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International Cooperation in Criminal Matters

Mutual Legal Assistance





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Mutual Legal Assistance

Outline of Presentation

- **Overview**
 - MLA: When? & Why?
 - What are possible?
- **Existence of a national law**
- **Existence of MLA Treaty**
- **Common Rules & Practices**
- **Usefulness of crime conventions**
- **Counter-terrorism instruments**
- **Good Practice**



Overview

- Universal Suppression through
 - **International Cooperation in Criminal Matters**
- Cooperation in criminal matters
 - **Mutual Legal Assistance (MLA)** = pursuing evidence
 - “mutual assistance” \geq “mutual legal assistance”
- **Extradition** = pursuing the suspect/convicted

- Law enforcement co-operation
 - Lead investigation
 - Elementary evidence for investigation purpose
 - Interpol
- “judicial assistance” - Letters Rogatory – Civil Law countries: investigation under judicial supervision
- Transfer of prisoners





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MLA:

When? & Why?

- When MLA is needed?
 - Investigation, prosecution or judicial proceeding cannot do without the missing piece located abroad
 - where some type of judicial order or compulsory measure must be applied to produce the desired information or evidence, in an acceptable form.
- Why MLA is needed?
 - International mobility
 - The missing piece must be legally obtained for uses in the court.
 - Through legal means
 - allowable by legal procedures of the requested country
 - acceptable in the court of requesting country
 - Overcome barriers of sovereignty



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MLA = What are possible?

For successful investigations, prosecutions and judicial proceedings, legal assistance may be requested for:

- Taking evidence or statements
- Effecting service of judicial documents
- Executing searches and seizures
- Examining objects and sites
- Providing information, evidence, expert evaluations, documents and records
- Identifying or tracing proceeds of crime, property or instrumentalities for evidentiary purposes and their seizure for the purpose of confiscation (i.e. Art. 13 of the UNTOC)
- Facilitating the appearance of witnesses
- Any other type of assistance not barred by domestic law



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MLA: Existence of a national law

- Differences between legal systems
- **Establish a central authority**
 - a proper authority should be designated as the national focal point
 - made known to other countries through bilateral/multilateral treaty mechanisms
- Assistance possible without an MLAT



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MLA: Existence of a national law

Mongolian Relevant Legal Provisions

- **CRIMINAL PROCEDURE LAW OF MONGOLIA** (January 10, 2001)
 - **CHAPTER 45**
 - Article 398
- **MLA is treaty-based.**
 - **But not limited to MLA Treaty**
 - according to mutual OR
 - other international agreements on rendering legal assistance
 - This should include crime conventions, such as UNTOC, UNCAC
- **Comprehensive national law on MLA**
 - Detailed legal provisions on the procedures and requirements for cooperation would be essential for providing cooperation in the absence of a treaty.



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MLA: Existence of a national law

MLA: Central Authority

- Go direct
 - no need to go through diplomatic channel;
- Facilitating roles
 - where necessary, to certify or authenticate, or arrange for the certification and authentication of, any documents or other material supplied in response to a request for assistance;
 - to take practical measures to facilitate the orderly and rapid disposition of requests for assistance;
 - to negotiate and agree on conditions related to requests for assistance, as well as to ensure compliance with those conditions;
 - to make any arrangements deemed necessary in order to transmit the evidentiary material gathered in response to a request for assistance to the competent authority of the requesting State or to authorize any other authority to do so.



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MLA: Central Authority

- Not clearly designated under the Criminal CPL Art. 401
- MLAT with Korea
 - Ministry of Justice and Home Affairs (MOJHA)
 - Foreign Relations and Cooperation Department (FRACD)
- But MLA treaty with India
 - Designates the General Prosecutor's Office as the central authority
- One & Only Central Authority



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- **Mutual Legal Assistance Treaty (MLAT)**

- **Bilateral**

- often between neighbouring jurisdictions or jurisdictions with close ties and relations
- **tailor-made to matched countries**
 - Bilateral instruments also provide an opportunity for the states involved to craft an instrument most suited to the legal systems and relations of the two states and to overcome particular problems that may exist.

- **Regional**

- **To enhance the network of cooperation**

- The conclusion of these binding international treaties may be considered to be desirable in the long term, first, in order to place international cooperation on a firm footing by providing predictable rules for cooperation and secondly, to increase the overall network through which assistance may be provided.



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MLA: MLAT

- **Mongolia has treaties on mutual legal assistance with the following countries:**
 - Bulgaria
 - China
 - Cuba
 - Czech
 - DPRK
 - France
 - Germany
 - Hungary
 - India
 - Kazakhstan
 - Kyrgyzstan
 - Poland
 - ROK
 - Romania
 - Russia
 - Turkey
 - Ukraine
 - Yugoslavia
 - Viet Nam

Source <http://www.mongolianembassy.us>



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MLA: MLAT

“Available statistics indicate that Mongolia is fairly active in extradition and MLA. In 2004-2005, there were 82 incoming and 51 outgoing extradition and MLA requests, 61 of which have been resolved.”

“The average time to execute a request was 1-3 months.”

Source: <http://www.oecd.org/corruption/asiapacific/publications>



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MLA: MLAT

- **Good MLAT**

- As tailor-made as possible
- Direct communication btw central authorities
- Dual criminality waived
- Adopt international standards and norms
- Solve difficult issues, i.e. death sentence



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MLA: Common Rules & Practices

- Dual criminality
 - Waived in some MLA treaties
- Acceptable ground of refusal
 - Mandatory
 - Discretionary
 - ...
- Protection of confidentiality
- Request can be fulfilled only in accordance with the law of the requested state
 - Criminal procedural law
 - National law on MLA



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MLA: Mini MLAT

- **Crime conventions**

- **UNTOC**

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

- » “mini mutual legal assistance treaty”

- **UNCAC**

- Mongolia has become a party since early 2006

- Help expand Mongolia’ s MLA network



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Transnational organized crime

- differences between legal systems
- clash of bureaucracies

Transnational organized criminal justice system



Mutual Legal Assistance Arrangements within Asia-Pacific

information as of September 2007

Requested State \ Requesting State	Australia	Bangladesh	Cambodia	P.R. China	Cook Islands	Fiji Islands	Hong Kong, China	India	Indonesia	Japan	Kazakhstan	Korea	Kyrgyzstan	Macao, China	Malaysia	Mongolia	Nepal	Pakistan	Palau	Papua New Guinea	Philippines	Samoa	Singapore	Sri Lanka	Thailand	Vanuatu	Vietnam
Australia	-	C	T	BDCT	DT	D	CBDT	CDT	BCT	CDT	T	BCDT	CT	CT	BCDT	C	CT	CT	CD	CD	BCT	D	CT	CT	CDT	DT	CT
Bangladesh	CD	-		CD	D	D	CD	CD	C			CD	C	C	C	C	C	C	CD	CD	C	D	C	C	CD	D	C
Cambodia	DT		-	DT	DT	D	DT	DT	AT	DT	T	DT	T	T	ADT		T	T	D	D	AT	D	AT	T	ADT	DT	AT
P.R. China	BCDT	C	T	-	DT	D	-	CDT	BCT	CDT	BT	BCDT	BCT	-	CDT	BC	CT	CT	CD	CD	BCT	D	CT	CT	BCDT	DT	CT
Cook Islands	DT		T	DT	-	D	DT	DT	T	DT	T	DT	T	T	DT		T	T	D	D	T	D	T	T	DT	DT	T
Fiji Islands	D			D	D	-	D	D		D		D			D				D	D		D			D	D	
Hong Kong, China	BCDT	C	T	-	DT	D	-	CDT	CT	CDT	T	BCDT	CT		CD	C	CT	CT	CD	CD	BCT	D	BCT	CT	CDT	DT	CT
India	CDT	C	T	CDT	DT	D	CDT	-	CT	CDT	BT	BCDT	BCT	CT	CDT	BC	CT	CT	CD	CD	CT	D	BCT	CT	BCDT	DT	CT
Indonesia	BCDT	C	AT	BCDT	DT	D	CDT	CDT	-	CDT	T	BCDT	CT	CT	ACDT	C	CT	CT	CD	CD	ACT	D	ACT	CT	ACDT	DT	ACT
Japan	CDT	C	T	CDT	DT	D	CDT	CDT	CT	-	T	BCDT	CT	CT	CDT	C	CT	CT	CD	CD	CT	D	CT	CT	CDT	DT	CT
Kazakhstan	DT		T	BDT	DT	D	DT	BDT	T	DT	-	DT	B ¹ P ² T	T	DT	B	T	BT	D	D	T	D	T	T	DT	DT	T
Korea	BCDT	C	T	BCDT	DT	D	BCDT	BCDT	BCT	BCDT	T	-	CT	CT	CDT	BC	CT	CT	CD	CD	BCT	D	CT	CT	BCDT	DT	BCT
Kyrgyzstan	CDT	C	T	BCDT	DT	D	CDT	BCDT	CT	CDT	B ¹ P ² T	CDT	-	CT	CDT	BC	CT	CT	CD	CD	CT	D	CT	CT	CDT	DT	CT
Macao, China	CDT	C	T	-	T		-	CT	CT	CT	T	CT	CT	-	CT	C	CT	CT	C	C	CT	D	CT	CT	CT	T	CT
Malaysia	BCDT	C	AT	CDT	DT	D	CD	CDT	ACT	CDT	T	CDT	CT	CT	-	C	CT	CT	CD	CD	ACT	D	ACT	CT	ACDT	DT	ACT
Mongolia	CD	C		BCD	D	D	CD	BCD	C	CD	B	BCD	BC	C	CD	-	C	C	CD	CD	C	D	C	C	CD	D	BC
Nepal	CDT	C	T	CDT	DT	D	CDT	CDT	CT	CDT	T	CDT	CT	CT	CDT	C	-	CT	CD	CD	CT	D	CT	CT	CDT	DT	CT
Pakistan	CDT	C	T	CDT	DT	D	CDT	CDT	CT	CDT	BT	CDT	CT	CT	CDT	C	CT	-	D	CD	CT	D	CT	BCT	CDT	DT	CT
Palau	CD	C		CD	D	D	CD	CD	C	CD		CD	C	C	CD	C	C	C	-	CD	C	D	C	C	CD	D	C
Papua New Guinea	CD	C		CD	D	D	CD	CD	C	CD		CD	C	C	CD	C	C	C	CD	-	C	D	C	C	CD	D	C
Philippines	BCDT	C	AT	BCDT	DT	D	BCDT	CDT	ACT	CDT	T	BCDT	CT	CT	ACDT	C	CT	CT	CD	CD	-	D	ACT	CT	ACDT	DT	ACT
Samoa	D			D	D	D	D	D		D		D			D				D	D		-			D	D	
Singapore	CDT	C	AT	CDT	DT	D	BCDT	BCDT	ACT	CDT	T	CDT	CT	CT	ACDT	C	CT	CT	CD	CD	ACT	D	-	CT	ACDT	DT	ACT
Sri Lanka	CDT	C	T	CDT	DT	D	CDT	CDT	CT	CDT	T	CDT	CT	CT	CDT	C	CT	BCT	CD	CD	CT	D	CT	-	BCDT	DT	CT
Thailand	CDT	C	AT	BCDT	DT	D	CDT	BCDT	ACT	CDT	T	BCDT	CT	CT	ACDT	C	CT	CT	CD	CD	ACT	D	ACT	BCT	-	DT	ACT
Vanuatu	DT		T	DT	DT	D	DT	DT	T	DT	T	DT	T	T	DT		T	T	D	D	T	D	T	T	DT	-	T
Vietnam	CDT	C	AT	CDT	DT	D	CDT	CDT	ACT	CDT	T	BCDT	CT	CT	ACDT	BC	CT	CT	CD	CD	ACT	D	ACT	CT	ACDT	DT	-

Key

Gray denotes treaty not yet ratified or in force

A Southeast Asian MLA in Criminal Matters Treaty

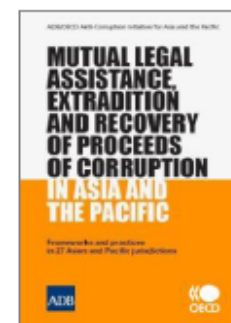
B Bilateral Treaty

C United Nations Convention against Corruption

D MLA available through domestic legislation

1, 2 Commonwealth of Independent States (CIS) Conventions on Legal Assistance and Legal Relationship in Civil, Family and Criminal Matters dated 22 January 1993 and 7 October 2002

T United Nations Convention against Transnational Organized Crime





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MLA & UNCT

- States parties to afford one another the widest & greatest measure of mutual legal assistance
 - the governing philosophy for mutual assistance
- Political offences
- Fiscal offences
- Bank secrecy
- Basic human rights protection



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National law on MLA

- **Assistance possible even without MLA Treaty**
- Not precluding from rendering of a broader range of assistance to another State under this Act than may be provided for in an agreement.
- Not limiting the power of a competent authority apart from the Central Authority to make or receive requests for information or to cooperate with a foreign State through other channels or in another manner.
- **Wider range of criminal procedures to be provided than national criminal procedures?**
 - Unless illegal
 - use of special investigative techniques ?
 - **Act not to limit other provision of assistance (MLA Act Section 4)**
- Applicable to International Criminal Court or a well recognized international tribunal
- **International cooperation between all countries regardless of legal system or legal background**
- Clear on troublesome issues
 - Military offence
 - **Political offence**
 - Death sentence

Practice

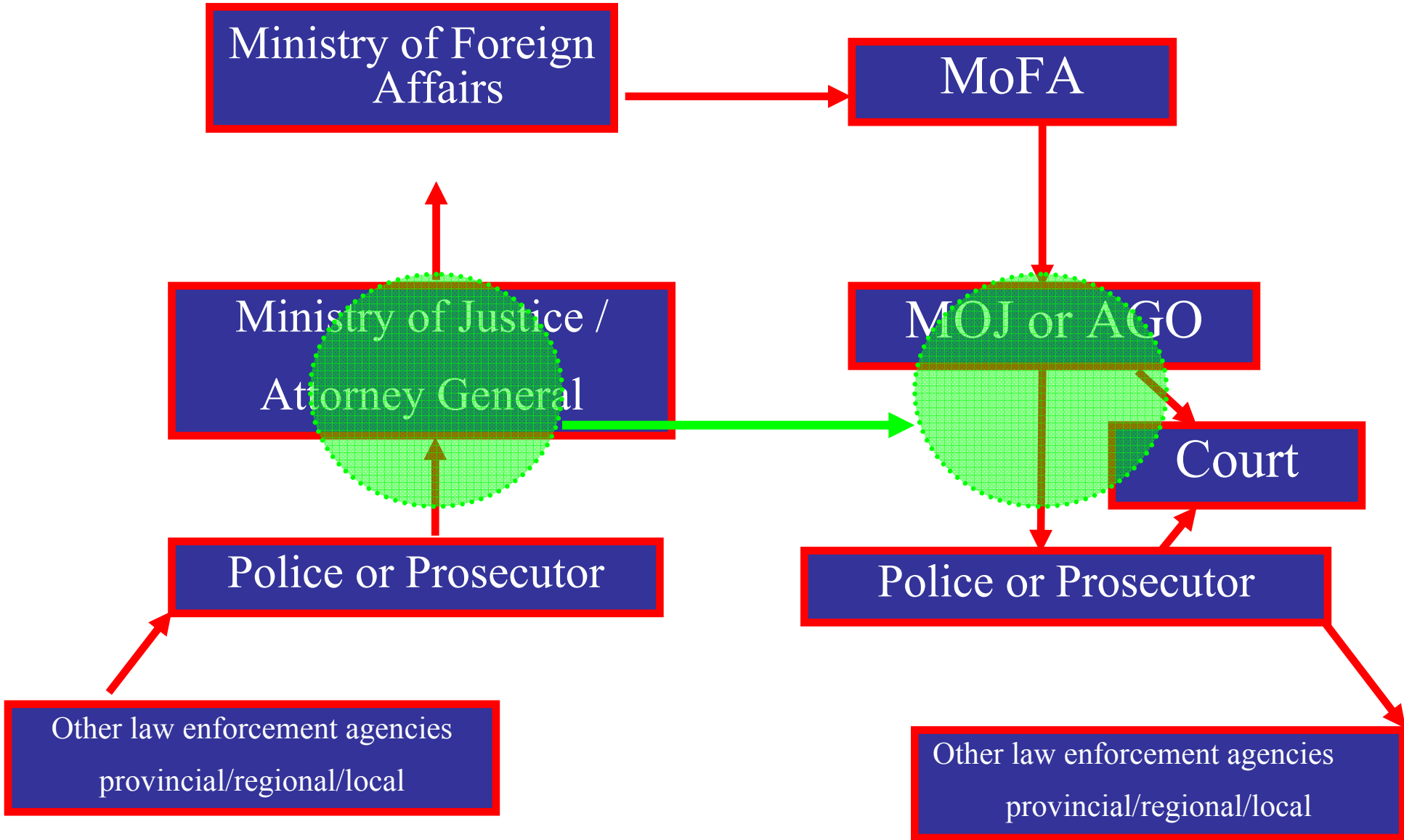
- Don't ask for more than you can accept
 - Wire tapping
- Flexibility, as far as legally possible
 - Interpretation of “dual criminality”
 - Conduct-based
 - Not rigid on form & means
- Completed contents
 - Be clear & avoid too technical terms
 - Be relevance
 - Be specific
 - Insufficiency not fatal
- Reasons provided for any refusal of a request for assistance



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MLA: Red Tape: Avoidable





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MLA: practical issues

operational level

- **Basic knowledge on the other's**
 - (the state to get the request)
 - **MLA law**
 - Who is the counterpart's central authority
 - **Differences**
 - **Substantive criminal law**
 - **Criminal procedure**
 - especially evidence law
 - **Alternative/Additional source of commitment**
 - Adherence to any relevant drugs/crime convention

MLA: Recommended Resources & Tools

- UNODC
 - mutual legal assistance request writer tool
 - For more information, please visit: www.unodc.org/mla/index.html
 - Model Law on Mutual Assistance In Criminal Matters (2007)
www.unodc.org/pdf/model_law_on_mutual_assistance.pdf
 - Model Treaty on Mutual Assistance in Criminal Matters
www.unodc.org/pdf/model_treaty_mutual_assistance_criminal_matters.pdf
<http://www.unodc.org/unodc/en/legal-tools/Model.html>
 - UNODC stands ready to provide TAs



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Thank you very much for your kind attention

Mongolia