Preface
Message from the UNODC Regional Representative

In this era of global and regional integration crime in various forms is not bound by national borders and it is no longer possible to think of many crimes as local. And as crime has become increasingly transnational it has become a challenge for countries to grapple with. Regionalisation and globalisation of crime leaves countries with little choice but to look for solutions to work together practically. Failing to do so will have consequences.

For instance, according to a recent UNODC conservative estimate, the transnational organized crime economy in East Asia and the Pacific exceeds 100 billion dollars per year, a figure that exceeds the gross domestic product of several countries in the region. The crime groups that profit from this illicit economy engage in a wide range of crime types, including drug and precursor trafficking, trafficking in persons, smuggling of migrants, trafficking of timber and endangered species, and trafficking of counterfeit goods and medicines. At the same time terrorist groups and their sympathisers have become increasingly transnational, promoting radical ideologies in cyberspace and sometimes travelling to commit violent terrorist acts.

The point is that organised crime and terrorist groups do not respect sovereignty, and law enforcement and prosecution authorities need to be able to work together effectively and efficiently to address cross-border challenges. Two major legal tools enabling national authorities to collaborate are mutual legal assistance (MLA) and extradition. International frameworks or UN conventions that include related provisions are: the UN convention against transnational crime (UNTOC), the UN convention against corruption (UNCAC) and international counter terrorism instruments. By joining and participating in these international frameworks countries of Southeast Asia have acknowledged the need to enhance cooperation.

In addition, countries of the region have been working together as a group on the Association of Southeast Asian Nations (ASEAN) Mutual Legal Assistance Treaty or ASEAN MLAT. The purpose is to promote the use of MLA between countries of the region, in part because the region is integrating, but also because cooperation of legal authorities remains limited and or informal. It is not an overstatement to say criminal justice cooperation in Southeast Asia is at an early stage of development in comparison with some other regions of the world.

The Southeast Asia MLA and extradition conference convened by UNODC with the KIC is part of moving this important agenda forward. It has brought the right people together to advance regional cooperation in criminal justice matters, creating momentum for law enforcement and prosecution authorities to more effectively counter transnational crime and terrorism.

Jeremy Douglas
Representative, UNODC Regional Office for Southeast Asia and the Pacific
Preface
Message from the President of KIC

I congratulate the UNODC Regional Office on successfully organizing the Third Senior Officials Workshop on Mutual Legal Assistance and Extradition in East Asia and the Pacific. As the president of the Korean Institute of Criminology, KIC, I was very pleased to participate in the two days’ workshop that was held in October 2015. I believe the theme of the workshop, ‘strengthening cross-border communication and cooperation in MLA and extradition’, was both important and timely.

As all participants of the Workshop shared valuable information on each country’s MLA and extradition system, let me briefly introduce Korean own system. Republic of Korea has signed MLA treaties with 38 countries, including China, Japan, Thailand, Philippines, Viet Nam, Indonesia, Malaysia, & Australia, and also extradition treaties with 32 countries. Without even such treaties, Korean government can provide legal assistance to any requesting countries, based on the principle of reciprocity and domestic laws.

Since the year of 2009, KIC has kept partnership with UNODC Regional Office in Bangkok/ for the “Towards AsiaJust” program. The “Towards AsiaJust” program aims to facilitate networks for effective cross-border justice cooperation in Asian region. One of its key objectives is to enhance mutual understanding of each state’s MLA and Extradition system, and thus to promote the development of regional MLA network.

As the member institute of the UN Crime Prevention and Criminal Justice Programme Network (UNPNIs), KIC will keep strengthening international and regional cooperation, especially in the field of cybercrime, anti-corruption, anti-terrorism, drug control, and criminal justice statistics. Partnership with UNODC in the Towards AsiaJust program will surely be one of the KIC’s top priorities.

As a final note, without the active participation and enthusiastic support of the member states of ASEAN, I strongly believe, the workshop could not have been a fruitful and rewarding one. I hope we keep work together towards the realization of justice in Asia and the Pacific, through a more effective MLA and extradition network in the region.

President, Korean Institute of Criminology
Kim, Zin Hwan
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1. Introduction

The ASEAN Economic Community (AEC)

The Association of Southeast Asian Nations (ASEAN) was established on August 8, 1967 in Bangkok, Thailand by signing the ASEAN Declaration, which is also called Bangkok Declaration. ASEAN started from the original five founding countries - Singapore, Thailand, Malaysia, Indonesia, and Philippines. And later, five other countries - Brunei Darussalam in 1984, Viet Nam in 1995, Lao People’s Democratic Republic in 1997, Myanmar in 1997, and Cambodia in 1999 - joined the team. These ten countries make up today’s ten Member States of ASEAN.¹ And ASEAN has been trying to achieve its goal through a regional cooperation for over forty years.

The ASEAN Economic Community (AEC) is a community that ten ASEAN member states gather together in order to create a single market to allow the free flow of goods, services, investments, and skilled labor, and the freer movement of capital across the region.² The ASEAN Economic Community is founded on four principles: creating a single market and production base; increasing competitiveness; promoting equitable economic development; and further integrating ASEAN with global economy.³ In other words, its goal is to transform ASEAN into a highly competitive economic region, and ultimately enable this region fully integrated into the global economy with its competitiveness.⁴

If ASEAN Economic Community works as one economy, the size of ASEAN Economic Community’s economy would be seventh largest in the world, considering its combined gross domestic product being $2.4 trillion in 2013. If the current economic growth rate continues, the size of ASEAN Economic Community’s economy would be fourth largest by 2050.⁵ It is not surprising when the ASEAN Economic Community’s regional market consists of more than 600 million people. Basically, this follows the global economic trend that the center of world economy is shifting toward Asia.

As the economic integration became the key principle of the ASEAN Economic Community, better infrastructure and more communication resulted. After the economic cooperation which was driven by ASEAN Free Trade Area (AFTA), increased trade flows between ASEAN countries resulted. Though the economy started to flourish, it also created some social problems. It created more opportunities for corruption and transnational organized crime to

¹ ASEAN Establishment, Available at http://www.asean.org/asean/about-asean/
³ ASEAN 2007. Singapore. Declaration on the ASEAN Economic Community Blueprint.
⁴ ASEAN 2007. Singapore. Declaration on the ASEAN Economic Community Blueprint.
expand across the region. The increased mobility and trade lead to the increased mobility of illicit goods such as drugs and counterfeit products and undocumented persons. Thus, the prevention and counter-mechanisms of transnational crime was necessary, and ASEAN had a goal to make this Southeast Asian region more of “a cohesive, peaceful, stable and resilient region with shared responsibility for comprehensive security.” With that in mind, ASEAN member states created several intergovernmental committees in order to handle issues of transnational crime. One key intergovernmental committee is called ASLOM, the ASEAN Senior Law Officials Meeting. This meeting is held every 18 months, and the Treaty of Mutual Legal Assistance in Criminal Matters between like-minded ASEAN Member States (MLAT) has been developed through this ASLOM.

**Legal Cooperation in Criminal Matters: Background and Legal Instruments**

International cooperation plays an important role in criminal matters, especially in transnational crime. Since each country has different legal systems, criminal offenders shield themselves of their crimes from detection by taking advantage of the differences. Criminal offenders are mobile, and they can evade detection, arrest, and punishment by operating across international borders. In that sense, international cooperation in criminal matters such as MLA and extradition become necessary, and ASEAN States has built up a body of ASEAN laws covering negotiated treaties, agreements, and other instruments that applied to specific regulatory areas. ASEAN member states implemented these treaties within their respective jurisdictions, based on their own constitutional or statutory procedures.

A number of legal instruments that have been developed within ASEAN that support international cooperation are: (1) Treaty on Mutual Legal Assistance in Criminal Matters (MLAT), (2) Model ASEAN Extradition Treaty, (3) ASEAN Convention on Counter Terrorism, and (4) ASEAN Convention on Trafficking in Persons, esp. Women and Children.

**Treaty on Mutual Legal Assistance in Criminal Matters (MLAT)**

ASEAN Senior Law Officials Meeting (ASLOM) has developed MLAT, and all ASEAN member states ratified MLAT. At the 15th ASLOM, Malaysia’s Report states that most MLAT treaty parties have legal systems which require specific legislation for MLAT to begin effect

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6 UNODC Regional Guide on MLA and Extradition
7 49 Colum. J. Transnat’l. 268, Columbia Journal of Transnational Law, Diane A. Desierto, *ASEAN’s Constitutionalization of International Law: Challenges to Evolution under the New ASEAN Charter*
9 UNODC Regional Guide on MLA and Extradition
10 UNODC Regional Guide on MLA and Extradition
domestically and have enacted domestic legislation. The challenges in implementation are in the areas of recovery of proceeds of crime, asset sharing, discrepancies in criminal procedure, and issuance of concurrent request to meet the treaty parties.

**Model ASEAN Extradition Treaty**

The Model ASEAN Extradition Treaty is to enhance mutual cooperation in criminal matters to combat transnational crime. This is currently pending, and ASEAN member states at the ASEAN Senior Law Official’s meeting expressed their desire to develop this Model Treaty.

The advantage of having the Extradition Treaty is that this can greatly reduce the difficulties caused by the differences in national legislation and may ensure or secure reciprocal treatment. It is true that, generally, all ASEAN member states have established domestic legal frameworks for extradition and may have concluded bilateral extradition treaties with neighbouring ASEAN countries. Also, many have had domestic statutory provisions enabling international conventions on transnational crimes and Terrorism, and stand alone, extradition regimes to be used as the legal basis for extradition. However, having a formal ASEAN Extradition Treaty will help expediting the extradition process and solve the discrepancies in the criminal procedure in extradition.

Currently, proposed issues to consider for the Model ASEAN Extradition Treaty are:

- Outgoing requests;
- Designation of Central Authority and focal points;
- Procedures of transmission and execution of requests; and
- Grounds for denial and refusal of requests

**ASEAN Convention on Counter Terrorism (ACCT)**

ASEAN Convention on Counter Terrorism (ACCT) was signed on 13 January 2007 in Cebu, Philippines, has been ratified by all ASEAN member states, and has already been entered into force since 27 May 2011.\(^\text{11}\)

According to Article 1 of ACCT, the objective of the Convention is to:

*Provide for the framework for regional cooperation to counter, prevent, and suppress terrorism in all its forms and manifestations*

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\(^{11}\) ASEAN website [http://agreement.asean.org/search.html?q=terrorism](http://agreement.asean.org/search.html?q=terrorism)
and to deepen cooperation among law enforcement agencies and relevant authorities of the Parties in countering terrorism.¹²

During the ASEAN Senior Officials Meeting on Transnational Crime (SOMTC), ASEAN member states noted its responsibility of monitoring the implementation of ACCT. Also, it has recommended fuller implementation of ACCT, development of a greater understanding of different legal systems in particular legislation concerning MLA, Extradition against Terrorism among ASEAN member states.

**ASEAN Convention on Trafficking in Persons, esp. Women and Children.**

ASEAN Convention on Trafficking in Persons, esp. Women and Children was finalized on 8 June 2015 during the ASEAN Senior Law Official Meeting’s Working Group, and it was signed on 21 November 2015 during the 27th ASEAN Summit at the Kuala Lumpur, Malaysia.¹³ Singapore recently acceded to the Convention, and nine other ASEAN member states are now parties to the Convention. However, the Convention is currently not in force.

This convention recognizes that “cooperation is imperative to the successful investigation, prosecution and elimination of safe havens for the perpetrators and accomplices of trafficking in persons and for the effective protection of, and assistance to, victims of trafficking.” The challenge here is the ratification issue. It is necessary for member states to express consent to be legally bound by entering into the Treaty, including the implementation.

¹² ASEAN Convention on Counter Terrorism, Article 1.
¹³ ASEAN website, [http://agreement.asean.org/](http://agreement.asean.org/)
2. Mutual Legal Assistance and Extradition

Mutual legal assistance

Mutual Legal Assistance in criminal matters is “a process by which States seek and provide assistance in gathering evidence for use in criminal cases.”

Treaties

Treaties have been worked as a basis for international cooperation throughout the world as they represent the most formal vehicle on the spectrum of international cooperation. Basically, the MLAT is a key legal instrument in strengthening regional cooperation to combat transnational crime. Interesting fact is that the MLAT does not cover extradition, the enforcement in the requested party of criminal judgments imposed in the requesting party, transfer of persons in custody to serve sentence, and transfer of proceedings in criminal matters.

The ASEAN MLAT is intended to facilitate the implementation of ASEAN member countries’ obligation under MLA regimes that have been established through international instruments. Basically, three below international instruments work as a legal basis for MLAT: (1) UN Convention against Transnational Organized Crime (2000), (2) UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), and (3) UN Convention against Corruption (UNCAC) (2004). Each international convention specifically deals with Mutual legal Assistance as stated below:

- UN Convention against Transnational Organized Crime, 2000
  
  Article 18 (2): “States should provide mutual legal assistance to the fullest extent possible under relevant laws, treaties, agreements and arrangements, with respect to investigations, prosecutions and judicial proceedings, in relation to the offences for which legal persons may be held liable, in accordance with Article 10.”

- UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988

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14 UNODC Manual EBook pg 19
15 UNODC Manual Ebook pg 19
16 MLAT, Article (2)
Article 7: “The Parties shall afford one another, pursuant to this article, the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to criminal offences established in accordance with article 3, paragraph 1.”

- UN Convention against Corruption\(^\text{20}\) (UNCAC), 2004

Article 46: “States are bound to render specific forms of mutual legal assistance in gathering and transferring evidence for use in prosecutions, to extradite offenders and to support the tracing, seizure and confiscation of the assets of corruption.”\(^\text{21}\)

In Mutual Legal Assistance, Treaty on Mutual Legal Assistance in Criminal Matters (MLAT) has been ratified by all ASEAN member states. Data on ratification of MLAT by country is as below.\(^\text{22}\)

<table>
<thead>
<tr>
<th>ASEAN Member Country</th>
<th>Ratification Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brunei Darussalam</td>
<td>15 February 2006</td>
</tr>
<tr>
<td>Cambodia</td>
<td>08 April 2010</td>
</tr>
<tr>
<td>Indonesia</td>
<td>09 September 2008</td>
</tr>
<tr>
<td>Lao PDR</td>
<td>25 June 2007</td>
</tr>
<tr>
<td>Malaysia</td>
<td>01 June 2005</td>
</tr>
<tr>
<td>Myanmar</td>
<td>22 January 2009</td>
</tr>
<tr>
<td>Philippines</td>
<td>12 December 2008</td>
</tr>
<tr>
<td>Singapore</td>
<td>28 April 2005</td>
</tr>
<tr>
<td>Thailand</td>
<td>31 January 2013</td>
</tr>
<tr>
<td>Viet Nam</td>
<td>25 October 2005</td>
</tr>
</tbody>
</table>

**Domestic Law**

Most ASEAN member states have adopted domestic legislation to deal with mutual legal assistance. While member states depend upon MLAT with procedural strategies, countries enact their own domestic law and utilize their own domestic law as the foundation for mutual legal assistance. Currently, laws and practices relating to MLA in criminal matters in ten ASEAN

\(^{20}\) United Nations Convention Against Corruption, New York, 2004


\(^{21}\) United Nations Convention Against Corruption, New York, 2004


\(^{22}\) Data available online: http://agreement.asean.org/agreement/detail/56
member states are at different levels of development. Below chart shows ASEAN member states’ domestic laws relevant to the MLAT.23

<table>
<thead>
<tr>
<th>ASEAN Member Country</th>
<th>Relevant Domestic Law</th>
</tr>
</thead>
</table>
| Brunei Darussalam    | Mutual Assistance in Criminal Matters Order 2005  
                        Criminal Asset Recovery Order 2012 |
| Cambodia             | MLAT has direct domestic application (No specific domestic law on MLA) |
| Indonesia            | Law on Mutual Legal Assistance in Criminal Matter 2006 |
| Lao PDR              | Law on Criminal Procedure, Article 117-120 |
| Malaysia             | Mutual Assistance in Criminal Matters Act 2002, Act 621  
                        Mutual Assistance in Criminal Matters Regulations 2003 |
| Myanmar              | Mutual Assistance in Criminal Matters Law 2004 |
| Philippines          | MLAT has direct domestic application |
| Singapore            | Mutual Assistance in Criminal Matters Act (Cap. 190A) |
| Thailand             | Act on Mutual Assistance in Criminal Matters 1992 |
| Viet Nam             | Law on Mutual Legal Assistance 2007 |

**Types of Mutual Assistance Rendered**

According to Article 1, Section 2, types of Mutual Assistance to be rendered in accordance with MLAT may include24:

(a) Taking of evidence or obtaining voluntary statements from persons;
(b) Making arrangements for persons to give evidence or to assist in criminal matters;
(c) Effecting service of judicial documents;
(d) Executing searches and seizures;
(e) Examining objects and sites;
(f) Providing original or certified copies of relevant documents, records and items of evidence;
(g) Identifying or tracing property derived from the commission of an offence and instrumentalities of crime;
(h) The restraining of dealings in property or the freezing of property derived from the commission of an offence that may be recovered, forfeited or confiscated;
(i) The recovery, forfeiture or confiscation of property derived from the

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23 Data available UNODC regional guide on MLA and Extradition pg 10
24 MLAT Article 1, Section 2
commission of an offence;
(j) Locating and identifying witnesses and suspects; and
(k) The provision of such other assistance as may be agreed and which
is consistent with the objects of this Treaty and the laws of the
Requested Party.

Even though all ASEAN member countries have ratified the MLAT, types of assistance
rendered by each country vary.
Extradition

Extradition is “the formal process whereby a State requests the enforced return of a person accused or convicted of a crime to stand trial or serve a sentence in the requesting State.”

Below chart shows ASEAN member states’ domestic laws relevant to Extradition:

<table>
<thead>
<tr>
<th>ASEAN Member Country</th>
<th>Relevant Domestic Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brunei Darussalam</td>
<td>Extradition Order 2006</td>
</tr>
<tr>
<td>Cambodia</td>
<td>No specific domestic law on Extradition</td>
</tr>
<tr>
<td>Indonesia</td>
<td>The Law on Extradition 2012</td>
</tr>
<tr>
<td>Lao PDR</td>
<td>Extradition Act 1992</td>
</tr>
<tr>
<td>Malaysia</td>
<td>Philippine Decree No. 1069. (1977)</td>
</tr>
<tr>
<td>Philippines</td>
<td>No recent changes to this decree since this decree have been enacted. Currently, the Department of Justice from Philippines is considering to make this decree up to date.</td>
</tr>
<tr>
<td>Singapore</td>
<td>Singapore Extradition Law</td>
</tr>
<tr>
<td>Thailand</td>
<td>The Extradition Act B.E. 2551</td>
</tr>
<tr>
<td>Viet Nam</td>
<td></td>
</tr>
</tbody>
</table>

3. Practices on MLA and Extradition

Brunei Darussalam

MLA & extradition central authority (CA)

The Central Authority for MLA and Extradition is the Attorney General of Brunei Darussalam. This office is consists of officers from the Criminal Justice Division and the International Affairs Division. The way the works are split are depends on how the request has been made. Criminal Justice Division handles all the requests made through government agencies, foreign governments and law enforcement agencies. The International Affairs Division handles all the requests that has made through diplomatic channels, government-to-government communications, and negotiations of treaties.

Treaties

Brunei Darussalam is party to the Treaty on Mutual Assistance in Criminal Matters among Like-Minded ASEAN Member States as it ratified the MLAT on 15th February 2006. In addition to the MLAT, Brunei is a member of the Commonwealth, law that is modeled on the Harare Scheme on Mutual Legal Assistance in Criminal Matters. Brunei is a member of ARIN-AP (Asia Pacific Asset Recovery Inter-Agency Network)

Domestic legislation

Brunei Darussalam carries out its functions in accordance with various domestic laws in execution of MLA and Extradition. For MLA, Brunei has enacted the Mutual Assistance in Criminal Matters Order 2005, which is a domestic legislation that gives effect to the ASEAN MLAT Treaty. For Extradition, it has enacted Extradition Order 2006. For Asset Recovery, Brunei has enacted Criminal Asset Recovery Order 2012 which deals with how we process asset recovery requests. Interestingly, Brunei has a special act called Summons and Warrants (Special Provisions) Act, Chapter 155 that specifically deals with issuance of warrants.

Statistics

Brunei Darussalam has received a number of incoming and outgoing MLA requests. From 2004 to 2015, Brunei has received in total of eight incoming MLA requests, and has sent in total of six outgoing MLA requests. A number of requests by each year is showed in chart
For Extradition, Brunei Darussalam has not requested or received any extradition.

### Law enforcement to law enforcement cooperation by types of crime

The Competent Authority for each crime type is different for law enforcement-to-law enforcement cooperation. For Human trafficking/Migrant Smuggling, the competent authorities are Royal Brunei Police Force (RBPF) and Immigration Department. For drug trafficking, the competent authority is Narcotics Control Bureau. For Money Laundering, the competent authorities are Commercial Crime Unit, Royal Brunei Police Force (RBPF), Financial Intelligence Unit, and Authority Monetary Brunei Darussalam. For Terrorism, the competent authorities are Major Crimes Unit, Royal Brunei Police Force (RBPF), and Internal Security Department. For Corruption, the competent authority is Anti-Corruption Bureau. For Environmental Crime, the competent authority is Royal Brunei Police Force (RBPF). For all other crimes, the competent authority is Royal Brunei Police Force (RBPF).

It is important to note that in Brunei Darussalam, although specific competent authority is designated for each crime type, the types of assistance and information available are not always handled in same way. Rather, the way it is handled is on a case-by-case basis based on how agencies categorize the crimes.
MLA vis-a-vis law enforcement-to-law enforcement cooperation

<table>
<thead>
<tr>
<th>MLA</th>
<th>LEA to LEA Cooperation</th>
</tr>
</thead>
<tbody>
<tr>
<td>– subject to an MLA Treaty</td>
<td>– faster exchange of info, intel, and evidence</td>
</tr>
<tr>
<td>– unfamiliar foreign counterpart</td>
<td>– less cost</td>
</tr>
<tr>
<td>– coercive measures requested</td>
<td>– less formality compared to MLA</td>
</tr>
<tr>
<td>– issues of political relations to be considered</td>
<td>– pre official investigation cooperation (this can happen even before MLA)</td>
</tr>
<tr>
<td>– can become evidence of State Practice</td>
<td>– prevent from use of MLA as “fishing expedition”</td>
</tr>
<tr>
<td>– better documented exchange of information</td>
<td></td>
</tr>
</tbody>
</table>

Mandatory grounds for refusal of MLA requests

The Central Authority shall refuse a MLA request on following mandatory grounds:

- Failure to comply by the foreign country with terms of the Treaty and MOU
- Exclusively a military law offence
- Prejudicing against a person on account of his color, race, ethnic origin, sex, religion, nationality or political opinions
- Offence request relates to is not of sufficient gravity
- Article or thing requested for is of insufficient importance or can be obtained by other means
- Prejudicial to the sovereignty, security, or nationals interests of Brunei Darussalam to provide assistance
- Failure to undertake that evidence obtained through request not to be used for other criminal matters (except with consent of AG) and will be returned to the AG upon her request
- In a request for arranging the attendance of a person in a foreign country, the requested person does not give his consent to the transfer
- Prejudicing a criminal matter in Brunei Darussalam

Discretionary grounds for refusal of MLA requests

The Central Authority may exercise his discretionary powers to refuse a MLA request on the following grounds:

- Pursuant to terms of a Treaty, and MoU;
- Prejudice the safety of any person;
- Criminal conduct subject matter of request is not an offence in Brunei Darussalam;
- Assistance requested poses excessive burden;
- In a request for the attendance of a prisoner, it is not in the public interest or the requested prisoner’s interests;
- Request does not adhere to requirements of section 2

**Grounds for refusal of extradition requests**

Based on Brunei’s Domestic Law, Extradition Order 2006, an Extradition Request can be refused if:

- Extradition offence is regarded as a political character
- The person is extradited for the purpose of prosecuting because of his race, religion, nationality, political opinions, sex or status, or for a political offence in the requesting county
- May be prejudicial at trial or detained bc of his race, religion, nationality, political opinions, sex or status
- Offence under military law
- Final judgment has been given against him for the offence in Brunei or a third country
- Under laws of requesting country or Brunei, immunity from prosecution because of lapse of time, amnesty or any other reason
- Already acquitted or pardoned by the requesting country or Brunei for the offence or an offence of similar conduct as the extradition offence
- Judgment has been given in his absence and there is no law in the requesting country that entitles him to appear before a court to raise a defence

**Costs for executing MLA and extradition requests**

Unless stated otherwise, costs are generally born by the country that receives the MLA request

**Internal Challenges of MLA & extradition central authority**

There are several challenges that Brunei government has faced in execution of MLA and Extradition. First of all, the awareness of MLA and Extradition still needs to be improved among law enforcement agencies and among agencies that could possibility be requesting MLA. The Brunei government needs to participate in more awareness building initiatives. This is because not many people know that MLA request is an option when they work MLA and
Extradition related work.

Law Enforcement Agencies are still not seeing the benefits of MLA and not utilizing the laws available to their advantage. Many Brunei agencies complain that the whole process of MLA is too bureaucratic, and they do not want to utilize the process. In this case, the recommendation would be to make a template or a check list for agencies to follow so that the requesting process can be easier for these agencies. In addition to these templates and checklists, the outreach part needs to be established. Even though Brunei government makes all the templates for the agencies to use, if agencies do not know how to access to the templates, which makes these templates are all useless. Need more efforts for more Brunei agencies to utilize the MLA and Extradition process.

Brunei does not receive a lot of requests since Brunei is a very small jurisdiction. In that reason, a lack of exposure and experience in dealing with a wide variety of MLA requests compared to other countries often become a problem.

The need to respond to stringent international standards concerning international cooperation (E.g., FATF 40 recommendations and immediate Outcome 2 of effectiveness element of FATF guidance, UNCAC)

There is a need for having strengthened requirements for countries to have arrangements for sharing confiscated assets and to assist with requests based on foreign non-conviction based confiscation orders in certain circumstances.

Countries are required to render MLA notwithstanding the absence of dual criminality when assistance does not involve coercive actions. Some countries apply laws very strictly, and sometimes it makes the Brunei’s authority harder to process the work.

Request/recommendation to counterparts

Brunei Government has shared insights and recommendations to counterparts in order to make the MLA and Extradition process smoother.

- Need a strong and stable team who is well versed with MLA and Extradition laws and issues to be taken care of by the MLA/Extradition Unit (need to build up the team that can be intact regardless of human resources changes)
- Awareness building amongst own officers and law enforcement agencies is necessary for the success of MLA and Extradition processes
- Guidelines are useful but practical experience is more beneficial
- Websites in English and laws pertaining to international cooperation that are
translated to English (if English is not the main legislative language) is useful in facilitating international cooperation. (also, some countries do not have functioning website and this can be a problem)

- Response and Feedback essential for any successful international cooperation request
- Adherence to timeframe.
Cambodia

Domestic legislation

Cambodia does not yet have a specific national law on MLA and on Extradition. Therefore, for MLA, Cambodia follows MLAT. For Extradition, Cambodia makes a determination on some extradition procedures based on provisions stated in the Cambodia’s Criminal Procedure, specifically, Code 2007, Articles 579-594.

Bilateral treaties

For MLA, Cambodia does not yet have Bilateral Treaties on MLA with foreign countries. However, as of 2015, Cambodia and Vietnam has ongoing discussion in signing a bilateral treaty.


Formal legal assistance

There are two practical means for Cambodia to manage formal legal assistance depending on whether:

- The country has a treaty with Cambodia; or
- The country has no treaty with Cambodia

If the country has a treaty with Cambodia, provision in the treaty determines how the request will be managed. The request must be made to the central authority (ministry of justice).

Even though Cambodia has no treaty with the requesting country, Cambodia still considers all requests for the legal assistance based on Cambodia’s domestic laws. Cambodia Criminal Procedure Code is silent on the issue of mutual legal assistance.

Forms of requests

The letter of request shall be in writing, including some basic information such as name and address of a person and office. Requested Party may request additional information, but they are optional. The letter of request and its supporting document are in the language
acceptable to the Requested Party.

Types of assistance

Cambodia offers assistance stated below:

- Serving documents
- Summoning the witness, the expert
- Taking and providing evidence
- Transfer of proceedings in criminal matters
- Facilitating sentenced persons to assist in investigation or give evidence
- Taking measures to trace, restrain, freeze, seize, or confiscate proceeds or instrumentalities of crime
- Exchanging information
- Any other types of assistance not inconsistent with the laws of Cambodia

Ground for refusal or postponement of MLA or extradition requests

MLA Requests or Extradition Requests can be rejected on following grounds:

- Inconsistent with an international agreement or with the laws
- Prejudice sovereignty, national security
- Offender has been finally convicted, acquitted or pardoned
- Offence that could be no longer prosecuted by reason of lapse of time
- Act or omission that does not constitute an offence under the laws
- Interfere an ongoing investigation, prosecution, court proceedings or enforcement of judgment
- Punishing a person of that person’s race, religion, nationality, place of birth, sex or political opinion of that person (Law on the Control of Drugs & Law on Counter Terrorism)

Procedure of MLA requests: flow of incoming requests

The MLA request starts from the requesting country’s approaching Cambodia through diplomatic channels, usually Embassy or Ministry of Foreign Affairs. Once Ministry of Foreign Affairs receives the request, it forwards the request to the Ministry of Justice, which is the Central Authority for MLA in Cambodia. Once the Ministry of Justice, the Central Authority,
receives the request, it makes a determination on what types of assistance has been requested and assesses the request. If the request is not rejected, then, it tasks appropriate competent authority to process the request. The request is executed in full or in part by the designated competent authority, and the requesting country uses evidence in investigation or prosecution. If the request is rejected based on grounds for rejection, then no more procedure is necessary.

Procedure of MLA Requests: flow of outgoing requests

Competent Authority, usually the Court, prepares an outgoing MLA request through the Ministry of Justice, the Central Authority. Basically, Competent Authority liaises with the Central Authority throughout the process. Competent Authority submits the completed request to the Central Authority, and the Central Authority ensures that the request complies with the law. Once the Central Authority determines that the request does comply with the law, the Central Authority submits the MLA request to the requested country through diplomatic channel, a.k.a., Ministry of Foreign Affairs.

Procedure of extradition requests: flow of incoming requests

The request shall be submitted to Cambodia through diplomatic channel, with letter proving evidence attached. The supporting documents shall include: identification document of the person being requested; report on the fact of the accusation of the person being requested; legal text applicable to the act and penalty to be imposed; and the copy of punishment decision, if any.

Then, Ministry of Foreign Affairs (MFA) forwards the request and attached documents to Ministry of Justice - Central Authority (MOJ-CA). The Central authority examines the request and forward the request and all documents enclosed to the General Prosecutor of the Appeal Court; General Prosecutor of the Appeal Court prepares the case and submits to the Investigating Chamber of the Appeal Court:

- If it is **agreed**, the Minister of Justice will forward the case to the Royal Government to issue a Sub-Degree ordering an extradition of the person sought;
- If it is **refused**, the Investigating Chamber shall immediately inform the Minister of Justice of the order. The person sought shall be released, except for the fact that he or she is involved in other cases.
Indonesia

Central authority

Indonesia has a very unique system because most countries have one Central Authority that deals with both MLA and Extraditions, but Indonesia has two types of authorities: (1) Central Authority, and (2) Competent Authority.

Indonesian Central Authority is composed of Directorate of International Law and Central Authority; Directorate General of Legal Administrative Affairs; and Ministry of Law and Human Rights of the Republic of Indonesia. The Central Authority is composed of in total of 9 officials, which is divided into two section: six for MLA, and three for extradition. Indonesian Competent Authorities are Attorney General’s Office, Indonesian National Police, and Corruption Eradication Commission.

Law enforcement-to- law enforcement cooperation by types of crime

The Competent Authority for each crime type is different for law enforcement-to-law enforcement cooperation. For Corruption, the competent authorities are Corruption Eradication Commission, Indonesian National Police, and Attorney General Office. For Terrorism, the competent authorities are Special Task Force for Terrorism and Indonesian National Police. For Human trafficking/ Migration Smuggling, the competent authority is Indonesian National Police. For Drugs trafficking, the competent authorities are Anti-Narcotics National Board, Indonesian National Police. For Environmental crime, the competent authority is Indonesian National Police. For Cybercrime, the competent authority is Indonesian National Police.

Asset recovery

It is especially hard for Indonesia to recover assets because usually criminals leave before the prosecution takes place, aka the government recovers their assets. The key issue to consider is how Indonesia can extradite fugitives for the purpose of investigation.

Political will

Due to difference of legal system and difference of laws and regulations, MLA and extradition process is hard. So basically it depends on how you want to assist other countries. Political will is the key.
Lao PDR

**Legal framework and practices on mutual legal assistance**

In Lao PDR, according to Article 271 of Criminal Procedure Law, a request on legal assistance in criminal matters shall be implemented in two ways: (1) Treaties (2) Criminal Law.

For multilateral treaties, Lao PDR has ratified MLAT. For bilateral treaties, Lao PDR has signed bilateral treaties with three ASEA countries: Vietnam 1998, China 2001, and PDR Korea 2008.

Lao’s domestic law regarding MLA is Law on Criminal Procedure, Articles 117-120.

**Ground for Refusal of MLA Requests**

According to Article 273 of Criminal Procedure law, a request on legal assistance can be rejected on following grounds:

- A request is not under scope of the bilateral and multilateral treaties which the Lao PDR is the Party to; or
- A request is contrary to the sovereignty, public orders, security, and national interests

**Procedure of MLA requests: flow of incoming requests**

![Diagram showing the process of implementing a request for legal assistance in criminal matters.]

**Legal framework on extradition**

In Lao, a request on extradition shall be implemented in two ways: (1) Treaties (2) Domestic
For bilateral Treaties on extradition, Vietnam signed in 1998 Effective in 2000; Thailand signed in 1999, effective in 2001; Cambodia signed in 1999, effective 2005; PDR Korea signed 2008; Russia signed in 2015, now under procedure for ratification.

For Domestic laws, Lao PDR has adopted The Law on Extradition in 2012. This Law on Extradition has 44 articles, and was drafted based on UNODC Model Law on Extradition (2004) and bilateral treaties.

**Procedure of extradition requests: flow of incoming requests**

**Practice on implementing of request on Extradition**

- A Request for Extradition
- Checking Process under Article 16: Foreign Relations and National Interests
  - Ministry of Foreign Affairs
- Checking Process under Articles 7, 8, 9, 10
  - The Supreme Prosecutor Office
  - The Vientiane Court
  - The Vientiane Prosecutor Office
- Extradition law, Criminal Procedure Law, Civil Procedure Law

**Challenges**

Challenges that Lao PDR has faced while executing MLA or Extradition requests are:

- No time frame for conducting the request under the law
- Limited grounds for refusal of the request
- No standard template of the request
- Roles, responsibilities, rights and duties of the key organizations are unclear and confused

For this reason, Lao PDR is currently working on drafting a new Law based on UNODC model
law in order to make the execution of MLA and extradition more efficient.
Malaysia

Domestic legislations

Malaysia has two domestic laws regarding MLA: Mutual Assistance in Criminal Matters Act 2002 [Act 621], and Mutual Assistance in Criminal Matters Regulations 2003. Mutual Assistance in Criminal Matters Act ("MACMA") is "an act which makes provisions for mutual assistance in criminal matters to be rendered and sought between Malaysia and other countries and for matters connected therewith." MACMA came into effect on 1 May 2003. Mutual Assistance in Criminal Matters Regulations 2003 has been enacted in order to complement the implementation of MACMA, and it came into force on 15 June 2003.

Malaysia’s domestic law on extradition is Extradition Act 1992 [Act 479]. Malaysia’s Extradition Act enable Malaysia to make sure that the effective administration of criminal justice in Malaysia.

Treaties or agreements

In addition to domestic laws on MLA, has entered into international bilateral treaties and multilateral treaties with other countries. For multilateral treaties, Malaysia has entered into MLAT. For bilateral treaties, which is the most common formal procedure used, Malaysia has entered into bilateral treaties with five countries: Australia, the United States of America, Hong Kong Special Administrative Region of the People’s Republic of China, United Kingdom, and republic of India. For Extradition, Malaysia has entered into bilateral treaties with six countries: Thailand, Indonesia, the United States of America, Hong Kong Special Administrative Region of the People’s Republic of China, Australia, Republic of India, and Republic of Korea.

Central authority

The Central Authority for MLA in Malaysia is the Attorney General of Malaysia which is composed of seven officers directly under the Attorney General. The Central Authority for extradition is the Ministry of Home Affairs, which is composed of five officers under the Security and Public Order Division in charge of extradition matters. According to section 7 and 19 of MACMA, the Central Authority is authorized to make and receive requests to and from the foreign countries. Although the Central Authority for extradition is the Ministry of Home Affairs, the Attorney General’s Chambers, in actual practice, examines and advises the Ministry of Home Affairs on whether an extradition request complies with the Extradition Act.

Law enforcement-to-law enforcement cooperation by types of crime (competent
The Competent Authority for each crime type is different for law enforcement-to-law enforcement cooperation. For general crimes information and Intelligence (including Narcotics, Terrorism, Cybercrime), the competent authority is Royal Malaysian police (RMP). For corruption, the competent authority is Malaysian Anti-Corruption Commission (MACC). For financial Intelligence and Records: Financial Intelligence and Enforcement Division, the competent authority is Central Bank of Malaysia (CBM). For customs related information, the competent authority is Royal Malaysian Customs Department (RMCD). For securities transactions records, the competent authority is Securities Commission of Malaysia (SC). For corporate and business information, the competent authority is Companies Commission of Malaysia (CCM/SSM). For telecommunication information, the competent authority is Malaysian Communications and Multimedia Commission (MCMC). For Corporate Information and Financial Records in Labuan, the competent authority is Labuan Financial Services Authority (LFSA). For tax information, the competent authority is Inland Revenue Board (IRB). For Maritime Enforcement Matters, the competent authority is Malaysian Maritime Enforcement Agency (MMEA).

It is important to note that Law Enforcement-to-Law Enforcement Cooperation might have certain limitations. This is why it needs formal agreements or MOUs when operating law enforcement-to-law enforcement cooperation. In that reason, Malaysia’s Central Authority encourages the law enforcement agencies to consider seeking informal assistance before making a formal mutual assistance request as information can generally be provided more quickly on an informal basis.

Mandatory grounds for refusal of MLA requests

Not all MLA requests are processed. The central authority of Malaysia, the Attorney General, shall refuse a MLA request on following mandatory grounds:

- the request relates to an offence of a political nature;
- the request relates to a military offence which is also not an offence under the ordinary criminal law of Malaysia;
- there are substantial grounds for believing that the request was made for the purpose of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of the person’s race, religion, sex, ethnic origin, nationality or political opinions;
- double jeopardy;
- dual criminality not fulfilled;
- offence of insufficient gravity;
- insufficient importance to the investigation or could reasonably be obtained by other means;
- affecting the sovereignty, security, public order or other essential public interest of Malaysia;
- no undertaking of specialty;
• no undertaking to return the things obtained after the completion of criminal matter, upon request by Malaysia;
• prejudicial to a criminal matter in Malaysia; or
• required steps to be taken that would be contrary to the laws of Malaysia.

Discretionary grounds for refusal of MLA requests

The central authority for MLA and Extradition may exercise his discretionary powers to refuse a MLA request on the following grounds:

• prejudicial to the the safety of any person, whether within or outside Malaysia;
• assistance would impose an excessive burden on the resources of Malaysia; or
• no undertaking of reciprocity from a non-treaty partner.

Grounds for refusal of extradition requests

The central authority of Malaysia shall refuse an extradition request on following mandatory grounds:

• the request relates to an offence of a political character;
• the request relates to a military offence which is also not an offence under the ordinary criminal law of Malaysia;
• there are substantial grounds for believing that the request was made for the purpose of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of the person’s race, religion, sex, ethnic origin, nationality or political opinions;
• double jeopardy;
• if the person would be liable to be tried or sentenced in the Requesting State by a Court or tribunal that has been specially established for the purpose of trying the person’s case; or
• Barred by time
• Dual criminality not fulfilled; or
• No understanding of specialty.

Discretionary Grounds for Refusal of Extradition Requests

The central authority may exercise his discretionary powers to refuse an extradition request on following grounds:

• If the person is a national of Malaysia
• When Malaysia has jurisdiction over the offence for which extradition is sought; or
• No understanding of reciprocity from a non-treaty partner
Cost for executing MLA requests

Malaysia bears all the ordinary expenses of fulfilling the MLA request. However, the requesting country will have to assume: the fees of counsel retained at the request of the Requesting State; the fees and expenses of expert witnesses; the costs of translation, interpretation, and transcription; the expenses to arrange the attendance of a person in the Requesting State including the fees, allowances and expenses payable to the person concerned while that person is in the Requesting State; and the expenses associated with conveying custodial or escorting officers.

The cost of establishing video conference or other appropriate communications and multimedia facilities and its related services, the remuneration of interpreters provided by Malaysia and allowances to witness and their traveling expenses in Malaysia shall be borne/refunded by the Requesting State.

Cost for executing extradition requests

The Requesting State shall bear the expense related to the translation, interpretation and transcription of documents provided in support of an extradition request and the transportation of the person surrendered and the escorting officers.

Malaysia shall pay all other ordinary expenses incurred in Malaysia by reason of the extradition proceedings including expenses incurred for the arrest and detention of the person whose extradition is sought until that person is surrendered to a person nominated by the Requesting State.

Statistics

Between 2009 to 2013, Malaysia received 160 incoming MLA requests and made 36 outgoing MLA requests. Below is the number of MLA requests received and the number of MLA requests made to foreign countries by crime type.

<table>
<thead>
<tr>
<th>Types of crime</th>
<th>No. of requests received</th>
<th>No. of requests made</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fraud</td>
<td>110</td>
<td>16</td>
</tr>
<tr>
<td>Theft</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>Murder</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>Corruption</td>
<td>9</td>
<td>7</td>
</tr>
<tr>
<td>Drugs</td>
<td>14</td>
<td>0</td>
</tr>
<tr>
<td>Other offences</td>
<td>16</td>
<td>2</td>
</tr>
</tbody>
</table>
Between 2009 to 2013, Malaysia received 54 incoming extradition requests, and made 0 outgoing extradition requests. Below is the number of extradition requests received and the number of extradition requests made from Malaysia to foreign countries by crime type.

<table>
<thead>
<tr>
<th>Types of crime</th>
<th>No. of requests received</th>
<th>No. of requests made</th>
</tr>
</thead>
<tbody>
<tr>
<td>Export control related offences</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Theft</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>Murder</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Corruption</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Drugs</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Other offences</td>
<td>38</td>
<td>0</td>
</tr>
</tbody>
</table>

**Internal Challenges of MLA & Extradition Central Authority**

In executing various MLA and Extradition requests, Malaysian Central Authority saw some places to improve for a more efficient execution of MLA or Extradition requests. The internal challenges of MLA & Extradition Central Authority are:

- Delays in receiving the request through diplomatic channel
- The requirement for a prima facie evidentiary standard of proof for extradition request from non-treaty partner or where the treaty is silence on dispensation on prima facie requirement
- Difficulty in engaging and encouraging local law enforcement agencies to make outgoing requests
Myanmar

Central authority

Myanmar’s Central Authority for MLA is Ministry of Home Affairs, composed of eleven members from various government organizations. The Central Authority in Myanmar has power to grant or refuse the MLA Request, has right to carry out the mutual legal assistance immediately, can perform immediate duties. It may delegate the power to any members of CA or anybody who are member of the Central Authority.

Focal Point of Myanmar to receive the request for rendering Mutual Legal Assistance is Head of Department of Transnational Organized Crimes

In Myanmar, main responsible departments within the competent authority are different by crime type. For Human Trafficking, main responsible department is Ministry of Home Affairs. For Cybercrime, main responsible department is Ministry of Communication. For Environmental Crime, main responsible department is Ministry of Environment and Forestry. For Terrorism, main responsible department is Ministry of Home Affairs. For Anti-Corruption, main responsible department is National Anti-Corruption Commission.

Domestic legislation

In Myanmar, domestic law regarding MLA is Mutual Assistance in Criminal Matters Law in 2004.

Grounds for refusal for MLA

Myanmar’s Mutual Assistance in Criminal Matters Law 2004, Section 18 provides that the Central Authority, after the scrutiny, may refuse a MLA request in whole or in part on following grounds:

- not being in conformity with the stipulations of this law;
- encroaching on the sovereignty of the State, its security prevalence of law and order or public interests;
- there being cause to believe that the race, sex, religion, nationality, ethnic origin, political opinion or personal stand of any individual is encroached;
- there being a prohibition of conducting investigation, prosecution and judicial proceedings of an offence similar to the offence requested, under the existing law of the Union of Myanmar;
- being an offence of military nature actionable under the Defence Services Act, 1959;
the subject matter relating to the request being contrary to the laws of Myanmar; or
being a request incidental to matters reserved in the international convention to which
Union of Myanmar is a State Party.

**Costs for executing MLA or extradition requests**

In general, Myanmar does not have that much MLA or Extradition requests. However, in practice, the requesting state covers the ordinary costs, unless agreed otherwise. Extraordinary costs are covered by relevant Ministry according to the agreement. If the request is made by the Myanmar, the Myanmar government shall cover the cost.

**Challenges**

Challenges that Myanmar has faced while executing MLA or Extradition requests are:

- Lack of staff, lack of training and guideline, etc.
- Lack of knowledge and experience
- Existing MLA law not being updated
- Lack of awareness of the application of MLA by other countries
- Not holding regular meetings of Central Authority
- Lack of linkage btw MLA and other relevant laws.
Philippines

Central authority for MLA & extradition

The Central Authority for MLA and Extradition is the Department of Justice. This department consists of 52 lawyers including the Chief State Counsel, two Assistant Chief State Counsels, and 21 general staffs.

Treaty

For MLA, Philippines ratified the MLAT. In addition to this multilateral treaty, it has signed bilateral treaties with four countries: Australia, China, Korea, and the United States.

For Extradition, Philippines has signed bilateral Treaty with Australia, China, Indonesia, Republic of Korea, Thailand, and the United States.

Domestic Law

Philippines has no direct domestic legislation on MLA. Even though Philippines do not have domestic legislation on MLA, the grounds for refusal of MLA must be based on applicable domestic legislation of Philippines by crime type. For instance, Corruption for Philippine’s law of secrecy on bank deposit.

It does have governing domestic legislation on Extradition - Presidential Decree No. 1069, prescribing the procedure of extradition of the person who has committed the crimes in a foreign country. The problem here is that there has been no changes to the Extradition Law since this decree has been enacted (1977). Currently, the Department of Justice from Philippines is considering to make this law up to date.

Statistics - MLA requests

Philippines receives a great number of incoming requests from foreign countries and makes a number of outgoing MLA Requests, which is shown below. The country that Philippine receives the most requests from is the United States of America. Since Philippines ratified the Rome Statute in 2012, Philippines received two requests from the International Criminal Court (ICC) since then.
<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Incoming MLA Requests</th>
<th>Number of Outgoing MLA Requests</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>53</td>
<td>4</td>
</tr>
<tr>
<td>2012</td>
<td>61</td>
<td>2</td>
</tr>
<tr>
<td>2013</td>
<td>43</td>
<td>6</td>
</tr>
<tr>
<td>2014</td>
<td>54</td>
<td>7</td>
</tr>
</tbody>
</table>

**Statistics - extradition Requests**

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Incoming Extradition Requests</th>
<th>Number of Outgoing Extradition Requests</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>2012</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>2013</td>
<td>6</td>
<td>1</td>
</tr>
<tr>
<td>2014</td>
<td>4</td>
<td>1</td>
</tr>
</tbody>
</table>

**Law enforcement-to-law enforcement cooperation by crime type**

The Competent Authority for each crime type is different for law enforcement-to-law enforcement cooperation. For Drug trafficking, the competent authority is Philippine Drug Enforcement Agency. For Human trafficking/ Migration Smuggling, the competent authorities are Department of Justice for prosecution, and Philippine National Police for investigation and arrest. For Environmental Crimes, the competent authority is Department of Environment and Natural Resources. For Cybercrime, the competent authority is Department of Justice (Office of Cybercrime). For Terrorism, the competent authority is Anti-Terrorism Council. For Corruption, the competent authority is Office of Ombudsman.

It is important to note that in Philippines, MLA under Treaty is more often utilized than Law Enforcement-to-Law Enforcement Cooperation because the requesting State would not know the particular types of assistance may be extended through informal channels. Therefore, submitting a formal request is favorable.

**Costs for executing MLA and extradition requests**

The principle is that costs for executing MLA and Extradition Requests are based on the applicable treaty.
For MLA, the requested State generally assumes all expenses needed for executing the assistance. For extraordinary expenses, parties shall consult with each other to determine who will assume such expenses.

For Extradition, the way costs are covered are based on the Philippine Extradition Law and applicable treaty. Generally, the requested State assumes all the expenses needed for executing the Extradition. This includes costs to arrest and detain.

**Internal challenges of MLA & Extradition**

Philippines faces three key internal challenges in executing MLA and Extradition.

- **No Domestic Legislation on MLA**: Absence of MLA in criminal matters contributes to inability to respond in a timely matter to some requests. Also, some competent authorities may not be familiar with the procedures or do not recognize the importance of strictly complying the extent allowed under Philippines’s law of the procedure of carrying out the assistance or authentication performance indicated in the request.

- **Outdated Extradition Law**: Since the Extradition Law of Philippines is outdated, judges often apply domestic criminal procedure in making determination on the procedure of extradition. It sometimes results in inconsistency and delay of proceedings.

- **CA performs other functions**: CA’s main job is to give assistance to Secretary of Justice. Even though Philippines’ CA has 52 lawyers, there is no one single lawyer exclusively handling the Mutual Legal Assistance or Extradition.
Singapore

Central authority

Central Authority for MLA and Extradition in Singapore is the Attorney General’s Chambers, and it checks the process of the MLA and Extradition. However, Ministry of Law, not the Attorney General’s Chambers is the one that actually makes the decision on whether to accept or reject the request.

Authorized Officers for MLA and Extradition are Commercial Affairs Department, Criminal Investigation Department, Singapore Police Force, Corrupt Practices Investigation Bureau, Island Revenue Authority of Singapore, Singapore Customs, Immigration and Checkpoints Authority. And the cases are assigned to a specific department according to the crime type.

Domestic legislations

Singapore has adopted its domestic legislation called Mutual Assistance in Criminal Matters Act (MACMA). Under 2006 Amendments of MACMA, treaty is no longer required in executing MLA requests. But when there is no treaty, reciprocity is required. Under 2014 Amendment of MACMA, it has removed the dual criminality for non-coercive measures and tax related offences requirement as well.

Types of assistance

Singapore assists eight types of Mutual Legal Assistance:

- Arranging for person to attend in foreign country as a witness
- Facilitate custody of person through Singapore
- Locate and identify persons
- Assist in effecting service of process
- Production orders – this is usually related to banks, or financial institutions
- Search and seizure warrants
- Restraint and confiscation of assets – where there is confiscation proceeding, you ask the CA to restrain the assets by asking CA to issue confiscation orders
- Recording of evidence before a Magistrate

Costs of rendering Assistance

Usually, ordinary costs are borne by Singapore. However, for costs of enforcing Foreign
Confiscation Order, it follows the statutory payments to Public Trustee. For asset sharing arrangements, when Singapore receives a confiscation order from a requesting country, then Singapore do enter into asset sharing arrangements depending on the nature of the crime. If it is the victim based crime, Singapore do not ask for asset sharing; Singapore do not get any money.

Suggestions for counterparts in requesting formal assistance

Singapore has been consistently asked counterparts several things when they request MLA through Formal channel. First is to use standard templates and forms. Also, it is better to send request to Central Authority directly. In Singapore, there is no need to go through diplomatic channels. For sensitive or important cases, Singapore Central Authority is willing to review drafts before the formal MLA request. Once it determines that it needs to go through formal MLA request, facts need to be clear to the Central Authority. Central Authority is the ones who need to get the facts clear because Central Authority from Singapore is the one who defends for the requesting country in front of the court.

Informal Assistance of MLA

MACMA is not intended to restrict other forms of assistance. Based on the nature of the case or types of assistance request, Singapore renders informal assistance to counterparts: for instance,

- Voluntary interview or statement
- Documents in the public domain
- Supply of documents on a voluntary basis.

Domestic law in extradition

Singapore has adopted Extradition Law that uses the list approach

Must be an “extradition crime”

In order to render an assistance in Extradition, the types of offence must be one of those listed extradition crimes. List of Offences in First Schedule to Extradition Act includes:

- Murder of any degree / Manslaughter or culpable homicide;
• Maliciously or willfully wounding or inflicting grievous bodily harm / Assault occasioning actual bodily harm;
• Rape / Indecent assault;
• Bribery;
• Stealing, embezzlement, fraudulent conversion, fraudulent false accounting, obtaining property or credit by false pretenses, receiving stolen property or any other offence in respect of property involving fraud;
• An offence against the law relating to benefits derived from
• Corruption, drug trafficking and other serious crimes.
Thailand

MLA and extradition central authority (CA)

In Thailand, one Central Authority handles both MLA and Extradition, and the Attorney General is the designated Central Authority for MLA and Extradition. It is composed of 12 prosecutors/attorneys with 12 general staffs.

Domestic legislation

In Thailand, domestic legislation that becomes a legal basis for MLA is the Act on Mutual Assistance in Criminal Matters 1992. Since it was enacted a while ago, this act is currently in the process of amendment. For Extradition, Thai has its domestic law, called the Extradition Act B.E. 2552, which is still enforceable.

Main responsible department within competent authority by crime type

The Competent Authority is different by crime type. In Thailand, under the 1992 MLA Act, competent authorities to provide MLA are Royal Thai Police, Attorney General, and Department of Corrections. For Drug Trafficking, competent authorities are Office of Narcotics Control Board, and Royal Thai Police. For Human Trafficking/Migration Smuggling, competent authorities are Royal Thai Police, and Ministry of Social Development and Human Security. For Environmental Crimes, competent authorities are Ministry of Natural Resources and Environment, and Royal Thai Police. For Cybercrime, competent authorities are Royal Thai Police, and Ministry of Information and Communication Technology. For Terrorism, competent authorities are Royal Thai Police, and Office of the National Security Council. For Corruption, competent authorities are Royal Thai Police, Office of the National Anti-Corruption Commission, and Office of Public Sector Anti-Corruption Commission. Overall, Royal Thai Police is involved in all crimes, from Drugs to Terrorism.

Main responsible department by types of assistance.

The work is assigned to different department based on types of assistance that the requesting country requests. If you need assistance to do outside of the court, e.g., interviewing witnesses, serving legal documents, providing documents or evidence, Royal Thai Police is the main responsible agency. However, if you need assistance to do inside Court, e.g., taking the testimony, requesting forfeiture, seizure of property, the Office of Attorney General is the
main responsible agency. The Department of Correction is responsible for transferring persons who makes a testimony.

**Grounds for refusal for MLA and extradition**

In Thailand, MLA request can be refused if
- The offence is not punishable under Thai laws, unless when Thailand and the requesting State have MLA treaty and treaty specifies otherwise;
- The request would effect a national sovereignty or security or other crucial public interests of Thailand or relates to a political offence; or
- The offence is related to a military offence.

The Extradition request can be refused if:
- If the offence is not extraditable offence and prohibited by the Thai laws or it is the offence of political character or military offence.

**Costs for executing MLA and extradition requests**

Thai Government generally absorbs the expense incurred from executing MLA and Extradition in the Kingdom

**Statistics on MLA**

Last five years 2012-2015, Thailand received in total of MLA 743 requests. Below is the specific data that shows the number of MLA requests received and sent to each ASEAN Country and neighboring countries in the last five years.

<table>
<thead>
<tr>
<th>Countries</th>
<th>Number of Incoming and Outgoing Requests</th>
</tr>
</thead>
<tbody>
<tr>
<td>Malaysia</td>
<td>9 outgoing requests, 1 incoming request</td>
</tr>
<tr>
<td>Myanmar</td>
<td>0 requests</td>
</tr>
<tr>
<td>Vietnam</td>
<td>1 outgoing request</td>
</tr>
<tr>
<td>Cambodia</td>
<td>2 outgoing requests</td>
</tr>
<tr>
<td>Laos</td>
<td>4 outgoing requests</td>
</tr>
<tr>
<td>Brunei</td>
<td>0 requests</td>
</tr>
<tr>
<td>Singapore</td>
<td>1 outgoing request</td>
</tr>
<tr>
<td>Indonesia</td>
<td>1 outgoing request</td>
</tr>
<tr>
<td>Philippines</td>
<td>1 outgoing request</td>
</tr>
<tr>
<td>Country</td>
<td>Requests</td>
</tr>
<tr>
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</tr>
<tr>
<td>Australia</td>
<td>6 incoming requests, 3 outgoing requests</td>
</tr>
<tr>
<td>China</td>
<td>0 requests</td>
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<tr>
<td>Japan</td>
<td>1 incoming request, 1 outgoing request</td>
</tr>
<tr>
<td>New Zealand</td>
<td>1 incoming request, 1 outgoing request</td>
</tr>
<tr>
<td>Republic of Korea</td>
<td>2 incoming requests</td>
</tr>
</tbody>
</table>
Viet Nam

Central authority

According to the 2007 Law on Mutual Legal Assistance of Vietnam, the Central Authority for Mutual Legal Assistance is Supreme People’s Procuracy. It handles requests for mutual legal assistance in criminal matters. Ministry of Public Security of Viet Nam handles the matters of extradition and transfer of sentenced person, and Ministry of Justice of Viet Nam – handles requests for mutual legal assistance in civil matters.

Treaty

Vietnam ratified MLAT on 31 January 2013. In addition to this multilateral treaty on MLA, Vietnam has signed a number of bilateral treaties on MLA with 19 countries, including but not limited to: the Czechoslovak Republic (inherited by the Czech Republic and the Republic of Slovakia), Cuba, Hungary, Bulgaria, Poland, Lao PDR, Russian Federation, China PR, Ukraine, Mongolia, and Belarus.

Domestic Legislation

Vietnam’s has a domestic law on MLA, and it was enacted recently. It is Law on Mutual Legal Assistance of Viet Nam 2007. But the rule of thumb that Viet Nam follows in execution of MLA requests is to follow the provisions of International Conventions, and the Principle of Reciprocity.

Grounds for refusal for MLA and extradition requests

In Vietnam, Grounds for refusal for MLA Requests and Extradition Requests are the same. The Central Authority may refuse a MLA request or an extradition request if:

- It is not in conformity with the obligations of Vietnam under the international treaties to which Vietnam is a party and Vietnamese laws;
- The execution of the request may jeopardize the sovereignty or national security of Vietnam;
- The request is for prosecution of a person for a criminal conduct of which that person has been convicted, acquitted or granted a general or special reprieve in Vietnam;
- The request relates to a criminal conduct for which the statute of limitations has elapsed according to the Penal Code of Vietnam;
• The request relates to a law violation which does not constitute a criminal offence under the Penal Code of Vietnam.

Costs for executing MLA and extradition requests

According to Article 31 of the Vietnamese Law on Mutual Legal Assistance, costs for execution of MLA requests are paid by the requesting country, except for otherwise. However, based on international practice and the Treaties on MLA in criminal matters Viet Nam has signed, these costs will be paid by the requested country except for:

• the expenses associated with conveying any person to or from the territory of the Requested Party and any fees, allowances, expenses payable to that person whilst in the Requesting Party to assist in investigation or give evidence;
• the expenses associated with conveying custodial or escorting officers;
• the expenses associated with expert;
• the expenses associated with interpreting, translating and transcription of documents and obtaining images of evidence via video conference or other electronic means from the Requested Party to the Requesting Party;

Statistics on MLA

Vietnam has received 324 incoming MLA requests from 2010 to 2015, and has sent 316 outgoing MLA requests in total from 2010 to 2015.

Internal challenges

The Government of Vietnam has faced various challenges in executing MLA or Extradition requests over the years. First challenge the government recognized is there is no time limit for executing a request. Also, the language barrier is a big concern in executing the requests on MLA/Extraditions. Vietnam finds it difficult to translate the request form, and it is very time consuming. As a result, it delays the MLA and extradition process.
Australia

Central authority

International Crime Cooperation Central Authority (ICCCA) is located in the international crime cooperation division of the attorney general’s department. ICCCA is responsible for mutual assistance and extradition casework and currently has around 540 mutual assistance requests on foot. These are generally split between 150 incoming and 390 outgoing requests.

In terms of mutual assistance Australia has seen a rise in a number of corruption related and proceeds of crime asset recovery requests. The other function that central authority has is to support division’s policy, treaty negotiation, and capacity building work.

Mutual assistance in Australia

Australia can make and receive mutual assistance requests to any country. Australia’s domestic legislation governing mutual assistance request is the mutual assistance in criminal matters act of 1997. Australia has bilateral treaties with 29 countries, including Indonesia, Malaysia the Philippines, and Thailand. And Australia is currently working to fulfill implementation requirements to bring our mutual assistance treaty with Viet Nam into effect. In addition to these treaties Australia is also a party to a number of multilateral conventions.

For incoming requests, far from the usual information that are provided by requesting countries, it’s very important to include admissibility requirement at the outset that requesting country might have and time limits and it is also useful to include information about any police to police assistance that requesting country have received with Australian law enforcement authorities. This is going to help Australia to link up the request to officers who may have had experience in the matter previously.

Section 8 of Australia’s mutual assistance request (act) provides where there are mandatory and discretionary grounds for refusal for assistance including for death penalty offences, however Australia has productive relationships with many countries who retain the death penalty, but in order to provide mutual assistance, Australia requires an undertaking that the death penalty will not be carried out.

In terms of outgoing requests Australia’s foreign evidence act requires that foreign material must be received in response to mutual assistance request in order to be admissible in
Australian court. And it will be noted interestingly that there has been amendments to Australia’s foreign evidence act to enable material that has been obtained on an informal basis to be adjudiced as evidence in terrorism related offending.

Details about general assistance that Australia can provide under mutual assistance act is as follows:

- Obtaining witness statements
- Executing search warrants and production of documents (e.g. business records, bank records, telephone records)
- Providing material obtained by Australian law enforcement authorities (e.g. telephone intercept material)
- Taking evidence from witnesses (including via video link)
- Transferring voluntary witnesses (including prisoners) to give evidence in foreign country
- Identify, restrain, confiscate and repatriate proceeds of crime (including registration and enforcement of foreign proceeds of crime orders)

Australia can register and enforce orders to restraint and forfeit property including non-confiscation based orders for many country.

One aspect of Australia’s outgoing mutual assistance requests is Australia’s admissibility requirement. And the rules that apply to evidence obtained overseas are contained in foreign evidence act of 1994. This act enables evidence to be admitted as evidence without direct evidence from a witness provided there are a number of requirements that are met and those are as follows.

- The testimony and exhibits must have been obtained as a result of a mutual assistance request
- The testimony must have been taken on oath or affirmation or under some other form of obligation to tell the truth that is acceptable in the foreign country
- The testimony must be certified by a judge, magistrate or officer in the foreign country, and
- The testimony and any exhibit attached to it must be certified and sealed by the Attorney-General or his delegate.

Australia’s foreign evidence act has been amended recently to enable foreign evidence obtained on informal basis to be adjudiced in terrorism related proceeding. This Type of evidence has to be annexed to a sworn statement of senior Australian Federal Police Officer that explains what the material is and precisely how it came into the hands of Australian
Federal Police. In addition to that it also has to be accompanied by certificate signed by the Attorney General certifying that it wasn’t practical to obtain this material pursuant to mutual assistance request.

**Extradition in Australia**

In terms of extradition Australia has 80 current extradition requests with a greater proportion of these being incoming requests for assistance from foreign countries. The most Common offences are fraud, theft, sexual offences, and drug offences.

Australia’s extradition process is governed by Extradition Act of 1988 and pursuant to that legislation Australia can only receive extradition requests from countries that are declared in our regulations to be extradition countries. However, Australia can make an extradition request to any country.

Australia has bilateral treaties on extradition with over 35 countries and a party to a number of multilateral conventions. Extradition requests are confidential until such time as the person is arrested in the request.

Australia cannot arrest on the basis of an Interpol red notice. In circumstances where provisional arrest request can be made this must be followed by fully complying extradition request within 45 to 60 days.

**Australia’s experience with ASEAN countries**

Australia’s main ASEAN partners in mutual assistance and extradition to dates are Singapore, Thailand, Malaysia, and Indonesia. Australia has bilateral mutual assistance treaties with Indonesia, Malaysia, the Philippines and Thailand. And Australia is currently working to fulfill domestic implementation requirements to bring into effect mutual assistance with Viet Nam.

Over the last ten years Australia makes more requests for assistance than Australia receives from ASEAN neighbors. Australia yet to make any requests to Lao PDR and Myanmar and yet to receive any request for assistance From Brunei, Cambodia Lao PDR and Myanmar. Thailand has received the second highest number of mutual assistance requests From Australia In the past 10 years. Australia has made 38 requests to Thailand for assistance and that material has been so broad range of offences including drugs, child sex offences and financial crimes.
Thailand has received the highest number of extradition requests from Australia. Australia has made 17 requests in the past 10 years. 10 alleged defendants have been surrendered to Australia to face prosecution for offences involving drugs, theft, major taxation offences and most recently this year Thailand surrendered xxx to face prosecution for murder in Australia.

In terms of Singapore, Singapore has received the highest number of requests for assistance from Australia. Australia has made 49 requests in the past ten years and Australia has strong and direct relationship with Singapore central authority in Attorney General’s Chambers. Material that Australia often seek from Singapore includes Internet records, banking and business records for financial crimes including fraud, taxation and money laundering offences.

In terms of Indonesia the main mutual assistance requests that Australia has sought from Indonesia has been for drugs, and people smuggling offences. Australia has made a number of extradition requests to Indonesia and Indonesia has in fact surrendered 6 alleged offenders to Australia including for people smuggling offences which is high priority for Australian government also for fraud, drugs and, child sex offences and in particular Indonesia recently surrendered XXX who is wanted to face people smuggling prosecutions in Australia. And Australia has seen strengthening in the relationship with Indonesia. Australia currently has two officers from the Attorney General’s department now posted at our Jakarta posts in Indonesia.

In terms of Malaysia Australia’s numerous mutual assistance requests to Malaysia have largely been for drugs and money laundering, fraud, and taxation offences and Malaysia has provided a great deal of assistance particularly for some very high profile Australian investigations. Australia has had 8 successful surrenders in terms of extradition from Malaysia. Notably Australia has extradition of XXX wanted for child kidnapping offences and two offenders for people smuggling offences and the provision of that assistance has been excellent. Malaysia’s Attorney General’s Chambers are able to work directly with Australia’s central authority on Casework matters and Australia certainly encourage this direct communication.

Australia has also had active requests from the Philippines and from Viet Nam and Australia previously sought material from both countries for drugs, child sex offences, murder, fraud and forgery.

Priorities, challenges and opportunities
Australia’s central authority is largely responsive to Australia’s commonwealth and state law enforcement operational priorities which will involve terrorism, foreign fighters which is an emerging area of investigation for Australia, people smuggling, tax, fraud offences and foreign bribery, obviously with murder, drugs, child sex offences. Those type of offences continue to be increasing and important to Australia.

In terms of incoming requests, Australia’s foreign partners are increasingly making requests of seeking proceeds crime. For type of orders and assistance, while Australia has the mechanisms to assist, Australia has differences in the regimes which often means that Australia requires a great deal of information from countries for proceeds of crime matters and that’s why it’s critical to have direct links from central authority to central authority so that Australia can obtain information from requesting countries that Australia need in tight, often tight time frames.

In terms of challenges, Australia’s onerous admissibility requirements have been already touched on.

Australia’s counter terrorism regime and emerging focus that Australia has on foreign terrorist fighters are as follows.
As a result of many Australians traveling to conflicts and increase potential for domestic terrorist acts inspired by these overseas conflicts, Australia anticipates that foreign evidence needed to support investigation and prosecution for those involved in terrorism will increase. Australia has a range of measures to address this increase of returning foreign terrorist fighters. And part of that response is to work collaboratively with countries in the Middle East and Southeast Asia to strengthen legal responses to terrorism in line with international standards.

Australia also encourage comprehensive and effective legislative frameworks to counter terrorism and terrorism financing consistent with UN Security Council resolution 2178 and other international counter-terrorism instruments. Strong counter-terrorism and counter financing of terrorism laws ensure those involved in terrorism can’t avoid justice and that cutting off of the financial supply enables these crimes to be impeded.

Australia has been placed to have the opportunity to work with countries in the Middle East and with ASEAN countries to strengthen international crime cooperation relationships through counter terrorism workshops, dialogues, and bilateral meetings and we look forward to these to increase and continue in the future.
Obviously strengthening of countries’ relationships certainly have broader mutual benefits for countries and Australia see these benefits particularly in increasing knowledge on what Australia’s partner countries priorities are in the region, their legal frameworks and practices, and building critical agency to agency, central authority to central authority and people to people links.
China

Central authority of China

There are 4 central authorities in China. Because China doesn’t have domestic mutual legal assistance law currently, central authority only appears in bilateral treaties and UN conventions now.

Ministry of Justice is main central authority for China. Also bilateral mutual legal assistance treaties that China has signed with other countries have designated Ministry of Justice as a central authority. And also Ministry of Justice is a central authority for UN convention against transnational organization crime. China has designated two central authorities under this convention. One is Ministry of Justice and the other one is Ministry of Public Security.

Second central authority is Ministry of Foreign Affairs, sometimes we call liaison authority in our bilateral treaty and domestic law. Ministry of Foreign Affairs is the central authority for bilateral extradition law that China has concluded with other countries and also with China’s non-treaty partners if the request was submitted through diplomatic channels. Requests will be received by treaty and law department of Ministry of Foreign Affairs.

Third one is Supreme People’s Procuratorate. This authority is designated as central authority for UN convention against corruption and also in some bilateral mutual legal assistance treaties. In about ten treaties Supreme People’s Procuratorate was designated as a central authority together with Ministry of Justice. For example, in China’s treaty with Vietnam, both Ministry of Justice and Supreme People’s Procuratorate are the central authorities for both countries.

Fourth one is Ministry of Public Security. It is one of central authority under UNTOC and also Ministry of Public Security was designated as central authority together with Ministry of Justice in about three bilateral mutual assistance treaties.

Legal basis for assistance

Legal basis for assistance in China including domestic law, international law, and principle of reciprocity.
Regarding domestic law for mutual legal assistance, currently China doesn’t have mutual legal assistance law in place and China is trying best to make this law ready in the future. It’s under legislation procedure now.

Currently China’s domestic legal basis for mutual legal assistance is in criminal proceeding law. There is a very simple article in criminal proceeding law which stipulates that, in accordance with international treaties which the People’s Republic of China has concluded or acceded to on the principle of reciprocity, judicial organs of China and those of other countries may request mutual legal assistance from each other in criminal matters. So this article is a basic legal basis and very principle basis for China to carry out mutual legal assistance cooperation. Also some articles are stipulated in such as anti-money laundering law which will regulate international cooperation affairs.

Domestic legal basis for extradition is extradition law. This law was enacted in December 28th, 2000. This law stipulates that Ministry of Foreign Affairs is a liaison authority for extradition cooperation.

Regarding bilateral treaties, mutual legal assistance in criminal matters, China has about 52 treaties currently and 48 of them have enacted. About bilateral treaties on extradition, China has 39 treaties with other countries and 30 of them have enacted.

China is a member party of a lot of multilateral conventions, such as UNTOC, UNCAC and based on these conventions China could carry out extradition and mutual legal assistance with other country.

Another basis is a principle of reciprocity with non-treaty, or non-convention partners. China could also carry out extradition and mutual legal assistance based on this principle.

**Scope of MLA assistance**

According to mutual legal assistance treaties that China has entered into, generally China could provide assistance on the following matters

- Serving documents;
- Taking the testimony or statements of persons;
- Providing documents, records, and articles of evidence, including bank, financial, corporate or business records;
- Locating or identifying persons, assets or articles of evidence;
- Obtaining and providing expert opinion;
- Conducting judicial inspections or examining sites or objects;
- Making persons available to give evidence or assisting in investigations;
- Executing requests for tracing, searches, freezing and seizures of evidence;
- Disposal of proceeds and instruments of crime;
- Transferring persons in custody for giving testimony or evidence, or assisting in investigations;
- Notifying results of criminal proceedings and supplying criminal and other records;
- Exchanging of information on law;
- Any other form of assistance not prohibited by the domestic law of China.

**MLA request to China**

When mutual legal assistance request is submitted to China, following information has to be included in the request.

Description of the authority making the request, legal Basis of making the request, description of facts of offences (who, when, where, what, why and how), summary of the offenses, applicable Law of the requesting party, identification information of suspects and other relevant persons, including date and place of birth, copy of passport or other identification and addresses, (If it’s a legal person) business code, explanation of relevance, description of evidence or other kinds of assistance sought, special procedures to be followed, any time constraints, confidentiality, contact information, any other supporting documents such as red note of Interpol, judicial documents to be served, etc.

**Procedure for Assistance**

Regarding mutual legal assistance, when central authority receives a request, it will review whether information mentioned above is included in the request. Central authority will also review to see if there are any grounds to refuse the request. If central authority finds information is sufficient, it will pass the request to the competent authority for further review. When competent authority finds the request could be executed it will arrange local, provincial level law enforcement agencies to execute the request.

Regarding extradition, Ministry of Foreign Affairs is central authority. When it receive a request, it will also review (This is what we call administrative review) the request to see if the request is in compliance with treaty and if there are any circumstances the request may be refused. If it finds the request is good enough, it will transfer the request to the Supreme People's Court. This authority will carry out judicial review on the request. And if Supreme
People’s Court grant the request, it will arrange law enforcement authorities such as public security authorities and other law enforcement authorities to have the request executed.

Cooperation with ASEAN Countries

Currently China has signed mutual legal assistance treaties with Thailand, Indonesia, Philippines, Lao PDR and Viet Nam. China has several cases with these countries, for example in the past 5 years China has about 12 requests from Thailand and about 6 requests from Indonesia and Viet Nam. Lao PDR has provided assistance China on corruption case.

China has signed extradition treaties with Thailand, Cambodia, Philippines, and Lao PDR. Extradition treaties with these four countries have been enacted. Maybe China has finished negotiation on extradition treaty with Indonesia, Viet Nam and Malaysia.

Challenges

China does not have mutual legal assistance law ready in domestic law. China is also facing death penalty issue and Language issue.

Language issue is as follows. Some of China’s bilateral treaties stipulate that both English and Chinese translation are acceptable, but due to the fact that local police and authorities’ ability to read and write English is very limited, in order to have your request to be executed faster, it is strongly recommended to our counterpart to translate the request into Chinese. If Chinese translation is attached in the request, efficiency and level of communication and cooperation will be much faster.

China is also facing problem of capacity building. Both central authority and competent Authorities need to carry out capacity building and need more trainings. Currently the ratio of incoming requests and outgoing requests is 10:1. When China receive 10 requests from foreign countries, China makes only 1 request to foreign countries. China’s competent authority and law enforcement authorities need more trainings to let them aware there is a very good channel for them to use the treaties and conventions to seek assistance from other countries.
Japan

Overview

When MLA request in a criminal matter seeks provision of evidence, Japan provide assistance for criminal investigation and prosecution in the requesting country. MLA request should be made by prosecuting and/or investigating authorities of the requesting state. As a matter of fact, Japan can receive MLA request and provide assistances without MLAT or MLA, such MLA request must be sent via diplomatic channel with assurance of reciprocity. On the other hand, as bilateral treaties and agreements on MLA in criminal matters, currently Japan has 6 treaties and agreements.

Current MLAT or MLA partners are U.S., Korea, China, Hong Kong SAR, EU and Russia. Thanks to the 6 MLAT or MLA, Japan use this frame work with 32 countries and regions. Each contracting party of MLAT or MLA designate central authority and MLA request shall be transmitted between central authorities. It means if we have MLAT or MLA, no diplomatic channel is necessary for MLA request. That means you can expect smooth and prompt MLA.

In Japan Ministry of Justice and National Public Safety Commission designated central authority of MLAT or MLA. Both authorities can send MLA request to contracting parties but all MLA request from foreign countries/regions should be received only by Ministry of Justice of Japan.

MLA requests from foreign state (non-MLAT)

When there is not MLAT or MLA between Japan and foreign state, diplomatic channel is necessary. When MLA request is received by Ministry of Foreign Affairs via diplomatic channel, Ministry of Foreign Affairs, if the requesting state has guaranteed reciprocity, shall forward the request to Ministry of justice with his or her opinion. Ministry of justice, when it deems it appropriate to receive the request, forward the request to respective executing agencies.

MLA requests from foreign state (MLAT)

When there is MLAT or MLA between Japan and foreign state, no diplomatic channel is necessary. It is not necessary for the request with MLAT or MLA to be forward via diplomatic channel.
MLA requests to foreign state (non-MLAT)

When there is not MLAT or MLA between Japan and foreign state, prosecutor office, police authorities and other investigation authorities make MLA request and send them to requested countries through their head agencies and Japanese Ministry of Foreign Affairs and diplomatic missions.

MLA requests to foreign state (MLAT)

When there is MLAT or MLA between Japan and foreign state, MLA request shall be transmitted between central authorities in Japan and requested country and no diplomatic channel is necessary also here.

MLA statistics with ASEAN countries

The number of requests from ASEAN countries to Japan is 1 in 2010, 2 in 2011, 4 in 2012, 1 in 2013 and also 1 in 2014.
The number of request from Japan to ASEAN countries is 4 in 2010, 6 in 2011, 11 in 2012, 18 in 2013, and 12 in 2014.
Since Japan doesn’t conclude any MLAT or MLA with ASEAN countries, it is considered that advance consultation for each MLA request is effective and efficient way to facilitate assistance.

Note (recommendations to foreign state central authority)

It is appreciated to have an advance consultation with Japan’s central authority at drafting stage.
Here is a check list for drafting request.

- Point of contact with regards to the request
- The name and other facts to identify the suspect or dependent
- The nature and the stage of the investigation or prosecution which needs the evidence
- Facts that constitutes the alleged offence
- The applicable legal provisions for the offence
- Requested assistance
- Attach any necessary documents/evidence in order to execute the request
- Deadline
- Confidentiality
• Be mindful of the grounds for refusing to provide the assistance
• All above needs to be translated into Japanese

Draft MLA request should be sent to infojp@moj.go.jp and it is recommended to check the website (http://www.moj.go.jp/ENGLISH/ccr/2stMeeting/ic-01.html) which has detailed information about MLA.
4. Observations and Recommendations

The information available on the laws and practices relating to MLA in criminal matters between ASEAM Member States suggests that MLA in law enforcement and criminal matters between ASEAM Member States is still in its infancy, and that there is a need to develop closer cooperation and coordination in this important field of criminal justice. The laws and practices relating to MLA in criminal matters among ASEAN member states are at different levels of development. Some states have yet to explore and engage with the legal and practical complexities of MLA at both domestic and international levels, while other states have well established and sophisticated regimes governing MLA requests.

The absence of unified procedures for granting MLA or extradition results in cumbersome and delayed process with no guarantee of successful execution of a requested assistance. Effective execution of MLA and extradition requires well trained staffs and practices. In that sense, additional financial resources will be necessary to ensure continued implementation towards achieving sustainable impact of the project in supporting regional criminal justice cooperation mechanisms in the region. UNODC will seek to continue discussions with the KIC to further strengthen the partnership with a view to ensuring a sustainable longer-term effort to enhance regional criminal justice cooperation in the region.