



UNITED NATIONS  
*Office on Drugs and Crime*

# **REPORT**

**Informal Expert Working Group**

**on**

**Mutual Legal Assistance Casework  
Best Practice**

**Vienna  
2001**

## INDEX

<b>INTRODUCTION</b>	<b>4</b>
1. Organization	4
2. Task	4
3. Participation	4
4. Report terminology	4
<b>EXECUTIVE SUMMARY</b>	<b>5</b>
<b>BEST PRACTICE RECOMMENDATIONS</b>	<b>7</b>
1. Enhancing effectiveness of mutual legal assistance treaties and legislation	7
2. Strengthening effectiveness of mutual legal assistance central authorities	7
2.1 <i>Establishing effective central authorities</i>	7
2.2 <i>Ensuring dissemination of up to date contact information</i>	8
2.3 <i>Ensuring around the clock availability</i>	8
2.4 <i>Consistency for different international conventions</i>	8
2.5 <i>Reducing delay</i>	8
3. Ensuring awareness of national legal requirements and best practices	8
3.1 <i>Increasing availability and use of practical guides</i>	8
3.2 <i>Increasing training of personnel involved</i>	9
4. Expediting cooperation through use of alternatives, when appropriate	9
4.1 <i>Police channels, if formal coercive measures not required</i>	9
4.1.1 <i>where evidence voluntarily given, or publicly available</i>	9
4.1.2 <i>to facilitate effective response to urgent formal requests</i>	9
4.1.3 <i>always inform central authority of prior informal contact</i>	9
4.2 <i>Use of joint investigation teams</i>	9
5. Maximizing effectiveness through direct inter-authority personal contact	10
5.1 <i>Maintaining direct contact throughout all stages of the request</i>	10
5.2 <i>Benefits of liaison magistrates, prosecutors and police officers</i>	10
6. Preparing effective requests for mutual legal assistance	10
7. Eliminating or reducing impediments to the full execution of requests	10
7.1 <i>Interpreting legal requirements flexibly</i>	10
7.2 <i>Minimizing grounds for refusal and exercising them sparingly</i>	11
7.3 <i>Reducing use limitations</i>	11
7.4 <i>Ensuring confidentiality in appropriate cases</i>	11
7.5 <i>Executing requests in accordance with Requesting State's procedures</i>	11
7.6 <i>Coordination in multi-jurisdictional cases</i>	12
7.7 <i>Reducing complexity, through reforms of extradition process</i>	12
7.8 <i>Confiscation cooperation</i>	12
7.9 <i>Streamlining third party protection</i>	13
7.10 <i>Consulting first to avoid unnecessary refusal /postponement or conditioning of cooperation</i>	13

8. Making use of modern technology in mutual legal assistance casework	13
9. Making use of the most modern mechanisms for providing mutual legal assistance	13
10. Maximizing availability and use of resources	14
10.1 Providing central authorities with adequate resources	14
10.2 Obtaining assistance from a Requesting State	14
10.3 Asset sharing	14
10.4 Optimizing language capability	14
11. Role of the United Nations in facilitating effective mutual legal assistance	15
11.1 Coordination of technical assistance	15
11.2 Updating UN Directory of Competent Authorities for Mutual Legal Assistance	15
11.3 UNDCP and CICP to work closely together in assisting States to implement similar mutual legal assistance obligations in the 1988 Convention and the Palermo Convention	15
11.4 Development of training materials	15

## **MODEL CHECKLISTS AND FORMS** **16**

### Model checklists

Explanatory note	17
General Checklist for Preparing All Mutual Legal Assistance Requests	18
Supplemental Checklist for Specific Types of Requests	19
<i>Search and seizure</i>	19
<i>Production of documents</i>	19
<i>Taking of witness statements/evidence</i>	20
<i>Temporary transfer of prisoners to give evidence</i>	20
<i>Pre-judgement seizure/freezing or post-judgement confiscation</i>	21

### Forms

<i>Form I Cover Note (Request/Acknowledgement)</i>	22
<i>Form II Authentication Certificate for Foreign Public Documents (Hague Convention, 1961)</i>	23

## **ANNEXES** **24**

Annex 1	EWG task and issues to be addressed	25
Annex 2	EWG Participants	26
Annex 3	List of bilateral of mutual legal assistance treaties of EWG participants home jurisdictions	28

## **ABBREVIATIONS USED IN THIS REPORT**

1993 Report	UNDCP Expert Working Group on Mutual Legal Assistance and Related Cooperation (E/CN.7/1993/CRP.13)
1988 Convention	United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988
Palermo Convention	United Nations Convention Against Transnational Organized Crime, 2000
EWG	Informal Expert Working Group on Mutual Legal Assistance Casework Best Practice, Vienna, 3-7 December 2001
EWG on Asset Forfeiture	UNDCP Informal Expert Working on Effective Asset Forfeiture Casework, Vienna, 3-7 September 2001

## INTRODUCTION

### 1. Organization

UNDCP's Legal Advisory Programme organized an informal expert working group ("EWG") of mutual legal assistance practitioners from central authorities designated under article 7 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 ("the 1988 Convention"). The EWG met in Vienna, 3-7 December 2001.

### 2. Task

- The EWG's task (*Annex 1*) was to develop best practice guidance to help States more effectively implement the mutual legal assistance provisions of the international drug control conventions and related instruments in domestic and international casework.
- In carrying out its task, the EWG discussed recent developments in mutual legal assistance practice that could facilitate enhanced providing of international cooperation, and practical means of strengthening mutual legal assistance under articles 5 and 7 of the 1988 Convention.
- The EWG also reviewed the Report of UNDCP's 1993 Expert Working Group on Mutual Legal Assistance and Related Cooperation (E/CN.7/1993/CRP.13) ("1993 Report").

### 3. Participation

Participating experts were drawn from Africa, the Americas, Asia-Pacific, the Caribbean, and Europe, and represented both the civil law and common law legal traditions. Given their wide personal international mutual legal assistance casework experience, they participated in the EWG's work in their own personal capacities. Other experts unable to be physically present in Vienna also contributed to the work, either by videoconference, or by separately contributing comments and suggestions on this report prior to final settlement of the text. The full list of participating experts at the meeting is at *Annex 2*.

### 4. Report terminology

For cross-legal system consistency and clarity, the EWG has used technical expressions in this Report with the same meaning they have in the relevant UN Conventions unless the contrary is indicated.

For example:

- "confiscation" includes forfeiture where applicable, and means the permanent deprivation of property by order of a court or other competent authority;
- "freezing" or "seizure" means temporarily prohibiting the transfer, conversion, disposition or movement of property, or temporarily assuming custody or control of property on the basis of an order issued by a court or a competent authority; and
- "proceeds" means any property derived from or obtained directly or indirectly through the commission of a relevant offence.

The EWG has used the expression "civil forfeiture" as meaning the permanent deprivation of property without the need to obtain a criminal conviction as a pre-requisite to eventual confiscation.

## EXECUTIVE SUMMARY

1. The EWG found that the recommendations in the 1993 Report had stood the test of time and still represented best practice. Some of them were now formally reflected in later instruments, such as Article 18 of the United Nations Convention Against Transnational Organized Crime, 2000 ("Palermo Convention").<sup>1</sup>
2. At the same time, the EWG found that there had been significant developments in mutual legal assistance practice since that Report. There remained a need for concerted further action to minimize or eliminate obstacles to effective mutual legal assistance in criminal matters, including under the provisions of articles 5 and 7 of the 1988 Convention.
3. The EWG also found that many States had significantly expanded their capability to provide international mutual legal assistance since the 1993 report. For example, particularly since the events in the United States of 11 September 2001, there have been considerable developments in the area of mutual legal assistance in the European Union: the pace of change has accelerated dramatically.
4. Instruments which have been agreed, or which are likely to be agreed, and implemented in all Member States of the EU by the end of 2002 include the Mutual Legal Assistance Convention of 2000, plus its Protocol of 2001, and Framework Decisions on the use of Joint Investigation Teams, the establishment of Eurojust, the Mutual Recognition of Orders freezing assets and seizing evidence, and the creation of a European Arrest Warrant.
5. The European Judicial Network, which has been operational since 1998, is also proving invaluable in practice, giving mutual legal assistance practitioners the ability to identify and communicate swiftly, and where necessary in confidence, with their counterparts in other Member States.
6. Many jurisdictions have taken recent legislative, judicial or executive initiatives to strengthen their ability to give, receive and effectively use mutual legal assistance. France has outposted liaison magistrates to important mutual legal assistance casework jurisdictions abroad. Civil asset forfeiture legislation proposals are being considered by parliaments in Australia, Canada and the United Kingdom, which will concurrently increase their respective mutual legal assistance capabilities. In the United States, recent legislation has, inter alia, increased its capacity to provide for freezing and confiscation of funds or other property used in or derived from foreign criminal offences, and its network of bilateral mutual legal assistance treaties has been greatly expanded. Indeed, there has been a general increase in the number of bilateral mutual legal assistance treaties entering into force in EWG participants' home States. (*Annex 3*).
7. Moreover, a number of significant global and regional multilateral instruments impacting on mutual legal assistance practice have been concluded recently, including the UN Financing of Terrorism Convention of 1999, the Council of Europe Convention against Cybercrime of 2001, the Second Additional Protocol of 2001 to the Council of Europe Convention on Mutual Assistance in Criminal Matters of 1959, the Palermo Convention, and the UN Terrorist Bombing Convention of 1997. In addition, the Organization of African Unity and CARICOM are currently in the process of negotiating regional conventions on mutual legal assistance in criminal matters, and negotiations will soon commence with respect to a UN Convention against Corruption.
8. At the same time, the EWG noted that 50 out of 164 Parties to the 1988 Convention had not notified the Secretary General of the UN of the designation of the authority to whom requests for mutual legal assistance should be directed under article 7. As a result, the UN Directory of Competent National Authorities under Articles 7 and 17 of the 1988 Convention is incomplete, and other parties may be hampered in their ability to obtain cooperation under the Convention. It was also noted that in some cases, the designated agencies appeared unlikely to be able to effectively process requests for mutual legal assistance in criminal matters (eg, where the designated authority was a national health ministry) and that in other cases, data in the Directory appeared to be incorrect or incomplete, making identifying and contacting central authorities unnecessarily difficult.

---

<sup>1</sup> For example, in seeking to reduce the incidence of inappropriate refusals of requests, compare "*Assistance should be granted wherever legally possible.*" (1993 Report, recommendation 3.5 (a)) with "*Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements...*" (UNTOC Convention, article 18, paragraph 2); and "*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, resource difficulties, or lack of information.*" (1993 Report, recommendation 3.5 (c)), with "*Before refusing a request....., the Requested State shall consult with the requesting State Party ...*" (Palermo Convention, article 18, paragraph 26).

9. The EWG also identified and extensively discussed a number of additional problems of law and practice that can impede the smooth flow of mutual legal assistance in drug and other criminal matters. To overcome these obstacles, the EWG agreed:
  - (a) recommendations States may wish to follow in order to facilitate the providing of effective mutual legal assistance (pages 7-16); and
  - (b) a series of model checklists and forms that could provide a general guide for Requesting States in preparing mutual legal assistance requests (pages 16-23).
10. Due to the wide range of differences between States in their domestic legislation and practice in executing requests, the EWG did not attempt to create a universal checklist for use by Requested States in executing mutual legal assistance requests.

## BEST PRACTICE RECOMMENDATIONS FOR FACILITATING MUTUAL LEGAL ASSISTANCE

The EWG recommended that States take the following actions in order to facilitate the providing of effective mutual legal assistance:

### 1. Enhancing the effectiveness of mutual legal assistance treaties and legislation

An effective legal basis to provide mutual legal assistance is critical to ensuring effective action. States should develop broad mutual legal assistance laws and treaties in order to create such a legal basis.

Since mutual legal assistance treaties (MLATs) create a binding obligation to cooperate with respect to a range of mechanisms, States should wherever possible expand the number of States with which they have such treaty relationships. States or regions that would have difficulty negotiating an extensive network of bilateral MLATs should consider developing regional MLATs to create a modern legal framework for cooperation, or if this is not possible, ensuring that they have up to date domestic legal regime for providing legal assistance. In this context States may wish to consider relevant UN or regional model treaties<sup>2</sup> or model legislation<sup>3</sup> and their associated guidelines or commentaries.

In developing or reviewing treaties and legislation States should ensure that there is the greatest possible flexibility in the domestic law and practice to enable broad and speedy assistance. It is particularly important to have the capacity to render the assistance in the manner sought by the Requesting State.

States should regularly review such treaties and laws, and, as needed, supplement them to ensure that they keep pace with developments in international mutual legal assistance practice.

### 2. Strengthening effectiveness of central authorities

#### 2.1 Establishing effective central authorities

The drug and crime control conventions contain extensive and broadly similar provisions relating to mutual legal assistance. Included in their provisions are requirements for each Party to notify the Secretary-General of the United Nations of the central authority designated by it to receive, transmit or execute requests for mutual legal assistance. This is critical information for Requesting States in planning and drawing up requests. It must be accurate, up to date and widely available to those who frame or transmit mutual legal assistance requests.

States that have not already done so should establish a central authority that facilitates the making under article 7 of the 1988 Convention of requests for mutual legal assistance to, and speedy execution of requests received from, other Parties. Central authorities should be staffed with practitioners who are legally trained, and who have developed institutional expertise and continuity in the area of mutual legal assistance. A central authority need not be established by legislation – an administrative structure would suffice.

Designation of authorities which have important national drug control capability in other fields (eg, health ministries), but little if any in international mutual legal assistance should be avoided.

#### 2.2 Ensuring the dissemination of up-to-date contact information for central authorities

Parties to the 1988 Convention should ensure that contact information contained in the UN Directory of competent authorities under article 7 of the Convention is kept up-to-date, and, to the extent possible, provides information for contacting its central authority via phone, fax and Internet.

---

<sup>2</sup> Eg, the United Nations *Model Treaty on Mutual Assistance in Criminal Matters* (Annex to Resolution 45/117 of 14 December 1990, and complementary provisions (Annex I to Resolution 53/112 of 9 December 1998; *Model Treaty on Extradition* (Annex to Resolution 45/116 of 14 December 1990, and complementary provisions (Annex I to Resolution 52/88 of 12 December 1997).

<sup>3</sup> Eg, UNDCP's model laws: (a) for States of common law legal tradition *Model Mutual Assistance in Criminal Matters Bill 2002*, *Model Foreign Evidence Bill 2002*, *Model Extradition (Amendment) Bill 2002*, *Model Witness Protection Bill 2002*; (b) for States of the civil or continental legal tradition *Model Law on Mutual Legal Assistance 2002*. All models are available (in hard copy or electronic form).

### 2.3 Ensuring around the clock availability

Both with respect to the 1988 Convention and generally, a State's central authority should, to greatest extent possible, provide for a means of contacting an official of the central authority if necessary for the purposes of executing an emergency request for mutual legal assistance after working hours. If no other reliable means is available, States may consider ensuring that their Interpol National Central Bureau or other existing channel is able to reach such an official after working hours, remembering that at any given time sunrise in one part of the world is sunset in another.

### 2.4 Consistency of central authorities for mutual legal assistance purposes under different treaties

The EWG noted the wide and growing range of international conventions, each requiring parties to afford one another most extensive possible mutual legal assistance in relation to the offences covered by the particular convention, and each requiring for that purpose the designation of a central authority.

The Group noted the potential for fragmentation of effort and inconsistency of approach if different central authorities are designated for different groups of offences. States are therefore urged to ensure that their central authorities under the 1988 Convention and the UN Convention on Transnational Organized Crime of 2000 are a single entity of the kind described in this section, in order both to make it easier for other States to contact the appropriate authority for all kinds of mutual legal assistance in criminal matters, and to facilitate greater consistency of mutual legal assistance practice for different kinds of criminal offences.

### 2.5 Reducing delay

The EWG noted that significant delay in the execution of requests is in part caused by delay in consideration of the request by the receiving central authority and transmission of the request to the appropriate executing authority. States should take appropriate action to ensure that requests are examined and prioritized by central authorities promptly upon receipt and transmitted to executing authorities without delay. States should consider placing time limits upon processing of requests by central authorities. States are encouraged to afford foreign requests the same priority as similar domestic investigations or proceedings. States should also ensure that executing agencies do not unreasonably delay processing of requests. Appropriate coordination arrangements should be in place in federal jurisdictions where constituent States have execution responsibilities to minimize the risk of delayed responses.

## **3. Ensuring awareness of national legal requirements and best practices for domestic and foreign officials involved in the mutual legal assistance process**

### 3.1 Increasing availability and use of practical guides regarding national mutual legal assistance legal framework and practices (domestic manuals; guides for foreign authorities)

It is important that domestic authorities be aware of the availability of mutual legal assistance and know the procedures to follow to obtain that assistance in relation to an investigation or prosecution. It is also very useful, particularly in larger jurisdictions, where there may be several authorities involved in the making or execution of such requests, to provide for the sharing of information between those authorities.

States should adopt mechanisms to allow for the dissemination of information to their domestic authorities regarding mutual legal assistance law, practice and procedures and on making requests to other States.

One possible approach is to develop a procedural manual or guide for distribution to relevant law enforcement, prosecutorial and judicial authorities. Other useful mechanisms can include the distribution of a regular newsletter and the convening of domestic practitioners meetings to provide updates on cases, legislation and general developments.

The provision of information to foreign authorities was also highlighted as an important measure to facilitate effective cooperation. States should develop guidelines on domestic law and procedures relating to mutual legal assistance to inform foreign authorities on the requirements that must be met to obtain assistance. Any such guidelines should be made available to foreign authorities through a variety of methods, such as, for example, publication on a website, direct transmission to law enforcement partners in other States or distribution through the ODCCP or other international organizations.

### 3.2 Increasing training of personnel involved in the mutual legal assistance process

Effective implementation of mutual legal assistance instruments and legislation is not possible without personnel who are well trained with respect to the applicable laws, principles and practices. States should use a broad range of methods to provide such training, in a manner that will allow for the expertise to be sustained, e.g.:

- lectures and presentations by central authorities as part of regular training courses or workshops for law enforcement, prosecutors, magistrates or other judicial authorities;
- special workshops or seminars on a domestic, regional or multi-jurisdictional basis;
- introducing programmes on mutual legal assistance as part of the curriculum for law schools or continuing legal education programmes;
- exchanges of personnel between central authorities of various jurisdictions.

## **4. Expediting cooperation through use of alternatives to formal mutual legal assistance requests**

### 4.1 Value of police channels where formal coercive measures are not required

The EWG emphasized that, except for coercive measures normally requiring judicial authority,<sup>4</sup> a formal mutual legal assistance request will not always be necessary to obtain assistance from other States.

Whenever possible, information or intelligence should initially be sought through police to police contact, which is faster, cheaper and more flexible than the more formal route of mutual legal assistance. Such contact can be carried out through ICPO/Interpol, Europol, through local crime liaison officers, under any applicable memoranda of understanding, or through any regional arrangements, formal and informal, that are available.

#### 4.1.1. Particularly where evidence is voluntarily given, or publicly available

While generally police channels can never be used to initiate coercive measures on behalf of the Requesting State, such channels may be used to obtain evidence given voluntarily (such as statements), or evidence from public records or other publicly available sources. Again, this method has the advantage of being faster and more flexible than formal requests. Also, certain categories of evidence or information may be obtained directly from abroad without the need for police channels, for example, publicly available information stored on the internet or in other repositories of public records.

#### 4.1.2 Or to help accelerate an effective response to very urgent formal requests

Many States will also permit very urgent requests to be made orally or by fax between law enforcement officers so that advance preparations can be made or urgent non-coercive assistance given, at the same time as a formal request is routed between central authorities.

#### 4.1.3 But always inform the central authority of the prior informal channel contacts

The formal request should state that a copy has been sent by the informal route to prevent duplication of work. Similarly, where there has been prior police to police contact, the Letter of Request should state this and give brief details.

### 4.2 Use of joint investigation teams

States should use joint investigation teams comprised of officers of two or more States where there is a transnational aspect to the offence, for example in facilitating controlled deliveries of drugs, or in cross-border surveillance operations. States should make full use of the benefits of the exchange of financial intelligence (in accordance with appropriate safeguards) between agencies responsible for collating financial transaction data and, where necessary, develop or enact the appropriate enabling legislation<sup>5</sup>.

---

<sup>4</sup> Eg, search and seizure, production of documents, confiscation of assets or obtaining evidence from unwilling witnesses.

<sup>5</sup> Although these exchanges constitute a means of cooperation among regulatory agencies, rather than formal mutual legal assistance, exchanges of certain financial intelligence often reveal for the first time serious offences within the jurisdiction of the criminal justice authorities of the receiving State (eg, drug trafficking, money laundering, corruption), and may lead to the commencement in that State of appropriate criminal investigations, prosecutions or related judicial proceedings, thereby possibly giving rise to subsequent mutual legal assistance requests for formal evidentiary or asset forfeiture purposes. The EWG emphasized the key complementary role direct exchanges of such financial intelligence between regulatory agencies can play in helping proactively to identify and then effectively deal with serious transnational crime, and encouraged States to enter into appropriate bilateral agreements, arrangements or understandings to facilitate that result.

## **5. Maximizing effectiveness through direct personal contact with authorities in other States**

### 5.1 Maintaining direct contact throughout all stages of the request

The 1993 Report had stressed the importance of personal contacts to open communication channels and to develop the familiarity and trust necessary to achieve best results in mutual legal assistance casework.

The EWG reaffirmed that personal contact between members of central authorities, prosecutors and investigators from the requesting and Requested States remains critically important at every stage in the mutual assistance process. In order to facilitate this, contact details, including phone, fax and where available, email addresses, of the responsible officials should be clearly stated within the request. Sometimes it may be desirable to establish contact with the official in the Requested State before sending the request, in order to clarify legal requirements or simplify procedures. Such contact can be initiated through the police channels referred to above, including through existing police attaché networks, or between prosecutors or staff of central authorities through the UNDCP's Directory of competent authorities, or through networks such as the EU's European Judicial Network, or through less formal structures such as the International Association of Prosecutors, or simply through personal contacts.

### 5.2 Benefits of liaison magistrates, prosecutors and police officers

The EWG also encouraged States to take initiatives such as the exchange of liaison police officers, magistrates or prosecutors with States with whom there is significant mutual legal assistance traffic, either by posting a permanent member of staff to the central authority of that country, or by arranging short term exchanges of staff. Experience shows that these "on-site" initiatives produce faster and more useful mutual legal assistance than is usually possible through "distance" dealings.

## **6. Preparing effective requests for mutual legal assistance**

Preparation of a request for assistance involves consideration of a number of requirements, e.g. treaty provisions (where applicable), domestic law, the requirements of the Requested State.

However, too meticulous attention to detail could result in a request that is unduly lengthy, or so prescriptive that it inhibits the Requested State from resorting to alternative methods of securing the desired end-result. Accordingly, those preparing requests should apply these basic principles:

- a) to be very specific in presentation;
- b) to link the existing investigation or proceedings to the assistance required;
- c) to specify the precise assistance sought, and
- d) where possible, to focus on the end-result and not on the method of securing that end-result (for example, it may be possible for the Requested State to obtain the evidence by means of a production or other court order, rather than by means of a search warrant).

To assist in the application of these basic principles, the EWG developed model checklists and re-produced forms for use in preparing requests. The checklists set out both the requirements generally expected of requests and additional specific requirements for certain areas of assistance (see pages 18-21).

## **7. Eliminating or reducing impediments to execution of requests in the Requested State**

### 7.1 Interpreting legal requirements flexibly

In general, States should strive to provide extensive cooperation to each other, in order to ensure that national law enforcement authorities are not impeded in pursuing criminals who may seek to shield their actions by scattering evidence and proceeds of crimes in different States. As described below, States should examine whether their current framework for providing assistance creates unnecessary impediments to cooperation and, where possible, reduce or eliminate them.

In addition, those prerequisites to cooperation that are retained should be interpreted liberally in favor of cooperation; the terms of applicable laws and treaties should not be applied in an unduly rigid way that impedes, rather than facilitates the granting of assistance.

### 7.2 Minimizing grounds for refusal and exercising them sparingly

If assistance is to be rendered as extensively as possible between States, the grounds upon which a request may be refused should be minimal, limited to protections that are fundamental to the Requested State.

Many of the existing grounds of refusal in mutual legal assistance are a “carry over” from extradition law and practice, where life or liberty of the target may be more directly and immediately at stake. States should carefully examine such existing grounds of refusal to determine if it is necessary to retain them for mutual legal assistance. An area of particular concern is dual criminality. It was noted that positions varied with some States requiring it for all requests, some for compulsory measures only, some having discretion to refuse on this basis and some with neither a requirement nor a discretion to refuse. Because of the problems that can arise from the application of this concept to mutual assistance, the EWG recommended that States consider restricting or eliminating the application of the principle, in particular where it is a mandatory pre-condition.

Problems can also arise from the application of the *ne bis in idem* principle as a ground for refusal of assistance. To the greatest extent possible, those States that apply this ground of refusal should use a flexible and creative approach to try and minimize the circumstances where assistance must be refused on this basis, for example by obtaining an undertaking that the Requesting State will not prosecute a person who already has been prosecuted in respect of the same conduct in the Requested State, thereby enabling the provision of information to the Requesting State to assist in related investigations. Some States do not apply this ground of refusal at all and States may wish to consider if it is possible to adopt such an approach.

Any ground of refusal should be invoked rarely, and only when absolutely necessary.

### 7.3 Reducing use limitations

Traditionally, evidence transmitted in response to a request for mutual legal assistance could not be used for purposes not described in the request unless the Requesting State contacted the Requested State and provided express consent to other uses. However, in order to avoid cumbersome requirements that are often not necessary many States have provided for a more streamlined approach in their mutual legal assistance practice. For example, many modern mutual legal assistance treaties instead require the Requested State to advise that it wishes to impose a specific use limitation; if the limitation is not deemed necessary, it should not be imposed<sup>6</sup>.

Such methods provide adequate control to the Requested State in important cases while facilitating the efficiency of mutual legal assistance in the many cases that are not sensitive. States should consider adopting such modern approaches to use limitations.

### 7.4 Ensuring confidentiality in appropriate cases

Some States are not in a position to maintain confidentiality of requests, with the result that the contents of requests are inappropriately disclosed to the subjects of the foreign investigation/ proceedings, thereby potentially prejudicing the investigation/ proceedings. Confidentiality of requests is often a critical factor in the execution of requests. It was recommended that where it is specifically requested, Requested States take appropriate measures to ensure the confidentiality of requests is maintained, and that in circumstances where it is not possible to maintain confidentiality under the law of the Requested State, the Requested State notify the Requesting State at the earliest possible opportunity and in any case prior to the execution of the request in order that it may decide whether it wishes to continue with the request in the absence of confidentiality.

### 7.5 Execution of requests in accordance with procedures specified by the Requesting State

It is important to comply with formal evidentiary/admissibility requirements stipulated by the Requesting State to ensure the request achieves its purpose. It was noted that failure to comply with such requirements would often render it impossible to use the evidence in the proceedings in the Requesting State, or at the least, causes delay (eg, where the requested material has to be returned to the Requested State for certification/authentication in accordance with the request). The Requested State should make every effort to achieve compliance with specified procedures and formalities to the extent that such procedures/formalities are not contrary to the domestic law of the Requested State.

---

<sup>6</sup> Another approach that is more flexible than the traditional rule described in this paragraph is taken in the EU MLAT and the Second Additional Protocol to the Council of Europe Convention on Mutual Assistance in Criminal Matters, whereby the Parties have agreed upon a broad list of uses to which the evidence may be put without requiring the Requesting State to obtain consent in each instance. Eg, for the purpose of proceedings to which the conventions or their protocols apply, for other judicial and administrative proceedings directly related to those proceedings, or for preventing an immediate and serious threat to public security.

States are also encouraged to consider if domestic laws relating to the reception of evidence can be made more flexible to overcome problems with the use of evidence gathered in a foreign State.

#### 7.6 Coordination in multi-jurisdictional cases

Increasingly, there are cases in which more than one State has jurisdiction over some or all of the participants in a crime. In some cases, it will be most effective for the States concerned to choose a single venue for prosecution. In others, it may be best for one State to prosecute some participants, while one or more other States pursue the remainder. In general, coordination in such multi-jurisdictional cases will avoid a multiplicity of requests for mutual legal assistance from each State that has jurisdiction than would otherwise take place. Where there are multiple requests for assistance in the same case, States are encouraged to closely consult in order to avoid needless confusion and duplication of effort.

#### 7.7 Reducing complexity of mutual legal assistance through reform of extradition processes

Traditionally, some States did not extradite their nationals to the State in which a crime took place. At times, such States would instead seek to prosecute their national themselves in lieu of extradition, resulting in lengthy and complex requests for mutual legal assistance in order to obtain the necessary evidence from the country in which the crime took place.

Recent increases in the number of States that either will extradite their nationals or will temporarily extradite them provided that any sentence can be served in the State of nationality, reduce the need for mutual legal assistance that would otherwise be required.

States that do not extradite nationals should consider whether this approach can be abrogated. If this is not possible, the States concerned should seek to coordinate efficiently with a view to an effective domestic prosecution in lieu of extradition.

#### 7.8 Cooperation with respect to confiscation

There are particular impediments to assistance with respect to the freezing/ seizure and confiscation of proceeds of crime. As noted in the report of the EWG on Asset Forfeiture,<sup>7</sup> in relation to freezing/ seizure, it can be difficult to obtain this assistance on the urgent basis required because of some of the inherent delays in the mutual assistance process.

Problems also arise because of the different approaches to the execution of mutual assistance requests and the varying systems for confiscation.

The 1988 Convention permits a State to comply with a request for freezing/ seizure or confiscation by directly enforcing the foreign order or by initiating proceedings in order to obtain a domestic order. As a result the approach taken differs between States.

Further, the States that obtain domestic orders do so on the basis of varying domestic asset confiscation regimes. In some States there is a requirement to provide evidence of a connection between the property sought to be confiscated and an offence. Other States employ a value or benefit system where there need only be evidence that the property is linked to a person who has been accused or convicted of a crime.

Experience in this area clearly demonstrates that the direct enforcement approach is much less resource intensive, avoids duplication and is significantly more effective in affording the assistance sought on a timely basis. Consistent with the conclusions of the EWG on Asset Forfeiture, the EWG strongly recommended that States which have not done so adopt legislation to permit the direct enforcement of foreign orders for freezing/seizure and confiscation.

The EWG also noted that several jurisdictions have adopted or are in the process of adopting regimes for civil forfeiture (i.e. without the need to obtain a criminal conviction as a pre-requisite to eventual confiscation). The EWG supported the use of civil forfeiture as an effective tool for freezing/seizure and confiscation. However, it was recognized that this created new challenges, because most current mutual legal assistance regimes do not yet make provision for civil forfeiture. The EWG recommended that States ensure that their mutual assistance regimes will apply to requests for evidentiary assistance or confiscation order enforcement in civil forfeiture cases. The Checklist developed by the EWG takes account of the varying domestic asset forfeiture regimes, as is reflected in the *Supplemental Checklist for Specific Types of Mutual Legal Assistance Requests* (pages 19-21).

---

<sup>7</sup> UNDCP Expert Working Group on Effective Asset Forfeiture Casework, Vienna, 3-7 September, 2001.

Problems also arise in requests relating to freezing/seizure and confiscation because of insufficient communication about applications for discharge of an order or other legal challenges brought in the Requested State. It is critically important that the Requesting State be informed of any such application in advance in order that it may provide additional evidence or information, which may be of relevance to those proceedings. Once again the importance of communication was emphasized.

The EWG noted the importance of equitable sharing of confiscated assets between the Requesting and Requested State as a means of encouraging cooperation, particularly with States that have very limited resources to execute requests effectively.

#### 7.9 Reducing impediments to mutual legal assistance brought about by third parties

Accused or other persons may seek to thwart criminal investigations or proceedings by legal action aimed at delaying or disrupting the mutual legal assistance process. While it may well be fundamental to provide the opportunity for third party participation in certain proceedings arising from the execution of a request for mutual legal assistance, States should ensure that wherever possible, their legal frameworks do not provide fortuitous opportunities for third parties to unduly delay the providing of assistance or to completely block execution on technical grounds.

In addition, a modern trend in taking witness evidence in the Requested State is to defer objections based on the law of the Requesting State until after the testimony is transmitted to the Requesting State, so that it may decide on the validity of the objection. This avoids the possibility of an erroneous ruling in the Requested State and allows the Requesting State to competently decide matters pertaining to its own law.

#### 7.10 Consulting before refusing/postponing/conditioning cooperation to determine if necessary

Where the Requested State considers that it is unable to execute the request, formal refusal should not be made before consulting with the Requesting State to see if the problems can be overcome, or the request modified to enable assistance to be given. For example, where assistance cannot be given because of an ongoing investigation or prosecution in the Requested State, it may be possible to agree to the postponement of the execution of the request until after the domestic proceedings are concluded. In another example, consultation may lead to a request for search and seizure, which could not be fulfilled under the law of a Requested State, being modified to a request for a production order, which could. Where, however, it is not possible to resolve the issue, reasons should be given for refusal.

### **8. Making use of modern technology to expedite transmission of requests**

States should make use of modern means of communications to transmit and respond to urgent requests for mutual legal assistance to the greatest extent possible. Where there is a particular need for speed, traditional, much slower, methods of transmission of requests (such as the transmission of written, sealed documents through diplomatic pouches or mail delivery systems) can result in cooperation not being provided in time. Where there is a concern that evidence may be lost, or that significant harm to persons or property may result if cooperation is not prompt, expedited means such as phone, fax, or Internet should be utilized. The Requesting and Requested States should determine among themselves how to ensure the authenticity and security of such communications, and whether such communications should be followed up by a written request transmitted through the normal channel. It must be emphasized that, unlike the case with extradition requests, direct communication between central authorities is the norm for mutual legal assistance requests.

### **9. Making use of the most modern mechanisms for providing mutual legal assistance**

The EWG noted the opportunities presented by modern technology to expedite the provision of assistance in criminal matters and to maximize the effectiveness of mutual assistance processes. The EWG also noted developments in international fora such as the European Union (Convention on Mutual Assistance in Criminal Matters Between the Member States of the European Union of 22 May 2000) and the Council of Europe (Convention on Cybercrime) in relation to the taking of evidence via video-link and the interception of electronic communications.

States should give consideration to acceding to such Conventions where possible and appropriate, and to developing the ability through their domestic legislation or otherwise to facilitate transnational cooperation in the following areas:

- (a) the taking of evidence via video-link;
- (b) the exchange of DNA material to assist in criminal investigations;
- (c) allowing the interception, including where telecommunications gateways are located in the territory of the Requested State, but are accessible from the territory of the Requesting State; and
- (d) the provision of assistance in computer crime investigations, including:
  - i) expeditious preservation of electronic data;
  - ii) expeditious disclosure of preserved traffic data;
  - iii) allowing monitoring electronic communications on a “real-time” basis.

## **10. Maximizing availability and use of resources**

### 10.1 Providing central authorities with adequate resources

An effective mutual assistance programme needs to be properly resourced in terms of both central and competent authorities and necessary infrastructure. As an optimum position, States should ensure that appropriate resources are allocated to mutual legal assistance. For developing States with many urgent competing resource priorities, optimal resource levels may not always be attainable.

### 10.2 Obtaining assistance from a requesting state

However, there may be other creative approaches that can be adopted to deal with resource issues. Importantly, a Requested State may wish to “seek assistance from the Requesting State in order to provide assistance”. Some examples of the types of assistance that can be sought from the Requesting State include providing personnel or equipment to be used in execution of the request, paying for the use of private counsel or covering general costs in whole or in part. A number of States have found it useful to lend a staff member to a Requesting State to facilitate the preparation and drafting of an effective request.

### 10.3 Asset sharing

The sharing of confiscated assets between the Requesting and Requested States is an important way that cooperation can be encouraged and additional resources provided. The EWG noted that asset sharing arrangements between States now find support in multilateral instruments such as the Palermo Convention.<sup>8</sup> The Group encourages States able to do so, to make greater use of asset sharing possibilities for these purposes.

### 10.4 Optimizing language capability

One special resource issue identified was the need for capacity for languages within the central authority. The optimum is to have this capacity by virtue of bilingual or multilingual personnel working in the authority. This enhances capacity for informal communication as well as with respect to review and presentation of requests. Access to reliable translation services is also of critical importance to ensure that translations of outgoing requests are accurate and properly reflect the original document and to review incoming requests where the accompanying translation is of a poor quality.

At the same time, some States may be unable to employ bilingual or multilingual personnel or have easy access to translation services for geographic or cultural reasons or because of a lack of resources. In those cases, creative solutions need to be found to deal with language problems. Some examples would be seeking assistance from other government departments and missions abroad or perhaps from the Requesting or Requested State as the case may be.

---

<sup>8</sup> Article 14, paragraph 3, subpara b.

## **11. Role of the United Nations in facilitating effective mutual legal assistance**

UNDCP and CACP have recognised and established roles in assisting Requesting States to implement particular international conventions - UNDCP, relating to drug control – and CACP, relating to transnational organized crime, once the latter Convention enters into force. This work includes legislative drafting assistance, model legislation on, for example, mutual legal assistance, asset forfeiture, witness protection, and the domestic use of foreign evidence, training of prosecutors and judicial officers, and regional and interregional casework-problem solving legal workshops for practitioners.

### 11.1 Coordination of technical assistance

The EWG recognized the essential role UNDCP/CACP in also working with its partners, firstly to help establish effective central authorities, and secondly, to coordinate cooperation and training efforts on a national, sub-regional and regional basis. In doing so, the EWG stressed the importance of drawing on the expertise of practitioners dealing with mutual legal assistance issues and casework on a daily basis, and linking them to States in need of training and by networking these efforts out under the scheme of wider partnerships.

### 11.2 Updating of UN Directory of Competent Authorities for Mutual Legal Assistance

In calling on States to notify accurate, appropriate and timely information particulars of their central authorities to transmit or execute mutual legal assistance requests for the purposes of Article 7 of the 1988 Convention, the EWG urged UNDCP to work with the States concerned to help ensure that UNDCP's Directory of Central Authorities is as useful as possible for day-to-day international casework cooperation.

### 11.3 Consistency between the 1988 Convention and the United Nations Convention against Transnational Organized Crime

In noting similar basic mutual assistance requirements of the 1988 Convention and the 2000 Palermo Convention, and the legal assistance work done by UNDCP and CACP, the EWG urged CACP and UNDCP to work closely together in assisting States to implement their mutual legal assistance obligations under the conventions.

### 11.4 Development of training materials

The EWG noted UNDCP's compilation, indexing and publication of all drug control legislation, including anti-money laundering legislation. This legislation is also available on the ODCCP website. The EWG recommended that UNDCP collect and compile from States any existing guidelines for foreign requesting authorities and training materials produced in this field of expertise (e.g. the Commonwealth University Curriculum on International Cooperation to Combat Crime, coordinated training activities for magistrates from Spain, Portugal and France, etc.). These materials could then be posted on the ODCCP and partner websites with appropriate cross-links, subject to the agreement of the material providers.

The EWG encouraged the organization by UNDCP/CACP, Commonwealth Secretariat, EU, regional organizations and other interested partners, of regular meetings of mutual assistance practitioners to discuss developments in mutual assistance law, policy and practice.

**MODEL CHECKLISTS**

**AND**

**FORMS**

**FOR GOOD PRACTICE  
IN REQUESTING MUTUAL LEGAL ASSISTANCE**

## **MODEL CHECKLISTS AND FORMS FOR GOOD PRACTICE IN REQUESTING MUTUAL LEGAL ASSISTANCE**

### **EXPLANATORY NOTE**

The following General and supplemental Checklists are intended to provide general guidance in the preparation of requests for international mutual legal assistance in criminal matters.

The General Checklist deals with the basic content of all mutual legal assistance requests. The Supplemental Checklists deal with additional content needed for the effective execution of requests for search and seizure, production of documents, taking witness statements/evidence, temporary transfer of prisoners to give evidence, pre-judgment seizure/freezing, or post-judgment confiscation

Requirements as to the form and content of requests can vary significantly depending on the law of the Requested State and applicable mutual legal assistance treaties (MLATs); in particular cases, they may be greater or less than indicated here. When in doubt, officials preparing mutual legal assistance requests are advised to contact the central authority of the Requested State for more detailed information.

Forms I, and II were developed by others and re-produced with permission<sup>9</sup>.

---

<sup>9</sup> Form I **COVER NOTE FOR ROGATORY LETTERS** (Joint Action of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on good practice in mutual legal assistance in criminal matters *Official Journal L191, 07/07/1998 p. 0001-0003*). Form II **APOSTILLE** to the Hague Convention Abolishing the Requirement of Legalization of Foreign Public Documents of 5 October 1961.

## General Checklist for Requesting Mutual Legal Assistance

The request should include the following:

- Identification**  
Identification of the office/authority presenting or transmitting the request and the authority conducting the investigation, prosecution or proceedings in the requesting State, including contact particulars for the office/authority presenting or transmitting the request and, unless inappropriate, the contact particulars of the relevant investigating officer/prosecutor and/or judicial officer (form I)
- Prior contact**  
Details of any prior contact between officers in the Requesting and Requested States pertaining to the subject matter of the request
- Use of other channels**  
Where a copy of the request has been or is being sent through other channels, this should be made clear in the request
- Acknowledgement of the request**  
A cover sheet incorporating the acknowledgement for completion and return to the Requesting State (see Form I)
- Indication of urgency and/or time limit**  
A prominent indication of any particular urgency or applicable time limit within which compliance with the request is required and the reason for the urgency or time limit
- Confidentiality**  
A prominent indication of any need for confidentiality and the reason therefor and the requirement to consult with the Requesting State, prior to the execution if confidentiality cannot be maintained
- Legal basis for the request**  
A description of the basis upon which the request is made, eg, bilateral treaty, multilateral convention or Scheme or, in the absence thereof, on the basis of reciprocity
- Summary of the relevant facts**  
A summary of the relevant facts of the case including, to the extent possible, full identification details of the alleged offender(s)
- Description of the offence and applicable penalty**  
A description of the offence and applicable penalty, with an excerpt or copy of the relevant parts of the law of the requesting State
- Description of the evidence/assistance requested**  
A description in specific terms of the evidence or other assistance requested
- Clear link between proceeding(s) and evidence/assistance sought**  
A clear and precise explanation of the connection between the investigation, prosecution or proceedings and the assistance sought (i.e., a description of how the evidence or other assistance sought is relevant to the case)
- Description of the procedures**  
A description of the procedures to be followed by the Requested State's authorities in executing the request to ensure that the request achieves its purpose, including any special procedures to enable any evidence obtained to be admissible in the Requesting State, and reasons why the procedures are required
- Presence of officials from the Requesting State in execution of request**  
An indication as to whether the Requesting State wishes its officials or other specified persons to be present at or participate in the execution of the request and the reason why this is requested
- Language**  
All requests for assistance should be made in or accompanied by a certified translation into a language as specified by the Requested State

Note: Where it becomes evident that a request or the aggregate of requests from a particular State involve a substantial or extraordinary cost, the Requesting and Requested States should consult to determine the terms and conditions under which the request is to be executed, and the manner in which the costs are to be borne.

## Supplemental Checklist for Specific Types of Mutual Legal Assistance Requests

### SEARCH AND SEIZURE

In the case of a request for search and seizure, the request should include the following:

- As specific a description as possible of the location to be searched and the documents or items to be seized including, in the case of records, the relevant time periods
- Reasonable grounds to believe that the documentation or thing sought is located at the place specified within the Requested State
- Reasonable grounds to believe that the documentation or thing will afford evidence of the commission of the offence, which is the subject of investigation or proceeding(s) in the Requesting State
- An explanation of why less intrusive means of obtaining the document or thing would not be appropriate
- An indication of any special requirements in relation to the execution of the search or seizure;
- Any known information about third parties who may have rights in the property

### PRODUCTION OF DOCUMENTS

In the case of a request for the production of documents, the request should include the following:

- Since a court order is generally required, it is particularly important to provide as specific a description as possible of the documents to be produced, and their relevance to the investigation
- An identification of the location and/or custodian of the required documents
- Check with Requested State as some may have additional requirements for the production of documents
- In cases involving requests for the production of computer records, the risks of deletion or destruction should be considered in consultation with the Requested State. In such a case an expedited, secure means of preservation may be required, e.g. special preservation order, or search and seizure
- An indication as to whether a copy or certified copy of the documents will suffice and if not, the reason why the original documents are required
- If certification or authentication is required, specify the form of certification/authentication, using an attached pro-forma certificate (see Form II) if possible
- An indication as to whether it is likely that any of the documents might be subject to any claim of privilege, e.g. legal professional privilege

### **TAKING OF WITNESS STATEMENTS/EVIDENCE**

In the case of a request for a statement or testimony, the request should include the following:

- ❑ The identity and location of the person from whom statement or testimony is to be obtained
- ❑ A description of the manner in which the evidence should be taken (e.g. whether under oath or any appropriate cautions to be administered) and recorded (e.g. process verbal, verbatim, videotaped, via video-link); and whether and in what manner the Requesting State's authorities wish to participate and why
- ❑ If officers of the Requesting State are not participating, a list of the topics to be covered and specific questions to be asked, including a point of contact in the Requesting State, should consultation by telephone become necessary during questioning
- ❑ In the case of video-link testimony, the reasons why video-link is requested in preference to the physical presence of the witness in the Requesting State, and a point of contact in the Requesting State to be consulted with on the procedures to be followed
- ❑ If representatives of the defence in the requesting state are requested to be present, this should be clearly specified, and the reasons made clear

### **TEMPORARY TRANSFER OF PRISONERS TO GIVE EVIDENCE**

In the case of a request for temporary transfer of prisoners to give testimony, the request should include the following:

- ❑ An explanation as to how the prisoner is able to assist in the investigation or proceeding(s)
- ❑ An indication as to whether the prisoner has consented to travel to the Requesting State, or a request for that consent to be sought by the Requested State
- ❑ An assurance that if transferred, the prisoner will be held in custody by the Requesting State at all times
- ❑ An assurance that the prisoner will be returned to the Requested State as soon as possible when his/her assistance is no longer required for the purposes of the request or as otherwise agreed by the States involved
- ❑ To the extent required by the Requested State, an assurance that the prisoner will not be detained, prosecuted or punished in the Requesting State for any offence committed prior to his/her attendance in the Requesting State
- ❑ An assurance that the prisoner will be returned to the Requested State without the need for extradition
- ❑ A point of contact in the Requesting State to be consulted with on any relevant issues, including credit for time spent in custody in the Requesting State, the logistical arrangements and costs of the transfer, as well as any other relevant pre-conditions

## PRE-JUDGMENT SEIZURE/FREEZING OR POST-JUDGMENT CONFISCATION

In the case of a request for pre-judgment seizure/freezing, or for post-judgment confiscation:

- ❑ Determine the specific procedural and substantive requirements of the Requested State's law to enable execution of the Requesting State's request for pre-judgment freezing/seizure or post-judgment confiscation, such as whether the Requested State can directly enforce orders of the Requesting State, whether it must institute domestic proceedings for an order on behalf of the Requesting State, or whether a criminal conviction will be required prior to conviction
- ❑ If the Requested State must institute domestic proceedings, determine what evidence is needed to permit the Requested State to obtain its own freezing/seizure order to preserve the assets on behalf of the Requesting State, or to permit the Requested State to obtain its own post-judgment order of confiscation of the assets. In particular, the Requesting State should determine the extent to which the Requested State requires a connection between the property to be frozen/seized or confiscated and an offence, or between the property and the accused or convicted property owner (as the case may be), and the evidence it must provide under the Requested State's law to establish such connection
- ❑ A point of contact in the Requesting State who may be consulted with as to legal requirements, strategic or logistical issues

### **Where the Requested State can directly enforce an order of the Requesting State, the request should include the following:**

- ❑ A copy of the order in a form acceptable to the Requested State, or such other information as it may seek
- ❑ In the case of a confiscation order, a description of the proceedings in the Requesting State that resulted in the issue of the order, the parties involved, and an assurance that the order is final
- ❑ Any information as to third parties who may have an interest in the property sought to be frozen/seized or confiscated

### **Where the Requested State cannot directly enforce an order of the Requesting State and is requested to obtain seizure/freezing and confiscation through domestic proceedings, the request should include the following:**

- ❑ As specific a description as possible of the property to be seized, frozen or confiscated;
- ❑ Specific information providing the reasonable grounds to believe that either (depending on the law of the Requested State) the property:
  - ❑ belongs to a person accused or convicted of a crime; or
  - ❑ was used in, or derived directly or indirectly, from the commission of an offence
- ❑ Any information as to third parties who may have an interest in the property sought to be frozen/seized or confiscated

Form I

**COVER NOTE FOR ALL MUTUAL LEGAL ASSISTANCE REQUESTS**

**REQUEST**

(To be filled in by Requesting Authority)

**Case:**

Case number:

Name(s) of suspect(s):

**Authority who can be contacted regarding the request:**

Organisation:

Place:

Country:

Name:

Function:

Spoken language:

Telephone number:

Fax Number:

E-mail:

**Deadline:**

- This request is urgent.
- Please execute this request before: (date)

**Reasons for deadline:**

**Date:**

**Signature:**

**ACKNOWLEDGEMENT OF REQUEST**

(To be filled in by the Requested Authority)

**Registration**

Registration number:

Date:

**Authority receiving the request**

Organisation:

Place:

Country:

Name:

Function:

Spoken language:

Telephone number:

Fax number:

E-mail:

**Authority who can be consulted on the execution of the request**

- Same as above
- Other:

Organisation:

Place:

Country:

Name:

Function:

Spoken language:

Telephone number:

Fax number:

E-mail:

**Deadline**

The deadline will probably

- Be met
- Not be met. Reason:

**Date:**

**Signature:**

**PLEASE FILL IN THIS FORM ON RECEIPT AND FAX IT TO:**

**Fax #:**

Form II

**APOSTILLE**

(Convention de La Haye du 5 octobre 1961)

1. Country: \_\_\_\_\_

This public document

2. has been signed by \_\_\_\_\_

3. acting in the capacity of \_\_\_\_\_

4. bears the seal/stamp of \_\_\_\_\_

certified

5. at \_\_\_\_\_ 6. the \_\_\_\_\_

7. by \_\_\_\_\_

8. N° \_\_\_\_\_

9. Seal/stamp: \_\_\_\_\_ 10. Signature: \_\_\_\_\_

**Note:** In cases where authentication of foreign public documents is required, the Hague Convention of 5 October 1961 abolishing the requirement of legalization for foreign public documents, to which currently 74 States<sup>10</sup> are parties, provides for a simplified and speedy way of certifying such authentication by means of the “apostille” attached to that Convention.

<sup>10</sup> At present, the following States are Parties to the Convention: Andorra, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Bahamas, Barbados, Belarus, Belgium, Belize, Bosnia and Herzegovina, Botswana, Brunei Darussalam, Bulgaria, China (Hong Kong Special Administrative Region and Macau Special Administrative Region only), Colombia, Croatia, Cyprus, Czech Republic, El Salvador, Estonia, Fiji, Finland, The former Yugoslav Republic of Macedonia, France, Germany, Greece, Grenada, Hungary, Ireland, Israel, Italy, Japan, Kazakhstan, Latvia, Lesotho, Liberia, Liechtenstein, Lithuania, Luxembourg, Malawi, Malta, Marshall Islands, Mauritius, Mexico, Namibia, Netherlands, New Zealand, Niue, Norway, Panama, Portugal, Romania, Russian Federation, Saint Kitts and Nevis, Samoa, San Marino, Seychelles, Slovakia, Slovenia, South Africa, Spain, Suriname, Swaziland, Sweden, Switzerland, Tonga, Trinidad and Tobago, Turkey, United Kingdom, United States, Venezuela, Yugoslavia.

# **Annexes**

## Annex 1

### **EWG Task and Issues to be Addressed**

To help States more effectively implement the mutual legal assistance (“MA”) provisions of the international drug control treaties and related instruments in domestic and international casework:

1. Identify legal, systemic and operational problems impeding effective MA performance.
2. Derive best practice to overcome those problems, having regard to success factors and lessons learned in MA casework to date.
3. Review and update ODCCP’s Report of the Expert Working Group on Mutual Assistance and Related International Cooperation, Vienna, 15-19 February, 1993. (E/CN.7/1993/CRP.13).
4. Develop any additional guidelines needed to
  - a) further improve the speed, usefulness and impact of responses to each main type of MA request (in terms of successful asset forfeiture and prosecution outcomes);
  - b) otherwise maximise the benefits of MA; and
  - c) minimize costs and risks typically associated with making and executing MA requests.
5. Develop best casework practice checklists to help justice system personnel formulate, transmit and execute each type of MA request promptly - and in the most useful and cost-effective way.

### **Success Factors, Lessons Learned and Best Practice Issues to be addressed**

#### **Making and executing MA requests**

- improving evidence gathering from willing/unwilling persons (including by video-link)
- facilitating the transfer of free or detained persons to assist with investigations or give evidence
- improving international search and seizure outcomes
- securing faster more reliable identifying or tracing of proceeds or other relevant property
- ensuring earliest freezing, seizing and confiscation of all proceeds, or property of equal value
- achieving appropriate covert monitoring of offender or suspect activities and communications
- facilitating lending of exhibits, documents, records (eg, bank, financial, corporate, government)
- using and getting best results from other, and new or emerging types of MA.

#### **Related issues**

- effective planning/, coordinating and communicating action on MA requests
- overcoming inter-legal system obstacles (substantive, procedural, attitudinal, etc)
- getting sovereignty into perspective - better sharing it in MA casework, to better preserve it
- maximising usefulness of responses - improving procedural flexibility
- reducing time lags between receipt of request and transmission of response
- minimizing and better handling urgent requests
- improving MA resourcing - and minimising costs/risks (ff, to requested States)
- securing, sharing and sustaining adequate MA skills and know-how
- improving domestic/international MA country/institution networks in day to day casework
- ensuring adequate domestic legal competency to approve, make or execute MA requests
- others to be suggested by participants?

## **ANNEX 2 – LIST OF PARTICIPANTS**

### **CONTRERAS SALDIVAR, Gabriel**

Attorney-General's Department  
Director of International Legal Assistance  
Colonia Tavacalera, México, D.F

### **CUTHBERTSON Shannon**

Principal Legal Officer, International Branch,  
Criminal Justice Division,  
Attorney-General's Department  
Canberra, Australia

### **DE GROOT, Selma K.**

Senior Legal Policy Officer  
Int. Legal Assistance Office, Ministry of Justice,  
Int. Criminal Law Affairs and Drugs Policy Dep.  
The Hague, The Netherlands

### **d'OLIVEIRA, Jan**

Deputy National Director of Public Prosecutions  
Pretoria, South Africa

### **GOOM, Sarah**

Senior Lawyer  
Advisory and International Division  
Treasury Solicitor's Office, HM Customs  
London, United Kingdom

### **HARRIS, Kenneth**

Department of Justice  
Office of International Affairs, Criminal Division  
Washington, USA

### **HARRIS, Lorna**

UK Central Authority  
Home Office  
London, United Kingdom

### **MOHAMMED, Abba Bello**

Legal Adviser  
Ministry of Police Affairs  
Abuja, Nigeria

### **PROST, Kimberly**

Deputy Director  
Constitutional and Legal Affairs Division, Head,  
Criminal Law Unit, Commonwealth  
London, united Kingdom

### **PASCAL, Jean-Francois**

Avocat Général at the Court of appeal  
of Aix-en-Provence, Palais de Justice  
Aix-en-Provence, France

### **ROYKAEW, Pravit**

Provincial Chief State Attorney  
Office of the Attorney General  
International Affairs Department  
Bangkok, Thailand

### **THOM, Gertel**

Attorney-Genera, Minister of Justice and Legal  
Affairs Office of the Attorney General  
St. John's, Antigua and Barbuda

### **VEVIA ROMER Isabel**

Deputy Vice-Director for International  
Judicial Cooperation of the Ministry of Justice  
Madrid, Spain

## **UNODC**

### **WELLS, Andrew**

Moderator of the EWG  
Senior Legal Adviser, Vienna

### **LABORDE, Jean-Paul**

Chief of Section, Commission Secretariat and Legal  
Affairs Branch, Vienna

### **GONZALES-RUIZ, Samuel**

Inter-regional Adviser, Vienna

### **HÖLGE, Kristian**

Regional Legal Adviser, Colombia

### **DAAMEN, Ingeborg**

Associate Expert, Vienna

### **BARDET, Celine**

Associate Expert, Vienna

nex 3 - List of bilateral mutual legal assistance treaties of EWG participants' home jurisdictions

Antigua & Barbuda	Australia	Canada	France	France contd.	Mexico	Netherlands	Nigeria	Spain	Thailand	United Kingdom	United States	South Africa
United States  <i>See notes</i>	Argentina Austria Canada Ecuador Finland France <b>Hong Kong</b> Hungary Indonesia <b>Israel</b> Italy <b>Korea</b> Luxembourg Mexico Monaco Netherlands Philippines Portugal Spain Sweden <b>Switzerland</b> United Kingdom United States	Austria <b>Argentina</b> Australia Bahamas <b>Belgium</b> <b>Brazil</b> China Czech Republic France Greece <b>Hong Kong</b> Hungary India <b>Israel</b> Italy <b>Jamaica</b> <b>Korea</b> Mexico Netherlands Norway Peru Poland Portugal Romania Russia South Africa Spain <b>Sweden</b> <b>Switzerland</b> <b>Thailand</b> <b>Trinidad &amp; Tobago</b> Ukraine United Kingdom <b>Uruguay</b> United States	Algeria <b>Argentina</b> Austria* Belgium* Bosnia-Herzegovina Brazil Burkina Faso Canada Cameroon Central African Republic Chad Colombia <b>Congo</b> Cote d'Ivoire Croatia* <b>Cuba</b> Djibouti <b>Dom. Republic</b> Egypt Finland* <b>Gabon</b> Germany* Hong Kong Hungary* <b>India</b> <b>Israel</b> <b>Korea</b> Lithuania Luxembourg* <b>Macedonia*</b> Madagascar Mali Mauritius Mexico Morocco Monaco Netherlands* Nigeria <b>Paraguay</b> Portugal* Romania* San Marino Senegal Slovenia*	Spain* Sweden* <b>Switzerland*</b> <b>Thailand</b> Togo Tunisia United Kingdom* United States <b>Uruguay</b> South Africa	Australia Canada Colombia Costa Rica Cuba Chile El Salvador France <b>Greece</b> Guatemala Nicaragua Panama Peru Portugal Spain United Kingdom United States <b>Uruguay</b> Venezuela	Australia Canada France* Suriname United States <b>Hong Kong</b>  <i>See notes</i>	Ethiopia Pakistan India Iran Russia United Kingdom <b>United States</b>	Argentina Australia Bolivia Canada Chile Colombia Dom. Republic El Salvador France* Hungary* <b>Korea</b> Lithuania Mexico Morocco Panama Portugal* Russia <b>Tunisia</b> United States Uruguay Yugoslavia	Canada France Norway United Kingdom United States	Argentina Australia Bahamas Bahrain Barbados Canada Ecuador India Italy* Malaysia Mexico Netherlands* Nigeria Panama Saudi Arabia Sweden* Spain* <b>Thailand</b> Uruguay United States	Antigua & Barbuda Argentina Australia Austria Bahamas Barbados Belgium Brazil Canada Cayman Islands <b>Colombia</b> <b>Cyprus</b> Czech Republic Dominica Egypt Estonia France Greece Grenada <b>Hong Kong</b> Hungary <b>Israel</b> Italy Jamaica <b>Korea</b> Latvia Lithuania Luxembourg Mexico Morocco Netherlands <b>Nigeria</b> Panama Philippines Poland Romania <b>Russia</b> St. Christopher & Nevis Saint Lucia St. Vincent & the Grenadines South Africa Spain <b>Switzerland</b> <b>Thailand</b> Trinidad & Tobago Turkey Ukraine United Kingdom Uruguay <b>Venezuela</b>	Algeria Canada France <b>Egypt</b> Lesotho United States <b>Zambia</b>  <i>See notes</i>

## NOTES

### to the List of bilateral mutual legal assistance treaties of EWG participants' home jurisdictions

- The **grey blocks** identify those states that have signed bilateral mutual legal assistance treaties, but are not yet ratified.
- States highlighted in **red** are not party to the 1988 Convention.
- **Antigua & Barbuda** has passed the Mutual Legal Assistance Act in 1993. This Act enables Antigua & Barbuda to provide mutual legal assistance to all Commonwealth countries without the necessity of a treaty. The Commonwealth is comprised of 54 Member States including: Antigua & Barbuda, Australia, Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei Darussalam, Cameroon, Canada, Cyprus, Dominica, Fiji, Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Mozambique, Namibia, Nauru, New Zealand, Nigeria, Pakistan, Papua New Guinea, Saint Lucia, St. Christopher & Nevis, St. Vincent & the Grenadines, Samoa, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, Swaziland, Tanzania, Tonga, Trinidad & Tobago, Tuvalu, Uganda, United Kingdom, Vanuatu, Zambia and Zimbabwe.
- States with whom **the Netherlands** has bilateral extradition treaties, which include sections on mutual legal assistance, are Argentina, United Kingdom, Liberia, Mexico, Monaco, Rumania, San Marino, Surinam and Yugoslavia.
- The Mutual Legal Assistance Treaty between the **United States** and the Cayman Islands was extended at a later date to Anguilla, the British Virgin Islands, the Turks and Caicos Islands and to Montserrat.
- **South Africa** is in the process of concluding bilateral mutual legal assistance treaties with Namibia, Brazil and Hong Kong.
- The states marked with a “\*” indicates that both states are also parties to the European Convention on Mutual Assistance in Criminal Matters of 1959, typically used by state parties rather than the earlier bilateral treaties.

State parties to the European Convention on Mutual Assistance in Criminal Matters of 1959 are: Albania, Armenia, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Turkey, Ukraine and United Kingdom. Azerbaijan and San Marino have signed the European Convention on Mutual Assistance in Criminal Matters, but have not ratified the Convention as of yet. Israel is the single non-member state party to the Convention.