United Nations S/2002/1212

Security Council

Distr.: General
28 October 2002

Original: English

Letter dated 25 October 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 6 August 2002 (S/2002/905).

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

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

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

02-66956 (E) 071102 181102
0266956

Annex

Letter dated 18 October 2002 from the Permanent Representative of Senegal to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

Following your letter S/AC.40/2002/MS/OC.123 dated 15 July 2002, I am pleased to forward herewith the additional report of Senegal, as requested by the Counter-Terrorism Committee, after the consideration of our first report submitted in accordance with paragraph 6 of the Security Council resolution 1373 (2001).

(*Signed*) Papa Louis **Fall**
Ambassador

Supplementary report by Senegal on the implementation of the provisions of Security Council resolution 1373 (2001) concerning counter-terrorism

[Original: French]

To supplement its previous report, the Government of Senegal hereby submits the information requested by the Counter-Terrorism Committee on certain points relating to the implementation of Security Council resolution 1373 (2001).

Paragraph 1

Subparagraph (a)

A detailed outline of the proposed ECOWAS-WAEMU harmonized law on the combating of money-laundering in the West African subregion.

The draft harmonized law on the combating of money-laundering in West Africa is one of many legal measures adopted or envisaged by Africa in its effort to combat effectively money-laundering and the networks financing terrorism.

The draft harmonized law takes into account texts and provisions that are already in force or are being drafted at the international and West African subregional levels.

At the international level, the following measures have been taken:

The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances was adopted on 19 December 1998;

The Financial Action Task Force on Money-Laundering (FATF), which drafted 40 recommendations to be used as a reference document at the international level, was established in 1989 by the G-7 Summit in Paris;

After 11 September 2001, the number of recommendations was increased to 48, given the need to combat the financing of terrorism;

On 8 November 1990, the Council of Europe adopted the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and on 10 June 1991, the Council adopted its Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering;

At its twentieth special session, on countering the world drug problem, the General Assembly adopted the action plan contained in its resolution S-20/4;

The United Nations Convention against Transnational Organized Crime was signed in Palermo on 15 December 2000.

All the above-mentioned instruments provide the frame of reference referred to by the international financial institutions, including the West African ones, in evaluating the efforts made by States to combat money-laundering. Such efforts are focused on the following:

1. Legislative cooperation relating to the harmonization of concepts with a view to ensuring effective international cooperation in judicial matters;

2. Collaboration between public authorities, monetary authorities, the financial world and professions involving activities that are particularly susceptible to money-laundering;

3. Increased cooperation among States in the framework of bilateral or multilateral agreements.

At the subregional level, measures taken in the Economic Community of West African States (ECOWAS) led to the establishment of the Intergovernmental Action Group against Money Laundering (GIABA), which works to encourage cooperation on legislative matters and coordinate the activities of States in this area. Senegal played an important role in the establishment of GIABA, having been the first country in the subregion to criminalize the laundering of the proceeds from narcotics trafficking in its drug code.

One of the goals of GIABA is to promote the necessary cooperation between States members of ECOWAS that have different legal systems, with a view to rationalizing the fight against money-laundering at the subregional level.

Accordingly, the Central Bank of West African States (BCEAO) decided to set up, for the benefit of the States members of the West African Economic and Monetary Union (WAEMU), namely Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali and Senegal, an appropriate legislative framework for combating the laundering of the proceeds from criminal activities involving corruption, fraud, misappropriation of public funds and so on.

This community legislation is needed because of the recent growth of a new form of financial crime which clearly threatens the integrity of the financial and monetary system of the subregion.

In June 2002, following two technical seminars held in Dakar in July 2000 and February 2002, the draft harmonized law was submitted to and adopted by the Board of Directors of BCEAO.

The draft law was submitted to the Council of Ministers of WAEMU for adoption in September 2002. It will subsequently be sent to member States with a view to its incorporation into the national law of each State.

Parallel to this procedure, during the first stage and pursuant to its mission, GIABA had the draft law translated into English and sent it to the English-speaking States members of ECOWAS and to French-speaking and Portuguese-speaking States that are not members of WAEMU. This was done so that other States might be aware of the purpose and orientation of the draft law.

During the second stage, GIABA requested legal assistance from the Government of the United Kingdom, which agreed to adapt the draft harmonized law to the common law system, in order to facilitate its incorporation into the national law of the English-speaking States members of ECOWAS. The aim is to enable all the States concerned to take practical steps so that during the course of this year, the legislation on combating money-laundering can be harmonized throughout the subregion.

In addition, community regulations were drafted and adopted with a view to organizing and reinforcing the fight against the financing of terrorism. These

regulations, which apply mainly to the banking system, are already applicable in the States members of WAEMU.

GIABA followed the same procedures, with a view to achieving harmonization among the States members of ECOWAS.

With regard to the major issues covered by the draft harmonized law, it takes into account all aspects of the fight against money-laundering, under the following six titles:

The preliminary title includes a definition of money-laundering based very largely on all the aforementioned international legal instruments and including all the different terms used;

Title I sets forth the purpose of the law, including the legal framework for combating money-laundering, and lists the subjects of the law, namely, the States themselves, the Treasury, the central bank and all those (natural and legal persons) that handle public or private funds;

Title II provides for money-laundering prevention measures pertaining to identification and knowledge of clients, preservation of transaction documents and implementation of in-house prevention programmes;

Title III provides for the detection of money-laundering, including mechanisms for reporting suspicion, the responsibility of States with respect to informants, the lifting of banking confidentiality and the establishment of national multidisciplinary financial intelligence units (CENTIF) to conduct investigations in this area within each State;

Title IV, on enforcement measures, provides for criminalization, seizure, criminal penalties and confiscation of the proceeds of money-laundering;

Title V provides for international cooperation with regard to mutual judicial assistance and the exchange of information among the States parties and with other States members of ECOWAS and the international community;

Title VI includes final provisions, including the date of adoption by States parties, monitoring of implementation, amendments and the coordinated entry into force of the law in all States members of ECOWAS.

It should be noted that Senegal, as a member of WAEMU is waiting for the conclusion of the adoption process at the community level before submitting the text to its legislature, with a view to its incorporation into its national law before the deadline set by the treaty establishing the Monetary Union.

Subparagraph (b)

The International Convention for the Suppression of the Financing of Terrorism

Upon completion of the ratification procedure, on which Senegal has already embarked, the requisite legislative and regulatory measures will be taken for the incorporation of the Convention into Senegalese national law and for its effective implementation.

Main provisions of article 80 of the Penal Code

Article 80 of the Penal Code reads as follows:

> "Other practices and acts of a nature such as to jeopardize public security, give rise to serious political unrest or infringe the laws of the country, shall be punished with imprisonment for a minimum of three and a maximum of five years and a fine of between FCFA 100,000 and 1,500,000.
>
> Offenders may also be subject to local banishment."

NB. The former text also penalized "other practices and acts of a nature such as to discredit public institutions and their functioning."

This offence, which was found to be incompatible with democratic freedoms, was abolished by the Act of 29 January 1999.

In fact, in 1999, the legislature thus wished to expunge crimes of opinion from the Senegalese legal system.

Subparagraph (c)

What is the basis for the list of accounts to which article 42 of Act No. 90-06 relates? Is there any provision in that Act for the freezing of accounts on the basis of suspicious transactions, independently of the listing of accounts?

It must first be explained that article 42 of Act No. 90-06 on banking regulations deals mainly with the oversight exercised by the Central Bank and Banking Commission as part of their supervision of the banking system.

It makes it incumbent on credit institutions (banks and financial institutions) to communicate to the Central Bank any information or documentation deemed useful for the examination of their situation.

The purpose of this article is to establish that banking confidentiality cannot be invaded vis-à-vis the courts and bodies supervising banking activities in the event of criminal investigations.

The way it is worded gives the supervisory authorities a fair degree of latitude to widen the field of their inquiries to encompass operations involving any account opened with any credit institution.

Act No. 90-06 does not contain any provisions concerning the freezing of accounts which have allegedly been used for suspicious transactions.

What legal provisions exist for the freezing or confiscating of funds of persons and entities who are not named in the lists drawn up by BCEAO, the United States administration and the European Union but are, in fact, connected with terrorist activities? Do articles 87 bis and 372 of the Code of Criminal Procedure deal with cases of this kind?

Yes, these provisions are applicable.

The provisions in question are the general provisions of ordinary law governing criminal procedure.

Subparagraph (d)

Articles 665, 666, 667, 668 and 669 of the Code of Criminal Procedure refer to offences committed abroad either by Senegalese or by aliens.

Article 665. “Any person who, in the territory of the Republic, became an accessory to the commission of an offence abroad, may be prosecuted and brought to trial if the act is an offence under both Senegalese law and the law of the foreign country.”

This provision establishes the principle of dual criminal liability. In order for acts committed abroad to be prosecuted in Senegal, they must be subject to prosecution both in Senegal and in the foreign country.

Article 45 of the Penal Code states that accessories to the commission of an offence must receive the same penalties as the perpetrators and co-perpetrators.

Forms of complicity are determined by article 46, paragraph 2, of the Penal Code, which states: “Persons who have procured weapons, tools or any other means used for the act shall be considered to be accessories.”

Article 668 of the Code of Criminal Procedure states: “Any offence, whereof an act forming one of its constituent parts has been performed in Senegal, shall be deemed to have been committed in the territory of the Republic.”

Within this framework, it is possible to prosecute “persons who have knowingly, in whole or in part, handled articles which have been removed or misappropriated, by means of an offence.” (Article 430 of the Penal Code)

Article 431 of the Penal Code continues, “if a serious penalty is applicable to the acts of handling, the handler shall be punished with the statutory penalty for the offence and the circumstances thereof.”

The law draws a distinction between series of offences and multiple offences.

Multiple offences are those where the same acts can be characterized in several different ways. In this case, prosecution may be initiated by relying on all of these possible characterizations. But the trial courts will choose only the characterization which best fits the acts.

Series of offences are those where different offences are committed by one or more persons and where each has its own characterization.

In this case, prosecution will rest on the legal basis pertaining to each offence.

Are financial institutions, other intermediaries (e.g. lawyers) and other natural or legal persons required to report suspicious transactions to the relevant authorities? What penalties apply to those who omit to report?

What laws and practical controls and surveillance measures exist to ensure that funds and other economic resources collected for religious, charitable or cultural purposes are not diverted for other purposes, particularly for financing terrorism?

As they stand at present, the banking and financial regulations say nothing precise about control and surveillance measures to ensure that funds and other economic resources collected for religious, charitable or cultural purposes are not diverted from their original purpose.

It should, however, be noted that the above-mentioned community regulations take this aspect into account pending their inclusion in the field of application of the law on money-laundering.

Please indicate the laws and procedures available to regulate alternative remittance systems, including systems of, or similar to, the kind known as hawala.

Alternative remittance systems, more usually known as “informal systems” are not covered by any specific regulations.

The rules contained in regulation R09/98/CM/UEMOA of 20 December 1998 on the external financial relations of the States members of WAEMU deal only with the traditional systems.

Article 2 of the regulation identifies the intermediaries responsible for executing external financial operations.

Under that article “Exchange operations, capital movements and settlements of any kind between a State member of WAEMU and other countries and, within WAEMU, between a resident and a non-resident, may be effected solely through the Central Bank, the postal administration or an intermediary bank authorized to perform manual exchange transactions, within the scope of their respective competence as defined in annex I to the said regulation.”

Consequently remittance systems which do not derive their prerogatives from this regulation are operating unlawfully and in breach of exchange controls. Offenders are liable to prosecution.

Order No. 94-29 of 28 February 1994, on proceedings related to exchange control offences, ratified by Act No. 94-54 of 27 May 1994, defines the nature of exchange control offences, indicates the procedure for establishing the facts relating to such offences and establishes the penalties.

Paragraph 2

Subparagraph (a)

How can the existing provisions of the Penal Code “serve as a legal basis for prosecuting activities involving recruitment of members of terrorist groups”, particularly where the groups themselves operate outside Senegal?

Article 238 of the Penal Code provides that the formation of any association, regardless of its duration or the number of its members, or the conclusion of any agreement, for the purpose of preparing one or more offences against persons or property, is a crime.

According to article 239, paragraph 1, of the Penal Code, “any person affiliated to an association formed for the purpose of preparing or committing one or more offences against persons or property, or becoming a party to an agreement concluded for that purpose, shall be subject to criminal penalties.”

Article 240 of the Code provides that “any person who knowingly and voluntarily assists the perpetrators of a crime of conspiracy by providing them with the instruments to commit an offence, means of correspondence or meeting places, shall be subject to criminal penalties”.

With regard to **fraudulent activities for the purpose of recruitment or the collection of funds**, the task of preventing these falls to the Ministries of the Armed Forces, Finance and the Interior, which are responsible for internal and external security, information and surveillance vis-à-vis the movement of funds.

Detailed outline of the provisions of Act No. 66-03 of 18 January 1966 and Decree No. 66-88

Act No. 66-03 of 18 January 1966, concerning the general rules governing weapons, classifies weapons into seven (7) categories: combat weapons, defensive weapons, hunting weapons, guns for target practice and fairground use, edged weapons, weapons for sale and weapons for collectors.

This law strictly prohibits the manufacture, importation, exportation, transfer, marketing, storage and bearing of combat or defensive weapons which are intended particularly for the law enforcement authorities.

...

A distinction is made for the second, third, fourth and fifth categories (art. 13), in that some of the activities in question may only be carried out with the permission of the authorities and under their supervision.

The manufacture of weapons by individuals for their own purposes is prohibited.

Persons found guilty of these acts are punished by imprisonment and a fine.

The provisions of the Act allow for the seizure of manufactured weapons which have been imported or are being held without permission.

Even in the case of weapons and ammunition intended for the security forces, the Act specifies that imports of these weapons are subject to a quota which is reviewed annually (art. 15).

In order to limit the number of offences committed with weapons, the Act prohibits those possessing weapons from bearing them outside their homes (article 18) except in the circumstances specified by decree.

It should be noted that the Government may at any time, depending on circumstances, withdraw all permits it has already issued for the import, storage and possession of weapons, in respect of those categories for which permits are authorized.

This Act concerning the general votes governing weapons established a system which encourages the security services to exercise great vigilance vis-à-vis persons holding weapons without permission, and arms traffickers with a view to preventing these activities.

It specifies the conditions to be complied with by approved importers, the restrictions imposed with regard to premises where weapons are stored, and the other formalities required by the Government (with regard to restocking and record-keeping).

Lastly, this legislation spells out how permits are issued for the import and purchase of weapons, and the frequency with which they must be renewed.

In the matter of weapons and ammunition, a particular feature of Senegal, as of many African countries, is that it has no arms industry of its own, and this helps to limit the circulation of military weapons.

Admittedly, because of the continuing conflict in the southern Casamance region, there is an arms traffic supplying the MFDC rebellion. However, Senegal is making every effort to bring this conflict to an end.

Practical measures taken to enforce the ECOWAS moratorium on illicit traffic in light weapons.

The ECOWAS moratorium on illicit traffic in light weapons, which was renewed in October 2001 for a period of three years, prohibits signatory countries, including Senegal, from importing, exporting or manufacturing light weapons, barring exceptional circumstances. It also calls for the establishment of "national commissions" in each member State to promote and ensure the coordination of specific measures to implement the moratorium at the national level.

In accordance with these recommendations, in April 2002 Senegal established its national commission on light weapons, based at the Ministry of the Armed Forces. In consultation with the Ministry of the Interior, it monitors all arms trading carried out within the country or on its borders.

Senegal has also disseminated widely information concerning the new measures and procedures governing the importation of weapons, as established by ECOWAS. All manufacturing or importation of weapons, by States and/or by individuals, must be authorized by the ECOWAS secretariat, which has to consult the member States before giving its authorization. If one or more member States object, the would-be manufacturer or importer has to apply to the arbitration unit of the secretariat.

In 2000, a member State lodged an objection against Senegal following the latter's request to import weapons for the National Police Force.

Last year, requests from some arms suppliers within the country also encountered objections.

In the light of the foregoing, it should be pointed out that apart from the ECOWAS moratorium, the possession, bearing and importation of weapons are strictly regulated by Senegal under Act No. 66-03 of 18 January 1966.

Subparagraph 2 (b)

The mechanism for inter-agency coordination between the authorities in Senegal responsible for narcotics, financial tracking and security, with particular regard to border controls necessary to prevent the movement of terrorist groups.

The mechanism available in Senegal to provide early warning of anticipated terrorist activity.

To deal with the phenomenon of narcotics trafficking, Senegal possesses the necessary administrative structures to combat drug trafficking and to coordinate the activities of the services involved. A National Narcotics Commission was set up as early as 1965. It was reorganized under Decree No. 87-415 of 3 April 1987, and

given the responsibility of formulating national policy and coordinating government drug-control activities.

The National Narcotics Commission was replaced in 1997 by the Interministerial Drug Control Committee, established under Decree No. 97-1217 of 17 December 1997. This Committee is chaired by the Ministry of the Interior, but is composed of representatives of seventeen other ministries, principally the Ministries of the Armed Forces, Justice, Foreign Affairs, Finance and Education.

This Committee has its own secretariat and is directed by a national coordinator. In addition to the ministries, representatives of six non-governmental organizations engaged in drug control activities work with the Committee.

The main tasks of the Committee are to:

Formulate national policy on drug abuse control and illicit drug trafficking;

Propose measures to improve the resources available to the various services involved in drug control;

Promote the dissemination of information, prevention, medical and social services, research and epidemiological and statistical studies on drug abuse;

Coordinate the work of non-governmental organizations engaged in preventing and combating drug abuse.

The Committee is required to submit an annual report to the Government and to the relevant international organizations on the national situation with regard to drug addiction and the progress made in controlling supply and reducing demand, and to make proposals to advance the various kinds of action to combat the scourge of drug abuse.

The service most directly involved on the ground in combating drug abuse is the Central Office for the Suppression of Illicit Trafficking in Narcotics (OCRTIS). It was initially established by Interministerial Decree No. 5671 of 10 July 1991. The rules governing its organization and operation were set out in Decree No. 976 1218 of 17 December 1997.

The chief functions of the Office are to:

Centralize all information that could lead to the arrest of drug traffickers;

Coordinate and guide all action taken to suppress illicit trafficking;

Take action at the national level and coordinate the work of the competent regional police services.

In the course of its work OCRTIS communicates with the Interministerial Narcotics Control Committee, the other government agencies involved in drug control, the judicial police and the customs service, as well as the services of the Ministry of Health.

Concerning drug addicts, Senegal adopted Decree No. 97 — 1219 of 17 December 1997 to establish the measures which should be taken to treat them.

At the inter-State level, the Senegalese agencies involved in drug control work in cooperation with GIABA in the ECOWAS subregion.

These agencies also maintain constant contact with the Regional Office of the United Nations International Drug Control Programme (UNIDCP), located in Dakar.

With regard to the existence of an early warning mechanism in Africa among inter-State information services, this is still at an embryonic stage.

Apart from the 1999 Algiers Convention, the African States have no legal framework for combating terrorism.

However, following the anti-American attacks at Nairobi and Dar-es-Salaam, and especially the New York attacks of 11 September 2001, it became clear not only that the Algiers Convention had not yet entered into force, but also that its provisions were neither adequate nor appropriate for the new requirements of an effective global anti-terrorist strategy.

For this reason, the Head of State of Senegal, President Abdoulaye Wade, took the initiative in mobilizing Africa after the attacks of 11 September 2001, by convening an emergency summit meeting to adopt the measures required from Africa in the global anti-terrorist struggle.

The draft African pact proposed by Senegal was replaced, at the meeting, by a Dakar Declaration calling for an action plan for the continent, and even more importantly for the preparation of an additional protocol to the Algiers Convention taking account of the new challenges and operational requirements of today's world, in order to prevent and combat terrorism in all its forms more effectively.

As part of this process the African Union (AU) organized in Algiers, from 11 to 14 September 2002, a high-level intergovernmental meeting which adopted an action plan for presentation to the next regular AU summit meeting, to be held in Maputo, and encouraged the AU Commission to consider in detail which aspects should be covered in the additional protocol, which should include, as well as the monitoring mechanism, other provisions to supplement and update the Algiers Convention. It is suggesting, in that regard, that the Commission should obtain proposals from States members of AU and submit a complete draft protocol to the AU legislative bodies as soon as possible, for consideration by the next summit meeting of the Union at Maputo (Mozambique).

However, there is still no effective system of coordination in Africa, although the recently constituted African Union has made plans for one in its Peace and Security Council.

In the meantime, each State is drawing upon its own information, while also relying on the data available at Interpol, and is introducing new legislation. In the event of an immediate terrorist threat, the States will look to their own competent authorities.

From this point of view, Senegal has amended its internal legislation in order to suppress terrorism. It also has a counter-terrorism unit, but this unit would benefit from extra resources.

Lastly, Senegal is working with neighbouring countries in the struggle against national and transnational organized crime.

Subparagraph (c)

Legislation on the entry and stay of aliens

The conditions for the entry, stay and establishment of aliens are set out in Decree No. 71.860 of 28 July 1971.

Title I of this Decree lists the documents required for entry into Senegal, including a passport or travel document, and an entry visa unless that requirement is waived (for countries of the European Union and ECOWAS, the United States and Canada). However, the crews of ships and aircraft in transit may be allowed to enter Senegal on presentation of a crew member's pass, permit or certificate.

Title II sets out the conditions for and establishment of aliens, who require a visa mentioning the duration of the stay, or the residence or establishment permit granted. The visa is valid for a period of one year from the date of issue.

A visa may be issued to nationals of certain countries only after consultation with the Ministry of the Interior, which must be informed of the issue of a visa containing a residence permit.

Title III establishes the conditions governing an alien's departure from Senegalese territory. The alien must present the following documents at the border control post: a valid passport, travel document or equivalent, and the international vaccination certificates required by the health regulations. Holders of a foreign identity card, and children of immigrants who are under 15 years of age and travelling alone must obtain a visa issued by the Minister of the Interior.

Chapter II concerns the refoulement of any alien who fails to meet the requirements for entry into Senegal. It also provides for the expulsion, on the basis of a ministerial order, of any alien infringing the pertinent regulations in force.

The general provisions of the decree state that any alien whose conduct poses a threat to law and order or the security of the State will be prosecuted in the courts.

Subparagraph (d)

Application of the OAU Convention on the Prevention and Combating of Terrorism and the Dakar Declaration

The 2001 Dakar Convention invited all States members of OAU that had not ratified the Convention on the Prevention and Combating of Terrorism, adopted in Algiers on 14 July 1999, to do so.

Accordingly, Senegal ratified the Convention on 20 December 2001.

Moreover, President Abdoulaye Wade requested the formation of a working group of experts to prepare legislation relating to the prevention of terrorist acts, the financing of terrorism, the criminalization of such acts, and the universal competence of the Senegalese courts. The working group has begun work and is currently studying the possibility of amending Senegal's legal and institutional provisions in at least three areas:

The criminalization and penalization of terrorist acts;

The application to these offences of special rules of criminal procedure (for example, extension of police custody), and

The establishment, as required, of a new judicial institution for that purpose.

Subparagraph (e)

How are the offences mentioned in relation to this subparagraph seen as specifically meeting the requirements of the subparagraph in the transnational context, particularly when the acts performed in Senegal are not necessarily of a criminal, or serious criminal, nature?

Please refer to the reply contained in subparagraph (d) above, concerning the working group established to propose appropriate legislation.

The courts of Senegal are competent to deal with criminal acts in the following situations:

A Senegalese citizen who has committed outside Senegal an act which constitutes an offence under Senegalese law may be prosecuted and sentenced in the Senegalese courts.

– Under articles 35 and 43 of the Code of Penal Procedure, the Senegalese courts are competent to try any person habitually resident in Senegal who is suspected of involvement in an offence.

– With regard to competence in the case of an act committed outside Senegal by a foreign national currently in Senegal, please refer to the reply provided under subparagraph 1 (d).

Subparagraph (f)

Bilateral and multilateral treaties on mutual assistance in criminal matters to which Senegal is party.

Bilateral treaties

1. Judicial agreement with Tunisia, 13 April 1964, ratified by Senegal on 20 January 1965.

2. Agreement with the Gambia, 28 April 1965, ratified by Senegal on 26 June 1974.

3. Agreement with Mali, 8 April 1965, ratified by Senegal on 18 January 1966.

4. Agreement with Morocco, 3 July 1967, ratified by Senegal on 14 June 1968.

5. Agreement with France, 29 March 1974, ratified by Senegal on 8 January 1975.

6. Agreement with Guinea-Bissau, 8 January 1975, ratified by Senegal on 6 January 1978.

7. Agreement with Cape Verde, 17 April 1980, ratified by Senegal on 23 July 1982.

Multilateral treaties

1. ECOWAS Convention on Extradition, 6 August 1994, ratified by Senegal on 16 May 1995.

2. ECOWAS Convention on Mutual Assistance in Criminal Matters, 29 July 1992, ratified by Senegal on 30 April 1999.

3. Rome Statute of the International Criminal Court of 17 July 1998, ratified by Senegal on 30 April 1999.

4. Convention on Cooperation in Judicial Matters among the States Parties to the Accord on Non-Aggression and Mutual Assistance in Defence (ANAD), signed on 21 April 1987 at Nouakchott, ratified by Senegal on 28 December 1987.

5. General agreement on cooperation in judicial matters of the former African and Malagasy Common Organization (OCAM) of 12 September 1961.

Legal time frame for judicial assistance

The legislation does not establish a specific time frame for judicial assistance. Senegal may invite its competent judicial authorities to perform the tasks required within a time frame suited to the circumstances of the case.

The general rule with regard to judicial assistance is that Senegal takes the necessary steps to comply with a request for such assistance.

Subparagraph (g)

Mechanism for inter-agency coordination between the authorities responsible for narcotics control, financial tracking and security, in particular in regard to border control.

This information is given under subparagraph 2 (b).

Paragraph 3

Subparagraphs (a), (b) and (c)

In Senegal, extradition is governed by Act No. 71-77 of 29 December 1971.

Legal basis for extradition

Article 1 of the above-mentioned Act provides that “in the absence of a treaty, the conditions and procedures for, and effects of, extradition shall be determined by the provisions of the present Act, which shall also apply to any matters not expressly covered in the aforementioned treaties.

More precisely, all self-executing provisions contained in a treaty ratified by Senegal are enforced immediately.

The legislator intervenes if the provisions of a treaty require the adoption of domestic legislative measures (to determine a penalty, for example, in criminal matters).

Concerning extradition, Senegal does not apply the list principle for determining extraditable offences. Article 4 of Act No. 71-77 of 29 December 1971 on extradition provides that the acts that may result in a request for extradition either to or from Senegal are as follows: “All acts punishable by serious or correctional penalties, provided that the duration of the correctional penalty is two years or more. Extradition is not granted when the offence is of a political nature, when the perpetrator of an offence committed outside Senegal has been tried and a final judgement pronounced, and in the case of prescription of the public right to action prior to the request.”

Subparagraphs (d) and (e)

Progress made by Senegal in relation to international conventions and protocols relating to terrorism

(a) Conventions ratified by Senegal

United Nations conventions

1. Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo, 1963), ratified by Senegal on 28 February 1972;

2. Convention for the Suppression of Unlawful Seizure of Aircraft (signed at The Hague on 1 December 1970, entered into force on 14 December 1971), ratified by Senegal on 14 February 1973);

3. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 1971), ratified by Senegal on 5 January 1973, and its 1988 Protocol;

4. International Convention against the Taking of Hostages (New York, 1979), ratified by Senegal on 10 March 1987;

5. International Convention against the Recruitment, Use, Financing and Training of Mercenaries (4 December 1989), ratified by Senegal on 3 April 1999.

Organization of African Unity (OAU) Conventions

1. OAU Convention on the Prevention and Combating of Terrorism (Algiers, 14 July 1999), ratified by Senegal on 20 December 2001;

2. OAU Convention for the Elimination of Mercenarism in Africa, signed by Senegal at Addis Ababa on 8 February 1978 and ratified on 2 July 1981.

(b) United Nations Conventions relating to terrorism for which Senegal has initiated the ratification process

1. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (New York, 1973);

2. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, 1988);

3. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (Rome, 10 March 1988),

supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation;

4. Protocol for the Suppression of Unlawful Acts of Violence at Airports, Serving International Civil Aviation (Montreal, 1988);

5. Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal, 1991);

6. International Convention for the Suppression of Terrorist Bombings (New York, 1997);

7. International Convention for the Suppression of the Financing of Terrorism (New York, 1999);

8. United Nations Convention against Transnational Organized Crime and its additional protocols (December 2000);

9. Convention on the Physical Protection of Nuclear Material (Vienna, 26 October 1979).

Is the supremacy of international treaties over domestic legislation such that it obviates the need for legislation to give effect domestically to Senegal's obligations under international instruments?

No. For example, article 1 of Act No. 71-77 of 28 December 1971 provides as follows: "in the absence of a treaty, the conditions and procedures for, and effects of, extradition shall be determined by the provisions of the present Act, which shall also apply to any matters not expressly covered in the aforementioned treaties."

Have the offences set forth in the relevant international conventions and protocols been included as extraditable offences in the bilateral treaties to which Senegal is party?

There is no need to provide specifically for those offences, since the general law of extradition is regulated by the treaties themselves as applied by Senegal, if it has ratified them, or, by default, by Act No. 71-77 of 28 December 1971 on extradition.

Subparagraph (g)

Is it possible under the law of Senegal for requests for the extradition of alleged terrorists to be refused on political grounds?

See answer provided above under paragraph 3, subparagraphs (a), (b) and (c).

Paragraph 4

Senegal shares the concerns expressed in paragraph 4 of Security Council resolution 1373 (2001), and has therefore constantly cooperated for the past decade in the coordination of efforts at the national, subregional, regional and international levels.

At the national level, Senegal was the first West African country to criminalize the laundering of funds derived from illicit narcotics trafficking, by establishing mechanisms for collaboration among government authorities, economic actors and the financial and banking world in order to combat that scourge effectively.

The authorities are therefore preparing to incorporate the ECOWAS draft law on money-laundering into national law.

At the subregional level, Senegal has learned lessons from its national experience in combating money-laundering, which was obstructed by the banking confidentiality established by the WAEMU treaty. The Government therefore took the initiative with a view to establishing a subregional body to combat money-laundering within ECOWAS, which led to the creation of the Inter-Governmental Action Group against Money Laundering (GIABA). Senegal is also coordinating the activities relating to the setting up of GIABA.

At the international level, Senegal played an important part in the preparation and adoption of the United Nations Convention against Transnational Organized Crime, which it signed at Palermo (Italy) on 13 December 2000, having participated in the twelve sessions of the Ad Hoc Committee established for that purpose by the General Assembly of the United Nations.

Lastly, Senegal takes every opportunity to urge other African states to follow its example and ratify that Convention.