

**Informal Expert Group Meeting on International Cooperation in Criminal Matters**  
**9-11 April 2019**

**UNOFFICIAL Submission from the U.S. Department of Justice and the Department of State**

**1. Briefing on the legal bases used for mutual legal assistance, including, where feasible, on the use of the United Nations Convention against Transnational Organized Crime, and the status of bilateral and other multilateral treaties or agreements.**

U.S. law contains several bases that allow the United States to provide and receive foreign legal assistance:

- Mutual Legal Assistance Treaties (MLATs) are bilateral treaties between the United States and a foreign country; MLATs are negotiated by the Department of State in cooperation with the Department of Justice to facilitate cooperation in criminal matters. Article II of the U.S. Constitution empowers the President of the United States to negotiate treaties between the United States and other countries, which, upon receiving the advice and consent of the U.S. Senate, have the legal force of federal law.
- In some instances, such as with China, the United States has Mutual Legal Assistance Agreements (MLAA), which are executive agreements between the two nations to assist the other in criminal affairs and are considered binding commitments, but are not on the same level as a treaty.
- Authority to act as the “Central Authority” or “Competent Authority” for mutual legal assistance matters under bilateral agreements and treaties has been delegated to the Office of International Affairs (OIA) in the Criminal Division of the U.S. Department of Justice.
- In the absence of bilateral treaties and agreements, the United States can provide mutual legal assistance to other countries pursuant to Title 18, United States Code, Section 3512. Section 3512 provides that U.S. courts “may issue such orders as may be necessary to execute a request from a foreign authority for assistance in the investigation or prosecution of criminal offenses,” and “may also issue an order appointing a person to direct the taking of testimony or statements or of the production of documents or other things, or both.” Of critical importance is the requirement that, before a court issues such an order in support of a foreign request, the foreign request must meet the same requirements of U.S. domestic law as if the request was in support of a U.S. investigation.

- The US also frequently relies on the United Nations Convention against Transitional Crime (UNTOC), as well as other multilateral treaties like the United Nations Convention against Corruption (UNCAC). To date, the UNTOC has been cited almost 600 times as a legal basis to seek or provide mutual legal assistance while the UNCAC has been cited over 250 times.

**2. Briefing on international cooperation for purposes of confiscation and disposal of confiscated proceeds of crime or property (as defined in the aforementioned Convention and on the basis of applicable bilateral treaties or agreements).**

The U.S. Department of Justice assigns high priority to requests by foreign countries for assistance in restraining, forfeiting, and repatriating assets found in the United States that are forfeitable under foreign law. The United States strives to act affirmatively on such requests so that it is not a safe haven for proceeds of foreign crime and other property forfeitable under foreign law.

Typically, the United States assists foreign countries in restraining and forfeiting assets located in the United States pursuant to Title 28, United States Code, Section 2467. This provision allows the United States to enforce a foreign forfeiture order or confiscation judgment “as if the judgment had been entered by a court in the United States.” To seek assistance under Section 2467, the foreign authority must submit a mutual legal assistance request to OIA that sets forth a summary of facts and proceedings that resulted in the forfeiture or confiscation judgment, and provide a certified copy of the forfeiture or confiscation judgment, among other requirements.

If the foreign authority cannot obtain a foreign forfeiture order or confiscation judgment, then the foreign authority can contact OIA to discuss the possibility of the United States initiating its own forfeiture proceeding based on the foreign offense. There are several attorneys at OIA that specialize in asset forfeiture who execute these incoming requests in coordination with the Money Laundering and Asset Recovery Section (MLARS), another section within the Criminal Division of the U.S. Department of Justice.

### **3. Briefing on the establishment and functions of central and other competent authorities dealing with international cooperation requests.**

As discussed above, OIA has been delegated the authority to perform the functions of the central authority for the Department of Justice for international cooperation in criminal matters, including mutual legal assistance. As DOJ's nerve center for international criminal law enforcement coordination, OIA's efforts in pursuit of this aim are carried out through five principal works streams: extradition and removal of fugitives, transfer of sentenced persons, international evidence gathering, providing legal advice to DOJ leadership and prosecutors, and international relations and treaty matters. OIA is made up of a diverse group of experienced professionals, including many former federal and state prosecutors. OIA is organized into regional teams that cover geographical areas of the world, and specialized teams that handle issues and case work requiring subject-matter expertise.

OIA's core mission involves routine, direct engagement with foreign central authorities in order to facilitate mutual legal assistance and extradition requests on behalf of U.S. prosecutors seeking evidence or fugitives from abroad. The success of OIA's mission – and the results of many U.S. prosecutions – is, therefore, highly dependent on the effectiveness of those foreign central authorities, their institutional capacity, established practices, and the ability of OIA attorneys to navigate the foreign counterpart's legal requirements.

OIA's structure also recognizes that reciprocity is the foundation of any well-functioning law enforcement relationship and the United States takes seriously its treaty obligations to provide assistance to our foreign partners. For example, specialized teams are dedicated to analyzing and executing incoming mutual legal assistance requests from other countries. A specialized cyber team focuses on incoming mutual legal assistance requests to the United States for electronic evidence (i.e., evidence from U.S.-based internet service providers like Google or Facebook), while a separate team handles all non-cyber requests for assistance from our partners.

### **4. The main countries with which cooperation in the fields of extradition and mutual legal assistance takes places.**

The Office of International Affairs works diligently to support and execute extradition and mutual legal assistance requests that meet the requirements of U.S. domestic law, comport with bilateral and multilateral treaty obligations, and promote justice. The United States is not a safe haven for criminal fugitives and foreign fugitives found in the U.S. as well as U.S. citizens

are subject to extradition. With regard to extradition, the United States domestic law, specifically Title 18, United States Code, Section 3184, requires the existence of a treaty for extradition. In practice this has been limited to bilateral treaties. In the absence of a bilateral extradition treaty, the United States will explore other removal options, such as deportation under U.S. immigration laws, in order to return the fugitive to the jurisdiction where he/she is wanted for prosecution or to serve a sentence of incarceration. U.S. law does not require the existence of a bilateral treaty for the United States to accept a fugitive, and in practice has received fugitives from countries relying on the UNTOC as the legal basis.

As discussed above, U.S. domestic law (specifically 18 U.S.C. § 3512) allows the U.S. to execute mutual legal assistance requests in the absence of a bilateral treaty. In recent years, OIA has encountered a rising volume in both incoming and outgoing mutual legal assistance requests. For example, incoming requests for electronic evidence (e.g., requests for electronic evidence from U.S.-based internet service providers like Google and Yahoo and Facebook) nearly tripled within two years (from 2013 to 2015).

##### **5. Briefing on the handling of mutual legal assistance and extradition requests – practical aspects and main challenges encountered.**

Like many central authorities around the world, OIA continues to confront challenges in the realm of modern international law enforcement cooperation:

- With respect to Mutual Legal Assistance Requests, OIA has experienced a significant increase in the volume of requests, both those made to, as well as by, the U.S. For example, as of March 2019, OIA had over 4000 open incoming MLA requests from other countries. The volume of extradition requests has also increased. Currently, there are more than 2000 open extradition requests from the U.S. to other countries, more than 700 open incoming extradition requests, and also about over 2000 outgoing open MLA requests.
- Many countries lack an effective central or competent authority and have limited experience with international cooperation, mutual legal assistance, and/or fugitive return. Such institutional, legal, and practical challenges hamper the ability of international partners to address transnational crime/international terrorism and also serve to increase the requirements for OIA attorneys who must work with international counterparts to modify requests in order to meet the requirements of U.S. law. For example, extradition requests from many countries fail to address all of the pertinent extradition treaty's requirements or

fail to contain sufficient supporting evidence such that a U.S. court would find probable cause to issue an arrest warrant for the fugitive.

- Moreover, practices that adversely affect international cooperation persist in many countries, such as the use of diplomatic channels to send mutual legal assistance requests. In an era in which electronic data is stored for mere months, such practices relating to mutual legal assistance are inimical to effective investigation and prosecution of transnational crime.