



Tool 4.4 Mutual legal assistance

Overview

This tool discusses mutual legal assistance, introduces the reader to a range of resources to facilitate assistance and offers some promising examples of mutual legal assistance.

In a large number of cases of trafficking in persons, national authorities need the assistance of other States for the successful investigation, prosecution and punishment of offenders, in particular those who have committed transnational offences. The ability to assert jurisdiction and secure the presence of an accused offender in the State's territory accomplishes an important part of the task, but does not complete it.

The international mobility of offenders and the use of advanced technology, among other factors, make it more necessary than ever that law enforcement and judicial authorities collaborate and assist the State that has assumed jurisdiction over the matter. In order to achieve this goal, States have enacted laws to permit them to provide such international cooperation and increasingly have resorted to treaties on mutual legal assistance in criminal matters.

Scope of mutual legal assistance

Article 18 of the Organized Crime Convention builds upon a number of previous global and regional initiatives. It calls for States parties to afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings. The offences in relation to which assistance ought to be granted include transnational "serious crimes" involving an organized criminal group, the offences established under the Organized Crime Convention itself and offences established under any protocols thereto that States become party to.

States parties are also obliged, by article 18, paragraph 1, of the Organized Crime Convention, to "reciprocally extend to one another similar assistance" where the requesting State has "reasonable grounds to suspect" that one or some of these offences are transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State and that the offences involve an organized criminal group.

As outlined in article 18, paragraph 3, of the Convention, legal assistance may be requested for:

- Taking evidence or statements
- Effecting service of judicial documents
- Executing searches and seizures
- Examining objects and sites

- Providing information, evidence, expert evaluations, documents and records
- Identifying or tracing proceeds of crime, property or instrumentalities for evidentiary purposes and their seizure for the purpose of confiscation (see art. 13 of the Convention)
- Facilitating the appearance of witnesses
- Any other type of assistance not barred by domestic law

As stated in article 18, paragraph 2, of the Convention, mutual legal assistance shall be afforded to the fullest extent possible.

Use of the Organized Crime Convention in the absence of mutual legal assistance treaties

Article 18, paragraph 7, of the Convention provides that paragraphs 9 to 29 of that article shall apply when States parties are not bound by a bilateral or regional treaty of mutual legal assistance. Where there is a treaty in place, it shall apply unless the States agree to apply article 18, paragraphs 9 to 29 of the Convention instead. In this sense, article 18, paragraphs 9 to 29 can be used as a “mini mutual legal assistance treaty” in the absence of other treaties. These paragraphs address various issues relevant to mutual legal assistance, for instance:

Article 18.9 When mutual legal assistance may be declined

Article 18.10-12 Conditions for transfer of a person

Article 18.14 How requests for assistance are to be made:

Article 18, paragraph 14, requests States to notify the Secretary-General of the United Nations of the language or languages acceptable to each State party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention.

Article 18.15 Content of requests for assistance

Article 18.16 Requests for additional information by the requested State party

Article 18.17 Compliance of requests with domestic law

Article 18.18 Provision of evidence by video conference

Article 18.19 Use of information and evidence

Article 18.20 Confidentiality of requests

Article 18.21-23 Refusal of requests

Article 18.24 Execution of requests:

The Convention recognizes the diversity of legal systems and allows States to refuse to provide mutual legal assistance under certain conditions (see art. 18, para. 21). However, it makes it clear that assistance cannot be refused on the grounds of bank secrecy (art. 18, para. 8) or

for offences considered to involve fiscal matters (art. 18, para. 22). States are required to provide reasons for any refusal to assist. Otherwise, States must execute requests expeditiously and take into account possible deadlines facing the requesting authorities (such as the expiration of statutes of limitation).

- Article 18.25-26 Postponement of assistance
- Article 18.27 Safe conduct of witnesses, experts or other persons giving evidence
- Article 18.28 Costs associated with executing requests
- Article 18.29 Obligations of the requested State party to provide materials to the requesting State

Recommended resources

Mutual legal assistance request writer tool of the United Nations Office on Drugs and Crime

UNODC has developed a mutual legal assistance request writer tool to help practitioners streamline the process of lodging requests. The computer-based tool is user-friendly, easily adjustable to a State's substantive and procedural law and practices and requires virtually no prior knowledge of or experience with mutual legal assistance. It also does not require Internet access.

The request writer tool guides the user step by step through the request process for each type of mutual assistance, using on-screen templates. The tool prompts users when they have omitted vital information, before they progress from one screen to the next, in order to avoid incomplete requests and minimize risks of delay or refusal. When data entry is finished, the tool consolidates all the data and then automatically drafts a correct, complete and effective request (in Microsoft Word) for final proofing and signature. The tool also provides details of where in other States to send the request and includes useful links to the legislation of other countries. The tool is available free of charge in English, French, Portuguese, Russian and Spanish.



For more information, please visit:
www.unodc.org/mla/index.html

United Nations Model Law on Mutual Assistance in Criminal Matters (2007)

The United Nations Model Law on Mutual Assistance in Criminal Matters was elaborated by the Treaty and Legal Affairs Branch of the UNODC Division for Treaty Affairs, in accordance with General Assembly resolution 53/112 of 9 December 1998. This tool can be adapted to domestic circumstances for the effective implementation of mutual legal assistance.



The Model Law is available at:
www.unodc.org/unodc/en/legal-tools/Model.html

United Nations Model Treaty on Mutual Assistance in Criminal Matters

The Model Treaty on Mutual Assistance in Criminal Matters was adopted by the General Assembly in its resolution 45/117 and was subsequently amended by the General Assembly in its resolution 53/112. It is intended to be used as a tool by States in the negotiation of bilateral instruments of this nature, thus enabling them to cope more effectively with criminal cases that have transnational implications.



The United Nations Model Treaty on Mutual Assistance in Criminal Matters can be downloaded at:
www.unodc.org/unodc/en/legal-tools/Model.html

The Revised Manuals on the Model Treaty on Extradition and the Model Treaty on Mutual Assistance in Criminal Matters are available at:
www.unodc.org/pdf/model_treaty_extradition_revised_manual.pdf

In some instances, national legislation must also be reviewed and amended to facilitate international cooperation and the use of foreign evidence in order for there to be full benefit from mutual legal assistance efforts.



The United Nations Model Foreign Evidence Bill, 2000 is a useful tool for doing so. The model bill is available at the UNODC website:
www.unodc.org/pdf/lap_foreign-evidence_2000.pdf

Basic Guide to Prosecutors in Obtaining Mutual Legal Assistance in Criminal Matters

(International Association of Prosecutors)

The International Association of Prosecutors (IAP), established in June 1995 at the United Nations Office at Vienna, has created a basic guide for use by prosecutors in obtaining mutual legal assistance. The guide is intended to be a simple route map for achieving mutual legal assistance and sets out useful principles and three basic rules to be followed.

- *Rule 1.* The contents of the request you send should be completed with care. Confidentiality may not always be possible and if it is required, this must be made clear on the face of the document.

- *Rule 2.* Ask another State to do for you only what your law enables you to do and only where the request will result in additional evidence of value to the prosecution. In doing so, respect common rules relating to certainty, confidentiality, disclosure, dual criminality, defamation, human rights, proportionality and reciprocity.
- *Rule 3.* Check the contents of your request, ensuring that all necessary particulars are clearly included and that all necessary annexes are attached.



The IAP basic guide is available at:
www.iap.nl.com

Promising practice

Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition

(Organization of American States)

At the third Meeting of Ministers of Justice and Attorneys General of the Americas, held in 2000, it was decided to improve information exchanges between OAS member States in the area of mutual legal assistance in criminal matters. A working group was established and developed a pilot project focusing on the creation of a criminal justice information exchange network. One component of the resulting Information Exchange Network is a public website that enables citizens of OAS member States to become familiar with their own justice systems and those of the States they are working with. The site includes a general description of legal systems of countries of the Americas and posts laws and bilateral and multilateral agreements in force concerning extradition and mutual legal assistance in criminal matters. This information is available in the four official languages of the OAS: English, French, Portuguese and Spanish.



For more information about the OAS Information Exchange Network, visit:
www.oas.org/juridico/mla/en/index.html

European liaison magistrates

In the European Union, a framework has been created for the exchange of liaison magistrates to improve judicial cooperation between member States. The tasks of the liaison magistrates comprise any activity designed to encourage and accelerate all forms of judicial cooperation in criminal matters, in particular by establishing direct links between relevant departments and judicial authorities in order to facilitate mutual legal assistance. Under arrangements agreed between the home and the host member States, the tasks of liaison magistrates may also include any activity connected with handling the exchange of information and statistics designed to promote mutual understanding of the legal systems of the States concerned and to further relations between the legal professions in each of those States.

Mutual legal assistance instruments

African instruments

Cooperation agreement on police matters between Benin, Ghana, Nigeria and Togo (Lagos, 1984)

The Economic Community of West African States Convention on Mutual Assistance in Criminal Matters (1992)

Southern African Development Community Protocol on Mutual Legal Assistance in Criminal Matters (2002)

www.sadc.int/english/documents/legal/protocols/legal_assistance.php

Mutual Assistance Pact between Member States of the Economic Community of Central African States (2002)

ASEAN instrument

ASEAN Treaty on Mutual Legal Assistance in Criminal Matters (2004)

In Kuala Lumpur on 29 November 2004, the Governments of Brunei Darussalam, Cambodia, Indonesia, the Lao Democratic People's Republic, Malaysia, the Philippines, Singapore and Viet Nam signed the ASEAN Treaty for Mutual Legal Assistance in Criminal Matters.

www.aseansec.org/17363.pdf

Commonwealth instrument

Scheme (the Harare Scheme) relating to Mutual Assistance in Criminal Matters within the Commonwealth
(1986, as amended in 1990 and 1999)

The Commonwealth scheme (the Harare Scheme) was agreed in 1990 and amended in 2002 and 2005. It is not a treaty or convention, but it assists States in making requests for assistance. Paragraph 14 of the scheme sets out the contents to be contained in such a request.

www.thecommonwealth.org/Internal/38061/documents/

European instruments

European Convention on the Transfer of Proceedings in Criminal Matters
(Strasbourg, 1972; came into force in 1978)

(*European Treaty Series*, No. 73)

<http://conventions.coe.int/treaty/en/Treaties/Html/073.htm>

Act on mutual assistance in criminal matters between European Union member States (2000)

Given that legal and judicial systems differ from one European Union member State to another, this Act sought to establish a cooperative mechanism to facilitate mutual judicial assistance between authorities (police, customs and courts) to improve the speed and efficiency of cooperation.

<http://europa.eu/scadplus/leg/en/lvb/l33108.htm>

The European Convention on Mutual Assistance in Criminal Matters (1959)

(*European Treaty Series*, No. 30)

<http://conventions.coe.int/Treaty/en/Treaties/Html/030.htm>

Additional Protocols to the European Convention on Mutual Assistance in Criminal Matters (1978, 2001)

(*European Treaty Series*, Nos. 99 and 182)

<http://conventions.coe.int/Treaty/en/Treaties/Html/099.htm>

<http://conventions.coe.int/Treaty/en/Treaties/Html/182.htm>

Convention on Mutual Assistance and Cooperation between Customs Administrations (1998)

This Convention, drawn up on the basis of article K3 of the Treaty on the European Union, seeks to increase cooperation among customs officials. It is not intended to affect other provisions regarding mutual assistance in criminal matters between judicial authorities, or more favourable provisions in bilateral or multilateral agreements between European Union member States governing customs cooperation.

<http://europa.eu/scadplus/leg/en/lvb/l33051.htm>

Nordic States Scheme (1962)

Adopted by Denmark, Finland, Iceland, Norway and Sweden, this scheme reflects the strong connections between those States.

Agreement among the Governments of the Black Sea Economic Cooperation Participating States on Cooperation in Combating Crime, in Particular in its Organized Forms (1998) and its **Additional Protocol** (2002)***Inter-American instruments*****Inter-American Convention on Mutual Assistance in Criminal Matters** (1992)

www.oas.org/juridico/english/study.htm

Optional Protocol related to the Inter-American Convention on Mutual Assistance in Criminal Matters (1993)

www.oas.org/juridico/english/treaties/a-59.html

The Inter-American Convention on the Taking of Evidence Abroad (1975)

www.oas.org/juridico/english/treaties/b-37.html

Additional Protocol to the Inter-American Convention on the Taking of Evidence Abroad (1984)

www.oas.org/juridico/english/treaties/b-51.html

Australian instrument

Through the Mutual Assistance (Transnational Organised Crime) Regulations 2004 and the Mutual Assistance in Criminal Matters Act 1987, mutual legal assistance is potentially available to all States parties to the Organized Crime Convention.



For more information, visit:

www.ministerjusticeandcustoms.gov.au/www/agd/agd.nsf/page/Extradition_and_mutual_assistance