(a) not provide support to those who commit terrorist acts;		
(b) take steps to prevent commission of terrorist acts, including by provision of early warning to other states by exchange of information;	Art. 18 (2) requires states to prevent FT by considering exchanging information between counterpart agencies and conducting inquiries.	
(c) deny safe haven to those who finance, plan, support, or commit terrorist acts or provide safe havens;		

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<b>Resolution 1373 (2001)</b>	<b>Convention</b>	<b>Comments</b>
(d) prevent use of their territory to finance, plan, facilitate, or commit terrorist acts;	Art. 18 (1)(a) requires states to cooperate to prevent their territories from being used to finance terrorists.	
(e) ensure that those who participate in financing, planning, preparation, or perpetration of terrorist acts are brought to justice;	Articles 9, 10, and 17 have a similar purpose.	
(f) afford one another the greatest measure of assistance in connection with criminal investigations or proceedings relating to the financing or support of terrorist acts; and	With respect to the financing of terrorist acts, Art. 11 (Extradition) and Arts. 12–15 (Mutual legal assistance and extradition) cover the same matter.	See Chapter 4, page 60 for discussion of mutual legal assistance requirements.
(g) prevent movement of terrorists by effective border controls.	Art. 18 (2)(b) requires states to consider measures to detect or monitor physical cross-border transportation of cash and certain bearer instruments.	
3. Calls upon states to (a) find ways of intensifying and accelerating exchange of information;	Arts. 12 and 18 (3) contain related FT prevention requirements.	Except for the notes below in this table, the contents of paragraph 3 are not discussed in this handbook.
(b) exchange information to prevent the commission of terrorist acts;	Arts. 12 and 18 (3) contain related FT prevention requirements.	
(c) cooperate to prevent and suppress terrorist attacks;	Arts. 12 and 18 (3) contain related FT prevention requirements.	

Resolution 1373 (2001)	Convention	Comments
(d) become parties to relevant conventions including the SFT Convention;		The Convention and the 9 treaties listed in its Annex are among the 12 conventions considered "relevant" by the Terrorism Committee.*
(e) increase cooperation and fully implement relevant international conventions and Security Council Resolutions 1269 (1999) and 1368 (2001);		The reference to "relevant conventions" includes the Convention.
(f) take measures to ensure that asylum seekers are not planning, facilitating, or participating in the commission of terrorist acts; and		
(g) ensure that (i) refugee status is not abused by terrorists; and (ii) that claims of political motivation are not recognized as grounds for refusing requests for extradition of alleged terrorists.	Art. 14 of the Convention contains language similar to (ii).	
<p>* In addition to the Convention and the nine treaties listed in its Annex, the Counter-Terrorism Committee takes the view that "relevant conventions" include two other conventions: the Convention on Offences and Certain Other Acts Committed on Board Aircraft, Sept. 14, 1963 and the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Mar. 1, 1991. Neither of these conventions are "criminalization" conventions in the same sense as the nine treaties listed in the Annex to the Convention. The first refers to offenses under the penal laws of the states parties, and the second requires states parties to prohibit and prevent the movement into and out of their territory of unmarked explosives.</p>		

The obligations of states under the Resolution may be grouped for purposes of presentation under the two headings of setting international norms on combating the financing of terrorism, and freezing assets of terrorists.

***Setting international norms on combating the financing of terrorism***

The Resolution contains two separate requirements with regard to combating the financing of terrorism, one relating to the financing of terrorist acts, the other relating to the financing of terrorists. The first requirement is contained in paragraphs 1(a) and 1(b) of the Resolution. In paragraph 1(a), the Resolution requires states to “prevent and suppress the financing of terrorist acts.” In paragraph 1(b), the Resolution requires states to “[c]riminalize the willful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts.”<sup>51</sup> The language of paragraph 1(b) is very close to that of the Convention. Under paragraph 3(d) of the Resolution, the Security Council “calls upon states” to become parties to the Convention. States must also make sure that such terrorist acts are established as a serious criminal offense in their domestic law and that the criminal punishment associated with this offense reflects its seriousness.<sup>52</sup> The Convention contains similar provisions. Thus, paragraphs 1(a) and 1(b) of the Resolution appear to be references to the Convention.

The second requirement is contained in paragraph 1(d) of the Resolution, which requires states to “prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons.” This part of the Resolution sets out an autonomous obligation, not contained in the Convention, as the Convention does not deal with the question of financial support to terrorists or terrorist entities.

States are also bound by other obligations in respect of terrorism, including the obligation to refrain from providing support to terrorists, to take steps to prevent terrorist acts, to deny safe haven to terrorists and those who finance terrorist acts, to bring such persons to justice, to afford other states the greatest measure of assistance in respect of criminal investigations or pro-

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<sup>51</sup> Resolution, *supra* note 5, para. 1(b).

<sup>52</sup> *Id.* para. 2(e).

ceedings, and to prevent the movement of terrorists or terrorist entities by effective border controls and other measures.<sup>53</sup> The Resolution also calls upon states to intensify and accelerate the exchange of information on terrorist movements and actions, on administrative and judicial matters to prevent the commission of terrorist acts, to cooperate through bilateral and multilateral arrangements and agreements to prevent, suppress, and prosecute terrorist acts, to become parties to the “relevant” global conventions against terrorism (including the Convention), to fully implement these conventions and Security Council Resolutions 1269 (1999)<sup>54</sup> and 1368 (2001),<sup>55</sup> to ensure that asylum seekers are not planning, facilitating, or participating in terrorist attacks, and to ensure that refugee status is not abused by terrorists and that claims of political motivation are not recognized as grounds for refusing requests for extradition of alleged terrorists.<sup>56</sup>

#### ***Freezing assets of terrorists and terrorist organizations***

The Resolution imposes on states an obligation to freeze without delay funds and other financial assets of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts.<sup>57</sup> The obligation extends to entities owned or controlled directly or indirectly by such persons. The Resolution does not mention the earlier resolutions of the Security Council that established the obligation to freeze the assets of named individuals and entities, nor does it refer to any list of such individuals or entities issued under the earlier resolutions. As a result, the general obligation to freeze assets of terrorists under the Resolution is independent of the regime established by these earlier resolutions. The general obligation to freeze terrorist assets under the Resolution is similar to the obligation contained in the Convention to take measures for the freezing of funds used or allocated to commit terrorist acts.<sup>58</sup> The Resolution and the Convention give considerable latitude to states in the design of an appropriate freezing, seizure, and confiscation regime.

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<sup>53</sup> *Id.* para. 2(a) through (g).

<sup>54</sup> U.N. SCOR, 54<sup>th</sup> Sess. 4053<sup>rd</sup> mtg., U.N. Doc. S/INF/55 (1999) [calling upon states to cooperate in the prevention and suppression of terrorist acts].

<sup>55</sup> U.N. SCOR, 56<sup>th</sup> Sess. 4370<sup>th</sup> mtg., U.N. Doc. S/INF/57 (2001) [calling upon states to redouble their efforts to prevent and suppress acts of terrorism].

<sup>56</sup> Resolution, *supra* note 5, para. 3(a) through (g).

<sup>57</sup> *Id.* para. 1(c).

<sup>58</sup> Convention, *supra* note 12, Art. 8, paras. 1 and 2. The Convention is broader than the Resolution on this point, as it requires that states parties take measures for the *identification, detection, freezing, and confiscation* of funds used or allocated for the purpose of committing the terrorist acts that states are required to criminalize under the Convention, while the Resolution requires only the *freezing* of assets of terrorists and those who support them.

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In view of the wide language used in paragraph 1(c), the Counter-Terrorism Committee has taken the position that the Resolution requires the freezing of the assets of persons and entities suspected of terrorism, whether they are included in lists established by the Security Council or are identified as such by states.<sup>59</sup> However, given the lack of uniformity in the definition of terrorism among states, the varying degrees of legal protection given to those whose name appears on such lists, and the fact that states are often reluctant to provide full factual information on which their suspicions are based, questions have been raised with regard to the obligation to freeze the assets of suspected terrorists identified by states.<sup>60</sup> The listing of suspected terrorists by the Security Council, under internationally agreed procedures, alleviates these concerns.

Under the earlier resolutions 1267 (1999) and 1333 (2000), the Security Council, acting under Chapter VII of the Charter, decided that members of the United Nations would freeze the assets of the Taliban and of Usama bin Laden, respectively, and entities owned or controlled by them, as designated by the “Sanctions Committee” (now called the 1267 Committee)<sup>61</sup> established under each of the resolutions. By contrast to Resolution 1373 (2001), these resolutions establish an “autonomous” asset-freezing regime under which lists of persons and entities whose funds are to be frozen are issued and modified from time to time under the authority of the Security Council. The 1267 Committee has the same composition as the Security Council. It has issued lists of individuals and entities belonging or associated with the Taliban and the Al-Qaida organization.<sup>62</sup> On the basis of Resolution 1390 (2002),<sup>63</sup> one consolidated list is now issued.

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<sup>59</sup> Letter from Jeremy Wainright, Expert Adviser, to the Chairman of the Counter-Terrorism Committee (November 12, 2002), endorsed by the Counter-Terrorism Committee on November 24, 2002. In view of this, many states now base their response to the freezing decisions of the Security Council on Resolution 1373 (2001), rather than on the earlier resolutions.

<sup>60</sup> See Kern Alexander, “International Legal Developments” in “The Funding of Terror: The Legal Implications of the Financial War on Terror,” 6.3 *Journal of Money Laundering Control* 201, 212–13 (2003).

<sup>61</sup> Security Council Committee Established Pursuant to Resolution 1267 (1999), *Guidelines of the Committee for the Conduct of Its Work*, para. 1 (November 7, 2002).

<sup>62</sup> The latest status of the list is available on the website of the Sanctions Committee established pursuant to Resolution 1267 (1999), <http://www.un.org/Docs/sc/committees/1267/1267ListEng.htm>.

<sup>63</sup> U.N. SCOR, 57<sup>th</sup> Sess. 4452<sup>nd</sup> mtg., U.N. Doc. S/INF/58 (2002). The text is set out in Appendix IV of this handbook.

The 1267 Committee's guidelines for the conduct of its work contain detailed provisions on the manner in which additions and deletions are made to the list of persons and entities whose assets are to be frozen. The designations are made by the Committee, in closed session, on the basis of the information provided by the states members of the United Nations. To the extent possible, proposed additions should include "a narrative description of the information that forms the basis or justification for taking action."<sup>64</sup> Individuals and entities can seek to be removed from the list by following the procedure established by the Committee. If it wishes to be removed from the list, an individual or entity must petition the government of residence or citizenship to request a review of the case. If the government to which the petition is submitted endorses the petition, it must try to reach an agreement for the de-listing with the original designating government. In the absence of an agreement, the petitioned government may refer the case to the Committee (and, later, to the Security Council). Updated lists, including lists of names removed from the list, are sent to UN members without delay. The list is also posted on the website of the 1267 Committee.

## **The FATF Special Recommendations on Terrorist Financing**

### **Background**

The FATF was established by the Group of Seven Summit held in Paris in 1989. It issued its first set of recommendations on combating money laundering in 1990 and modified them in 1996. The FATF has also issued Interpretative Notes which amplify or clarify some of the recommendations. A further review of the recommendations is currently underway. As of April 30, 2003, the FATF had 31 members. Members of the FATF agree to perform self-assessments, in which they report on the status of their implementation of the 40 anti-money laundering recommendations, and to undergo mutual evaluations, in which the anti-money laundering system of each country is assessed by a team made up of experts from other member countries. Members not in compliance with the recommendations face a graduated set of responses ranging from having to deliver progress reports at plenary meetings to suspension of membership. Two rounds of mutual evaluations have already taken place for most members.

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<sup>64</sup> *Guidelines of the Committee for the Conduct of its Work*, para. 5(b) (November 7, 2002), [http://www.un.org/Docs/sc/committees/1267/1267\\_guidelines.pdf](http://www.un.org/Docs/sc/committees/1267/1267_guidelines.pdf). The proposed names of individuals or entities are circulated among the members of the Committee. The designation is considered accepted if no state objects to it within 48 hours.

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The reaction of the FATF to the terrorist attacks in the United States on September 11, 2001 was swift. On October 29 and 30, 2001 the FATF met in Washington in an extraordinary Plenary and decided to expand its mandate beyond money laundering to include the financing of terrorism, and also to focus its energy and expertise on the worldwide effort to combat it. At the same meeting, the FATF adopted a new set of eight Special Recommendations on terrorist financing (the text of the Special Recommendations is set out in Appendix V). The FATF asked its members to undertake a self-assessment of their implementation of the Special Recommendations, to be submitted by May 1, 2002. The same invitation was later issued to all countries of the world. The FATF also issued a Self-Assessment Questionnaire on the eight Special Recommendations<sup>65</sup> and *Guidance Notes for the Special Recommendations*,<sup>66</sup> intended to clarify certain aspects of the Special Recommendations. In September 2002, the FATF reported that more than 120 countries had responded to the request for a self-assessment.<sup>67</sup>

In November 2002, the Fund adopted a Methodology for Assessing Compliance with Anti-Money Laundering and Combating the Financing of Terrorism<sup>68</sup> (hereinafter referred to as “the Methodology”), which had been developed by the IMF, the World Bank, the FATF, the Egmont Group, and other international standard-setting organizations. The FATF “40+8” recommendations were added to the Fund’s list of areas and associated standards and codes for use in the operational work of the Fund, and a 12-month pilot program of AML/CFT assessments and accompanying Reports on the Observance of Standards and Codes (ROSCs) was undertaken, involving the participation of the Fund, the World Bank, the FATF, and the FATF-style regional bodies. By contrast to the Recommendations and the Special Recommendations, compliance with which had been assessed separately thus far, the Methodology brings together the 40 Recommendations on Money Laundering and the 8 Special Recommendations on Terrorist Financing in a single assessment document. It should be emphasized, however, that the

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<sup>65</sup> FATF Secretariat, *Self-Assessment Questionnaire: FATF Special Recommendations on Terrorist Financing* (Jan. 31, 2002), [http://www.fatf-gafi.org/TerFinance\\_en.htm](http://www.fatf-gafi.org/TerFinance_en.htm).

<sup>66</sup> FATF Secretariat, *Guidance Notes for the Special Recommendations on Terrorist Financing and the Self-Assessment Questionnaire* (March 27, 2002), [http://www.fatf-gafi.org/TerFinance\\_en.htm](http://www.fatf-gafi.org/TerFinance_en.htm) [hereinafter “Guidance Notes”].

<sup>67</sup> FATF Press release, Russia, Dominica, Niue, and Marshall Islands removed from FATF’s list of non-cooperative countries and territories (October 11, 2002), [http://www.fatf-gafi.org/Newsarchive\\_en.htm](http://www.fatf-gafi.org/Newsarchive_en.htm).

<sup>68</sup> *Report on the Outcome of the FATF Plenary Meeting and Proposal for the Endorsement of the Methodology for Assessing Compliance with Anti-Money Laundering and Combating the Financing of Terrorism Standards*, Annex II, IMF (November 8, 2002), <http://www.imf.org/external/np/mae/aml/2002/eng/110802.pdf>.



Methodology is not a standard-setting instrument, but an instrument intended to facilitate AML/CFT assessments in a uniform way. The parts of the Methodology dealing directly with the financing of terrorism are set out in Appendix V.

### **The Special Recommendations**

The first five Special Recommendations contain standards that are similar in content to the provisions of the Convention and the Resolution. The last three cover new areas. Table 3 summarizes the contents of the Special Recommendations. They are described briefly in turn in the next paragraphs.

#### ***SR I: Implementation of international legal instruments***

Special Recommendation I states that countries “should take immediate steps to ratify and to implement fully” the Convention, and to “immediately implement the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts, particularly United Nations Security Council Resolution 1373.”<sup>69</sup>

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<sup>69</sup> Under the Methodology, which covers the 40 Recommendations on Money Laundering as well as the eight Recommendations on Terrorist Financing, this criterion would be assessed by verifying that the country has also ratified and implemented the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, December, 1988 [hereinafter “the 1988 Convention”], as well as the United Nations Convention Against Transnational Organized Crime, December, 2000 [hereinafter “the Palermo Convention”]. The reference to the 1988 Convention is contained in FATF Anti-Money Laundering Recommendation No. 1. The reference to the Palermo Convention is new, and in this case, the Methodology would assess a broader standard than is set out in the Recommendations. However, it is understood that the revised Recommendations to be considered by the FATF Plenary in June 2003 may include the ratification and implementation of the Palermo Convention.

**Table 3. Summary of FATF Special Recommendations**

Number	Contents	Comments
I	“Ratify and implement fully” the Convention and UN resolutions	This standard is satisfied by becoming a party to the Convention and implementing it, and responding to the obligations contained in the relevant UN Security Council resolutions.
II	Criminalize the financing of terrorism, terrorist acts, and terrorist organizations	Refers to the Convention (financing of terrorist acts) and Section 1 (d) of the Resolution (providing financial support to terrorists and terrorist organizations).
III	Freeze and confiscate terrorist assets	Refers to Section 1 (c) of the Resolution; Resolutions 1267 (1999), 1333 (2000), and 1390 (2002); and Article 8 of the Convention.
IV	Report suspicious transactions linked to terrorism	Similar to Article 18, paragraph 1 (b) of the Convention.
V	Provide widest possible range of assistance to other countries	Similar to Section 3 (e) of the Resolution and Articles 11–16 and 18, paragraphs 3 and 4 of the Convention.
VI	Impose anti-money laundering requirements on alternative remittance systems	New
VII	Strengthen customer identification measures in wire transfers	New
VIII	Ensure that entities, in particular nonprofit organizations, cannot be misused to finance terrorism	New

Special Recommendation I also states that countries should “immediately implement” UN Security Council Resolutions “relating to the prevention and suppression of the financing of terrorist acts, particularly Resolution No. 1373 (2001).” The *Guidance Notes* list the following resolutions as being relevant in this context: 1267 (1999), 1269 (1999), 1333 (2000), 1373 (2001), and 1390 (2002).

***SR II: Criminalization of the financing of terrorism, terrorist acts, and terrorist organizations***

Special Recommendation II sets as a standard the criminalization of the financing of *terrorism, terrorist acts, and terrorist organizations*. The term “terrorist acts” refers to the acts that the parties to the Convention have agreed to criminalize. The Special Recommendation does not define “terrorist organizations,” thus leaving each country to define it for its own purposes. The term “terrorism” would appear to be redundant with “terrorist acts.”<sup>70</sup> In addition, countries must make these offenses predicate offenses for the crime of money laundering.

In assessing compliance with Special Recommendation II, the Methodology states that the financing of terrorism “should be criminalised on the basis of the Convention,” and lists a number of assessment criteria, including:

- The offense should also apply when terrorists or terrorist organizations are located in another jurisdiction or when the terrorist acts take place in another jurisdiction.<sup>71</sup> (See Chapter 4, page 54 for a discussion of this point.);
- The offense should apply at least to those individuals and legal entities that knowingly engage in financing of terrorism<sup>72</sup> (see Chapter 4, page 51 for a discussion of the intentional element in the offense);
- If it is permissible under the jurisdiction’s legal system, the offense of financing of terrorism should extend to legal entities<sup>73</sup> (see Chapter 4, page 53 for a discussion of this point);
- Laws should provide for effective, proportionate, and dissuasive criminal, civil, or administrative sanctions for financing of terrorism,<sup>74</sup> and legal means and resources should be adequate to enable an effective implementation of laws on the financing of terrorism.<sup>75</sup>

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<sup>70</sup> The *Guidance Notes* state that the terms “financing of terrorism” or “financing of terrorist acts” refer to the activities described in the Convention. *Guidance Notes, supra* note 66, para. 8.

<sup>71</sup> Methodology, *supra* note 68, Criterion 3.1.

<sup>72</sup> *Id.* Criterion 4.

<sup>73</sup> *Id.* Criterion 4.1.

<sup>74</sup> *Id.* Criterion 5.

<sup>75</sup> *Id.* Criterion 6.

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Special Recommendation II also establishes as a standard that each country should ensure that terrorism financing offenses are designated as money laundering predicate offenses. (See Box 3.) Implementation is discussed in Chapter 4, page 49.

### **Box 3. Freezing, Seizure, Confiscation, and Forfeiture**

The *Guidance Notes* (paragraphs 14–16) contain a useful definition of the three terms in the context of Special Recommendation II:

*Freezing:* In the context of this Recommendation, a competent government or judicial authority must be able to freeze, to block, or to restrain specific funds or assets and thus prevent them from being moved or disposed of. The assets/funds remain the property of the original owner and may continue to be administered by the financial institution or other management arrangement designated by the owner.

*Seizure:* As with freezing, competent government or judicial authorities must be able to take action or to issue an order that allows them to take control of specified funds or assets. The assets/funds remain the property of the original owner, although the competent authority will often take over possession, administration, or management of the assets/funds.

*Confiscation (or forfeiture):* Confiscation or forfeiture takes place when competent government or judicial authorities order that the ownership of specified funds or assets be transferred to the state. In this case, the original owner loses all rights to the property. Confiscation or forfeiture orders are usually linked to a criminal conviction and a court decision whereby the property is determined to have been derived from or intended for use in a criminal offense.

### ***SR III: Freezing, seizure, and confiscation of terrorist assets***

Freezing, seizure, and confiscation are dealt with in different ways in the Convention, the Resolution, and the Special Recommendations. The Convention requires states parties to “take appropriate measures, in accordance with [their] domestic legal principles, for the identification, detection and freezing or seizure” of terrorist funds, and “for the forfeiture” of such funds.<sup>76</sup> For its part, the Resolution also contains a wide-ranging obligation for states to freeze terrorist assets, and Resolutions No. 1267 (1999) and 1390 (2002) require the actual freezing of the assets of terrorist and terrorist organizations listed by the “1267 Committee.” However, these resolutions require only the freezing of these assets; they do not require their

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<sup>76</sup> Convention, *supra* note 12, Art. 8, paras. 1 and 2.

seizure or confiscation. Special Recommendation III brings the three elements of freezing, seizure, and confiscation together.

Possible legislative responses to this standard (and the relevant provisions of the Convention and the UN resolutions) are discussed in Chapter 4, page 55.

***SR IV: Reporting transactions related to terrorism***

Special Recommendation IV sets as a standard the extension of the scope of suspicious transaction reports required of financial institutions to include transactions suspected of being related to terrorism. This would normally be accomplished through an amendment to the anti-money laundering law. The *Guidance Notes* state that countries have the choice of using a subjective criterion on which reports would be based (a financial institution “suspects” that a transaction is related to terrorism), or a more objective one (a financial institution “has reasonable grounds to suspect that a transaction is related to terrorism”).<sup>77</sup>

This standard, which is part of the preventive measures called for in the Convention, is discussed in Chapter 4, page 63.

***SR V: International cooperation***

Special Recommendation V establishes as a standard that countries afford each other the greatest possible measure of assistance in connection with criminal and civil enforcement, and administrative investigations, inquiries, and proceedings relating to the financing of terrorism, terrorist acts, and terrorist organizations. The *Guidance Notes* indicate that this recommendation covers the following types of assistance:<sup>78</sup>

- (1) Exchanges of information through mutual legal assistance mechanisms, including the taking of evidence, the production of documents for investigations or as evidence, the search and seizure of documents or things relevant to criminal proceedings or investigations, the ability to enforce a foreign restraint, seizure, forfeiture, or confiscation order in a criminal matter;
- (2) Exchanges of information by means other than mutual legal assistance mechanisms, such as exchanges of information between FIUs and other regulatory or supervisory agencies;
- (3) Measures to ensure denial of “safe haven” to individuals involved in terrorist financing;

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<sup>77</sup> *Guidance Notes*, *supra* note 66, para. 21.

<sup>78</sup> *Id.* para. 22.

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- (4) Procedures for extradition of such individuals; and
- (5) Provisions and procedures to ensure that claims of political motivations for committing the offense are not grounds for denial of extradition requests.

The Methodology assesses compliance with this criterion by stating that “there should be laws and procedures allowing the provision of the widest possible range of mutual legal assistance in AML/CFT matters, whether requiring the use of compulsory measures or not, and including the production of records by financial institutions and other persons, the search of persons and premises, seizure and obtaining of evidence for use in AML/CFT investigations and prosecutions and in related actions in foreign jurisdictions.”<sup>79</sup> Criteria 34.1–42 of the Methodology elaborate on a number of these points.

Possible legislative responses to this standard and the related provisions of the Convention and the Resolution are discussed in Chapter 4, page 60.

### ***SR VI: Alternative remittance services***

Special Recommendation VI sets as a standard that countries impose anti-money laundering requirements on alternative remittance systems—that is, remittance systems that do not use formal financial sector institutions, such as banks, to effect transfers of funds from one country to another.<sup>80</sup> (See Box 4.) According to the *Guidance Notes*, the effect of this recommendation is to require (i) that alternative remittance or transfer services be either licensed or registered; (ii) that FATF Recommendations 10 and 11 (customer identification), 12 (record keeping), and 15 (suspicious transaction reporting) be extended to alternative money remittance systems; and (iii) that sanctions be available in cases of failure to comply with these requirements.<sup>81</sup> Possible legislative responses to this recommendation are discussed in Chapter 4, page 65.

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<sup>79</sup> Methodology, *supra* note 68, Criterion. 42.

<sup>80</sup> The forthcoming IMF/World Bank *hawala* study uses the term “informal funds transfer systems,” which the authors prefer in view of their observation that in some jurisdictions, these systems are the dominant means by which financial transfers are conducted, a situation that is not consistent with the word “alternative.” This handbook uses the term “alternative remittance systems” in deference to the FATF terminology.

<sup>81</sup> *Guidance Notes*, *supra* note 66, para. 28.

#### Box 4. Alternative Remittance Systems

There is no established or even generally agreed definition for “alternative remittance systems.” Nevertheless, law enforcement authorities generally describe such systems on the basis of certain common characteristics. Alternative remittance systems “generally have developed based on specific ethnic, cultural or historical factors and, in some cases, are a traditional method for moving money that pre-date the spread of Western banking systems in the 19<sup>th</sup> and 20<sup>th</sup> centuries.” A key characteristic of alternative remittance systems is that they largely operate on the basis of “correspondent” relationships—that is, value is moved from one location to another often without the physical movement of currency. While most frequently viewed as “parallel” or “shadow” systems operating outside of the established national and international payments mechanisms, alternative remittance systems may rely on the formal systems as a means of movement of funds.

Another key characteristic of alternative remittance systems is their reliance on some form of “netting” to transmit value and settle balances among dealers. Often, offsetting debits and credits are employed on a large scale and involve more than two parties. Agents, *hawaladar*, or brokers usually receive a commission or payment for their services and make a profit by exploiting exchange rate differentials. Brokers are understood to be scrupulous in settling balances, and because the most important component to continuing viability within the network is trust, transactions rarely break down and payment is virtually guaranteed.

There is evidence that alternative remittance systems operate even in the advanced economies where formal financial institutions operate efficiently. While the reasons for the existence of alternative remittance systems are varied, the lack of access to more formal banking systems, higher costs, lack of experience, or discomfort with institutions outside of known cultural traditions may be factors. Repatriation of emigrant income has frequently been the basis for the increase in the use of alternative remittance systems in Western countries in recent decades. Remittance through alternative remittance systems may be less expensive, more secure and may circumvent restrictive currency exchange regulations. Such systems can service remote areas that are not accessed by traditional or formal financial institutions.

Alternative remittance systems are attractive to launderers and those who finance terrorism because there is little or no record of the communications whereby the transfers are made. The lack of a record trail impedes law enforcement tracing the movement of funds. In addition, they are generally not subject to external auditing, control, or supervision by regulatory authorities.

The IMF and the World Bank have recently completed a study of the *hawala* system in Asia, the conclusions of which are summarized in Box 5.

Sources: David Marshall Nissman, *Money Laundering*; Lisa C. Carroll, *Alternative Remittance Systems Distinguishing Sub-Systems of Ethnic Money Laundering in Interpol Member Countries of the Asian Continent*; Mohammed El-Qorchi, “Hawala,” *Finance & Development*, December 2002, Vol. 39, No. 4; and IMF/World Bank, *Informal Funds Transfer Systems: An Analysis of the Hawala System*, April 2003.

***SR VII: Originator information in wire transfers***

Special Recommendation VII addresses the issue of customer identification in international and domestic wire transfers. As elaborated in the *Guidance Notes*, the standard is that (i) originator information be specified on domestic and international funds transfers; (ii) financial institutions retain the information at each stage of the transfer process; and that (iii) countries require financial institutions to examine more closely or to monitor funds transfers for which complete originator information is not available.<sup>82</sup> The requirement extends to financial institutions, *bureaux de change*, and remittance/transfer services.<sup>83</sup> It may be noted that the problem of lack of originator information on wire transfers is related to money laundering as a whole, and should be dealt with by an appropriate amendment to the FATF recommendations on money laundering. However, without waiting for a revision of the 40 Recommendations on this point, the Special Recommendations take an initial step in addressing the issue.

These matters would normally be dealt with through amendments to the anti-money laundering law or the laws regulating financial institutions, and secondary legislation issued under such laws. The FATF has issued an Interpretative Note to this recommendation.<sup>84</sup> Possible legislative responses are discussed in Chapter 4, page 63.

***SR VIII: Nonprofit organizations***

Special Recommendation VIII states that countries should review their laws and regulations that relate to entities that can be used for the financing of terrorism, leaving the decision as to which type of organization is particularly vulnerable to each country, on the basis of an evaluation of local conditions. Nevertheless, the Recommendation draws particular attention to nonprofit organizations, and requires countries to ensure that nonprofit organizations cannot be misused (i) by terrorist organizations posing as legitimate entities, (ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and (iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organizations.

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<sup>82</sup> *Id.* para. 34.

<sup>83</sup> *Id.* para. 35.

<sup>84</sup> FATF Secretariat, *Interpretative Note to FATF Special Recommendation VII: Wire Transfers* (February 14, 2003), [http://www.fatf-gafi.org/pdf/INSR7\\_en.PDF](http://www.fatf-gafi.org/pdf/INSR7_en.PDF).



In view of its nature, this Recommendation does not lend itself to an immediate and comprehensive legislative response. The first part of the Recommendation requires a review of the legal regime of these entities to prevent their misuse for terrorist financing. Only after such a review is completed can the authorities decide on the measures best suited to deal with the risks identified. The questionnaire issued by the FATF on the Special Recommendations<sup>85</sup> and its *Guidance Notes* provide information as to the intended scope of the review.

The second part of the recommendation deals more specifically with “non-profit organizations.” The *Guidance Notes* state that “jurisdictions should ensure that such entities may not be used to disguise or facilitate terrorist financing activities, to escape asset freezing measures or to conceal diversions of legitimate funds to terrorist organizations.”<sup>86</sup> The use of non-profit organizations to channel funds to finance terrorist activities is a worrying trend, since it is difficult to separate these funds from other funds managed by the same nonprofit entity. In effect, the only difference between a legal and an illegal donation to, or by, a nonprofit organization is the intention leading to the transaction. In addition, in some cases, the management of the entity may not be aware that the entity is being used for illegal purposes. The FATF has issued a document on international best practices in combating the abuse of nonprofit organizations, which may serve as a guide for the review of the sector in a particular country.<sup>87</sup> Possible legislative responses to this recommendation with respect to nonprofit organizations are discussed in Chapter 4, page 70.

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<sup>85</sup> FATF Secretariat, *Self-Assessment Questionnaire*, *supra* note 65.

<sup>86</sup> *Guidance Notes*, *supra* note 66, para. 38.

<sup>87</sup> FATF Secretariat, *Combating the Abuse of Non-Profit Organisations: International Best Practices* (October 11, 2002), [http://www.fatf-gafi.org/TerFinance\\_en.htm](http://www.fatf-gafi.org/TerFinance_en.htm).

## **LEGISLATING TO MEET THE INTERNATIONAL NORMS AND STANDARDS**

Countries that have already legislated to implement the obligations and standards related to combating the financing of terrorism have done so in many different ways. Some countries have enacted comprehensive legislation that deals with many aspects of combating terrorism and its financing, sometimes going well beyond the international requirements. Others have designed legislation to deal with one or a few of these requirements at a time—for example, adopting legislation dealing specifically with the requirements of the Convention, or those of the Convention and the Resolution taken together.

Each approach has its own advantages and it is up to each country to decide on how to proceed, depending on its own needs. In some cases, where the existing legal framework, and in particular the anti-money laundering laws, are weak or outdated, a comprehensive law covering in a unified manner both AML and CFT may be a good solution. It provides for a more coherent legislative response and reduces the risk of gaps or loopholes. In other cases, it may be preferable to make some amendments to the existing laws. This approach has the advantage of being quicker. But the resulting legal construction may lack clarity and coherence.

What follows is a very brief and general presentation of this topic. While a discussion of the criminal legislative policy issues related to the prevention, detection, and repression of terrorism is beyond the scope of this handbook, it is hoped that the very general presentation that follows will help clarify the issues facing authorities as they consider the possible scope of legislation, and will also help explain the wide variations in the scope of recent laws that contain provisions on the financing of terrorism.

### **General**

The legislative policy response to the international obligations related to the prevention and repression of terrorism financing may be made part of a wider legislative initiative to combat terrorism generally, or it may be considered on its own. Some countries have decided to respond to the events of September 2001 by adopting a wide-ranging set of measures to facilitate the detection, prevention, and repression of terrorism. These comprehensive

laws emphasize preventive measures. Before the enactment of such comprehensive legislation, these countries generally dealt with terrorism by adopting provisions repressing specific acts, notably those criminalized under the international conventions on the suppression of terrorist acts, and by relying on general criminal law provisions, such as those relating to murder, sabotage, or unlawful use of explosives. Countries such as Canada, the United Kingdom, and the United States have adopted comprehensive anti-terrorism legislation. As the Canadian Minister of Justice put it before the Canadian Senate Committee considering the proposed legislation, “Our current laws allow us to investigate terrorism, prosecute and impose serious penalties on those who have engaged in various specific activities generally associated with terrorism.... However, these and other laws are not sufficient to prevent terrorist acts from occurring in the first place.... Our current laws do not adequately address the reality of how terrorist cells operate and how support is provided. Our laws must fully implement our intention to prevent terrorist activity and, currently, they do not.”<sup>88</sup> The Canadian Terrorist Act 2001<sup>89</sup> is intended to provide law enforcement authorities with the tools to identify and stop terrorist plots before they can be carried out.<sup>90</sup> In addition to measures designed to respond to the country’s obligations under the Resolution and the Convention, the Act “addresses the core needs for comprehensive criminal measures against terrorism, including provisions on the fundamental issue of definition.”<sup>91</sup>

The USA PATRIOT Act<sup>92</sup> is also a wide-ranging law providing expanded powers to police authorities, passed in the immediate aftermath of the terrorist attacks of September 11, 2001 in the United States. The Act gives federal officials greater authority to track and intercept communications and vests the Secretary of the Treasury with regulatory powers to combat corruption of U.S. financial institutions for foreign money laundering purposes. It seeks to close U.S. borders to foreign terrorists and to detain and remove those within its borders. It creates new crimes and new

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<sup>88</sup> The Honorable Anne MacLellan, Minister of Justice and Attorney General of Canada, appearance before the Senate Committee on the Subject Matter of Bill C-36, December 4, 2001, quoted in Richard G. Mosley, “Preventing Terrorism, Bill C-36: the Anti-Terrorism Act 2001,” in *Terrorism, Law & Democracy, How Is Canada Changing Following September 11?*, Canadian Institute for the Administration of Justice 147, 2002.

<sup>89</sup> Anti-Terrorism Act, Statutes of Canada 2001, Chapter 41 [Canada].

<sup>90</sup> Mosley, *supra* note 88, at 150.

<sup>91</sup> *Id.* at 153.

<sup>92</sup> United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001, Public Law 107-56, October 26, 2001.

penalties, for use against domestic and international terrorists.<sup>93</sup> The law implementing the Convention was adopted later.<sup>94</sup>

Other countries, which had already criminalized various forms of terrorism, recently modified their legislation as necessary to implement the Convention, and included in the same law additional powers to the police in the detection of terrorist offenses. This is the case, for example, of France.<sup>95</sup>

Still other countries have taken the requirements of the Convention and some of the requirements of the Resolution together and have legislated to incorporate their provisions into local law. An example is the Barbados Anti-Terrorism Act, 2002-6. The Act sets out a new terrorism offense, with a definition structured in a manner similar to that of the Convention and provides the legislative tools to repress such acts and their financing, as well as the freezing and forfeiture of terrorist funds.

Finally, some countries have adopted specific legislative measures to incorporate the Convention into their legislation, while limiting the scope of new legislation to what is needed to make the provisions of the Convention operational. For example, such legislation may specify to what extent legal entities are to be made criminally responsible for acts of individuals, a question left to the decision of each party to the Convention. Similarly, as the Convention does not specify the penalties for the acts parties are to criminalize, the law may specify such penalties. For example, Monaco's Ordonnance Souveraine No. 15.320 of April 8, 2002 on the repression of the financing of terrorism defines the offenses set out in the Convention and the treaties set out in its Annex, and contains provisions dealing with matters on which the Convention leaves options to the states parties.<sup>96</sup> A separate ministerial decree, based on the Ordonnance Souveraine by which Monaco made the Convention applicable internally, provides for the freezing of assets of persons and organizations listed in annexes to the decree.<sup>97</sup>

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<sup>93</sup> Charles Doyle, *The USA PATRIOT Act: A Sketch*, CRS, Library of Congress (2002), <http://fpc.state.gov/documents/organization/10091.pdf>.

<sup>94</sup> Suppression of the Financing of Terrorism Convention Implementation Act of 2002, Public Law 107-197, Title II, §202(a), June 25, 2002, 116 Stat. 724, amended by Public Law 107-273, Div. B, Title IV, § 4006, November 2, 2002, 116 Stat. 1813 (18 U.S.C. §2339C).

<sup>95</sup> Loi no 2001-1062 du 15 novembre 2001 relative à la sécurité quotidienne, *Journal Officiel*, 16 novembre 2001 [France].

<sup>96</sup> Ordonnance Souveraine no 15.320 du 8 avril 2002 sur la répression du financement du terrorisme, *Journal de Monaco, Bulletin officiel de la Principauté*, no 7542, April 12, 2002 [Monaco].

<sup>97</sup> Arrêté Ministériel no 2002-434 du 16 juillet 2002 portant application de l'ordonnance souveraine no 15.321 du 8 avril 2002 relative aux procédures de gel des fonds aux fins de lutte  
(continued)

Similarly, in Cyprus, a law authorizes the ratification of the Convention, and includes the legislative elements necessary to implement the Convention, such as the penalties and the provisions regarding the liability of legal persons.<sup>98</sup>

These examples illustrate the variety of solutions to the problem of defining the scope of legislation to be enacted in connection with the coming into force of the Convention in a country, and in the elaboration of the country's legislative response to Resolution 1373 (2001). The decisions on the appropriate scope of such legislation are based on a number of factors. First and foremost are the criminal policy objectives pursued through the proposed legislation—do the authorities intend to develop a comprehensive response to the threat of terrorism to be included in the proposed legislation, or are they proposing to deal only with the issues related to the financing of terrorism as they are defined in the Resolution, the Convention, or some position between these two? Second, do the authorities intend to establish a separate investigatory and procedural regime for terrorism offenses, or is it the intention to have the general regime cover these offenses? Third, what is the current arsenal of legislative provisions dealing with terrorism, and can they serve as the basis for provisions criminalizing the financing of terrorism? Fourth, do the authorities also intend to deal with all FATF Special Recommendations in the same law? A fifth consideration may be how the legislation compares with that of other relevant jurisdictions. (This consideration was explicitly stated in the case of the Canadian Anti-Terrorist Act, 2001.)<sup>99</sup>

## Designing the Implementing Legislation

### Matters to Be Covered

The purpose of this section is to provide some guidance as to the drafting of legislation implementing the Convention and responding to the Resolution (as well as Resolutions 1267 (1999), 1333 (2000), and 1390 (2002)), taking

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contre le terrorisme, *Journal de Monaco, Bulletin officiel de la Principauté*, no. 7566, July 19, 2002 [Monaco].

<sup>98</sup> A Law to Ratify the International Convention for the Suppression of the Financing of Terrorism, including supplementary provisions for the immediate implementation of the Convention, No. 29 (III) of 2001 [Cyprus].

<sup>99</sup> “While [Bill C-36] did not have to be the same as legislation in other countries such as the United States and the United Kingdom, any differences had to be explainable and defensible”—Richard Mosley, quoted in Nicole Baer, “Act of Terror, Justice Department moves quickly to craft balanced anti-terrorism legislation,” in 2-1 *Justice Canada*, Department of Justice.

into account the FATF Special Recommendations on Terrorism Financing. Table 4 summarizes the matters dealing with the prevention and suppression of terrorism financing in the Convention, the Resolution, and the FATF's eight Special Recommendations that are likely to require a legislative response, and provides some suggestions as to which laws could be amended to fulfill these requirements. The discussion that follows is based on the assumption that authorities intend to submit legislation to the legislative body to cover these matters.

**Table 4. Summary of Items for Legislation**

Topic	Convention	Resolution	FATF	Legislation
Criminalize the financing of terrorist acts.	2–7, 9, 17, 18 1(a)	1(a), 1(b)	II	Criminal Code (see Chapter 4, page 43)
Prevent financial support to terrorists and terrorist organizations.		1(d)	II	Criminal Code (see Chapter 4, page 43)
Freeze, seize, and confiscate terrorist assets.	8	1(c)	III	Criminal Code or Code of Criminal Procedure (see Chapter 4, page 55)
Cooperate internationally in investigations of financing and support of terrorist acts.	10–16	2(f)	V	Criminal Code, Code of Criminal Procedure, Anti-Money Laundering (AML) Law, Mutual Legal Assistance Law, others (see Chapter 4, page 60)
Become party to the “relevant conventions” and fully implement them.		3(d), 3(e)	I	The Convention is one of the “relevant conventions.” In most countries, ratification requires an act of parliament.

Topic	Convention	Resolution	FATF	Legislation
Require financial institutions to take preventive measures to detect and report FT transactions.	18 1(b)		IV	AML Law (see Chapter 4, page 63)
Establish internal and external channels of communications on suspected offenses, including use of Interpol.	18 3(3), 18 4		V	Criminal Code, AML Law, others (see Chapter 4, page 61)
Take measures for, inter alia, registering or licensing all money transmission agencies and detecting transborder cash movements	18 2(a), 18 2(b)		VI	Financial Services Law, Customs Law, others (see Chapter 4, page 63)
Require financial institutions to include originator information on all funds transfers.			VII	AML Law or regulations, Financial Services Law (see Chapter 4, page 63)
Ensure that nonprofit organizations are not used for financing terrorism.			VIII	Charitable organizations law or similar law (see Chapter 4, page 70)

In deciding on the specific structure of the legislation to be drafted, taking into account the general considerations outlined above as well as the list of requirements of the Convention, the Resolution, and the Special Recommendations, authorities would need to consider a number of practical questions. First, depending on the legal system involved, it may be that some of the requirements may be implemented without legislation. This would be the case in a country where ratified international treaties have the force of law. Even in such countries, however, it may be necessary to specifically

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incorporate the required criminal offenses in the criminal code (as most countries have done), so as to ensure that the code contains all criminal offenses, and that there is no doubt as to the applicability of other parts of the code (on evidence, certain general defenses, etc.) to the new offenses. With respect to those provisions that are to be the subject of legislation, another consideration would be whether all of them would be set out in one comprehensive law, or, if this is not the case, how the legislative provisions would be grouped. Similarly, authorities would need to consider existing legislation to determine if such legislation could be amended to meet certain requirements, rather than adopting a new law. In any event, the links between any proposed new legislation and existing laws, including in particular laws on money laundering, will need to be considered.

### **Model Laws**

In addition to this handbook, authorities may consult a number of sources in designing proposed legislation, or in drafting specific provisions. Some countries have put references to their relevant legislation on the website of the Counter-Terrorism Committee of the Security Council.<sup>100</sup> Authorities may also consult a number of model laws. For example, the Commonwealth Secretariat has issued a number of model legislative provisions and commentaries, and “Implementation Kits” on various aspects of combating terrorism.<sup>101</sup> The United Nations Centre for International Crime Prevention (CAP) is preparing legislative and implementation tools for the 12 global anti-terrorism conventions.<sup>102</sup> The Caribbean Anti-Money Laundering Program has also issued Draft Legislation to Combat Terrorist Acts and Terrorist Financing.<sup>103</sup>

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<sup>100</sup> These laws may be consulted on the Web at [http://www.un.org/Docs/sc/committees/1373/ctc\\_da/index.html](http://www.un.org/Docs/sc/committees/1373/ctc_da/index.html).

<sup>101</sup> *E.g.*, Commonwealth Secretariat, Model Legislative Provisions on Measures to Combat Terrorism (September 2002); and Implementation Kits for the International Counter-Terrorism Conventions (2002).

<sup>102</sup> It is expected that these tools will be issued in 2003.

<sup>103</sup> Fitz-Roy Drayton, Caribbean Anti Money Laundering Programme, *Draft Legislation to Combat Terrorist Acts and Terrorist Financing*.



### Issues of Human Rights

The Convention contains an indirect reference to human rights in Article 21, which states that “[n]othing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of the United Nations, international humanitarian law and other relevant conventions.”<sup>104</sup> The purposes of the Charter of the United Nations include the promotion and encouragement of “respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”<sup>105</sup> The reference to international humanitarian law, which also appears in the Terrorist Bombing Convention,<sup>106</sup> would appear to be intended to safeguard the rights of populations in situations of armed conflicts, which is dealt with in international humanitarian law conventions.

While issues of human rights are more likely to arise in the context of the drafting of a comprehensive law on terrorism,<sup>107</sup> even a narrower law, dealing only with the legislative response to the Resolution and the Convention may raise such issues. In some countries, there was a concern that the generic definition of terrorist acts set out in the Convention for purposes of establishing the offense of financing such acts could be susceptible of abuse in view of its broad character. In particular, it was felt that certain forms of public protests, whether legal or illegal, could fall under the definition of terrorist acts. These countries have attempted to deal with the issue by adding interpretative language to the definition clarifying that strikes or protests do not constitute acts of terrorism unless certain other elements of the offenses of terrorism are present (see Chapter 4, page 47, for examples). More generally, each country will need to balance the need for legislation giving police and other authorities sufficient powers to detect and

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<sup>104</sup> Article 17 also refers to international human rights in the context of the treatment of persons taken into custody and regarding whom other measures are taken or proceedings are carried out pursuant to the Convention.

<sup>105</sup> Art. 1, para. 3 of the U.N. Charter states, “The purposes of the United Nations are: [...] 3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”

<sup>106</sup> International Convention for the Suppression of Terrorist Bombings, Art. 19, para. 1.

<sup>107</sup> In many countries, concerns have been expressed with respect to the expanded powers given to the police in terrorism matters, as well as to questions of detention without charges and the rights of detainees to legal counsel. *See generally* Economic and Social Council, Commission on Human Rights, *Other Issues, Terrorism and human rights, progress report prepared by Ms. Kalliopi K. Koufa, Special Rapporteur*, paras. 112–17, E/CN.4/Sub. 2/2002/31.

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prosecute acts of terrorism, including their financing and their preparation, with the need to preserve individual liberties, including basic privacy rights and the rights of offenders. Authorities may consult the guidance note issued by the Office of the High Commissioner for Human Rights and the Council of Ministers of the Council of Europe in this respect.<sup>108</sup>

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<sup>108</sup> See Office of the High Commissioner for Human Rights, *Note to the Chair of the Counter-terrorism Committee: A Human Rights Perspective on Counter-Terrorism Measures*, <http://www.un.org/Docs/sc/committees/1373/ohchr1.htm>; and Council of Europe, *Guidelines on human rights and the fight against terrorism, adopted by the Committee of Ministers on July 11, 2002 at the 80<sup>th</sup> meeting of the Ministers' Deputies* (September 2002).

## DRAFTING NOTES ON SPECIFIC MATTERS

### Criminalizing the Financing of Terrorism

#### General

Authorities wishing to implement the provisions of the Convention and to respond to the requirements of the Resolution would need to consider two separate but related types of conduct regarding the financing of terrorism. One is *the financing of terrorist acts*, as defined in Article 2 of the Convention. The other is *the provision of financial support to terrorists and terrorist organizations*, as stated in paragraph 1(d) of the Resolution. While the requirements relating to these forms of conduct are similar, they are not identical, and it will be for the authorities of each country to decide in which way each type of conduct will be characterized in local law.<sup>109</sup> Before considering the differences between the two requirements, it should be noted that paragraph 1(b) of the Resolution requires the criminalization of the financing of terrorist acts, using language that is very close to that of the Convention. Read with paragraph 3(d), which calls upon states to become parties to the Convention “as soon as possible,” paragraph 1(b) of the Resolution is a clear reference to criminalization of the financing of terrorist acts as defined in the Convention. It would follow that paragraph 1(d) requires something additional to the criminalization of terrorist acts.

While both the Convention and paragraph 1(d) of the Resolution deal with the provision of financial assistance directed towards terrorism, there are notable differences between the two. First, while the Convention clearly requires the *criminalization* of the financing of terrorist acts, paragraph 1(d) of the Resolution appears to take a different approach. Rather than requiring that countries *criminalize* the provision of funds and services to terrorists, it requires them to “prohibit their nationals and entities within their territories” from making financial assistance available to terrorists and terrorist organizations. This language appears deliberate, as it stands in contrast to the language used in paragraph 1(b) of the Resolution referred to above, which requires the *criminalization* of the financing of terrorist acts. The thrust of

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<sup>109</sup> The FATF Special Recommendations on Terrorist Financing also appear to take the view that there are two separate types of conduct to criminalize, as SR II sets as a standard the criminalization of the financing of *terrorism, terrorist acts, and terrorist organizations*.

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paragraph 1(d) is to stop the flow of funds and financial services to terrorists and terrorist organizations, whether this is accomplished through criminalization or other means.

Second, as regards the nature of such assistance, the requirement in paragraph 1(d) of the Resolution is broader than that in the Convention. The Convention criminalizes the provision of “*funds*,” which it defines as the equivalent of *assets*, while the Resolution uses the broader form “funds, financial assets or economic resources or financial or other related services.” Taking into account the broad definition of “funds” in the Convention, what is covered by the Resolution and not by the Convention is the provision of “*financial or related services*.”<sup>110</sup>

Third, the range of persons and entities that must be prevented from receiving funds or services is defined in the Resolution, but not in the Convention. In the Resolution, the list of such persons includes not only the persons who commit or attempt to commit, or facilitate or participate in acts of terrorism, but also entities owned or controlled, directly or indirectly by such persons, and entities acting on behalf or at the direction of such persons. The Convention defines only terrorist acts, not terrorists or terrorism, and, by implication, any person who commits, or may commit, an act of terrorism, would be included.

It would follow from the above that, in addition to criminalizing the financing of terrorist acts in accordance with the Convention, the Resolution requires in its paragraph 1(d) that countries prevent the flow of funds and services to terrorists and terrorist organizations. The manner in which this is to be done is left to each country. One way to accomplish this would be to provide for the freezing of the assets of the classes of persons and entities enumerated in paragraph 1(d), and to prohibit the provision of financial and other services to such persons.

In many jurisdictions, the freezing of assets and the prohibition of the provision of resources would be based on the criminalization of the conduct alleged on the part of the owners of the assets to be frozen, and who would be the intended recipients of the financial assistance.<sup>111</sup> In others, the provisions would rest on the establishment of lists of persons and

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<sup>110</sup> It is unclear what “economic resources” adds to the other terms on the list.

<sup>111</sup> In addition to the criminal forfeiture systems described in this paragraph, some countries, including the United States, have civil forfeiture systems in which assets can be forfeited independently of criminal proceedings. See Stefan D. Cassalla, “Restraint and Forfeiture of Proceeds of Crime in International Cases: Lessons Learned and Ways Forward,” *Proceedings of the 2002 Commonwealth Secretariat Oxford Conference on the Changing Face of International Cooperation in Criminal Matters in the 21st Century* (Commonwealth Secretariat, 2002), p. 183.

organizations deemed to be engaging in such conduct. For example, the Barbados Anti-Terrorism Act 2002-6 criminalizes both the provision or collection of funds intended for terrorism purposes, and the provision of financial services for such purposes. The freezing and forfeiture provisions of the Act are then linked to charges under the terrorism offense as so defined.<sup>112</sup> In other countries, such as Canada, the freezing of assets and the prohibition of financial support are based on a list of individuals and organizations issued by the Government on the basis of information that the person or entity is engaging in a terrorist activity, independently of any indictment against such person or entity.<sup>113</sup> In the context of the European Union, the measures called for in paragraph 1(b) of the Resolution on criminalization have been taken by each country member of the European Union, while the measures related to the freezing of assets of terrorists and terrorist organizations have been taken at the Union level.<sup>114</sup>

### **Defining Terrorist Acts**

The nine treaties listed in the Annex to the Convention did not attempt to define terrorism, but rather defined specific acts in a way that did not use the term “terrorism.” The most recent of these treaties, the International Convention for the Suppression of Terrorist Bombings, uses the terms “terrorist” and “terrorism” in its title and in its preamble, and refers to resolutions of the General Assembly on terrorism, but it defines the offense of terrorist bombing without using the term. As is the case of the nine treaties listed in its Annex, the Convention does not define terrorism. Rather, it contains a definition of *terrorist acts*, which provides the basis for the definition of the financing offenses set out in the Convention.

The Resolution does not define “terrorism.” It requires states to “prevent and suppress the financing of terrorist acts,”<sup>115</sup> and to “become parties to the [...] Convention.”<sup>116</sup> It also requires states “to prohibit [persons] from making any funds, financial assets or economic resources [...] for the benefit

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<sup>112</sup> *Anti-Terrorism Act 2002-6*, Sections 4 and 8 [Barbados].

<sup>113</sup> *Criminal Code*, Sections 83.05 to 83.12 [Canada].

<sup>114</sup> Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism (2001/931/CFSP), *Official Journal of the European Communities*, December 28, 2001, L 344/93, and Council Regulation (EC) No. 2580/2001 of December 27, 2001 on specific measures directed against certain persons and entities with a view to combating terrorism, *Official Journal of the European Communities*, December 28, 2001, L 244/70 [European Union].

<sup>115</sup> Resolution, *supra* note 5, para. 1(a).

<sup>116</sup> *Id.* para. 3(d).

of persons who commit or attempt to commit [...] terrorist acts [...].”<sup>117</sup> The absence of any indication that a wider definition is required, together with the reference to the Convention, leads to the conclusion that the Resolution does not require that states define terrorism or terrorist acts in a manner wider than the Convention.<sup>118</sup> Many states have used or adopted a wider definition, but this is not required by the Resolution.

FATF Special Recommendation I states that the financing of terrorism “should be criminalized on the basis of the Convention.” In the following notes, the basis for the discussion of a definition of terrorist acts is the definition contained in the Convention.

### **Types of Terrorist Acts**

Terrorist acts are defined in the Convention as (i) the terrorist acts set out in at least those of the nine international treaties listed in the Annex to the Convention to which the country is a party (“treaty offences”); and (ii) terrorist acts as defined in the generic definition set out in Article 2 (b) (“generic offences”).

#### **“Treaty offences”**

Article 4, paragraph 1 (a) of the Convention refers to nine treaties, contained in the Annex to the Convention, and makes it an offense to provide or collect funds with the intention or in the knowledge that these funds will be used to carry out an offense defined in one of the listed treaties.<sup>119</sup> The drafters of the Convention recognized that a country may not have become party to all nine treaties listed in the Annex to the Convention at the time it became a party to the Convention. The Convention authorizes states parties to declare, at the time of becoming a party to the Convention, that a treaty to which the country is not a party will be deemed not to be included in the Annex to the Convention, such declaration ceasing to have effect at the time the country becomes a party to the treaty. Conversely, if a state party to the Convention ceases to be a party to one of the treaties, it may by declaration state that the treaty will be deemed not included in the Annex. Such declarations are optional. Countries may include the nine

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<sup>117</sup> Resolution, *supra* note 5, para. 1(d).

<sup>118</sup> Walter Gehr, a former expert of the CTC, has written that the Committee Chairman had stated that the Committee would consider as terrorist acts any act that the Committee would unanimously consider as such. Mr. Gehr added that the Committee’s work proved to be concrete enough to obviate the need to resolve all issues related to the definition of terrorism. Walter Gehr, “Le Comité contre le terrorisme et la résolution 1373 (2001) du Conseil de Sécurité,” *Actualité et Droit International* (January 2003), <http://www.ridi.org/adi>.

<sup>119</sup> The list is set out in Box 1.

treaties in their definition of “treaty offences” even if they are not parties to all of them.

In practice, some states parties have included all treaties in their definition, including those to which they were not a party. Other states parties have limited the list to the treaties to which they were a party. Among those, some have provided a mechanism under which the government may by regulation add the treaties to the list as the country becomes a party to them, without the need to amend the law. As a matter of legislative drafting, some laws refer to the treaty by name, while others extract from each treaty the offense it contains and set it out as an offense.

**“Generic offences”**

By contrast to the “treaty offences,” which are defined in terms of conduct that is in itself “terrorist,” the generic offense of financing terrorist acts relies not only on conduct, but also on intent and purpose to define terrorist acts. Under the generic definition set out in the Convention, *any act can be a terrorist act, provided it is intended to cause death or serious bodily injury to certain persons, and provided its purpose is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing something.*

A number of countries have added elements to the definition that have the effect of limiting its scope, or expanding it.<sup>120</sup> The limiting language appears to have been motivated by a concern that the generic definition could be used in circumstances where it was not intended. Noteworthy in this respect is the qualification found in the U.K., Canadian, and Australian laws to the effect that the offense only exists “if the action is done or the threat is made with the intention of advancing a political, religious or ideological cause.”<sup>121</sup> Another limitation takes the form of the exclusion of certain activities from the scope of “providing or collecting funds.” An example of such a provision is found in the New Zealand Terrorism Suppression Act 2002, which, “to avoid doubt,” expressly excludes the provision or collection of funds for the purposes of advocating democratic

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<sup>120</sup> In this Section, the examples of legislation provided include general anti-terrorism laws as well as laws implementing the Convention.

<sup>121</sup> *Suppression of the Financing of Terrorism Act 2002*, Schedule 1, Amendments to the Criminal Code act 1995, Part 5.3, Section 100.1, Definitions, paragraph *terrorist act* [Australia]; similar language is found in the *Terrorism Act 2000*, Article 1 (1)(c) [U.K.]; the *Anti-Terrorism Act*, Section 83(1)(b) [Canada]; and the *Terrorism Suppression Act 2002*, Section 5(2) [New Zealand].

government or the protection of human rights from the scope of the financing offense.<sup>122</sup>

The Convention makes it a part of the definition of the financing of terrorism that the perpetrator intended that the outcome of the act of terrorism being financed be “death or bodily injury” to civilians and noncombatants. A number of countries have defined the offense in such a way that it is applicable to cases where the intent is not necessarily to directly cause death or serious bodily injury. For example, the New Zealand Act mentioned above includes, among others, the following additions: “a serious risk to the health or safety of a population,” “serious interference with, or serious disruption to, an infrastructure facility if likely to endanger human life,” and “the introduction or release of a disease-bearing organism, if likely to devastate the national economy of a country.”<sup>123</sup> Another, wider expansion is found in the Mauritius Prevention of Terrorism Act of 2002, which in addition to criminalizing the commission of acts of terrorism, criminalizes the omission of doing anything that is reasonably necessary to prevent such acts.<sup>124</sup>

Authorities will need to assess the advantages and disadvantages of adding language limiting or expanding the definition of terrorism for purpose of the implementation of the Convention. Local conditions and, in particular, sensitivity to basic rights considerations may suggest the addition of limiting language. However, such language may make successful prosecution of offenses more difficult. The examples of legislation given in the Appendixes are based on the Convention’s requirements exclusively.

Authorities may also consider the use of a listing mechanism to facilitate the prosecution of financing of terrorism crimes. A number of states, including Canada,<sup>125</sup> New Zealand,<sup>126</sup> the United Kingdom,<sup>127</sup> and the United States,<sup>128</sup> have established mechanisms under which the names of persons or organizations suspected of engaging in terrorism (other than those listed under the authority of the Security Council) may be set out in a list issued under the authority of the executive branch. The lists are published, and

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<sup>122</sup> *Terrorism Suppression Act 2002*, Section 8(2) [New Zealand].

<sup>123</sup> *Terrorism Suppression Act 2002*, Section 5(3) [New Zealand].

<sup>124</sup> *Prevention of Terrorism Act of 2002*, Section 3(1) [Mauritius].

<sup>125</sup> *Criminal Code*, Section 83.05 [Canada].

<sup>126</sup> *Terrorism Suppression Act 2002*, Sections 20-24 [New Zealand].

<sup>127</sup> *Terrorism Act 2000*, Sections 3-13 [United Kingdom].

<sup>128</sup> *Immigration and Nationality Act*, 8 U.S.C. §1189 [U.S.] (applies to foreign organizations only).



knowledge that these persons and organizations are terrorists or terrorist organizations is presumed, thus easing the burden of proof of knowledge or intent in the financing of terrorism offense (such mechanisms generally also require the freezing of the assets of persons and organizations on the list and prohibit the provision of any assistance to them). While such mechanisms make the prosecution of financing of terrorism offenses easier, they must be crafted carefully to ensure that they are not abused and that persons and organizations so listed have a right to have their request to be removed from the list heard by an independent body, while taking into account the fact that the evidence used to constitute such lists is likely to be highly sensitive. As such lists are not required by the Convention or the Resolution, the examples of legislation provided in this handbook do not refer to them. Authorities interested in including such a mechanism in their legislation may consult the legislation of the countries mentioned above.

### **Financing of Terrorism and Money Laundering**

In their responses to the United Nations questionnaire, some countries have made the point that they had implemented the provisions of the Resolution on the criminalization of the financing of terrorism by adopting money laundering legislation.<sup>129</sup> This would not appear to be responsive to the spirit and letter of the Resolution and the Convention. It should be borne in mind that the Convention establishes a separate, autonomous offense of financing of terrorist acts. Although both financing of terrorism and money laundering offenses are based on the common idea of attacking criminal groups through measures aimed at the financing of their activities, the two offenses are distinct. In particular, in terrorism financing, the funds used to finance terrorist acts need not be proceeds of illicit acts, and need not have been laundered. These funds may have been acquired and deposited in financial institutions legally. It is not their criminal origin that makes them “tainted,” but their use, or intended use, to finance terrorist acts, or to provide support to terrorists or terrorist organizations. Thus, to rely exclusively on the offense of money laundering to criminalize terrorist financing would leave a significant gap in the legislation, as terrorist funding offenses would be established in cases where the funds intended to finance a terrorist act were of illicit origin, but the funding of terrorist acts out of legally obtained funds could not be prosecuted.

Nevertheless, the two offenses are linked inasmuch as FATF Special Recommendation II requires jurisdictions to include the financing of terrorism as a predicate offense to money laundering. Such an inclusion is

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<sup>129</sup> Walter Gehr, “Recurrent Issues,” Briefing for the member states on 4 April 2002, UN Counter-Terrorism Committee, <http://www.un.org/docs/sc/committees/1373/rc.htm>.

automatic for countries that define predicate offenses as “all crimes” (as is required in the Strasbourg Convention)<sup>130</sup> or all serious crimes (as long as the terrorism financing offenses fall within the definition of “serious crimes” in the jurisdiction). In countries where predicate offenses are set out in a list, the list may need to be amended to include terrorist financing offenses.

### **Aiding and Abetting, and Conspiracy as Substitute Offenses**

Some countries have stated that the offense of terrorist financing is included in the offense of aiding or abetting the commission of terrorist acts, or conspiracy to commit such acts.<sup>131</sup> However, in contrast to the notion of aiding and abetting, the Convention does not require that the terrorist act that the funds were intended to finance actually take place or even be attempted. It is sufficient that the alleged perpetrator intended that they be used to finance terrorist acts or that the person knew that they would be used for that purpose. This is made clear by paragraph 3 of Article 2, which states that: “For an act to constitute an offence set forth in [the Convention], it shall not be necessary that the funds were actually used to carry out an offence [under the Convention].” Thus the offense of financing of terrorism is separate and independent of the terrorism offenses. By contrast, in most jurisdictions, aiding and abetting offenses only occur when the principal act is committed, or at least attempted, a condition that is not included in the definition of the offense in the Convention.<sup>132</sup> Moreover, in most jurisdictions, aiding and abetting occurs only when the alleged perpetrator has knowledge that the principal offense is being committed or attempted, while in the case of the Convention, the link with the terrorist offense is not that it occurs or is attempted, but rather that the alleged perpetrator intends that the funds be used to commit the terrorist act (or knows that the funds will be so used).<sup>133</sup>

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<sup>130</sup> Under Article 1e of the Strasbourg Convention, “‘predicate offence’ means any criminal offence as a result of which proceeds were generated that may become the subject of an offence as defined in Article 6 of this Convention.”

<sup>131</sup> Gehr, *supra* note 129.

<sup>132</sup> *Id.*

<sup>133</sup> See, e.g., *Johnson v Youden*, [1950] 1 All ER 300, summarized in *The Digest*, Annotated British, Commonwealth and European Cases, 14(1), Criminal Law, Evidence and Procedure, London, 1993 [hereinafter “the Digest”] no. 954, at 120. Aiding and abetting may occur, however, if the alleged perpetrator knew that an illegal act (in this case, an act of terrorism) was to be committed, even if the person did not know exactly what terrorist act would actually be committed (in this case, attempting to set a public house on fire with a pipe bomb). See, *DPP for NI v Maxwell*, [1978] 3 All ER 1140, [1978] WLR 1350, 143 JP 63, 122 Sol. Jo 758, [1978] NI 42, sub nom *Maxwell v. DPP for NI* 68 Cr App Rep 142, HL, summarized in *The Digest*, no. 867, at 109.

Similar remarks may be made with respect to conspiracy. Being an independent offense, the financing of terrorism can be committed by one person acting alone, a situation that is inconsistent with a theory of conspiracy.

### **Attempt, Participation, Organization, Direction, and Contribution**

In addition to the commission of the offenses defined in the Convention, the Convention requires the criminalization of attempts to commit these offenses.<sup>134</sup> The Convention requires also that the participation as an accomplice in a defined offense, the organization of such an offense, or direction of others to commit such an offense be criminalized.<sup>135</sup> The intentional contribution to the commission of such an offense by a group acting with a common purpose, under certain defined circumstances, is also to be criminalized.<sup>136</sup> Authorities will need to determine which of these requirements can be met on the basis of general criminal law principles or existing legislation, and which ones will require new offenses. Language to cover these elements is included in the examples of legislation set out in Appendixes VII and VIII.

Separately from these provisions, which are contained in Article 2, the Convention sets out in its Article 18 a requirement that states take “measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate and organize or engage in the commission of offences set forth in article 2.” The exact significance of this provision is far from clear, as it contains a circular element, and because, although it appears to require the criminalization of certain acts, it is not set out in Article 2 and is not expressed in the clear “criminalization” terms of that Article. Indeed, read as a criminalization provision, it would be redundant with some of the provisions of Article 2. The circular element is that the provision appears to require the prohibition of acts that are defined as being illegal. These ambiguities are most easily resolved by considering that the word “prohibit” really means “prevent and prosecute,” in which case the provision would not be considered as a “criminalization” provision, but a requirement to enforce existing laws.

### **Knowledge and Intent**

The definition of terrorism financing in the Convention includes as mental elements that the offense be committed willfully, and with the

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<sup>134</sup> Convention, *supra* note 12, Art. 2, para. 4.

<sup>135</sup> *Id.* Art. 2, paras. 5(a) and (b).

<sup>136</sup> *Id.* Art. 2, para. 5(c).

intention that the funds be used to commit a terrorist act as defined in the Convention, or in the knowledge that they would be used to commit such an act.<sup>137</sup> The willfulness requirement appears to be a reference to the general principle of criminal law that makes criminal intent (“*mens rea*”) an element of all crimes. The second element sets out knowledge and a specific form of intent as two alternative mental elements.

The Convention leaves it to each state party to define the form of intent or knowledge that would be necessary to constitute the offense, as well as the means to prove either element. The minimum requirement would consist of actual knowledge on the part of the perpetrator that the funds will be used for a terrorist act, together with the will to achieve this result. This requirement should be implemented in all states parties. However, many legal systems also admit less direct forms of intent, which, when applied to the financing of terrorism, would include cases where, for example, the perpetrator foresaw, or could have foreseen, or should have foreseen, that the terrorist act would occur as a consequence of the provision or collection of the funds, and the perpetrator provided or collected the funds anyway. Some countries have incorporated similar forms of knowledge in their legislation, while in other countries, general criminal law principles or case law may lead to similar results. One example of a specific provision is found in the Australian Criminal Code, where the financing of terrorism is defined as providing or collecting funds, and being “reckless as to whether the funds will be used to facilitate or engage in a terrorist act.”<sup>138</sup> Another example is found in the Commonwealth Secretariat Implementation Kit for the Convention, in which the suggested definition of financing of terrorism states in part that a person provides or collects funds “with the intention that they should be used, or having reasonable grounds to believe that they are to be used” to carry out a terrorist act.<sup>139</sup>

Authorities may also note the impact of FATF Special Recommendations I and II and the Methodology on this issue. Special Recommendation I sets as a standard that countries “should take immediate steps to ratify and implement fully” the Convention, and Special Recommendation II sets as a

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<sup>137</sup> The prohibition of support of terrorists and terrorist organizations set out in paragraph 1(d) of Resolution 1373 (2001) does not refer to the mental element of the related offense, leaving it to each country to define it in accordance with its criminal law.

<sup>138</sup> *Criminal Code Act 1995*, Section 103.1, added to the *Criminal Code* by the *Suppression of the Financing of Terrorism Act 2002*, No. 66, 2002. A person is reckless as to a result if: “he or she is aware of a substantial risk that the result will occur; and (b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.” *Criminal Code Act 1995*, Section 5.4.

<sup>139</sup> Commonwealth Secretariat, *Implementation Kits for the International Counter-Terrorism Convention* 293.

standard that “[e]ach country should criminalize the financing of terrorism, terrorist acts and terrorist organizations.” One of the criteria for compliance with these standards is stated as follows in the Methodology: “The offences of ML and FT should apply at least to those individuals and legal entities that knowingly engage in ML or FT activity. Laws should provide that the intentional element of the offences of ML and FT may be inferred from objective factual circumstances.”<sup>140</sup>

The first sentence of the quoted section of the Methodology is consistent with the Convention, as knowledge is required (as an alternative to intent) in the definition of the offense itself in the Convention. With respect to the second sentence of the criterion, the idea that knowledge or intent should be inferred from objective factual circumstances was already present in the FATF 40 Recommendations on Money Laundering.<sup>141</sup> Its origin can be found in the 1988 Vienna Convention, which states that: “Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.”<sup>142</sup> There is no similar provision in the Convention. It is a matter for each jurisdiction to determine whether its general criminal law provides an equivalent standard applicable to terrorism financing offenses. If there is doubt on this point, the authorities may consider whether specific legislation is necessary to ensure that the standard as assessed under the Methodology is met.<sup>143</sup>

## **Liability of Legal Persons**

Article 5 of the Convention requires states parties to take measures to enable legal entities located in their territory or organized under their laws to be held liable when a person responsible for the management or control of the entity has, in that capacity, committed an offense set forth in the Convention. Article 5 adds that such liability may be criminal, civil, or administrative. The FATF 40 Recommendations contain a similar provision with respect to money laundering,<sup>144</sup> but the Special Recommendations are

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<sup>140</sup> Methodology, *supra* note 68, Criterion I. 4.

<sup>141</sup> FATF Recommendation 5 states as follows: “As provided in the Vienna Convention, the offence of money laundering should apply at least to knowing money laundering activity, including the concept that knowledge may be inferred from objective factual circumstances.”

<sup>142</sup> United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, December 19, 1988, Article 3, paragraph 3.

<sup>143</sup> The language used in the Methodology (“Laws should provide...”) would entail that assessments based on it would look for a legislative basis for the standard.

<sup>144</sup> Recommendation 6 reads as follows: “Where possible, corporations themselves—not only their employees—should be subject to criminal liability.”

silent on this point, except for stating that the Convention should be ratified and implemented, and for what is stated in SR VIII concerning the abuse of legal entities, and nonprofit entities in particular, for terrorism financing.

The examples of legislation set out in Appendices VII and VIII may be considered if the liability is to be criminal. Providing civil or administrative sanctions may require the amendment of other acts, such as the Companies Act or the Banking Act.

### **Establishing Jurisdiction over the Financing of Terrorism Offenses**

Article 7 of the Convention requires each state party to take jurisdiction over the offenses set out in the Convention (i) when the offense is committed in its territory, (ii) when the offense is committed aboard a vessel carrying the flag of that state or an aircraft registered there, or (iii) when the offense is committed by a national of that state (Article 7, paragraph 1). The Convention also provides that the states parties may take jurisdiction in certain other cases (Article 7, paragraph 2). Pursuant to Article 3, the Convention does not apply to situations where the offense is committed in a single state, the alleged offender is a national of that state and is present in the territory of that state and no other state has a basis for exercising jurisdiction under the Convention. However, Article 7, paragraph 6 states that the Convention does not exclude the exercise of any criminal jurisdiction established by a state party in accordance with its domestic law, without prejudice to the norms of general international law. It follows that there is no requirement in the Convention for states parties to assume jurisdiction in such purely domestic cases, although there is no prohibition to do so in the Convention, and states would normally have jurisdiction under domestic law once the offense has been established, unless the definition of the offense excludes purely domestic situations.

States parties have implemented the jurisdictional provisions of the Convention in a number of ways. One country (Barbados) has defined the financing of terrorism offense as an act committed in or outside the country, and has provided that its courts would have jurisdiction in all cases listed in Article 7 of the Convention.<sup>145</sup> Thus, the offense can be prosecuted in that country even in cases where the Convention does not apply because the facts are purely domestic.

Another country (Canada) has provided that the offense is deemed to have been committed in its territory when any one of certain listed elements,

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<sup>145</sup> *Anti-Terrorism Act, 2002-6*, Section 12 [Barbados].

taken from the Convention, is present.<sup>146</sup> This type of provision responds to Article 11, paragraph 4 of the Convention, which states that, if necessary to provide a legal basis for extradition, the offenses are to be treated between the parties as if they had been committed not only in the place in which they occurred but also in the states that have established jurisdiction under Article 7.

Another country (the United States) has enacted implementing legislation limiting the jurisdiction of its courts under the Convention to the cases listed in the Convention and where the application of the Convention is not excluded by Article 3.<sup>147</sup> The common law examples set out in Appendix VIII contain the three variants described above, while the civil law example set out in Appendix VII follows the text of the Convention.

### **Procedural Matters**

Article 9, paragraphs 1 and 2 of the Convention requires states parties to investigate allegations of offenses set out in the Convention and to ensure the presence of alleged offenders found on their territories for purposes of prosecution or extradition. Article 9 also requires that a person with regard to whom measures have been taken to ensure his or her presence be allowed to communicate with a representative of a state of that person's nationality. The state party must also notify other states parties that have established jurisdiction on the offense under the Convention, and indicate whether it intends to exercise jurisdiction. In some countries, implementation of these provisions of the Convention may not require new legislation. This would be the case if laws and regulations governing criminal investigations already cover the requirements of the Convention in this regard. Nevertheless, countries may find it useful to expressly implement these provisions. The examples set out in Appendices VII and VIII contain provisions implementing these requirements of the Convention.

### **Freezing, Seizing, and Confiscating Terrorist Assets**

#### **Requirements of the Convention, United Nations Resolutions, and the FATF Special Recommendations**

The provisions of the Convention and those of the Resolution overlap in part, but each contains provisions not contained in the other. The Convention

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<sup>146</sup> *Criminal Code*, Section 7 (3.73) [Canada].

<sup>147</sup> *Suppression of the Financing of Terrorism Convention Implementation Act of 2002*, 18 U.S.C. §2339C [U.S.].

requires each state party to take appropriate measures “for the identification, detection and freezing or seizure of any funds used or allocated for the purposes of committing the offences” set out in the Convention, and “for the forfeiture of funds used or allocated for the purposes of committing [such] offences [...] and the proceeds derived from such offences.”<sup>148</sup>

The Resolution contains the following detailed obligations for states regarding the freezing of terrorist assets:

- (c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;

Thus the requirement of the Convention is a comprehensive one, covering identification, detection, freezing, seizure, and forfeiture of terrorist funds, while the Resolution requires only the freezing of terrorist assets. As has been discussed above, earlier resolutions of the Security Council have required states to freeze the assets of persons and organizations appearing on lists issued under the authority of the Security Council.

Special Recommendation III refers to these three elements of a country’s international obligations. It sets as a standard the implementation of measures for freezing the assets of terrorists, those who finance terrorism and terrorist organizations “in accordance with United Nations resolutions,” and for the seizure and confiscation of property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts, or terrorist organizations. The *Guidance Notes* add that “with regard to freezing in the context of SR III, the term *terrorists, those who finance terrorism* and *terrorist organizations* refer to individuals and entities identified pursuant to S/RES/1267 (1999) and S/RES/1390 (2002), as well as to any other individuals and entities designated as such by individual national governments.”<sup>149</sup>

Countries that are parties to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the 1988 Vienna Convention) or the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (the 1990 Strasbourg Convention)

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<sup>148</sup> Convention, *supra* note 12, Art. 8, paras. 1 and 2.

<sup>149</sup> *Guidance Notes*, *supra* note 66, para. 17.



may have in place freezing, seizure, and confiscation mechanisms in relation to money laundering offenses similar to those called for in the Convention with respect to terrorist funds. The 1988 Vienna Convention requires states parties to adopt measures for the confiscation of the proceeds of drug crimes and money laundering, and measures to enable their authorities to identify, trace, and freeze or seize proceeds, property, or instrumentalities of such crimes for purposes of confiscation.<sup>150</sup> The 1990 Strasbourg Convention contains similar provisions, which are not limited to drug crimes, and cover all crimes. In implementing these two conventions, states parties have generally provided in their criminal law mechanisms for the freezing, seizure, and confiscation of proceeds of crime. These mechanisms give competent authorities the power to seize or freeze assets on the basis of a suspicion or a belief that they are proceeds of crime, and to confiscate them (or to confiscate assets of equivalent value), usually on the basis of the conviction of a person for the related crime.

Resolutions 1267 (1999) and 1390 (2002) follow a different pattern. They require member states to seize (but not to confiscate) assets of persons and organizations that have been designated in lists issued under the authority of the Security Council. The resolutions have two novel features. First, they require that each member state freeze the assets of persons and entities independently of any suspicion or belief on the part of the member state that such persons and entities are engaging in terrorist activities. Second, the resolutions require the freezing of assets of listed persons, without providing any time frame for such freezing. The resolutions thus transform what is usually a temporary measure, intended to prevent assets from being removed from a country during an investigation or a trial, into a potentially permanent measure.

There are thus two distinct international requirements concerning the freezing, seizure, and confiscation of terrorist assets. One is the requirement to have in place a comprehensive mechanism to freeze, seize, and confiscate assets of terrorists, set out in Article 8 of the Convention and (with respect to seizure) Article 1(c) of the Resolution. In countries that already have a general legal framework for the freezing, seizure, and confiscation of criminal assets, consideration may be given to amending this framework, if necessary, to respond to the provisions of the Convention and the Resolution in this regard. The other is the requirement to seize assets of persons and entities appearing on lists issued under the authority of the Security Council (or designated as such by other states). The legislative basis for a country's

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<sup>150</sup> United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Art. 5, paras. 1 and 2. The Strasbourg Convention contains similar provisions (Articles 2 and 3).

response to such lists may be established in the same legislation, or in separate legislation, as long as the legislation reflects the special characteristics of the Security Council resolutions discussed above.

### Country Responses

When the first Security Council list was issued under Resolution 1267 (1999), the need to respond quickly to the requirements of the Security Council led many countries to implement the freezing requirements pursuant to existing laws and regulations, such as foreign exchange laws (France, Spain), or the legislation under which the country became a member of the United Nations (New Zealand). Such membership laws granted to the Executive the power to take necessary action to respond to decisions of the Security Council under Chapter VII of the Charter, although it was recognized in some countries that the legislation was not well suited to the novel requirements of Resolution 1267 (1999). Since then, New Zealand has enacted legislation dealing specifically with the freezing of assets of terrorists and terrorist organizations identified as such by the Security Council or otherwise suspected of being terrorists or terrorist organizations.

In Canada, regulations were issued in October 2001 under the United Nations Act, to authorize the Minister of Foreign Affairs to freeze the assets of terrorists and terrorist organizations listed as such by the Security Council. One of the features of the Canadian regulation is the fact that it authorizes a listed person to apply to the Solicitor General to be removed from the list, but leaves unstated the consequence for a successful individual of being removed from the list while still appearing on the Security Council list. Subsequently, in December 2001, Canada enacted the Anti-terrorist Act, which gives the Executive the power to list entities (but not individuals) with respect to which the Executive “is satisfied that there is reasonable grounds to believe” that the entity has knowingly carried out, or attempted, or participated in terrorist activity or has knowingly acted on behalf of, at the direction of or in association with such an entity. Assets of listed entities are frozen under the Act. Thus the Act authorizes the Executive to list entities that are not listed under the authority of the Security Council.<sup>151</sup> Other jurisdictions have now enacted provisions responding directly to the requirements of the Security Council Resolutions.<sup>152</sup> For example, the

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<sup>151</sup> On November 24, 2002, the U.N. Counter-Terrorism Committee adopted the view of the experts assisting the Counter-Terrorism Committee to the effect that the Resolution requires the freezing of the assets of persons or entities who engage in terrorist activities even if they are not listed by the Security Council, Letter from Jeremy Wainwright, Expert Adviser, to the Chairman of the Counter-Terrorism Committee (November 11, 2002).

<sup>152</sup> It may be noted that the implementation of the asset freezing provisions of the Resolution by members of the IMF results in the freezing of nonresidents' bank accounts and  
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Council of the European Union issued a regulation under which the Council may issue lists of persons and entities committing, or attempting to commit, or participating in, or facilitating the commission of acts of terrorism (the text is set out in Appendix IX).<sup>153</sup> Similarly, in April 2002, Monaco issued a Sovereign Order requiring financial institutions to freeze the assets of persons and entities whose name is set out in lists to be issued by Ministerial Order.<sup>154</sup>

In designing laws to respond to their obligations under the Convention and the relevant Security Council resolutions, authorities may consider whether new legislation is needed, and if it is needed, such legislation could deal with both the requirements of the Convention and those of the Security Council resolutions. A number of questions would also need to be addressed in the design of the legislation implementing the requirements of the Convention and the Resolution. In particular, authorities would need to decide whether a listing mechanism should be adopted in this regard (in addition to the lists issued by the Security Council). It should be noted that neither the Resolution nor the Convention require the use of lists. Countries may implement the freezing requirements of the Resolution and the Convention on an individual basis, without recourse to a list.<sup>155</sup> Also, decisions would have to be made as to under what circumstances the freezing action could be taken, and whether (in the absence of a list) a court

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the prohibition of direct payments, including payments for current international transactions. When such freezes apply to receipts of current international transactions, including the payment of interest on the balances in the accounts, the freezes give rise to restrictions on the making of transfers for current international transactions, and, under Article VIII, Section 2(a) of the Articles of Agreement of the IMF, require IMF approval, even though they are imposed by IMF members pursuant to a mandatory resolution of the Security Council. The IMF has recognized, however, that it does not provide a suitable forum for the discussion the political and military considerations that lead members to establish such restrictions solely for the preservation of national or international security, and has established a procedure under which, unless the IMF informs the member within 30 days of receipt of the notice that it is not satisfied that such restrictions are proposed solely to preserve such security, the member may assume that the IMF has no objection to the imposition of the restrictions (see International Monetary Fund, Decision No. 144-(52/51) of August 14, 1952, in *Selected Decisions and Selected Documents of the International Monetary Fund*, 27<sup>th</sup> issue 474 (December 31, 2002).

<sup>153</sup> Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, *Official Journal*, L 344, 28/12/2001 p. 0070–0075 [E.U.].

<sup>154</sup> Ordonnance Souveraine no 15.320 du 8 avril 2002 sur la répression du financement du terrorisme, *Journal de Monaco, Bulletin officiel de la Principauté*, no 7542, April 12, 2002 [Monaco].

<sup>155</sup> This is also the view expressed in a letter from Jeremy Wainwright, Expert Adviser, to the Chairman of the Counter-Terrorism Committee (November 11, 2002) and endorsed by that Committee.

order would be required before any freezing action, or whether a temporary freeze could be decided by police authorities pending a court order. The European Union Council Regulation (EC) No. 2580/2001 of December 27, 2001 (referred to above) contains a detailed set of provisions related to the listing of terrorists and terrorist entities, and the freezing of their assets. In addition, Appendixes VII and VIII provide further examples of legislation on freezing and confiscation of terrorist assets.

### **International Cooperation: Mutual Legal Cooperation and Extradition, Temporary Transfer of Persons in Custody, and Channels of Communications**

#### **Requirements of the Convention, the Resolution, and the FATF Special Recommendations**

Generally, the Convention requires states parties to afford one another the greatest measure of mutual legal assistance in connection with criminal investigations, or criminal proceedings or extradition proceedings in respect of the offenses set out in the Convention.<sup>156</sup> In addition, the Convention contains special provisions concerning the temporary transfer of persons in custody, for purposes of testifying or assisting in investigations.<sup>157</sup>

The Resolution also requires states to afford one another mutual assistance in criminal investigations or criminal proceedings relating to the financing or support of terrorist acts.<sup>158</sup> Further, the Resolution requires states to find ways of exchanging information related to the actions and movement of terrorist persons and networks as well as cooperating on administrative and judicial matters.<sup>159</sup> The Resolution puts strong emphasis on the exchange of information as an important component in international cooperation with respect to matters related to terrorism and its financing.

Special Recommendation V establishes as a standard that countries cooperate with one another, on the basis of treaty, arrangement, or other mechanisms in criminal, civil enforcement and administrative investigations, inquiries and proceedings relating to financing of terrorism, terrorist acts, and terrorist organizations. It also requires countries to take measures to ensure that they do not provide safe havens for individuals charged with the

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<sup>156</sup> Convention, *supra* note 12, Art. 12, para. 1.

<sup>157</sup> *Id.* Art. 16.

<sup>158</sup> Resolution, *supra* note 5, para. 2(f).

<sup>159</sup> *Id.* para. 3, *passim*.

financing of terrorism, terrorist acts, or terrorist organizations, and to have procedures in place to extradite, where possible, such individuals.

The discussion that follows deals with judicial cooperation (mutual legal assistance, extradition and temporary transfers of persons in custody), and international cooperation among FIUs in dealing with financing of terrorism cases.

### **Extradition, Mutual Legal Assistance, and Temporary Transfer of Persons in Custody**

In countries where there are general laws on mutual legal cooperation and extradition, implementation of the provisions of the Convention on these subjects may be made by amending, where necessary, the existing laws. The laws may need to be amended to ensure that their scope of application extends to the offenses and types of cooperation set out in the Convention, and that the provision of assistance in matters covered by the Convention is not denied on grounds not permitted in the Convention. The civil law provisions set out in Appendix VII follow generally the Model Legislation on Laundering, Confiscation and International Cooperation In Relation To The Proceeds Of Crime (1999), issued by the United Nations Office for Drug Control and Crime Prevention. The common law example is adapted from the Commonwealth Secretariat model provisions on extradition.

### **Cooperation Among FIUs**

In addition to exchanges of information on terrorist financing through mutual legal assistance arrangements, countries exchange such information through arrangements among financial intelligence units (FIUs). FIUs have been established in a large number of countries as “A central national agency responsible for receiving (and, as permitted, requesting), analyzing and disseminating to the competent authorities disclosures of financial information (i) concerning suspected proceeds of crime; or (ii) required by national legislation or regulation, in order to counter money laundering.”<sup>160</sup> While the original purposes of establishing an FIU was the detection of transactions suspected of being related to money laundering, they are now being used also to detect transactions suspected of being linked to terrorism. Thus, Special Recommendation IV sets as a standard that such transactions be reported to “competent authorities.” FIUs are grouped in an informal association called the Egmont Group, which has adopted the above-mentioned definition of an FIU and uses it as a basis for deciding on the admission of new members.

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<sup>160</sup> Egmont Group, *Statement of Purposes of the Egmont Group of Financial Intelligence Units*, The Hague, June 13, 2001.

FIUs exchange information among themselves on the basis of the Egmont Group's *Principles for Information Exchange between Financial Intelligence Units for Money Laundering Cases*, adopted at The Hague on June 13, 2001. Up to the end of 2001, the arrangements for the exchange of information between FIUs were focused mainly on information dealing with money laundering cases. As countries enact legislation requiring the reporting of transactions suspected of being related to the financing of terrorism, FIUs will also have to exchange information among each other on terrorist financing. The Egmont Group has already taken steps to improve its information collection and sharing in respect of terrorism financing.<sup>161</sup> The Principles for Information Exchange state that "FIUs should be able to exchange information freely with other FIUs on the basis of reciprocity or mutual agreement..." and that such exchange should produce "any available information that may be relevant to an analysis or investigation of financial transactions and other relevant information related to money laundering and the persons or companies involved."<sup>162</sup> Information received by an FIU from another FIU may only be used for the purposes for which it was requested, and the receiving FIU may not transfer it, or make use of it in an administrative, investigative, prosecutorial, or judicial purpose without the consent of the FIU that provided it.<sup>163</sup> Such information must be subject to strict safeguards to protect its confidential character.<sup>164</sup>

Some FIUs have the power to exchange information with other FIUs even in the absence of an agreement with the other FIU on exchange of information (usually in the form of Memoranda of Understanding (MOU), or exchanges of letters). This is the case of FinCEN, the U.S. FIU.<sup>165</sup> Many FIUs have the authority to enter into information sharing agreements with other FIUs, while others can only do so after consultation with, or upon approval of, the responsible minister. In Canada, for example, agreements on exchange of information between the Canadian FIU and others may be

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<sup>161</sup> At a special meeting in October 2002, the Egmont Group agreed to: (i) work to eliminate impediments to information exchange; (ii) make terrorist financing a form of suspicious activity to be reported by all financial sectors to their respective FIU; (iii) undertake joint studies of particular money laundering vulnerabilities, especially when they may have some bearing on counter terrorism, such as hawala, and (iv) create sanitized cases for training purposes. See James S. Sloan, Director, FinCEN, Statement before the Subcommittee on Oversight and Investigations of the Committee on Financial Services, March 11, 2003.

<sup>162</sup> Egmont Group, *Principles for Information Exchange between Financial Intelligence Units for Money Laundering Cases*, The Hague, June 13, 2001, para. 6.

<sup>163</sup> *Id.* paras. 11 and 12.

<sup>164</sup> *Id.* para. 13.

<sup>165</sup> 31 U.S.C. 319, 31 U.S.C. 310, and 31 CFR §103.53 [U.S.]. FinCEN will enter into MOUs if the other FIU requires one.

entered into either by the responsible minister, or, with the consent of the responsible minister, by the FIU. The type of information that can be exchanged is enumerated in the Canadian law. In most cases, once the MOU is in place (if needed), the FIU can exchange information directly with the other FIU. In the case of Monaco, the law makes the exchange of information subject to reciprocity, and to a finding that no criminal proceedings have been instituted in Monaco on the basis of the same facts.<sup>166</sup>

### **Preventive Measures (Article 18 of the Convention and FATF SR VII)**

Article 18(1)(b) of the Convention requires states parties to “cooperate in the prevention of the offences set forth in Article 2 by taking all practicable measures [...] to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories.” Some of the measures set out in Article 18 are stated as obligations of each state party, while others are stated in the form of a requirement to consider their adoption.

The mandatory measures include “measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate and organize or engage in the commission of offences set forth in Article 2.”<sup>167</sup> This requirement is discussed in Chapter 4, page 51.

The other mandatory provision in Article 18 is to require financial institutions and other professions “to utilize the most efficient measures available for the identification of their usual and occasional customers, as well as customers in whose interest accounts are opened and to pay special attention to unusual or suspicious transactions; and to report any transactions suspected of stemming from a criminal activity.”<sup>168</sup> For this purpose, states parties are to consider the following concrete measures, which are based on the FATF Recommendations:

- Prohibiting the opening of accounts, the holders or beneficiaries of which are unidentified or unidentifiable and requiring that the identity of real owners of such accounts be verified (FATF Recommendation 10 contains a similar requirement).

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<sup>166</sup> Loi no 1.162 du 7 juillet 1993 relative à la participation des organismes financiers à la lutte contre le blanchiment des capitaux, amended by Loi no 1.253 du 12 juillet 2002, Article 31 [Monaco].

<sup>167</sup> Convention, *supra* note 12, Art. 18, para. 1(a).

<sup>168</sup> *Id.* Art. 18, para. 1(b).

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- Verifying, when necessary, the legal existence and structure of legal entities by obtaining proof of incorporation, including the corporation's name, legal form, address, directors as well as provisions regulating the power to bind the legal entity (FATF Recommendation 10 contains a similar requirement).
- Reporting promptly to competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent, economic, or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith (FATF Recommendations 14, 15, and 16, and Special Recommendation IV contain a similar requirement).
- Maintaining "all necessary records" on domestic and international transactions for at least five years (FATF Recommendation 12 contains a similar requirement, which specifies that the records to be kept include both customer identification records and transaction records).

For its part, FATF SR VII sets as a standard that countries ensure that financial institutions, including money remitters, include "accurate and meaningful originator information (name, address, and account number) on funds transfers and related messages that are sent," and that the information remain with the transfer or related message through the payment chain. FATF SR VII also sets as a standard that countries ensure that financial institutions, including money remitters, conduct enhanced scrutiny of and monitor for suspicious activity funds transfers that do not contain complete originator information (name, address, and account number).

If a state party has already in place an anti-money laundering law that contains provisions conforming to the FATF Recommendations, it may consider amending its law to require the reporting of suspicious transactions related to terrorism financing, as the simplest way to satisfy the requirements of the Convention and of FATF Special Recommendation IV. Amendments to the AML law could also be considered for implementing the other preventive measures set out in the Convention and in FATF SR VII. The advantage of this approach is to put together in one law all requirements related to preventive measures applicable to financial institutions and other covered entities, whether they relate to combating money laundering or the financing of terrorism. For example, Germany has adopted preventive



measures for financial institutions in a single statute which covers measures against both money laundering and terrorist financing.<sup>169</sup> Similarly, Monaco has amended its anti-money laundering law to extend the scope of the obligation to report suspicious transactions to include “all sums recorded in [the books of financial institutions] and all transactions relating to funds that could derive from terrorism or terrorist acts or terrorist organizations or that are intended to be used to finance them, and the evidence which provides the basis for their report.”<sup>170</sup>

### **Alternative Remittance Systems (FATF SR VI)**

FATF Special Recommendation VI sets the following as a standard:

Each country should take measures to ensure that persons or legal entities, including agents, that provide a service for the transmission of money or value, including transmission through an informal money or value transfer system or network, should be licensed or registered and subject to all the FATF Recommendations that apply to banks and non-bank financial institutions. Each country should ensure that persons or legal entities that carry out this service illegally are subject to administrative, civil or criminal sanctions.

The general features of informal remittance systems are outlined in Box 4, above. Special Recommendation VI is based on the recognition that as controls over transactions of formal financial institutions have increased, launderers have tended to move funds through less supervised, unregulated channels. These systems, which are generally known as alternative remittance systems, or informal money or value transfer systems, are vulnerable to misuse for money laundering or terrorist financing purposes.

The FATF intention for SR VI is “to ensure that jurisdictions impose anti-money laundering and counter-terrorist financing measures on all forms of money/value transfer systems,” including informal ones, which were not included in the scope of the FATF 40 Recommendations on money laundering. However, the FATF recognizes that the distinction between formal and informal systems is somewhat artificial.

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<sup>169</sup> Sections 6, 8, 11, 12, 13, and 14 of the Money Laundering Act in the version of the Act on the Improvement of the Suppression of Money Laundering and Combating the Financing of Terrorism (Money Laundering Act) of August 8, 2002 [Germany].

<sup>170</sup> Loi no 1.162 du 7 juillet 1993 relative à la participation des organismes financiers à la lutte contre le blanchiment des capitaux, amended by Loi no 1.253 du 12 juillet, 2002, Article 3 [Monaco].

The IMF and the World Bank have recently conducted a joint study of the types, scope, and controls exercised over informal funds transfer systems.<sup>171</sup> The IMF/World Bank study also contains a useful analysis of the linkages to the formal financial sectors of the *hawala* system of South Asia and their implications for fiscal, financial sector and supervisory policies of these jurisdictions. The conclusions of the study are summarized in Box 5.

**Box 5. Conclusions of the IMF/World Bank *Hawala* Study**

After reviewing the historical background and the operational characteristics of the *hawala* system of money remittance, its linkages with the formal financial sector, and its implications for the design of financial sector policies, the study comes to the following conclusions:

It encourages a two-pronged approach towards regulation in the context of long-term financial sector development, which includes, in countries where the *hawala* system exists alongside a well-functioning conventional banking sector, that *hawala* dealers be registered and keep adequate records in line with FATF recommendations, and that the level of transparency in these systems be improved by bringing them closer to the formal financial sector without altering their specific nature. In conflict-afflicted countries without a functioning banking system, requirements beyond basic registration may not be possible because of inadequate supervisory capacity.

Simultaneously, the regulatory response should address weaknesses that may exist in the formal sector and in particular the economic and structural weaknesses that encourage transactions outside the formal financial systems.

The study also emphasizes that prescribing regulations alone, without appropriate supervisory capacity and incentives, will not ensure compliance.

It cautions that the application of international standards needs to pay due regard to specific domestic circumstances and legal systems.

Finally, the study concludes that informal funds transfer systems cannot be completely eliminated by means of criminal proceedings and prohibition orders, and thus addressing such systems will require a broader response, including well-conceived economic policies and financial reforms, a well-developed and efficient payment system, and effective regulatory and supervisory frameworks.

Source: IMF/World Bank, *Informal Funds Transfer Systems: An Analysis of the Hawala System*, pp. 4–5.

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<sup>171</sup> *Informal Funds Transfer Systems—An Analysis of the Hawala System*, IMF and World Bank, December 2002 (IMF/World Bank Study) (to be published in 2003).

### Interpretative Note on FATF SR VI Requirements

The FATF has recently issued an Interpretative Note to define the scope of the international requirements that are envisaged in SR VI.<sup>172</sup> The Interpretative Note provides additional guidance on the minimum requirements for implementation of the Special Recommendation. It describes the three core elements of SR VI as follows:

- Jurisdictions should require licensing or registration of persons (natural or legal) that provide money/value transfer services, including informal systems;
- Jurisdictions should ensure that money/value transmission services, including informal systems, are subject to applicable FATF Recommendations (in particular, Recommendations 10–21 and 26–29) and the eight Special Recommendations on Terrorism Financing; and
- Jurisdictions should be able to impose sanctions on money/value transfer services, including informal systems that fail to obtain a license or register and fail to comply with relevant FATF Recommendations.

The Interpretative Note defines *money or value transfer service* as “a financial service that accepts cash, cheques, other monetary instruments or other stores of value in one location and pays a corresponding sum in cash or other form to a beneficiary in another location by means of a communication, message, transfer or through a clearing network to which the money/value transfer service belongs.” Transactions performed by such services can involve one or more intermediaries and a third party for final payment. The Note adds that

“[a] money or value transfer service may be provided by persons (natural or legal) formally through the regulated financial system or informally through non-bank financial institutions or other business entities or any other mechanism either through the regulated financial system (for example, use of bank accounts) or through a network or mechanism that operates outside the regulated system. In some jurisdictions, informal systems are frequently referred to as *alternative remittance services* or *underground* (or *parallel*) *banking systems*. Often these systems have ties to particular geographic regions and are therefore described using a variety of

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<sup>172</sup> FATF, *Interpretative Note to Special Recommendation VI: Alternative Remittance*, (February 14, 2003), [http://www.fatf-gafi.org/TerFinance\\_en.htm](http://www.fatf-gafi.org/TerFinance_en.htm).

specific terms. Some examples of these terms include *hawala*, *hundi*, *fei-chien*, and the *black market peso exchange*.”

The Interpretative Note provides guidance on the scope of SR VI. It states that SR VI should apply to all persons (natural or legal), which conduct for or on behalf of a customer the types of activity set out in the definition. Activities described are covered if these are a primary or substantial part of the business or when such activity is undertaken on a regular or recurring basis, including as an ancillary part of a separate business enterprise.

The first issue is for each jurisdiction to identify precisely which persons or legal entities will be subject to the regulations. The Interpretative Note clarifies that jurisdictions need not impose separate licensing/registration requirements or designate another competent authority with respect to legal persons recognized as financial institutions (defined by the FATF 40 Recommendations), which carry out activities covered by SR VI, and which are already subject to the full range of applicable obligations under the FATF 40+8. As a result, the focus for the jurisdiction should be on financial sector participants that engage in the defined activities but which do not qualify as financial institutions and are not otherwise supervised.

This leads to the second issue, namely, requiring licensing or registration. The Interpretative Note states that “[j]urisdictions should designate an authority to grant licenses, and/or carry out registration and ensure that the requirement is observed.” After deciding upon the definition—whether broad or narrow, the feasibility of licensing individuals or entities that are not subject to specialized licensing such as banking or wire transfer licenses must be determined.

Jurisdictions must then decide how to apply all FATF Recommendations that apply to banks and non-bank financial institutions to alternative remittance systems, including Recommendations 10–21 and 26–29, as well as the Special Recommendations on Terrorist Financing.

The third component of SR VI requires jurisdictions to assign appropriate administrative, civil, or criminal sanctions to persons or legal entities that carry out remittance services illegally. The scope of penalties for carrying out remittance services illegally can range from criminal prosecutions for engaging in transmittals outside of the established formal financial systems, to administrative or civil fines for engaging in these activities without adhering to customer due diligence, record keeping, or suspicious transaction reporting. Sanctions should be proportionate. The effectiveness of sanctions must be evaluated in light of the jurisdiction’s overall system, whether based primarily on law enforcement, regulatory and supervisory oversight, or through the registration of businesses. The Interpretative Note contemplates sanctions being applicable to persons who provide money/value transfer services while failing to obtain a license or to

register, and to licensed or registered money/value transfer businesses that fail to apply the relevant FATF 40+8 Recommendations.

### **Jurisdiction-Specific Approaches**

Some countries, for example, India and Japan, have attempted to ban alternative remittance systems altogether. The basis for such a ban in many countries is centered on the inability of authorities to obtain records or follow the flow of moving funds. The possible uses of alternative remittance systems for illegal purposes make them highly unattractive to governmental authorities in countries where a more formalized system also exists. Nevertheless, these informal systems continue to thrive in many of the countries that have attempted to ban them. One writer has stated that in India, “some estimates conclude that up to 50% of the economy uses the *hawala* system for moving funds, yet it is prohibited by law.”<sup>173</sup> It would appear that outlawing alternative remittance systems alone has proven not to be an impediment to their continued operation.

Since SR VI was adopted, few jurisdictions have fully implemented its three components, but some progress has been made. As noted in the APG Paper, jurisdictions have approached alternative remittance systems with a combination of some obligations, for example, reporting or customer identification, registration and some obligations, and registration and full obligations. Canada and the United States have two representative approaches. Canada imposes suspicious transaction reporting, reporting on large cash transactions (above Can\$10,000), and a record keeping requirement on the identity of originating customer, including the name and address of the originator for any transfer over Can\$3000 to an expanded category of “money services business.” The expanded category encompasses persons or entities in the business of remitting funds and does not require the physical movement of funds, thus including informal systems.<sup>174</sup>

The United States requires the registration of “underground banking systems” and imposes suspicious transaction reporting on them. Section 359 of the USA PATRIOT Act brings under the umbrella of the Bank Secrecy Act requirements for suspicious activity reporting, “licensed sender of money or any other person who engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in

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<sup>173</sup> David M. Nissman, *Money Laundering*, part 1.6, Alternative Remittance Systems, <http://corpusjurispublishing.com/Articles/moneylaundering.pdf>.

<sup>174</sup> Section 1(2) The Proceeds of Crime (Money Laundering) and Terrorist Financial Act, February 1, 2002 [Canada].

facilitating the transfer of money domestically or internationally outside of the conventional financial institutions systems.”<sup>175</sup> Regulations issued by U.S. financial supervisors to implement U.S. suspicious activity reporting under 31 U.S.C. §5318, are to apply equally to any other financial institutions and “to any person who engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system.”<sup>176</sup> The common law legislative example set out in Appendix VIII contains a prohibition of unlicensed money transmitting businesses based on Section 373 of the USA PATRIOT Act 2001.

### **Nonprofit Organizations (FATF SR VIII)**

In response to evidence that nonprofit organizations are sometimes used as conduits for terrorist funds, the FATF adopted Special Recommendation VIII, which reads as follows:

Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused:

- i. by terrorist organisations posing as legitimate entities;
- ii. to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and
- iii. to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.

While the first sentence of the Recommendation is wide-ranging and would require jurisdictions to review all their laws related to legal entities to assess if any type of entity is susceptible to abuse for purposes of terrorist financing, the focus of the Recommendation is contained in the second sentence, which deals with charitable entities. In response to requests for clarification of the Recommendation, the FATF issued a note on international best practices in combating the abuse of nonprofit organizations.<sup>177</sup>

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<sup>175</sup> Section 359(a), *USA PATRIOT Act 2001*, amending 31 U.S.C. § 5312(a)(2)(R) [U.S.].

<sup>176</sup> Section 359(c), *USA PATRIOT Act 2001*, amending 31 U.S.C. § 5318 [U.S.].

<sup>177</sup> FATF Secretariat, *Combating the Abuse of Non-profit Organisations: International Best Practices*, *supra* note 87.

### **Best Practice Note on FATF SR VIII**

The FATF Note states a number of basic principles that should guide the response to SR VIII. Among them are the following:

- The charitable sector is a vital component of the world economy and of many national economies and social systems that complements the activity of the governmental and business sectors in supplying a broad spectrum of public services and improving quality of life. The FATF wishes to safeguard and maintain the practice of charitable giving and the strong and diversified community of institutions through which it operates.
- Government oversight should be flexible, effective, and proportional to the risk of abuse. Mechanisms that reduce the compliance burden without creating loopholes for terrorist financiers should be given due consideration. Small organizations that do not raise significant amounts of money from public sources, and locally based associations or organizations whose primary function is to redistribute resources among members may not necessarily require enhanced government oversight.
- Different jurisdictions approach the regulation of nonprofit organizations from different constitutional, legal, regulatory, and institutional frameworks, and any international standards or range of models must allow for such differences, while adhering to the goals of establishing transparency and accountability in the ways in which nonprofit organizations collect and transmit funds. It is understood as well that jurisdictions may be restricted in their ability to regulate religious activity.

The FATF Note focuses on three main areas of operations and oversight of nonprofits. First, under “financial transparency,” the note stresses the need for proper accounting practices, independent auditing of financial accounts, as well as the preferred use of bank accounts to channel funds. Second, under “programmatically verification,” the note mentions the need to provide accurate information to potential providers of funds, the need to verify that financed projects have actually been carried out, and that the funds were in fact received and used by their intended beneficiaries. Third, under “administration,” the note stresses the need for nonprofits to document their operations and to have boards of directors (or other forms of supervisory bodies) capable of proactive verification measures.

The note also mentions nonprofits’ foreign operations, and government regulations. These two issues are dealt with in greater detail in the next two sections.

### **Best Practice for Disbursements of Funds to Foreign Recipient Organizations**

When distributing funds to foreign recipient organizations, nonprofit organizations may adopt practices to ensure, to the extent possible, that such funds are not diverted to finance terrorist activities. The following paragraphs summarize the United States Department of Treasury Anti-Terrorist Financing Guidelines with respect to financing foreign recipient organizations.<sup>178</sup>

Nonprofit organizations should collect detailed information about a foreign recipient organization including its name in English and in the language of origin, any acronym or other names used to identify it, the address and phone number of any of its places of business, its principal purpose, including a detailed report on its projects and goals, the names and addresses of organizations to which it provides or proposes to provide funding, services, or material support, to the extent known, as applicable, copies of any public filings or releases made by it, including the most recent official registry documents, annual reports, and annual filing with the pertinent government, as applicable, and its existing sources of income, such as official grants, private endowments, and commercial activities.

In addition, nonprofit organizations may consider vetting potential foreign recipient organizations. Nonprofit organizations should be able to demonstrate that they have conducted a reasonable search of public information, including information available via the Internet, to determine whether the foreign recipient organization is or has been implicated in any questionable activity, that they verified that the foreign recipient organization does not appear on any list of the relevant national government, the United Nations, or the European Union identifying it as having links to terrorism or money laundering, that they have verified the identity of key staff at the foreign recipient including the full name of each key staff member in English, in the language of origin, and any acronym or other names used, and nationality, citizenship, current country of residence, place and date of birth of each key staff member if possible and it has run the names through public databases and compared them with the lists noted above.

Nonprofit organizations may also wish to review the financial operations of the foreign recipient organization if large amounts of aid are contemplated. Nonprofit organizations should determine the identity of the financial institutions with which the foreign recipient organization maintains

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<sup>178</sup> Adapted from the U.S. Department of Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S. Based Charities, pp. 4–6.



accounts. They should seek bank references and determine whether the financial institution is a shell bank, operating under an offshore license, licensed in a jurisdiction that has been determined to be noncooperative in the international fight against money laundering; or licensed in a jurisdiction that lacks adequate anti-money laundering controls and regulatory oversight. Nonprofit organizations should also require periodic reports from the foreign recipient organization on its operational activities and use of the disbursed funds and should also perform routine, on-site audits of foreign recipient organizations whenever possible, consistent with the size of the disbursement and the cost of the audit.

### **Oversight and Sanctions**

Some jurisdictions have given their regulatory authorities the power to oversee nonprofit organizations. This is often the case where jurisdictions have conferred tax benefits on such organizations, in which case the tax authorities may exercise some oversight. In some jurisdictions, this oversight may only need to be slightly enhanced to achieve the objectives of Special Recommendation VIII. In other jurisdictions, regulatory oversight may need to be put in place.

Regulations covering the oversight and best practice requirements for nonprofit organizations should be backed up with sanctions for failure to comply. If the nonprofit is located in a jurisdiction where there are tax advantages or exemptions for nonprofit organizations, one possible sanction would be the termination of tax exempt status for breach of the best practice or due diligence provisions and the freezing of suspected funds. Other appropriate and proportional sanctions may include sanctioning of the directors of the nonprofit organization. The common law example of legislation on nonprofit entities is taken from the Commonwealth Secretariat Model Law, which is adapted from the Canadian Charities Registration (Security Information) Act. Similar provisions are provided in the civil law example.

# 5

## CONCLUSION

Suppressing the financing of terrorism is an ambitious objective, and success will depend on the ability of states to quickly put in place appropriate legislation as well as adequate enforcement mechanisms. For countries that have already adopted the laws and put in place the necessary enforcement mechanisms to deal with money laundering, the additional legislation to address the financing of terrorism is not considerable, but the additional enforcement mechanisms required to successfully detect, and prosecute financing of terrorism cases may be considerable. For countries that lack both legal and administrative infrastructures, the task may well be more daunting. The IMF (together with the World Bank and many regional organizations) has engaged in programs to assess countries' AML/CFT legal frameworks and to offer technical assistance to countries that wish to bring their legal frameworks into conformance with current international norms and standards in this regard.

## **APPENDIXES**

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Appendix

I

Table of Concordance

Topic	Convention	Resolutions	FATF SR*	Civil Law (Article)	Common Law (Section)
Criminalize the financing of terrorism (FT)	Article 4	1373 (2001)	II	II-2	2
Establish liability (criminal, civil or administrative) of corporations for FT	Article 5			II-3	3
Exclude excuses for FT based on political, philosophical, etc. considerations	Article 6			I-3	
Establish jurisdiction over FT offenses	Article 7			III-1	4
Identify, detect, freeze, or seize assets used in committing FT offenses, and freeze terrorist assets	Article 8	1267 (1999), 1333 (2001), 1373 (2001), 1390 (2002)	III	II-9–II-12	8–10
Establish procedure for detention of persons suspected of FT (including notification of other jurisdictions)	Articles 9, 17, and 19			IV-2–IV-5	5–7
Implement principle of “prosecute or extradite”	Article 10			IV-17	5(1)
Implement provisions on extradition	Article 11			IV-12–IV-16	12

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Topic	Convention	Resolutions	FATF SR*	Civil Law (Article)	Common Law (Section)
Implement provisions on mutual legal cooperation	Articles 12–15			IV-6–IV-11	13
Implement provisions on transfer of detainees and prisoners	Article 16				14
Take FT prevention measures, including:	Article 18, 1				
Prohibit illegal encouragement, instigation, organization, or engaging in FT offenses	(a)			See the discussion on page 50	
Require financial institutions to utilize the most efficient measures available for customer identification; pay special attention to suspicious transactions, and report suspicious transactions; and, for this purpose, consider regulations on unidentified account holders and beneficiaries, on documentation for opening accounts for legal entities, on suspicious transaction reporting, and on record retention	(b)		IV	(Anti-Money Laundering (AML) Law)	

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Topic	Convention	Resolutions	FATF SR*	Civil Law (Article)	Common Law (Section)
Consider:	Article 18, 2				
Supervision measures, including, for example, licensing of all money transmission agencies; and	(a)		(SR VI: impose anti-money laundering requirements on alternative remittance systems)	V-7–V-8	15
feasible measures to detect or monitor cross-border transportation of cash	(b)			(AML and other laws)	
Establish channels for exchange of information between competent agencies and services	Article 18, 3 (a)			(AML and other laws)	
Establish procedures for cooperating with other parties in inquiries on (i) persons and (ii) funds suspected of FT involvement	(b)			(AML and other laws)	
Consider exchanging such information through Interpol	Article 18, 4				
Include customer identification in money transfers			VII	V-9	

*Table of Concordance* 79

Topic	Convention	Resolutions	FATF SR*	Civil Law (Article)	Common Law (Section)
Ensure that in particular non-profit organizations cannot be used to finance terrorism.			VIII	V-1–V-6	16

\* FATF SR denotes Financial Action Task Force Special Recommendation.

**Preamble**

*The States Parties to this Convention,*

*Bearing in mind* the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of goodneighbourliness and friendly relations and cooperation among States,

*Deeply concerned* about the worldwide escalation of acts of terrorism in all its forms and manifestations,

*Recalling* the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations, contained in General Assembly resolution 50/6 of 24 October 1995,

*Recalling also* all the relevant General Assembly resolutions on the matter, including resolution 49/60 of 9 December 1994 and its annex on the Declaration on Measures to Eliminate International Terrorism, in which the States Members of the United Nations solemnly reaffirmed their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States,

*Noting* that the Declaration on Measures to Eliminate International Terrorism also encouraged States to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter,

*Recalling* General Assembly resolution 51/210 of 17 December 1996, paragraph 3, subparagraph (f), in which the Assembly called upon all States to take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and terrorist organizations, whether such financing is direct or indirect through organizations which also have or claim to have charitable, social or cultural goals or which are also engaged in unlawful activities such as illicit arms trafficking, drug dealing and racketeering, including the exploitation of persons for purposes of funding terrorist activities, and in particular to consider, where appropriate, adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes without impeding in any way the freedom of legitimate capital movements and to intensify the exchange of information concerning international movements of such funds,



*Recalling also* General Assembly resolution 52/165 of 15 December 1997, in which the Assembly called upon States to consider, in particular, the implementation of the measures set out in paragraphs 3 (a) to (f) of its resolution 51/210 of 17 December 1996,

*Recalling further* General Assembly resolution 53/108 of 8 December 1998, in which the Assembly decided that the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 should elaborate a draft international convention for the suppression of terrorist financing to supplement related existing international instruments,

*Considering* that the financing of terrorism is a matter of grave concern to the international community as a whole,

*Noting* that the number and seriousness of acts of international terrorism depend on the financing that terrorists may obtain,

*Noting also* that existing multilateral legal instruments do not expressly address such financing,

*Being convinced* of the urgent need to enhance international cooperation among States in devising and adopting effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators,

*Have agreed as follows:*

#### **Article 1**

For the purposes of this Convention:

1. "Funds" means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit.
2. "A State or governmental facility" means any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.
3. "Proceeds" means any funds derived from or obtained, directly or indirectly, through the commission of an offence set forth in article 2.

#### **Article 2**

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully

and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

- (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or
  - (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.
2. (a) On depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the annex may declare that, in the application of this Convention to the State Party, the treaty shall be deemed not to be included in the annex referred to in paragraph 1, subparagraph (a). The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the depositary of this fact;
- (b) When a State Party ceases to be a party to a treaty listed in the annex, it may make a declaration as provided for in this article, with respect to that treaty.
3. For an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, subparagraphs (a) or (b).
4. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.
5. Any person also commits an offence if that person:
- (a) Participates as an accomplice in an offence as set forth in paragraph 1 or 4 of this article;
  - (b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 4 of this article;
  - (c) Contributes to the commission of one or more offences as set forth in paragraphs 1 or 4 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
    - (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or

- (ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article.

**Article 3**

This Convention shall not apply where the offence is committed within a single State, the alleged offender is a national of that State and is present in the territory of that State and no other State has a basis under article 7, paragraph 1, or article 7, paragraph 2, to exercise jurisdiction, except that the provisions of articles 12 to 18 shall, as appropriate, apply in those cases.

**Article 4**

Each State Party shall adopt such measures as may be necessary:

- (a) To establish as criminal offences under its domestic law the offences set forth in article 2;
- (b) To make those offences punishable by appropriate penalties which take into account the grave nature of the offences.

**Article 5**

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence set forth in article 2. Such liability may be criminal, civil or administrative.
2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.
3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

**Article 6**

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

**Article 7**

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

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- (a) The offence is committed in the territory of that State;
  - (b) The offence is committed on board a vessel flying the flag of that State or an aircraft registered under the laws of that State at the time the offence is committed;
  - (c) The offence is committed by a national of that State.
2. A State Party may also establish its jurisdiction over any such offence when:
- (a) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), in the territory of or against a national of that State;
  - (b) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), against a State or government facility of that State abroad, including diplomatic or consular premises of that State;
  - (c) The offence was directed towards or resulted in an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), committed in an attempt to compel that State to do or abstain from doing any act;
  - (d) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State;
  - (e) The offence is committed on board an aircraft which is operated by the Government of that State.
3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.
4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties that have established their jurisdiction in accordance with paragraphs 1 or 2.
5. When more than one State Party claims jurisdiction over the offences set forth in article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.
6. Without prejudice to the norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

**Article 8**

1. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing the offences set forth in article 2 as well as the proceeds derived from such offences, for purposes of possible forfeiture.
2. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the forfeiture of funds used or allocated for the purpose of committing the offences set forth in article 2 and the proceeds derived from such offences.
3. Each State Party concerned may give consideration to concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of the funds derived from the forfeitures referred to in this article.
4. Each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to compensate the victims of offences referred to in article 2, paragraph 1, subparagraph (a) or (b), or their families.
5. The provisions of this article shall be implemented without prejudice to the rights of third parties acting in good faith.

**Article 9**

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.
2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.
3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:
  - (a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;
  - (b) Be visited by a representative of that State;
  - (c) Be informed of that person's rights under subparagraphs (a) and (b).

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 7, paragraph 1, subparagraph (b), or paragraph 2, subparagraph (b), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 7, paragraph 1 or 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

#### **Article 10**

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 7 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

**Article 11**

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 7, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

**Article 12**

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences set forth in article 2, including assistance in obtaining evidence in their possession necessary for the proceedings.

2. States Parties may not refuse a request for mutual legal assistance on the ground of bank secrecy.

3. The requesting Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.

4. Each State Party may give consideration to establishing mechanisms to share with other States Parties information or evidence

needed to establish criminal, civil or administrative liability pursuant to article 5.

5. States Parties shall carry out their obligations under paragraphs 1 and 2 in conformity with any treaties or other arrangements on mutual legal assistance or information exchange that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

**Article 13**

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. Accordingly, States Parties may not refuse a request for extradition or for mutual legal assistance on the sole ground that it concerns a fiscal offence.

**Article 14**

None of the offences set forth in article 2 shall be regarded for the purposes of extradition or mutual legal assistance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

**Article 15**

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

**Article 16**

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences set forth in article 2 may be transferred if the following conditions are met:

- (a) The person freely gives his or her informed consent;
- (b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.



2. For the purposes of the present article:
  - (a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;
  - (b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;
  - (c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;
  - (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.
3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

#### **Article 17**

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

#### **Article 18**

1. States Parties shall cooperate in the prevention of the offences set forth in article 2 by taking all practicable measures, *inter alia*, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:
  - (a) Measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of offences set forth in article 2;

(b) Measures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity. For this purpose, States Parties shall consider:

(i) Adopting regulations prohibiting the opening of accounts the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;

(ii) With respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;

(iii) Adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith;

(iv) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic or international.

2. States Parties shall further cooperate in the prevention of offences set forth in article 2 by considering:

(a) Measures for the supervision, including, for example, the licensing, of all money transmission agencies;

(b) Feasible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

3. States Parties shall further cooperate in the prevention of the offences set forth in article 2 by exchanging accurate and verified

information in accordance with their domestic law and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences set forth in article 2, in particular by:

- (a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;
- (b) Cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:
  - (i) The identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;
  - (ii) The movement of funds relating to the commission of such offences.

4. States Parties may exchange information through the International Criminal Police Organization (Interpol).

#### **Article 19**

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

#### **Article 20**

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

#### **Article 21**

Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of the United Nations, international humanitarian law and other relevant conventions.

#### **Article 22**

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction or performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

**Article 23**

1. The annex may be amended by the addition of relevant treaties that:
  - (a) Are open to the participation of all States;
  - (b) Have entered into force;
  - (c) Have been ratified, accepted, approved or acceded to by at least twenty-two States Parties to the present Convention.
2. After the entry into force of this Convention, any State Party may propose such an amendment. Any proposal for an amendment shall be communicated to the depositary in written form. The depositary shall notify proposals that meet the requirements of paragraph 1 to all States Parties and seek their views on whether the proposed amendment should be adopted.
3. The proposed amendment shall be deemed adopted unless one third of the States Parties object to it by a written notification not later than 180 days after its circulation.
4. The adopted amendment to the annex shall enter into force 30 days after the deposit of the twenty-second instrument of ratification, acceptance or approval of such amendment for all those States Parties having deposited such an instrument. For each State Party ratifying, accepting or approving the amendment after the deposit of the twenty-second instrument, the amendment shall enter into force on the thirtieth day after deposit by such State Party of its instrument of ratification, acceptance or approval.

**Article 24**

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.
2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.
3. Any State which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

**Article 25**

1. This Convention shall be open for signature by all States from 10 January 2000 to 31 December 2001 at United Nations Headquarters in New York.
2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.
3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

**Article 26**

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.
2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

**Article 27**

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.
2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

**Article 28**

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on 10 January 2000.

**Annex**

1. Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.
2. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.

3. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.
4. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
5. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.
6. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.
7. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.
8. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988.
9. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

Appendix  
**III**

**Status of the Convention  
as of April 15, 2003<sup>1</sup>**

**Entry into force:** April 10, 2002, in accordance with Article 26 (1).

**Registration:** April 10, 2002, No. 38349.

**Status:** Signatories: 132, Parties: 79.

**Text:** Resolution A/RES/54/109; depositary notifications C.N.327.2000.TREATIES-12 of May 30, 2000 (rectification of the original text of the Convention); and C.N.3.2002.TREATIES-1 of January 2, 2002 [proposal for corrections to the original text of the Convention (Arabic, Chinese, English, French, Russian and Spanish authentic texts)] and C.N.86.2002.TREATIES-4 of February 1, 2002 [Rectification of the original of the Convention (Arabic, Chinese, English, French, Russian and Spanish authentic texts)]; C.N.312.2002.TREATIES-14 of April 4, 2002 [proposal of a correction to the original of the Convention (Spanish authentic text)] and C.N.420.2002.TREATIES-20 of May 3, 2002 [rectification of the original of the Convention (Spanish authentic text)].<sup>1</sup>

**Note:** The Convention was adopted by Resolution 54/109 of December 9, 1999 at the fourth session of the General Assembly of the United Nations. In accordance with its article 25 (1), the Convention will be open for signature by all States at United Nations Headquarters from January 10, 2000 to December 31, 2001.

Participant	Signature	Ratification, Acceptance (A), Approval (AA), Accession (a)
Albania	18 Dec 2001	10 Apr 2002
Algeria	18 Jan 2000	8 Nov 2001
Andorra	11 Nov 2001	
Antigua and Barbuda		11 Mar 2002 a
Argentina	28 Mar 2001	
Armenia	15 Nov 2001	
Australia	15 Oct 2001	26 Sep 2002

<sup>1</sup> For current status of ratifications, refer to the following website: <http://untreaty.un.org/english/bible/englishinternetbible/partI/chapterXVIII/treaty11.asp>.

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Austria	24 Sep 2001	15 Apr 2002
Azerbaijan	4 Oct 2001	26 Oct 2001
Bahamas	2 Oct 2001	
Bahrain	14 Nov 2001	
Barbados	13 Nov 2001	18 Sep 2002
Belarus	12 Nov 2001	
Belgium	27 Sep 2001	
Belize	14 Nov 2001	
Benin	16 Nov 2001	
Bhutan	14 Nov 2001	
Bolivia	10 Nov 2001	7 Jan 2002
Bosnia and Herzegovina	11 Nov 2001	
Botswana	8 Sep 2000	8 Sep 2000
Brazil	10 Nov 2001	
Brunei Darussalam		4 Dec 2002 a
Bulgaria	19 Mar 2001	15 Apr 2002
Burundi	13 Nov 2001	
Cambodia	11 Nov 2001	
Canada	10 Feb 2000	19 Feb 2002
Cape Verde	13 Nov 2001	10 May 2002
Central African Republic	19 Dec 2001	
Chile	2 May 2001	10 Nov 2001
China	13 Nov 2001	
Colombia	30 Oct 2001	
Comoros	14 Jan 2000	
Congo	14 Nov 2001	
Cook Islands	24 Dec 2001	
Costa Rica	14 Jun 2000	24 Jan 2003
Côte d'Ivoire		13 Mar 2002 a
Croatia	11 Nov 2001	
Cuba	19 Oct 2001	15 Nov 2001
Cyprus	1 Mar 2001	30 Nov 2001
Czech Republic	6 Sep 2000	
Democratic People's Republic of Korea	12 Nov 2001	
Democratic Republic of the Congo	11 Nov 2001	
Denmark <sup>1</sup>	25 Sep 2001	27 Aug 2002
Djibouti	15 Nov 2001	
Dominican Republic	15 Nov 2001	
Ecuador	6 Sep 2000	
Egypt	6 Sep 2000	
Equatorial Guinea		7 Feb 2003 a
Estonia	6 Sep 2000	22 May 2002
Finland	10 Jan 2000	28 Jun 2002 A
France	10 Jan 2000	7 Jan 2002
Gabon	8 Sep 2000	
Georgia	23 Jun 2000	27 Sep 2002
Germany	20 Jul 2000	
Ghana	12 Nov 2001	6 Sep 2002
Greece	8 Mar 2000	
Grenada		13 Dec 2001 a
Guatemala	23 Oct 2001	12 Feb 2002
Guinea	16 Nov 2001	



Guinea-Bissau	14 Nov 2001	
Honduras	11 Nov 2001	25 Mar 2003
Hungary	30 Nov 2001	14 Oct 2002
Iceland	1 Oct 2001	15 Apr 2002
India	8 Sep 2000	
Indonesia	24 Sep 2001	
Ireland	15 Oct 2001	
Israel	11 Jul 2000	10 Feb 2003
Italy	13 Jan 2000	27 Mar 2003
Jamaica	10 Nov 2001	
Japan	30 Oct 2001	11 Jun 2002 A
Jordan	24 Sep 2001	
Kazakhstan		24 Feb 2003 a
Kenya	4 Dec 2001	
Latvia	18 Dec 2001	14 Nov 2002
Lesotho	6 Sep 2000	12 Nov 2001
Liberia		5 Mar 2003 a
Libyan Arab Jamahiriya	13 Nov 2001	9 Jul 2002
Liechtenstein	2 Oct 2001	
Lithuania		20 Feb 2003 a
Luxembourg	20 Sep 2001	
Madagascar	1 Oct 2001	
Mali	11 Nov 2001	28 Mar 2002
Malta	10 Jan 2000	11 Nov 2001
Marshall Islands		27 Jan 2003 a
Mauritius	11 Nov 2001	
Mexico	7 Sep 2000	20 Jan 2003
Micronesia (Federated States of)	12 Nov 2001	23 Sep 2002
Monaco	10 Nov 2001	10 Nov 2001
Mongolia	12 Nov 2001	
Morocco	12 Oct 2001	19 Sep 2002
Mozambique	11 Nov 2001	14 Jan 2003
Myanmar	12 Nov 2001	
Namibia	10 Nov 2001	
Nauru	12 Nov 2001	
Netherlands <sup>2</sup>	10 Jan 2000	7 Feb 2002 A
New Zealand <sup>3</sup>	7 Sep 2000	4 Nov 2002
Nicaragua	17 Oct 2001	14 Nov 2002
Nigeria	1 Jun 2000	
Norway	1 Oct 2001	15 Jul 2002
Palau		14 Nov 2001 a
Panama	12 Nov 2001	3 Jul 2002
Paraguay	12 Oct 2001	
Peru	14 Sep 2000	10 Nov 2001
Philippines	16 Nov 2001	
Poland	4 Oct 2001	
Portugal	16 Feb 2000	18 Oct 2002
Republic of Korea	9 Oct 2001	
Republic of Moldova	16 Nov 2001	10 Oct 2002
Romania	26 Sep 2000	9 Jan 2003
Russian Federation	3 Apr 2000	27 Nov 2002
Rwanda	4 Dec 2001	13 May 2002
Saint Kitts and Nevis	12 Nov 2001	16 Nov 2001

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Saint Vincent and the Grenadines	3 Dec 2001	28 Mar 2002
Samoa	13 Nov 2001	27 Sep 2002
San Marino	26 Sep 2000	12 Mar 2002
Saudi Arabia	29 Nov 2001	
Serbia and Montenegro	12 Nov 2001	10 Oct 2002
Seychelles	15 Nov 2001	
Sierra Leone	27 Nov 2001	
Singapore	18 Dec 2001	30 Dec 2002
Slovakia	26 Jan 2001	13 Sep 2002
Slovenia	10 Nov 2001	
Somalia	19 Dec 2001	
South Africa	10 Nov 2001	
Spain	8 Jan 2001	9 Apr 2002
Sri Lanka	10 Jan 2000	8 Sep 2000
Sudan	29 Feb 2000	
Swaziland		4 Apr 2003 a
Sweden	15 Oct 2001	6 Jun 2002
Switzerland	13 Jun 2001	
Tajikistan	6 Nov 2001	
Thailand	18 Dec 2001	
The Former Yugoslav Republic of Macedonia	31 Jan 2000	
Togo	15 Nov 2001	10 Mar 2003
Tonga		9 Dec 2002 a
Tunisia	2 Nov 2001	
Turkey	27 Sep 2001	28 Jun 2002
Uganda	13 Nov 2001	
Ukraine	8 Jun 2000	6 Dec 2002
United Kingdom of Great Britain and Northern Ireland	10 Jan 2000	7 Mar 2001
United Republic of Tanzania		22 Jan 2003 a
United States of America	10 Jan 2000	26 Jun 2002
Uruguay	25 Oct 2001	
Uzbekistan	13 Dec 2000	9 Jul 2001
Venezuela	16 Nov 2001	
Viet Nam		25 Sep 2002 a

<sup>1</sup> With a territorial exclusion with respect to the Faroe Islands and Greenland.

<sup>2</sup> For the Kingdom in Europe.

<sup>3</sup> With a territorial exclusion with respect to Tokelau to the effect that "... consistent with the constitutional status of Tokelau and taking into account the commitment of the Government of New Zealand to the development of self-government for Tokelau through an act of self-determination under the Charter of the United Nations, this ratification shall not extend to Tokelau unless and until a Declaration to this effect is lodged by the Government of New Zealand with the Depositary on the basis of appropriate consultation with that territory."

**RESOLUTION 1267 (1999)**

**Adopted by the Security Council at its 4051st meeting,  
on October 15, 1999**

*The Security Council,*

*Reaffirming* its previous resolutions, in particular resolutions 1189 (1998) of 13 August 1998, 1193 (1998) of 28 August 1998 and 1214 (1998) of 8 December 1998, and the statements of its President on the situation in Afghanistan,

*Reaffirming* its strong commitment to the sovereignty, independence, territorial integrity and national unity of Afghanistan, and its respect for Afghanistan's cultural and historical heritage,

*Reiterating* its deep concern over the continuing violations of international humanitarian law and of human rights, particularly discrimination against women and girls, and over the significant rise in the illicit production of opium, and stressing that the capture by the Taliban of the Consulate-General of the Islamic Republic of Iran and the murder of Iranian diplomats and a journalist in Mazar-e-Sharif constituted flagrant violations of established international law,

*Recalling* the relevant international counter-terrorism conventions and in particular the obligations of parties to those conventions to extradite or prosecute terrorists,

*Strongly condemning* the continuing use of Afghan territory, especially areas controlled by the Taliban, for the sheltering and training of terrorists and planning of terrorist acts, and reaffirming its conviction that the suppression of international terrorism is essential for the maintenance of international peace and security,

*Deploring* the fact that the Taliban continues to provide safe haven to Usama bin Laden and to allow him and others associated with him to operate a network of terrorist training camps from Taliban-controlled territory and to use Afghanistan as a base from which to sponsor international terrorist operations,

*Noting* the indictment of Usama bin Laden and his associates by the United States of America for, *inter alia*, the 7 August 1998 bombings of the United States embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania and for conspiring to kill American nationals outside the United States, and

noting also the request of the United States of America to the Taliban to surrender them for trial (S/1999/1021),

*Determining* that the failure of the Taliban authorities to respond to the demands in paragraph 13 of resolution 1214 (1998) constitutes a threat to international peace and security,

*Stressing* its determination to ensure respect for its resolutions,

*Acting* under Chapter VII of the Charter of the United Nations,

1. *Insists* that the Afghan faction known as the Taliban, which also calls itself the Islamic Emirate of Afghanistan, comply promptly with its previous resolutions and in particular cease the provision of sanctuary and training for international terrorists and their organizations, take appropriate effective measures to ensure that the territory under its control is not used for terrorist installations and camps, or for the preparation or organization of terrorist acts against other States or their citizens, and cooperate with efforts to bring indicted terrorists to justice;

2. *Demands* that the Taliban turn over Usama bin Laden without further delay to appropriate authorities in a country where he has been indicted, or to appropriate authorities in a country where he will be returned to such a country, or to appropriate authorities in a country where he will be arrested and effectively brought to justice;

3. *Decides* that on 14 November 1999 all States shall impose the measures set out in paragraph 4 below, unless the Council has previously decided, on the basis of a report of the Secretary-General, that the Taliban has fully complied with the obligation set out in paragraph 2 above;

4. *Decides* further that, in order to enforce paragraph 2 above, all States shall:

(a) Deny permission for any aircraft to take off from or land in their territory if it is owned, leased or operated by or on behalf of the Taliban as designated by the Committee established by paragraph 6 below, unless the particular flight has been approved in advance by the Committee on the grounds of humanitarian need, including religious obligation such as the performance of the Hajj;

(b) Freeze funds and other financial resources, including funds derived or generated from property owned or controlled directly or indirectly by the Taliban, or by any undertaking owned or controlled by the Taliban, as designated by the Committee established by paragraph 6 below, and ensure that neither they nor any other funds or financial resources so designated are made available, by their nationals or by any persons within their territory, to or for the benefit of the Taliban or any undertaking owned or controlled, directly or indirectly, by the Taliban, except as may be authorized by the Committee on a case-by-case basis on the grounds of humanitarian need;

5. *Urges* all States to cooperate with efforts to fulfil the demand in paragraph 2 above, and to consider further measures against Usama bin Laden and his associates;

6. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council consisting of all the members of the Council to undertake the following tasks and to report on its work to the Council with its observations and recommendations:

(a) To seek from all States further information regarding the action taken by them with a view to effectively implementing the measures imposed by paragraph 4 above;

(b) To consider information brought to its attention by States concerning violations of the measures imposed by paragraph 4 above and to recommend appropriate measures in response thereto;

(c) To make periodic reports to the Council on the impact, including the humanitarian implications, of the measures imposed by paragraph 4 above;

(d) To make periodic reports to the Council on information submitted to it regarding alleged violations of the measures imposed by paragraph 4 above, identifying where possible persons or entities reported to be engaged in such violations;

(e) To designate the aircraft and funds or other financial resources referred to in paragraph 4 above in order to facilitate the implementation of the measures imposed by that paragraph;

(f) To consider requests for exemptions from the measures imposed by paragraph 4 above as provided in that paragraph, and to decide on the granting of an exemption to these measures in respect of the payment by the International Air Transport Association (IATA) to the aeronautical authority of Afghanistan on behalf of international airlines for air traffic control services;

(g) To examine the reports submitted pursuant to paragraph 9 below;

7. *Calls upon* all States to act strictly in accordance with the provisions of this resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to the date of coming into force of the measures imposed by paragraph 4 above;

8. *Calls upon* States to bring proceedings against persons and entities within their jurisdiction that violate the measures imposed by paragraph 4 above and to impose appropriate penalties;

9. *Calls upon* all States to cooperate fully with the Committee established by paragraph 6 above in the fulfilment of its tasks, including supplying such information as may be required by the Committee in pursuance of this resolution;

10. *Requests* all States to report to the Committee established by paragraph 6 above within 30 days of the coming into force of the measures imposed by paragraph 4 above on the steps they have taken with a view to effectively implementing paragraph 4 above;

11. *Requests* the Secretary-General to provide all necessary assistance to the Committee established by paragraph 6 above and to make the necessary arrangements in the Secretariat for this purpose;

12. *Requests* the Committee established by paragraph 6 above to determine appropriate arrangements, on the basis of recommendations of the Secretariat, with competent international organizations, neighbouring and other States, and parties concerned with a view to improving the monitoring of the implementation of the measures imposed by paragraph 4 above;

13. *Requests* the Secretariat to submit for consideration by the Committee established by paragraph 6 above information received from Governments and public sources on possible violations of the measures imposed by paragraph 4 above;

14. *Decides* to terminate the measures imposed by paragraph 4 above once the Secretary-General reports to the Security Council that the Taliban has fulfilled the obligation set out in paragraph 2 above;

15. *Expresses* its readiness to consider the imposition of further measures, in accordance with its responsibility under the Charter of the United Nations, with the aim of achieving the full implementation of this resolution;

16. *Decides* to remain actively seized of the matter.

**Resolution No. 1373 (2001)**

**Adopted by the Security Council at its 4385th meeting,  
on September 28, 2001**

*The Security Council,*

*Reaffirming* its resolutions 1269 (1999) of 19 October 1999 and 1368 (2001) of 12 September 2001,

*Reaffirming also* its unequivocal condemnation of the terrorist attacks which took place in New York, Washington, D.C. and Pennsylvania on 11 September 2001, and expressing its determination to prevent all such acts,

*Reaffirming further* that such acts, like any act of international terrorism, constitute a threat to international peace and security,

*Reaffirming* the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations as reiterated in resolution 1368 (2001),

*Reaffirming* the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

*Deeply concerned* by the increase, in various regions of the world, of acts of terrorism motivated by intolerance or extremism,

*Calling* on States to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism,

*Recognizing* the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism,

*Reaffirming* the principle established by the General Assembly in its declaration of October 1970 (resolution 2625 (XXV)) and reiterated by the Security Council in its resolution 1189 (1998) of 13 August 1998, namely that every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts,

*Acting* under Chapter VII of the Charter of the United Nations,

1. Decides that all States shall:
  - (a) Prevent and suppress the financing of terrorist acts;

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(b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;

(c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;

(d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

2. Decides also that all States shall:

(a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;

(b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;

(c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;

(d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;

(e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;

(f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;



(g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;

3. Calls upon all States to:

(a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;

(b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;

(c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;

(d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;

(e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);

(f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;

(g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists;

4. Notes with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard emphasizes the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security;

5. Declares that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations;

6. Decides to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and calls upon all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution;

7. Directs the Committee to delineate its tasks, submit a work programme within 30 days of the adoption of this resolution, and to consider the support it requires, in consultation with the Secretary-General;

8. Expresses its determination to take all necessary steps in order to ensure the full implementation of this resolution, in accordance with its responsibilities under the Charter;

9. Decides to remain seized of this matter.

**Resolution 1390 (2002)**

**Adopted by the Security Council at its 4452nd meeting,  
on January 16, 2002**

*The Security Council,*

*Recalling* its resolutions 1267 (1999) of 15 October 1999, 1333 (2000) of 19 December 2000 and 1363 (2001) of 30 July 2001,

*Reaffirming* its previous resolutions on Afghanistan, in particular resolutions 1378 (2001) of 14 November 2001 and 1383 (2001) of 6 December 2001,

*Reaffirming* also its resolutions 1368 (2001) of 12 September 2001 and 1373 (2001) of 28 September 2001, and *reiterating* its support for international efforts to root out terrorism, in accordance with the Charter of the United Nations,

*Reaffirming* its unequivocal condemnation of the terrorist attacks which took place in New York, Washington and Pennsylvania on 11 September 2001, expressing its determination to prevent all such acts, *noting* the continued activities of Usama bin Laden and the Al-Qaida network in supporting international terrorism, and expressing its determination to root out this network,

*Noting* the indictments of Usama bin Laden and his associates by the United States of America for, inter alia, the 7 August 1998 bombings of the United States embassies in Nairobi, Kenya and Dar es Salaam, Tanzania,

*Determining* that the Taliban have failed to respond to the demands in paragraph 13 of resolution 1214 (1998) of 8 December 1998, paragraph 2 of resolution 1267 (1999) and paragraphs 1, 2 and 3 of resolution 1333 (2000),

*Condemning* the Taliban for allowing Afghanistan to be used as a base for terrorists training and activities, including the export of terrorism by the Al-Qaida network and other terrorist groups as well as for using foreign mercenaries in hostile actions in the territory of Afghanistan,

*Condemning* the Al-Qaida network and other associated terrorist groups, for the multiple criminal, terrorist acts, aimed at causing the deaths of numerous innocent civilians, and the destruction of property,

*Reaffirming* further that acts of international terrorism constitute a threat to international peace and security,

*Acting* under Chapter VII of the Charter of the United Nations,

1. *Decides* to continue the measures imposed by paragraph 8 (c) of resolution 1333 (2000) and *takes note* of the continued application of the measures imposed by paragraph 4 (b) of resolution 1267 (1999), in accordance with paragraph 2 below, and *decides* to terminate the measures imposed in paragraph 4 (a) of resolution 1267 (1999);

2. *Decides* that all States shall take the following measures with respect to Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them, as referred to in the list created pursuant to resolutions 1267 (1999) and 1333 (2000) to be updated regularly by the Committee established pursuant to resolution 1267 (1999) hereinafter referred to as “the Committee”;

(a) Freeze without delay the funds and other financial assets or economic resources of these individuals, groups, undertakings and entities, including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly, for such persons’ benefit, by their nationals or by any persons within their territory;

(b) Prevent the entry into or the transit through their territories of these individuals, provided that nothing in this paragraph shall oblige any State to deny entry into or require the departure from its territories of its own nationals and this paragraph shall not apply where entry or transit is necessary for the fulfilment of a judicial process or the Committee determines on a case by case basis only that entry or transit is justified;

(c) Prevent the direct or indirect supply, sale and transfer, to these individuals, groups, undertakings and entities from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned and technical advice, assistance, or training related to military activities;

3. *Decides* that the measures referred to in paragraphs 1 and 2 above will be reviewed in 12 months and that at the end of this period the Council will either allow these measures to continue or decide to improve them, in keeping with the principles and purposes of this resolution;

4. *Recalls* the obligation placed upon all Member States to implement in full resolution 1373 (2001), including with regard to any member of the Taliban and the Al-Qaida organization, and any individuals, groups, undertakings and entities associated with the Taliban and the Al-Qaida organization, who have participated in the financing, planning,

facilitating and preparation or perpetration of terrorist acts or in supporting terrorist acts;

5. *Requests* the Committee to undertake the following tasks and to report on its work to the Council with its observations and recommendations;

(a) to update regularly the list referred to in paragraph 2 above, on the basis of relevant information provided by Member States and regional organizations;

(b) to seek from all States information regarding the action taken by them to implement effectively the measures referred to in paragraph 2 above, and thereafter to request from them whatever further information the Committee may consider necessary;

(c) to make periodic reports to the Council on information submitted to the Committee regarding the implementation of this resolution;

(d) to promulgate expeditiously such guidelines and criteria as may be necessary to facilitate the implementation of the measures referred to in paragraph 2 above;

(e) to make information it considers relevant, including the list referred to in paragraph 2 above, publicly available through appropriate media;

(f) to cooperate with other relevant Security Council Sanctions Committees and with the Committee established pursuant to paragraph 6 of its resolution 1373 (2001);

6. *Requests* all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement the measures referred to in paragraph 2 above;

7. *Urges* all States, relevant United Nations bodies, and, as appropriate, other organizations and interested parties to cooperate fully with the Committee and with the Monitoring Group referred to in paragraph 9 below;

8. *Urges* all States to take immediate steps to enforce and strengthen through legislative enactments or administrative measures, where appropriate, the measures imposed under domestic laws or regulations against their nationals and other individuals or entities operating on their territory, to prevent and punish violations of the measures referred to in paragraph 2 of this resolution, and to inform the Committee of the adoption of such measures, and *invites* States to report the results of all related investigations or enforcement actions to the Committee unless to do so would compromise the investigation or enforcement actions;

9. *Requests* the Secretary-General to assign the Monitoring Group established pursuant to paragraph 4 (a) of resolution 1363 (2001), whose mandate expires on 19 January 2002, to monitor, for a period of 12 months, the implementation of the measures referred to in paragraph 2 of this resolution;

10. *Requests* the Monitoring Group to report to the Committee by 31 March 2002 and thereafter every 4 months;

11. *Decides* to remain actively seized of the matter.

Recognising the vital importance of taking action to combat the financing of terrorism, the FATF has agreed these Recommendations, which, when combined with the FATF Forty Recommendations on money laundering, set out the basic framework to detect, prevent and suppress the financing of terrorism and terrorist acts.

#### ***I. Ratification and implementation of UN instruments***

Each country should take immediate steps to ratify and to implement fully the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism. Countries should also immediately implement the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts, particularly United Nations Security Council Resolution 1373.

#### ***II. Criminalizing the financing of terrorism and associated money laundering***

Each country should criminalise the financing of terrorism, terrorist acts and terrorist organisations. Countries should ensure that such offences are designated as money laundering predicate offences.

#### ***III. Freezing and confiscating terrorist assets***

Each country should implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organisations in accordance with the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts.

Each country should also adopt and implement measures, including legislative ones, which would enable the competent authorities to seize and confiscate property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations.

#### ***IV. Reporting suspicious transactions related to terrorism***

If financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that

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<sup>1</sup> Adopted by the FATF Extraordinary Plenary at Washington D.C., October 30, 2001.

funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organisations, they should be required to report promptly their suspicions to the competent authorities.

***V. International cooperation***

Each country should afford another country, on the basis of a treaty, arrangement or other mechanism for mutual legal assistance or information exchange, the greatest possible measure of assistance in connection with criminal, civil enforcement, and administrative investigations, inquiries and proceedings relating to the financing of terrorism, terrorist acts and terrorist organisations.

Countries should also take all possible measures to ensure that they do not provide safe havens for individuals charged with the financing of terrorism, terrorist acts or terrorist organisations, and should have procedures in place to extradite, where possible, such individuals.

***VI. Alternative remittance***

Each country should take measures to ensure that persons or legal entities, including agents, that provide a service for the transmission of money or value, including transmission through an informal money or value transfer system or network, should be licensed or registered and subject to all the FATF Recommendations that apply to banks and non-bank financial institutions. Each country should ensure that persons or legal entities that carry out this service illegally are subject to administrative, civil or criminal sanctions.

***VII. Wire transfers***

Countries should take measures to require financial institutions, including money remitters, to include accurate and meaningful originator information (name, address and account number) on funds transfers and related messages that are sent, and the information should remain with the transfer or related message through the payment chain.

Countries should take measures to ensure that financial institutions, including money remitters, conduct enhanced scrutiny of and monitor for suspicious activity funds transfers which do not contain complete originator information (name, address and account number).

***VIII. Non-profit organizations***

Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused:

- (i) by terrorist organisations posing as legitimate entities;



- (ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and
- (iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.

**2.1 CRIMINAL JUSTICE MEASURES AND INTERNATIONAL  
CO-OPERATION*****I. Criminalisation of ML and FT***

1. The jurisdiction should have ratified and fully implemented the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Vienna Convention), the UN International Convention for the Suppression of the Financing of Terrorism 1999, and the UN Convention Against Transnational Organized Crime 2000 (Palermo Convention), as well as other regional AML/CFT conventions (e.g. the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime), where applicable. Countries should also immediately implement the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts, particularly United Nations Security Council Resolution 1373. (see FATF 1, 35, I).

2. Each jurisdiction should criminalise money laundering on the basis of the Palermo and Vienna Conventions (see FATF 4).

- 2.1 The offence of ML may extend not only to those persons who have committed ML, but also to persons who have committed both the laundering and the predicate offence.
- 2.2 It should not be necessary that a person be convicted of a predicate offence to establish that assets were the proceeds of a predicate offence and to convict any person of laundering such proceeds.
- 2.3 Predicate offences for ML should extend to all serious offences, including drug trafficking and FT offences. (see FATF 4, II) It is possible to identify ML predicate offences by list or generically, including by length of penalty.
- 2.4 The offence of ML should extend to any type of property that directly or indirectly represents the proceeds of crime.

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<sup>1</sup> Sections related to the financing of terrorism, wherein all italics are in the original. Endorsed by the International Monetary Fund, the World Bank, and the Financial Action Task Force. For complete text, see <http://www.imf.org/external/np/mae/aml/2002/eng/110802.pdf>.

- 2.5 The predicate offences for ML should extend to conduct that occurred in another country, and which would have constituted a predicate offence had it occurred domestically.
3. FT should be criminalised on the basis of the Convention for the Suppression of the Financing of Terrorism (see FATF II).
  - 3.1 The FT offence should also apply when the terrorists or terrorist organisations are located in another jurisdiction or when the terrorist acts take place in another jurisdiction (see FATF II).
4. The offences of ML and FT should apply at least to those individuals or legal entities that knowingly engage in ML or FT activity. Laws should provide that the intentional element of the offences of ML and FT may be inferred from objective factual circumstances. (see FATF 5).
  - 4.1 If permissible under the jurisdiction's legal system, the offences of ML and FT should extend to legal entities (e.g., companies, foundations) (see FATF 6).
5. Laws should provide for effective, proportionate and dissuasive criminal, civil or administrative sanctions for ML and FT.
6. *Legal means and resources should be adequate to enable an effective implementation of ML and FT laws.*

## ***II. Confiscation of proceeds of crime or property used to finance terrorism***

7. Laws should provide for the confiscation of laundered property<sup>2</sup>, proceeds from, and instrumentalities used in or intended for use in the commission of any ML or predicate offence, and property of corresponding value. Laws should provide for the confiscation of property that is the proceeds of, or used in, or intended or allocated for use in FT. (see FATF 7, III).
  - 7.1 Laws and other measures should provide for the freezing and/or seizing of property that is, or may become, subject to confiscation. Such laws or measures may provide that the initial application to freeze or seize property can be made on an ex parte basis.
  - 7.2 If permissible under the jurisdiction's legal system, States should consider laws that provide for the confiscation of the property of organisations that are found to be primarily

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<sup>2</sup> Property should include property that is income or profit derived from the proceeds of crime [footnote in original].

criminal in nature (i.e. organisations whose principal function is to perform or assist in the performance of illegal activities).

- 7.3 Laws should provide for confiscation of property of corresponding value, in the event that property that is subject to confiscation is not available (see FATF 7, III).
- 7.4 If permissible under the jurisdiction's legal system, jurisdictions should consider laws which allow for confiscation without conviction (*civil forfeiture*), in addition to the system of confiscation triggered by a criminal conviction.
8. Law enforcement agencies, the FIU or other competent authorities should be given adequate powers to identify and trace property that is, or may become, subject to confiscation or is suspected of being the proceeds of crime or used for FT (see FATF 7, III).
9. Laws should provide protections for the rights of bona fide third parties. Such protections should be consistent with the standards provided in the Palermo Convention and Strasbourg Convention, where applicable (see FATF 7).
10. In addition to confiscation and criminal sanctions, if permissible under the jurisdiction's legal system, there should be authority to void contracts or render them unenforceable where parties to the contract knew or should have known that as a result of the contract the authorities would be prejudiced in their ability to recover financial claims resulting from the operation of AML/CFT laws (see FATF 7).
11. *Authorities should keep statistics on the amounts of property frozen, seized, and confiscated relating to ML, the predicate offences and FT (see FATF 7, 38)*
12. *Training should be provided to administrative, investigative, prosecutorial, and judicial authorities for enforcing laws related to the freezing, seizure, and confiscation of property.*
13. Laws and other measures should provide for freezing without delay of funds or other property of terrorists, those who finance terrorism and terrorist organisations, in accordance with the United Nations resolutions relating to the prevention and suppression of FT (e.g., U.N.SCRs 1267, 1269, 1390) (see FATF III)
  - 13.1 *Authorities should keep statistics on the amounts of property frozen relating to FT and the number of individuals or entities whose property have been frozen.*
14. Competent authorities should have the power to identify and freeze the property of suspected terrorists, those who finance terrorism and terrorist

organisations, even where the names of such persons do not appear on the list(s) maintained by the relevant committees of the U.N. Security Council.

15. If permissible under the jurisdiction's legal system, the jurisdiction should consider establishing an asset forfeiture fund into which all or a portion of confiscated property will be deposited and will be used in the management of seized and confiscated property, as well as for law enforcement, health, education or other appropriate purposes (see Interpretative Note to FATF 38).

16. If permissible under the jurisdiction's legal system, the jurisdiction should consider asset sharing mechanisms to enable it to share confiscated property with other jurisdictions, particularly when confiscation is directly or indirectly the result of co-ordinated law enforcement actions. Unless otherwise agreed, such reciprocal sharing arrangements should not impose conditions on jurisdictions receiving the shared property. (see FATF 38, Interpretative Note to FATF 38).

[...]

#### ***V. International Co-operation***

34. There should be laws and procedures allowing the provision of the widest possible range of mutual legal assistance in AML/CFT matters, whether requiring the use of compulsory measures or not, and including the production of records by financial institutions and other persons, the search of persons and premises, seizure and obtaining of evidence for use in AML/CFT investigations and prosecutions and in related actions in foreign jurisdictions (see FATF 3, 32, 34, 36, 37, 38, 40, I and V).

34.1 There should be appropriate laws and procedures to provide effective mutual legal assistance in AML/CFT investigations or proceedings where the requesting jurisdiction is seeking: (i) the production or seizure of information, documents, or evidence (including financial records) from financial institutions, other entities, or natural persons; searches of financial institutions, other entities, and domiciles; (ii) the taking of witnesses' statements; and (iii) identification, freezing, seizure, or confiscation of assets laundered or intended to be laundered, the proceeds of ML and assets used for or intended to be used for FT, as well as the instrumentalities of such offences, and assets of corresponding value (see FATF 34, 37, 38, V).

34.2 Assistance should be provided in investigations and proceedings where persons have committed both the money laundering and the predicate offence as well as in investigations and proceedings where persons have committed the money laundering offence only (see FATF 33).

35. *The provision of mutual legal assistance should be used to the fullest extent possible to give effect to requests for assistance from foreign authorities relative to ML and predicate offence investigations, prosecutions, confiscations, extraditions, and other actions and proceedings.*

35.1 *To the greatest extent possible, differing standards in the requesting and in the requested jurisdiction concerning the intentional elements of the offence under domestic law should not affect the ability to provide mutual legal assistance (see FATF 33).*

35.2 *The authorities should give timely and effective follow up to requests for mutual legal assistance (see FATF 37, 38).*

35.3 *Authorities should keep statistics on all mutual legal assistance and other requests that are made or received, relating to ML, the predicate offences and FT, including details of the nature and result of the request.*

36. International co-operation should be supported through the use of conventions, treaties, agreements or arrangements, whether bilateral or multilateral (see FATF 3, 34).

37. There should be arrangements in place for law enforcement authorities to exchange information regarding the subjects of investigations with their international counterparts, based on agreements in force and by other mechanisms for co-operation. *The authorities should record the number, source, and purpose of the request for such information exchange, as well as its resolution (see FATF 34, V).*

38. Co-operative investigations, including controlled delivery, with other countries' appropriate competent authorities should be authorised, provided that adequate safeguards are in place e.g. a need for judicial authorisation (see FATF 3, 36).

39. *There should be arrangements for co-ordinating seizure and forfeiture actions, including, where permissible, authorising the sharing of confiscated assets with other countries when confiscation is directly or indirectly a result of co-ordinated law enforcement actions (see FATF 38, 39).*

40. There should be laws and procedures to extradite individuals charged with a ML or FT offence or related offences (see FATF 3, 40, V).

40.1 Where a jurisdiction does not extradite its own nationals pursuant to extradition requests, that jurisdiction should, at the request of the jurisdiction seeking extradition, and in accordance with the general principles relating to mutual assistance, submit the case without undue delay to its competent authorities for the purpose of prosecution of the offences set forth in the request.

41. *Countries should also take all possible measures to ensure that they do not provide safe havens for individuals charged with the financing of terrorism, terrorist acts or terrorist organisations, and should have procedures in place to extradite, where possible, such individuals. (FATF V).*

42. *Relevant authorities should be provided adequate financial, human or technical resources to ensure adequate oversight and to conduct investigations and to respond promptly and fully to requests for assistance received from other countries.*

**Title I. Definitions<sup>1</sup>**

For the purposes of this law:

1. “Funds” and “property” means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in such assets, including but not limited to bank credits, traveler’s checks, bank checks, money orders, shares, securities, bonds, drafts, and letters of credit.<sup>2</sup>
2. “State or government facility” means any permanent or temporary facility or conveyance that is used or occupied by representatives of a state, members of a government, the legislature or judiciary, or by officials or employees of a state or any other public authority or entity, or by employees or officials of an intergovernmental organization in connection with their official duties.<sup>3</sup>
3. “Proceeds” means any funds derived from or obtained, directly or indirectly, through the commission of an offense set forth in Article I-2.<sup>4</sup>
4. “Convention” means the International Convention for the Suppression of the Financing of Terrorism, opened for signature on January 10, 2000.

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<sup>1</sup> The structure of the law, as well as some of its provisions, particularly Title IV on international cooperation, are adapted from the Model Legislation on Laundering, Confiscation, and International Cooperation in Relation to the Proceeds of Crime (1999) established by the United Nations Office on Drugs and Crime. The drafter will find other provisions in that model legislation that can be included in this law.

<sup>2</sup> Article 1, paragraph 1 of the Convention.

<sup>3</sup> Article 1, paragraph 2 of the Convention.

<sup>4</sup> Article 1, paragraph 3 of the Convention.



## Title II. Offenses

### Article II-1. Financing of Terrorism<sup>5</sup>

1. Any person commits the offense of the financing of terrorism who by any means, directly or indirectly, [unlawfully and willfully],<sup>6</sup> provides or collects funds, or tries to provide or collect funds [**Option:** , or provides or tries to provide financial or other services]<sup>7</sup> with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

(a) an act which constitutes an offense within the scope of and as defined in one of the treaties listed in the annex to the Convention on the suppression of the financing of terrorism, and to which [*name of the country adopting the law*] is a party;

(b) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or abstain from doing any act.

2. **Variante 1:**<sup>8</sup> [For an act to constitute an offense in the sense of paragraph 1, it shall not be necessary that the funds were actually used to carry out an offense referred to in paragraph 1, subparagraph (a) or (b).] **Variante 2:** [The offense exists independently of the eventual occurrence of an act referred to in paragraph 1, subparagraph (a) or (b)].

3. Any person also commits an offense if that person:<sup>9</sup>

(a) participates as an accomplice in an offense as set forth in paragraph 1 or 3 of this article;

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<sup>5</sup> Article 2 of the Convention.

<sup>6</sup> These terms appear in the text of the Convention but seem redundant. An offense is necessarily unlawful and there does not seem to be any case where the financing of terrorism could be lawful. As for the willful nature of the crime, this refers to the intention to commit the offense, which is covered in the definition of the offense itself.

<sup>7</sup> This options extends the definition of the financing of terrorism under the Convention to include the requirement stipulated under Article 1(d) of Security Council Resolution 1373 (2001).

<sup>8</sup> The first variante repeats the language of Article 2 of the Convention. The second variante is a simpler formulation, borrowed from Article 421-2-2 of the French penal code.

<sup>9</sup> Article 2, paragraph 5 of the Convention.

(b) organizes or directs others to commit an offense as set forth in paragraphs 1 or 3 of this article.

(c) contributes to the commission of one or more offenses as set forth in paragraphs 1 or 3 of this article by a group of persons acting with a common purpose, when this contribution is made with full knowledge of the intention of the group to commit an offense as set forth in paragraph 1 of this article or when its aim is to facilitate the criminal activity of the group or to serve its purposes, and that activity or purpose involves the commission of an offense as set forth in paragraph 1 of this article;<sup>10</sup>

#### Article II-2. Justifications Not Allowed

No consideration of a political, philosophical, ideological, racial, ethnic, religious, or other similar nature may be taken into account in order to justify the commission of any of the aforementioned offenses.<sup>11</sup>

### **Title III. Coercive Measures<sup>[12]</sup>**

#### **Chapter 1. Punishment of Offenses**

##### **Section 1. Penalties Applicable**

###### Article III-1. Financing of Terrorism

The penalty of imprisonment of ... to ... and a fine of ... to ... is imposed on anyone who commits a terrorism financing offense.

An attempt to commit a terrorism financing offense is punishable **Option 1:** [as if the offense had itself been committed] **Option 2:** [by a penalty reduced by a *[fraction]* in relation to the main penalty].

Complicity in an offense, its organization, orders given and assistance provided for its commission are punishable as if the offense had itself been committed.

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<sup>10</sup> Article 2, paragraph 5 of the Convention.

<sup>11</sup> Article 6 of the Convention.

<sup>12</sup> The structure of this title and the next is borrowed from the Model Legislation on Laundering, Confiscation, and International Cooperation in Relation to the Proceeds of Crime (1999) developed by the United Nations Office on Drugs and Crime. The drafter will find other provisions in this model legislation that can be included in this law.

Article III-2. Association or Conspiracy to Commit Terrorism Financing

The same penalties apply to participation in an association or conspiracy to commit the offenses referred to in Article I-2.

Article III-3. Penalties Applicable to Corporate Entities

When a terrorism financing offense is committed by an agent or representative under their management or control, corporate entities, other than the state, are punished by a fine equal to [*a multiple— for example, five times*] the fine specified for natural persons, without prejudice to the conviction of the latter as perpetrators or accomplices of the offense.

Corporate entities may additionally be:

- (a) banned permanently or for a maximum period of five years from directly or indirectly carrying on certain business activities;
- (b) ordered to close permanently or for a maximum period of five years their premises that were used for the commission of the offense;
- (c) dissolved if they were created for the purpose of committing the offense;
- (d) required to publicize the judgment in the press or any other audiovisual media.

Article III-4. Aggravating Circumstances

**Variant (a):** The penalty imposed under Articles II-1, II-2, and II-3 may be increased to imprisonment of ... to ... and a fine of ... to ...:

**Variant (b):** The penalty imposed under Articles II-1, II-2, and II-3 may be increased by ... [*one third or other proportion determined on the basis of the general penal system in force*]:

when the offense is perpetrated in the context of a criminal organization.

Article III-5. Mitigating Circumstances

The general system of mitigating circumstances provided in [...provisions of the criminal code on mitigating circumstances] is applicable to the offenses provided for under Article I-2.

## Section 2. Confiscation

Article III-6. Confiscation

In the event of a conviction for an offense referred to in Article I-2, an order is issued for confiscation of the funds and assets used or intended to be used

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to commit the offense, the funds and assets that are the subject of the offense, as well as the proceeds of the offense.

The confiscation order specifies the funds and assets concerned and contains the necessary details to identify and locate them.

When the funds and assets to be confiscated cannot be produced, confiscation may be ordered for their value.

Anyone who claims to have a right over the assets or funds that are the subject of a confiscation order may appeal to the jurisdiction that issued the order within one year of the date of that order.

### Article III-7. Nullity of Certain Instruments

Any instrument executed free of charge or for a consideration *inter vivos* or *mortis causa*, the purpose of which is to safeguard property from confiscation measures as provided in this section, is void.

In the case of the nullification of a contract involving payment, the buyer is reimbursed only for the amount actually paid.

### Article III-8. Disposal of Confiscated Property

Confiscated funds accrue to the state, which may allocate them to a fund for combating organized crime or terrorism, or for compensating the victims of the offenses associated with terrorism, or their families. They remain encumbered, up to their value, by any rights *in rem* lawfully established in favor of third parties.

In cases where confiscation is ordered under a judgment by default, the confiscated funds accrue to the state and are realized in accordance with the relevant procedures on the subject. However, if the court, ruling on an application to set aside such judgment, acquits the person prosecuted, it orders restitution of the value of the funds confiscated by the state, unless it is established that such property represents the proceeds of a crime or offense.

## **Chapter 2. Freezing of Funds in Application of United Nations Security Council Resolutions**

### Article III-9. Freezing of Funds

The [*Prime Minister, Minister of Finance, Minister of Foreign Affairs, Minister of Justice*] may, by administrative decision, order the freezing of

funds and assets of individuals and organizations designated by the United Nations Security Council acting under Chapter VII of the United Nations Charter.<sup>13</sup> This decision is published in the ... [*name of the official journal*].

Article III-10. Procedure for Disputing Administrative Measures to Freeze Funds

Any individual or organization whose funds have been frozen pursuant to Article II-9 and feels that they were included on the list as the result of an error may seek to have their name removed from the list by submitting a request to this effect within thirty days of the publication of the list to the minister who ordered the freezing, indicating all factors that could demonstrate the error. The minister's decision with respect to this request cannot be appealed.

**Chapter 3. On Freezing, Provisional Measures, and Seizure in Criminal Matters**

Article III-11. On Provisional Measures

[...*name of the judicial authority competent to order provisional measures*] may, ex officio or at the request of the public prosecutor's office [**Option:** or a competent agency], order any provisional measures at state expense, including the freezing of funds and financial transactions involving assets, regardless of their nature, that can be seized or confiscated.

The lifting of these measures can be ordered at any time at the request of the public prosecutor's office or, after notice from the latter, at the request of the competent agency or the owner.

Article III-12. Seizure<sup>14</sup>

[...*name of competent judicial authorities and officials responsible for the detection and suppression of terrorism financing offenses*] may seize assets associated with the offense that is the subject of investigation, in particular funds used or intended to be used to commit the offenses referred to in

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<sup>13</sup> Security Council Resolutions 1267 (1999), 1333 (2000), and 1390 (2002). According to the FATF definition, freezing (also called block or restraint) occurs when a competent government or judicial authority takes control of the funds involved and prevents their original owner from accessing or transferring them. However, the funds remain the property of the original owner and may continue to be administered by the financial institution or other management arrangement designated by the owner.

<sup>14</sup> According to the FATF definition, seizure occurs when the competent government or judicial authority takes control of the funds in question. The funds remain the property of their original owner, although the competent authority may still keep possession of them and provide for their administration or management.

Article I-2, as well as the proceeds of these offenses, and all evidence facilitating their identification.

**Title IV. Jurisdiction of the Courts of ... [name of the country adopting the law]<sup>15</sup>**

Article IV-1. Jurisdiction of the Courts

The criminal law of ... [name of the country adopting the law] is applicable to the offenses indicated in Article I-2 when:

- (a) the offense was committed in its territory;
- (b) the offense was committed on board a vessel flying its flag or an aircraft registered pursuant to its laws at the time the offense was committed;
- (c) the offense was committed by one of its nationals;
- (d) the offense was committed outside its territory by someone now present in its territory, in all cases where [...name of the country adopting the law] does not extradite such a person to a state requesting extradition for the same offense;
- (e) the offense was directed to or resulted in the commission of an offense indicated in Article I-2, paragraph 1, subparagraph (a) or (b), in its territory or against one of its nationals;
- (f) the offense was directed to or resulted in the commission of an offense indicated in Article I-2, paragraph 1, subparagraph (a) or (b), against a government facility of that state located outside its territory, including its diplomatic or consular premises;
- (g) the offense was directed to or resulted in the commission of an offense indicated in Article I-2, paragraph 1, subparagraph (a) or (b), in an attempt to compel that state to do or abstain from doing any act;
- (h) the offense was committed by a stateless person who has his or her habitual residence in the territory of that state.
- (i) the offense was committed on board an aircraft operated by the government of that state.

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<sup>15</sup> Adapted from Article 7 of the Convention. To the extent that the general legal provisions of the country adopting the law include within the competence of that country's criminal law any of the cases listed here, such cases may be omitted from the special law. The Convention makes jurisdiction compulsory in the cases indicated in subparagraphs (a) through (d). It is optional in cases (e) through (i).

Article IV-2. Territorial Jurisdiction

The court of [name of capital city] is competent to hear cases involving offenses committed outside the national territory.

**Title V. International Cooperation**

**Chapter 1. General Provisions**

Article V-1. General Provisions<sup>16</sup>

The authorities of [*...name of the country adopting the law*] agree to cooperate as much as possible with those of other states for the purposes of information exchange, investigation, and proceedings, provisional measures and confiscations of instruments and proceeds associated with laundering, for purposes of extradition as well as purposes of mutual technical assistance.

**Chapter 2. Measures Relating to Persons Under Investigation**

Article V-2. Investigations

When the public prosecutor's office is informed that the perpetrator or presumed perpetrator of an offense indicated in Article I-2 may be located in its territory, it takes the necessary steps to investigate the facts brought to its notice.

Article V-3. Special Measures

If the public prosecutor's office feels that circumstances warrant, it takes appropriate steps to ensure the presence of that person for purposes of prosecution or extradition, when necessary requesting that a preliminary investigation be opened and that the person subject to investigation be placed under judicial control or in detention.

Article V-4. Right of Communication

Anyone with respect to whom the measures indicated in Article V-3 are applied is entitled to:

- (a) communicate without delay with the nearest representative of the state where he or she is a citizen or with someone otherwise qualified to protect his or her rights or, in the case of a stateless person, the country where he or she customarily maintains a residence;

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<sup>16</sup> Article 12 of the Convention.

- (b) be visited by a representative of that state;
- (c) be informed of the rights afforded him or her under subparagraphs (a) and (b) of this paragraph.

When the public prosecutor's office receives the request from a state that has established its jurisdiction over the offense in accordance with Article 7, paragraphs 1 (b) and 2 (b) of the Convention, it makes the necessary arrangements to ensure that the person detained under Article IV-3 can be visited by a representative from the International Red Cross.

#### Article V-5. Notification to Competent States

When the person who is the subject of the investigation indicated in Article IV-2 has been detained, the public prosecutor's office immediately informs, directly or through the Secretary General of the United Nations, the states that have established their jurisdiction over the offense and, if deemed appropriate, any other interested states, of the detention as well as of the circumstances justifying the detention. The public prosecutor promptly informs said states of the conclusions of the investigation and indicates to them whether it intends to exercise its jurisdiction.

### **Chapter 3. Requests for Judicial Cooperation**

#### Article V-6. Purpose of Requests for Cooperation

At the request of a foreign state, requests for cooperation relating to the offenses indicated in Article I-2 of this law are executed in accordance with the principles set forth in this title. Cooperation may specifically include:

- gathering evidence or taking depositions;
- providing assistance to make detained persons or others available to the judicial authorities of the requesting state in order to give evidence or assist in investigations;
- serving judicial documents;
- carrying out searches and seizures;
- examining objects and sites;
- providing information and evidentiary items;
- providing originals or certified copies of relevant files and documents, including bank statements, accounting documents, and records showing the operations of a company or its business activities.



Article V-7. Refusal to Execute Requests

1. A request for cooperation may be refused only:<sup>17</sup>

(a) if there are serious grounds for believing that the measures being requested or the decision being sought are directed at the person in question solely on account of that person's race, religion, nationality, ethnic origin, political opinions;<sup>18</sup>

(b) if it was not made by a competent authority according to the legislation of the requesting country or if it was not transmitted in the proper manner;

(c) if the offense to which it relates is the subject of criminal proceedings or has already been the subject of a final judgment in the territory of ... [*name of the country adopting the law*].

2. Bank secrecy may not be invoked as grounds for refusing to comply with the request.

3. The public prosecutor's office may appeal a court's decision to refuse compliance within [...] days following such decision.

4. The government of [*name of the country adopting the law*] promptly informs the foreign government of the grounds for refusing to comply with the request.

Article V-8. Request for Investigatory Measures

Investigatory measures are undertaken in conformity with the legislation of ... [*name of the country adopting the law*] unless the competent foreign authorities have requested that a specific procedure compatible with the legislation of ... [*name of the country adopting the law*] be followed.

A judicial officer or public official appointed by the competent foreign authority may attend the execution of the measures, depending on whether they are carried out by a judicial officer or by a public official.

Article V-9. Request for Provisional Measures

A court that is requested by a competent foreign authority to order provisional measures orders such measures in accordance with the legislation of ... [*name of the country adopting the law*]. It may also take a measure whose effects correspond most closely to the measures sought. If

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<sup>17</sup> Only the case indicated in paragraph (a) is specified in the Convention. The other cases are mentioned as examples. The drafter will find other topics in the model legislation mentioned above.

<sup>18</sup> Article 15 of the Convention (which also covers extradition).

the request is worded in general terms, the court orders the most appropriate measures provided for under the legislation.

Should it refuse to comply with measures not provided for under the legislation of ... [*name of the country adopting the legislation*], the court receiving the request to carry out the provisional measures ordered abroad may replace them with measures provided for under that legislation and whose effects correspond most closely to the measures whose execution is being sought.

The provisions relating to the lifting of provisional measures as set forth in Article II-11, paragraph 2 of this law are applicable.

#### Article V-10. Request for Confiscation

In the case of a request for judicial cooperation in order to issue a confiscation order, the court rules after referring the matter to the prosecuting authority. The confiscation order must apply to funds used or intended to be used to commit a terrorism financing offense or that constitute the proceeds of such an offense, and that are located in the territory of ... [*name of the country adopting the law*].

The court receiving the request for the enforcement of a confiscation order issued abroad is bound by the findings as to facts on which the order is based and may refuse to grant the request solely on one of the grounds stated in Article IV-7.

#### Article V-11. Disposal of Confiscated Goods

The state ... [*name of the country adopting the law*] has the power to dispose of funds confiscated in its territory at the request of foreign authorities.

However, the state may reach agreements with foreign states providing for the sharing, systematically or on a case-by-case basis, of funds derived from confiscations ordered upon request.

### **Chapter 4. Extradition**

#### Article V-12. Requests for Extradition

In the case of a request for extradition, the provisions of the Convention, procedures and principles not contrary to the Convention and set forth in an extradition treaty in force between the requesting state and ... [*name of the country adopting the law*] as well as the provisions of this law apply.

Article V-13. Security Measures

If it feels that the circumstances warrant, the public prosecutor's office takes appropriate steps to ensure the presence of the person covered by the request for extradition, when necessary asking the court receiving the request for extradition to place him or her under judicial control or in detention.

Article V-14. Double Criminality

Under this law, extradition shall be carried out only if the offense giving rise to extradition or a similar offense is provided for under the legislation of the requesting state and of ... [*name of the country adopting the law*].

Article V-15. Mandatory Grounds for Refusal

Extradition is not granted:

- (a) If there are serious grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinions, sex, or status, or that that person's position may be prejudiced for any of those reasons;<sup>19</sup>
- (b) If a final judgment has been rendered in ... [*name of the country adopting the law*] in respect of the offense for which extradition was requested;
- (c) if the person whose extradition is requested has, under the legislation of either country, become immune from prosecution or punishment for any reason, including lapse of time or amnesty;
- (d) if the person whose extradition is requested has been or would be subjected in the requesting state to torture or cruel, inhuman, or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in Article 14 of the International Covenant on Civil and Political Rights;

Article V-16. Optional Grounds for Refusal

Extradition may be refused:

- (a) if prosecution in respect of the offense for which extradition is requested is pending in ... [*name of the country adopting the law*] against the person whose extradition is requested;

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<sup>19</sup> Article 15 of the Convention (which also covers judicial cooperation).

(b) if the person whose extradition is requested has been sentenced or would be liable to be tried or sentenced in the requesting state by an extraordinary or ad hoc court or tribunal;

(c) if ... [*name of the country adopting the law*], while also taking into account the nature of the offense and the interests of the requesting state, considers that, in the circumstances of the case, the extradition of the person in question would be incompatible with humanitarian considerations in view of the age, health, or other personal circumstances of that person.

(d) if extradition is sought to enforce a final sentence that was rendered in the absence of the person concerned, who has not been able to provide for his or her own defense for reasons beyond his or her control;

(e) if ... [*name of the country adopting the law*] has established its jurisdiction over the offense pursuant to Article III-1 of this law;

***Options:***

(f) if the person whose extradition is requested is subject to the death penalty in respect of the crime of which he or she is accused in the requesting country, unless that country gives sufficient assurances that the penalty will not be carried out;

(g) if the person whose extradition is requested is a national of ... [*name of the country adopting the law*].

Article V-17. Aut dedere aut judicare [the duty to extradite or prosecute in international law]

If ... [*name of the country adopting the law*] refuses to extradite, it refers the matter to its competent authorities so that proceedings may be instituted against the person concerned in respect of the offense that gave rise to the request.

Article V-18. Surrender of Property

Within the limits authorized under national legislation and without prejudice to the rights of third parties, all property found in the territory of ... [*name of the country adopting the law*] that has been acquired as a result of the offense committed or that may be required as evidence is surrendered to the requesting state if extradition is granted, if requested by that state.

The property in question may, if the requesting state so requests, be surrendered to the requesting state even if the extradition agreed to cannot be carried out.

Should that property be subject to seizure or confiscation in the territory of ... [*name of the country adopting the law*], the state may temporarily retain it or hand it over.

Where national legislation or the rights of third parties so require, any property so surrendered is returned to ... [*name of the country adopting the law*] free of charge, after the completion of the proceedings, if ... [*name of the country adopting the law*] so requests.

## **Chapter 5. Provisions Common to Requests for Mutual Assistance and Requests for Extradition**

### Article V-19. Political Nature of the Offense

For the purposes of this law, the offenses indicated in Article I-2 shall not be considered offenses of a political nature, offenses connected with a political offense, offenses inspired by political motives, or fiscal offenses.

### Article V-20. Transmission of Requests

Requests sent by foreign authorities with a view to establishing laundering offenses or enforcing or ordering provisional measures or confiscations, or for purposes of extradition are transmitted through diplomatic channels. In urgent cases, such requests may be sent through the International Criminal Police Organization (ICPO/Interpol) or directly by the foreign authorities to the judicial authorities of ... [*name of the country adopting the law*], either by post or by any other more rapid means of transmission leaving a written or materially equivalent record. In such cases, in the absence of notice given through diplomatic channels, requests are not immediately executable.

Requests and their annexes shall be accompanied by a translation in a language acceptable to ... [*name of the country adopting the law*].

### Article V-21. Content of Requests

Requests shall specify:

1. the authority requesting the measure;
2. the requested authority;
3. the purpose of the request and any relevant contextual remarks;
4. the facts in support of the request;
5. any known details that may facilitate identification of the persons concerned, in particular marital status, nationality, address, and occupation;
6. any information necessary to identify and locate the persons, instrumentalities, proceeds, or property in question;

7. the text of the statutory provision establishing the offense or, where applicable, a statement of the law applicable to the offense and an indication of the penalty incurred for the offense.

In addition, requests shall include the following particulars in certain specific cases:

(1) in the case of requests for the taking of provisional measures, a description of the measures sought;

(2) in the case of requests for the making of a confiscation order, a statement of the relevant facts and arguments to enable the judicial authorities to order the confiscation under domestic law;

(3) in the case of requests for the enforcement of orders relating to provisional measures or confiscations:

(a) a certified true copy of the order, and a statement of the grounds on the basis of which the order was made if they are not indicated in the order itself;

(b) a document certifying that the order is enforceable and not subject to ordinary means of appeal;

(c) an indication of the extent to which the order is to be enforced and, where applicable, the amount of the sum to be recovered on the item or items of property;

(d) where necessary and if possible, any information concerning third-party rights of claim on instrumentalities, proceeds, property, or other things in question.

(4) in the case of requests for extradition, if the person has been convicted of an offense: the original or a certified true copy of the judgment or any other document setting out the conviction and the sentence imposed, the fact that the sentence is enforceable and the extent to which the sentence remains to be served.

#### Article V-22. Handling of Requests

The Minister of Justice of ... [*name of the country adopting the law*], after verifying that the request has been made in the proper manner, forwards it to the public prosecutor's office at the place where the investigations are to be conducted or where the proceeds or property in question are situated or where the person whose extradition is being requested is located.

The public prosecutor's office refers the matter to the officials competent to deal with requests for investigation or to the court competent to deal with requests relating to provisional measures, confiscations, or extradition.

A magistrate or public official appointed by the competent foreign authority may attend the execution of the measures, depending on whether they are carried out by a magistrate or by a public official.

Article V-23. Additional Information

The Ministry of Justice or the public prosecutor's office may, ex officio or at the request of the court to which the matter is referred, request, through diplomatic channels or directly, that the competent foreign authority provide all additional information necessary for complying with the request or facilitating compliance therewith.

Article V-24. Requirement of Confidentiality

Where a request requires that its existence and substance be kept confidential, such requirement shall be observed except to the extent necessary to give effect to the request. If that is not possible, the requesting authorities shall be promptly informed to that effect.

Article V-25. Postponement

The public prosecutor's office may postpone referring the matter to the police authorities or to the court only if the measures or order sought could interfere with ongoing investigations or proceedings. It shall immediately inform the requesting authority accordingly through diplomatic channels or directly.

Article V-26. Simplified Extradition Procedure

With regard to the offenses provided for under this law, ... [*name of the country adopting the law*] may grant extradition after receipt of a request for provisional arrest, provided that the person whose extradition is requested explicitly consents thereto.

Article V-27. Restriction on the Use of Evidence for Other Purposes

The communication or use, for investigations or proceedings other than those specified in the foreign request, of evidentiary facts contained therein is prohibited on pain of invalidation of such investigations or proceedings, except with the prior consent of the foreign government.

Article V-28. Allocation of Costs

Costs incurred in complying with requests provided for under this title are borne by the state of ... [*name of the country adopting the law*] unless otherwise agreed with the requesting country.

## **Title VI. Miscellaneous Measures**

### **Chapter 1. Nonprofit Associations and Organizations**

#### Article VI-1. Registration Procedure

Any nonprofit association or organization that wishes to collect or receive, grant or transfer funds must be entered in the registry [of associations] [of nonprofit organizations] in accordance with methods defined by decree.

The initial application for registration includes the names, surnames, addresses and telephone numbers of all persons given responsibility for the operations of the association, particularly the President, Vice-President, General Secretary, Members of the Board of Directors, and Treasurer, as applicable. Any change in the identity of those responsible must be reported to the authority charged with maintaining the registry.

#### Article VI-2. Donations

Any donation made to an association or organization indicated in the preceding article in an amount equal to or greater than an amount established by decree is recorded in a record maintained for the purpose by the association or organization, containing the full details on the donor, the date, the nature, and the amount of the donation. The record is kept for a period of [...] years and is submitted at the request of any authority responsible for the oversight of nonprofit organizations and, when requested, to judicial police officials responsible for a criminal investigation.

[When the donor of an amount in excess of that amount wishes to remain anonymous, the record may omit the identification but the association or organization is required to disclose his or her identity at the request of judicial police officials responsible for a criminal investigation.]

#### Article VI-3. Compulsory Statements

Any cash donation in an amount equal to or greater than a sum established by decree is the subject of a statement filed with the [financial investigation unit] following procedures defined by decree.

Any donation is also subject to a statement filed with the [financial investigation unit] when the funds are suspected of being related to a terrorist operation or the financing of terrorism.

#### Article VI-4. Accounting and Bank Accounts

Nonprofit associations or organizations are required to keep accounts in accordance with provisions in effect and to submit their financial statements for the preceding year to the authorities designated for this purpose within [...] months following the close of their financial year.



Nonprofit associations or organizations are required to deposit in a bank account at an authorized banking institution all sums of money that are submitted to them as donations or in the context of the transactions they are called upon to carry out.

Article VI-5. Banned Associations

Notwithstanding the conduct of criminal proceedings, the minister of [...] may, by administrative ruling, order a temporary ban on or the dissolution of nonprofit associations or organizations that, with full knowledge of the facts, encourage, promote, organize, or commit the offenses indicated in Article I-2 of this law.

A decree establishes the conditions for application of these provisions.

Article VI-6. Penalties

Any violation of the provisions of this chapter is punishable by one of the following penalties:

- (a) a fine of no more than [...];
- (b) a temporary ban on the activities of the association or organization of no more than [...];
- (c) the dissolution of the association or organization.

## Chapter 2. Alternative Funds Transfer Systems

Article VI-7. **Option 1:** [Authorization to operate] **Option 2:** [Entry in the registry]<sup>20</sup>

1. Any individual or corporate entity not authorized as a financial institution in the sense of the law ... [*banking law and laws on other financial institutions*] or any other applicable law that carries out, on behalf of or in the name of another individual or corporate entity, operations to transfer funds or assets in the sense of the following paragraph as a principal or essential activity, regularly or periodically or in addition to another activity, must **Option 1:** [be authorized to do so by ... [*name of the authority designated for this purpose*]] **Option 2:** [be entered in a registry opened for this purpose by ... [*name of the authority designated for this purpose*]].

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<sup>20</sup> The standard set by FATF Special Recommendation VI consists of the alternative of a system of prior authorization or entry in a registry.

2. A funds or asset transfer system consists of a financial service that accepts cash, checks, or any other instruments of payment or stores of value at a given location and pays an equivalent sum in cash or any other form to a beneficiary located in another geographic area by means of a method of communication, a message, transfer, or compensation (clearing) system to which the funds or asset transfer system belongs. Transactions carried out through these services may involve one or more intermediaries and a third party who receives the final payment.<sup>21</sup>

3. The following provisions of the law ... [*reference to the law on money laundering*] are applicable to the transfer services indicated in paragraphs 1 and 2.<sup>22</sup>

article ... [*provisions on client identification*];

article ... [*provisions on suspicious transaction reports*]; and

article ... [*provisions on retaining documents*]

article ... [*other provisions*]

4. The methods for applying this article are established by decree.

#### Article VI-8. Penalties

1. The penalty of imprisonment of ... to ... and a fine of ... to ... is imposed on those who carry out fund transfers in the sense of paragraphs 1 and 2 without **Option 1:** [having been authorized to do so in advance] **Option 2:** [being entered in the registry indicated in paragraph 1].<sup>23</sup>

2. The attempt to commit an offense referred to in the preceding paragraph is punished as if the crime itself had been committed [**variant:** is punished with a penalty reduced by [*fraction*] with respect to the principal penalty.

3. Complicity is punished like the offense itself.

4. Corporate entities may additionally be:

(a) banned permanently or for a maximum period of five years from directly or indirectly engaging in certain professional activities;

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<sup>21</sup> The definition is taken from the FATF *Guidance Notes*.

<sup>22</sup> The Interpretative Note to Recommendation VI notes that all FATF recommendations on money laundering, particularly recommendations 10 through 21 and 26 through 29 should be extended to include alternative fund transfer systems.

<sup>23</sup> The option used shall be the same as in Article V-7.

(b) ordered to close permanently or for a maximum period of five years their premises that were used for the commission of the offense;

(c) dissolved if they were created for the purpose of committing the offense;

(d) ordered to pay a maximum fine of [...]

5. A fine of ... to ... is imposed on those who carry out fund transfers in the sense of paragraphs 1 and 2 above without complying with the provisions of paragraph 3. Corporate entities may also receive a maximum fine of ... to ... and, in the case of a repeated offense, the penalties indicated in paragraph 4.

### **Chapter 3. Information Accompanying Wire Transfers**

#### Article VI-9. Information Accompanying Wire Transfers<sup>24</sup>

1. All cross-border wire transfers must be accompanied by precise information on the person ordering the transfer, particularly his or her name, and as applicable, account number. In the absence of an account number, a unique reference number accompanies the transfer.

2. All domestic wire transfers must include the same information as in the case of cross-border transfers, unless all information concerning the person ordering the transfer can be made available to the financial institutions of the beneficiary and the competent authorities in some other way.

3. The methods for implementing this article are established by decree.

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<sup>24</sup> These provisions are based on the Interpretative Note to FATF Special Recommendation VII.

Arrangement of Sections<sup>1</sup>

1. Definitions
2. Offenses
3. Liability of Legal Entities
4. Jurisdiction
5. Investigations
6. Rights of an Offender
7. Notification of Other States
8. Freezing of Funds
9. Forfeiture
10. Sharing of Forfeited Funds
11. Giving Effect to United Nations Security Council Resolutions
12. Extradition
13. Mutual Legal Assistance
14. Temporary Transfer
15. Alternative Remittance Systems
16. Refusal of Applications for Registration and Revocation of the Registration of Charities Linked to Terrorist Groups

Section 1. Definitions

In this Part:

(1) the term “funds” means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travelers checks, bank checks, money orders, shares, securities, bonds, drafts, and letters of credit;

(2) the term “state or government facility” means any permanent or temporary facility or conveyance that is used or occupied by representatives of a state, members of a government, the legislature, or the judiciary, or by officials or employees of a state or any other public authority or entity or by

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<sup>1</sup> Except as otherwise noted, the examples are adapted from the Terrorism Financing Act 2002-6 [Barbados].

employees or officials of an intergovernmental organization in connection with their official duties;

(3) the term “proceeds” means any funds derived from or obtained, directly or indirectly, through the commission of an offense set forth in Section 2;

(4) the term “provides” includes giving, donating, and transmitting;

(5) the term “collects” includes raising and receiving;

(6) the term “treaty” means:

(a) the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on December 16, 1970;

(b) the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on September 23, 1971;

(c) the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973;

(d) the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979;

(e) the Convention on the Physical Protection of Nuclear Material, adopted at Vienna on March 3, 1980;

(f) the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on February 24, 1988;

(g) the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988;

(h) the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on March 10, 1988; or

(i) the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997;

(7) the term “national of [*country*]” has the meaning given that term in [*reference to the appropriate section of the nationality or citizenship act*];

(8) the term “state” has the same meaning as that term has under international law, and includes all political subdivisions thereof; and

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(9) the term “Court” means [*name of the court charged with considering and issuing freezing and forfeiture orders*].

Section 2. Offenses

(1) A person commits an offense under this section if that person, by any means, directly or indirectly, unlawfully and willfully provides or collects funds with the intention that such funds be used, or with the knowledge that such funds are to be used, in full or in part, in order to carry out—

(a) an act which constitutes an offense within the scope of a treaty specified in subsection (6) of Section 1, or

(b) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

(2) A person commits an offense under this section if that person attempts or conspires to commit an offense under subsection (1).

(3) A person commits an offense under this section if that person—

(a) participates as an accomplice in an offense set forth in subsection (1) or (2);

(b) organizes or directs other to commits an offense as set forth in subsection (1) or (2);

(c) contributes to the commission of one or more of the offenses as set forth in subsection (1) or (2) by a group of persons acting with a common purpose, provided, however, that such contribution is intentional and—

(i) is made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offense set forth in subsection (1) or (2); or

(ii) is made in the knowledge of the intention of the group to commit an offense as set forth in subsection (1) or (2).

(4) A person commits an offense under this section if that person, directly or indirectly, makes available funds, financial assets or economic resources or financial or other related services—

(a) intending that they be used by, or knowing or having reasonable grounds to believe that they will be used, in whole or in part, for benefiting any person who is carrying out or facilitating, or is intending to carry out or facilitate, an offense set out in subsection (1) or (2); or

(b) knowing or having reasonable grounds to believe that, in whole or in part, they will be used by or benefit persons or entities carrying out or

facilitating, or intending to carry out or facilitate, an offense set out in subsection (1) or (2).<sup>2</sup>

(5) For an act to constitute an offense set forth in this section, it shall not be necessary that the funds or other resources were actually used to carry out an offense set forth in paragraph (a) or (b) of subsection (1).

### Section 3. Liability of Legal Entities

Where an offense set forth in Section 2 is committed by a person responsible for the management or control of a legal entity located in [*country*] or organized under the laws of [*country*], that entity, in circumstances where the person committed the offense while acting in that capacity, is guilty of the offense, notwithstanding—

(a) any criminal liability that may have been incurred by an individual that was directly involved in the commission of the offense; or

(b) any civil or administrative sanction that may have been imposed by law on the entity.

### Section 4. Jurisdiction

#### EXAMPLE ONE

Where a person is alleged to have committed an offense under Section 2, proceedings in respect of that offense may be commenced in [*country*], where the alleged offense—

(a) was committed by a national of [*country*];

(b) was committed on board a vessel flying the flag of [*country*];

(c) was committed on board an aircraft that—

(i) was operated by the government of [*country*]; or

(ii) was registered in [*country*];

(d) was directed toward or resulted in the carrying out of an offense under Section 2 in [*country*] or against a national of [*country*];

(e) was directed toward or resulted in the carrying out of an offense under Section 2 against a state or government facility of [*country*] outside [*country*], including diplomatic or consular premises of [*country*];

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<sup>2</sup> Subsection (4) is intended to respond to the provisions of paragraph 1(d) of Resolution 1373 (2001); it is adapted from Article 4 of The Terrorism (Suppression of Financing) Act 2002 [Singapore].

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(f) was directed toward or resulted in the carrying out of an offense under Section 2 committed in an attempt to compel [*country*] to do or refrain from doing any act; or

(g) was committed by a stateless person who is ordinarily resident in [*country*].

EXAMPLE TWO<sup>3</sup>

(1) Any person who, outside [*country*], commits an offense referred to in Section 2, is deemed to commit such offense in [*country*] if—

(a) the offense is committed on board a vessel flying the flag of [*country*] or an aircraft registered under the laws of [*country*], at the time the offense is committed;

(b) the offense is committed by a national of [*country*];

(c) the offense is directed toward or results in the carrying out of an offense referred to in Section 2 in [*country*] or against a national of [*country*];

(d) the offense is directed toward or resulted in an offense referred to in Section 2 committed against [*country*] or a facility of the government of [*country*] abroad, including diplomatic or consular premises of [*country*];

(e) the offense is directed toward or resulted in an offense referred to in Section 2 committed in an attempt to compel [*country*] to do or abstain from doing any act;

(f) the offense is committed by a stateless person who has his or her habitual residence in the territory of [*country*]; or

(g) the offense is committed on board an aircraft which is operated by the Government of [*country*].

EXAMPLE THREE<sup>4</sup>

Courts shall have jurisdiction over the offenses in Section 2 in the following circumstances:

(1) the offense takes place in [*country*] and—

(a) is committed by a person who is a national of another state or a stateless person;

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<sup>3</sup> Adapted from the Criminal Code, Section 7 (3.73) [Canada].

<sup>4</sup> Adapted from Title 18, USC 2339C (b) [U. S.].



- (b) on board a vessel flying the flag of another state or an aircraft which is registered under the laws of another state at the time the offense is committed;
  - (c) on board an aircraft which is operated by the government of another state;
  - (d) is committed by a person who is found outside [country];
  - (e) was directed toward or resulted in the carrying out of an offense set forth in subsections (a) or (b) of predicate act against—
    - (i) a national of another state; or
    - (ii) another state or a government facility of such state, including its embassy or other diplomatic or consular premises of that state;
  - (f) was directed toward or resulted in the carrying out of a predicate act committed in an attempt to compel another state or international organization to do or abstain from doing any act; or
  - (g) was directed toward or resulted in the carrying out of a predicate act--
    - (i) outside [country]; or
    - (ii) within [country], and either the offense or the predicate act was conducted in, or the results thereof affected, interstate or foreign commerce;
- (2) the offense takes place outside [country] and—
- (a) is committed by a person who is a national of [country] or is a stateless person whose habitual residence is in [country];
  - (b) is committed by a person who is found in [country]; or
  - (c) was directed toward or resulted in the carrying out of a predicate act against--
    - (i) any property that is owned, leased, or used by [country] or by any department or agency of [country], including an embassy or other diplomatic or consular premises of [country];
    - (ii) any person or property within [country];
    - (iii) any national of [country] or the property of such national; or
    - (iv) any property of any legal entity organized under the laws of [country], including any of its states, districts, commonwealths, territories, or possessions;
- (3) the offense is committed on board a vessel flying the flag of [country] or an aircraft which is registered under the laws of [country] at the time the offense is committed;

(4) the offense is committed on board an aircraft which is operated by [country]; or

(5) the offense was directed toward or resulted in the carrying out of an act referred to in Section 2 committed in an attempt to compel [country] to do or abstain from doing any act.

#### Section 5. Investigations

(1) [Where any person has reasonable grounds to suspect that funds or financial services are related to or are to be used to facilitate an offense under this Part, it shall be the duty of that person to report the matter to the [Commissioner of Police].]

(2) Where information is received from any source in or outside [country] that a person who has committed or which is alleged to have committed an offense under this part may be present in [country], the [Commissioner of Police] shall take such measures as may be necessary to investigate the facts contained in the information.

(3) Where on investigation it is found that the person referred to in subsection (2) is in [country], the [Commissioner of Police] shall make a report to the [Director of Public Prosecutions] who shall take such measures as are necessary to prosecute or extradite the offender as the circumstances warrant.

(4) Where any person referred to in subsection (1) fails to report as required under that subsection, that person is guilty of an offense and is liable on conviction to a fine of [amount] or imprisonment for a term of [number] years.

#### Section 6. Rights of an Offender

A person against whom measures referred to in Section 5, subsection (3) are taken is entitled to—

(a) communicate without delay with the nearest appropriate representative of—

(i) the state of which the person is a national;

(ii) the state which is otherwise entitled to protect that person's rights;  
or

(iii) where that person is stateless, the state in which that person ordinarily resides;

(b) be visited by a representative of the relevant state referred to in subsection (1); and

(c) be informed of the rights referred to in subsections (a) and (b).

Section 7. Notification of Other States

Where a person is taken into custody as a result of an investigation undertaken under Section 5, the [Director of Public Prosecutions] shall inform the [Attorney General] who shall—

- (a) notify, through the Secretary-General of the United Nations, the state which established jurisdiction in respect of an application brought under Section 8 or 9, of the detention of that person and of the circumstances that warranted the detention; and
- (b) communicate the final outcome of the proceedings to the Secretary-General for transmission of the information to the other state.

Section 8. Freezing of Funds

(1) Subject to subsection (4), the court may, where it is satisfied on the application by the [Director of Public Prosecutions] that

- (a) a person has been charged or is about to be charged with an offense under section 2; or
- (b) a request has been made by the appropriate authority of another state in respect of a person
  - (i) who has been charged or is about to be charged with an offense in respect of an act described in Section 3 or 4; or
  - (ii) in respect of whom there is reasonable suspicion that the person has committed an offense referred to in subparagraph (i);

make an order, in this part referred to as a freezing order, freezing the funds in the possession of or under the control of that person.

(2) An application for a freezing order under subsection (1) may be made *ex parte* and shall be in writing and be accompanied by an affidavit stating

- (a) where the person referred to in subsection (1) has been charged, the offense for which he is charged;
- (b) where the person has not been charged, the grounds for
  - (i) believing that the person committed the offense, or
  - (ii) having a reasonable suspicion that the person committed the offense;
- (c) a description of the funds in respect of which the freezing order is sought;
- (d) the name and address of the person who is believed to be in possession of the funds; and

(e) the ground for believing that the funds are related to or are used to facilitate an offense referred to in subsection (1) and that the funds are subject to the effective control of the person.

(3) Where the court makes an order under subsection (1), the court shall require that

(a) the order be published within such time and manner as the court directs;

(b) the applicant, within 21 days of the making of the order, serve notice of the order together with a copy of the order on any person whom, in the opinion of the court, appears to have an interest in the funds referred to in subsection (2); and

(c) the person referred to in paragraph (b) or any other person who appears to have an interest in the funds, be afforded an opportunity to be heard by the court within such time as the court determines, unless in respect of paragraph (b) the court is of the opinion that giving such notice would result in the disappearance, dissipation, or reduction in the value of the funds.

(4) Where an application for a freezing order made under subsection (1) is made as a result of a request from another state, the court shall not make the order unless it is satisfied that reciprocal arrangements exist between [*country*] and that other state whereby that other state is empowered to make a similar order in respect of a request for a freezing order from [*country*].

(5) The court may, in making an order under subsection (1), give directions with regard to

(a) the duration of the freezing order; and

(b) the disposal of the funds for the purpose of

(i) determining any dispute relating to the ownership of or other interest in the funds or any part thereof;

(ii) its proper administration during the period of the freezing order;

(iii) the payment of debts incurred in good faith prior to the making of the order;

(iv) the payment of moneys to the person referred to in subsection (1) for reasonable subsistence of that person and family; or

(v) the payment of the costs of the person referred to in subparagraph (iv) to defend criminal proceedings against him.

(6) Notwithstanding subsection (5), a freezing order made under this section shall cease to have effect at the end of the period of 6 months after the order was made where the person against whom the order was made has not been charged with an offense under Section 2 within that period.

(7) an order made under subsection (1) may be renewed for a period not exceeding 6 months in each particular case, but in no case shall the entire period exceed 18 months.

(8) A freezing order granted by the court under this section shall not prejudice the rights of any third party acting in good faith.

(9) Where the court makes an order for the administration of frozen funds the person charged with the administration of the funds is not liable for any loss or damage to the funds or for the costs of proceedings taken to establish a claim to the funds or to an interest in the funds unless the court in which the claim is made is of the opinion that the person has been guilty of negligence in respect of the taking of custody of the funds.

#### Section 9. Forfeiture

(1) Where a person is convicted of an offense under Section 2, the Director of public prosecutions may apply to the court for a forfeiture order against the funds that are the subject of the offense.

(2) The court may upon application by the [*Director of Public Prosecutions*], forfeit any funds of an offense of terrorism or any funds of that person that are the subject of a freezing order, unless it is proved that the funds did not derive from the commission by that person of an offense under Section 2.

(3) For the purposes of subsection (2) the burden of proof lies on the person who owns, or is in possession or control of the funds.

(4) In determining whether or not any funds are derived from an offense under section 2, the standard of proof required for the purposes of subsection (2) is the same as in criminal proceedings and for the purposes of subsection (3) is the same as in civil proceedings.

(5) In making a forfeiture order the court may give directions

(a) for the purpose of determining any dispute as to the ownership of or other interest in the funds or any part thereof; and

(b) as to the disposal of the funds.

(6) Upon application to the court by a person against whom a forfeiture order has been made under this section the court may order that an amount deemed by the court to be the value of the funds so ordered to be forfeited, be paid by that person to the court upon satisfactory payment of that sum by that person the funds so ordered to be forfeited shall be returned to him.

#### Section 10. Sharing of Forfeited Funds

(1) The government of [*country*] may, pursuant to any agreement with any other state, share with that state on a reciprocal basis, the funds derived from forfeiture pursuant to this Act.

(2) Funds referred to under subsection (1) may be utilized by the government of [country] to compensate victims of the offenses referred to in this Act.

#### Section 11. Giving Effect to United Nations Security Council Resolutions

Where the Security Council of the United Nations decides, in pursuance of Article 41 of the Charter of the United Nations, on the measures to be employed to give effect to any of its decisions and calls upon the government of [country] to apply those measures, the minister responsible for foreign affairs may, by order published in the gazette, make such provisions as may appear to him or to her necessary or expedient to enable those measures to be effectively applied.

#### Section 12. Extradition

(1) The offenses described in Section 2 shall be deemed to be extraditable offenses under the Extradition Act, and accordingly, the provisions of that Act shall apply to, and in relation to, extradition in respect to those offenses.

(2) Where there is, on the date on which this Act comes into operation, an extradition arrangement in force between the government of [country] and a state party to the Convention, such arrangement shall, for the purposes of the Extradition Act, be deemed to include provision for extradition in respect of the offenses described in Section 2.

(3) Where there is no extradition arrangement between the government of [country] and a state party to the Convention, the minister [of Foreign Affairs] may, by order published in the gazette, treat the Convention, for the purposes of the Extradition Act, as an extradition arrangement between the government of [country] and such state party to the Convention providing extradition in respect of the offenses set out in Section 2.

(4) Where the government of [country] accedes to a request by a state party to the Convention for the extradition of a person accused of an offense set out in Section 2, the act constituting such offense shall, for the purpose of the Extradition Act, be deemed to have been committed not only in the place where it was committed, but also within the jurisdiction of the requesting state.

(5) Notwithstanding anything in the Extradition Act, an offense set out in Section 2 shall, for the purpose of that Act, be deemed not to be a fiscal offense or an offense of a political character or an offense connected with a political offense or an offense inspired by political motives, for the purpose only of the extradition of a person accused of any such offense as between the government of [country] and a state party to the Convention.

### Section 13. Mutual Legal Assistance

Notwithstanding anything in [the Mutual Assistance Act] [this Criminal Code], a request by a state party to the Convention for mutual assistance in respect of an offense set out in Section 2 shall not be refused solely on the ground that:

- (a) the rendering of such assistance would result in a violation of the laws relating to banking secrecy; or
- (b) such offense is a fiscal offense; or
- (c) such offense is a political offense or an offense connected with a political offense or an offense inspired by political motives.

### Section 14. Temporary Transfer

(1) Where [*country*] approves a request from a state party to the Convention seeking the temporary transfer of a person in custody in [*country*] to the state party to the Convention to testify or assist an investigation or proceeding relating to an offense set out in Section 2, the [*Attorney General*] may make an application to the court for a transfer order.

(2) The application shall specify:

- (a) the name and location of the detained person;
- (b) the period of time for which the person is to be transferred;
- (c) the *country* to which the person is to be transferred;
- (d) the person or class of person into whose custody the person is to be delivered for purpose of the transfer; and
- (e) the purpose of the transfer.

(3) If the judge hearing an application brought pursuant to sub-section 1 is satisfied that the detained person consents to the transfer and the transfer is for a fixed period, the judge shall make a transfer order, including any conditions he or she considers appropriate.

(4) Notwithstanding any provision in the [*Immigration Act or other similar legislation*], where a request has been made by [*country*] for a person detained in a state party to the Convention, to be temporarily transferred to [*country*] to testify or assist an investigation or proceeding relating to an offense set out in Section 2 [*of the Criminal Code*], the [*Minister, Attorney General, or other appropriate authority*] may authorize the detained person to enter [*country*] to remain in a fixed location or locations for a specified period of time.

(5) The [*Minister, Attorney General, or other appropriate authority*] may vary the terms of an authorization issued under subsection 4.

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(6) A person who is in [country] pursuant to a request by [country] shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in [country] in respect of any acts or convictions anterior to his or her departure from the territory of the state party to the Convention from which such person was transferred.

Section 15. Alternative Remittance Systems<sup>5</sup>

(a) Whoever knowingly conducts, controls, manages, supervises, directs, or owns all or part of an unlicensed money transmitting business, shall be fined an amount not exceeding [...] or imprisoned not more than [...] years, or both.

(b) As used in this section--

(1) the term “unlicensed money transmitting business” means a money transmitting business which—

(A) is operated without a money transmitting license issued by [authority] whether or not the defendant knew that the operation was required to be licensed or that the operation was so punishable; or

(B) otherwise involves the transportation or transmission of funds that are known to the defendant to have been derived from a criminal offense or are intended to be used to be used to promote or support unlawful activity;

(2) the term “money transmitting” includes transferring funds on behalf of the public by any and all means including but not limited to transfers within this country or to locations abroad by wire, check, draft, facsimile, or courier.

Section 16. Refusal of Applications for Registration and the Revocation of the Registration of Charities Linked to Terrorist Groups<sup>6</sup>

(1) The [Minister of Finance] may sign a certificate refusing or revoking the registration of a charity, based on information received including any security or criminal intelligence reports, where there are reasonable grounds to [believe] [suspect] that an applicant for registration as a registered charity (in this section referred to as “the applicant”) or a registered charity has made, is making or is likely to make available any resources, directly or indirectly, to a terrorist group.

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<sup>5</sup> Adapted from 18 U.S.C. § 1960.

<sup>6</sup> Adapted from the Commonwealth Secretariat’s *Model Legislative Provisions on Measures to Combat Terrorism*, pp. 32–33.



- (2) A copy of the signed certificate shall be served on the applicant or the registered charity, personally or by registered letter sent to its last known address, with a copy of the certificate.
- (3) The certificate or any matter arising out of it shall not be subject to review or be restrained, prohibited, removed, set aside or otherwise dealt with except in accordance with this section.
- (4) Within (30) thirty days of receipt of the copy of the notice under subsection (2), the applicant or the registered charity may make an application to the [*High Court*] to review the decision of the minister.
- (5) Upon the filing of an application under subsection (4), a judge of that court shall –
- (a) examine in chambers the information, including any security or criminal or intelligence reports considered by the [*Minister of Finance*] before signing the certificate and hear any other evidence or information that may be presented by or on behalf of those ministers (whether or not such information is admissible in a court of law), and may, on the request of the minister, hear all or part of that evidence or information in the absence of the applicant or registered charity or any counsel representing the applicant or registered charity, if the judge is of the opinion that disclosure of the information would be prejudicial to national security or endanger the safety of any person,
  - (b) provide the applicant or the registered charity with a statement summarizing the information available to the judge so as to enable the applicant or registered charity to be reasonably informed of the circumstances giving rise to the certificate, without disclosing any information the disclosure of which would, in the judge's opinion, be prejudicial to national security or endanger the safety of any person,
  - (c) provide the applicant or the registered charity with a reasonable opportunity to be heard; and
  - (d) determine whether the certificate is reasonable on the basis of all the information available to the judge or, if found not reasonable, quash it.
- (6) A determination under subsection (5) shall not be subject to appeal or review by any court.
- (7) Where the judge determines, under subsection (5) that a certificate is reasonable, or if no application is brought upon the expiry of (30) thirty days from the date of service of the notice, the minister shall cause the certificate to be published in the gazette.
- (8) A certificate determined to be reasonable under subsection (5), shall be deemed for all purposes to be sufficient grounds for the refusal of the

application for the registration of the charity referred to in the certificate or the revocation of the registration of the charity referred to in the certificate.

(9) Where the judge determines that the certificate is not reasonable, he or she shall order the registration or continued registration of the charity.

Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism *Official Journal L 344*, 28/12/2001 P. 0070 – 0075 (preamble omitted)

**Article 1**

For the purpose of this Regulation, the following definitions shall apply:

1. “Funds, other financial assets and economic resources” means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit.

2. “Freezing of funds, other financial assets and economic resources” means the prevention of any move, transfer, alteration, use of or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management.

3. “Financial services” means any service of a financial nature, including all insurance and insurance-related services, and all banking and other financial services (excluding insurance) as follows:

*Insurance and insurance-related services*

(i) Direct insurance (including co-insurance):

(A) life assurance;

(B) non-life;

(ii) Reinsurance and retrocession;

(iii) Insurance intermediation, such as brokerage and agency;

(iv) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

*Banking and other financial services (excluding insurance)*

(v) Acceptance of deposits and other repayable funds;

(vi) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

(vii) Financial leasing;

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- (viii) All payment and money transmission services, including credit, charge and debit cards, travellers' cheques and bankers' drafts;
  - (ix) Guarantees and commitments;
  - (x) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
    - (A) money market instruments (including cheques, bills, certificates of deposits);
    - (B) foreign exchange;
    - (C) derivative products including, but not limited to, futures and options;
    - (D) exchange rate and interest rate instruments, including products such as swaps and forward rate agreements;
    - (E) transferable securities;
    - (F) other negotiable instruments and financial assets, including bullion;
  - (xi) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
  - (xii) Money brokering;
  - (xiii) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
  - (xiv) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
  - (xv) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
  - (xvi) Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) to (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.
4. For the purposes of this Regulation, the definition of "terrorist act" shall be the one contained in Article 1(3) of Common Position 2001/931/CFSP.
5. "Owning a legal person, group or entity" means being in possession of 50 % or more of the proprietary rights of a legal person, group or entity, or having a majority interest therein.
6. "Controlling a legal person, group or entity" means any of the following:
- (a) having the right to appoint or remove a majority of the members of the administrative, management or supervisory body of such legal person, group or entity;

- (b) having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative, management or supervisory bodies of a legal person, group or entity who have held office during the present and previous financial year;
- (c) controlling alone, pursuant to an agreement with other shareholders in or members of a legal person, group or entity, a majority of shareholders' or members' voting rights in that legal person, group or entity;
- (d) having the right to exercise a dominant influence over a legal person, group or entity, pursuant to an agreement entered into with that legal person, group or entity, or to a provision in its Memorandum or Articles of Association, where the law governing that legal person, group or entity permits its being subject to such agreement or provision;
- (e) having the power to exercise the right to exercise a dominant influence referred to in point (d), without being the holder of that right;
- (f) having the right to use all or part of the assets of a legal person, group or entity;
- (g) managing the business of a legal person, group or entity on a unified basis, while publishing consolidated accounts;
- (h) sharing jointly and severally the financial liabilities of a legal person, group or entity, or guaranteeing them.

**Article 2**

1. Except as permitted under Articles 5 and 6:
  - (a) all funds, other financial assets and economic resources belonging to, or owned or held by, a natural or legal person, group or entity included in the list referred to in paragraph 3 shall be frozen;
  - (b) no funds, other financial assets and economic resources shall be made available, directly or indirectly, to, or for the benefit of, a natural or legal person, group or entity included in the list referred to in paragraph 3.
2. Except as permitted under Articles 5 and 6, it shall be prohibited to provide financial services to, or for the benefit of, a natural or legal person, group or entity included in the list referred to in paragraph 3.
3. The Council, acting by unanimity, shall establish, review and amend the list of persons, groups and entities to which this Regulation applies, in accordance with the provisions laid down in Article 1(4), (5) and (6) of Common Position 2001/931/CFSP; such list shall consist of:
  - (i) natural persons committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism;
  - (ii) legal persons, groups or entities committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism;

- (iii) legal persons, groups or entities owned or controlled by one or more natural or legal persons, groups or entities referred to in points (i) and (ii); or
- (iv) natural legal persons, groups or entities acting on behalf of or at the direction of one or more natural or legal persons, groups or entities referred to in points (i) and (ii).

**Article 3**

1. The participation, knowingly and intentionally, in activities, the object or effect of which is, directly or indirectly, to circumvent Article 2 shall be prohibited.
2. Any information that the provisions of this Regulation are being, or have been, circumvented shall be notified to the competent authorities of the Member States listed in the Annex and to the Commission.

**Article 4**

1. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy and to the provisions of Article 284 of the Treaty, banks, other financial institutions, insurance companies, and other bodies and persons shall:
  - provide immediately any information which would facilitate compliance with this Regulation, such as accounts and amounts frozen in accordance with Article 2 and transactions executed pursuant to Articles 5 and 6:
  - to the competent authorities of the Member States listed in the Annex where they are resident or located, and
  - through these competent authorities, to the Commission,
  - cooperate with the competent authorities listed in the Annex in any verification of this information.
2. Any information provided or received in accordance with this Article shall be used only for the purposes for which it was provided or received.
3. Any information directly received by the Commission shall be made available to the competent authorities of the Member States concerned and to the Council.

**Article 5**

1. Article 2(1)(b) shall not apply to the addition to frozen accounts of interest due on those accounts. Such interest shall also be frozen.
2. The competent authorities of the Member States listed in the Annex may grant specific authorisations, under such conditions as they deem appropriate, in order to prevent the financing of acts of terrorism, for
  - (1) the use of frozen funds for essential human needs of a natural person included in the list referred to in Article 2(3) or a member of his family,

including in particular payments for foodstuffs, medicines, the rent or mortgage for the family residence and fees and charges concerning medical treatment of members of that family, to be fulfilled within the Community;

(2) payments from frozen accounts for the following purposes:

(a) payment of taxes, compulsory insurance premiums and fees for public utility services such as gas, water, electricity and telecommunications to be paid in the Community; and

(b) payment of charges due to a financial institution in the Community for the maintenance of accounts;

(3) payments to a person, entity or body person included in the list referred to in Article 2(3), due under contracts, agreements or obligations which were concluded or arose before the entry into force of this Regulation provided that those payments are made into a frozen account within the Community.

3. Requests for authorisations shall be made to the competent authority of the Member State in whose territory the funds, other financial assets or other economic resources have been frozen.

#### **Article 6**

1. Notwithstanding the provisions of Article 2 and with a view to the protection of the interests of the Community, which include the interests of its citizens and residents, the competent authorities of a Member State may grant specific authorisations:

- to unfreeze funds, other financial assets or other economic resources,
- to make funds, other financial assets or other economic resources available to a person, entity or body included in the list referred to in Article 2(3), or
- to render financial services to such person, entity or body,

after consultation with the other Member States, the Council and the Commission in accordance with paragraph 2.

2. A competent authority which receives a request for an authorisation referred to in paragraph 1 shall notify the competent authorities of the other Member States, the Council and the Commission, as listed in the Annex, of the grounds on which it intends to either reject the request or grant a specific authorisation, informing them of the conditions that it considers necessary in order to prevent the financing of acts of terrorism.

The competent authority which intends to grant a specific authorisation shall take due account of comments made within two weeks by other Member States, the Council and the Commission.

**Article 7**

The Commission shall be empowered, on the basis of information supplied by Member States, to amend the Annex.

**Article 8**

The Member States, the Council and the Commission shall inform each other of the measures taken under this Regulation and supply each other with the relevant information at their disposal in connection with this Regulation, notably information received in accordance with Articles 3 and 4, and in respect of violation and enforcement problems or judgments handed down by national courts.

**Article 9**

Each Member State shall determine the sanctions to be imposed where the provisions of this Regulation are infringed. Such sanctions shall be effective, proportionate and dissuasive.

**Article 10**

This Regulation shall apply:

1. within the territory of the Community, including its airspace,
2. on board any aircraft or any vessel under the jurisdiction of a Member State,
3. to any person elsewhere who is a national of a Member State,
4. to any legal person, group or entity incorporated or constituted under the law of a Member State,
5. to any legal person, group or entity doing business within the Community.

**Article 11**

1. This Regulation shall enter into force on the day of its publication in the Official Journal of the European Communities.
2. Within a period of one year from the entry into force of this Regulation, the Commission shall present a report on the impact of this Regulation and, if necessary, make proposals to amend it.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 27 December 2001.



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