

TOPIC NO. 4
MUTUAL LEGAL ASSISTANCE AND SHARING OF INFORMATION
BETWEEN GOVERNMENTS

DURATION OF SESSION: 45 MINUTES TO 1 HOUR
SUGGESTED METHOD: LECTURE
TRAINING AIDS: OHP, POWERPOINT PRESENTATION

AIM OF THE SESSION:

The session will familiarise the participants with the concept of mutual legal assistance as envisaged in Article 7 of the 1988 UN Convention and the methodology laid down for seeking/providing such assistance in precursor control investigations, prosecutions and other proceedings.

OBJECTIVE OF THE SESSION:

At the end of this session, each participant will:

1. Know on what issues legal assistance can be sought from other countries;
2. Know whom to approach in the country for seeking such assistance from abroad and what procedure needs to be followed.

POINTS TO BE COVERED:

- Mutual legal assistance is a universally recognised form of international cooperation.
- Article 7 of the 1988 UN Convention urges the Parties to the Convention to afford one another the widest possible mutual assistance in investigations, prosecutions and judicial proceedings in relation to criminal offences pertaining to precursor chemicals.
- The Convention lays down a detailed procedure for seeking and providing mutual legal assistance.
- Purposes for which Request can be sought
- The Convention lists various purposes for which one of the Parties to the Convention may request the other party to provide the legal assistance. These purposes are:
 - Taking evidence or statements from persons.
 - Effecting service of judicial documents.

- Executive searches and seizures.
 - Examining objects and sites.
 - Providing information and evidentiary items.
 - Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records,
 - Identifying or tracing proceeds, property, instrumentalities or other assets.
- The Convention also leaves it to the discretion of the Parties to provide one another any other forms of mutual assistance.
- Facilitating Presence/availability of persons in other country
 - Parties are urged to facilitate or encourage, to the extent consistent with their domestic law and practice, the presence or availability of persons, including persons in custody, who consent to assist in investigations or participate in proceedings.
- Designation of Authority for attending to requests/communication
 - Parties have to designate an authority or where necessary, authorities to attend to requests for mutual assistance.
 - The Secretary General should be notified details of such authority or authorities.
 - Transmission of requests for mutual legal assistance shall take place between these authorities.
 - Parties reserve the right to transmit requests through diplomatic channels.
 - In urgent circumstances, if parties so agree, requests for mutual legal assistance can be transmitted through Interpol also.

The requests for legal assistance should be made in writing in a language acceptable to the requested Party.

- Information to be contained in a request
- While making a request for mutual legal assistance, Parties are required to include following information in the request:
 - (a) The identity of the authority making the request;
 - (b) The subject matter and nature of the investigation, prosecution or proceeding to which the request relates, and the name and the functions of the authority conducting such investigation, prosecution or proceeding;
 - (c) A summary of the relevant facts, except in respect of requests for the purpose of service of judicial documents;
 - (d) A description of the assistance sought and details of any particular procedure the requesting Party wishes to be followed.
 - (e) Where possible, the identity, location and nationality of any person concerned; and

- (f) The purpose for which the evidence, information or action is sought.
- The requested Party can also ask for additional information.
- Use of Information received under Mutual Legal Assistance
 - The requesting Party can use the information or evidence for investigation, prosecution etc. only with prior approval of the requested Party.
- Confidentiality of Information
 - The requested Party can also require the requesting party to keep the fact and substance of the request confidential.
- Execution/Refusal of Request
 - A request shall be executed in accordance with and to the extent not contrary to the domestic law of the requested Party.
 - The Convention mandates that a Party shall not deny mutual legal assistance on the ground of bank secrecy.
 - Mutual legal assistance can be refused on one of the following grounds:
 - If the request is not made in conformity with the provisions of Article 7 of the Convention.
 - If the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;
 - If the authorities of the requested Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or proceedings under their own jurisdiction;
 - If it would be contrary to the legal system of the requested Party relating to mutual legal assistance for the request to be granted.
 - Reasons are required to be given for refusal of request.
- Postponement of Request
 - If the assistance interferes with an ongoing investigation, prosecution or proceedings, mutual legal assistance can be postponed also or the terms and conditions to which request can be granted can be decided after mutual consultations.
- Immunity to Witnesses
- Costs of Mutual Legal Assistance
- Bilateral/Multi-lateral Agreement
 - The Convention also urges the Parties to enter into bilateral and multilateral agreement to give practical effect to or to enhance the effectiveness of mutual legal assistance.