

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

OEA/Ser.K/XXXIV  
PENAL/doc12/05 rev. 2  
3 September 2005  
Original: Portuguese

Second Meeting of Central Authorities and other Experts on  
Mutual Assistance in Criminal Matters and Extradition  
September 1-3, 2005  
Brasilia, Brazil.

EN – [FR](#) – [PT](#) - [SP](#)

RECOMMENDATIONS FROM THE SECOND  
MEETING OF CENTRAL AUTHORITIES AND OTHER EXPERTS ON MUTUAL  
ASSISTANCE IN CRIMINAL MATTERS AND EXTRADITION

**RECOMMENDATIONS FROM THE SECOND  
MEETING OF CENTRAL AUTHORITIES AND OTHER EXPERTS ON MUTUAL  
ASSISTANCE IN CRIMINAL MATTERS AND EXTRADITION**

The central authorities and other experts on mutual assistance in criminal matters and extradition of the OAS Member States, met in Brasilia, Brazil, from September 1-3, 2005, pursuant to a decision taken at the Fifth Meeting of Ministers of Justice or Ministers or Attorneys General of the Americas (REMJA-V) and OAS General Assembly Resolution AG/RES. 2068 (XXXV-O/05).

At the conclusion of their deliberations, the central authorities and other experts on mutual assistance in criminal matters and extradition adopted the following recommendations, to be presented and considered at the Sixth Meeting of Ministers of Justice or of Ministers or Attorneys General of the Americas (REMJA-VI).

**I. MUTUAL ASSISTANCE IN CRIMINAL MATTERS**

In fulfillment of the REMJA V mandate, the Second Meeting examined the results achieved regarding the implementation of the recommendations adopted at the First Meeting, held in Ottawa, Canada, from April 30 to May 2, 2003, with the goal that mutual assistance in criminal matters be effective, efficient, and expeditious. To this end, the information provided by the States in their responses to the questionnaires prepared in advance, as well as the analysis of those responses carried out by the Technical Secretariat of the OAS were taken into account, which highlights that there have been important advances in the implementation of the recommendations adopted at the First Meeting, such as the increase from 10 to 18 in the number of ratifications of the Inter-American Convention on Mutual Assistance in Criminal Matters (recommendation 1); the establishment and functioning of new central authorities (recommendation 2); in the adoption of decisions to accelerate procedures and reduce or eliminate the factors that contribute to delays in transmission or execution of requests (recommendation 3); and the adoption of measures to ensure the availability of a wide range of measures of mutual assistance in criminal matters (recommendation 4).

Notwithstanding the foregoing, the analysis of these results also demonstrates that new advances are required in respect of the recommendations adopted at the First Meeting, which continue to be of the greatest importance in order for mutual assistance in criminal matters to be effective, efficient, and expeditious.

Taking the foregoing into account, it is recommended:

1. That the States that have not yet done so, take the measures necessary for the effective implementation of the recommendations adopted at the First Meeting, with the objective being the full implementation of those recommendations prior to the Third Meeting, specially to strengthen its central authorities aiming that the requests of mutual assistance in criminal matters, especially to strengthen and empower their central authorities with the aim of effectively, efficiently and expeditiously managing requests for mutual assistance, including the discretion to transmit, prioritize and execute requests. The States shall inform of the decisions that have been taken in this regard at the Third Meeting.

2. That, with the objective of continuing to strengthen mutual assistance in criminal matters:

a. The continuation and conclusion of the preparation of a guide of best practices in mutual assistance in criminal matters, based on the draft presented by Canada. For this task, a working group, coordinated by the Delegation of Canada open to all delegations, shall carry out the consultations necessary and shall present a complete and agreed upon proposal for consideration and approval at the Third Meeting.

As part of this proposal of a guide of best practices, the group shall present a draft form for requests of mutual assistance in criminal matters, based on the draft prepared by various delegations and presented by Paraguay.

For the preparation of the final proposals, it will be taken into account the observations formulated at this Second Meeting, those that the delegations submit in writing to Canada as coordinator of the group, as well as the developments that have taken place in this field in other fora, such as those at the Ibero-American level and in the United Nations, specially the "Mutual Legal Assistance Request Tool" of the UNODC.

b. The continuation and conclusion of the preparation of model legislation on mutual assistance in criminal matters, based on the proposal presented by Argentina at this Second Meeting, as the coordinator of the group also made up by Chile and Colombia.

To this end, the States that have proposals with respect to the text of the model legislation proposal, shall submit their proposals to the aforementioned group, which shall elaborate an agreed upon revised version that will be sent in advance of the Third Meeting, where it will be presented for consideration and adoption.

The States that have not yet done so, shall submit to the Technical Secretariat, prior to the Third Meeting, the information on the legal terms commonly used in their countries in the area of mutual assistance in criminal matters and extradition. The Technical Secretariat will continue systematizing that information and disseminating it through the private internet web pages of the Hemispheric Information Exchange Network.

c. In order to further the provision set forth in the recommendation 4.b adopted as the First Meeting of Central Authorities and Other Experts in Mutual Legal Assistance in Criminal Matters (PENAL/doc.1/03, Ottawa, Canada, April 30<sup>th</sup> to May 2<sup>nd</sup>, 2003), it is recommended that the internal legislation and international treaties allow for the elimination or reduction of the requisite of dual incrimination for mutual assistance in criminal matters in order to combat offences in particular the ones relating to the transnational organized crime, money laundering, terrorism and its financing, as well as translation of banking and commercial information, except when cooperation offends its fundamental principles and ordre public.

## **II. EXTRADITION**

For the purpose of strengthening hemispheric cooperation in the area of extradition, the Second Meeting recommends:

1. That States, to the extent that they have not done so, take the legal and other necessary measures, within the framework of their respective legal systems, to facilitate and ensure the implementation of those treaties on extradition to which they are party. Similarly to the area of mutual assistance in criminal matters that cooperation in this area be effective, efficient and expeditious.

2. That the States, to the extent that they have not done so, take the necessary measures in order to establish and ensure the action of the central authorities or other competent authorities for cooperation in the area of extradition, as well as to ensure that they can carry out their functions in an effective, efficient and expeditious manner. It is recommended that States:

a) Establish a central or competent authorities to operate extradition pursuant to the treaties in force or based on a reciprocity undertaking, and according to the domestic legislation of each State.

b) Provide central authorities or competent authorities with the personnel, materials and financial resources, and the necessary training for the effective, efficient and expeditious performance of their functions.

c) Establish, respecting the legal limitations, direct channels of communication and permanent contact between central or competent authorities, as well as technical cooperation between them.

3. That the States, respecting the legal limitations, take the measures that they deem necessary in order to eliminate bureaucratic formalities, in order to facilitate more effective, efficient and expeditious cooperation. That consideration be given to the use of means such as teleconferences or similar means.

4. That a working group be created, under the coordination of the Delegation of Brazil, open to all delegations, in order to prepare a guide of procedures in the matter of extradition to be presented at the Third Meeting.

5. Accept the offer made by Trinidad and Tobago in providing translations of its draft Backing of Warrants Bill on extradition with the aim of its inclusion be considered in the agenda of the next meeting of the REMJA Working Group on Mutual Assistance in Criminal Matters and Extradition.

## **III. HEMISPHERIC PLAN OF ACTION AGAINST TRANSNATIONAL ORGANIZED CRIME**

Taking the REMJA V mandate in this area into account, the Second Meeting recommends:

1. That the central authorities and experts in mutual assistance in criminal matters and extradition provide the appropriate follow-up to the negotiation process of the Hemispheric Plan of Action against Transnational Organized Crime within the framework of the OAS.

2. That priority be given in the Hemispheric Plan of Action against Transnational Organized Crime being prepared by the OAS, to those actions necessary to strengthen cooperation aimed at the signature and ratification, ratification, accession, as appropriate, as well as legislative implementation, and application of the following treaties:

- a) The Inter-American Convention on Mutual Assistance in Criminal Matters and its Optional Protocol.
- b) The Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (CIFTA).
- c) Inter-American Convention against Corruption.
- d) The United Nations Convention against Transnational Organized Crime and its three Protocols.
- e) The United Nations Convention against Corruption.

3. That the recommendations for the strengthening of the cooperation on mutual assistance in criminal matters and extradition, emanating from the First and Second Meetings of central authorities and other experts in those areas, be considered vital to the process of elaboration of the Hemispheric Plan of Action, as well as the importance of the continuing to consolidate the cooperation process that is being developed between these authorities within the framework of the REMJA.

#### **IV. HEMISPHERIC INFORMATION EXCHANGE NETWORK**

In this area, the Second Meeting recommends:

1. That consolidation of the hemispheric information exchange network continue and that, in order to maintain the Network's public and private components updated, every four months, the States submit to the Technical Secretariat, the updated information that is to be incorporated in relation to those components.

2. That the secure e-mail system be extended to all the OAS Member States, that appropriate measures be taken to improve its effectiveness in relation to cooperation between central authorities and that States use the system in order to assess its value and present the results of such assessment to REMJA VI, for its consideration.

3. That the Network, in its public, private and secure e-mail system components, also be used for cooperation in the area of extradition, and accordingly, it be named *Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition*.

4. That appropriate consideration be given by REMJA VI to means by which the Network can be maintained and properly funded in the long term.

5. That practical means be developed for advancing in reciprocal cooperation, between the noted Hemispheric Information Exchange Network and the "*Fiscalía Virtual de Iberoamérica*", of the Ibero-American Association of "*Ministerios Públicos*" taking into account the advances and contributions of both initiatives and that the Third Meeting be informed of the results achieved in this regard.

**V. MEETINGS OF CENTRAL AUTHORITIES AND OTHER EXPERTS ON MUTUAL ASSISTANCE AND EXTRADITION**

In this area, it is recommended:

1. Acknowledging the vital role the ad hoc working groups have played in the preparation and support of the REMJA, we recommend the institutionalization of these groups and the process of cooperation through the REMJA, and we further recommend the creation of a permanent office within the Department of International Legal Affairs, dedicated to providing administrative assistance and fostering and strengthening mutual assistance in criminal matters and extradition among members States to promote better coordination, in conjunction with the other bodies of the Organization of American States (OAS) in the fight against crime, especially transnational organized crime.

In this regard, the Meeting of Central Authorities and Other Experts on Mutual Assistance in Criminal Matters and Extradition takes favorable note of the intention of some member States to raise this recommendation in the context of the IV Summit of the Americas, to be held in Mar del Plata, Argentina, in November 2005.

2. That at the next meetings of central authorities and other experts in mutual assistance in criminal matters and extradition, appropriate consideration be given to the strengthening of cooperation in these areas within the framework of the CIFTA Convention and with respect to acts of corruption. The aforementioned is in accordance with recommendations from the First Conference of States Parties of the CIFTA and with the "Meeting of experts on cooperation with respect to the denial of safe haven to corrupt officials and those who corrupt them, their extradition, and the denial of entry and the recovery of the proceeds of corruption and their return to their legitimate owners". In the meantime, it is recommended that the ad hoc working groups discuss these issues as well as those arising from other OAS entities that play a role in combating crime with the aim to present a report at the next meeting of Central Authorities.

3. Appreciate and accept the offer to host the Third Meeting of Central Authorities and Other Experts on Mutual Assistance in Criminal Matters and Extradition, made by the Delegation of Colombia.

4. To thank the Brazilian authorities for their outstanding efforts and the work carried out as the venue for this meeting. Likewise to thank the OAS Technical Secretariat for all the support provided and the work done for the success of this meeting.