



Schweizerische Eidgenossenschaft  
Confédération suisse  
Confederazione Svizzera  
Confederaziun svizra

Federal Department of Justice and Police FDJP  
**Federal Office of Justice FOJ**  
Division for International Legal Assistance

# Human Rights— Risk for Refusal or Making MLA Better?



UNCAC EM on IC – Vienna, 31 May 2019

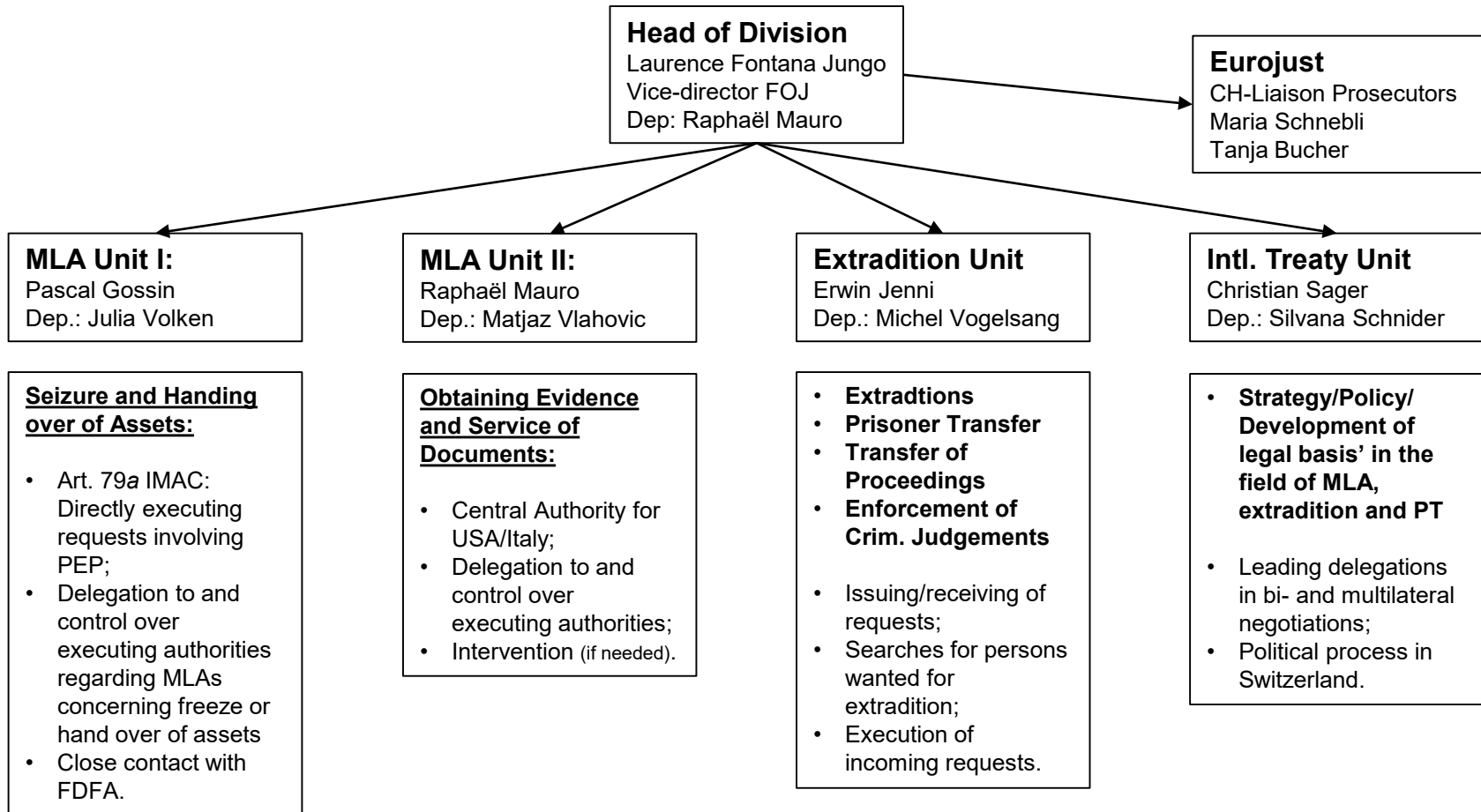
Dr Christian Sager, Head International Treaty Unit



**Total staff of Swiss CA:**

- 45 persons (37.5 full time equivalents)
- 31 women, 14 men
- 32 lawyers, 1 financial analyst, 12 administrative/paralegals

# Organisation chart





# Human Rights Obligations

## Art. 5 R

- 1 All activities of
- 2 State activities  
ends sought.
- 3 State institution
- 4 The Confederat



proportionate to the



# Obligation to Grant MLA under UNCAC?

“21. Mutual legal assistance may be refused:

“(a) If the request is not made in conformity with the provisions of this article;

“(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;

“(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

“(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.



# Standards of Domestic Law

## Art. 2 Foreign proceedings<sup>7</sup>

A request for cooperation in criminal matters shall not be granted if there are reasons to believe that the foreign proceedings

- a.<sup>8</sup> do not meet the procedural requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950<sup>9</sup>, or the International Covenant on Civil and Political Rights of 16 December 1966<sup>10</sup>;
- b.<sup>11</sup> are being conducted so as to prosecute or punish a person on account of his political opinions, his belonging to a certain social group, his race, religion, or nationality;
- c. could result in aggravating the situation of the defendant for any of the reasons mentioned under letter b; or
- d. have other serious defects.



# Human Rights Guarantees

## **Art. 80p** Conditions subject to acceptance

<sup>1</sup> The executing and the appellate authority as well as the Federal Office may make the granting of mutual assistance wholly or partly subject to certain conditions.

<sup>2</sup> The Federal Office shall communicate the conditions to the requesting State when the ruling on the granting and the extent of the mutual assistance is final and shall give it an appropriate deadline by which to accept or refuse. If the deadline given is not respected, mutual assistance may be granted on the points that are not subject to conditions.

<sup>3</sup> The Federal Office shall examine if the response of the requesting State satisfies the conditions set.

<sup>4</sup> The ruling of the Federal Office is subject to an appeal to the Appeals Chamber of the Federal Criminal Court within ten days of its notice being given in writing. The decision of the Appeals Chamber is final.<sup>129</sup>



"a) Aucun tribunal d'exception ne pourra être saisi des actes délictueux qui sont imputés à A. \_\_\_\_\_;

b) Le prévenu disposera du temps et des facilités nécessaires pour préparer sa défense (art. 14 par. 3 let. b Pacte ONU II) et du droit de se faire assister et de communiquer avec le défenseur de son choix (art. 14 par. 3 let. b Pacte ONU II);

c) La présomption d'innocence sera respectée (art. 14 par. 2 Pacte ONU II);

d) Il aura le droit d'être jugé publiquement, dans un délai raisonnable, par un tribunal indépendant et impartial (art. 14 par. 3 let. c Pacte ONU II);

e) En cas d'arrestation, le détenu ne sera soumis à aucun traitement portant atteinte à son intégrité physique et psychique (art. 7, 10 et 17 Pacte ONU II). Les conditions de détention ne seront pas inhumaines ou dégradantes au sens de l'art. 7 du Pacte ONU II; en particulier, la détention doit se dérouler dans une cellule salubre (température, air, lumière, espace, eau, etc.) et le détenu doit avoir la possibilité d'une promenade journalière; la santé du détenu sera assurée de manière adéquate, notamment par l'accès aux soins médicaux suffisants requis par son état de santé.

f) La représentation diplomatique de la Suisse pourra en tout temps s'enquérir de l'état d'avancement de la procédure pénale, assister aux débats lors du jugement sur le fond et obtenir un exemplaire de la décision mettant fin au procès; elle pourra rendre visite, en tout temps et sans surveillance, au prévenu; celui-ci pourra s'adresser à elle en tout temps, que ce soit au stade de l'instruction ou lors de l'exécution d'une peine privative de liberté qui serait infligée.

g) La peine de mort ne sera ni requise, ni prononcée, ni appliquée à l'égard du prévenu."UNCAC EM on IC - 31/05/2019

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# Conclusions

- Guarantees = useful tool;
- In-depth analysis and monitoring are essential;
- Human rights *are* a challenge to successful MLA, but if we understand each other, we can manage!





## **Publications of FOJ:**

Website: <http://www.rhf.admin.ch>

Guideline „International Mutual Legal Assistance in Criminal Matters“, 9th Edition 2009 (German, French, Italian, English).

Checklist (German, French, Italian, English, Russian, Spanish)

Leaflet “Recovering unlawfully obtained assets located in Switzerland”

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