

AG/RES. 2040 (XXXIV-O/04)

MEETING OF MINISTERS OF JUSTICE OR OF MINISTERS OR ATTORNEYS
GENERAL OF THE AMERICAS

(Adopted at the fourth plenary session, held on June 8, 2004)

THE GENERAL ASSEMBLY,

HAVING SEEN the Annual Report of the Permanent Council to the General Assembly (AG/doc.4265/04 add. 3 corr. 1), in particular as it pertains to the implementation of resolution AG/RES. 1924 (XXXIII-O/03), and the Final Report of the Meeting of Ministers of Justice or of Ministers or Attorneys General of the Americas (REMJA-V/doc.9/04);

RECALLING that, in the Plan of Action of the Third Summit of the Americas, held in Quebec City, the Heads of State and Government decided to continue to support the work done in the context of the Meetings of Ministers of Justice or of Ministers or Attorneys General of the Americas (REMJA) and the implementation of their conclusions and recommendations;

RECALLING ALSO that, in the Declaration on Security in the Americas, adopted in Mexico City, on October 28, 2003, the states of the Hemisphere reaffirmed "that the Meetings of Ministers of Justice or Ministers or Attorneys General of the Americas (REMJA) and other meetings of criminal justice authorities are important and effective fora for promoting and strengthening mutual understanding, confidence, dialogue, and cooperation in developing criminal justice policies and responses to address new threats to security"; and

TAKING INTO ACCOUNT the importance of continued appropriate follow-up to and implementation of the conclusions and recommendations of the REMJA,

RESOLVES:

1. To express its satisfaction with the results of the Fifth Meeting of Ministers of Justice or of Ministers or Attorneys General of the Americas (REMJA-V), held at OAS headquarters from April 28 to 30, 2004, and of the three technical meetings held prior to it as part of the REMJA process.
2. To welcome the conclusions and recommendations of REMJA-V, contained in the Final Report of that meeting (REMJA-V/doc.9/04) and appended hereto.
3. To instruct the Permanent Council to give appropriate follow-up to the implementation of the conclusions and recommendations of REMJA-V, and to convene the meetings referred to therein, which will be held within the resources allocated in the program-budget of the Organization and other resources.

4. To instruct the Permanent Council to present a report to the General Assembly at its thirty-fifth regular session on the implementation of this resolution.

CONCLUSIONS AND RECOMMENDATIONS OF REMJA-V

Having concluded its deliberations on the various items on its agenda, the Fifth Meeting of Ministers of Justice or of Ministers or Attorneys General of the Americas (REMJA-V), convened under the auspices of the OAS, approved the following conclusions and recommendations for transmission, through the Permanent Council, to the General Assembly of the OAS at its thirty-fourth regular session.

I. HEMISPHERIC COOPERATION AGAINST TRANSNATIONAL ORGANIZED CRIME AND AGAINST TERRORISM

REMJA-V reaffirms that the damage caused and the threat posed by the different types of transnational organized crime and terrorism, to our citizens and to our democracies and to the economic and social development of our states, make it necessary and urgent to continue to strengthen and enhance mutual legal and judicial cooperation at the hemispheric level, as well as to enact laws, procedures, and new mechanisms, if they have not done so, to enable them to combat these crimes effectively.

In this connection, it underscores that the Declaration on Security in the Americas, adopted in Mexico City on October 28, 2003, states that terrorism and transnational organized crime are part of the new threats, concerns, and other diverse challenges affecting the security of the states of the Hemisphere and reaffirms that “the Meetings of Ministers of Justice or of Ministers or Attorneys General of the Americas (REMJA) and other meetings of criminal justice authorities are important and effective fora for promoting and strengthening mutual understanding, confidence, dialogue, and cooperation in developing criminal justice policies and responses to address new threats to security.”

Considering that, although the international community has made progress in drawing up regulations to combat these forms of crime, differences persist in the way States criminalize this conduct, which can create obstacles for more effective international cooperation.

REMJA-V recognizes that it is advisable that the subject of transnational organized crime continue to be dealt with by the many bodies of the OAS as they have been doing in the framework of their respective competence, such as CICAD, the Consultative Committee of CIFTA, the CIM, the Inter-American Children’s Institute, REMJA, and MESICIC.

REMJA-V reaffirms that the measures carried out by the States Parties in combating terrorism shall take place with full respect for the rule of law, human rights, and fundamental freedoms, without undermining the rights and obligations of States and individuals in keeping with International Law, International Law on Human Rights and International law on Refugees.

REMJA-V expresses satisfaction that in the period following REMJA-IV, OAS Member States have taken significant steps to strengthen hemispheric implementation of United Nations counter-terrorism and transnational organized crime instruments in effectively addressing these crimes. In particular, during the interval between REMJA-IV and REMJA-V, numerous OAS Member States became Party to the 1999 Convention for the Suppression of the Financing of Terrorism, as well as earlier universal counter-terrorism instruments. Similarly, numerous OAS Member States became Party to the 2000 United Nations Convention Against Transnational Organized Crime and its three Complementary Protocols or took substantial steps towards reaching this status. REMJA-V recognizes this notable progress to combat terrorism and transnational organized crime.

REMJA-V also notes with satisfaction that adherence to regional instruments addressing terrorism and organized crime has rapidly accelerated. The 2002 Inter-American Convention against Terrorism has entered into force on July 10, 2003 and has been ratified by eight (8) Member States of the OAS; and the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Material (CIFTA) has been ratified by twenty-two (22) Member States of the OAS.

REMJA-V also expresses satisfaction at the progress made in strengthening and consolidating cooperation between the States of the Americas to combat terrorism, through the work of the Inter-American Committee against Terrorism (CICTE) and its national contact points.

At the same time, more work remains in crafting effective implementation of hemispheric and global counter-terrorism and organized crime standards, and we note with alarm the increase in terrorist attacks throughout the world and activities of other criminal organizations. Accordingly, we recommend that:

- A. HEMISPHERIC COOPERATION AGAINST TRANSNATIONAL ORGANIZED CRIME
 1. With respect to combating organized crime, Member States that have not yet done so sign and ratify, ratify, or accede to, as appropriate, and implement the following as quickly as possible:
 - a. The United Nations Convention Against Transnational Organized Crime, the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, and the Protocol Against the Smuggling of Migrants by Land, Sea, and Air. We encourage Member States to complete their internal processes for determining whether to sign and ratify the Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.
 - b. The Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Material (CIFTA), which, inter alia, sets forth an effective regime for criminalizing illicit arms trafficking that can aid the fight

against organized crime and terrorist groups, as well as creating a mechanism for tracing illicitly trafficked weapons to their source.

2. Member States who are Party or signatory to the Transnational Organized Crime Convention and its two protocols in force, work together at the First Conference of the Parties, June 28 to July 9, 2003, to facilitate the successful application of these important international instruments.
3. To recommend to the General Assembly of the OAS that it convene a group of experts to consider the possibility of drawing up a Hemispheric Plan of Action against Transnational Organized Crime as an integrated plan that brings together the efforts that each area of the OAS has been making to address the problem's different aspects, in accordance with the Declaration on Security in the Americas.
4. That the Member States consider, when appropriate, harmonization of their respective legal frameworks with the obligations taken on in this matter. To this end, it is recommended that the General Assembly of the OAS instruct the Inter-American Juridical Committee to conduct a study on the afore-mentioned issue and that it report to the body that the General Assembly has assigned responsibility to consider the possibility of drafting the Hemispheric Plan of Action against Transnational Organized Crime.
5. That the Member States promote greater inter-relations between law enforcement authorities so they can decide on common lines of action in investigating and prosecuting these crimes.
6. Urge States to hold regional and national training seminars and workshops that refer to the different modalities of transnational organized crime.

B. HEMISPHERIC COOPERATION AGAINST TERRORISM

1. With respect to combating terrorism, Member States that have not yet done so sign and ratify, ratify, or accede to, as appropriate, and implement the following as quickly as possible:
 - a. the twelve United Nations counter-terrorism conventions.
 - b. the Inter-American Convention Against Terrorism.
2. Member States have sufficient ability to take law enforcement action with respect to situations in which a terrorist attack has not yet been carried out, and timely investigation and prosecution may prevent the carrying out of such attacks, and take immediate steps to provide for a sufficient ability to pursue and cooperate with each other in respect of such conduct.
3. Each Member State enhances its abilities to facilitate the sharing of information among security services and law enforcement agencies in

order to prevent attacks and successfully prosecute terrorists in conformity with applicable national laws and international instruments.

4. In applying Article 7 of the Inter-American Convention against Terrorism, the Member States promote the broadest measures of cooperation, particularly measures to ensure effective cooperation among law enforcement agencies, immigration services, and related agencies, and improve their controls on travel and identity documents.
5. To take note of the work of the Inter-American Commission on Human Rights in the area of terrorism and human rights. It recommends that officials responsible for the development of anti-terrorism legislation continue to meet and exchange best practices and national experiences between them on this issue.
6. To recommend that Hemispheric Information Exchange Network for Mutual Legal Assistance in Criminal Matters include information on legislation, as appropriate, and anti-terrorist policies in force in the Member States.
7. To recommend that, in order to help in the prevention of acts of terrorism, measures must be taken to avoid discrimination against members of society.

II. MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS AND EXTRADITION

A. MEETING OF CENTRAL AUTHORITIES AND OTHER EXPERTS ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

REMJA-V recommends as follows:

1. To express its satisfaction at the Meeting of Central Authorities and Other Experts in Mutual Legal Assistance in Criminal Matters, held pursuant to the recommendations of REMJA-IV in Ottawa, Canada, from April 30 to May 2 2003, and to adopt in their entirety its recommendations, published in document OEA/Ser.K/XXXIV.5 REMJA-V/doc.4/.
2. To support, in accordance with recommendation 6 of that meeting, the continued holding of meetings of the Central Authorities and other Experts on mutual legal assistance in criminal matters in the Hemisphere at least once between REMJAs, with the support and coordination of the Working Group on Mutual Legal Assistance, as well as consideration, at their next meeting, of both progress made in implementing the recommendation of the Ottawa meeting and, *inter alia*, the topics referred to in the aforementioned recommendation 6, according to an order of priorities that they define.

3. To decide that the next Meeting of Central Authorities and Other Experts start considering actions to build up hemispheric legal cooperation in the matter of extradition, including temporary extradition when appropriate in keeping with national legislation and to proceed with organizing the sections on mutual legal and judicial cooperation of a hemispheric plan of action to fight against transnational organized crime and terrorism, including measures of administration of cases by the requesting State so as not to overburden the requested State.
4. To decide that the next Meeting of Central Authorities and Other Experts shall continue building up and rendering more effective the mechanisms of mutual legal assistance in criminal matters, and hemispheric cooperation in the matter of extradition. To this end, the Meeting of Central Authorities and Other Experts will be able to request input from the following bodies regarding the areas of their competence: CICTE, CICAD, Consultative Committee of CIFTA, CIM, MESICIC, Inter-American Children's Institute, and the Inter-American Juridical Committee.

B. HEMISPHERIC INFORMATION EXCHANGE NETWORK FOR MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

In view of the usefulness and importance of the Hemispheric Information Exchange Network for Mutual Legal Assistance in Criminal Matters, REMJA-V recommends as follows:

1. To decide to adopt the Hemispheric Information Exchange Network for Mutual Legal Assistance in Criminal Matters and urge all Member States to implement its public component and disseminate among the most interested users.
2. That, since the network, under the leadership of a group consisting of Argentina, Bahamas (The), Canada, and El Salvador, and administered by the OAS General Secretariat, comprises data on all OAS Member States, information related to mutual legal assistance in criminal matters and extradition should continue to be posted on the public website.
3. That States that have not yet done so identify a contact person to provide and update the information made available via the network.
4. To express satisfaction towards the development of the MLA secure e-mail pilot project and recommends that all States take the appropriate measures to evaluate it and that it continue to operate and be expanded to cover other States.
5. To examine the possibility of exchanging information, in mutually interesting areas and methodologies, with the Virtual Prosecution Office of Latin America.

III. PENITENTIARY AND PRISON POLICIES

Given the importance and advisability of continuing and reinforcing the exchange of information and experiences as well as mutual cooperation with regard to penitentiary and prison policies, REMJA-V recommends as follows:

1. To express its satisfaction with the results and adopt the report of the First Meeting of the Group of Officials Responsible for the Penitentiary and Prison Policies of the OAS Member States (document OEA/Ser.K/XXXIV.5 REMJA-V/doc.6/04), held at OAS headquarters on October 16 and 17, 2003, in keeping with a REMJA-IV decision.
2. To support periodic meetings of officials responsible for the penitentiary and prison policies of the OAS member states and the establishment of an Internet information system on such policies, as recommended at the first meeting of the officials.
3. That the States, through their participation in the meetings of penitentiary and prison authorities, promote penitentiary strategies and policies, based on respect for human rights, and that contribute to reducing overcrowding in prisons. To this end, the States will promote modernization of prison infrastructure and extend the functions of rehabilitation and social integration of the individual, by improving conditions of detention and studying new penitentiary standards.

IV. CYBER-CRIME

Under this topic, REMJA-V recommends as follows:

1. To express its satisfaction with the results of the Initial Meeting of the Group of Governmental Experts on Cyber-Crime, held at OAS headquarters on June 23 and 24, 2003, in keeping with a REMJA-IV decision.
2. To adopt the recommendations of the Group of Governmental Experts (document OEA/Ser.K/XXXIV.5 REMJA-V/doc.5/04) and to ask it, through its Chair, to report to the next meeting of REMJA on the progress made regarding said recommendations.
3. To support consideration of the recommendations made by the Group of Governmental Experts at its initial meeting as the REMJA contribution to the development of the Inter-American Strategy to Combat Threats to Cybersecurity, referred to in OAS General Assembly resolution AG/RES. 1939 /XXXIII-O/03), and to ask the Group, through its Chair, to continue to support the preparation of the Strategy.
4. That international training on cybercrime be provided to the States of the OAS that request it and that the States of the OAS in general consider the possibility of allocating resources to guarantee delivery of this training.

5. That the Member States participate in the technical meetings of the Group of Governmental Experts on Cyber-Crime so that future challenges can clearly be understood throughout the hemisphere.
6. That Member States, in the context of the expert group, review mechanisms to facilitate broad and efficient cooperation among themselves to combat cybercrime and study, when possible, the development of technical and legal capacity to join the 24/7 network established by the G8 to assist in cybercrime investigations.
7. To the extent possible, Member States ensure that differences in the definition of offenses do not impede the efficiency of cooperation through mutual legal and judicial assistance and extradition.
8. That Member States evaluate the advisability of implementing the principles of the Council of Europe Convention on Cybercrime (2001); and consider the possibility of acceding to that convention.
9. That Member states review and, if appropriate, update the structure and work of domestic bodies, or agencies in charge of enforcing the laws so as to adapt to the shifting nature of cybercrime, including by reviewing the relationship between agencies that combat cybercrime and those that provide traditional police or mutual legal assistance.

V. CORRUPTION: FOLLOW-UP ON THE COMMITMENTS UNDERTAKEN IN THE DECLARATION OF NUEVO LEÓN

The Declarations of Nuevo Leon and Quebec City, as well as previous REMJA, recognize the severity of the problem of corruption in our societies.

We note with approval that, since REMJA-IV, most Member States have signed the United Nations Convention against Corruption and a number of additional Member States have become Party to the Inter-American Convention against Corruption, but we today undertake to strengthen our efforts to effectively pursue corruption.

Accordingly, REMJA-V recommends that Member States:

1. That have not yet done so take measures as soon as possible that are necessary to reach the following objectives:
 - a. Sign and ratify, ratify, or accede to, as appropriate, and implement the 2003 United Nations Convention Against Corruption.
 - b. Sign and ratify, ratify, or accede to, as appropriate, and implement the 1996 Inter-American Convention against Corruption.
2. Cooperate to strengthen the Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption, through practical measures to enhance its effectiveness, including to increase economic resources and develop human resources and speed up the evaluation process of the First Round.

3. Prior to REMJA-VI, each Member State, in conformity with its national laws and applicable international regulations, shall adopt domestic legal measures that deny safe haven to corrupt officials, to those who corrupt them, and their assets and shall exchange information on the measures they have adopted.
4. In conformity with national legislation and any international juridical instruments that are applicable, review their legal regimes to extradite and provide mutual legal assistance with respect to corruption offenses, including their abilities to provide for confiscation of assets proceeding from criminal activities on behalf of other countries that may have different modalities for obtaining confiscation, with a view to enhancing them.
5. Adopt such legislative and other measures, in accordance with fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property to the requesting State, in the case of embezzlement of public funds or of laundering of embezzled public funds.
6. We shall support the work of the meeting of the States Parties to the Inter-American Convention against Corruption that will be held in Managua, Nicaragua in July 2004, which should consider "additional concrete measures to increase transparency and combat corruption."

VI. TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN

Bearing in mind that the trafficking in persons is an offense against human dignity, which should be criminalized, prevented, and combated and whose victims are in a situation of vulnerability, which requires greater international attention and due assistance and protection to safeguard their human rights and for which, to reach these goals, integral cooperation of all the States is required.

Recognizing that there are many international instruments guaranteeing the protection of women, boys, girls and adolescents, such as the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, ILO Convention 182 concerning the Worst Forms of Child Labor, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, the Inter-American Convention on International Traffic in Minors, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

Bearing in mind that the Protocol to Prevent, Suppress and Punish the Trafficking in Persons, Especially Women and Children, complementary to the United Nations Convention against Transnational Organized Crime, specifies the actions that qualify trafficking in persons as a crime.

Determined to overcome obstacles in the fight against this transnational crime.

REMJA-V recommends the following:

1. That Member States that have not yet done so sign and ratify, ratify, or accede to, as appropriate, and implement the following as quickly as possible, the Protocol to Prevent, Suppress and Punish the Trafficking in Persons, Especially Women and Children, that complements the United Nations Convention against Transnational Organized Crime.
2. Encourage Member States to complete their internal processes for determining whether to sign and ratify:
 - a. The Protocol against the Illicit Trafficking in Migrants by Land, Sea and Air
 - b. The Inter-American Convention on International Traffic in Minors.
3. The holding of a meeting of national authorities in this matter, including the participation, *inter alia*, of the CIM, the IIN, the United Nations, the OIM, and other related international organizations for the purpose of studying integral cooperation mechanisms among the States to ensure protection of and assistance to the victims, the prevention of the crime, and the prosecution of its perpetrators. Likewise, the meeting will facilitate the exchange of information and experiences, political dialogue and cooperation between the countries of origin, transit and destination of the trafficking in persons, as well as the establishment or improvement of statistics records in this area.
4. To keep the topic of the Trafficking in Persons as an item on the agenda in future debates of REMJA.

VII. VIOLENCE AGAINST WOMEN

REMJA-V:

1. Urges Member States to complete their internal processes for determining whether to sign and ratify the Inter-American Convention on the Prevention, Punishment and Eradication Violence against Women (Convention of Belém do Pará).
2. Encourages the States Parties to the Inter-American Convention on the Prevention, Punishment and Eradication Violence against Women (Convention of Belém do Pará) to study the most appropriate manner establish the Convention's Follow-up Mechanism.

VIII. GENDER AND JUSTICE

REMJA-V, after having heard the presentation by the Inter-American Commission of Women (CIM), took note of the recommendations on gender and justice formulated to the REMJA-V by the Second Meeting of Women Ministers or Ministers or Top Authorities Responsible for Women's Policies in the Member States and refers them to the Member States for greater consideration.

IX. JUSTICE STUDIES CENTER OF THE AMERICAS (JSCA)

Pursuant to the mandates of the Second and Third Summits of the Americas, OAS resolution AG/RES.1 (XXVI-E/99), and the conclusions and recommendations of REMJA II and III, which led to the establishment of a Studies Center to contribute to improving the policies and institutional capacity of the region's justice systems.

And having heard the report of the Justice Studies Center of the Americas, REMJA-V decides:

1. To express its appreciation to the Board of Directors and the Executive Director for the leadership and initiative they have shown in guiding and developing the Center's initial work plans in the criminal justice area and giving concrete form to the vision of a regional center of justice sector expertise set forth by the Heads of State and Government in Santiago of Chile.
2. To congratulate the Center on the successful launch of websites and publications that are being widely consulted in the region, as well as on the drafting of an important comparative study of criminal procedure norms and practices in the region that should help improve justice system performance.
3. To express satisfaction at the efforts made to ensure participation by Member States in Center programs and activities, notwithstanding the diversity of interests and institutions involved and the limitations of funding.
4. To request that the Center, consistent with the objectives set forth in its Statute, include in its working plans the conclusions and recommendations of REMJA, toward which end the Member States shall provide the necessary resources.
5. To request the Center to organize a working group or process, including both the Member States and other donors, to develop for consideration by REMJA-VI a plan for funding the Center consistent with the mandate of the Third Summit of the Americas. This process shall be without detriment to the voluntary contributions that for this purpose the Member States should make, in accordance with the provisions of the Center's Statute, approved by the General Assembly of the Organization of American States.

6. To approve renewal of the Executive Director's term of office as agreed by the Board of Directors of the Center, in accordance with its Statute, in a regular session held on January 5, 2004 in Santiago de Chile.
7. To request the Center to continue supporting national efforts to strengthen domestic systems, with a view toward improving the national frameworks for cooperation and mutual legal assistance.

X. NEXT MEETING

REMJA-V recommends that the Sixth Meeting of Ministers of Justice or of Ministers or Attorneys General of the Americas (REMJA-VI) take place in 2006 and that the OAS General Assembly charge the Permanent Council of the OAS to set a date and site for REMJA-VI.