IMPLEMENTATION OF UNSCR 1373 (2001)
IN WEST AFRICA: ISSUES AND CHALLENGES

BY

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AT

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Introduction

1. The process of globalization has made West Africa no less immune to the threats of terrorism than any other region of the world. Globalization has resulted in the need for international organizations and regional bodies to broaden their focus beyond state-based security threats to encompass those emanating from non-state perpetrators. The September 11, 2001 terrorist attacks on the United States of America accelerated this paradigm shift and provoked global efforts to address international terrorism. An important element of such efforts is the United Nations Security Council Resolution (UNSCR) 1373 of 2001, which was adopted subsequent to these attacks principally sought to combat acts of terrorism by placing barriers on the movement, organization and funding of terrorist groups.

2. UNSCR 1373 imposes obligation on States Parties to take certain specific measures to combat terrorism within their jurisdictions and regions, and globally. Amongst other things, it requires states to freeze without delay the funds or other assets 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. Member states also have obligation to deny safe haven to those who finance, plan, support or commit terrorist acts and to ensure that terrorist acts are established as serious criminal offences in domestic laws and regulations; and that punishment duly reflects the seriousness of those terrorist acts so that any person who participates in the financing, planning, preparation or perpetration of terrorist acts is brought to justice. In addition, the UNSCR 1373 calls upon states to prevent the movement of terrorists and terrorist groups through effective border control. Furthermore, it requires states to exchange information and forge cooperation through bilateral and multilateral agreements in order to prevent the commission of terrorist acts. A major obligation under the Resolution is that states should become parties to the relevant international conventions and protocols relating to terrorism, and to fully implement them within their jurisdictions.
3. In order to facilitate effective implementation of the resolution, the Committee on terrorism within the Security Council instituted a three-tiered program to encourage and support member states to: (a) introduce and pass necessary legislation; (b) put in place necessary machinery to implement the legislation; and (c) use the machinery effectively once it is in place. Similarly, the Financial Action Task Force (FATF), recognizing the importance of taking action to combat terrorism by disrupting its flow of funds, expanded its mandate beyond anti-money laundering to include countering the financing of terrorism in 2001. Consequently, the FATF issued the nine Special Recommendations in line with the relevant international conventions and protocols on terrorist financing. The FATF Special Recommendation III specifically addresses the implementation of UNSCR1373. It requires states to implement measures to freeze, without delay, funds or other assets of terrorists and those who finance terrorism and terrorist organizations in accordance with the United Nations resolutions. This is in tandem with the principle that if the terrorist groups are starved of funds then they are on their way to extinction. In addition, SR I, II, IV and V, which respectively prescribe the criminalization of terrorist financing and associated money laundering, the ratification and implementation of international instruments on terrorist financing, the reporting of suspicious transactions related to terrorism and international cooperation, address various other facets of implementing UNSCR1373.

Status of Implementation of the UNSCR 1373 in West Africa

4. In West Africa, the principal mechanism for gauging the efforts of countries in the implementation of the UNSC resolution is the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA). GIABA is a specialized institution of the Economic Community of West Africa States (ECOWAS), as well as a Financial Action task Force (FATF) Style Regional Body (FSRB). Its mandate is to develop anti-money laundering and counter financing of terrorism (AML/CTF) measures, and to coordinate regional efforts to combat money laundering (ML) and terrorist financing (TF). Its membership consists of all Member States of the

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1 The Resolution established the Counter Terrorism Committee of the Security Council (CTC). This Committee is mandated to monitor the implementation of the resolution through the Counter Terrorism Executive Directorate (UNCTED).

2 The FATF has supported the establishment of regional bodies to promote and ensure the effective implementation of its recommendations, thus creating a truly global network against money laundering and terrorist financing.
ECOWAS and it is, as such, a regional inter-governmental body which supports the work of the UN in preventing, detecting, deterring and suppressing terrorism, particularly its financing.

5. One of the main thrusts of the mandate of GIABA is to assess member states’ level of compliance with international standards on ML and TF through a mutual evaluation process – a peer review mechanism agreed to by Member States based on the FATF 40+9 Recommendations and Methodology and other international instruments. The process is a means by which countries recognize what progress has been achieved and the vulnerabilities and deficiencies in their AML/CFT regimes. We acknowledge the continued support of the UNCTED for this regional process. So far, thirteen (13) countries in West Africa have undergone mutual evaluation as indicated on the table below. The ratings of these countries is instructive in explaining their efforts towards the implementation of the UNSCR 1373 and forms the basis for the discussion of the issues and challenges encountered by countries, particularly that of low capacity of countries for effective implementation of this resolution.

6. The outcomes of the thirteen assessed ECOWAS countries in respect of the FATF SR I-IX are shown in the table below.
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Note: C = Compliant; LC = Largely Compliant; PC = Partially Compliant; and NC = Non Compliant.

The table shows that less than one third of the countries are compliant with respect to SR I and SR II, which deal with criminalization of terrorist financing and the ratification and implementation of international instruments on terrorist financing respectively. Eleven out of the thirteen countries were rated non compliant in respect of SR IV, which obliges financial institutions to report suspicious transaction related to terrorist financing. In addition, more than half of the countries were rated non-compliant on SR V, which deals with international cooperation, including mutual legal assistance, information exchange and assistance relating to the financing of terrorism. Most pertinent, is the rating under SR III, which revealed that ten countries were assessed as being non-compliant, while only three had taken substantive action to
implement measures to freeze, without delay, funds or other assets of terrorists and those who finance terrorism and terrorist organizations.

7. These very low ratings indicate that member states are struggling with the implementation of UNSCR 1373. The mutual evaluation reports, though a stock document and work-in-progress, show a myriad of factors impeding the implementation of this resolution.

8. Essentially, most of the weaknesses and gaps identified during the mutual evaluation process are related to deficiencies in the national legal framework and inadequate national coordination and collaboration among competent authorities. The mutual evaluation reports showed that some of our member states do not have laws which adequately criminalize terrorist financing. Even where such laws exist, it was observed that there was little or no regulation or procedure in place to ensure appropriate freezing, seizure and confiscation of terrorist funds. Most member states had no mechanisms for designation of persons identified as terrorists, delisting or even disseminating updated list of terrorists to financial and non financial institutions (a related UNSCR 1267). Officials of competent authorities still seem to be in the dark as regards their roles in the implementation of UNSCR 1373. All these are indicative of a general lack of understanding of the UN resolutions, inadequate political will and overall lack of capacity and resources to effective put in place and operationalize the mechanisms needed for implementation of this resolution.

9. Furthermore, the lack of regional and international cooperation poses a significant challenge to the effective implementation of UNSCR 1373. While political and policy direction on AML/CFT has been achieved in the region, inter-country operational cooperation is still being forged at a slow pace. Countries are still operating much in isolation and this will naturally affect the overall implementation of CFT measures. Moreover, the multi-disciplinary nature of the administration of an AML/CFT regime makes the requisite mechanism for cooperation and collaboration more difficult to implement especially in the absence of clear national regulations or procedures. Another challenge relates to slow pace in the introduction of legislative changes in the region. Nevertheless, following the assessment of member States’ AML/CFT systems
in the past four years, most countries in West Africa now have counter-terrorist financing legislation.

10. In addition to the specific weaknesses unearthed by the mutual evaluation process, geographical challenges further impair implementation of AML/CFT measures in the region. West Africa is a vast region of over 5 million square kilometers bordered by the Sahel, a largely ungoverned and sparsely populated region between the Sahara in the north and the Savannas in the south, where movement across the region by local populations takes little account of state borders. Historically, West Africa has been plagued with wars and other forms of armed conflict, and continues to grapple not only with the aftermath, but also with ethnic and religious crises, organized crimes and corruption. All these add up to enduring conditions of political instability and state fragility which undermine the capacity to effectively implement AML/CFT measures.

11. The informal and cash based nature of the region’s economy, which facilitate the illegal ownership, movement, transfer or exchange of funds; the proceeds from other illegal sources, such as minerals or precious stones; and the porous borders, among others, constitute a precarious mix which could be used as a marker to ascertain the level of risk of terrorist activities and terrorist financing. Al-Qaeda has been reported to have sleeper cells in several West African countries, including Senegal, Guinea-Bissau and Mali (where representatives of Al-Qaeda in the Islamic Maghreb [AQIM] have roots in Mali and work "in silence, recruiting and doing field work"). The recent attack on the UN building in Nigeria seems to indicate that the home grown Boko Haram group may be aligning with terrorist organizations outside the region, especially in North Africa. This recent attack seems to suggest a virulent evolution or trend in which nationalistic, home-grown, radical extremists and militants may be lured into the networks of international terrorism. There is, therefore, a need to pay more attention to border control in the region and intensify efforts on international cooperation both within and outside the region.

12. Another major challenge is the lack of coordination of all law enforcement agencies. In most member States, competent authorities appear to be in competition, with each
working solo, where collaboration and cooperation would have enhanced their performance, particularly through synergy in information sharing.

13. Also, the speed of technology and its application in financial transactions is a major challenge in following the movement of funds used for TF purposes. Due to the profit-motive of financial intermediaries and competition in the industry, there seem to be a general apathy towards timely generation of suspicious transactions reports (STRs) by the reporting entities.

GIABA’s Response

14. On its own part, GIABA has endeavored to address the challenges and the weaknesses identified by its mutual evaluation process through the provision of technical assistance to member States and through special purpose vehicles in order to build capacity with respect to the implementation of UNSCR 1373. GIABA, in collaboration with other development partners, including the UN, has supported member States in developing appropriate CFT legislation. GIABA has also provided direct assistance towards the establishment of Financial Intelligence Units (FIUs) in its member States. This has led to an increase of FIUs in the region from 2 in 2005 to 13 in 2010. GIABA’s technical assistance to member States in relation to FIUs is categorized under training and capacity-building programs, mentorship, study tours, provision of equipment, advocacy and advisory services, all with the aim of enhancing the capacity of the FIUs of Member States to perform their core functions, particularly analysis and dissemination of STRs related to terrorist financing in order to facilitate investigation and prosecution of TF cases.

15. As stated earlier, GIABA member States lack the capacity to respond to the challenges of terrorist financing, including the detection and seizure of terrorist funds. UNSCR 1373 related legislations and procedures of many GIABA member states are at their nascent stages and appear complicated to law enforcement, prosecutorial and judicial authorities. International standards on terrorist financing require countries to provide the necessary investigation and prosecutorial tools to the officials charged with combating terrorist financing. It is therefore pertinent to build the capacity of personnel of these authorities to enable them to adequately respond to the challenges
they face in implementing the requirements of the UNSCRs. It is important to note that with its statute, GIABA has a technical assistance mandate, thus, it provides on an annual basis, customized training for investigators, prosecutors and judicial officials to enhance their capacity to effectively implement UNSCR 1373 and other related international standards against money laundering and the financing of terrorism. Furthermore, as asset recovery is a complicated process, GIABA also provides direct assistance to strengthen the capacity of its members to ensure that criminal assets are identified, frozen without delay, seized and confiscated within the ambit of law.

Raising awareness has the potential to prevent and deter terrorist activities. Thus, one of the main thrusts of GIABA is to promote strategic partnerships with the various segments of the civil society. Our yearly open-house forum has provided immense opportunities for exchange of information and for galvanizing the youths, religious organizations, and the mass media to support efforts to prevent terrorism and other related acts.

**The Way Forward**

17. Enhancing the implementation of legislative and operational rules for the effective implementation of UNSCR 1373 in the region requires the concerted efforts of all stakeholders – regulators, reporting entities, civil society, development partners, political authorities and GIABA. There is a need to re-engage leaders and policymakers in the region and restate the consequences of the continued inertia regarding implementation of UNSCR 1373. However, the challenges in the implementation of this resolution must be contextualized within the social, political, cultural and financial environments in the region. Countries in West Africa are essentially low-capacity countries. Thus, any strategy or policy which seeks to effect the detection of terrorist and terrorist financing must take this fact into account.

18. GIABA will continue with the task of supporting member states with adopting, improving and implementing legislation concerning asset freezing. We will also continue to support and provide technical assistance to key officials in the implementation of the UNSCR 1373 and other UN instruments. Countries, would on the other hand, complement our efforts by designating dedicated counter-terrorism units and personnel within the law enforcement, security and border control agencies.
throughout the region. The creation of a regional group of network of counter-terrorism personnel is essential for the development of counter-terrorist know-how in the region. There is a need for high level regional cooperation and coordination which will include constructive dialogue and information sharing between states. GIABA is keen to support this initiative through enhancing capacity to foster collaboration between key players. GIABA will continue its work with the FIUs and the financial and non-financial sectors regarding their roles in implementation of the resolution. Nevertheless, the dearth of skills and expertise in the region needs to be addressed; the lack of capacity and expertise make it impossible for most developing countries, especially those emerging from conflict, to effectively implement the Resolution. Technical assistance from development partners in this regard is therefore crucial.

19. This fight, which is against a covert, yet ubiquitous phenomenon, clearly requires collaboration on a global scale. However, collaboration on a global scale is the first step. Fine-tuning and translating this collaboration into workable practical tools at the national and local level is imperative. Consequently, effective implementation of this resolution and other UN instruments against transnational organized crime would necessarily require a strategic partnership. This partnership entails equal responsibility and equal burden. In adopting this resolution, our member States have recognized and committed to their responsibilities and obligations to the international community. There is no doubt that the goal of effectively implementing UNSCR 1373 in West Africa can be achieved; however, the pace of that achievement will depend on the commitment and capacity of countries, as well as the technical expertise of key players.

20. In conclusion, I would like to thank the Chair of the CTC for extending invitation to me to participate in the activities marking the tenth anniversary of the adoption of the UNSCR 1373 and wish to pledge our continued support to the work of the UN in this direction. Ten years may be too short a time to determine the success of an initiative. At the same time, it is more than enough to assess progress, which is the aim of this meeting today. I would like to also thank the UNCTED for their continued support to GIABA and to our member States. I wish to re-assure you of our relentless
efforts in ensuring that we create a secure environment for healthy competition, investment, global peace and security.

21. I thank you for your kind attention.

GIABA Secretariat,
Dakar, Senegal,
27 September, 2011.