



Economic and Social Council

Distr.: General
7 January 2005

Original: English

Commission on Narcotic Drugs

Forty-eighth session

Vienna, 7-14 March 2005

Item 4 of the provisional agenda*

**Follow-up to the twentieth special session
of the General Assembly**

The world drug problem

Third biennial report of the Executive Director

Addendum

Measures to promote judicial cooperation

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* E/CN.7/2005/1.



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 criminal organizations involved in 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 maritime drug law enforcement, measures to enhance the judicial process, such as the protection of witnesses and judicial officers, and other forms of cooperation.

2. The international drug control treaties provide the framework for judicial cooperation. As at 1 December 2004, the treaties enjoyed almost universal adherence. Since the twentieth special session, in 1998, 23 States have become parties to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,¹ bringing the number of parties to 170 States and 1 regional economic integration organization (the European Community); 19 States have become parties to the Single Convention on Narcotic Drugs of 1961² or to that Convention as amended by the 1972 Protocol,³ bringing the number of parties to 180 States; and 18 States have become parties to the Convention on Psychotropic Substances of 1971,⁴ bringing the number of States parties to that Convention to 175.

3. The present report contains a summary and analysis of the replies received from Member States to the third biennial questionnaire concerning progress made towards meeting the objectives set by the General Assembly at its twentieth special session in connection with judicial cooperation. It is the third report in the series and covers the period from June 2002 to June 2004. The first report (E/CN.7/2001/16) covered the period from June 1998 to June 2000 and the second report (E/CN.7/2003/2/Add.3) covered the period from June 2000 to June 2002. Fewer States replied to the questions in the third biennial questionnaire on judicial cooperation (87 States⁵) than to those in the first and second questionnaires. Unless otherwise specified, percentages presented here should be read as percentages of States responding to the third biennial questionnaire. Comparisons have been carried out between percentages of States responding in each reporting period. Cumulative figures have also been used to assess the number of States that have revised, simplified or strengthened procedures in each area since the special session, by reviewing answers to the first, second and third questionnaires or to the second and third questionnaires only when the question was introduced only in the second questionnaire.

II. Extradition

4. Extradition is one of the key forms of judicial cooperation, by which States may secure the rendition of fugitives wanted in their jurisdiction for serious offences, including drug-related offences. Article 6 of the 1988 Convention provides that States may consider the Convention as the legal basis for extradition for the

offences established by it. It also provides that the offences under the Convention shall be considered by States parties as extraditable offences. Under article 6, paragraph 7, of the Convention, parties agree to endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which article 6 applies. Further, the Convention provides that States parties shall seek to conclude bilateral and multilateral agreements on extradition.

5. At its twentieth special session, in its resolution S-20/4 C of 10 June 1998, the General Assembly requested States to take steps to review and if necessary simplify their extradition laws and procedures, including by reviewing legislation; to facilitate cooperation with other States concerning extradition, for example, by informing other States of the relevant competent authorities, by using modern communication technologies and providing other relevant information. Both the 1988 Convention and the measures adopted at the twentieth special session called upon States to remove impediments to extradition, in particular the non-extradition of nationals. States were requested to consider extraditing their nationals for serious drug offences on the agreement that offenders would be surrendered for prosecution but that they could be returned to serve any sentence and to reconsider the other traditional exceptions to extradition.

6. Since September 2002, the United Nations Office on Drugs and Crime (UNODC) has been collecting information from Member States on a voluntary basis on competent authorities designated to receive, respond to and process extradition requests. As at 1 December 2004, the contact information for competent authorities of 115 States or dependent territories had been provided to UNODC (ST/NAR.3/2005/2), including information on specific procedures to be followed in urgent cases. UNODC plans to make available that and other information in order to facilitate practical judicial cooperation to Member States on a secure website. UNODC has also developed a draft model law on extradition to assist Member States in adapting their extradition legislation to support relevant treaties or as a legal basis for extradition in the absence of a treaty.

7. Of the 86 States responding in the second reporting cycle, most (85 per cent) had legislation permitting extradition. However, according to the replies received, the laws of 47 per cent of all States that replied to the third survey precluded or seriously limited the extradition of nationals. From a regional perspective, most States in Europe (65 per cent) reported such restrictions, followed by Africa and Asia with 42 per cent each and the Americas with 31 per cent. Of the States that did preclude or seriously limit extradition of nationals, less than a third (27 per cent) had considered extraditing their nationals for serious drug offences or reconsidered other traditional exceptions to extradition, in particular in cases of serious crime. Asia and Europe, which accounted for most of the replies, had considered that possibility (40 per cent and 36 per cent, respectively). Some States that refused the extradition of nationals in general had provided for an exception if given the assurance that offenders would be sent back to their State of nationality to serve their sentence.

8. When comparing the percentage of States responding that had laws that precluded or limited the extradition of nationals with the first and second reporting periods, there did not seem to have been much progress. During the first reporting period, 48 per cent of the States responding had such laws; during the second reporting period (when more States replied), 52 per cent had such laws. During the

current reporting period, 47 per cent of the States responding had such laws. However, some States had reviewed that exception: Colombia, for example, reported that, since the lifting of the exception in the Constitution, 95 per cent of all requests for extradition related to extradition of nationals for drug offences.

9. During the reporting period, less than one third (31 per cent) of the States responding had reviewed, simplified or otherwise strengthened their procedures in connection with extradition in drug-related cases. That figure is comparable with the one from the two prior reporting periods (32 and 29 per cent during the first and second reporting period, respectively). In Asia, only 14 per cent of States had carried out such a review, while that figure rose to 43 per cent in States in the Americas and to 50 per cent in Oceania (only two States replied from the latter region: Australia and New Zealand). Several States provided information on specific revisions of their legislation relating to extradition. Most States of the European Union had revised or were in the process of revising their procedures to implement the European arrest warrant (as at 1 November 2004, 24 of the 25 European Union member States had implemented the European arrest warrant).⁶ However, when reviewing the replies since the first reporting period, a total of 67 States had revised or reviewed their procedures at least once since the special session.

10. Further, most States had entered into both bilateral and multilateral agreements on extradition (80 per cent and 67 per cent, respectively), Asia and Africa were the regions where fewer States replied positively (bilateral agreements: 23 and 26 per cent, respectively, and multilateral agreements: 30 and 31 per cent, respectively). Many States were parties to a number of bilateral, regional and multilateral treaties and many provided lists of such treaties. Some States reported difficulties during the negotiation, adoption or ratification of the treaties owing to differences between legal systems, the definition of political offences, the definition of extraditable offences, delays in negotiations, especially for multilateral treaties, and delays in formal approval or ratification by legislative bodies.

11. Mexico proposed the easing of the high standard of evidence required by some States and suggested that it should be sufficient to submit the arrest warrant or sentencing document for a request for extradition to be acceptable.

12. When negotiating extradition treaties, more than a third (38 per cent) of States had made use, where appropriate, of the Model Treaty on Extradition. In Africa and Asia, that proportion rose to almost half (47 per cent).

13. One third (34 per cent) of all responding States had developed model forms, guides or manuals on how to make requests for extradition to their States. That figure was close to the one from the first reporting periods (32 and 31 per cent during the first and second reporting period, respectively).

14. Less than half the States (41 per cent or 35 States) reported that statistics were available on extradition requests made, received, executed or refused. The statistics provided showed that some States received and/or sent more requests than others (for example, Colombia, Germany, Mexico, the Russian Federation or Spain where Colombia received 142 requests and sent 1 request in 2002; Germany received 76 and sent 132 in 2003; Spain received 202 and sent 67 in 2003). Other States received and sent fewer requests each year. For example, the following States received less than 20 requests in 2003: Albania 4, Chile 3, Estonia 17, Greece 5, Morocco 6, Nigeria 10, Poland 1, Slovakia 9, South Africa 17, Trinidad and

Tobago 12, and Turkey 3. In most States, the number of requests executed was less than half the number of requests received each year. For example, in the case of Mexico, 47 requests in 2002 and 58 requests in 2003 were received, while 14 and 20 requests were executed in the same years. In 2002, 5 requests were refused and in 2003, 2 requests were refused.

15. The number of refusals of extradition was much lower than the difference between the number of requests sent and those executed, which suggested that such a difference was probably due for the most part to delays and procedural difficulties rather than substantive legal impediments. The reasons for refusal stated in the replies included non-extradition of nationals, lack of dual criminality, statute of limitations periods that had elapsed, political offences and procedural or formal deficiencies in the requests. Other difficulties encountered in the extradition process included lengthy procedures, which could lead to the release of prisoners as a result of the limitation of pre-trial detention, differences between national legal and judicial systems, bureaucratic problems, translation problems, poor quality of judicial management and inadequate knowledge of international treaties on the part of judges, the obsolete nature of some bilateral treaties that were not adapted to drug offences, high standards of evidence required by some States, lack of information from requested to requesting States on the outcome of extradition requests, difficulties in locating accused persons and political problems.

16. In conclusion, legal and practical difficulties remained, even though most States had laws and had entered into bilateral and multilateral treaties providing for extradition of drug offenders and many had revised their legislation since the special session. As regards the non-extradition of nationals and the simplification of the traditional extradition process, the developments in Europe with respect to the European arrest warrant were encouraging. However, as the European arrest warrant would only apply between European Union member States, the difficulty would still remain with respect to the extradition of nationals of the Union to other States. It seemed that a small number of States were very active in the field, while most implemented their legislation with respect to extradition much less frequently. While the low number of refusals reported was also encouraging, many difficulties remained with regard to differences between legal systems, delays, procedural and language problems.

III. Mutual legal assistance

17. At its twentieth special session, the General Assembly recommended that States 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 authorities, and the review of domestic laws and procedures in connection with mutual legal assistance.

18. Since the entry into force of the 1988 Convention, UNODC has been collecting and publishing a list of competent authorities under articles 7 and 17, and more recently article 6, of the 1988 Convention. Since 2001, this list has been issued quarterly and disseminated to all competent authorities, in paper and electronic format. As at 1 December 2004, 125 States or dependent territories had

provided updated information on their competent authorities for mutual legal assistance. UNODC plans to make such information available to Member States on a secure website. UNODC has also developed casework best practice guidelines for extradition and mutual legal assistance. A mutual legal assistance computer program is being developed to help practitioners streamline the preparation of requests and to provide access to relevant multilateral, bilateral and regional treaties and agreements, as well as a selection of national laws. It will include a case management tracking system for incoming and outgoing mutual legal assistance requests.

19. Most of the responding States reported that they had legislation permitting mutual legal assistance (82 per cent overall: almost 80 per cent in Africa, 94 per cent in the Americas, 67 per cent in Asia, 90 per cent in Europe and 100 per cent in Oceania). Again, close to a third of all States had reviewed, simplified or otherwise strengthened procedures for mutual legal assistance. However, regional disparities were evident: while only 20 per cent of States in Europe and 26 per cent of States in Africa had reviewed their procedures, 43 per cent of all States in the Americas, 38 per cent of States in Asia and 50 per cent of States in Oceania had reviewed or simplified their procedures. Globally, since the first reporting period, a total of 54 States had revised or reviewed their procedures at least once since the special session.

20. Globally, the same proportion of States had developed model forms, guides or manuals on how to make requests for mutual legal assistance for extradition (one third or 34 per cent). However, regionally there were disparities: in the Americas and Asia, more States had developed model forms, guides or manuals for mutual legal assistance than for extradition (the Americas: 43 per cent versus 25 per cent; Asia: 33 per cent versus 23 per cent), while in Africa and in Europe more States had developed model forms, guides or manuals for extradition than for mutual legal assistance (Africa: 26 per cent versus 10 per cent; Europe: 53 per cent versus 43 per cent). Overall, Europe and Oceania were the regions where most States had developed guidelines for either mutual legal assistance or extradition or both.

21. Again, when comparing the replies concerning bilateral and multilateral treaties, the figures were similar for mutual legal assistance and for extradition. Globally, three quarters (74 per cent) of all States had entered into bilateral agreements and two thirds (67 per cent) had entered into multilateral agreements in relation to mutual legal assistance.

22. Regionally, Africa was the region where fewer States had entered into multilateral and bilateral agreements with respect to mutual legal assistance (47 per cent in both cases) followed by Oceania (50 per cent in both cases), Asia (57 per cent for multilateral and 67 per cent for bilateral treaties), Europe (80 and 89 per cent, respectively) and the Americas (81 and 93 per cent, respectively). In comparison with the figures relating to extradition, the situation was similar in all regions except in Africa, where more States had bilateral agreements for extradition than for mutual legal assistance.

23. When negotiating mutual legal assistance treaties, a third (33 per cent) of the States had made use, where appropriate, of the Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117, annex, as amended by

Assembly resolution 53/112). In Africa and Asia, the proportion rose to approximately half (42 per cent in Africa and 52 per cent in Asia). The figures were again similar to those relating to the use of the Model Treaty on Extradition and to those of the second reporting period (45 per cent). Fewer States reported difficulties with respect to requests for mutual legal assistance and negotiations, ratification or giving effect to bilateral and multilateral treaties with respect to mutual legal assistance than with respect to extradition. The difficulties reported related to differences in legal systems, translations and language issues, death penalty offences, delays and deadlines, problems with establishing the competence of authorities in States with federal or provincial structures and lack of resources.

24. One third (34 per cent) of all States responding had developed model forms, guides or manuals on how to make requests for mutual legal assistance.

25. In a third of the States (34 per cent or 30 States), statistics were available on mutual legal assistance requests. Of those States which provided statistics, a few sent and received a large number of requests during one or both years of the reporting period and the other States reported fewer requests.⁷ Only one State reported the refusal of two requests during the reporting period.

26. In conclusion, while most States had adopted legislation and entered into bilateral and multilateral treaties with respect to providing mutual legal assistance in drug trafficking cases and many had revised their procedures since the special session, only a limited number of States had actively implemented those provisions. While fewer States were using mutual legal assistance than extradition, there seemed to be fewer legal and formal difficulties in sending and executing requests for mutual legal assistance than for extradition. However, as in extradition cases, difficulties relating to legal differences, translation and delays were reported.

IV. Transfer of proceedings

27. The recommendations of the General Assembly at its twentieth special session and the 1988 Convention encourage States to consider enacting legislation to transfer or receive proceedings in criminal matters, and take other steps to facilitate the transfer of proceedings. Almost half the States that replied to the third biennial questionnaire reported that they had enacted legislation permitting or facilitating transfer of proceedings (46 per cent). In Europe, three quarters (73 per cent) of all States responding had such legislation, while half (43 per cent) of States in the Americas, a third in Africa and in Asia (31 and 28 per cent, respectively) and no States in Oceania had such legislation. The figures were very similar to those reported during the first and second reporting periods (E/CN.7/2003/2/Add.3, para. 18). However, only 10 per cent of the States that replied during the third reporting period had reviewed, simplified or otherwise strengthened procedures in connection with transfer of proceedings (10 per cent in Africa, 18 per cent in the Americas, 15 per cent in Asia and 3 per cent in Europe). That figure was again similar to the one for the second reporting period. Cumulatively, over the two reporting periods when the question was asked, only 20 States reported that they had reviewed, simplified or otherwise strengthened procedures in connection with transfer of proceedings since the special session.

28. About 10 per cent of all States had developed model forms, guides or manuals on how to make requests for transfer of proceedings (21 per cent of all States in Europe replying, 5 per cent of States in Africa, 6 per cent of States in the Americas and none in Asia and Oceania).

29. Statistics on transfer of proceedings were only available in 12 per cent of the States responding. However, only four States (Albania, Chile, Mexico and Slovakia) provided statistics on requests made and received and one State (Albania) provided statistics on requests executed. The number of requests made or received by each State each year was in the range of 1 to 20, except in Slovakia, where 55 requests had been sent in 2002 and 35 requests had been sent in 2003. No refusals were reported.

30. A quarter of all States had entered into bilateral agreements on the subject and a third had entered into multilateral agreements on the subject. Europe was the region where most States had entered into bilateral and multilateral agreements (36 per cent and 67 per cent, respectively). The main multilateral treaty referred to was the 1972 European Convention on the Transfer of Proceedings in Criminal Matters.

31. Globally, only 11 per cent of all States responding reported that they had made use of the Model Treaty on the Transfer of Proceedings in Criminal Matters, where appropriate, when negotiating treaties in that area. In Asia, however, the figure rose to 27 per cent. The figures were similar to those from the second reporting period.

32. Several States reported that while they did not have specific legislation or had not entered into specific treaties in the area, the transfer of proceedings was covered by mutual legal assistance laws and treaties. Few States reported specific difficulties.

33. Among all the areas of judicial cooperation, transfer of proceedings was the one where fewer States had enacted legislation, entered into treaties or revised their legislation. Only a few States in Europe and in the Americas used such a tool with respect to drug offences.

V. Law enforcement cooperation and exchange of information

34. With respect to law enforcement and exchange of information, the General Assembly at its twentieth special session had 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.

35. A total of 78 per cent of the States that responded to the third biennial questionnaire 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, a figure that was very similar to that of the second reporting period, and there were no major differences between regions. Many States had agreed to the exchange of police and drug liaison officers from other States. For example, the Royal Canadian Mounted Police had a programme called the International Observer Attachment Program, which brought police officers from other States to Canada for one week of drug-related lectures and instruction,

followed by one week of attachment to a drug unit. In Southern Africa, the Southern African Development Community and the International Criminal Police Organization (Interpol) organized specific training programmes on drug law enforcement in South Africa and Zimbabwe.

36. Many of the States responding (72 per cent) were sharing information with other States on criminal investigation techniques and criminal intelligence about activities of individuals or groups. In the Americas, 87 per cent of all States responding shared information in that area, while in Asia and Africa the percentages were 62 and 67 per cent, respectively. Many States again provided examples of such cooperation. For instance, Myanmar reported that it shared information concerning criminal investigations at cross-border meetings with neighbouring States. New Zealand reported that the sharing of information took place through established law enforcement networks such as the Combined Law Agency Group in the South Pacific. Nigeria reported that it shared information with the United States of America, the United Kingdom of Great Britain and Northern Ireland, South Africa and States in West Africa. The Russian Federation reported that within the framework of international cooperation on controlled deliveries the Federal Service of the Russian Federation for Control of Trade in Narcotic Drugs had conducted an operation with the Central Directorate for Combating Illicit Drug Trafficking of the Ministry of the Interior of Tajikistan, the State Customs Committee of the Russian Federation and the Border Service of the Russian Federal Security Service to cut off a supply route for the smuggling of heroin produced in Afghanistan and that bilateral police investigations along the Tajik-Afghan border were also conducted. Similar cooperation also took place with the authorities of Ukraine.

37. Many of the States responding to the third biennial questionnaire (71 per cent) had established specialized units for investigating drug trafficking cases. In Europe, only 67 per cent of States had done so, while in the Americas 81 per cent had established such units. Most States (87 per cent) had also enhanced technical cooperation, training and human resource development for law enforcement personnel. In all regions, at least 80 per cent of States had enhanced cooperation and training in that area (95 per cent in Asia, 87 in the Americas, 84 in Africa and 82 in Europe). Many States provided specific information on such units; for example, Peru reported that the National Anti-Drug Directorate of its National Police had established specialized investigation units covering specific areas of drug trafficking and related offences.

38. Most States (80 per cent) were using modern communication technologies to facilitate the exchange of information. In that area, however, the regional differences were more marked, with only 63 per cent of States in Africa reporting that they used such techniques, while 81 per cent in the Americas and 86 per cent in Asia and Europe did so. Many States reported using telecommunications, electronic mail (e-mail) and the Internet. For example, the Australian Federal Police had established a secure real-time international network for online communications for all its overseas posts (32 posts in 26 States), which enhanced the capacity of its officers to carry out their liaison, investigation and intelligence functions efficiently. The Australian Customs Service and the United States Customs and Border Protection and the New Zealand Customs Service had co-sponsored the Customs Asia Pacific Enforcement Reporting System (CAPERS), an Internet-based communication platform with a secure e-mail system to encourage cooperation,

communication and liaison between customs administrations, which had 23 States online as of February 2004. The Bahamas reported that e-mail and teleconferencing were now the preferred method of communication to facilitate rapid exchange of information with other States, making it possible, for example, to send photographs of suspects. Investigators from different jurisdictions were able to meet each other via video-link and discuss strategy on pertinent law enforcement issues.

39. Three quarters (75 per cent) of all States responding had taken other measures to strengthen cooperation with law enforcement agencies of other States. Many States in Europe referred to different training and technical cooperation programmes in the framework of the European Union PHARE programme while others referred to the signing of memorandums of understanding and the placement of liaison officers.

40. In conclusion, law enforcement cooperation appears to be developing in all regions, although in the case of Africa slower progress has been made in relation to the use of modern communication technologies.

VI. Controlled delivery

41. In the area of controlled delivery, which is provided for by article 11 of the 1988 Convention, the General Assembly at its special session recommended that States ensure that their legislation, procedures and practices allow for the use of the technique at both the domestic and the international levels and consider entering into agreements with other States to facilitate the use of controlled deliveries.

42. Most of the States responding to the third biennial questionnaire (80 per cent) had provided for the use of controlled delivery in their legislation. Many of them (in Africa 63 per cent, in the Americas 68 per cent, in Asia 81 per cent and in Europe 93 per cent) had made such provision in their legislation. Less than half of the States responding (39 per cent) reported that they had reviewed, simplified or otherwise strengthened their procedures with regard to controlled delivery. Cumulatively, over the two reporting periods, 49 States had revised their laws and procedures at least once since the special session.

43. Some States reported practical difficulties when carrying out controlled deliveries, including differences between legal provisions in different States (such as the acceptance of the use of undercover agents), financial, basic logistical and technical problems (lack of vehicles and equipment), lack of experience and expertise, communication problems between States and security problems.

44. Some States reported that although they did not have specific legislation, controlled delivery was facilitated administratively. A few reported that they were currently in the process of adopting legislation on controlled delivery.

45. In conclusion, although controlled delivery was one of the measures that was widely used by States in all regions, it was clearly an area in which many States still had difficulties in performing effectively. Further attention is required to ensure that the technique is used efficiently.

VII. Drug trafficking by sea

46. In the area of illicit trafficking in drugs by sea, which is provided for by article 17 of the 1988 Convention, the General Assembly recommended at its special session that States review national legislation to ensure that the legal requirements of the 1988 Convention were met, for example, the identification of competent national authorities, the maintenance of ship registries and the establishment of adequate law enforcement powers. It also recommended that Member States facilitate cooperation between competent authorities and promote regional cooperation, as well as training to law enforcement personnel in maritime drug law enforcement.

47. Since the entry into force of the 1988 Convention, UNODC has been collecting and publishing a list of competent authorities under articles 7 and 17 of the 1988 Convention. Since 2001, that list had been issued quarterly and disseminated to all competent authorities, both electronically and in paper format. As at 1 December 2004, 94 States had provided updated information on their competent authorities for receiving and sending requests relating to illicit trafficking by sea. UNODC will make that information available on the secure website referred to in paragraph 6.

48. Among the States responding to that part of the questionnaire, half (50 per cent or 44 States) had legislation permitting cooperation with other States in connection with countering illicit drug trafficking by sea. Some States reported that while they had no specific legislation in the field, such cooperation was carried out under general international cooperation laws or article 17 of the 1988 Convention. Less than a third (28 per cent) of States responding had reviewed, simplified or otherwise strengthened procedures for executing requests in connection with countering illicit drug traffic by sea. There were few major regional differences, Africa being the region with the lowest percentage (31 per cent), followed by Asia (41 per cent), Oceania (50 per cent), the Americas (56 per cent) and Europe (65 per cent). A greater proportion of States had reviewed their legislation in the Americas and Oceania (50 per cent, though only two States reported in the latter region) than in the other regions (Europe 27 per cent, Asia 23 per cent and Africa 16 per cent). South Africa reported that procedures were currently being reviewed, as the current fragmentation of responsibilities between different government departments made implementation of article 17 difficult. Globally, since the special session, 43 States had reported that they had reviewed, simplified or otherwise strengthened procedures for executing requests in connection with countering illicit drug traffic by sea.

49. Approximately a third (31 per cent) of all States replying had entered into bilateral or multilateral agreements on illicit trafficking by sea. The major multilateral agreements cited were the Council of Europe Agreement on Illicit Traffic by Sea, implementing article 17 of the 1988 Convention, and a number of international customs cooperation treaties.

50. A few States reported that they had received, sent or executed requests for assistance in relation to illicit trafficking by sea: Canada, Cyprus, Honduras, Japan, Latvia, Netherlands, Portugal, Trinidad and Tobago, Togo and United Kingdom. Some States reported that statistics were not available. Difficulties encountered included staff limitations and the time-consuming nature of such requests, lack of resources, requests emanating from a signatory that was not the recognized competent authority, lack of reliable information and failure by requesting Governments to verify information. Japan reported that it would be organizing a maritime drug law enforcement seminar for States in Asia in 2004, which would use the practical guide for competent national authorities under article 17 of the 1988 Convention, developed by UNODC and available as a CD-ROM and in paper format in the six official United Nations languages.

51. In conclusion, much remained to be done in the area of combating illicit drug trafficking by sea, as only a few States were using such a tool.

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

52. The General Assembly recommended at its special session that States 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, as well as witnesses, whenever the circumstances so warrant, in cases that involve illicit drug trafficking.

53. Most States responding to the third biennial questionnaire (69 per cent) reported having in place legislation, rules or procedures for the protection of judges, prosecutors, surveillance personnel, law enforcement officers and witnesses. However, in Africa only half (52 per cent) of the States reported having such measures in place.

54. During the reporting period, a quarter (26 per cent) of all States had reviewed, simplified or otherwise strengthened procedures in connection with the protection of judges and prosecutors. For example, in Bulgaria, article 36e of the Law on the Judiciary, which entered into force on 1 January 2003, regulated the functions of a special Directorate within the Ministry of Justice that carried out tasks relating to protection of magistrates. However, in States in the Americas the proportion was only 12 per cent and in Asia 14 per cent. Globally, since the special session, 39 States had reported that they had revised their procedures.

55. A fifth (20 per cent) of States responding had reviewed, simplified or otherwise strengthened procedures in connection with the protection of surveillance personnel and law enforcement officers. While in Europe, a third (34 per cent) of all States and in Africa a fifth (21 per cent) had done so, in States in the Americas only 6 per cent and in Asia only 10 per cent had revised those procedures. Globally, since the special session, 33 States have reported that they have revised their procedures. In Denmark, for example, in June 2004, an amendment of the Criminal Code and the Administration of Justice Act was adopted, by which it was made possible to question a member of the police in a court of law without revealing name or identity.

56. More States have revised their procedures with respect to the protection of witnesses than with respect to the two previous categories. Globally, some 37 per cent of all States responding had reviewed, simplified or otherwise strengthened procedures in connection with the protection of witnesses. Regionally, in Europe 56 per cent, in Oceania 50 per cent, in Africa 37 per cent, in States in the Americas 31 per cent and in Asia 20 per cent of the States responding had done so. Since the special session, 47 States had reported that they had revised their procedures with regard to the protection of witnesses. For instance, in Argentina, the law provided that the following protection measures could be taken by the court to protect a witness or a defendant who had collaborated in the investigation: changing the identity of the persons and providing financial resources needed to change residence and occupation. In addition, a national witness and defendant protection programme to preserve the safety of those collaborating in a judicial investigation under federal jurisdiction had been established in August 2003.

57. In conclusion, while most States reported having legislation, rules or procedures for the protection of judges, prosecutors, surveillance personnel, law enforcement officers and witnesses, regional disparities remained. Globally, fewer States had revised their procedures with respect to the protection of surveillance personnel and law enforcement officers than with respect to the protection of judges and prosecutors. However, on a more positive note, more States had revised their procedures with respect to the protection of witnesses.

IX. Conclusions and recommendations

A. Conclusions

58. 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 special session, States have made considerable progress in adopting legislation and entering into bilateral and multilateral agreements in the different areas. Many States have revised their legislation, rules or procedures since the special session to implement those recommendations. The measures relating to extradition, mutual legal assistance, controlled delivery and law enforcement cooperation were globally more implemented than those relating to transfer of proceedings, illicit trafficking in drugs by sea and protection of judges, prosecutors, surveillance personnel, law enforcement officers and witnesses. However, while the legal and procedural framework existed in many States, numerous difficulties still remained in the implementation of all the measures. The States actively making use of such tools were mostly in the Americas, Europe and Oceania, and a few in Asia and Africa.

59. The Model Treaty on Extradition and the Model Treaty on Mutual Assistance in Criminal Matters were used quite frequently when negotiating bilateral treaties in the related fields, especially in Asia and in Africa.

60. Legal, procedural and technical difficulties remained 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 a matter of concern.

B. Recommendations

61. 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 be encouraged to adopt legislation to provide for the possibility to carry out extradition, mutual legal assistance and controlled delivery and ensure that those laws are flexible and kept up to date;

(b) States should be encouraged, in particular, to adopt legislation and procedures to enable transfer of proceedings and cooperation in countering illicit trafficking in drugs by sea;

(c) States should be encouraged to adopt legislation and procedures to enable protection of judges, prosecutors, surveillance personnel, law enforcement officers and witnesses;

(d) States should be encouraged to enter into, renegotiate or extend bilateral and multilateral treaties in the different fields of judicial cooperation, making use, when appropriate, of the relevant model treaties;

(e) States should be encouraged to revise their procedures and legislation to provide for the extradition of nationals or the possibility to extradite nationals on condition that, if convicted, they will be returned to the State of nationality to serve their sentence;

(f) States should consider revising their legislation to reform and simplify their procedures with respect to extradition, in particular as regards double criminality conditions, definition of political offences and the possibility of simplifying surrender procedures;

(g) States should consider lowering their procedural impediments to extradition and mutual legal assistance, in particular with respect to language and standard of evidence, using modern technology to speed up and improve results in casework and ensuring that competent authorities communicate with their foreign counterparts from the outset of the request process;

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

(i) States should consider making use of the following: model legislation and legislative guides to upgrade their judicial cooperation laws; best practice guidelines in extradition and mutual legal assistance casework; and other tools developed by UNODC and its partners to train and assist competent authorities in drafting and executing effective requests for judicial cooperation;

(j) When neighbouring States have different legal systems, consideration should be given to building overarching legal systems to enhance mutual legal assistance and extradition capacities among such States, including, when necessary, by the posting of criminal justice liaison personnel abroad;

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

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

(m) States along significant drug trafficking routes should consider establishing joint teams of prosecutors dealing with drug trafficking and organized crime;

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

(o) States should be encouraged to review existing systems with a view to improving the sharing of criminal intelligence and to develop cooperation between law enforcement agencies, including through the establishment of joint investigative teams, when necessary.

Notes

¹ United Nations, *Treaty Series*, vol. 1582, No. 27627.

² *Ibid.*, vol. 520, No. 7515.

³ *Ibid.*, vol. 976, No. 14152.

⁴ *Ibid.*, vol. 1019, No. 14956.

⁵ Afghanistan, Albania, Algeria, Andorra, Argentina, Armenia, Australia, Azerbaijan, Bahamas, Bangladesh, Bolivia, Brunei Darussalam, Bulgaria, Canada, Chile, China, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Eritrea, Estonia, Ethiopia, Finland, Germany, Greece, Grenada, Guatemala, Haiti, Honduras, Hungary, Indonesia, Iraq, Israel, Italy, Japan, Jordan, Latvia, Liechtenstein, Lithuania, Madagascar, Mauritius, Mexico, Monaco, Morocco, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Niger, Nigeria, Oman, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Russian Federation, Slovakia, Slovenia, South Africa, Spain, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, Uzbekistan, Viet Nam, Zambia and Zimbabwe.

⁶ The Tampere European Council endorsed the principle of mutual recognition of judicial decisions within the European Union. The Council of the Union framework decision of 13 June 2002 introduced a new system for the surrender of fugitives aiming at replacing the traditional extradition system between the member States of the Union. The European arrest warrant provides for expeditious proceedings; abolition of double criminality requirement in specified cases, including drug trafficking; surrender of nationals; abolition of the political offence exception; and a possibility of additional deviation from the rule of specialty.

⁷ For example, in 2002, Albania received 65 requests, Bulgaria 7, Canada 2, Colombia 68, Greece 28, Japan 8, Mexico 21, Nigeria 25, Republic of Korea 3, Slovakia 3, South Africa 37, Spain 358, Trinidad and Tobago 3, Turkey 140 and the United Kingdom 229. In 2003, the same States reported similar numbers of requests received and Honduras received 3 requests, Albania received 60 requests and Poland received 123 requests. Approximately the same list of States reported that they had sent requests during the biennium, with the same States representing the bulk of the requests (Albania, Bulgaria, Colombia, Mexico, Poland, Spain, Turkey and the United Kingdom).