



**Report  
of the Expert Working Group  
on  
Mutual Legal Assistance and  
Related International Confiscation**

**Vienna, 15 – 19 February 1993**

## *CHAPTER I*

### **EXECUTIVE SUMMARY**

#### **Satisfactory legislative and treaty progress**

1.1 There has been considerable legislative and complementary treaty activity by many States to implement the mutual legal assistance and international confiscation provisions of article 7 and part article 5 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 ("the 1988 Convention"). For example:

- (a) the group was aware of over 40 implementing laws of 27 countries (Attachment "B");
- (b) regional agreements have been concluded under the auspices of the Council of Europe, the Economic Community of West African States, the Economic Community of the Great Lakes Countries, the Commonwealth of Independent States, the Organization of American States and the South Asian Association for Regional Co-operation (Attachment "C");
- (c) over 70 relevant bilateral treaties have been negotiated; many of which are already in force (Attachment "D");
- (d) a number of appropriate models have been developed under UN auspices or bilaterally to assist States in adjusting their domestic laws to comply with the 1988 Convention and negotiate networks of complementary bilateral treaties (Attachments "B" and "C").

1.2 Much of this activity has enabled mutual legal assistance and international confiscation to be given not only for drug-related offences, but also for other serious crime. Many of the implementation problems for assistance related to serious crime generally are common to assistance related only to drug offences.

#### **But much more needs to be done for effective implementation**

1.3 Continued UNDCP assistance will be necessary to enable other countries to upgrade their domestic law and arrangements in line with the 1988 Convention.

1.4 The best laws and best treaties have little value unless they are fully and effectively implemented. For that to become a universal reality, States must know not only what to do, but also how to do it and then have the political will and resources to make it happen.

1.4 The legal principles are now reasonably well settled. The group found the key implementation problems to lie firstly, in the practical day-to-day matters of establishing the administrative infrastructure necessary for dealing with requests and secondly, in ensuring quick, informal information flows between them to ensure that potential legal, operational and resources constraints in the requested State are properly understood and taken into account in framing effective requests.

### **Overview of implementation issues and problems examined**

1.5 The issues and problems fell into 5 broad areas:

- (a) problems with identification of, and communications between, the authorities responsible for handling international requests;
- (b) problems with infrastructure, roles and resources of these authorities;
- (c) procedural and substantive constraints in requested States limiting their ability to fully execute requests;
- (d) form and contents of requests, particularly lack of critical information in requests; and
- (e) lack of basic "ground rules" to govern day-to-day co-operation between these authorities.

### **Overview of recommendations for more effective implementation**

1.6 The full text of all recommendations are at Chapter 3. In summary, they seek to:

- (a) ensure that:
  - (i) all authorities for mutual legal assistance and international confiscation requests under the 1988 Convention are designated and notified to the Secretary-General by all Parties as soon as possible;
  - (ii) their full contact particulars are made known to each other to enable fast efficient communications and dealings between them, both in general and on a case-by-case basis;
  - (iii) they are tasked with certain key additional functions such as domestic co-ordination of action in response to the request, and that they have appropriate infrastructure and resources for the purpose;
- (b) foster the development of practical guidance materials essential for ensuring the success of requests, in particular on key procedural and substantive constraints of each Party which, unless taken into account by the requesting State, can lead either to refusal or delay of assistance, or to ineffective use of assistance once given;
- (c) establish a basic code of conduct for dealings between central authorities of requesting and requested States on mutual legal assistance and international confiscation under the 1988 Convention. These behavioural rules are consistent with the requirements of the 1988 Convention and aim at maximizing co-operation, consultation and the granting of the assistance requested;

Other recommendations seek to put in place mechanisms for the regular review of implementation experience and casework by representatives of central authorities, for the purpose of continually improving effective implementation of these two key articles of international co-operation under the 1988 Convention.

## **CHAPTER 2**

### **REVIEW OF IMPLEMENTATION EXPERIENCE**

#### **BACKGROUND TO THE EWG MEETING**

2.1 The UNDCP expert group meeting on the implementation of Article 7 and relevant parts of Article 5 of the 1988 Convention was attended by 15 experts from Australia, Bahamas, Canada, Chile, Egypt, France, India, Iran, Japan, Mexico, Russian Federation, Spain, United Kingdom, United States of America and Venezuela. The Acting Chief, Crime Prevention and Criminal Justice Branch of the United Nations Secretariat also participated as an expert.

2.2 Observers from 6 organizations participated (Commonwealth Secretariat, Council of Europe, Economic Community of West African States (ECOWAS), Helsinki Institute for Crime Prevention and Control (HEUNI), ICPO-Interpol and the Organization of American States (OAS)). Full list of participants is at Attachment "A".

2.3 The meeting was opened on the 15 February 1993 by the Director of Treaty Implementation and Legal Affairs Division. The Director said that although the 1988 Convention had entered into force in near record time and there were now 71 parties, much remained to be done to effectively implement its more powerful provisions, such as mutual legal assistance and international confiscation.

2.4 The task of the group was to examine implementation experience, identify legal and operational problems which may be impeding effective implementation and to develop appropriate strategies and recommendations to overcome them.

2.5 After a round-table introductory overview by participants of key implementation problems in their respective countries or organizations, the group adopted the provisional agenda and timetable.

#### **IMPLEMENTATION PROBLEMS WITH "DESIGNATED" AUTHORITIES**

##### **Inability to locate "designated" authorities**

2.6 Paragraph 8 of article 7 of the 1988 Convention obliges Parties to

".... designate an authority, or when necessary authorities, which shall have the responsibility and power to execute requests for mutual legal assistance or to transmit them to the competent authorities for execution."

The paragraph also obliges Parties to notify "the authority or the authorities designated for this purpose ...." to the Secretary-General of the United Nations.

2.7 In many cases, authorities wishing to make a request for mutual legal assistance do not know to what authority in a requested State to direct their request.

2.8 Although this problem will be partly solved through the UNDCP Directory of National Authorities to be published soon, many Parties have not yet notified particulars of their designated authorities to UNDCP. It appears that some Parties may not have yet designated or established the relevant authorities. A mechanism is needed to ensure regular reporting and updating of this vital information.

#### **Need to clarify the role and functions of "designated" authorities**

2.9 Paragraph 8 of article 7 speaks only of authorities with "the responsibility and power to execute requests or to transmit them to the competent authorities for execution." While the functions of an executing authority and a transmitting authority are clear enough, the article does not further elaborate on the functions of these authorities, particularly functions of co-ordination and liaison between all relevant domestic authorities which may be involved in the execution of the request.

2.10 The central authority for the purposes of article 7 should effectively be a national central co-ordinating office, whether its competency is to make requests, execute them or merely transmit them. Hereafter in this report, the central authority is referred to as the "central authority".

2.11 The group considered that the central authority should have a number of key additional functions to those referred to in paragraph 8 of article 7, namely to:

- (a) to receive, review and transmit requests;
- (b) advise its international counterparts on the legal and other requirements and constraints relevant to the making or effective execution of international requests;
- (c) if it is not itself able to execute the request, advise which other, if any, domestic authority could; and
- (d) carry out a leadership, liaison, co-ordination and quality control role domestically to ensure that outgoing requests from the requesting State can be executed as quickly and effectively as possible in the requested State.

2.12 The group stressed the fundamental importance of the co-ordinating function, particularly in States where there are many different executing authorities, often independent of the executive arm of government. Legislation or similar formal vehicles, for example regulations or guidelines, may be useful in some States to clarify responsibility for co-ordination and to ensure adequate powers for effective co-ordination.

#### **Non-acceptance of the legal competency of some investigating or prosecuting authorities seeking assistance**

2.13 Article 7 does not oblige Parties to recognize the legal competency of the investigating or prosecuting authorities on whose behalf a request may be made by a central authority.

2.14 Cases have arisen where the requested State has refused to recognize the competency of the requesting authority, particularly where coercive measures are requested. For example, a request by the police authorities of one State, made through its central authority, was refused by the judicial authorities of the requested State on the grounds that the request was made by a Minister of Justice rather than a judicial officer.

2.15 This problem has been reduced to some extent by the parties concerned expressly designating in bilateral treaties both the competent authorities for the transmission of requests and the competent authorities for making requests.

2.16 The group recommended that, so far as possible, the legal competency of the authority conducting the investigation, prosecution or proceeding to which the request relates be presumed by the requested State, wherever the request has been transmitted by the central authority for the purposes of Article 7 and the request contains a statement of the name, functions and legal competency of that authority. The central authority should act as a "filter" to ensure that requests are made on behalf of truly "competent" authorities.

2.17 It also recommended that requests should not be refused on the sole ground of perceived lack of legal competency of the requesting authority, without prior consultation between the central authority of the requested and requesting States. For example, one expert reported that his State, after consultation, would normally proceed to execute the request without delay, pending receipt of a fresh request from the "competent" authority.

2.18 Finally, the group thought that, in general, legal competency should be presumed where a request emanated from, or through, the principal prosecutor (or his or her designate) of the requesting State (e.g. Attorney-General).

### **Importance of personal contacts**

2.19 Having identified the central authority, the requesting State then needs to know what legal and other practical requirements of the requested State have to be met for the request to be fully executed.

2.20 This task is made much easier if direct personal contacts have already been established and developed between key staff in the central authorities of the States concerned. Visiting opportunities, correspondence exchanges and telephone contacts all serve to open communication channels and to develop familiarity and mutual trust. The process of negotiating complementary bilateral and multilateral mutual legal assistance treaties and arrangements envisaged by paragraph 20 of article 7 has the flow-on benefit of building close personal contacts for future cooperation.

### **Need for appropriate central authority infrastructure**

2.21 Some States have enacted legislation to establish their central authority. Others have established them through administrative means. Countries which have not yet established central authorities should not too readily assume that legislation is necessary or desirable, and should consider the possibility of establishing them administratively. Administrative implementation may be as effective, yet quicker and cheaper.

2.22 Nor are expensive bureaucracies necessary. A cost-effective vehicle can be achieved with a small central authority of two or three people with knowledge of the requirements of the other main legal systems. This may be sufficient, even in countries with a significant request caseload. They are able to quickly and informally contact their counterparts in other countries to ensure quick and effective preparation and execution of requests. However, they would need to be supported by a network of designated part-time focal points in each of their relevant agencies (e.g. police, customs, regulatory agencies and courts).

2.23 These authorities should not duplicate functions of other domestic drug authorities. To ensure proper co-ordination and liaison with other players in the country's drug control system, the central authority should be represented in any national co-ordinating authority in drug control matters.

## **Resources needs**

2.24 Lack of resources impedes implementation of mutual legal assistance and international confiscation in many parts of the world. These include lack of staffing, training, finance, outdated legislation that may not have been published, or if published is nonetheless not accessible. In some jurisdictions copies of certain laws in force no longer exist. Telephones do not exist or do not work. The authorities of many countries do not have sophisticated communication equipment such as facsimile machines or even telex for internal communications, let alone external ones. They lack means of every kind.

2.25 The group recognized the urgent need for legislation development, for harmonization of legislation regionally because of great disparities between neighbouring States, which could hinder co-operation. It also recommended that UNDCP include the establishment and operation of central authorities for mutual legal assistance in the development of "master plans" for countries and subregions, as well as to provide technical co-operation assistance to requesting States in providing or upgrading communication facilities.

## **IMPLEMENTATION PROBLEMS WITH INADEQUATE CONSULTATION, PLANNING, AND PREPARATION OF REQUESTS**

### **Careful planning necessary**

2.26 Requesting States frequently have different expectations of how quickly a requested State can execute a request. The request may often be "urgent" from the requesting State's perspective. However the substantive, procedural and resources constraints in the requested State may mean that the request cannot be executed quickly, perhaps not for many weeks or even months.

2.27 When a requesting authority considers it has not received adequate assistance, it often is because it did not give the requested State the information it needed to ensure prompt and effective provision of assistance, it set unrealistic deadlines for the requested State, or it placed unreasonable demands on the resources of the requested authority.

2.28 The central authority has a crucial role to play in limiting these problems. For example, it can play a role of training or informing, as appropriate, all those involved domestically in framing or executing requests, particularly:

- (a) requesting authorities, on the substantive and procedural limitations or requirements of the requested State; and
- (b) executing authorities, on the need for timely and adequate execution of international requests.

2.29 The central authority of the requesting State can reduce delays by working closely with the requesting authority to ensure that what it needs for the purposes of its investigation or proceedings is what it in fact requests, in both the substantive and procedural sense.

2.30 To carry out this role effectively, the central authority in the requesting State needs the support of its counterparts in requested States to help ensure requests are complete and sufficient before transmission. In this way, consultation between the central authorities should result in the time limits and other practical constraints in the requested State being ascertained, taken into account and planned for, so that assistance may be received within the requesting State's own domestic deadlines.

### **Insufficient information provided in the request**

2.31 A high proportion of international requests require further information from the requesting State before they can be executed. This insufficient information may lead to refusal of the request or delays, which prejudice the success of the investigation or proceeding in the requesting State.

2.32 The group noted that article 7 paragraph 10 sets out what a request for mutual legal assistance must contain, and paragraph 15 enables a request to be refused if it is not made in conformity with provisions of that Article. It considered that requests should contain:

- (a) a clear description of the name and function of the authority conducting the investigation, prosecution or proceeding;
- (b) a full statement of facts and offence alleged sufficient to enable a requested State to be satisfied of the existence of dual criminality, where relevant;
- (c) where the request is for a witness to be examined before a court, providing a list of questions to be asked;
- (d) adequate information on the identity and whereabouts of persons sought (for example in developing countries precise identity of a person sought may not be sufficient, since there may not be street addresses or other geographic aids to help in locating the person; in such cases, providing the fullest possible particulars of the person's believed whereabouts is critical to prospects of assistance being effectively provided); and
- (e) a clear description of necessary procedures for the gathering of evidence, or any particular form that the evidence must take.

2.33 The central authority can also play a valuable quality control function by vetting requests for accuracy, adequacy of information and prospects for successful execution (in the light of the substantive and procedural requirements of the requested State).

### **Importance of developing and making available practical guides**

2.34 The group suggested that UNDCP, in collaboration with the Crime Prevention and Criminal Justice Branch and other interested Parties such as the Council of Europe, should consider developing draft multilingual model forms of request for each main type of assistance (e.g. search and seizure, taking evidence, identifying or tracing proceeds, arranging for witnesses to travel to requesting States to assist in investigations or proceedings).

2.35 The models should be flexible and provide guidance only, particularly for States not yet experienced in either making or responding to requests. They should reflect differences between the major legal systems and preferably contain checklists to guide the preparation of requests.

2.36 Each central authority should consider, if possible, the preparation of two manuals to assist in its functions.

2.37 The first would be an internal manual, which competent authorities within the requesting state could resort to in preparing requests. This manual would provide information on the requirements of foreign States, and the type and form of information required in a request. In addition such a manual could provide the executing authorities with details of the procedures to be followed in the execution of requests from foreign States.

2.38 The second manual would be addressed to requesting States and would provide information on the requirements of the legal system of the requested State. Through this manual, requesting States would be informed of the nature of the legal system in the requested State and of the information which is necessary for successful requests to that State.

2.39 It is further recommended that UNDCP consider compiling one or two page documents from each central authority, which would summarize the essential form and information required in a request to that particular country.

2.40 Flowing from the discussions on the importance of complete and accurate requests, the group concluded that it would be useful to have a model, guideline or checklist on the content and form of requests. This would be especially helpful in requests for action in relation to suspected proceeds of crime. A form or forms which reflected in general terms the requirements of the different legal systems in which the Convention has to be implemented (civil, common law etc.) and which was available in various languages, would be of great assistance in the preparation and execution of requests. Having the document or documents available in various languages would also assist in overcoming some of the terminology problems, which exist between legal systems.

2.41 Various options for developing the forms, including questionnaires to each country, were discussed. A number of countries, including the United Kingdom and Mexico, offered assistance in the preparation of such a guide. Because of ongoing related projects in the Crime Prevention and Criminal Justice Branch and the Council of Europe, it was decided to delay any final recommendations on the development of the guides until the scope of the other projects had been considered fully.

2.42 There were general discussions about the various problems, which could be identified in relation to requests for the freezing or seizing or confiscation of proceeds of crime and search and seizure.

2.43 It was noted that the 1988 Convention and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation both identify two methods through which action in relation to proceeds of crime can be effected. State parties may execute on the basis of foreign orders or may initiate domestic proceedings. The problems associated with execution would vary depending on the chosen method of execution. In addition, requests for assistance in this area must recognize and reflect the appropriate procedure of the requested State.

2.44 A number of diverse issues, pertaining to these requests were discussed, including problems where the subject is not present in the requested State, the variation between countries as to when and how often search and seizure will be used, and the different requirements of countries for requests for search and seizure and freezing or seizing or confiscating proceeds of crime.

2.45 It was noted that the central authority has essential functions in relation to such requests. To obtain assistance, it is necessary that the requirements of the requested State, for execution of such requests, be clear to the requesting State. The central authority of the requesting State should be familiar with these requirements, or should initiate preliminary discussions with the central authority of the requested State, to obtain the information or clarify any details. The authorization of the request by the central authority would also assure the requested State of the validity of the request.

2.46 A general discussion on terminology revealed that differences in language and procedures could result in confusion, which may frustrate the execution of requests. This highlighted the necessity for clear communication of requirements. In addition, the group was of the view that the best way to overcome such differences would be to describe in the request the result sought to be achieved, rather than the legal vehicle by which it may be achieved. For example, use of the expression "search and seizure" is capable of different interpretations in different jurisdictions. This may lead to a request for "search and seizure" being legally incapable of execution under the legal system of some requested States, even though other procedures may be available in those States capable of achieving the same result.

2.47 While the importance of the central authority was discussed once again, it was noted that this should not be over emphasized, in the sense that other informal regional methods of communication and assistance are not eliminated by the existence of the central authority.

#### IMPLEMENTATION PROBLEMS RELATING TO LACK OF UNDERSTANDING OF DIFFERENCES BETWEEN STATES' LEGAL SYSTEMS

2.48 Many difficulties in successfully obtaining mutual legal assistance could be significantly reduced if the requesting State better understood the legal system and law of the requested State. Such understanding might reduce instances of refusal or delay in providing assistance.

2.49 The most effective way to deal with the differences is for the central authority of an intending requesting State to consult with the central authority of the intended requested State, before the request is finalised. This ensures that potential delay and any grounds for refusal attributable solely to those differences can be avoided wherever possible.

2.50 A better general understanding could also be brought about through the development of multi-lingual guidelines by the Crime Prevention and Criminal Justice Branch and UNDCP on the essential features and differences between the main legal systems of the world, and a thesaurus of basic mutual legal assistance and international confiscation terminology.

2.51 The group also suggested that a concise compendium of the fundamental procedural requirements of requested States having an impact on the execution of requests be developed by UNDCP, in collaboration with the Crime Prevention and Criminal Justice Branch (1-2 pages maximum per country). This would enable requesting States to anticipate substantive and procedural factors and frame the request in a way that overcomes them, so far as possible.

2.52 The central authorities could then pass on this information to others involved in mutual legal assistance in their countries. The central authorities could usefully carry out a role of informing judges, prosecutors and investigators in their countries about mutual legal assistance and international confiscation.

#### OTHER IMPLEMENTATION PROBLEMS RELATING TO THE EXECUTION OF REQUESTS

2.53 There was discussion about immunities and privileges of witnesses. One option considered was having foreign law issues determined in the foreign State on the basis of written submissions.

2.54 The very difficult issue of the costs of execution was discussed. The conclusion of these discussions was that consultation between the relevant Parties was essential to resolve such issues.

#### **Refusal of assistance**

2.55 It appears that requests for assistance are not often refused. For example, in one country, a study indicates that, out of a sample of 135 cases, assistance received in 73 cases was not satisfactory. However, only 3 of those 73 cases involved refusal of assistance.

2.56 The group focused on situations where granting assistance has led to what some countries would regard as a breach of the principle *ne bis in idem*. Even in countries where as a matter of law the principle was not infringed, it nonetheless gave rise to a perception of double jeopardy.

Cases have arisen where a country, after having tried, convicted and sentenced an offender for certain conduct, e.g. importation of drugs, was requested to transmit the transcript of the judgement to either the offender's country of origin, or to another country from where the drugs were exported. The judgment had consequently been used to retry and sentence the person a second time for the offence of exportation of drugs, although the person had already served a sentence for the importation of the same drugs in the requested country.

2.57 In some cases, the requesting country felt it had no choice under the United Nations drug control conventions but to prosecute again the offender. Article 3 of the 1988 Convention for instance, lists a comprehensive range of sometimes overlapping conduct - such as import, export, offering, offering for sale, etc. - which have to be established as criminal offences. The intention of the drafters was more to ensure that such conduct would constitute an offence in each jurisdiction where it took place, than to provide for an offender to be prosecuted and punished several times in different jurisdictions for effectively the same conduct.

2.58 In such cases, assistance could be refused pursuant to paragraph 15 (b) of article 7, which provides that mutual legal assistance may be refused if the requested Party considers that execution of the request is likely to prejudice its *ordre public* or essential interests. Indeed, several Parties to the European Convention on Mutual Assistance in Criminal Matters have reserved their right to refuse assistance if it concerns a prosecution or proceedings incompatible with the principle of double jeopardy.

2.59 However, the group agreed that instances of refusal should be kept to the minimum, since the aim was to provide mutual legal assistance to the fullest possible extent. To this end, consultations between requesting and requested authorities when such cases arise are essential. One possible way of dealing with the problem could be the transfer of the offender for execution of the sentence in his country of origin. Another possible approach would be for the judges of the country where the offender will be first sentenced to take into account the fact that a second trial is contemplated in the other country: when practicable, this would ensure that sentences are complementary instead of double.

### **Urgent requests**

2.60 Personal relationships between competent authorities and caseworkers in each country involved are again essential for the efficient execution of urgent requests. In the context of personal contacts, the requesting authority, even before being able to formulate any request, can channel information on the pending case and therefore enable the requested authority to prepare itself and give a swift response as soon as the request is forwarded.

2.61 Personal contacts also help engender the trust necessary for oral requests to be acted on, pending receipt of a written request. The Council of Europe's observer welcomed the introduction in article 7 of the 1988 Convention of the possibility to make oral requests in urgent circumstances as an example of progress made since the adoption of the European Convention on Mutual Assistance in Criminal Matters. He also informed the group that in the field of illicit traffic at sea, the Council of Europe was negotiating a regional agreement under article 17 of the 1988 Convention, in which channels for urgent communication and response would be provided for.

2.62 When oral requests cannot be acted upon, e.g. when coercive measures are involved, or when adequate equipment such as fax machines is not available in one or both countries, the use of Interpol-NCB network can prove particularly useful for the transmission of urgent requests between the central authorities. Similarly, when the country places drug liaison officers in key foreign countries, they can provide a quick alternative channel of communication, when central authorities are unable to contact each other directly.

2.63 In considering the problems with urgent requests, it is necessary to reflect on the effect of the urgency on results. It was noted that there tends to be less effective results when requested States must respond under severe time constraints.

2.64 Further, a timely execution of urgent requests implies that the competent authorities work on a 24 hour basis. This condition is more difficult to fulfil in countries where investigation measures for mutual legal assistance are carried out by judges who usually do not function on a day and night basis, whereas police officers do.

#### **Legal action to prevent or hinder execution**

2.65 Some cases were reported where either third parties or the person the subject of the request initiated legal action to prevent the delivery of the requested assistance, e.g. resisting a request for transmission of bank records on the grounds of breach of an obligation of confidentiality. In such cases an interim order may be issued which prevents delivery until the case can be determined on its merits.

#### **PROBLEMS IN THE USE OF EVIDENCE OBTAINED**

2.66 There was a general discussion about the effectiveness of evidence obtained and problems in its use in proceedings in the requesting State. Some countries noted that problems with use were linked directly to problems with the original request or with the form of execution. For example, one country noted that evidence gathered in cases where requests had to be executed within a short time period, was less effective. Others noted that where evidence was not obtained in the manner or form requested cases were unsuccessful.

2.67 In response to questions posed by the Council of Europe, there was discussion about the use of satellite and telephone links to obtain evidence. A few countries have new legislation and agreements permitting the use of satellite links to gather evidence. Many countries noted that taking evidence by live satellite link or on video was prohibited by their judges or, at best, their judges would have a discretion to allow it or not. Other than some domestic use in the cases of child abuse or appellate work, most countries could report little experience with this type of evidence. However, there was general consensus that it is an area which countries may wish to consider and explore in the next few years.

#### **USEFUL SERVICES AVAILABLE FROM UNDCP AND FROM ICPO-INTERPOL**

2.68 UNDCP briefed the group on legal assistance it can provide to States on request (Attachment "F") and on its current programmes and projects, with particular emphasis on the information gathered and compiled by UNDCP which is available to States. For example, there is a compilation and index of all drug control legislation, including money-laundering legislation. The group noted the usefulness and importance of having such information available. There was discussion as well on some of the challenges to money-laundering legislation, which had arisen in various jurisdictions. The group noted the benefits of having some general summaries on such cases distributed and discussed the possibility of UNDCP undertaking the collection of such cases and preparation and distribution of simple summaries.

2.69 There was a presentation from Interpol on the services of that organization in relation to mutual legal assistance requests, where compulsory measures such as taking of evidence under oath or international confiscation are not sought. This was followed by general discussion and questions, which emphasized the usefulness of Interpol as a means of obtaining information, in particular on sentences imposed in cases of interest to the parties. From this there arose general consensus amongst the group that many times a country providing assistance is not given feedback on the results of the case where assistance was provided. The group concluded that such follow up and feedback is very important and should be provided.

## *CHAPTER 3*

### **RECOMMENDATIONS FOR MORE EFFECTIVE IMPLEMENTATION**

#### **Identification of, and communications between, central authorities**

3.1 The 1988 Convention obligates Parties to designate an authority or authorities responsible for the transmission of requests and for execution or transmittal to competent authorities for execution. This designated central authority has a number of essential functions and responsibilities in advancing mutual legal assistance between the Parties.

Recommendations:

- (a) States, which have not already done so, should designate an authority (or, if necessary, authorities) and notify the United Nations' Secretary-General of its identity and full contact particulars;
- (b) States should establish a practical infrastructure for the authority and provide appropriate training and resources;
- (c) Subject to availability of resources, UNDCP should assist States, at their requests, which are having difficulty in establishing, equipping or training their central authorities.
- (d) Copies of this report should be made available to States which are not yet parties and to parties which have not yet designated their central authorities to assist them in the establishment or designation process.

3.2 Personal communication between central authorities is essential for effective mutual legal assistance under the 1988 Convention. Such communication will be possible only if accurate information on the identity and crucial particulars of the designated authorities (address, phone, fax and, if possible, after hours contact point) are available to each party. The pending UNDCP publication of its directory of national authorities under the drug control conventions will provide that basic information.

Recommendations:

- (a) The forthcoming UNDCP directory should be distributed to all known central authorities as soon as possible.
- (b) The directory should be regularly updated, at least annually.
- (c) To improve communication and working relations between central authorities:
  - (i) the mutual legal assistance or international confiscation request should specify the name and contact particulars of the person in the requesting central authority with day to day responsibility for the request; and -
  - (ii) the central authority receiving a request should as soon as possible acknowledge its receipt and provide the name and contact particulars of the person in that authority with day-to-day responsibility for the request.

- (c) the requesting State should provide timely feedback to the requested State on the outcome, usefulness and effectiveness of the assistance provided.

**Form and content of requests, in the context of procedural and substantive constraints on execution in the requested State**

3.3 A central authority has an essential advisory role to fulfil in relation to mutual legal assistance under the 1988 Convention. The authority of a requested state can assist a requesting State by providing a description of what is required for the successful execution of a request in that State and of the proper form and content of requests.

3.4 Discussions also revealed that there can be diverse procedural and substantive problems in the execution of requests. The sharing of experiences amongst central authorities can help to solve or alleviate such problems.

**Recommendations:**

- (a) Central authorities, where possible, should prepare guides, preferably multilingual, for distribution to their international counterparts.
- (b) These guides should describe in general terms how requests are executed in the country and provide details of the information required in the requests to obtain effective execution.
- (c) UNDCP should seek to obtain from each Party to the 1988 Convention a concise summary of the essential procedural and substantive requirements of its system, particularly in relation to the execution of requests for compulsory measures. The summaries should include information such as:
  - (i) whether the law of the requested State permits the execution in its jurisdiction of a final confiscation order made in the requesting State, or the taking out of a domestic confiscation order in the requested State, or both;
  - (ii) what, if any, evidentiary tests (e.g. "reason to believe", "reasonable and probable cause") must be satisfied before the assistance can be given;
  - (iii) what, if any, requirements of authentication must be met, either for the assistance to be given, or for it to be effectively used in the requesting State.
- (d) UNDCP should, in collaboration with the Crime Prevention and Criminal Justice Branch, seek to develop and disseminate to central authorities other complementary materials to aid States in making requests for assistance under articles 7 and 5.
- (e) Central authorities should submit information on problems encountered in the execution of requests to UNDCP and UNDCP should endeavor to disseminate that information to the parties to the Convention.

## **Ground rules for dealings between States in relation to mutual legal assistance and international confiscation under the 1988 Convention**

3.5 In examining implementation difficulties, the group often identified problems connected with attitudes towards assistance. It thought it would be helpful to recognise them and suggest approaches that would transform these problems into opportunities. They are:

- (a) Assistance should be granted wherever legally possible;
- (b) The central authority of the requested State should provide advice when asked to its counterpart in the requesting State, to help that State develop requests capable of complete and effective execution;
- (c) In general, no request should be refused without prior consultation between central authorities. Consultation should always occur where impediments to execution arise from differences between their legal systems, resources difficulties, or lack of information;
- (d) In general, whenever a request has been transmitted between central authorities, the receiving authority should not call into question the legal competency of the authority conducting the investigation, prosecution or proceeding to which the request relates. It should never be refused on this ground where the request has stated the name, functions and competency of the authority.
- (e) The central authority in both requesting and requested States should be considerate of the constraints under which each other is operating. In particular, the central authority in the requesting State should:
  - (i) ensure that requests are formulated so as to meet the needs of the investigation, prosecution or proceeding concerned, without imposing unreasonable burdens on the time and other resources of its counterpart; and,
  - (ii) where a translation of the request is to be provided, give consideration to the time required to prepare an accurate translation, so as to minimize execution difficulties for the requested State.

### **Other matters**

3.6 Paragraph 20 of Article 7 obliges Parties to consider the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to, or enhance the provisions of that Article.

3.7 Such bilateral and multilateral discussions are also useful to exchange information on legal systems, to adapt the general provisions of the 1988 Convention to suit the particular needs of the individual parties, and to provide a framework for agreement on particular issues such as costs or evidentiary requirements.

### **Recommendations:**

- (a) Parties which have not concluded such agreements or arrangements are strongly encouraged to do so as quickly as possible. Where this is not legally possible, the parties concerned should consider putting into place other mechanisms, including becoming Parties to multilateral agreements, capable of achieving the same objectives.

- (b) Where appropriate, the heads of central authorities could make recommendations for improving the effectiveness of practical implementation.
- (c) These recommendations should be brought to the attention of the central authorities of Parties, the authorities of signatory States to the 1988 Convention as well as to Governments about to become Parties. They should also be brought to the attention of the Commission on Narcotic Drugs and the Commission on Crime Prevention and Criminal Justice.

3.8 Given the importance of close functional relationships between international central authorities and the objectives underlying these recommendations, it may well be that annual meetings of a group of representatives of central authorities would assist with the implementation of the Convention.

Recommendations:

- (a) Representatives of central authorities should meet regularly, at least annually, to review implementation experience and casework;
- (b) These meetings can occur regionally or inter-regionally. However, it is essential, because of the cross-regional nature of mutual legal assistance and international confiscation that a regular interregional meeting be held;
- (c) The costs of participants in such meetings should, so far as possible, be borne by the central authorities;
- (d) Where central authorities are not in a position to fund the attendance of their representatives, other central authorities could consider also funding the attendance of representatives of such authorities. Where the attendance of such representatives is likely to be important to achieve the practical objectives of the meeting, UNDCP is also encouraged to provide enabling financial assistance;
- (e) UNDCP is also encouraged to organise and provide the forum for the first such interregional meeting in the second half of 1994. The meeting should review:
  - (i) implementation experience and casework;
  - (ii) the content and usefulness of the UNDCP Directory of National Authorities;
  - (iii) the proposed multilingual guides; and
  - (iv) the proposed UNDCP compilation of Parties' concise summaries of their substantive and procedural requirements for executing requests.