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### Commission on Narcotic Drugs

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Item 3 of the provisional agenda\*\*

**Thematic debate on the follow-up to the twentieth special session of the General Assembly: general overview and progress achieved by Governments in meeting the goals and targets for the years 2003 and 2008 set out in the Political Declaration adopted by the Assembly at its twentieth special session**

### The world drug problem

#### Fifth report of the Executive Director

#### Addendum

### Measures to promote judicial cooperation

#### *Summary*

The present report has been prepared pursuant to paragraph 16 of the Political Declaration adopted by the General Assembly at its twentieth special session (resolution S-20/2, annex), in which Member States undertook to promote multilateral, regional, subregional and bilateral cooperation among judicial and law enforcement authorities to deal with drug offences and related criminal activities. To that end, States were encouraged to review and, where appropriate, to strengthen by the year 2003 the implementation of the measures to promote judicial cooperation adopted at the special session. Such measures included extradition, mutual legal assistance, transfer of proceedings, controlled delivery, cooperation in law enforcement, targeting trafficking in drugs by sea, measures to support the judicial process and other forms of cooperation.

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\* Reissued for technical reasons.

\*\* E/CN.7/2008/1.



The report reflects the measures taken by Member States to achieve the objectives set by the General Assembly at its special session in connection with judicial cooperation and indicates a general increase in the implementation of the recommendations of the General Assembly. The report also contains recommendations on how Governments could improve judicial cooperation.

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## I. Introduction

1. In paragraph 16 of the Political Declaration adopted by the General Assembly at its twentieth special session (resolution S-20/2, annex), Member States undertook to promote multilateral, regional, subregional and bilateral cooperation among judicial and law enforcement authorities to deal with drug offences and related criminal activities. To that end, States were encouraged to review and, where appropriate, to strengthen by 2003 the implementation of the measures to promote judicial cooperation adopted at the special session. Such measures included extradition, mutual legal assistance, transfer of proceedings, controlled delivery, cooperation in law enforcement, targeting trafficking in drugs by sea, measures to support the judicial process and other forms of cooperation. The implementation of those measures, taken together, should achieve the objectives set by the General Assembly at its special session in connection with judicial cooperation.

2. The legal framework for judicial cooperation is provided by the international drug control treaties.<sup>1</sup> As of 17 September 2007, the treaties enjoyed universal adherence, with 183 States parties to each of the conventions.

3. The present report contains a summary and analysis of the replies received from Member States<sup>2</sup> for the fifth reporting period, concerning progress made towards meeting the objectives set by the General Assembly at its twentieth special session (hereinafter referred to as “the General Assembly objectives”). It is the fifth report in the series and covers the period from June 2006 to June 2007.

4. Unless otherwise specified, the data presented here reflect the responses of States to the questionnaire for the fifth reporting period (CND/NR/2007/1). Comparisons have been carried out between the percentages of States that responded during each reporting period (see table) in order to provide an overview of the progress achieved since 1998. The present report assesses the implementation by Member States of measures to achieve the General Assembly objectives in each of the areas of judicial cooperation detailed above, on the basis of the replies to the questionnaire received by the Secretariat. Specific questions were selected for the purpose of the analysis<sup>3, 4</sup> and, where all replies were in the affirmative, the

<sup>1</sup> The Single Convention on Narcotic Drugs of 1961 (United Nations, *Treaty Series*, vol. 520, No. 7515) and that Convention as amended by the 1972 Protocol (United Nations, *Treaty Series*, vol. 976, No. 14152), the Convention on Psychotropic Substances of 1971 (United Nations, *Treaty Series*, vol. 1019, No. 14956) and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (United Nations, *Treaty Series*, vol. 1582, No. 27627).

<sup>2</sup> Complementary data, which corroborated the conclusions of the present report, were received from Interpol, the European Police Office (Europol) and the Financial Action Task Force on Money Laundering. An initial draft of the report was presented during an informal expert group meeting held in Vienna in September 2007. The comments made by the experts were incorporated into the present report.

<sup>3</sup> The composite indices that have been developed summarize the responses provided by Member States through the questionnaire with regard to the reported implementation and estimated coverage of activities as requested under the various action plans. An analysis has been conducted using the data provided by all those countries that responded to the questionnaire in each reporting period. The indices are presented as regional averages, ranging from a minimum of 0 per cent to a maximum of 100 per cent. For example, a region reaches 100 per cent when all the reporting countries indicate having all the requested measures in place, while a region where

implementation rate of the General Assembly objectives was deemed to be 100 per cent. Thus, the percentages reflect the level of implementation of a group of measures by the States reporting from the region concerned.

Table

**States responding to section IV of the biennial reports questionnaire, by reporting period**

<i>Reporting period</i>	<i>Number of countries</i>
1998-2000	109
2000-2002	122
2002-2004	103
2004-2006	100
2006-2007	105

5. The data are presented in charts, one each for global data and four geographic groups: Africa and the Middle East, the Americas and the Caribbean, Asia and Oceania, and Europe. These four groups have been formed from nine subregions: two for Africa and the Middle East (North Africa and the Middle East, and Sub-Saharan Africa); two for the Americas (Latin America and the Caribbean, and North America); three for Asia and Oceania (Central, South and South-West Asia, East and South-East Asia, and Oceania); and two for Europe (Western Europe, and Eastern and South-Eastern Europe). For each subregion, an average implementation rate is presented.

6. Several factors complicated the analysis of the replies to the questionnaire. First, there was no consistency in the identity of States replying to the questionnaire throughout the reporting periods. Only about 56 Member States replied in all reporting periods: 109 in the first reporting period, 123 in the second, 104 in the third, 100 in the fourth, and 107 States replied to the questions on judicial cooperation in the fifth reporting cycle. In addition, the questionnaire itself was significantly revised after the first reporting period, limiting the comparability of the replies from that period with those from the subsequent periods. Consequently, the graphs only refer to the second, third, fourth and fifth reporting periods.

7. The lack of statistical data in this area is an inherent difficulty that most States encounter, while, where data exist, their segregation by types of offence is problematic. In addition, the absence of specific time frames in some of the replies made it difficult to assess when developments had really occurred. These difficulties are addressed in the chapter on recommendations.

## II. Extradition

8. The first building block for successful judicial cooperation is extradition. Extradition prevents offenders from taking advantage of international borders to escape the consequences of their actions. This is particularly important when it

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all reporting countries report having none of those measures in place has a rating of 0 per cent.

<sup>4</sup> Questions 21, 26, 27, 29, 33, 34, 36, 40, 41, 43 (a)-(d), 44-46, 49, 52 and 53. As the index has been refined since the previous report, different data are presented.

comes to drug trafficking. Article 6 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988<sup>5</sup> provides that States may consider the Convention as the legal basis for extradition for the offences established by it. It also stipulates that the offences under the Convention shall be considered by States parties as extraditable.

9. At its twentieth special session, in its resolution S-20/4 C, the General Assembly requested States to review and, if necessary, simplify their extradition laws and procedures, including by reviewing legislation, and to facilitate cooperation with other States concerning extradition, for example by informing other States of their relevant competent authorities. Both the 1988 Convention and the measures adopted at the twentieth special session called upon States to remove impediments to extradition. States were requested to consider extraditing their nationals for serious drug offences on the condition that offenders would be surrendered for prosecution, but that they could be returned to serve any sentence. As the data collected throughout the reporting periods indicates, this is still one of the major impediments to extradition.

#### **A. Competent national authorities**

10. In most countries, extradition requests are received by a specific competent national authority, designated by the Government for that purpose. The United Nations Office on Drugs and Crime (UNODC) regularly collects information from, and distributes information on, competent national authorities designated to receive, respond to and process extradition requests from Member States. As at 14 November 2007, the contact information for 147 competent authorities of Member States or dependent territories had been provided to UNODC. In December 2006, UNODC made that information available to Member States on a secure website (<http://www.unodc.org/compauth/index.html>) and Governments were encouraged to apply for an access password. During 2007, the database was enhanced to allow for the inclusion of authorities under the United Nations Convention against Transnational Organized Crime<sup>6</sup> and for external updates of the data by the users themselves. The updated database is expected to be launched by the end of 2007. In the framework of its work to further the implementation of the Organized Crime Convention, UNODC is organizing regional workshops on international cooperation, which include specific training on extradition for practitioners, in particular practitioners from competent national authorities.

#### **B. Legislation on extradition**

11. Legislation should be in place in order to allow for the extradition of offenders between Member States. In the first reporting period, 90 per cent of Governments reported that they had adopted legislation on extradition procedures. It is unclear, however, whether this figure was different in 1998, when the recommendations were made. It has not changed significantly since the first reporting period and it has fluctuated in a manner that mostly reflected the differences in the number of

<sup>5</sup> United Nations, *Treaty Series*, vol. 1582, No. 27627.

<sup>6</sup> *Ibid.*, vol. 2225, No. 39574.

responding States. It dropped to 88 per cent during the second reporting period, to 85 per cent during the third and to 84.4 per cent during the fourth, but has risen again to 89.5 per cent of the responding States in the fifth reporting period.

12. The following Member States indicated that they did not have legislation on extradition: Afghanistan, Eritrea, Indonesia, Madagascar, Mongolia, Myanmar, Sao Tome and Principe and Sri Lanka. Four Member States did not reply to the question: Kyrgyzstan, Montenegro, Republic of Korea and Sierra Leone.

### **C. Extradition of nationals**

13. The percentage of Member States not allowing the extradition of their nationals remained high. In the responses to the first biennial reports questionnaire, 48 per cent indicated that national laws either precluded or seriously limited the extradition of nationals. The figures were 52 per cent during the second reporting period, 47 per cent during the third, 44.4 per cent during the fourth and 58.2 per cent during the fifth.

14. These figures are not expected to change, since the limitation on extradition of nationals is rooted in the constitutional system of some countries. In fact, some States reported that they did not envisage lifting the restriction on the extradition of nationals, although this did not imply that offenders could evade punishment. Article 6, paragraph 9 (b), of the 1988 Convention obliges the parties to that Convention to submit a case for prosecution in their territories if they do not extradite the accused on the ground of nationality. The 1988 Convention also allows, in article 6, paragraph 10, for the enforcement of a sentence imposed by a requesting State.

### **D. Review of extradition procedures**

15. In its resolution S-20/4 C of 10 June 1998, the General Assembly requested States to review and, if necessary, simplify their extradition laws and procedures in drug-related cases. During the reporting period, 38.8 per cent of the responding States reported that they had taken such measures. The figures reported in the previous reporting periods were as follows: 32 per cent, 29 per cent, 31 per cent and 28 per cent during the first, second, third and fourth reporting periods respectively. These figures are difficult to compare as the question is not limited to a specific period of time, although it appears that almost half of the Member States had reviewed their extradition procedures by 2007.

### **E. Bilateral and multilateral agreements**

16. Most States replying in the fifth reporting period had entered into both bilateral and multilateral agreements on extradition (80 per cent and 60.9 per cent respectively), with bilateral agreements being the preferred method. The figures in previous cycles were 70 per cent in the first reporting period (for both types of agreement), 80 per cent and 58 per cent respectively in the second reporting period, 80 per cent and 67 per cent in the third and 76 per cent and 58 per cent in the fourth.



## **F. Obstacles to extradition**

17. Throughout the reporting cycles, the number of refusals of extradition was lower than the difference between the number of requests sent and those executed, although this gap seems to have narrowed in the last cycle. It implies that, although some requests were not executed, they were not officially refused, possibly due rather to delays and procedural difficulties than to substantive legal impediments. The reasons for official refusal stated in the replies included non-extradition of nationals, lack of dual criminality, lack of an extradition agreement, statute of limitation periods that had elapsed, political offences and procedural or formal deficiencies in the request. Other difficulties encountered in the extradition process included difficulties in the identification of the offender, lengthy procedures which could lead to the release of prisoners as a result of limitations on pretrial detention, differences between national legal and judicial systems (in particular the question of the imposition of the death penalty) and problems related to the translation of requests.

## **G. Conclusions**

18. Legal impediments to extradition and practical difficulties remain, even though most States have laws in place and have entered into bilateral and multilateral treaties on the extradition of drug offenders and many States have revised their legislation since the twentieth special session. As regards the non-extradition of nationals, several States maintain the position that they will not consider it. Member States that are parties to the 1988 Convention are obliged to prosecute offenders in their own courts in such cases. Governments could also consider the simplification of traditional extradition procedures. The European Union, for example, has adopted the European arrest warrant which allows for de facto extradition of nationals through a simplified procedure and in a manner that does not conflict with the constitutional provisions of the member States.

19. Most of the progress in adopting bilateral and multilateral agreements has been made within regional frameworks rather than at the global level. While the low number of reported refusals is encouraging, there remain many difficulties with regard to differences between legal systems, delays and procedural and language problems. The levels of implementation of measures to achieve the General Assembly objectives in the area of extradition vary among subregions and indicate different trends (see figures 1-5). Globally, the rate of implementation has increased between 1998 and 2007, although the increase was not a constant trend in all regions. As mentioned above, some of the changes between reporting periods may be attributed to changes in the questionnaire (between the first and the second cycle) and changes in the numbers of responding States (the second cycle having the highest response rate).

20. One of the major difficulties in assessing progress achieved in the area of extradition is the lack of statistical data on the number of requests made by Governments each year and the number of requests carried out in the specific area of drug trafficking. Of the States replying to the questionnaire during the fifth reporting period, 53.6 per cent indicated that statistical data were available on extradition requests. According to data received from Interpol, in 2004, 260 persons

were arrested or extradited for drug-related offences. This figure grew to 395 in 2005.

21. The lack of statistical data has prevented UNODC from assessing the real volume of extradition requests made each year. UNODC is currently considering cooperation with Interpol in order to collect such data. States should consider establishing systems for the collection of statistical data in order to allow monitoring and evaluation of the efficacy of their own national systems.

Figure 1

**All regions: measures taken in the area of extradition, selected reporting periods**  
(Composite index)

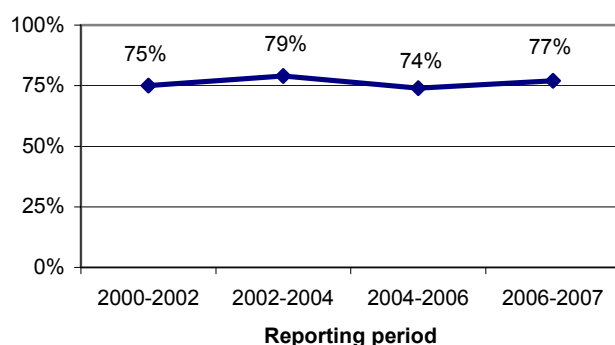


Figure 2

**Africa and the Middle East: measures taken in the area of extradition, by subregion, selected reporting periods**  
(Composite index)

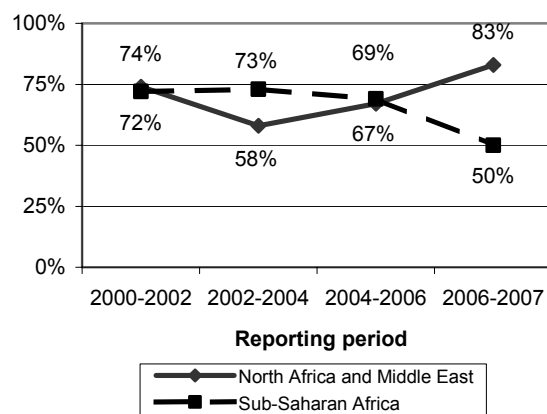


Figure 3  
**Americas: measures taken in the area of extradition, by subregion, selected reporting periods**  
 (Composite index)

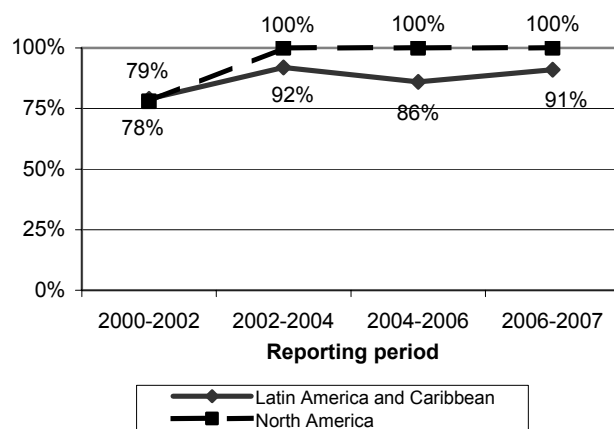


Figure 4  
**Asia and Oceania: measures taken in the area of extradition, by subregion, selected reporting periods**  
 (Composite index)

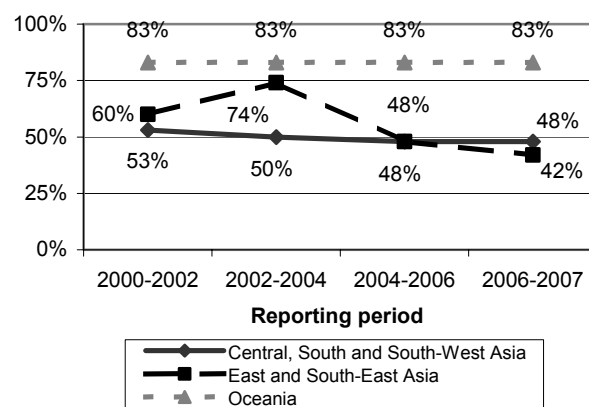
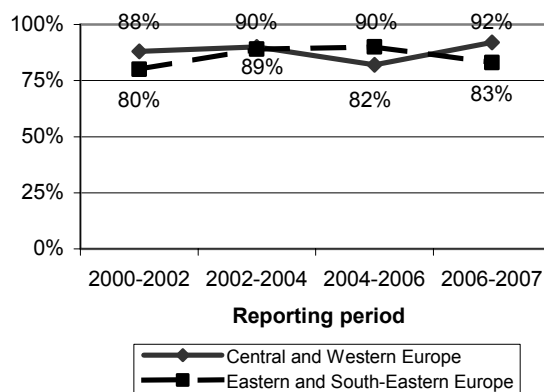


Figure 5

**Europe: measures taken in the area of extradition, by subregion, selected reporting periods**  
(Composite index)



### III. Mutual legal assistance

22. At its twentieth special session, the General Assembly recommended that States should ensure that their domestic legislation enabled them to implement article 7 (mutual legal assistance) of the 1988 Convention and take specific steps to facilitate mutual legal assistance, such as the sharing of information on competent national authorities and the review of domestic laws and procedures in connection with mutual legal assistance.

#### A. Competent national authorities

23. Since the entry into force of the 1988 Convention, UNODC has been collecting and publishing a list of competent national authorities under article 7 of the 1988 Convention. As at 17 September 2007, States or dependent territories had provided updated information on 189 competent authorities for mutual legal assistance. That information is currently available online in a secure website (<http://www.unodc.org/compauth>). In 2006, UNODC released the Mutual Legal Assistance Request Writer Tool, which assists criminal justice practitioners around the world in drafting correct and effective mutual legal assistance requests, thereby significantly enhancing international cooperation among States. The Request Writer Tool can be downloaded from a secure UNODC website (<http://www.unodc.org/mla>).

#### B. Legislation permitting mutual legal assistance

24. Globally, the rate of responding States that reported that they had legislation permitting mutual legal assistance has increased throughout the reporting periods, to 90.4 per cent in the fifth reporting period. The figure was 81 per cent in the fourth period, 82 per cent in the third period, 79 per cent in the second period and

77 per cent in the first period. This is a welcome increase and a figure that is similar to the situation for extradition. Several Member States indicated that they did not have such legislation in place: Bangladesh, Ecuador, Eritrea, Mongolia, Nepal, Sao Tome and Principe, Sri Lanka and Turkey. Two Member States did not reply to the question: Montenegro and Republic of Korea.

25. When adopting legislation, States are invited to avail themselves of the UNODC model law on mutual legal assistance. In addition, new forms of mutual legal assistance have recently been introduced in new conventions, such as the provisions on asset recovery in the United Nations Convention against Corruption (General Assembly resolution 58/4, annex).

### **C. Bilateral and multilateral agreements**

26. The analysis of the replies concerning bilateral and multilateral treaties throughout the reporting periods shows that the figures for mutual legal assistance have grown steadily. Globally, in the fifth reporting period 80.9 per cent of all States had entered into bilateral agreements and 66.6 per cent had entered into multilateral ones. These figures were 73 per cent and 63 per cent in the fourth reporting period, 80 per cent and 67 per cent in the third reporting period and 70 per cent and 60 per cent in the second reporting period.<sup>7</sup>

### **D. Obstacles to mutual legal assistance**

27. States reported applying similar grounds for refusal to execute mutual legal assistance requests as those applied in cases of extradition, in particular difficulties resulting from legal differences, procedural requirements, protection of bank secrecy, protection of national interests, translation and delays. An encouraging development was reported concerning dual criminality: this requirement could be waived when assistance did not involve coercive means, or could be considered on the basis of the underlying conduct rather than the specific offence. As was the case for extradition, statistics are also lacking and only 47.4 per cent of the replying States reported that statistics on requests for mutual legal assistance were available.

### **E. Conclusions**

28. While most States have adopted legislation and entered into bilateral and multilateral treaties on mutual legal assistance in drug trafficking cases and many have revised their procedures since the special session of the General Assembly, it is difficult to assess the rate of implementation of those provisions. The overall situation remained similar in the fifth reporting period to that reported in the previous periods.

29. The levels of implementation of measures to achieve the General Assembly objectives in the area of mutual legal assistance have steadily increased globally, although the degree of variance among different subregions points to different

<sup>7</sup> During the first reporting period, Member States were requested to respond to a different question.

trends. At the regional level, the rates were lowest in Asia and Africa in all the reporting cycles (see figures 6-10). Some regional developments were achieved through institutionalizing cooperation, such as the creation of Eurojust in 2002.

Figure 6

**All regions: measures taken in the area of mutual legal assistance, selected reporting periods**  
(Composite index)

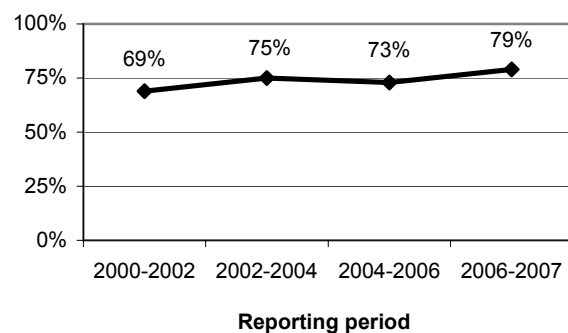


Figure 7

**Africa and the Middle East: measures taken in the area of mutual legal assistance, by subregion, selected reporting periods**  
(Composite index)

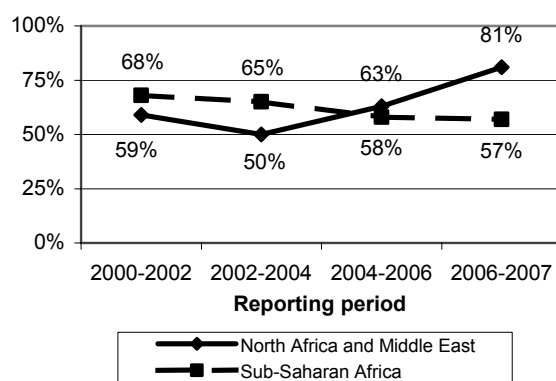


Figure 8

**Americas: measures taken in the area of mutual legal assistance, by subregion, selected reporting periods**  
(Composite index)

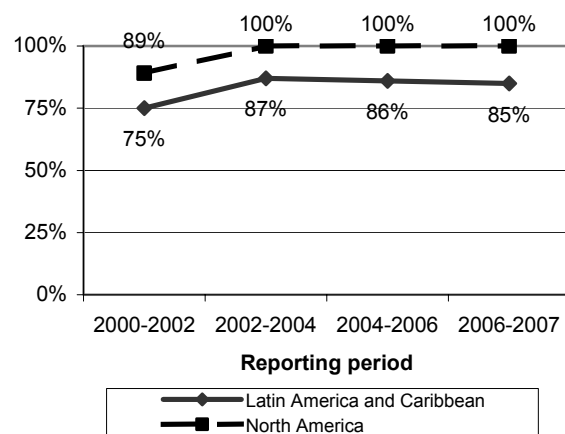


Figure 9

**Asia and Oceania: measures taken in the area of mutual legal assistance, by subregion, selected reporting periods**  
(Composite index)

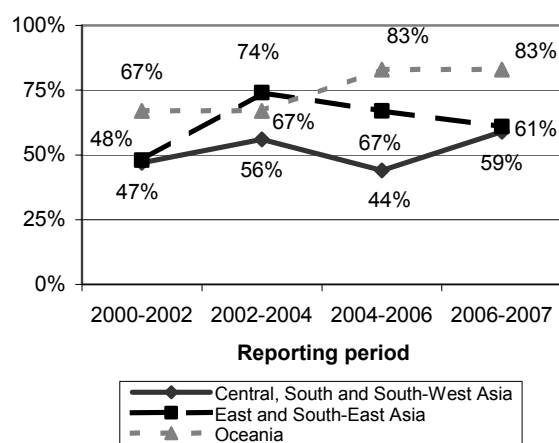
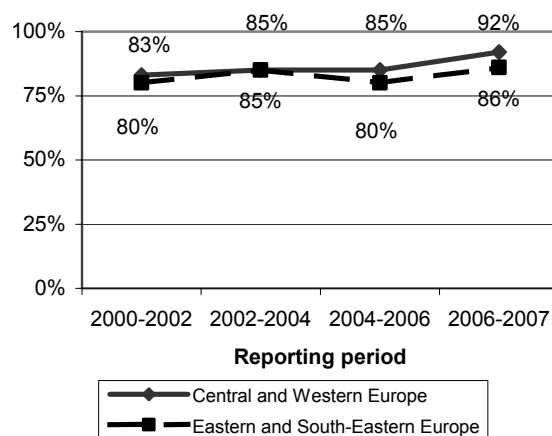


Figure 10

**Europe: measures taken in the area of mutual legal assistance, by subregion, selected reporting periods**  
(Composite index)



#### IV. Transfer of proceedings

30. The recommendations of the General Assembly at its twentieth special session and the 1988 Convention encouraged States to consider enacting legislation to transfer or receive proceedings in criminal matters and to take other steps to facilitate the transfer of proceedings. Article 8 of the 1988 Convention obliges the parties to the Convention to consider “the possibility of transferring to one another proceedings for criminal prosecution of offences established in accordance with article 3, paragraph 1, in cases where such transfer is considered to be in the interests of a proper administration of justice”, but it does not give further direction on instances where transfer of proceedings may be requested.<sup>8</sup>

<sup>8</sup> The European Convention on the Transfer of Proceedings in Criminal Matters (United Nations, *Treaty Series*, vol. 1137, No. 17825) provides such examples. Under article 8, paragraph 1, of that Convention, a contracting State may request another contracting State to take proceedings in one or more of the following cases: “if the suspected person is ordinarily resident in the requested State; if the suspected person is a national of the requested State or if that State is his State of origin; if the suspected person is undergoing or is to undergo a sentence involving deprivation of liberty in the requested State; if proceedings for the same or other offences are being taken against the suspected person in the requested State; if it considers that transfer of the proceedings is warranted in the interests of arriving at the truth and in particular that the most important items of evidence are located in the requested State; if it considers that the enforcement in the requested State of a sentence if one were passed is likely to improve the prospects for the social rehabilitation of the person sentenced; if it considers that the presence of the suspected person cannot be ensured at the hearing of proceedings in the requesting State and that his presence in person at the hearing of proceedings in the requested State can be ensured; if it considers that it could not itself enforce a sentence if one were passed, even by having recourse to extradition, and that the requested State could do so”.



## **A. Legislation permitting transfer of proceedings**

31. Of the responding Member States, 50.4 per cent reported that they had enacted legislation permitting or facilitating transfer of proceedings, which constitutes a slight increase in comparison with the previous reporting period (50 per cent). Throughout the first three reporting periods, the figure remained at 46-47 per cent.

## **B. Bilateral and multilateral agreements**

32. Globally, 26.6 per cent of the States responding had entered into bilateral agreements on transfer of proceedings and 29.5 per cent had entered into multilateral agreements. These figures were 22 per cent and 26 per cent in the fourth reporting period, 25 per cent and 33 per cent in the third reporting period and 18 per cent and 23 per cent in the second reporting period.<sup>9</sup>

33. As in previous reporting periods, out of all the areas of judicial cooperation the fewest number of States had enacted legislation, entered into treaties or revised their legislation on the transfer of proceedings. The availability of data was also even lower than in other areas. One Member State provided information on the grounds for refusal of a request through the application of the rule of *ne bis in idem* (i.e. no legal action can be instituted twice for the same offence).

34. The transfer of proceedings should be considered as an alternative measure when a country does not extradite its nationals and has no legal basis for the prosecution of the offender. As such, it is considered a complementary, and not a primary, measure, which could account for the low levels of implementation.

35. The rate of implementation of measures to achieve the General Assembly objectives in the transfer of proceedings increased between 1998 and 2007 at the global level, although it varied among different subregions and cycles (see figures 11-15).

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<sup>9</sup> During the first reporting period, Member States were requested to respond to a different question.

Figure 11  
**All regions: measures taken in the area of transfer of proceedings, selected reporting periods**  
 (Composite index)

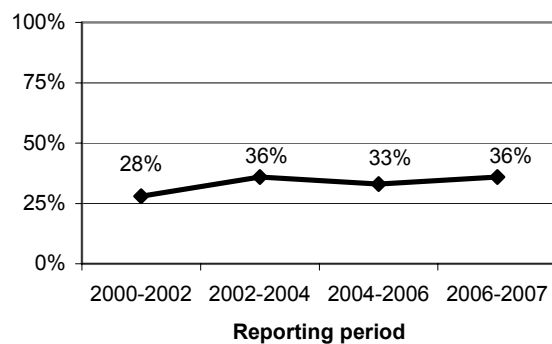


Figure 12  
**Africa and the Middle East: measures taken in the area of transfer of proceedings, by subregion, selected reporting periods**  
 (Composite index)

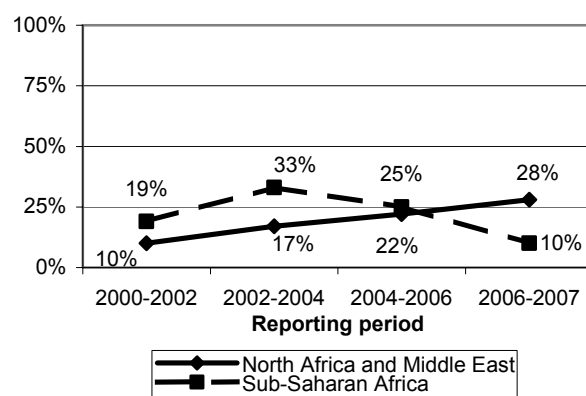


Figure 13

**Americas: measures taken in the area of transfer of proceedings, by subregion, selected reporting periods**  
(Composite index)

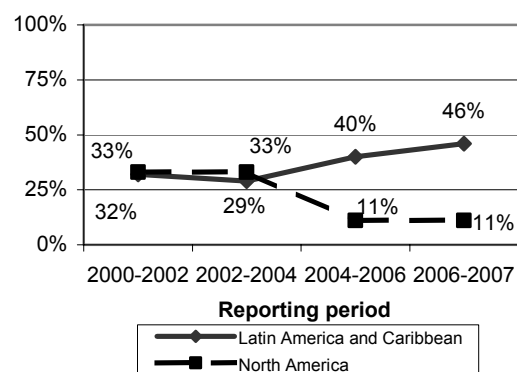


Figure 14

**Asia and Oceania: measures taken in the area of transfer of proceedings, by subregion, selected reporting periods**  
(Composite index)

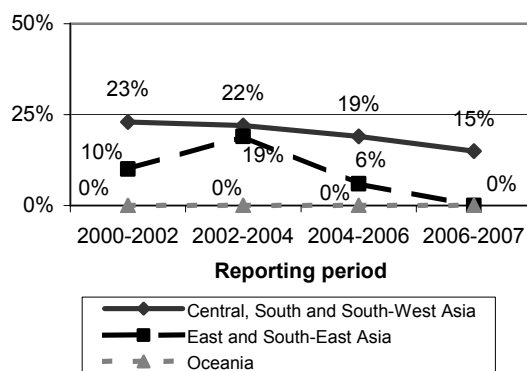
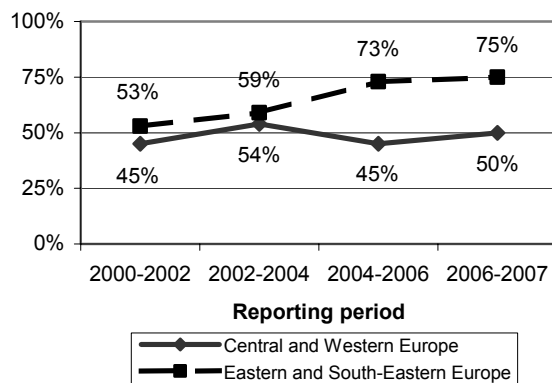


Figure 15

**Europe: measures taken in the area of transfer of proceedings, by subregion, selected reporting periods**  
(Composite index)



## V. Law enforcement cooperation and exchange of information

36. With respect to law enforcement and exchange of information, the General Assembly at its twentieth special session encouraged States to consider developing or expanding programmes for the exchange of law enforcement personnel and to take other steps, where appropriate, to enhance cooperation between law enforcement agencies.

### A. Exchange programmes

37. A total of 77.1 per cent of States responding in the fifth reporting period had instituted exchange programmes with other States, in many cases on the basis of bilateral and multilateral agreements and arrangements made within regions or subregions; this figure was similar to those of the second, third and fourth reporting periods (78, 76 and 78 per cent, respectively). Many States had agreed to the exchange of police and drug liaison officers with other States.

38. Italy reported on training programmes carried out together with Brazil, Cape Verde and the Russian Federation in 2006, and with Bulgaria and Peru in 2007. In order to exchange updated information on drug matters, Myanmar has established monthly field-level meetings of officers (contact points) and biannual cross-border meetings at the senior and middle levels with all of its neighbouring countries. Belarus reported that the Collective Security Treaty Organization had decided to create a single database for information on trafficking in illicit narcotic drugs, psychotropic substances and precursors. The Economic Community of West African States organized regular meetings of national drug control coordinators. Many States reported that they had participated in exchange of information in the framework of regional organizations, such as police organizations, customs networks etc.

## **B. Information-sharing**

39. A total of 73.3 per cent of the responding States reported that they had shared with other States information on criminal investigation techniques and criminal intelligence about the activities of individuals or groups. This is lower than the rate in previous reporting periods (78 per cent during the third and fourth periods). Many States again provided examples of such cooperation and reported that drug liaison officers played a major role in exchange of information (European Police Office (Europol)). Several States reported that they had shared Web-based access to different databases with other countries, such as the automated electronic search facility, the Interpol database on wanted persons, stolen vehicles and stolen works of art (non-European Union countries); the Schengen Information System, a database concerning certain classes of persons and property in the Schengen area; and the automated fingerprint identification system "Eurodac", for the electronic transmission of fingerprints and photographs among European Union countries.

## **C. Establishment of specialized units**

40. Most of the responding States had established specialized units for investigating drug trafficking cases (74.2 per cent). This is higher than the rates reported in the third and fourth cycles (71 and 74 per cent, respectively), but lower than the rate reported in the second cycle (79 per cent). In most countries, these specialized units had representatives from police or customs, and in one case (Jamaica) mention was made of the inclusion of an airport team. Specialized units had also been established at the regional level. Europol reported that in 2003, the European Joint Unit on Precursors had been established as a multinational, multidisciplinary operational unit to investigate serious criminal activity in the field of precursor chemicals.

## **D. Technical cooperation**

41. Most States had also enhanced technical cooperation, training and human resource development for law enforcement personnel (80.9 per cent). This figure was similar to those reported in previous reporting periods (83 per cent in the fourth period, 87 per cent in the third and 77 per cent in the second). In all regions, at least two thirds of States had enhanced cooperation and training in that area.

## **E. Use of modern communication technologies**

42. Most of the replying States reported that they had made use of modern communication technologies (83.8 per cent). This figure was higher than in previous reporting periods: 83 per cent in the fourth, 80 per cent in the third, 78 in the second and 65 per cent in the first reporting period. This was an important increase as the use of modern technologies allows for faster communication between competent national authorities and enables reaction in real time.

43. Interpol reported that its global police communications system (I-24/7) has enabled police to exchange crucial data quickly and securely. The system connects

the Interpol General Secretariat in Lyon, France, national central bureaux in member countries and regional offices, creating a global network for the exchange of police information and providing law enforcement authorities in member countries with instant access to the databases and other services of Interpol. The I-24/7 system was created in 2003 and is connected to all 186 Interpol members.

## **F. Other measures**

44. Most of the responding States had taken other measures to strengthen cooperation with law enforcement agencies of other States (81.9 per cent), an increase from the last reporting period (75 per cent). Such measures included, for example, joint task forces with other countries.

45. One example provided by Interpol included many of the forms of cooperation mentioned above. In December 2000, Project Ecstasy Deluxe was initiated by the General Secretariat of Interpol, targeting a group of offenders who were smuggling methylenedioxymethamphetamine (MDMA), commonly known as “ecstasy”, from Europe to the United States of America in postal parcels and using express courier mail services. The investigation began with a tip-off from a European police service, which was then passed to the United States. Several weeks later, the United States started reporting back to Interpol following 12 separate seizures of “ecstasy” from Belgium, France and Luxembourg. This, in turn, enabled the United States to initiate several national controlled deliveries, which resulted in a number of arrests. An investigation in Illinois yielded a photocopy of a Belgian passport, which was communicated to Interpol directly. Interpol matched the passport number with a record in their database provided by Belgium several years earlier, when they reported the theft of a batch of blank passports. Interpol also found a file from the Interpol office in Berne concerning Dominican nationals involved in a cocaine transaction in Geneva. One of the protagonists was associated to a French national who had used the Belgian passport to lodge at a hotel in Geneva. Over the next eight months, Interpol carried out a wide range of activities, from controlled deliveries of “ecstasy” to identifying the financial transactions between the United States and Europe. During this time, Interpol held two operational working group meetings, which included United States federal prosecutors, investigators and analysts from seven different countries. Interpol linked individual suspects, telephone numbers, bank robberies, assault charges, embezzlement, passport fraud and addresses to numerous seemingly unrelated criminal files in their database. By September 2001, every member of the trafficking organization, which had cells and suppliers in Belgium, Canada, France, Luxembourg, Switzerland and the United States, had been arrested. All of them were successfully prosecuted in the courts and some were extradited. The operation was driven and initiated by the General Secretariat of Interpol. Every day Interpol members communicate with each other via the I-24/7 system to follow up on post-seizure leads and to exchange fingerprints, car numbers, passport alerts etc.

46. Some countries utilize police cooperation agreements to enhance cooperation. Interpol provides a model agreement for cooperation on its website ([www.interpol.int](http://www.interpol.int)).

## G. Conclusions

47. In conclusion, law enforcement cooperation appears to have developed in all regions, although the reported figures remain similar to those of the previous reporting periods. However, cooperation at the international level is lacking. Some countries appear to be involved in such programmes on a more regular basis than others. The levels of implementation of measures to achieve the General Assembly objectives in the area of law enforcement cooperation slightly increased between 1998 and 2007 (see figures 16-20).

Figure 16

**All regions: measures taken in the area of law enforcement cooperation, selected reporting periods**  
(Composite index)

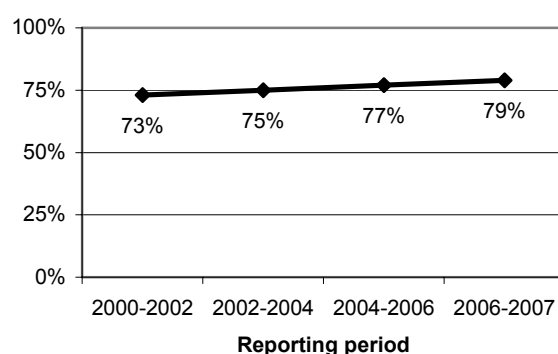


Figure 17

**Africa and the Middle East: measures taken in the area of law enforcement cooperation, by subregion, selected reporting periods**  
(Composite index)

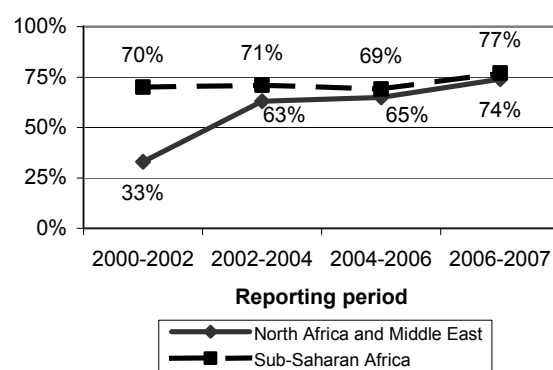


Figure 18

**Americas: measures taken in the area of law enforcement cooperation, by subregion, selected reporting periods**  
(Composite index)

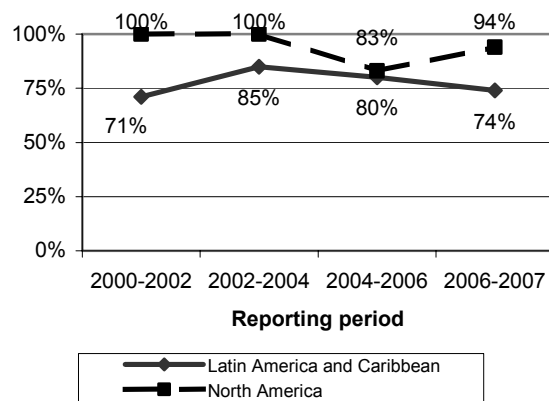


Figure 19

**Asia and Oceania: measures taken in the area of law enforcement cooperation, by subregion, selected reporting periods**  
(Composite index)

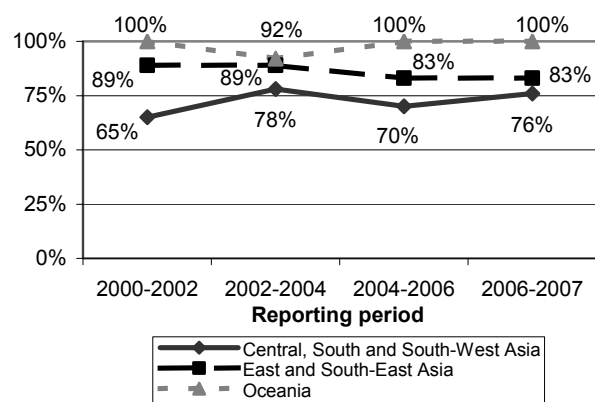
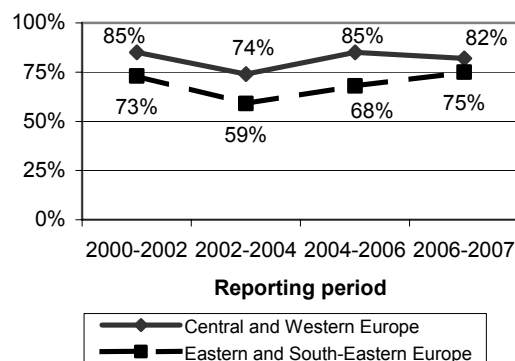




Figure 20

**Europe: measures taken in the area of law enforcement cooperation, by subregion, selected reporting periods**  
(Composite index)



## VI. Controlled delivery

48. Article 1 (g) of the 1988 Convention defines “controlled delivery” as “the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, substances in Table I and Table II annexed to this Convention, or substances substituted for them, to pass out of, through or into the territory of one or more countries, with the knowledge and under the supervision of their competent authorities, with a view to identifying persons involved in the commission of offences established in accordance with article 3, paragraph 1, of the Convention”. Further guidance is provided in article 11 of the Convention. At its special session, the General Assembly recommended that States should ensure that their legislation, procedures and practices allowed for the use of the technique at both the national and international levels and should consider entering into agreements with other States to facilitate the use of controlled deliveries.

### A. Legislation permitting controlled delivery

49. Most States responded that they had provided for the use of controlled delivery in their domestic legal system (82.8 per cent, compared with 84 per cent, 80 per cent, 74 per cent and 67 per cent in the fourth and previous reporting periods respectively). Less than half of the respondents provided data on the number of controlled deliveries carried out during the reporting period; for those which did provide statistical data, the numbers varied from 1 to 66 controlled deliveries per year.

## B. Obstacles to controlled delivery

50. Some States reported practical difficulties encountered in the course of controlled deliveries, including differences between legal provisions in different States, difficulties in identifying the links between local and international criminal groups, differences in legal requirements and different authorities responsible for conducting controlled deliveries. Italy mentioned encountering difficulties with States that did not have legal provisions providing for the use of the technique. Afghanistan mentioned technical difficulties and the low capacity of its law enforcement.

51. In conclusion, although the technique of controlled delivery was widely used by States in all regions, the percentage of States having legislation permitting its use remained largely the same as in the previous reporting period. It is clearly an area in which many States still have difficulties in performing effectively. Further attention is required to ensure that the technique is used efficiently.

52. The levels of implementation of measures to achieve the General Assembly objectives in the area of controlled delivery seem to be generally increasing. This is true for most subregions, although in some there was a major increase in the second reporting period, followed by a small decrease (see figures 21-25).

Figure 21

**All regions: measures taken in the area of controlled delivery, selected reporting periods**  
(Composite index)

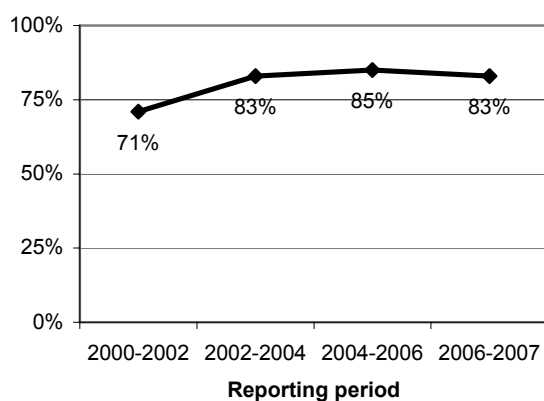


Figure 22

**Africa and the Middle East: measures taken in the area of controlled delivery, by subregion, selected reporting periods**  
(Composite index)

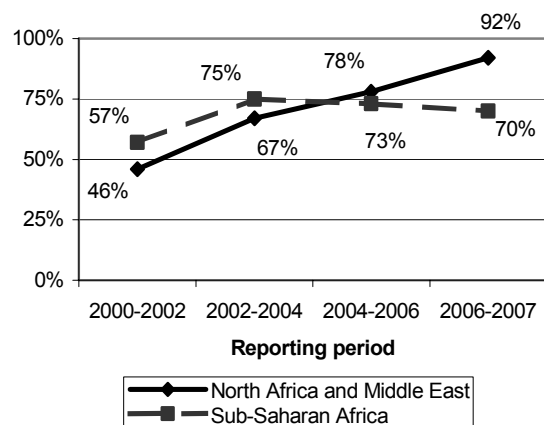


Figure 23

**Americas: measures taken in the area of controlled delivery, by subregion, selected reporting periods**  
(Composite index)

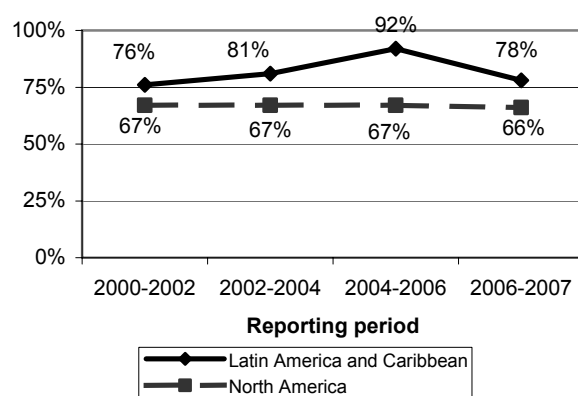


Figure 24  
**Asia and Oceania: measures taken in the area of controlled delivery, by subregion, selected reporting periods**  
 (Composite index)

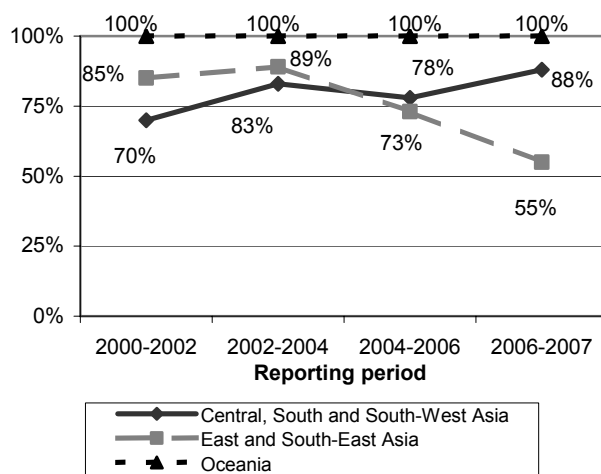
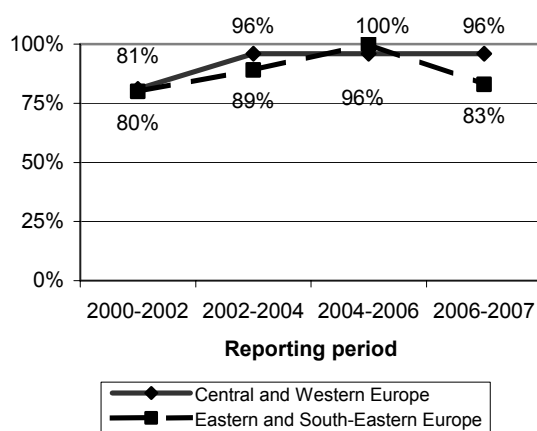


Figure 25  
**Europe: measures taken in the area of controlled delivery, by subregion, selected reporting periods**  
 (Composite index)



## VII. Trafficking in drugs by sea

53. In the area of trafficking in drugs by sea, which is regulated under article 17 of the 1988 Convention, the General Assembly recommended at its special session that States should review national legislation to ensure that the legal requirements of the 1988 Convention, such as the identification of competent national authorities, the maintenance of ship registries and the establishment of adequate law

enforcement powers, were met. The Assembly also recommended that Member States should facilitate cooperation between competent national authorities and promote regional cooperation, as well as train law enforcement personnel in maritime law enforcement related to drugs.

#### **A. Competent national authorities**

54. Since the entry into force of the 1988 Convention, UNODC has been collecting and publishing a list of competent authorities under article 17 of the 1988 Convention. Since 2001, that list has been issued and disseminated to all competent authorities on a quarterly basis, both electronically and in hard copy. As at 19 September 2007, States and independent territories had provided updated information on 138 competent authorities for receiving and sending requests relating to trafficking by sea. In December 2006, UNODC made that information available on a secure website (<http://www.unodc.org/compauth/index.html>).

#### **B. Legislation permitting cooperation**

55. Among the States responding in the fifth reporting period to the part of the questionnaire on drug trafficking by sea, 67.6 per cent, or 71 States (as compared with 66 per cent, or 59 States, in the fourth reporting period, 50 per cent, or 44 States, in the third, 51 per cent in the second and 65 in the first) had adopted legislation permitting cooperation with other States in connection with countering trafficking in illicit drugs by sea.

#### **C. Bilateral and multilateral agreements**

56. A total of 37.1 per cent of responding States had concluded bilateral or multilateral agreements on trafficking by sea. This figure is higher than those reported in the two previous reporting periods (37 and 31 per cent). The major multilateral agreements cited were the Council of Europe Agreement on Illicit Traffic by Sea, implementing article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,<sup>10</sup> and a number of international customs cooperation treaties.

57. Information on requests for assistance in relation to trafficking by sea was provided by 21 States: Belgium, Bosnia and Herzegovina, Costa Rica, Czech Republic, Ecuador, Finland, France, Haiti, Hungary, Japan, Lithuania, Malta, Moldova, New Zealand, Portugal, Romania, South Africa, Spain, the former Yugoslav Republic of Macedonia, Turkey and United States. The number of requests executed annually in each country ranged from 1 to 120. According to information provided by Interpol, the number of drug seizures at sea was 229 in 2004 and 171 in 2005.

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<sup>10</sup> Council of Europe, *European Treaty Series*, No. 156.

## D. Conclusions

58. In conclusion, there was a significant increase in the percentage of countries having legislation permitting cooperation in the area of combating drug trafficking by sea and in those entering into bilateral or multilateral agreements, although much remains to be done. The complex nature of operations on the high seas may have contributed to the low levels of implementation and requires the attention of Member States.

59. The levels of implementation of measures to achieve the General Assembly objectives in the area of trafficking by sea have increased globally between 1998 and 2007, although this varies between different subregions and reporting periods. This may be because of differences in the participation of, in particular, landlocked countries in the five reporting periods (see figures 26-30).

Figure 26

**All regions: measures taken in the area of drug trafficking by sea, selected reporting periods**  
(Composite index)

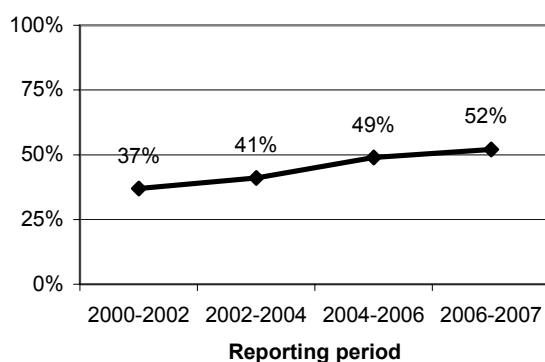


Figure 27

**Africa and the Middle East: measures taken in the area of drug trafficking by sea, by subregion, selected reporting periods**  
(Composite index)

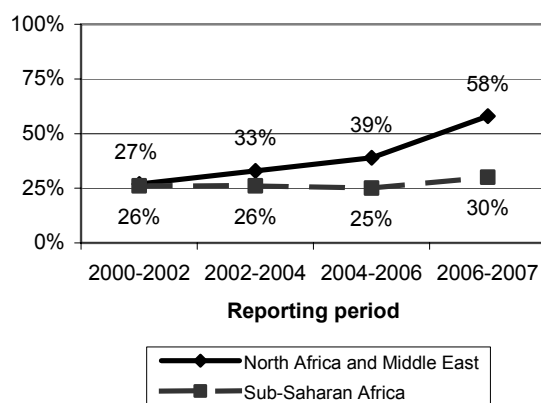


Figure 28

**Americas: measures taken in the area of drug trafficking by sea, by subregion, selected reporting periods**  
(Composite index)

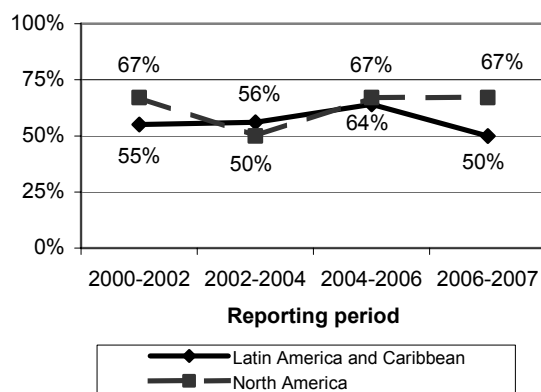


Figure 29

**Asia and Oceania: measures taken in the area of drug trafficking by sea, by subregion, selected reporting periods**  
(Composite index)

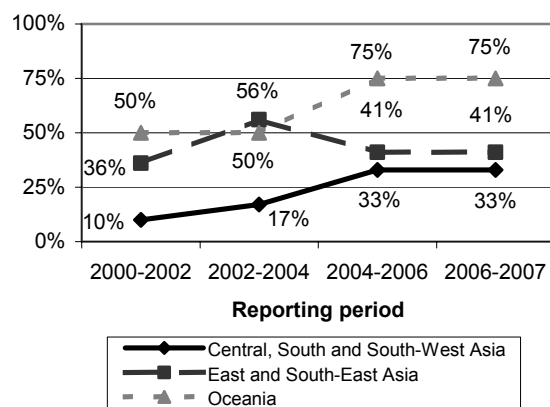
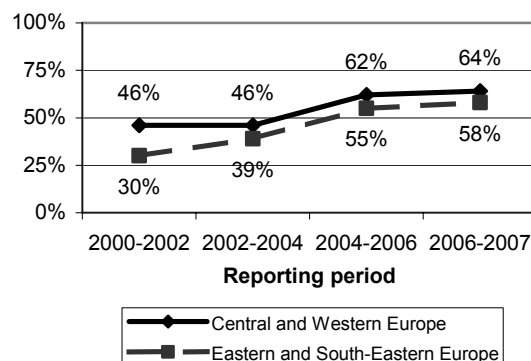


Figure 30

**Europe: measures taken in the area of drug trafficking by sea, by subregion, selected reporting periods**  
(Composite index)



## VIII. Protection of judges, prosecutors, surveillance personnel, law enforcement officers and witnesses

60. At its twentieth special session, the General Assembly recommended that States should consider designing complementary measures to enhance further the implementation of the 1988 Convention in the area of the protection of judges, prosecutors and other members of surveillance and law enforcement agencies and witnesses, in cases that involved trafficking in illicit drugs, whenever the circumstances so warranted.

61. Most States reported that they had legislation, rules or procedures for the protection of judges, prosecutors, surveillance personnel, law enforcement officers and witnesses in place (79 per cent or 83 Member States). This was a significant increase compared with the figures reported in the previous reporting periods (69, 69 and 63 per cent in the fourth, third and second reporting periods respectively). For example, Lithuania is now considering a new law on witness protection. It is intended that the new law will, inter alia, address the issues of protection of persons serving custodial sentences and the provision of financial support to such persons. Angola mentioned that a new penal code currently under review would strengthen procedures on the protection of witnesses.

62. In 2005, UNODC organized an expert group meeting on witness protection in the justice system.<sup>11</sup> The expert group identified the legal obstacles in implementing and using measures for witness protection throughout the criminal justice process. It developed 60 best practice recommendations to address both the operational and the legal challenges to the effective use of available measures to protect witnesses. It also looked at cross-border operational support and international cooperation, including the international relocation of witnesses. UNODC also prepared a model law on witness protection for civil law countries and a model agreement on

<sup>11</sup> See <http://www.unodc.org/newsletter/en/200504/page004.html> and <http://www.unodc.org/unodc/en/legal-tools/Model.html>.



cooperation in witness protection and relocation, and is in the process of publishing a good practice guide for the establishment and operation of specialized witness protection programmes. The good practice guide will be made available to relevant law enforcement and judicial authorities worldwide.

63. While most States reported having legislation, rules or procedures for the protection of judges, prosecutors, surveillance personnel, law enforcement officers and witnesses, regional disparities remain. Compared with the previous reporting periods, more States had enacted legislation and revised their procedures on the protection of witnesses.

64. The levels of implementation of measures to achieve the General Assembly objectives on protection of witnesses have increased globally, with a degree of variance between different subregions and reporting periods. This could be the result of the selection of questions that relate exclusively to the review of measures. Furthermore, different States may have reviewed different measures during different reporting periods. In addition, question 53 of the biennial reports questionnaire, relating to existing measures, was not included in the first reporting cycle and is therefore not reflected in the graphs (see figures 31-35).

Figure 31

**All regions: measures taken in the area of protection, selected reporting periods**  
(Composite index)

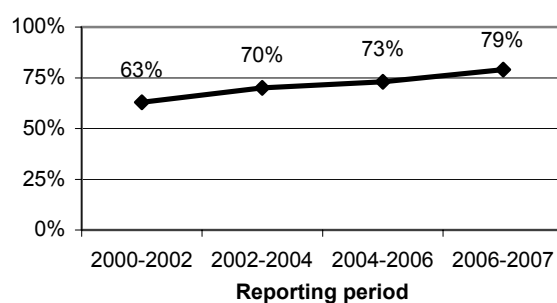


Figure 32

**Africa and the Middle East: measures taken in the area of protection, by subregion, selected reporting periods**  
(Composite index)

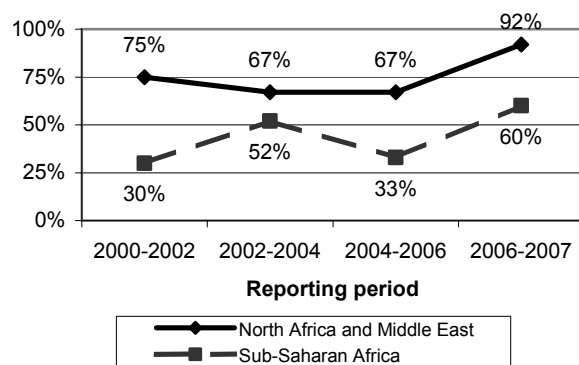


Figure 33  
**Americas: measures taken in the area of protection, by subregion, selected reporting periods**  
 (Composite index)

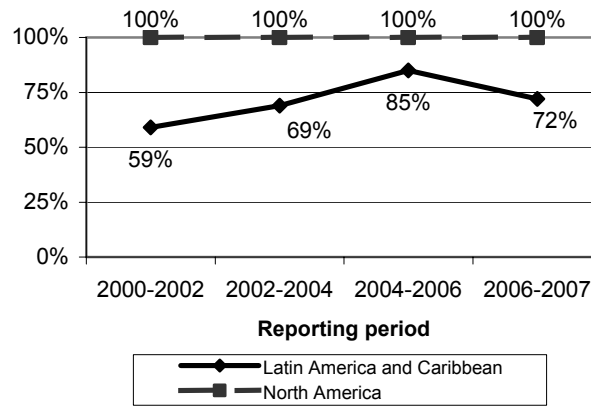


Figure 34  
**Asia and Oceania: measures taken in the area of protection, by subregion, selected reporting periods**  
 (Composite index)

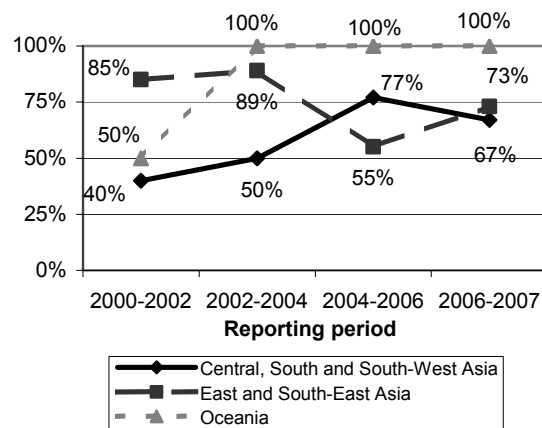
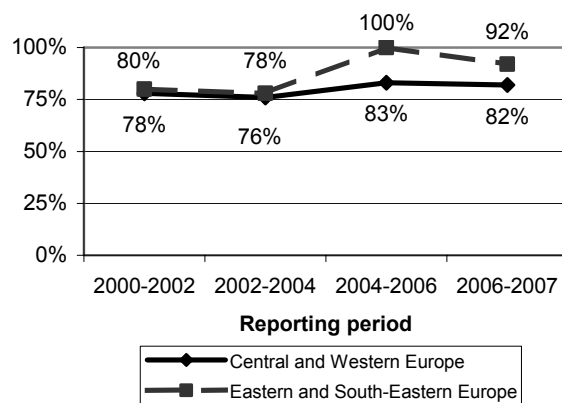


Figure 35

**Europe: measures taken in the area of protection, by subregion, selected reporting periods**  
(Composite index)



## IX. Conclusions and recommendations

### A. Conclusions

65. In the fifth reporting period, States have made some progress in the implementation of the provisions of the 1988 Convention and of the recommendations relating to judicial cooperation made by the General Assembly at its twentieth special session. This was mostly achieved by adopting legislation and entering into bilateral and multilateral agreements in the different areas. Nonetheless, a comparison of the information provided in the replies in the fifth reporting cycle with those provided in previous reporting periods indicates that progress during the last reporting period has been modest (see figures 36-40).

66. Since the twentieth special session, in 1998, many States have revised their legislation, rules or procedures to implement the recommendations of the General Assembly at that session. The measures relating to extradition, mutual legal assistance, controlled delivery and law enforcement cooperation have had a higher rate of implementation globally than those relating to transfer of proceedings, trafficking in drugs by sea and protection of judges, prosecutors, surveillance personnel, law enforcement officers and witnesses, although the percentage of States that have legislation to facilitate cooperation in combating trafficking by sea has increased significantly. While the legal and procedural framework exists in many States, numerous difficulties remain in the implementation of all the measures.

67. Legal, procedural and technical difficulties remain with respect to the execution of requests for judicial cooperation, including extradition. Differences in legal systems, the non-extradition of nationals, translation problems and delays remain causes of concern. In most countries, procedures concerning the protection of victims have yet to be revised.

Figure 36  
**All regions: overall measures for increasing judicial cooperation, selected reporting periods**  
 (Composite index)

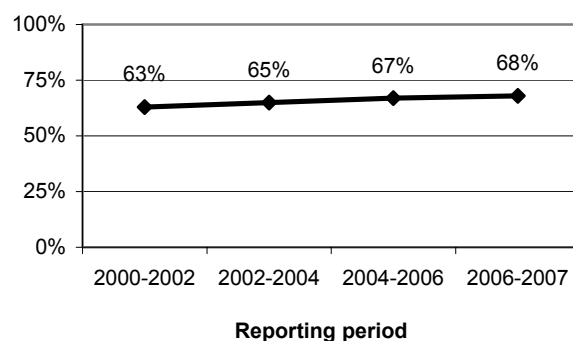


Figure 37  
**Africa and the Middle East: overall measures for increasing judicial cooperation, by subregion, selected reporting periods**  
 (Composite index)

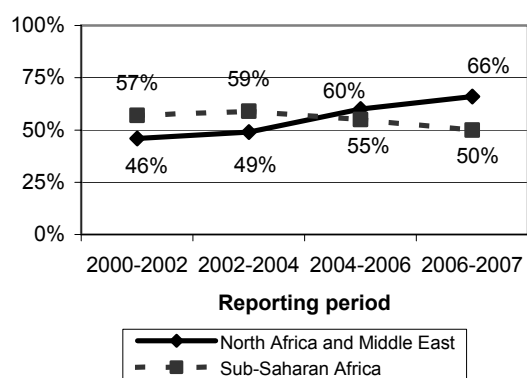


Figure 38

**Americas: overall measures for increasing judicial cooperation, by subregion, selected reporting periods**  
(Composite index)

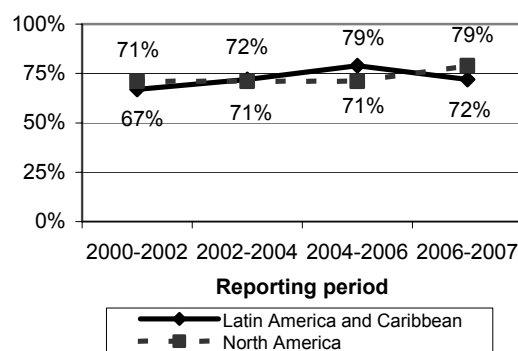


Figure 39

**Asia and Oceania: overall measures for increasing judicial cooperation, by subregion, selected reporting periods**  
(Composite index)

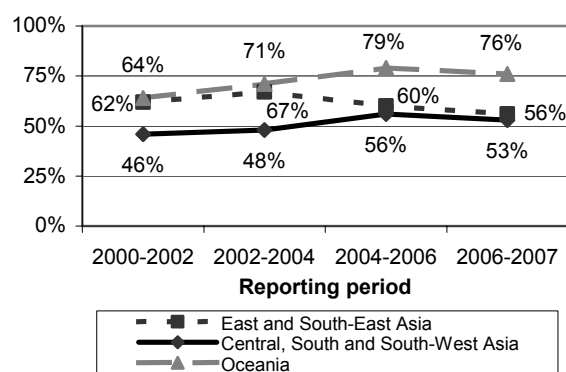
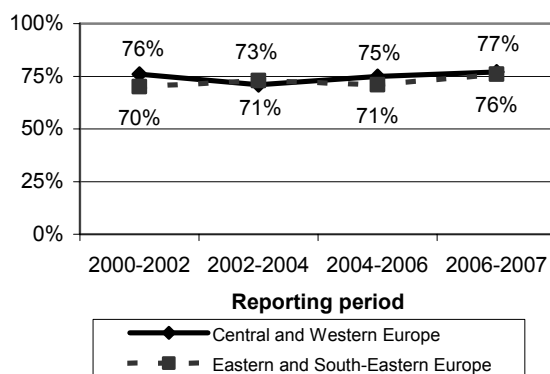


Figure 40

**Europe: overall measures for increasing judicial cooperation, by subregion, selected reporting periods**  
(Composite index)



## B. Recommendations

68. The following recommendations, aimed at enhancing judicial cooperation, are brought to the attention of the Commission on Narcotic Drugs:

(a) States that have not yet done so should adopt legislation permitting extradition, mutual legal assistance and controlled delivery and ensure that those laws are flexible and regularly reviewed to keep them up to date;

(b) States should, where they do not extradite their own nationals on the grounds of nationality, submit the case to their competent national authorities for the purpose of prosecution;

(c) States may consider extradition on the condition that convicted persons will be returned to their jurisdiction to serve their sentence;

(d) Where the death penalty is an impediment to extradition, guarantees could be sought that, if imposed, it would not be carried out;

(e) States should consider revising their legislation and, when necessary, reform and simplify their procedures on extradition, in particular as regards dual criminality (to be interpreted as criminalizing the conduct underlying the offence), the definition of political offences and the possibility of simplifying surrender procedures, without prejudice to the rights of suspected offenders;

(f) States are encouraged to show flexibility in applying the formal conditions to extradition and mutual legal assistance, for example with respect to languages in which a request would be accepted;

(g) States should, in particular, adopt legislation or procedures to enable transfer of proceedings and cooperation in countering trafficking in drugs by sea;

(h) States should consider adopting legislation to enable protection of witnesses and legislation or procedures to enable the protection of judges, prosecutors, surveillance personnel and law enforcement officers;

(i) In order to enhance judicial cooperation, States should consider entering into, renegotiating or extending bilateral and multilateral treaties in the different fields of judicial cooperation, based on, when appropriate, the relevant model treaties;

(j) Member States should consider the use of modern technology to speed up and improve results in casework and ensuring that competent national authorities communicate with their foreign counterparts from the outset of the request process. Governments are invited to make increased use of UNODC online tools for that purpose and of the global police communications system of Interpol (I/24-7);

(k) States should consider providing UNODC with copies of existing model forms, guidelines or manuals for extradition, mutual legal assistance, transfer of proceedings and other types of judicial cooperation, or links to websites containing such information, to enable the sharing of such tools through the UNODC secure website;

(l) States should consider making use of model legislation and legislative guides, best practice guidelines in extradition and mutual legal assistance casework, as well as other tools developed by UNODC<sup>12</sup> and its partners to train and assist competent authorities in drafting and executing effective requests for judicial cooperation;

(m) When neighbouring States have different legal systems, consideration should be given to building common procedures and practices (such as the European arrest warrant) to enhance mutual legal assistance, extradition and controlled delivery capacities among such States, including, where possible, by the posting of criminal justice liaison personnel abroad;

(n) Consideration should be given to organizing cross-border problem-solving forums and training sessions for judicial cooperation casework practitioners to resolve problems concerning unnecessary delays, postponement or refusal of extradition, mutual assistance, controlled delivery and related requests;

(o) States should consider providing technical support and training to judges and prosecutors involved in judicial cooperation;

(p) States, in particular those along significant drug trafficking routes, should consider establishing joint teams of law enforcement officers dealing with drug trafficking and organized crime;

(q) With respect to controlled delivery, consideration should be given to ensuring that adequate resources are available to facilitate such operations;

(r) States should consider reviewing existing systems in order to improve the sharing of criminal intelligence and to develop cooperation between law enforcement agencies, including through the establishment of joint investigative teams, when necessary;

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<sup>12</sup> See <http://www.unodc.org/unodc/en/legal-tools/Model.html>.

(s) States should consider regularly collecting data on requests for international cooperation and establishing databases to maintain such information in order to allow for the monitoring of the efficiency of their own national systems. This could be done with the assistance of UNODC;

(t) States are encouraged to hold bilateral and multilateral training seminars on international cooperation in order to familiarize themselves with different legal systems and generate more trust between practitioners.

69. For future follow-up and action on the goals of the twentieth special session of the General Assembly, the Commission on Narcotic Drugs is encouraged to initiate a review of the use of the biennial report questionnaires as a possible instrument and mechanism to be used as a tool for data collection, taking into account the lessons learned from the application of the biennial reports questionnaire mechanism, to develop new means of data collection on the implementation of the goals of the twentieth special session of the General Assembly and future actions.

70. In the specific area of judicial cooperation, several specific topics were identified as requiring additional action by Member States:

(a) Extradition: standardized universal mechanisms to facilitate extradition should be discussed and implemented;

(b) Mutual legal assistance: States should be encouraged to adopt a more flexible approach and to provide the widest possible range of assistance, in particular in the case of non-coercive measures;

(c) Controlled delivery: there is a need to further enhance cooperation between States and to develop national capacities in this area, which is currently lacking;

(d) Law enforcement cooperation: information exchange among source, transit and destination countries as well as intergovernmental organizations, should be improved and institutionalized;

(e) Protection: protection of witnesses was identified as a major issue of concern in law enforcement. States should adopt legislation, as well as practical measures, to provide for the protection of witnesses.