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PROJECT ON CRIMINAL ASSET RECOVERY IN SERBIA (CAR)

MUTUAL LEGAL ASSISTANCE DRAFT MANUAL

March 2011

CML-CAR-06/2011

Table of Content

Overview 5
1. MUTUAL LEGAL ASSISTANCE (JUDICIAL) & MUTUAL ASSISTANCE (ADMINISTRATIVE) 6
1.1 General Guidance 6
1.2 Administrative Assistance 7
1.3 Formal Requests (Mutual Legal Assistance) 9
1.4 The Form of the Letter of Request 10
1.5 Particular Problems Experienced when Mutual Legal Assistance is Sought in Economic Crime, Corruption and Organised Crime Cases 12
1.6 Important First Steps in an Investigation (Reactive or Proactive) Likely to Require a Request to another State 15
1.7 Practical Steps by those intending to make a request to a foreign state 16
1.8 Grounds for Refusal 18
1.9 Other Issues of Common Difficulty 24
1.10 Legality of Special Investigative Techniques 26
1.11 Transmission of an MLA Request: Competent Authorities & Central Authorities 28
1.12 Receiving Foreign Material into Evidence in the Requesting State 29
1.13 Permission to Use Evidence for Other Purposes 29
1.14 Challenging a refusal by the requested state to execute the letter of request 30
1.15 Temporary Transfer of a Prisoner for Purposes of Investigation 30
1.16 Requests for Criminal Record Information from EU Member States 31
2. INTERNATIONAL INSTRUMENTS 32
2.1 Importance of international instruments 32
2.2 What is a 'convention' and what are the obligations of a State Party under a convention? 32
2.3 The Vienna Convention on the Law of Treaties 1969, "the Vienna Convention" 32
2.4 Giving Domestic Effect to International Treaties 34
3. INTERNATIONAL INSTRUMENTS ADDRESSING MLA 36
4. INTERNATIONAL INSTRUMENTS (MULTILATERAL & BILATERAL AGREEMENTS) RELATED TO MUTUAL LEGAL ASSISTANCE AND EXCHANGE OF DATA TO WHICH SERBIA IS A STATE PARTY 37
4.1 Multilateral treaties 38
4.2 Bilateral agreements 38
4.3 Central Authorities 38
4.4 Joint investigative teams 38
5. BILATERAL AGREEMENTS 38
6. MULTILATERAL AGREEMENTS 41
6.1 Conventions of the UN or its organisations 41
6.2 Council of Europe Conventions 43

7. SIGNIFICANT INTERNATIONAL INSTRUMENTS FOR THOSE FIGHTING ECONOMIC/FINANCIAL CRIME, CORRUPTION & ORGANISED CRIME 43
7.1 European convention on mutual assistance in criminal matters 1959...........43
7.2 European union MLA convention 2000 44
7.3 The UN convention against transnational organised crime 2000 (UNTOC) 47
7.4 The UN convention against corruption 2003 (UNCAC)................................48
8. THE TRACING & RECOVERY OF ASSETS 54
8.1 Tracing, restraint and confiscation of assets 54
8.2 Practical steps to effective asset recovery co-operation 55
8.3 Obstacles to be Overcome When Seeking International Forfeiture/Confiscation Co-operation...57
8.4 Judicial & law enforcement networks 58
8.4.1 Interpol 58
8.4.2 Europol 58
8.4.3 Eurojust 58
8.4.4 European Judicial Network 60
8.4.5 European Judicial Network in Civil and Commercial Matters 61
8.4.6 The Competent National Authorities (CNAs) on-line Directory 62
8.4.7 Commonwealth Network of Contact Persons (CNCP)...........................63
8.4.8 The Judicial Regional Platforms of Sahel and Indian Ocean Commission Countries 63
8.4.9 Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition of the Organization of American States 64
8.4.10 Ibero-American Legal Assistance Network (IberRed) 64
8.4.11 StAR Interpol Focal Point Contact List...65
8.5 Should MLA be sought or should proceedings be brought in another jurisdiction?...65
9. EXAMPLES OF LETTERS OF REQUEST 67
9.1 EXAMPLE 1 67
9.2 EXAMPLE 2 70
9.3 EXAMPLE 3 81
9.4 EXAMPLE 4 84
9.5 EXAMPLE 5 (to be read with EXAMPLE 8) 89
9.6 EXAMPLE 6 91
9.7 EXAMPLE 7 95
9.8 EXAMPLE 8 106
10. USEFUL LINKS:... 110

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MUTUAL LEGAL ASSISTANCE DRAFT MANUAL

[NB: INDEX, GLOSSARY OF ABBREVIATIONS & PARA NUMBERING TO BE ADDED ONCE DRAFT AGREED]

Overview

In Serbia, as in all other developed and developing states, organised crime poses a major threat both at the economic and social levels. In addition to the efforts to address crime within individual states there is an ever increasing need to be able to combat criminal activity that extends beyond national borders. As Serbian law enforcement agencies continue to succeed against those involved with organised crime within Serbia, practical experience in other jurisdictions has shown that the same criminals extend their operations beyond national boundaries where they believe the chances of detection are much reduced. This is, perhaps, particularly the case of those who seek to hide their monetary criminal profits.

National boundaries, of course, are not a barrier to serious organised criminals and they should not be a barrier to law enforcement. States and agencies working together with other states to reduce these barriers will not be welcomed by serious organised criminals, but will clearly be welcomed by governments, law enforcement agencies and the public.

Organised crime is complex. Whilst it is convenient to identify and investigate crimes by sector, to do so exclusively oversimplifies the position .Experience has shown that most criminal sectors are tied together by themes such as money laundering and firearms, and those committing the crimes are sufficiently flexible to change their activity according to environment opportunities and the risks they perceive. It is important that the law enforcement effort is equally flexible.

Economic/financial crime, corruption and the activities of organised criminal syndicates are, increasingly, transnational offences; as such, investigations into them regularly require prosecutors and judicial police to gather evidence across borders.

Equally, in a world of financial networks that may straddle many states, the mounting of a purely domestic financial crime or corruption case will very often demand evidence from foreign jurisdictions.

Against that background, the framework and procedures within which both formal assistance (referred to as “mutual legal assistance”) and administrative cooperation (sometimes referred to as “mutual assistance” or “informal assistance”) are obtained are often bewildering and very often depend on the attitude and opinions of those ‘on the ground’ to whom the request is made. With that in mind, what are the real and practical difficulties and what are the solutions?

The major challenges are increasingly international mobility of offenders, the use by them of advanced technology and international banking for the commission of offences, and a

framework of prosecutorial and law enforcement co-operation that is often slow, unwieldy and, in many regions, still lacking the networks of practitioners and officials necessary to facilitate the process.

Those using this manual should always have in mind that it is more necessary than ever for law enforcement and judicial authorities to co-operate and assist each other in an effective way if investigations, prosecutions and judicial proceedings are to run their true course.

Practitioners should take comfort from the fact that many states have enacted laws to enable them to provide assistance to foreign jurisdictions and, increasingly, have obligated themselves to do so in treaties (both multi- and bilateral) or agreements on mutual legal assistance in criminal matters. Such treaties or agreements usually list the kind of assistance to be provided, the requirements that need to be met for affording assistance, the obligations of the co-operating states, the rights of alleged offenders and the procedures to be followed for submitting and executing the relevant requests.

1. MUTUAL LEGAL ASSISTANCE (JUDICIAL) & MUTUAL ASSISTANCE (ADMINISTRATIVE)

1.1 General Guidance

Prosecutors and investigators sometimes have recourse to mutual legal assistance without exploring whether administrative, that is to say, investigator to investigator/prosecutor to prosecutor mutual assistance would, in fact, meet their needs. It is often forgotten that the state receiving the request might welcome an informal approach that can be dealt with efficiently and expeditiously. Prosecutors must thus ask themselves whether they really need a formal letter of request to obtain a particular piece of evidence.

The extent to which states are willing to assist even with a formal request does, of course, vary greatly. In many cases, it will depend on a particular state's own domestic laws, on the nature of the relationship between it and the requesting state and, it has to be said, on the attitude and helpfulness of those officials to whom the request is made. The importance of excellent working relationships being built up and maintained trans-nationally cannot be too greatly stressed.

Examples of some types of administrative assistance

Although no definitive list can be made of the type of enquiries that may be dealt with informally, some general observations might be useful:

- If the enquiry is a routine one and does not require the state of whom the request is made to seek coercive powers, then it may well be possible for the request to be made and complied with without a formal letter of request.
- The obtaining of public records, such as land registry documents and papers relating to registration of companies, may often be obtained administratively.

Such documents might even be available as open source material, so always check.

- Potential witnesses may be contacted to see if they are willing to assist the authorities of the requesting country voluntarily.
- A witness statement may be taken from a voluntary witness through an administrative request, particularly in circumstances where that witness's evidence is likely to be non-contentious.
- The obtaining of lists of previous convictions and of basic subscriber details from communications and service providers that do not require a court order may also be dealt with in the same, informal way.

In looking at the above, however, variations from state to state must always be borne in mind.

Examples of enquiries where a formal MLA request is likely to be required
Equally, it is possible to draw up a guidance list of the sorts of request where a formal MLA letter will be required:

- Obtaining testimony from a non-voluntary witness.
- Seeking to interview a person as a suspect.
- Obtaining account information and documentary evidence from banks and financial institutions.
- Requests for search and seizure.
- Internet records and the contents of emails.
- The transfer of consenting persons into custody in order for testimony to be given.

Confusion can be avoided if prosecutors and investigators have proper regard to the parameters of the conventions and treaties that relate to mutual legal assistance. <u>It should be remembered that the regime of mutual legal assistance is one for the obtaining of evidence; thus, the obtaining of intelligence and the locating of suspects or fugitives should usually only be sought by way of administrative assistance to which, of course, agreement may or may not be forthcoming.</u>

<u>Note: A mutual legal assistance request cannot be made for the arrest of a fugitive. Such a request is strictly the domain of extradition.</u>

1.2 Administrative Assistance

It is sometimes forgotten just how many types of evidence and other material may be obtained informally. For example, some States have directories of telephone account holders available on the internet (although consideration will need to be given as to whether it is in a form that may be used evidentially).

It should be remembered that, although the means of making the request is administrative or informal, the material that can be sought is evidential and in admissible form. The word 'informal' is not being used in the present context in relation to the product itself, simply in relation to the way in which the request is made and the route by which it is communicated. The whole rationale is to avoid being subject to, and indeed adding to, the delays very often inherent in the formal MLA procedure. The message is: administrative assistance is capable of being the appropriate route not just for information or intelligence, but also for gathering many types of evidence in proper admissible form to use before a court.

Often a degree of lateral thinking is required. For instance, it might be quicker, cheaper and easier for the requesting state's investigators to arrange and pay for a voluntary witness to travel to the requesting state to make a witness statement, rather than the investigators themselves travelling to take the statement. Similarly, if the consent of the state in which the requesting state's embassy is situated is obtained, witness statements may be taken by investigators at that embassy.

Taking matters one stage further, many States have no objection to an investigator/prosecutor of the requesting State telephoning the witness, obtaining relevant information and sending an appropriately drafted statement by post thereafter for signature and return. Of course, such a method may only be used as long as the witness is willing to assist the requesting authority and in circumstances where no objections arise from the authorities in the foreign State concerned (from whom prior permission must be sought).

Any consideration of administrative assistance should not overlook the use to which such assistance can be put in order to pave the way for a later, formal, request. It might, for instance, be possible to narrow down an enquiry in a formal letter of request by first seeking informal assistance. For example, if a statement is to be taken from an employee of a telephone company in a foreign company, administrative measures should be taken to identify the company in question, its address and any other details that will assist and expedite the formal process. It is sometimes overlooked, but should not be, that an expectation always exists among those working in the field of mutual legal assistance that as much preparation work as possible will be undertaken by informal means.

There are certain key considerations which a prosecutor must consider when deciding whether evidence is to be sought by informal/administrative means from abroad:

- It must be evidence that could be lawfully gathered under the requesting State's law, and there should be no reason to believe that it would be excluded in evidence when sought to be introduced at trial within the requesting State;
- It should be evidence that may be lawfully gathered under the laws of the requested State;
- The requested State should have no objection;
- The potential difficultly in failing to heed these elements might be that (in States with an exclusionary principle in relation to evidence) such evidence will be excluded;

- In addition, but of no less importance, inappropriate actions by way of informal request may well irritate the authorities of the foreign State, who might therefore be less inclined to assist with any future request.

The potential difficultly in failing to heed these elements might be that (in states with an exclusionary principle in relation to evidence) such evidence will be excluded;

In addition, but of no less importance, inappropriate actions by way of informal request may well irritate the authorities of the foreign state who might therefore be less inclined to assist with any future request.

<u>The golden rule must be: ensure that any administrative informal request is made and executed lawfully.</u>

To make the administrative process most efficient:

- Maintain a good relationship i.e. execute lawfully.
- Avoid inappropriate informal request as this will irritate the authorities.
- Use informal assistance rather than legal assistance if possible as it is quicker
- Use informal assistance to pave the way for formal assistance, do all the background research so that a focused and targeted formal request of MLA can be made.

Building Networks

Obtaining material via the route of informal assistance is likely to be more easily achieved if positive and collaborative relationships have been built with key individuals in other states. Such relationships can be developed by investigators and prosecutors by arranging with other states, joint training courses, mutual exchanges of personnel, seminars and regional information exchange sessions.

Further progress can be made by appointing law enforcement liaison officers in other states. Such liaison officers would have to have access, in accordance with the laws of the host state, to all agencies within the state with relevant responsibilities.

1.3 Formal Requests (Mutual Legal Assistance)

In criminal matters, there is no universal instrument or treaty which governs the gathering of evidence abroad. However, the building blocks for formal requests are the conventions, schemes and treaties that states have signed and ratified. For instance, in the field of corruption investigations, the UN Convention against Corruption makes specific provision for mutual legal assistance and the encouraging of as permissible approach as possible to international cooperation in criminal matters.

Before a formal request can be made and MLA provided, there must be a legal basis.
The legal bases include:

- Multilateral instruments, including general MLA conventions (e.g. the Council of

Europe Convention) or penal instruments (e.g., the UN Convention against Corruption)

- Bilateral treaties
- Schemes or voluntary arrangements, such as the Harare Scheme for Commonwealth states
- National law, with or without a requirement for reciprocity
- Reciprocity/Comity

Prosecutors or judges making a formal request should always assert the international obligation of a requested state to assist where such an obligation exists by way of international instrument. Equally, the authority upon which the letter of request is written should also be spelt out.

Similarly the person making a request must take care to ensure that his or her own domestic law allows the request that is actually being made. For instance, a piece of domestic legislation might, in fact, disallow some requests or type of requests that many conventions, treaties or other international instruments would appear to allow. For some states, the domestic legislation will have primacy. To make a request otherwise than in accordance with domestic law in such circumstances will be to be invite challenges, or arguments for the exclusion of evidence thereby obtained.

<u>Prosecutors and prosecuting authorities are recommended to make early contact with a counterpart in the State to which the request is to be made.</u> Notwithstanding the existence of a convention or treaty with a broad and permissive approach, the requested state may well have entered into reservations that limit the assistance that can in fact be given. For instance, some States have reserved the right to refuse judicial assistance when the offence is already the subject of a judicial investigation in the requested State. <u>The key principle must be this: regard should always be given to the fact that a requested State will have to comply with its own domestic law, both as regards whether assistance can be given at all and, if so, how that assistance is, in fact, given.</u>

1.4 The Form of the Letter of Request

<u>The requesting authority should compile a letter that is a stand-alone document. It should provide the requested State with all the information needed to decide whether assistance should be given and to undertake the requested enquiries.</u> Of course, depending upon the nature of those enquiries and the type of case, the requested State may be quite content for officers from the requesting State to travel across and to play a part in the investigation.

A problem that occurs in all jurisdictions in respect of both incoming and outgoing requests is that of timing and of delay. A request may takes weeks, sometimes months, and occasionally, and unfortunately, years to execute. As soon as sufficient grounds emerge to warrant the making of a request abroad and the need for such a request is clear, then the letter should be issued.

It is important that urgent requests be kept to a minimum and that everyone involved in the process should appreciate that an urgent request is urgent and unavoidably so. If a request is urgent the letter should say so clearly (both in the heading and body of the letter) and in terms that explain the reasons why.

Principal Conditions to be Satisfied within the Letter of Request

The material conditions to be satisfied within the letter of request may be summarised as follows:

- If the requested State requires an undertaking of reciprocity on the part of the requesting State, then this should be given. (In this respect, common-law countries are usually more restrictive than those with a civil code).
- A general prerequisite is the criminalisation of the act in both the requesting and requested State (the dual-criminality rule). This should therefore be addressed within the letter.
- The assistance must relate to criminal proceedings (whether at an investigative stage or after court proceedings have begun) in the strict and accepted sense; that is to say, an investigation or proceedings against the perpetrators of a criminal offence under ordinary law.
- Although it need not be specifically asserted within the letter, a prerequisite for formal assistance is the guarantee of a fair trial and respect for the fundamental rights laid down in the "International Covenant on Civil and Political Rights" (ICCPR) and regional human rights instruments (and ECHR, where applicable) within the legal system of the requesting State.
- Some requested States may require an assertion that the request does not relate to fiscal, political or military misdemeanours.
- The letter must contain a description of the facts which form the basis of the investigations/proceedings. Such a description must be as detailed as possible and should indicate in what way the evidence being sought is necessary.
- If the requesting and requested State is each a party to a relevant multilateral or bilateral agreement, then the international instrument concerned should be referred to and explicitly relied upon.

Although a request is executed by the Competent Judicial Authority of the requested State in accordance with its own laws and its own rules and procedures, very often it will be possible for the requesting authority to make an express request that the requested State apply the requesting State's rules of procedure.

If such a request is available to the requesting authority, advantage should be taken of it. The reason is obvious. A fundamental difficulty, often overlooked, is that different States have different ways of presenting evidence. The whole purpose of a request is to obtain useable, admissible evidence. That evidence must therefore be in a form appropriate for the requesting country, or as near as possible to that form as circumstances allow. It should be made clear, therefore, by the requesting state in what form, for instance, the testimony of a

witness should be taken. The requested state cannot be expected to be familiar with the rules of evidence-gathering and evidence-adducing in the requesting State.

Further to the above, instruments may contain a provision to the effect that the method of execution specified in the request shall be followed to the extent that it is compatible with the laws and practices of the requested State. If in doubt, the requesting authority should provide examples of what is required to the requested authority.

1.5 Particular Problems Experienced when Mutual Legal Assistance is Sought in Economic Crime, Corruption and Organised Crime Cases

Influential Target

If an investigation involves an influential politician or business figure in the requested State, or if a powerful suspect in the requesting State has allies in the State of whom the request is to be made, the assistance sought may never be provided. The requested authority may, for instance, cite "national interest" or immunities/jurisdictional privilege enjoyed by certain sections of the community (e.g. ministers of the government or judges).

This challenge is not an easy one to overcome. However, some practical steps can be taken. First, as much information and detail should be obtained as to who in the requested State may be trusted, and as to what are the most accurate sources of information. It might be that embassies in the requested State will be in a position to answer this, but the requesting State's FIU might also be able to assist. Second, the requesting authority must get to know the requested state itself in the widest sense, particularly its political and legal systems, whilst putting aside any prejudice or preconceptions. The same applies to the officials themselves who will be liaised with during the process. Third, the requesting state can seek assurances from the requested state. Although assurances are sometimes broken, there is always pressure on a state to ensure that guarantees are respected. Fourth, there can be a reminder given to the requested state that there is always a next time. That the requested state today may well be tomorrow's requester is always a powerful motivator; indeed, it is one of the unspoken driving forces in international co-operation.

Appeals

In some States, the person in respect of whom the request for mutual legal assistance is made is able to appeal against the sharing of evidence with the requesting authority. When such an appeal is available it may well cause lengthy delay. In those European States which have traditionally enjoyed favourable tax and banking conditions, for instance Liechtenstein and Switzerland, an appeal avenue is available in relation to the disclosure of information on financial position etc. In those countries, in addition, institutions such as banks may have similar rights of appeal.

Requests for Freezing & Confiscation

Requests for the freezing, confiscation and repatriation of proceeds of crime have traditionally caused particular difficulty. UNTOC made some inroads and UNCAC has addressed these issues in detail and has provided fresh obligations. However, it is still the

case that no internationally binding legal instrument sets out a comprehensive mandatory regime for the repatriation of assets. [See the section, below, on confiscation requests]

Search & Seizure

Search and/or seizure generally can be problematic. Essentially, the authority making the request should be careful to provide as much information as possible about the location of the premises etc. But it must be remembered that different jurisdictions set different thresholds. Search and seizure is a powerful weapon for investigators. It must be assumed that the requested State will only be able to execute a request and search/seizure if it has been demonstrated by the request that reasonable grounds exist to suspect that an offence has been committed and that there is evidence on the premises or person concerned which goes to that offence. These "reasonable grounds" should be specifically set out within the letter therefore.

Generally, it will not be enough simply to ask for search and seizure without explaining why it is believed the process might produce evidence. For a request within Europe, it is undeniably good practice to have written regard to the core principles of the ECHR, namely necessity, proportionality and legality. Interference with property and privacy in European States is now usually justifiable only if there are pressing social reasons such as the need to prosecute criminals for serious offences. Even if all these factors are addressed, it may well be that the searching of the person and taking of fingerprints, DNA other samples will have less chance of success in some jurisdictions. It is, therefore, to liaise with the requested state on this point specifically before a request is issued.

Important additional information to include in a request for search and seizure of evidence

1. The full address or a precise description of any place to be searched.
2. Details of how the place to be searched is connected with the case or the suspected person.
3. Any information available which indicates that the material requested may be held on computer.
4. Full details of the specific material or type of material to be seized (it will not usually be sufficient to simply state "evidence relevant to the investigation").
5. A full description of the criminal conduct concerned. (Requests for search and seizure are generally subject to a need for dual criminality).
6. An explanation why the material requested is considered both relevant and important evidence to the investigation or proceedings.
7. Why the evidence is thought to be on the particular premises or in the possession of the particular person concerned.
8. Why the material would not be produced to a court in the requested state if the natural or legal person holding the material were ordered to do so by means of a witnesses order/summons. (This is to help ensure that the request is less likely to fail or be subsequently subject to subsequent legal challenge.)
9. Appropriate undertakings for the safekeeping and return of any seized evidence.

10. If it is anticipated that the searching officers may come across confidential material (i.e. medical records or similar that might have special status in the requested state, or legally privileged material) during the course of a search.
11. Any other information which would be of operational use to the executing authority in connection with the execution of the request.

Investigations & Proceedings of Sensitivity

As financial crime and corruption becomes increasingly sophisticated and transnational, and as more and more cases involve a link with organised crime, it may well be that there are extremely sensitive aspects to an investigation. Nevertheless, it may be that that sensitive information will have to be included in a formal request for assistance in order to satisfy the requested authority. At the same time, the disclosure of prospective witnesses and other information that could be exploited by criminals, organised crime or those who are otherwise corrupt, needs to be weighed in the balance.

In reality, the system for obtaining mutual legal assistance, globally, is inherently insecure. The risk of unwanted disclosure will be greater or lesser depending on the identity of the requested state. When considering the matter, those making the request must have regard to duty of care issues which arise for them. Sometimes, difficulties can be avoided by the issuing of a generalised letter which leaves out the most sensitive information but provides enough detail to allow the request to be executed. If the sensitive detail proves to be needed, the letter may be supplemented by a briefing given personally by, for instance, the requesting prosecutor to the receiving prosecutor. Exceptionally, consideration can be given to the issuing of a conditional request for mutual legal assistance; in other words, a request that is only to be executed by the requested authority if it can be executed without requiring sensitive information to be disclosed.

A Letter of Request Checklist

If one was to put together a checklist for the requester on what must be included within the letter of request it would include the following:

- An assertion of authority by the author of the letter;
- Citation of relevant treaties and conventions;
- Assurances (i.e. as to reciprocity, dual criminality etc);
- Identification of defendant/suspect;
- Present position re the criminal investigation/proceedings;
- Charges/crimes under investigation/prosecution;
- Summary of facts and how those facts relate to the request being made;
- Enquiries to be made;
- Assistance required;
- Signature of the author of the letter.

1.6 Important First Steps in an Investigation (Reactive or Proactive) Likely to Require a Request to another State

Key activities/approaches

The following guidance is intended to be of assistance once the prosecutor has opened a file on the investigation of economic or organised crime requiring the assistance of /cooperation with another state.

Commencement of an investigation: It is advised that an investigative strategy is written by the prosecutor. This will provide clarity as to the aims of the investigation, and what activity it is proposed to undertake to achieve its objectives, for example, to conduct surveillance on the targets, to undertake a financial investigation. It will also provide an audit trail for future reference.

Briefings/Debriefings: It is critical that all those engaged in an investigation are kept fully informed as to its progress and direction of travel. If prosecutors/investigators are not kept fully informed mistakes and duplication of effort are likely to occur. A record should be made of such briefings.

Completion of Decision Logs: Good practice has shown that key decisions in an investigation should be documented in a decision log. In the UK the log is normally completed by and the responsibility of the Senior Investigating Officer (SIO). In the case of Serbia it could be either the responsibility of the prosecutor or, if one is identified, the lead investigator. The log may show for example why it is considered necessary to conduct surveillance against an individual(s) and why there is a need to conduct a financial investigation.

The completion of such logs is considered to be important in all major investigations, particularly those that involve the deployment of covert techniques, such as the deployment of an undercover officer. The record will be able to show why it was considered necessary to deploy an undercover officer and the fact that issues such as proportionality have been considered. They are also helpful when engaged in a long term and protracted investigation where the rationale for a particular decision/course of action may be required in a subsequent court case, months or even years later.

Media Strategy: Increasingly in both developed and developing countries the media is becoming involved in the debate on crime. Where a particular investigation is likely to draw the interest of the media, such as a politician under investigation, it may be advantageous to liaise with the media sooner rather than later. Media that is left to speculate as to what is occurring on a particular investigation can be damaging to the investigation. Also a media that is not properly and accurately briefed can be manipulated by those who are seeking to undermine a particular investigation.

Particular Issues Relating to the Flow from Intelligence to Evidence

It is acknowledged that Serbia is not a common law jurisdiction and that it is the prosecutor who makes the decision as to when an investigation file will be opened. However, careful consideration needs to be given as to what material is shared with the prosecutor at the time the request to open a criminal investigation is made. Any material that is not shared with the

prosecutor at the outset could lead to difficulties in the future as far as disclosure of material is concerned.

The following is intended to offer some practical guidance as to some of the considerations that could be made both prior to and whilst an investigation of serious crime is taking place.

Before an Investigation commences:

- Are you satisfied that the information justifies an investigation commencing?
- Is the information single strand intelligence or is it corroborated by other intelligence? Whilst it is accepted that an investigation could commence on the existence of single strand intelligence it is far better if other corroborative information can be identified.
- Are you satisfied that the information is genuine and is not rumour or mischief making by the source of the information.
- Where the intelligence is recorded and will it made readily available to the investigators and the prosecutor?
- Is there a need to develop the intelligence further, before considering the deployment of other resources?
- What and what type of resources will be required to conduct the investigation and are those resources (including financial considerations) readily available?
- What intelligence/information is shared with the prosecutor when you are requesting for an investigation to commence?
- Has any police activity taken place before the prosecutor agrees to open a file.If yes what information will be shared with them at the outset?
- From the evidential point of view, when you are building the case you need to be clear as to from what point the investigation started and particularly what information/ intelligence was available at that time. Increasingly, defence counsel are examining to what I refer to as the 'front end of an investigation' i.e. access to and scrutiny of the material available to you at the time you make the decision to commence an investigation. This is particularly the case where the evidence against an individual subsequently, proves to be strong. Defence counsel will often use the tactic of trying to undermine initial police activity. If he succeeds, it has the potential to throw doubt on strong evidence.

1.7 Practical Steps by those intending to make a request to a foreign state

A number of sources (the latest of which is UNODC's Technical Guide to UNCAC) have addressed what steps should be taken by a person intending to make an MLA request. A distillation of these is as follows:

- As a practical matter, the prosecutor or judicial authority requesting assistance will need to recognise that the case it is pursuing is much more important to it than it is to the requested State Party. It is vital, therefore, that the requesting state makes

strenuous efforts to make it as easy as possible for the requested state to respond positively.

- The requesting authority should Identify the substantive and procedural requirements in the requested state for the provision of assistance (since this is often highly resource intensive, it may be necessary to select the highest priority cases and engage external legal assistance to ensure that the research is thorough and accurate. All the more important therefore if the assistance of the requested state can be sought on this);
- The requested state should be contacted directly to ensure that the request will be sent to the proper authority;
- Discuss the request informally with the requested state in advance, which may require the submission of a preliminary draft of the request, so that the requested state can draw attention to errors or advise on the best way to make the request;
- After transmission, follow up the request to ensure it arrives safely, contains no errors and is being appropriately dealt with.

Matters for the Prosecutor or Judicial Authority to Have in Mind Before Issuing the Letter

In addition to the above, practical measures which are aimed at ensuring smooth execution of a request, it must also be emphasised that the prosecutor or other judicial authority who is to issue the letter of request must satisfy himself of the following before the letter is issued:

- Whether an offence has been committed or there are reasonable grounds for suspecting this to be so and which offences are under investigation;
- The subjects of the investigation;
- The assistance sought and its relevance to the investigation;
- The identity of any competent overseas authority that is, will, or may be able to give assistance (when dealing with EU states, the issuer of the letter should ideally identify the court with jurisdiction over the area where the evidence is sought and the person who is expected to give assistance);
- Is the proposed enquiry permitted by national law in the requesting and requested state?
- Is the proposed enquiry permitted under the relevant convention, treaty or other international instrument that is being cited within the letter?
- Has enough factual information about the case been given to provide a proper basis for the assistance to be sought?
- Does the assistance to be sought amount to little more than a "fishing expedition"? (In particular, if any coercive measures (such as a search warrant) are likely to be needed in the requested state, it is highly likely that a judicial authority will have to be satisfied that the enquiry is more than just speculative, that there are grounds for believing that the evidence exists or can be made available. The issuer of the letter should, therefore, state in the letter of request the basis for believing that this is so and show a legitimate and clear nexus between the facts and the assistance sought.)

- What value will the assistance sought have for the investigation or proceedings? MLA is a time-consuming process, not just for the requesting judicial authority, but, in particular, also for the executing judicial authority, for which it can also be both human and financial resource-intensive. The issuer should consider whether the assistance sought is likely to be proportionate to the case. and should explain in the letter of request what bearing the assistance sought will have upon the case.
- Can the assistance be obtained by other means? Judicial authorities should not use MLA for enquiries that could be made by other, less formal, means.
- Can the assistance that is sought be realistically given? Some enquiries that could not be undertaken easily in one state might be relatively straightforward in another. For example, France and Belgium keep centralised banking records, whereas the UK does not.
- Can the assistance be given in the time available?
- Is the assistance sought likely to produce admissible evidence?
- What are the consequences of issuing an LOR? Would making the request create unacceptable/unjustifiable security risks? Would seeking assistance risk revealing a sensitive investigation? Some jurisdictions are unable to carry out investigations without notifying those concerned/those being targeted, others are able to do so. Each jurisdiction will have different criteria governing whether or not secrecy can be maintained.

1.8 Grounds for Refusal

The granting of mutual legal assistance by a state is an exercise of sovereignty. There is, therefore, a general discretion to refuse assistance; although, of course, where MLA is sought on the basis of a treaty, where bilateral or multilateral, that discretion is subject to the obligations contained therein.

The principal difficulties, however, are less outright refusal, but, rather, delay and the often cumbersome process involved in making and executing a formal request. The importance of building 'networks' and of consultation between requesting and requested state is, then, paramount. Indeed, the international imperative is to encourage states to address concerns they might have in executing a request by adopting measures short of outright refusal.

Such measures could include attaching conditions to execution of a request or postponing execution (where, for instance, the enquiries requested would be likely to prejudice an ongoing domestic criminal investigation in the requested state). Moreover, in circumstances where a state is minded to refuse a request, it should notify the requesting state and give reasons, and, where practicable, it should then consult with the requesting state before reaching a final decision (in the hope that the bar to assistance is capable of being resolved through discussion). Indeed this consultative approach is specifically provided for in the MLA provisions of recent instruments.

Different international instruments contain some common and some different grounds for refusal. Similarly, states vary as to the grounds for refusal set out in domestic law and, indeed, different states may take different approaches in relation to the same ground.

It is, for obvious reasons, a basic principle of MLA that a state is able to refuse a request if to execute would be contrary to domestic law. Accordingly, those instruments that address MLA often contain a specific provision to that effect. In addition, though, it is always important to ascertain what grounds for refusal are contained within the national MLA law(s) of the state to whom a request is to be made.

When they sign up to international arrangements to provide MLA (whether bi-lateral treaties or multi-lateral conventions), states undertake to give assistance in accordance with the terms of the arrangement. Most, if not all arrangements specify grounds for refusal.
Whether or not assistance is given in response to an individual request for assistance will be a matter for the competent authority of the state from which assistance is sought (usually, but not always, a court or investigating magistrate). If assistance is refused there is usually little, if any, scope for negotiation.

In practice, refusal is rare and is most likely to occur simply because the request cannot be executed at all, perhaps due to insufficient information to establish the whereabouts of the evidence or a witness. Occasionally assistance may be refused for legal reasons, perhaps because in the receiving state the conduct complained of would not be an offence, the assistance sought would not be lawful, or the subject of the request has already been acquitted or convicted of the same offence.

Given that most MLA requests will be made pursuant to a treaty, it is worthwhile to have in mind the sort of discretionary refusal powers that MLA treaties, and treaties containing MLA provisions, provide to contracting states. A good example for present purposes is the 1959 Convention, which provides, at Article 2, that assistance <u>may</u> be refused:

a) if the request concerns an offence which the requested state considers a political offence, an offence connected with a political offence, or a fiscal offence. (However, the position in relation to Fiscal Offences has been modified by the Additional Protocol to the 1959 European Convention ("the Fiscal Offences Protocol"). In effect this prevents refusal on the grounds that an offence is regarded by the executing state as a fiscal offence.)
b) if the requested state considers that execution of the request is likely to prejudice the sovereignty, security, *ordre public* or other essential interests of its country.

It should be noted that:

- The EU Convention 2000 supplements the 1959 Convention. Thus, the contracting parties are in the same position as with the 1959 Convention.
- Many states have also entered certain reservations to the 1959 Convention, refusing or giving them the discretion to refuse to assist in certain situations. A state’s reservations should always be checked before a request is made.

- Article 2 of the 1959 Convention is supplemented by Article 5, which gives a state party the power to, for instance, apply the dual criminality rule in relation to search and seizure requests (involving, as they do, a coercive power being sought in the requested state).
- Some instruments and arrangements addressing MLA contain explicit provisions addressing those discretionary grounds for refusal long recognised (through customary law) as being legitimate reasons to refuse a request for assistance (see the discussion of those, below).

State/Public Interest

International instruments addressing MLA, whether multilateral or bilateral, will typically contain an explicit provision allowing for assistance to be refused (in relation to a request made in relation on the instrument in question) where to provide assistance would prejudice, or be detrimental to, the requested state's interests. The form of words used varies, but the 1959 Convention is a good example, providing (at Article 2(b)) that assistance may be refused if:

"...the requested Party considers that execution of the request is likely to prejudice the sovereignty, security, ordre public or other essential interests of its country."

The UN Model Treaty (at Article 4.1(a)) adopts a similar approach, allowing refusal where to grant the request:

"...would prejudice sovereignty, security, public order/ordre public or other essential public interest" of the requested State.

Such a provision is found in crime instruments as well as specific MLA treaties. Thus, UNCAC (at Article 46(21)(b)), for instance, contains identical wording to that contained in the Model Treaty.

This ground is not particularly common in practice, save perhaps for national security. Practitioners will usually realise in advance the cases that may trigger this ground. When such a case arises, the requesting and requested states should consult each other to try to resolve the matter and to strike an appropriate balance between international co-operation and the protection of national interests of one state. As always with MLA, dialogue is usually the key.

Lack of Reciprocity

The principle of reciprocity provides one of the legal bases for requesting assistance, but a lack of reciprocity is also a potential ground for refusal. Some States will afford assistance even where the requesting State would not be able to comply with the request were it to be made to it, but other States will not. International instruments recognise this variation in practice and generally provide that the absence of reciprocity is a discretionary ground for refusal in respect of a request made in reliance on the instrument in question. Thus, the 1959 Convention preserves the ability of a requested State to apply the principle of reciprocity and to make execution dependent on the principle being met (Article 5)

Absence of Dual Criminality

The principle of dual criminality is one that has been transposed into the framework of MLA from extradition law. For MLA purposes, the absence of dual criminality is not an absolute bar to execution in the way it is for extradition. The applicability of the principle in MLA varies greatly from State to State. Many international instruments (and voluntary arrangements, such as the Harare Scheme) expressly provide for it as a discretionary ground of refusal. It is particularly important, therefore, that the stance of the requested State is canvassed in discussions or consultation before a letter of request is sent. Some States do not insist on the dual criminality requirement being satisfied, whilst others make it an essential pre-condition to giving assistance. Confusingly, a third category of State (including the UK) requires dual criminality in order for coercive measures, such as search and seizure, to be undertaken. Just to add to this uncertain picture, some of those States that insist on dual criminality as a pre-condition nevertheless consider its absence to be a discretionary ground for refusal, whilst others regard dual criminality as mandatory.

As there are such a range of approaches by States, those who are preparing a letter of request must find out from the requested State exactly what its position is. If it does require the dual criminality requirement to be satisfied, it should be borne in mind that the test is whether the conduct which gives rise to the investigation or proceedings is criminal in both states, not whether the conduct is given the same offence 'label' or criminalised as the same offence in both states. This consideration is of particular importance in relation to those offences that are generally less common; if the requested state does not have the same offence, then the requesting state will need to be thorough in ascertaining whether the conduct alleged fits into the description of an offence in the requested state, even if the title of that offence is markedly different between the two states; for instance, an abuse of function offence in a civil law state may amount to the common law offence of misconduct in public office.

Tax (Fiscal) Offences and Bank Secrecy

MLA in cases involving financial crime and related offences (including corruption) will, obviously, usually involve making bank and financial institution documents available. Some states might indeed seek to refuse to give assistance because the material sought falls under bank secrecy laws or regulations. Treaties and laws in many states may also allow refusal of MLA because the offense underlying a request is a tax offence or involves fiscal matters. In practice, though, this is a ground of refusal that is now rarely relied upon.

If a judicial authority is faced with a denial of assistance because of fiscal offences or bank secrecy, he should carefully examine the provisions of the relevant treaty, if an instrument is forming the basis of the request. Some treaties (e.g., articles 46(8) and 46(22) of UNCAC) now prohibit the refusal of assistance on those grounds. He should also look at the relevant laws of the requested state to ascertain whether the state's claim of bank secrecy is, in fact, justified. Very often, through misunderstanding or mis-application, it will not be.

As a practical, pre-emptive measure, and to attempt to prevent a rejection on the ground of bank secrecy, the requesting authority should try to obtain as much information as possible through informal means concerning a bank account before sending a request. This will be a difficult task in some investigations, but could prove worthwhile. FIU to FIU contact will, for instance, be one initial route to effect this.

Capital Punishment/human rights
Many states will refuse MLA assistance if the death penalty could be imposed by the requesting state in the case in question. The determining factor is not that a state retains the death penalty, but rather whether the offence in question is punishable by death. The principle is harder to apply to a request for MLA than to one for extradition, because the request for MLA will usually occur at an early stage in a case, when it may be difficult to say with any certainty whether the death penalty may be imposed.

A requesting authority that is faced with the issue will wish to consider whether the death penalty is, in fact, applicable to the case. It may then wish to consider whether an assurance is able to be given that, in the event of conviction, that penalty will not be imposed in that case. It follows that where, for the requested state, the death penalty is a discretionary ground for denying assistance, then the requesting and requested states should consult each other as a matter of priority in order to try to resolve the issue.

On broader human rights issues, all the authorities involved in making and executing an MLA request are public authorities and, therefore, generally bound by the provisions of relevant international and regional human rights instruments. They must therefore act compatibly with those (e.g. the ECHR) when making a request, and in giving assistance. Even if the MLA treaty in question does not contain a specific ground of refusal on human rights grounds, a request should be refused if to execute it would be to bring about an unjustified breach of a qualified right or a breach of an absolute right.

Extraterritoriality
For some states, there may be special restrictions in executing MLA requests in cases where the underlying offence occurs outside the territory of the requesting state. Of course, this is as particular issue in corruption and organised crime cases, where many states have extraterritorial jurisdiction provided for in national law to enable them to prosecute crimes that have taken place on the territory of another state. Under some treaties and national legislation, there is an express provision that MLA may be granted only if the laws of the requested state provide, in turn, for the punishment of the same offence committed outside its territory. There is no escaping the potential difficulty that extraterritoriality can cause to some states in this regard; however, one has to say that if the principles, and any applicable treaty or law, are applied reasonably, then international co-operation through MLA should not be unduly restricted.

Non Bis in Idem (Double Jeopardy)
Most states will be minded to refuse an MLA request if the principle of non bis in idem (double jeopardy) would be offended in a given case. However, it should be noted that there are a number of variations of the principle from one instrument or treaty to another. Thus, some treaties focus on whether a person has been convicted/punished for the crime in the requesting and/or requested states, while others may also consider whether the person has been convicted/punished in a third state. Different treaties also use different formulations thus: some ask whether the person has been punished, while others look at whether the person has been tried, acquitted, or convicted. Hence, if double jeopardy might be an issue in

an intended request, practitioners should closely examine the language of the relevant treaty and relevant national laws.

On a practical level, the problem of double jeopardy might be capable of being addressed by examining whether there are facts that support a different offence in circumstances where the alleged conduct is distinct from the conduct that was the subject of the earlier acquittal/conviction/punishment.

With the above in mind, the reader is referred to the observations relating to dual criminality set out above: conduct, not 'label', is the important factor common to both dual criminality and non bis in idem. For the latter, a practical effect is that if, for instance, a person has been convicted of laundering a bribe, the principle of double jeopardy arguably should not bar further proceedings against that person for accepting the same bribe, since bribe taking and money laundering are separate and distinct courses of conduct.

Political Offences, Offences of a Political Character, and Persecution

Refusal of MLA on the grounds that the offence is a political one or is of a political character will be unlikely to arise in most financial or organised crime cases, but can pose a great challenge in corruption investigations. The definition of a political offence is not always clear. Thus, some states might argue that this ground applies to the prosecution of a former public official who belongs to a political party that is no longer in power.

To address this concern, some instruments such as the UNCAC (at Article 44(4)) state that corruption offences cannot be political offences. If the relevant instrument has no such provision, then emphasis should be placed on the facts and evidence. In other words, a claim that an offence is of a political character must be founded on sufficient evidence. As with other grounds for refusing assistance, the requesting and requested states should consult with each other on the point.

A state may also deny assistance on the grounds that the request for assistance has been made to prosecute or punish a person on account of his or her sex, race, religion, nationality, ethnic origin, or political opinions. As with the claim of political offence, an MLA request should not be denied because of a mere allegation of persecution. The claim ought to be supported by sufficient facts or evidence.

Relevance of the requested enquiries

It should not be forgotten that a request may be refused (or a supplementary letter required) if the enquiries that are sought do not appear to the requested state to be relevant. It is, therefore, important that the relevance to the overall investigation is clearly set out within the summary of facts.

In deciding whether an enquiry is relevant, a court in the requested state should adopt a wide interpretation and should have in mind that admissibility will be a matter for the trial court in the requesting state (see the principles confirmed in *Re Mutual Legal Assistance in Criminal Matters (Court of Appeal (Ontario, Canada), 13 September 1999).*, in relation to an MLA request submitted by the Russian Federation to Canada).

1.9 Other Issues of Common Difficulty

Locating suspects abroad
When an extradition request has been made, locating the suspect is obviously of the utmost importance. However, a prosecutor cannot issue a letter of request to locate a suspect, as this is not a request to obtain evidence. With regard to the 1959 Convention, it should also be noted that Article 1(2) provides that the Convention does not apply to arrests, and not therefore to requests for assistance in locating a suspect for that purpose.

A request on behalf of the defence
The defence in a criminal case are not able to issue a letter of request themselves. At the same time, the defence may have legitimate enquiries that need to be made in another state in order to ensure a fair trial or to put the defendant's case fully. In some jurisdictions the judge will be in a position to issue a letter of request setting out the enquiries that need to be made. In common law states, a defendant can usually apply to a judge after criminal proceedings have been instituted against him for the judge to issue a letter; in addition, in those states, the prosecutor will often be in a position to issue the letter of request as part of the prosecution's duty to ensure fairness to the accused.

Generally, where a judge is unable to issue a letter or where the investigation is protracted (e.g. large scale international fraud), it is often more straightforward for the prosecutor to do so (subject to such a course of action being consistent with the prosecutor's role and duties in a given state), as the prosecution has extensive machinery for obtaining assistance, something which the defence may not have. Prosecutors should remain aware of this, and when appropriate, liaise with a suspect's legal representatives to establish whether they want any enquiries abroad made on their behalf.

There are clear advantages to the administration if the judge or the prosecutor assist the defence in this way: Doing so can place the prosecutor in a better position to resist defence applications to adjourn or delay proceedings pending their enquiries. It also ensures that a case is not dismissed against a defendant solely on the grounds that evidence that might have supported his case is no longer available. Prosecutors must have regard to these possibilities.

Distinguishing between evidence and incidental enquiries
It is good practice to itemise in the letter of request the assistance to be sought. However, this can result in some letters requesting assistance in locating the suspect when in fact the request is that a suspect be located and evidence be gathered from him, perhaps "covert DNA" or video footage/surveillance. Locating the suspect is necessary but incidental to the assistance sought. To avoid confusion, in such circumstances, it may not be necessary to specify that the suspect be located as this may perhaps go without saying. If the executing authorities cannot locate the suspect, they cannot obtain evidence from him.

Requests for intelligence-gathering, etc.
It has already been highlighted in the 'Overview', above, but requests for what can only be described as intelligence gathering, or for family liaison visits and for anything else that cannot properly be described as evidence gathering, should not be made in a letter of

request, unless such enquiries can fairly be said to be incidental to assistance in obtaining evidence that can properly be sought. Obtain this assistance on an administrative, prosecutor to prosecutor/police to police basis.

Participation of Authorities from the Requesting State

The participation of the authorities of the requesting state in the execution of a request is sometimes a sensitive issue that can either increase the efficiency of any investigation, or ruin it. The requesting state knows best the evidence and issues at stake in its inquiry, but its officials cannot operate in foreign territory. Hence, whenever possible, requested states should allow foreign investigators to:

- Be present when hearing witnesses, and allow them to ask questions, or indicate what questions to ask (these may be prepared in advance);
- Be present during searches, to help decide what to seize;
- Participate in sorting out of the documents seized, to indicate which ones are of use to them

To give an example: Switzerland has a reputation for not always allowing foreign investigators to be present. However, in fact, Swiss legislation allows those measures on the condition that foreign investigators commit themselves to not using the information that they obtain whilst in Switzerland until they receive it through the formal MLA channels.

Taking all the above into account, if it would be of assistance to have the investigating officers present when the enquiries are made, the requested state should be asked expressly in the letter to grant permission for the officers to be present. Depending upon the nature of those enquiries and the type of case, the requested state may be quite content for officers from the requesting state to travel across and to play a part. On a request that is largely documentation-driven, however, such as telecommunications service provider records, it may be that such travel would not be of any benefit.

Issues do frequently arise when officials of the requesting state conduct undercover operations in the requested state. One of the obstacles to such operations is that the requesting state loses control over the gathering of information and its use by the requested state, which contradicts the basic principles of international co-operation. Hence, experience tends to show that such undercover operations should only be carried out between states bound by an established and mutual confidence.

Challenges Arising from the Right against Self-Incrimination

Many MLA requests seek to obtain evidence or statements from individuals in the requested state. Upon receiving the request, the requested authorities must often ask the requesting state whether the witness is a suspect or a target, because national law (and sometimes the constitution) in many states protects witnesses against self-incrimination. Therefore, different rules usually apply to witnesses and suspects.

Sometimes the requested authorities will ask the requesting authorities to offer a witness immunity from prosecution. This is a potential problem in civil law states, where granting immunity to a witness is particularly rare.

Witness Protection
Another, related, issue is the existence of a witness protection programme. Witnesses under these programmes have agreed to co-operate with the prosecution in a domestic case in the requested state. Since these witnesses are often kept in secret locations, they are not easy to reach for interviews. Early liaison and discussion between the authorities is vital. Exceptionally, a protected witness may be required to travel to the requesting state to give evidence. Close liaison between authorities must take place in such circumstances, and alternatives, such as videolinked evidence, should be considered if national laws permit (see, also, the EU Convention re videolink testimony).

There are many criminal prosecution cases that fail or even commence due to witnesses being frightened of retribution or intimidated. Sadly, the use of fear and/or intimidation against an individual(s) are tactics that are deployed by criminals to prevent or undermine prosecutions against them. To combat these circumstances it is important to have a comprehensive and effective witness protection programme in place.

Such a programme should provide an individual effective protection, and appropriate support for individuals who have given or have agreed to give information/evidence. Consideration will also have to be given for protection to relatives and associates, because of risk to the security of the person.

It is critical that the appropriate authorities providing witness protection understand that such protection can often go beyond just the time of criminal proceedings and in exceptional cases can involve an individual being given a new identity, and the requirement for relocation, perhaps even in another state.

1.10 Legality of Special Investigative Techniques

These are means or techniques used to gather evidence and/or information in such a way that they do not alert those being investigated. Invariably, their deployment will involve a breach of the right to a private life, which will have to be justified by those carrying out/authorising the operation.
Some obvious examples of special investigative techniques include controlled delivery, surveillance (including electronic surveillance) and the deployment of undercover agents.

In that regard, the following should be noted:
<u>Technical surveillance:</u> Sometimes referred to as intrusive electronic surveillance, this is a formidable tool for the investigator, but, potentially, highly intrusive and, therefore, demanding of stringent safeguards against misuse. In most jurisdictions the interception of telecommunications, the use of listening devices, and the deployment of tracking devices will each fall within the definition of electronic surveillance.

<u>Physical surveillance and observation:</u> Generally less intrusive than technical surveillance, and extends to placing a target under physical surveillance by following or even videoing

him. It may also extend to monitoring bank accounts and sophisticated methods of monitoring computer activities.

Undercover operations and 'sting' operations: The use of undercover agents, which may or may not amount to a 'sting operation', are extremely valuable in cases where it is very difficult to gain access by conventional means to those engaged in organised criminality. The evidence of an 'insider', whether an undercover operative or even a co-conspirator, is likely to be significant in a subsequent prosecution. Furthermore, the effect of such conclusive evidence, although likely to be the subject of initial legal challenge, often brings offers of cooperation and please of guilt from defendants thereby eliminating the need for lengthy and expensive trial processes.

The very nature of special investigative techniques is such that their deployment is likely to give rise to later challenge before the court on the basis that fundamental rights (e.g. under the European Convention on Human Rights (ECHR) have been breached, the activities of law enforcement have been unconstitutional, and/or the operation was un lawful under national law.

When planning any covert deployment, it must be remembered that the rights of an individual must be safeguarded and that the only breaches that occur are those that are justifiable and authorised. All decisions by those planning and authorising an operation will, almost certainly, be scrutinised and challenged.

Therefore a special investigative technique, whether for intelligence-gathering or evidential purposes, must only be used when:

- There is an express basis in accessible, national law that provides for it;
- There is a proper framework in place for authorisation and oversight;
- its use is necessary and proportionate.

When considering any sort of deployment that will involve intrusion, the question that should always be asked is: "Am I able to gather the intelligence/evidence sought in another, less intrusive, way?"

States can jointly use these special investigative techniques when necessary where there is in place appropriate bilateral and multilateral agreements or arrangements in the context of cooperation at the international level, taking full account of human rights implications.

A potential problem is the legality of the investigative technique used to gather evidence. For example, telephone intercept, or wiretap, evidence is inadmissible in the courts of some states. As a consequence, these states will not carry out requests to wiretap. This must be clearly explained to the requesting authority to prevent further misunderstanding.

Similar questions arise when one state requests another to engage in undercover operations. While such operations are an established way to obtain evidence, they can now involve the use of new surveillance technologies. Whether such requests will be executed depends on whether those technologies are legal in the requested state.

Typically, a request for the deployment of covert techniques will involve the obtaining of an authorisation or court order in both the requesting and requested states. Those making the request should have this firmly in mind and must ensure that: they have their own state's authorisation or order in place and cited in the request, and they have provided sufficient material for the authorities in the requested state to apply before its court.

1.11 Transmission of an MLA Request: Competent Authorities & Central Authorities

Most states designate a central authority with the power to receive and execute mutual legal assistance requests or transmit them to the competent domestic authorities for execution, thus providing an alternative to diplomatic channels. The judicial authorities of the requesting state can communicate with the central authority directly.

Some central authorities are also competent authorities to issue a letter of request (e.g. many small jurisdictions, including significant financial centres, have an Attorney General who performs both functions). In some states the central authority is little more than a 'post box'; in others, it is much more proactive and may, for instance, quality assure outgoing requests.

Now, to an increasing degree, even more direct channels are being used, in that an official in the requesting state can send the request directly to the appropriate official in the other state. Direct transmission, as this is called, is particularly important where a request is of great urgency.

A judicial authority should always check whether the national law of the other state with whom he is dealing allows in its national law for direct transmission.

The following EU/Schengen member states do not currently accept directly transmitted requests to their judicial or prosecuting authorities:

- The Republic of Ireland does not accept direct transmission of requests for search warrants or restraint / confiscation orders
- Malta does not accept direct transmission from authorities which are not listed in the UK's declaration to Article 24 of the 1959 convention
- Greece

When sending by direct transmission, there are a number of ways of identifying the correct judicial authority for your request:

- look at the European Judicial Atlas at http://www.ejncrimjust.europa.eu/atlas_advanced.aspx
- ask the European Judicial Network (EJN)contact point for assistance
- Use the liaison magistrate scheme, where appropriate

When sending direct, quote the relevant treaty and ensure that indicated clearly in the request is that the evidence can also be returned directly.

1.12 Receiving Foreign Material into Evidence in the Requesting State

Since the procedural and evidence-gathering laws of states differ considerably, the requesting state may require special procedures (such as statements under oath, notarised affidavits, or audio/video recorded interviews of suspects) that are not recognised under the law of the requested state

This has posed a difficulty for a requesting state, since the general principle has always been that the requested state will give primacy to its own procedural law.

That principle has led to practical problems, in particular when the requesting and the requested states represent different legal traditions. For instance, the evidence transmitted from the requested state may be in the form prescribed by its laws, but such evidence may be unacceptable under the procedural law of the requesting state.

<u>The modern approach is to allow more flexibility as regards procedures.</u> Thus, by way of example, Article 7(12) of the Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, a request should be executed in accordance with the domestic law of the requested State Party. However, the Article also provides that, to the extent not contrary to the domestic law of the requested State Party and where possible, the request should be executed in accordance with the procedures specified in the request. Thus, although not going so far as to require that the requested state comply with the procedural form required by the requesting state, it certainly encourages the requested state to do so. Such a provision may be properly cited in a letter of request in which reliance is being placed on a treaty and the treaty itself contains the provision.

It is also worth noting that the same provision appears in Article 18(17) of UNTOC and in Article 46(17) of UNCAC. A further demonstration of the current way of thinking is contained in the Model Treaty on Mutual Assistance in Criminal Matters, where Article 6 provides for the execution of the request in the manner specified by the requesting State Party to the extent consistent with the law and practice of the requested State Party. During discussions and consultation with a foreign state, practitioners might find it useful to bring this to the attention of their counterparts.

Notwithstanding the above, however, there will clearly be occasions when a piece of evidence gathered pursuant to a letter of request needs to be adduced but is not in the usual, or prescribed, form for the purposes of the requesting state. It is, therefore, important that a state has, if possible, a provision in its procedural law allowing into evidence material from a foreign state which is not in the usual form. Depending on the demands of national law, some states give their courts a discretion on whether to allow such evidence, whilst others provide that such evidence shall be treated in the same way as if it was a piece of domestically generated evidence produced in the prescribed form.

1.13 Permission to Use Evidence for Other Purposes

Evidence provided by the requested state should only be used for the investigation or proceedings stated in the request (rule of specialty). If a requesting state wishes to use evidence for different purposes or to share the evidence with a third state a new request must be submitted to the Central Authority that dealt with the original request. This request should explain what the requesting state wishes to use the information for. and why.

1.14 Challenging a refusal by the requested state to execute the letter of request

International cooperation, whether by way of formal MLA or an informal request, depends in very large part on goodwill, a willingness to assist, and the recognition that today's requested State might be the requesting State tomorrow. What then can be done in the event of a refusal to execute a request?

If a letter of request is issued on the basis of comity, without the force of a treaty obligation, the requested State will be at liberty to refuse to execute if it is unwilling to cooperate.

However, if the request is made in reliance upon a treaty, whether bilateral or multilateral, an unjustified refusal will put the requested State in breach of its treaty obligation. Such a course may well risk embarrassment and might prompt executive or diplomatic pressure to accede to the request.

Nevertheless, if a State remains steadfast in its refusal there is, in practical terms, little that can be done. Depending on the instrument concerned, the matter may be put before the conference or assembly of the States Parties and might result in censure, or it might be referred to the organisation or body with 'ownership' of the instrument in question. Either way, rebuke and little more will be the outcome.

A further avenue that a requesting State might go down is to bring an action before the International Court of Justice (ICJ in The Hague. Indeed, the ICJ (the principal judicial organ of the United Nations) handed down a judgment on 4 June 2008 following an action brought by Djibouti against France in respect of a refusal to execute an MLA request.

1.15 Temporary Transfer of a Prisoner for Purposes of Investigation

The law of many states allows for the temporary transfer abroad of prisoners who consent to assist with foreign criminal investigations and proceedings. It is a request provided for specifically in some international instruments and arrangements (e.g. EU Convention and the Harare Scheme).

Prisoners cannot be transferred without their consent. Requests for temporary transfer of prisoners must be sent to the appropriate Central Authority. The request must usually be made formally, by a letter of request.

Before agreeing to the transfer, the relevant Central Authority must be satisfied that the presence of the prisoner is not already required in the requested state for the purposes of

investigations or proceedings and that the transfer would not prolong the prisoner's period of detention.

Where the transfer is agreed with the requesting authority, the Central Authority arranges for:

- the prisoner in custody to be taken to a departure point and to be delivered into the custody of a person representing the requesting authority;
- for the prisoner to be escorted back to the requested state by the requesting authority;
- the subsequent transfer of the prisoner in custody from the arrival point in the requested state to his place of detention.

The costs of escorting and accommodating prisoners from their point of departure from the requested state to their point of return are, in these circumstances, met by the requesting authority (not the requested state, unlike costs of MLA generally).

Additional information to include in a request for temporary transfer of prisoners to the requesting state to assist in the requesting state's investigation:

1. Dates on which the presence abroad of the prisoner is required, including the dates on which the court or other proceedings for which the prisoner is required will commence and are likely to be concluded;
2. Information for the purpose of obtaining the prisoner's consent to the transfer and satisfying the requested authorities that arrangements will be made to keep the prisoner in secure custody such as:
   - whether the prisoner will have immunity from prosecution for previous offences;
   - details of proposed arrangements for collecting the prisoner from and returning the prisoner to the requested state;
   - details of the type of secure accommodation in which the prisoner will be held in the requesting state;
   - details of the type of escort available abroad to and from the secure accommodation.

1.16 Requests for Criminal Record Information from EU Member States

There is a reciprocal arrangement in place by which an EU member state will other EU member states of any convictions imposed on national from other member state.

Each EU member state has a bureau or point of contact who should be directly contacted to request criminal record information regarding an EU national subject to criminal proceedings in that state

Requests should include information on the requesting authority, the reason for the request and details on the identity of the person concerned in the request (including their name, birth name, aliases, sex, nationality, date of birth, place of birth, parent's names, residence or known address, fingerprints where available, other identification data where available).
Forms for requests can be found in the Official Journal of the European Union, 9.12.2005, L

322/36. This can be found at: http://www.ejncrimjust. europa.eu/publications%5C2007/3/Forms/criminal_rec_en.pdf

2. INTERNATIONAL INSTRUMENTS

INTERNATIONAL INSTRUMENTS: WHAT ARE THEY & WHAT EFFECT DO THEY HAVE?

2.1 Importance of international instruments

The reader has already had attention drawn to international instruments as providing a legal basis for MLA requests. Given that the framework of international co-operation created by a number of instruments, both MLA-specific and penal, shapes the way in which requests are made and executed, it is important for judicial authorities to have a real understanding of what instruments are, what they do and the obligations they are capable of imposing on a state.

2.2 What is a 'convention' and what are the obligations of a State Party under a convention?

The 1959 Convention, UNTOC and UNCAC are each an example of a multilateral treaty. The term "convention" is generally used for formal multilateral treaties where there are a broad number of parties and where participation is open to the international community.

The purpose of this section is to provide an overview of the key defining characteristics of a treaty; the different stages of adoption, signature, ratification and accession; and, how treaties are implemented under domestic law, giving them domestic legal effect.

2.3 The Vienna Convention on the Law of Treaties 1969, "the Vienna Convention"

The rules governing international treaties used to be based on customary international law, or the general principles of law. However, The Vienna Convention, which entered into force on 27 January 1980, codified these rules and sets out with greater clarity the criteria for the establishment and operation of international treaties.

For the purposes of this Guide, the following provisions of the Vienna Convention are important to note:

Article 2(1)(a) of the Vienna Convention defines "treaty" as "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation."

The terminology that surrounds the treaty-making process can be confusing. It is therefore important to note the distinction between the various procedural terms, as these can determine whether a State has consented to be bound to the terms of the treaty or not.

Adoption

"Adoption" takes place during the treaty-making process, and is the formal act in which participating States consent to the text of a proposed treaty. Article 9 of The Vienna Convention states:

Article 9(1) "The adoption of the text of a treaty takes place by the consent of all the States participating in its drawing up…"

Article 9(2) "The adoption of the text of a treaty at an international conference takes place by the vote of two-thirds of the States present and voting, unless by the same majority they shall decide to apply a different rule."

Signature

A State which has signed a treaty subject to ratification, acceptance or approval, does not establish the consent to be bound. Signature is a process of authentication and reflects the willingness of the State to continue in the treaty-making process by qualifying it to proceed to undertake ratification.

A signatory State to a treaty, while not yet bound to its provisions, is nevertheless obligated not to act in any way which would defeat the object and purpose of a treaty prior to its entry into force. Article 18 of The Vienna Convention states:

"A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become party to the treaty…"

Ratification

Ratification is the act whereby a State establishes its consent to be bound to a treaty. In the case of multilateral treaties, the act of ratification is normally done by the deposit of the instruments of ratification to an international organization or to the Secretary General of the United Nations, as the depositary. Article 16 of The Vienna Convention holds:

"Unless the treaty otherwise provides, instruments of ratification, acceptance, approval or accession establish the consent of a State to be bound by a treaty upon:

(a) their exchange between the contracting States;

(b) their deposit with the depositary; or

(c) their notification to the contracting States or to the depositary is so agreed

The process of ratification grants States the necessary time frame required to receive domestic approval for the treaty and to enact domestic legislation giving effect to the treaty.

Accession

Accession has the same legal effect as ratification, but applies when a State becomes party to a treaty after the treaty has already been negotiated and signed by other States. Article 15 of The Vienna Convention outlines when consent of a State to be bound by a treaty is expressed by accession:

1. *(a) the treaty provides that such consent may be expressed by that State by means of accession;*
(b) it is otherwise established that the negotiating States were agreed that such consent may be expressed by that State by means of accession; or
(c) all the parties have subsequently agreed that such consent may be expressed by that State by means of accession.

Reservations to international treaties (Articles 19 – 23 of the Vienna Convention)
Many international instruments provide for a State to make a reservation as to its provisions. A treaty can prohibit reservations entirely, or allow only specific reservations to be made. Reservations made under UNCAC must be notified to the Secretary-General of the UN.

A reservation is a declaration made by a State which excludes or alters the legal effect of specified provisions of the treaty to that State. Reflecting the concept of universality, reservations provide a level of flexibility by enabling States to become parties to multilateral treaties whilst permitting the exemption or alteration of certain provisions with which the State may not wish or is unable to comply.

The integrity of the treaty remains intact by virtue of Article 19(c) of the Vienna *Convention, which holds:*

"A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless: … (c)… the reservation is incompatible with the object and purpose of the treaty."

However, it should be noted that there is considerable debate surrounding what constitutes the "object and purpose of the treaty", which renders this provision rather opaque in practice.

2.4 Giving Domestic Effect to International Treaties

There are two major approaches as to how international treaties enter into force domestically. This process depends on whether a State subscribes to a *monist* or *dualist* system governing the relationship between international and national law.

Monist systems
Monist systems reflect a unitary nature between international and domestic law, whereby both sources of law are considered to belong to the same legal family. Under this approach, when a State ratifies a treaty, the treaty is given the domestic force of law without the need to enact subsequent, implementing legislation. Democratic processes leading to the domestic approval of a treaty is attained during the treaty-making process. Under monist systems,

domestic courts and other public bodies refer to the language of the treaty provisions itself as a source of law.

Monist legal systems exhibit variations in approach. These include:

1. Systems where only certain treaties are considered to be directly applicable in domestic law and where the treaty provisions share the same level of hierarchy as federal laws, in line with the principle that the latest in time prevails;

2. Systems where the provisions of certain treaties are superior to later legislation, but which remain lower in status to Constitutional provisions;

3. Systems where the Constitution provides for the direct applicability of certain treaties and where treaty provisions are considered superior to all laws.

Examples of States with monist legal systems (or variations thereof) include Germany, the Netherlands, and the United States.

However, even in a monist legal system, the effect of the constitution may be that domestic legislation will be needed to address sanctions before any criminal proceedings can be instituted.

Dualist systems

Dualist systems of law stress that international law and domestic law exist separately, and mostly operate independently of each other. Unlike monist systems, when a dualist State expresses its consent to be bound to an international treaty, the treaty does not directly assume the domestic force of law. Rather, the enactment of domestic legislation is first required in order for the treaty to have domestic legal effect.

The process by which an international treaty is given the force of law domestically is referred to as the "act of transformation"; the treaty is expressly transformed into domestic law by the use of relevant constitutional mechanisms (i.e. an Act of Parliament). For example, the United Kingdom, which is a dualist State, ratified the European Convention on Human Rights (ECHR) in 1951, but ECHR provisions did not have the domestic force of law until the process of transformation, which resulted in the Human Rights Act 1998.

Therefore, in dualist systems, a State can express its consent to be bound by a treaty through ratification, placing the State under international legal obligations, but the same treaty provisions would have no domestic legal effect until the act of transformation. Furthermore, before the act of transformation, domestic courts are not strictly bound by the provisions of the treaty, although in practice such sources of law are considered highly persuasive.

Following the British practice, most Commonwealth countries have dualist legal systems. Some have made it their practice to pass a single Act of Parliament simply incorporating their international obligations (even if under more than one instrument) into domestic law, whilst others have chosen to give effect to the treaty by passing comprehensive domestic

legislation based on the requirements of the treaty, that establishes the necessary infrastructure or systems, and creates the necessary offences

3. INTERNATIONAL INSTRUMENTS ADDRESSING MLA

The following is a selection of multilateral treaties that contain include extensive provisions on MLA as a form of international co-operation:

- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (see Article 7),
- UN Transnational Organised Crime Convention 2000 (UNTOC) (Article 18),
- UN Convention against Corruption 2003 (UNCAC) (Article 46),
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (see Articles 8-10),
- Council of Europe Convention on Cybercrime,
- Council of Europe Criminal Law Convention on Corruption (see Article 26),
- Inter-American Convention against Corruption (see Article XIV),
- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (see Article 9).

In addition, ad hoc mutual legal assistance instruments have been drawn up within the framework of:

- The Council of Europe (European Convention on Mutual Assistance in Criminal Matters 1959 and its two Additional Protocols of 1978 and 2001),
- The Commonwealth (The Commonwealth Scheme for Mutual Assistance in Criminal Matters of 1986, as amended in 1990, 1999 and 2010)
- Organisation of American States (Inter-American Convention on the Taking of Evidence Abroad 1975 and Additional Protocol of 1984; and Inter-American Convention on Mutual Assistance in Criminal Matters of 1992 and Optional Protocol of 1993)
- Economic Community of West African States (the ECOWAS Convention on Mutual Assistance in Criminal Matters 1992)
- Southern African States Parties and the European Union (the Convention of 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and its Protocol of 2001)
- Arab League (Arab League Convention on Mutual Assistance in Criminal Matters 1983).

The United Nations, in turn, has prepared a Model Treaty on Mutual Assistance in Criminal Matters (General Assembly Resolutions 45/117, annex, and 53/112, annex I), which represents a distillation of the international experience gained with the implementation of such mutual legal assistance treaties, in particular between states representing different legal systems.

In addition, it should be remembered that states also enter into:

- Bilateral treaties: such as the 1994 Treaty Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters
- Other, voluntary, arrangements: e.g. for Commonwealth states there is the voluntary Scheme Relating to Mutual Assistance in Criminal Matters, also known as the "Harare Scheme".
- Memoranda of Understanding (Where there is a memorandum of understanding in force, care should be taken as some may purport to offer greater assistance than is permitted by national law. Memoranda of Understanding do not have force of law and national law will take precedence.)

With the framework of international instruments in mind, practitioners should ask themselves when making a request:

- What is the legal basis used by the State Party for mutual legal assistance?
- Is the Convention used as a legal basis for mutual legal assistance? If not, or in addition to the Convention, has the State Party concluded bilateral or multilateral agreements or arrangements to facilitate extradition?
- Does the State Party participate in any practitioner or judicial network?
- Does the State Party have a designated central authority agency responsible for receipt, processing or execution of mutual legal assistance requests?
- Does the central authority have clear guidelines on practical aspects and issues arising in a mutual legal assistance case?
- Are there established procedures in the State Party for dealing with mutual legal assistance requests?

4. INTERNATIONAL INSTRUMENTS (MULTILATERAL & BILATERAL AGREEMENTS) RELATED TO MUTUAL LEGAL ASSISTANCE AND EXCHANGE OF DATA TO WHICH SERBIA IS A STATE PARTY

The Law on mutual legal assistance in criminal matters prescribes the procedure for providing mutual legal assistance in criminal matters, in cases where there is no ratified international agreement or where certain issues are not regulated by it. The said law regulates the procedures of; extradition of accused or sentenced persons, taking over and transfers of criminal prosecution, enforcement of judgments, enforcement of judgments with the transfer and procedure for providing other forms of mutual legal assistance (execution of procedural actions, enforcement of measures of surveillance, recording of telephone and other conversations and communication, and exchange of information…)

Given the fact that national legislation recognises the supremacy of international treaties, there follows a short review of bilateral and multilateral treaties ratified by the Republic of Serbia:

4.1 Multilateral treaties

The Republic of Serbia acceded to all relevant treaties which regulate mutual legal assistance (list of treaties is following). The Ministry of Justice of the Republic of Serbia is appointed as a central authority in relation to above mentioned treaties.

4.2 Bilateral agreements

Within the period of the last twenty years the Republic of Serbia (previously the Federal Republic of Yugoslavia and Serbia and Montenegro) had concluded bilateral agreements in the area of mutual legal assistance only with the countries of former Socialist Federal Republic of Yugoslavia (Croatia, the Former Yugoslav Republic of Macedonia, Bosnia and Herzegovina and Montenegro). Following is the list of all bilateral treaties.

4.3 Central Authorities

In relation to all bilateral mutual legal assistance agreements concluded by the Republic of Serbia, the Ministry of Justice is the central authority. The only exception is the agreement signed with Montenegro. This agreement stipulates that the central authority is the Ministry of Justice, but that the general forms of legal assistance related to the delivery and distribution of certain acts, documents and information, and execution of certain process activities (hearing the parties, witnesses, taking statements from heirs, etc.) courts and other competent authorities from respective countries will communicate directly.

4.4 Joint investigative teams

Only the agreement with Montenegro (article 38) and agreement amending the agreement with Bosnia and Herzegovina (article 36a) provide for the establishment of joint investigative teams. According to the Law on Mutual Legal Assistance in Criminal Matters, the Minister of Justice of the Republic of Serbia has the power to conclude such an agreement with the competent authority of the state consorted. This power has not been used so far.

5. BILATERAL AGREEMENTS

<u>Algeria</u>
Agreement on mutual legal assistance in criminal and civil matters between Socialist Federal Republic of Yugoslavia and Peoples Democratic Republic of Algeria
Agreement

<u>Austria</u>

1. Agreement on mutual legal assistance in criminal matters between Socialist Federal Republic of Yugoslavia and the Republic of Austria;
2. Agreement on mutual enforcement of court judgments in criminal matters between Socialist Federal Republic of Yugoslavia and the Republic of Austria.

<u>Bosnia and Herzegovina</u>

1. Agreement between Serbia and Montenegro and Bosnia and Bosnia and Herzegovina on mutual legal assistance in civil and criminal matters;
2. Agreement between Serbia and Montenegro and Bosnia and Bosnia and Herzegovina on mutual enforcement of Court judgments in criminal matters;
3. Agreement between Serbia and Montenegro and Bosnia and Bosnia and Herzegovina on amendments and supplements to the agreement between Serbia and Montenegro and Bosnia and Bosnia and Herzegovina on mutual enforcement of Court judgments in criminal matters (not jet confirmed/ratified, but is applied according to the provisions of the treaty- the law on ratification in the parliamentary procedure);
4. Agreement between Serbia and Montenegro and Bosnia and Bosnia and Herzegovina on amendments and supplements to the agreement between Serbia and Montenegro and Bosnia and Bosnia and Herzegovina mutual enforcement of court judgments in criminal matters (not yet confirmed/ratified, but is applied according to the provisions of the treaty- the law on ratification in the parliamentary procedure).

<u>Montenegro</u>

1. Agreement between the Republic of Serbia and Montenegro on mutual legal assistance in civil and criminal matters;
2. Agreement between the Republic of Serbia and Montenegro on mutual enforcement of Court judgments in criminal matters;

<u>Bulgaria</u>

Agreement between Federal Peoples Republic of Yugoslavia and Peoples Republic of Bulgaria on mutual legal assistance

<u>Czech Republic</u>

Agreement between Socialist Federal Republic of Yugoslavia and Czech Socialist Republic on legal relations in civil, family and criminal matters;

<u>France</u>

Convention between Socialist Federal Republic of Yugoslavia and French Republic on mutual legal assistance in criminal matters;

<u>Greece</u>

Convention between the Government of Federal Peoples Republic of Yugoslavia and the Kingdom of Greece on mutual legal relations

Croatia
Agreement between the Federal Republic of Yugoslavia and the Republic of Croatia on mutual legal assistance in civil and criminal matters;

Iraq
Agreement between the Socialist Federal Republic of Yugoslavia and Republic of Iraq on legal and judicial cooperation

Italy
1. Convention between the Kingdom of Serbs, Croats and Slovenians and Italy on legal and judicial protection of respective citizens;
2. Convention between the Federal Peoples Republic of Yugoslavia and Italy on mutual legal assistance in criminal and administrative matters.

Cyprus
Agreement between the Socialist Federal Republic of Yugoslavia and the Republic of Cyprus on mutual legal assistance in civil and criminal matters

Hungary
1. Agreement between the Socialist Federal Republic of Yugoslavia and the People's Republic of Hungary on mutual legal assistance;
2. Agreement on amendments and supplements to the agreement between the Socialist Federal Republic of Yugoslavia and the People's Republic of Hungary on mutual legal assistance.

Former Yugoslav Republic of Macedonia
Agreement between Serbia and Montenegro and Republic of Macedonia on mutual legal assistance in criminal matters.

Mongolia
Agreement between the Socialist Federal Republic of Yugoslavia and the Mongolian People's Republic on mutual legal assistance in civil, family and criminal matters

Germany
Agreement on mutual legal assistance in criminal matters between the Socialist Federal Republic of Yugoslavia and the Federal Republic of Germany.

Poland
Agreement between the Federal People's Republic of Yugoslavia and the People's Republic of Poland on mutual legal assistance in civil and criminal matters

Romania
Agreement between the Federal People's Republic of Yugoslavia and People's Republic of Romania on mutual legal assistance

Russian Federation
Agreement between the Federal People's Republic of Yugoslavia and United Soviet Socialist Republics on mutual legal assistance in civil, family and criminal matters

Slovakia
Agreement between the Socialist Federal Republic of Yugoslavia and Czechoslovak Socialist Republic on legal relations in civil, family and criminal affairs;

Spain
Agreement between the Socialist Federal Republic of Yugoslavia and Spain on mutual legal assistance related to extradition

Turkey
Convention on judicial legal assistance in criminal matters between the Socialist Federal Republic of Yugoslavia and the Turkish Republic;

6. MULTILATERAL AGREEMENTS

6.1 Conventions of the UN or its organisations

1. Convention against Transnational Organized Crime; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; Protocol against the Smuggling of Migrants by Land, Sea and Air. (General Assembly resolution 55/25 of 15 November 2000).
2. Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their parts and Components and Ammunition.(General Assembly resolution 55/255 of 31 May 2001).
3. Slavery Convention, Geneva, 25 September 1926.
4. Protocol amending the Slavery Convention signed at Geneva on 25 September 1926, New York, 7 December 1953.
5. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, signed on 7 September 1956, Geneva, Switzerland.
6. 1904 International Agreement for the Suppression of the "White Slave Traffic", as amended by the 1949 Protocol.
7. 1910 International Convention for the Suppression of the "White Slave Traffic", as amended by 1949 Protocol, amending the International Agreement for the Suppression of the White Slave Traffic, and amending the International Convention for the Suppression of the White Slave Traffic.
8. 1921 International Convention for the Suppression of the Traffic in Women and Children, as amended by the 1947 Protocol.

9. 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.
10. 1989 United Nations Convention on the Rights of the Child (Child Convention). Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.
11. 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft.
12. 1970 Convention for the Suppression of Unlawful Seizure of Aircraft. (1970 Hague Convention).
13. 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. 1971 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation.
14. 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.
15. 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (Protection of Diplomats Convention).
16. 1979 International Convention against the Taking of Hostages.
17. 1998 Rome Statute of the International Criminal Court (ICC Statute / Rome Statute).
18. 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.
19. 1948 Convention on the Prevention and Punishment of Genocide.
20. 1973 Convention on the Suppression and Punishment of the Crime of Apartheid.
21. 1949 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.
22. 1949 Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea.
23. 1949 Geneva Convention (III) Relative to the Treatment of Prisoners of War.
24. 1949 Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War.
25. 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I).
26. 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).
27. 1979 Vienna Convention on the Physical Protection of Nuclear Materials.
28. 1997 International Convention for the Suppression of Terrorist Bombings.
29. 1999 International Convention for the Suppression of the Financing of Terrorism.
30. 2005 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.
31. 2005 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf.

32. 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries (UN Mercenary Convention).
33. 2003 United Nations Convention against Corruption.

6.2 Council of Europe Conventions

1. European Convention on Mutual Assistance in Criminal Matters.
2. Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.
3. Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.
4. European Convention on Extradition.
5. Additional Protocol to the European Convention on Extradition.
6. Second Additional Protocol to the European Convention on Extradition.
7. Convention on the Transfer of Sentenced Persons.
8. Additional Protocol to the Convention on the Transfer of Sentenced Persons.
9. European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders.
10. European Convention on the International Validity of Criminal Judgments.
11. European Convention on the Transfer of Proceedings in Criminal Matters.
12. European Convention on the Suppression of Terrorism.
13. Protocol amending the European Convention on the Suppression of Terrorism.
14. Criminal Law Convention on Corruption.
15. Additional Protocol to the Criminal Law Convention on Corruption.
16. Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.
17. European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches.
18. Council of Europe Convention on the Prevention of Terrorism.
19. Convention on Cybercrime.
20. Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.
21. Council of Europe Convention on Action against Trafficking in Human Beings.
22. Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

7. SIGNIFICANT INTERNATIONAL INSTRUMENTS FOR THOSE FIGHTING ECONOMIC/FINANCIAL CRIME, CORRUPTION & ORGANISED CRIME

7.1 European convention on mutual assistance in criminal matters 1959

This was the first significant instrument for MLA. It was developed by the Council of Europe, and entered into force on 12 June1962. It provided recognition of the necessity for specific instruments for co-operation in evidence gathering. However, it has limitations; in particular, it was designed to operate amongst states of similar legal tradition, that of the civil law. It does not address the significant challenge to effective MLA, bridging the differences between legal systems. However, that is where the EU Convention (see below) now steps in.

Significant provisions within the 1959 Convention are addressed in this manual within their relevant sections in order to give a proper context as to their practical working.

7.2 European union MLA convention 2000

On 29 May 2000, the EU Council of Ministers adopted the Convention on Mutual Assistance in Criminal Matters. The Convention aims to encourage and modernise co-operation between judicial, police and customs authorities within the EU (along with Norway and Iceland) by supplementing provisions in existing legal instruments, including the 1959 Convention, and facilitating their application.

The state receiving a request must in principle comply with the formalities and procedures indicated by the requesting state. But when an offence falls within the competence of the receiving authority, a spontaneous exchange of information (i.e. without prior request) may take place between member states regarding criminal offences and administrative infringements.

The effect of the EU Convention is to supplement not just the 1959 Convention and its 1978 Protocol on Mutual Assistance in Criminal Matters, but also the Benelux Treaty of 1962 and the 1990 Schengen Implementation Convention.

The EU Convention stipulates that such mutual assistance shall respect the basic principles of each Member State and the ECHR. It covers criminal offences and administrative infringements.

On 16 October 2001 a Protocol concerning mutual cooperation on banking information was also adopted, aiming at fighting against money laundering and financial crime. This Protocol forms an integral part of the 2000 Convention.

The EU Convention provides that the requesting state can ask the receiving state to comply with some formalities or procedural requirements which are essential under its national legislation. It also seeks to avoid delay by providing that requests for MLA and communications about MLA are to be made directly to the judicial authorities with territorial competence. (However, in some cases documents may be sent or returned via a central authority, and urgent requests may be made via Interpol or any other competent body.)

It also makes provision for mechanisms involving modern communication methods such as video conferencing and teleconferencing.

What kind of MLA may be requested under the EU Convention ?
Mutual assistance may be requested in the following cases:

- to hand over to the competent authorities of a requesting State objects that have been stolen or obtained by other criminal means and that are found in another member state;
- to temporarily transfer to the territory of a member state where an investigation is being carried out a person held on the territory of another member state;
- hearing by videoconference;
- hearing by telephone conference;
- to permit controlled deliveries on the territory of a member state in the framework of criminal investigations into offences that may give rise to extradition. They are to be directed and monitored by the authorities of the requested member state.
- Two or more EU Member States may set up a joint investigation team for a specific purpose and for a limited period of time.
- Covert investigations may also be carried out by officers of another member state (as well as by officers of the home Member State) acting under covert or false identity, provided that the national law and procedures of the member states where the investigations take place are complied with.
- for the competent authority of a member state to request another member state to intercept telecommunications. These may either be intercepted and transmitted directly to the requesting state or recorded for subsequent transmission. Such requests must be in accordance with the national laws and procedures of the involved member states.

Specific forms of assistance provided for in the EU Convention
Stolen objects: that are found in another member state are to be placed at the disposal of the requesting State with a view to their return to their rightful owners. In certain cases, the requested Member State may refrain from returning the objects if that would facilitate the restitution of such articles to the rightful owner.

A person held on the territory of a member state which has requested an investigation may be temporarily transferred to the territory of the member state in which the investigation is to take place, with the agreement of the competent authorities. Where it is required by one of the member states, the consent of the person concerned is necessary before he can be transferred.

A witness or an expert in a member state may be heard by the judicial authorities of another member state by videoconference if this is not contrary to the fundamental principles of the requested member state and if all the parties concerned are in agreement.

Controlled deliveries may be permitted on the territory of another member state within the framework of criminal investigations into extraditable offences. They are to be directed and monitored by the authorities of the requested member state.

Two or more member states may set up a joint investigation team the composition of which is to be set out in a joint agreement between the member states concerned. The team would be set up for a specific purpose and for a limited period of time. An official from the member state in which the team is operating would coordinate and lead its activities in the territory of that member state.

Covert investigations may also be carried out by officers acting under covert or false identity, provided that the national law and procedures of the member state where the investigations take place are complied with.

Interception of telecommunications may be carried out at the request of a competent authority from another member state - a judicial authority or an administrative authority designated for the purpose by the member state concerned. Communications may either be intercepted and transmitted directly to the requesting member state or recorded for subsequent transmission. Member states are to consider such requests in accordance with their own national law and procedures. Interception may also take place on the territory of a Member State in which earth satellite equipment is located if the technical assistance of that Member State is not required by the service providers in the requesting Member State. Where interception takes place on the territory of a particular Member State because of the location of the subject but no technical assistance is needed, the Member State carrying out the interception should inform the other Member State of its action.

Personal data protection: A member state which has obtained personal data under the Convention may use them only:

- for judicial or administrative proceedings covered by Convention;
- for preventing an immediate and serious threat to public security;
- for any other purpose, with the prior consent of the communicating Member State or of the data subject.

The communicating member state may ask the member state to which the personal data have been transferred to give information on the use made of the data.

Note: European Evidence Warrant

The European Evidence Warrant (EEW), adopted as a Council Framework Decision in December 2008, is intended to replace mutual legal assistance procedures and further improve judicial co-operation by applying the principle of mutual recognition to a judicial decision for the purpose of obtaining objects, documents and data for use in criminal legal proceedings in different member states. Until the EEW is fully implemented, a process expected to last until late 2012, its measures will initially run in parallel with the MLA procedures under the 1959 Convention and the EU Convention.

It will allow the issuing judicial authority (the definition of which includes public prosecutors) to obtain existing evidence, but not to interview witnesses, to take statements, to obtain retained communications data, to carry out interception of communications, to request covert surveillance or to monitor bank accounts. MLA requests will still be required in such circumstances.

7.3 The UN convention against transnational organised crime 2000 (UNTOC)

The UN Convention Against Transnational Organised Crime (UNTOC or 'The Palermo Convention') was opened for signature on 12 December 2000 and came into force on 29 September 2003. It is also supplemented by three Protocols.

Ambit

Although an international instrument to counter transnational organised crime, in reality, UNTOC has a broader application. It:

- Defines and standardises certain terms (such as 'confiscation', 'organised criminal group', 'proceeds of crime', 'property', and 'serious crime') that are used with different meanings in various States or circles;
- Requires States to establish specific offences as crimes;
- Requires the introduction of specific control measures, such as the protection of victims and witnesses;
- Provides for the confiscation/forfeiture of the proceeds of crime;
- Promotes international cooperation, through, in particular, extradition, legal assistance and joint investigations;
- Provides for training, research and information-sharing measures;
- Encourages States to put in place preventive policies and measures.

MLA Provisions

In Article 3, UNTOC calls for the widest measure of MLA in investigations, prosecutions and judicial proceedings, and expands the scope of application to all convention offences.

Article 18 is the principal MLA provision. It provides that assistance may be requested for taking evidence or statements, effecting service of judicial documents, executing searches and seizures, examining objects and sites, providing information, evidence and expert evaluations, documents and records, tracing proceeds of crime, facilitating the appearance of witnesses and any other kind of assistance not barred by domestic law. Article 18 applies also to international co-operation in the identification, tracing and seizure of proceeds of crime, property and instrumentalities for the purpose of confiscation.

UNTOC allows states to refuse an MLA request under certain conditions (Article 18(21). However, it makes clear that assistance cannot be refused on the ground of bank secrecy (18(8)) or for offences considered to involve fiscal matters (18(22)). States are required to provide reasons for any refusal to assist. States must execute requests expeditiously and take into account possible deadlines facing the requesting authorities (for example expiration of a statute of limitation).

Asset Recovery Provisions

Article 12 requires a State party to adopt measures, to the greatest extent possible within its legal system, to enable confiscation of proceeds/the equivalent value of proceeds and instrumentalities of offences covered by the Convention. The term "to the greatest extent possible within their domestic legal systems" is intended to reflect the variations in the way that different legal systems carry out the obligations imposed by this Article. Nevertheless, States are expected to have a broad ability to comply with the provisions of Article 12.

Article 12 also obligates each State party to adopt measures to enable the identification, tracing, freezing and seizing of items for the purpose of eventual confiscation. In addition, it obligates each State party to empower courts or other competent authorities to order production of bank records and other evidence for purposes of facilitating such identification, freezing and confiscation.

Article 13 then sets forth procedures for international co-operation in confiscation matters. These are important powers, as criminals frequently seek to hide proceeds and instrumentalities of crime abroad, as well as evidence relating thereto, in order to thwart law enforcement efforts to locate and gain control over them. A State party that receives a request from another State party is required by Article 13 to take particular measures to identify, trace and freeze or seize proceeds of crime for purposes of eventual confiscation.

Article 13 also describes the manner in which such requests are to be drafted, submitted and executed. It is important to note that these are special procedures aimed at obtaining the proceeds of crime, as opposed to procedures that assist in the search for such proceeds as part of the evidence of crime (for example, warrants and *in rem* procedures).

Article 14 addresses the final stage of the confiscation process: the disposal of confiscated assets. While disposal is to be carried out in accordance with domestic law, States parties are called upon to give priority to requests from other States parties for the return of such assets for use as compensation to crime victims or restoration to legitimate owners. States parties are also encouraged to consider concluding an agreement or arrangement whereby proceeds may be contributed to the UN to fund technical assistance activities under UNTOC or shared with other States parties that have assisted in their confiscation.

Detailed provisions similar to those of UNTOC can be found in UNCAC, Article 5 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, the International Convention for the Suppression of the Financing of Terrorism, UN Security Council Resolution 1373 (2001) and the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. States that have enacted legislation to implement their obligations as parties to those conventions may not need major amendments for meeting the requirements of UNTOC. In addition, the FATF Forty Recommendations provide guidance to countries on means of identifying, tracing, seizing and forfeiting the proceeds of crime.

7.4 The UN convention against corruption 2003 (UNCAC)

UNCAC was opened for signature on 9 December 2003 and came into force on 14 December 2005.

UNCAC has the most detailed MLA provisions to date of any penal instrument. The offences under the Convention are wide; it is therefore likely to prove an especially useful practical tool to those investigating and prosecuting not just corruption, but a broad range of economic and financial crimes (particularly where public officials are alleged to be involved).

MLA provisions

The Convention generally seeks ways to facilitate and enhance mutual legal assistance, encouraging States Parties to engage in the conclusion of further agreements or arrangements in order to improve the efficiency of mutual legal assistance. In any case, paragraph 1 of Article 46 requires States Parties to afford one another the widest measure of mutual legal assistance as listed in Article 46 (3) in investigations, prosecutions and judicial proceedings in relation to the offences covered by the Convention. If a State Party's current legal framework on mutual legal assistance is not broad enough to cover all the offences covered by the Convention, amending legislation may be necessary.

States Parties have discretion in determining the extent to which they will provide assistance for judicial proceedings, but assistance should at least be available with respect to portions of the criminal process that in some States Parties may not be part of the actual trial, such as pre-trial proceedings, sentencing proceedings and bail proceedings.

The UNODC Legislative Guide (at paragraphs 593-5) sets out the principal requirements of Article 46 as follows:

State Parties are required:

(a) To ensure the widest measure of mutual legal assistance for the purposes listed in Article 46, paragraph 3, in investigations, prosecutions, judicial proceedings and asset confiscation and recovery in relation to corruption offences (art. 46, para. 1);

(b) To provide for mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to offences for which a legal entity may be held liable under Article 26 (art. 46, para. 2);

(c) To ensure that mutual legal assistance is not refused by it on the ground of bank secrecy (art. 46, para. 8). In this respect, legislation may be necessary if existing laws or treaties governing mutual legal assistance are in conflict;

(d) To offer assistance in the absence of dual criminality through non-coercive measures, subject to the basic concepts of its legal system (art. 46, para. 9, *(b);*

(e) To apply paragraphs 9 to 29 of Article 46 to govern the modalities of mutual legal assistance in the absence of a mutual legal assistance treaty with another State party (art. 46, paras. 7 and 9-29). In this respect, legislation may be necessary if existing domestic law governing mutual legal assistance is inconsistent with any of the terms of these paragraphs and if domestic law prevails over treaties;

(f) To notify the Secretary-General of the United Nations of their central authority designated for the purpose of Article 46, as well as of the language(s) acceptable to them in this regard (art. 46, paras. 13 and 14);
(g) To consider entering into bilateral or multilateral agreements or arrangements to give effect to or enhance the provisions of Article 46 (art. 46, para. 30).

In addition, States parties may provide information on criminal matters to other State parties without prior request, where they believe that this can assist in inquiries, criminal proceedings or the formulation of a formal request from that State party (art. 46, paras. 4 and 5). States parties are also invited to consider the provision of a wider scope of legal assistance in the absence of dual criminality (art. 46, para. 9 *(c)*).

Article 46, paragraph 3, sets forth the following list of specific types of mutual legal assistance that a State party must enable:
(a) Taking evidence or statements from persons;
(b) Effecting service of judicial documents;
(c) Executing searches and seizures, and freezing;
(d) Examining objects and sites;
(e) Providing information, evidentiary items and expert evaluations;
(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
(h) Facilitating the voluntary appearance of persons in the requesting State party;
(i) Any other type of assistance that is not contrary to the domestic law of the requested State party.
(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention.
(k) The recovery of assets in accordance with the provisions of chapter V of this Convention.

It should be noted that there is a prohibition on the denial of mutual legal assistance on the ground of bank secrecy by virtue of Article 46, paragraph 8. Thus, where a State party's laws currently permit such ground for refusal, amending legislation will be required.

Article 46 (2) mandates States Parties to provide MLA with respect to investigations, prosecutions and judicial proceedings in which a legal person is involved.

Article 46(9) requires States Parties to take into account the purposes and spirit of the Convention (Article 1) as they respond to requests for legal assistance in the absence of dual criminality. Although States Parties may decline to render assistance in the absence of dual criminality (para. 9 (b)), they are further encouraged to exercise their discretion and consider the adoption of measures that would broaden the scope of assistance even in the absence of this requirement (para. 9 (c)).

However, to the extent consistent with the basic concepts of their legal system, States Parties are required to render assistance involving non-coercive action on the understanding that the assistance is not related to matters of a *de minimis* nature or cannot be provided under other provisions of the Convention (para. 9 (b)).

Paragraphs 4 and 5 of Article 46 provide a legal basis for the spontaneous transmission of information whereby a State Party forwards to another State Party information or evidence it believes is important to combat offences covered by the Convention at an early stage where the other State Party has not made a request for assistance and may be completely unaware of the existence of such information or evidence. The aim of these provisions is to encourage States Parties to exchange information on criminal matters voluntarily and proactively. The receiving State Party may subsequently use the information provided in
order to submit a formal request for assistance. The only general obligation imposed for the receiving State Party, which is similar to the restriction applied in cases where a request for assistance has been transmitted, is to keep the information transmitted confidential and to comply with any restrictions on its use, unless the information received is exculpatory to the accused person. In this case the receiving State Party can freely disclose this information in its domestic proceedings.

Article 46 (18) proposes the use of videoconference as a means of providing evidence in cases where it is not possible or desirable for the witness to appear in person in the territory of the requesting State Party to testify.

Asset Recovery Provisions

In addition to Article 31 (Freezing, seizing etc,), which provides for a domestic freezing and confiscation regime in each State Party, UNCAC makes detailed provision for the recovery of property/repatriation of assets.

Article 54 (Mechanisms for recovery of property through internationals co-operation in confiscation) provides that:

- Each State Party, in order to provide MLA pursuant to Article 55 of the Convention, with respect to property acquired through on involved in a commission of an offence established in accordance with the Convention shall, in accordance with its domestic law:
    - Take such measures as may be necessary to permit is competent authorities to give effect to an order of confiscation issued by a court of another State Party;
    - Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign original by adjudication of an offence of money laundering or such other offence as may be within its jurisdiction, or by other procedures authorised under its domestic law;

    - Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence, or in other appropriate cases.

- Each State Party, in order to provide MLA upon a request made pursuant to Article 55 shall, in accordance with its domestic law:
    - Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority or requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to a confiscation order (i.e. to permit its competent authorities to give effect to a confiscation order issued by a court of another State Party);
    - Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested Party to believe that there are sufficient grounds for taking such action and that the property would eventually be subject to an order of confiscation for the purposes of giving effect to an order for confiscation order by a court of another State Party;
    - Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

Article 55 (International co-operation for purposes of confiscation) provides that:

- A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with the Convention for confiscation of proceeds of crime, property etc situated in its territory shall, to the greatest extent possible within its domestic legal system:
    - Submit the request to its competent authorities for the purpose of obtaining a confiscation order and, if such an order is granted, give effect to it; or
    - Submit to its competent authorities, with a view to giving effect to it to the extent requested, a confiscation order issued by a court in the territory in the requesting State Party in accordance with Articles 31 and 54, insofar as it relates to proceeds of crime, property etc situated in the territory of the requested State Party.
- Following a request made by another State Party, having jurisdiction over an offence established in accordance with the Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property etc for the

purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request made under Article 55, by the requested State Party.

- A description of property to be confiscated, a statement of facts, and a legal admissible copy of the confiscation order shall be provided, as appropriate, by the requesting Party.
- Co-operation under Article 55 maybe refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence, or if the property is of a *de minimis* value.
- Before lifting any provisional measure taken pursuant to Article 55, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.
- Article 55 shall not be construed as prejudicing rights of bone fide third parties.

Article 57 is one of the most crucial and innovative parts of the Convention. There can be no prevention, confidence in the rule of law and criminal justice processes, proper and efficient governance, official integrity or widespread sense of justice and faith that corrupt practices never pay, unless the fruits of the crime are taken away from the perpetrators and returned to the rightful parties.

For this reason there is little discretion left to States parties about this article: States are required to implement these provisions and introduce legislation or amend their law as necessary.

Article 57 requires State Parties to:

- dispose of property confiscated under articles 33 or 55 as provided in paragraph 3 below, including by return to prior legitimate owners (para. 1);
- enable their authorities to return confiscated property upon the request of another State party, in accordance with their fundamental legal principles and taking into account bona fide third party rights (para. 2);
- in accordance with the above and articles 46 and 55 of the Convention,

    - return confiscated property to a requesting State party, in cases of public fund embezzlement or laundering of embezzled funds (see art. 17 and 23), when confiscation was properly executed (see art. 55) on the basis of final judgement in the requesting State (this judgment may be waived by the requested State) (para. 3, subpara. a)
    - return confiscated property to a requesting State party, in cases of other corruption offences covered by the Convention, when confiscation was properly executed (see art. 55), on the basis of final judgement in the requesting State (which may be waived by the requested State) and upon

reasonable establishment of prior ownership by the requesting State or recognition of damage by the requested State (para. 3, subpara. b);

- in all other cases, give priority consideration to the
    - return of confiscated property
    - return such property to its prior legitimate owners
    - compensation of victims (para. 3, subpara. c).

States parties may also consider the conclusion of agreements or arrangements for the final disposition of assets on a case-by-case basis (art. 57, para. 5).

8. THE TRACING & RECOVERY OF ASSETS

8.1 Tracing, restraint and confiscation of assets

A request to a foreign state to restrain or confiscate assets will involve the exercise of a coercive power by the court in the requested state and will, therefore, invariably require the request to be made formally by a letter of request. Similarly, the supply of material needed in the tracing process will also, in the usual course of events, require such a letter to be issued.

The general principles governing MLA requests apply equally when seeking co-operation specifically to freeze or confiscate assets.

Some key points to have in mind:

- Particular care needed to ensure that the wording of the letter of request is precise.
- When the letter includes a request to trace funds, the requests made must address not only the holder/signatory of a bank account, but also any beneficial owners and anyone who has been given a 'power of attorney'.
- One of the key objectives in tracing is to identify the natural person who is the beneficial owner/has the beneficial interest. Identifying the legal person with beneficial ownership is often straightforward, but will not usually be sufficient.
- In relation to account information, the specific requests contained within the letter should state concisely what is being sought: for instance, the request should state if a client profile, customer notes, due diligence material, correspondence or electronic records/data (there may be particular procedures/laws in the requested state to be adhered to in relation to this).
- Given the volume of material held by financial institutions in relation to information as to individual transactions, delay can be reduced by focusing the request on transactions above a certain limit, or within a particular and precise time frame (this will also help to ensure that the request is not viewed as a 'fishing expedition'.
- When requesting freezing, have in mind that the requested State will want to be reassured that it is not leaving itself open to avoidable legal challenge. Therefore, where possible, consider the impact of the freezing on other persons or entities

(particularly in a case where the account of a legal person with an ongoing business is the subject of the request), and how such adverse effect might be addressed or minimised.

- Some States will only execute a request for freezing if criminal proceedings have already been instituted (check what the requested State understands by that, as common law States will usually regard the institution of proceedings to be charging or indicting a defendant, whereas in civil law States it will often be taken to mean the opening of the penal (investigation) file). Additionally, there are States who will only be able to provide assistance where a conviction has already been obtained.
- When making a request for the return or repatriation of assets following the making of a confiscation order, the requesting State should consider to whom the assets will be returned. For instance, the national laws of some States provide a right to a 'victim' of corruption or other economic crime to seek compensation, with the definition of who constitutes a 'victim' varying as between different jurisdictions. Consultation between the States involved should take place, particularly if the requested State is likely to seek an assurance as to whom the assets will be returned. The issue of assurances can be particularly problematic if the assets are State funds that have been stolen by, for instance, a corrupt politician or even Head of State. The requested State may be anxious to avoid repatriating assets to a State where they are going to fall back into corrupt hands, but, at the same time, Article 56 of UNCAC (addressing the return of assets) does not provide for conditional repatriation.

8.2 Practical steps to effective asset recovery co-operation

Requests for the restraint and confiscation of assets generally require dual criminality and a full justification as to why it is necessary. Without this information, a court will be unable to give an order to freeze assets effectively or register an order to confiscate assets to allow it to be enforced.

The requested authority dealing with the request will make the appropriate applications before the court for the assets to be restrained and should inform the requesting authority as soon as this has been done.

The requesting state must then serve a copy of the restraint order upon the suspect and any other person known to be affected by it once it receives it from the requested state. It must be remembered that the requested state's courts will usually require an acknowledgement that this has been completed otherwise the court may discharge the order.

In most, but not all states, the order to freeze assets can be obtained by a court on behalf of a foreign jurisdiction at the investigative stage of criminal proceedings.

Important additional information to include in an MLA request for freezing/restraint of property in the requested state

1. The name, address, nationality, date and place of birth and present location of the suspect(s) or defendants whose criminal conduct has given rise to anticipated confiscation or forfeiture proceedings.
2. Details of the criminal investigation.
3. Details of the law applicable to the investigation and current evidence against the suspects.
4. Particulars of the property which it is intended to restrain in the requested state, the persons holding it and details of the link between the suspect and the property (this is important if the property to be restrained is held in the name of a third party such as a company or another person).
5. State clearly whether prior assistance in the case (including asset tracing assistance) has been provided and, if so, give particulars of the requested state's enforcement or other authority involved and details of the assistance already received.
6. Where applicable, details of any court orders already made in the requesting state against the suspect in respect of his or her property. If any court order has been made, a duly authenticated copy should be included with the request; that is, a true copy of that order certified by a person in his or her capacity as a judge, magistrate or officer of the relevant court of the requesting state, or by an official of the Central Authority in the requesting state.
7. If possible, brief details of all known property held by the suspect outside the requested state.
8. A certificate or statement issued by or on behalf of the requesting state's Central Authority, stating:
   • that an investigation has been instituted in that state and has not concluded, or that proceedings have been instituted and are ongoing in the requesting state;
   • that the order which it is expected the court of the requesting state will make will have the purpose of recovering property or has the purpose of ordering the forfeiture of instrumentalities of crime.
   • that any future order that is made can be enforced outside the jurisdiction of the requesting state;
   • an undertaking or agreement to serve a copy of the order once it has been made upon the suspect and other persons known to be affected by the order.

Important additional information to include in a request for confiscation/forfeiture of property in the requested state

1. The information as outlined above for freezing/restraint applications.
2. If direct enforcement is sought, an original confiscation or forfeiture order, or a duly authenticated copy of the order; and
3. A certificate or statement issued by or on behalf of the requesting state's Central Authority stating:
   • That the order was made consequent on the conviction of the person named in the order

- that the order is in force, and that neither the order nor any conviction to which it may relate is subject to appeal;
- that all or a certain amount of the sum payable under the order remains unpaid in the territory of the requesting state or that other property recoverable under the order remains un-recovered there;
- that the confiscation order has the purpose of recovering property, or the value of property received in connection with the commission of crime, or, in the case of a forfeiture order ,has the purpose of ordering the forfeiture of instrumentalities of crime;
- that the order made can be enforced outside the jurisdiction of the requesting state.

Note: The court has to be satisfied that granting a freezing/restraint order or a confiscation/forfeiture order, or giving effect in the requested state to a confiscation order made in the requesting state would not be incompatible with any rights under the ECHR (or other regional human rights instrument as may be applicable if a state from another region). The requesting state, in particular, must consider its request against the provisions of applicable human rights instruments.

8.3 Obstacles to be Overcome When Seeking International Forfeiture/Confiscation Co-operation

Among the procedural, evidentiary and political obstacles to recovery efforts are:

- Anonymity of transactions impeding the tracing of funds and the prevention of further transfer
- Lack of technical expertise and resources
- Lack of harmonisation and co-operation
- Problems in the prosecution and conviction of offenders as a preliminary step to recovery
- Absence of institutional/legal avenues through which to pursue claims successfully, certain types of conduct not criminalised, immunities, third party rights
- Questions of evidence admissibility, type and strength of evidence required, differences regarding *in rem* forfeiture, time-consuming, cumbersome and ineffective mutual legal assistance treaties when the identification and freezing of assets must be done fast and efficiently
- Limited expertise to prepare and take timely action, lack of resources, training or other capacity constraints
- Lack of political will to take action or co-operate effectively; lack of interest on the part of victim states in building institutional and legal frameworks against corruption
- Corruption offenders are often well connected, skilled and bright. They can afford powerful protections and can seek shelter in several jurisdictions. They have been able to move their assets and criminal proceeds discretely and to invest them in ways that render discovery and recovery difficult.

8.4 Judicial & law enforcement networks

8.4.1 Interpol

Interpol is the world's largest international police organisation, with 188 member states. It facilitates cross-border police co-operation, and supports and assists all organisations, authorities and services whose role is to prevent or combat international crime. Interpol aims to facilitate international police co-operation even where diplomatic relations do not exist between particular countries.

Interpol acts as a central repository for professional and technical expertise on transnational organised crime and as a clearinghouse for the collection, collation, analysis and dissemination of information relating to organised crime and criminal organisations;

- It enables different police forces from across the globe to exchange crucial data quickly and securely
- Provides support to member countries in ongoing international investigations on a case by case basis.
- Identifies, establishes and maintains contacts with experts in the field.
- Initiates, prepares and participates in programmes to improve the international sharing of information.
- Traditionally, Interpol has not been a transmission route for letters of requests (although it has always been able to receive a copy of a letter in order to facilitate the process); however, it now has a formal role in transmission in certain circumstances in relation to requests made under the EU Convention (see section on that convention, above.
- Monitors and analyses information related to specific areas of activity and criminal organisations

8.4.2 Europol

Europol is the European Union law enforcement organisation that handles criminal intelligence. Its aim is to improve the effectiveness and co-operation between the competent authorities of the member states in preventing and combating serious international organised crime and terrorism.

The objective of Europol is to make a significant contribution to the EU's law enforcement action against organised crime and terrorism, with an emphasis on targeting criminal organisations. Within MLA, Europol's role (like that of Interpol) is to improve the sharing of intelligence between law enforcement agencies across the EU and globally

8.4.3 Eurojust

Eurojust is a judicial cooperation body created to help provide safety within an area of freedom, security and justice. It was set up by the Council of the European Union in February 2002 to improve the fight against serious crime by facilitating the co-ordination of action for investigations and prosecutions covering the territory of more than one member State with full respect for fundamental rights and freedoms.

Eurojust is composed of 27 National Members, one from each EU member state. National Members are seconded in accordance with their respective legal systems and are judges, prosecutors or police officers of equivalent competence, who together form the College of Eurojust.

In order to carry out its tasks, Eurojust maintains privileged relationships with the European Judicial Network, the European Police Office (Europol), the European Anti-Fraud Office and liaison magistrates. It is also able, through the Council, to conclude cooperation agreements with non-member states and international organizations or bodies, such as UNODC, for the exchange of information or the secondment of officers.

At the request of a member State, Eurojust may assist investigations and prosecutions concerning that particular member state and a non-member state, if a co-operation agreement has been concluded or if there is an essential interest in providing such assistance.

In addition to cooperation agreements, Eurojust also maintains a network of contact points worldwide. Eurojust aims to improve the co-ordination of investigations and prosecutions between the competent authorities in the member states and improves the cooperation between the competent authorities of the member states, in particular by facilitating the execution of international mutual legal assistance and the implementation of extradition requests.

What practical input can Eurojust give to an MLA or administrative request?

Members know the legal systems and practical arrangements of their state, have rapid access to their state agencies and will be entitled to engage in direct dialogue with the national authorities. They can immediately consult, and advice can be given collectively from the whole Eurojust team and not only from any one individual. They have the further advantage of having an overall view of what is happening across Europe. They can put any cases referred to them into an EU context and more easily spot any patterns or trends in EU crime.

Eurojust can give immediate legal advice and assistance in cross-border cases to investigators, prosecutors and judges in different EU states. It advises judges and prosecutors where to look for information that they need from another EU state and on how to proceed in cross-border cases.

Although Eurojust can recommend to national authorities to take certain steps, such as to initiate and/or co-ordinate investigations or to set up investigation teams, it has no authority to launch or carry out investigations itself. It works alongside the EJN (see below).

Members

Eurojust is composed of 27 National Members, one from each EU member state.

8.4.4 European Judicial Network

The European Judicial Network (EJN) is a network of national contact points for the facilitation of judicial cooperation in criminal matters between the members States of the European Union.

National contact points are designated by each member State among central authorities in charge of international judicial cooperation, judicial authorities and other competent authorities with specific responsibilities in the field of international judicial cooperation, both in general and for certain forms of serious crime, such as organized crime, corruption, drug trafficking or terrorism.

The Network is composed of more than 300 national contact points throughout the 27 member States, the European Commission and a Secretariat based in The Hague.

The contact points promote judicial cooperation between the competent local authorities for the purpose of, for example, the dispatch and implementation of requests for judicial assistance as well as the establishment of the most appropriate direct contacts. In addition, the contact points can help in resolving difficulties arising from the implementation of such requests. The contact points meet three times a year to gather knowledge on the different legal systems of European Union countries, to discuss difficulties in the provision of judicial assistance, and to make proposals for the resolution of conflicts.

The EJN is made up of:

- the central authorities in each member state responsible for international judicial cooperation;
- one or more contact points in each member state, each having an adequate knowledge of a language of the EU other than its own national language;
- the European Commission is also a contact point for those areas falling within its sphere of competence.

How does the EJN function?
The contact points:

- are active intermediaries with the tasks of facilitating judicial cooperation between the member states, particularly in actions to combat serious crime and establishing the appropriate direct contacts for mutual assistance requests. ;
- provide the necessary legal and practical information to the local judicial authorities in their own countries, to the contact points in other countries and to the local judicial authorities in the other countries to enable them to prepare an effective request for judicial cooperation or to improve judicial cooperation in general;

- improve coordination of judicial cooperation in cases where a series of requests from the local judicial authorities in a Member State necessitates coordinated action in another Member State.

The contact points must have permanent access to the following four types of information:

- full details of the contact points in each Member States;
- a simplified list of the judicial authorities and a directory of the local authorities in each Member State;
- concise legal and practical information concerning the judicial and procedural systems in the Member States;
- the texts of the relevant legal instruments.

The EJNs Secretariat forms part of Eurojust but functions as a separate unit and enjoys autonomy.

Members

Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and United Kingdom.

(Information about the laws and requirements of EU Member States, the types of evidence that can be obtained, and details of contact points can be found at the European Judicial Network website: www.ejn-crimjust.europa.eu. Some states also have their own websites.)

The relationship between Eurojust, the EJN and Liaison Magistrates

The relationship between the EJN, Eurojust and the liaison magistrates set up in the Joint Action of 22 April 1996 is natural and complementary as regards facilitating judicial cooperation in cross-border cases. The EJN is a decentralised network of contact points which advise and assist judicial authorities in Member States when judicial cooperation is necessary. Eurojust is a central unit with wide possibilities for coordination in cross-border cases. Their relations are based on consultation and complementarity to avoid duplication of efforts. Seconded liaison magistrates in Member States also encourage judicial cooperation by exchanging legal information to promote mutual understanding. Eurojust may, on a case-by-case basis cooperate with liaison magistrates that, at the same time, can be appointed as contact points of the EJN.

8.4.5 European Judicial Network in Civil and Commercial Matters

There is a European Judicial Network (EJN) for Civil and Commercial Matters website where a large quantity of information about the Member States, Community law, European law and various aspects of civil and commercial law can be found.
Website: http://ec.europa.eu/civiljustice/

8.4.6 The Competent National Authorities (CNAs) on-line Directory

The on line Directory of Competent National Authorities allows easy access to the contact information of competent national authorities designated under the 1988 Drugs Convention and the United Nations Convention against Transnational Organised Crime and the Protocols thereto.

The Directory contains the contact information of over 600 CNA's authorised to receive, respond to and process requests for:

- Extradition
- Transfer of Sentenced Persons
- Mutual Legal Assistance in Criminal Matters
- Illegal Traffic of Narcotics by Sea
- Smuggling of Migrants by Sea
- Trafficking of Firearms

With the view to facilitate communication and problem solving among competent authorities at the inter-regional level, the Directory contains essential information on:

- State membership in existing regional networks
- Legal and procedural requirements for granting of requests
- Use of the Organised Crime Convention as the legal basis for requests
- Links to national laws and websites
- Indication of requests that can be made through Interpol

The on line directory is available to competent authorities and government agencies with a user account. Account members also receive the latest publication of the Directory twice a year and can download the directory in .pdf and .rtf formats.

The online Directory provides access to the contact information of competent national authorities designated under the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and the United Nations Convention against Transnational Organised Crime and the Protocols Thereto.

With the view to facilitating communication and problem-solving among competent authorities at the interregional level, the Directory contains essential information on:

- State membership in existing international cooperation networks
- Legal and procedural requirements for granting of requests
- Use of the Organised Crime Convention as the legal basis for requests
- Links to national laws and websites
- Indication of requests that can be made through the International Criminal Police Organization (INTERPOL)

Members

All State parties to the Conventions can access the Directory, which is password protected

8.4.7 Commonwealth Network of Contact Persons (CNCP)

The purpose of the Commonwealth Network of Contact Persons is to facilitate international cooperation in criminal cases between Commonwealth member states and between those sates and non-Commonwealth countries, including on mutual legal assistance and extradition, and to provide relevant legal and practical information.

The Network comprises at least one contact person from each of the jurisdictions of the Commonwealth.

Members
Antigua and Barbuda, Australia, Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei Darussalam, Cameroon, Canada, Cyprus, Dominica, Fiji, Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Mozambique, Namibia, Nauru, New Zealand, Nigeria, Pakistan, Papua New Guinea, Samoa, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Swaziland, Tonga, Trinidad and Tobago, Tuvalu, Uganda, United Kingdom, United Republic of Tanzania, Vanuatu and Zambia.

8.4.8 The Judicial Regional Platforms of Sahel and Indian Ocean Commission Countries

Judicial Regional Platforms have been established by UNODC's Terrorism Prevention Branch and Organised Crime and Illicit Trafficking Branch to strengthen international cooperation in criminal matters in the regions of the Sahel and the Indian Ocean. Their main focus is to prevent and combat forms of serious crime, such as organized crime, corruption, drug trafficking or terrorism.

The Platforms are international cooperation networks of focal points, who facilitate extradition and mutual legal assistance in criminal matters procedures with the Member States of their Platforms. They also identify technical assistance needs for strengthening the judicial cooperation among them and sensitize the national stakeholders of the penal chain on the role and mechanisms of the Platforms. The national focal points meet, a least, once a year.

Judicial Regional Platform of the Indian Ocean Commission (IOC) countries: Comoros, France (Réunion), Madagascar, Mauritius and Seychelles
Judicial Regional Platform of Sahel states: Burkina Faso, Mali, Mauritania, and Niger,

(http://www.unodc.org/documents/treaties/organized_crime/internationalcooperation/Focal_points_IOC.pdf)

8.4.9 Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition of the Organization of American States

The Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition has been under development since 2000, when the Third Meeting of the Ministers of Justice or of Ministers or Attorney Generals of the Americas decided to increase and improve the exchange of information among member States of the Organization of American States in the area of mutual assistance in criminal matters

The Network has three components: a public website, a private website and a secure electronic communication system.

The public component of the Network provides legal information related to mutual assistance and extradition for the 34 States members of the Organization of American States. The private component of the Network contains information for individuals who are directly involved in legal cooperation in criminal matters. The private site includes information on meetings, contact points in other countries, a glossary of terms and training on the secure electronic communication system.

The purpose of the secure electronic communication system is to facilitate the exchange of information between central authorities who deal with issues of mutual assistance in criminal matters and extradition. This system not only provides secure instant e-mail service to central authorities, it also provides a space for virtual meetings and the exchange of pertinent documents.

Members
Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia (Plurinational State of), Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States, Uruguay and Venezuela (Bolivarian Republic of).

8.4.10 Ibero-American Legal Assistance Network (IberRed)

The Ibero-American Legal Assistance Network (IberRed) is a structure formed by contact points from the Ministries of Justice and Central Authorities, Prosecutors and Public Prosecutors, and judicial branches of the 23 states comprising the Latin American Community of Nations, aimed at optimizing instruments for civil and criminal judicial assistance and strengthening cooperation between countries.

Members
Argentina, Bolivia (Plurinational State of), Brazil, Colombia, Costa Rica, Cuba, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua,

Panama, Paraguay, Peru, Portugal, Puerto Rico, Spain, Uruguay and Venezuela (Bolivarian Republic of).

8.4.11 StAR Interpol Focal Point Contact List

To assist developed and developing states in their efforts to recover stolen assets, the StAR Initiative and INTERPOL are working together and have established a 24/7 Focal Point Contact List of national officials who could respond to emergency requests for international assistance. This is the first of its kind, worldwide list of national officials who are available 24 hours a day, seven days a week, to help states with stolen asset cases, especially those involving politically exposed persons, and bribery of public officials.

8.5 Should MLA be sought or should proceedings be brought in another jurisdiction?

It may sometimes be the case that consultation between states should focus on where the case should be heard, rather than the provision of MLA. It might be that the would-be requesting state would be better to provide its evidence to the requested state for proceedings to be initiated there. There might even be existing, related proceedings in the requested state. There has always been a great deal of uncertainty once the issue becomes one of determining which is the best or most effective jurisdiction within which to undertake proceedings against criminal offences with transnational dimensions.

In doing so, a list of priorities may need to be established. The starting point is likely to be that the state in which the act was committed should have priority to prosecute the offender. Other criteria, it might be argued, should be subordinate to this principle. However, this assumption is often overturned in transnational vases once other considerations are taken into account.

States should try to make decisions at an early stage and may wish to ask when and how the issue of jurisdiction should be considered, as well as which authorities will be responsible for consultations and agreement. The issue of timing may also be relevant, as the question is raised whether the decision should be made at the beginning of investigation or after the nature of the case has been ascertained.

To facilitate decisions on case transfer, states should formulate a practical set of criteria which may assist in resolving such complex jurisdictional issues. For instance, the types of questions that states will be likely to ask will include:

- Where was the offence committed and where was the offender arrested?
- Where are the most witnesses or most important evidence or victims of the crime concerned located?
- Which jurisdiction has the best/most effective laws?
- Which jurisdiction has the best confiscation laws?
- In which jurisdiction will there be less delay?
- Which jurisdiction provides the best security and custody assurances?

- Which jurisdiction can best deal with sensitive disclosure issues?
- Which jurisdiction can bear the costs of the proceedings?
- In which jurisdiction had the crime substantial effects?
- Where are most of any potentially recoverable assets located?
- Which state has the most developed asset-recovery mechanisms?
- Has the state concluded agreements or arrangements on transfer of criminal proceedings?
- Has the state developed policy and practical criteria for decisions on transferring or accepting criminal proceedings?
- Does that policy paper lay out the judicial, operational and sentencing implications of decision-making on these issues?
- Does the policy paper address the implications of decision-making in relation to the proceeds of crime?
- Has the state identified and mandated an authority to take lead responsibility for consultations and decision-making on related issues?

9. EXAMPLES OF LETTERS OF REQUEST

Possible templates of Letters of Request are set out below and may be of assistance to practitioners. It must be borne in mind that these are provided for guidance only and the format and content of the request must comply with the requirements of the national law of the requested state.

9.1 EXAMPLE 1

The Competent Judicial Authorities
of the Republic of Concordia

Dear Sirs

Letter of Request: John Smith

I have the honour to request your assistance under the provisions of the IGAD Convention on Mutual Legal Assistance in obtaining certain information, statements and documents in relation to a criminal investigation being conducted by officers of the Ruretanian Police Service in Capitala, Ruretania.

The Ruretanian Prosecution of Offences Act 2002 states that the Director of Public Prosecutions has the duty to take over the conduct of criminal proceedings (other than certain proceedings relating to relatively minor offences) instituted on behalf of a police force. The Director is head of The Public Prosecution Service of Ruretania. As a Public Prosecutor designated by him I have his powers to conduct proceedings in this case and I am designated as a Judicial Authority for the purposes of Article 6(1) of the Convention. Accordingly, I am empowered to issue this letter.

Criminal proceedings have been instituted against:
Name: ______________
Address: ______________
____
____
Ruretania
Date of Birth: 11 February 1964
Nationality: Concordian

He has been charged with murder. His case is listed at ______________ Capitala High Court on 1 April 2010 for a directions hearing. The trial of the issue will take place at a later date. The Court has withheld bail.

Murder is an offence contrary to common law and is committed where a person of sound mind and discretion unlawfully kills another with intent to kill or to cause grievous bodily harm. Murder carries a penalty on conviction after trial on indictment of imprisonment for life.

Summary of Facts

On 10 April 2008 the ______________ Fire Service attended a house fire at ______________, where they found the partially burnt body of a man, ______________. Post mortem forensic examination revealed the cause of death as multiple blows to the head using a blunt instrument, possibly a bottle.
______________ was an acquaintance of the deceased. He denies being responsible for his murder, but accepts he was in the house with him during the hours before his death.
Extensive forensic scientific investigations have been undertaken. Early results show that Mr Smith was at the house at the time the body and house were set on fire.
During the course of their investigations the police spoke to a person who claimed to have seen ______________ buying a bottle of vodka at a shop in Main Street an hour before the deceased is believed to have died. The shop is called ______________.
Police enquiries have established that if ______________ did go to the shop at that time he would have been served by a shop assistant called Miss ______________. She is a Concordian national, who returned home to Concordia on 12 April 2008. Miss ______________ is not suspected of being involved in the murder in any way.
The police would like to interview Miss ______________ to establish whether she ____.
An enquiry through Mr ______________ of the ______________ Department of the Concordia Police have established that she is willing to make a statement and will, if required, travel to Ruretania to see if she can identify ______________ at an identification parade.

Enquiries to be made

To visit
Miss ______________ of
____
____
Concordia

To interview her and take a witness statement in writing concerning:
(a) ____
(b) ____

Assistance Required

That such other enquiries are made, persons interviewed and exhibits seized as appear to be necessary in the course of the investigation.

It is requested that the above enquiries are made and that Detective Inspector ______________ is permitted to be present when they are made. It is respectfully requested that he attend as he has a full and detailed knowledge of this investigation. His telephone

number is +444________. His fax number is +444 ________. His address is Major Incident Room, ____________________ Ruretania.
His e-mail address is ________________.

It is requested that the witness statement be taken in writing, dated and headed by the following declaration: "This statement consisting of ____ pages is true to the best of my knowledge and belief." The number of pages should be filled in the space once the statement has been written and the witness should sign the statement beside the declaration, on every page and at the end. Please date the statement. It is requested that the witness' address, telephone number and date of birth be written on the back of the first page of the statement.

If documentation is obtained from the witness, the witness should produce each document as an exhibit in her statement. In order to do this the statement should describe the document and give it an exhibit number. The exhibit number should consist of the witness' initials and a consecutive number. For example, the first document produced by the witness will have the exhibit number JAS1, the second will be JAS2 and so on.

That an indication be obtained of the preparedness of any witness to travel to Ruretania to give evidence in person.

That the originals of any witness statements made and the originals or certified copies of the documents or other items secured during the course of the enquiry be handed to Detective Inspector _______________ and permission given for their removal to Ruretania for use at the trial.

That any information held on computer in any form be preserved and secured from unauthorised interference and made available in due course to the investigating officers and The Ruretanian Public Prosecution Service for use at any subsequent trial.

I confirm that the enquiries requested to be made in this letter could be made by the Ruretania police under powers currently available to them if the enquiries were made in England rather than the Concordia.
I thank you in advance for your valuable co-operation concerning this case.

Yours faithfully

____
Public Prosecutor

9.2 EXAMPLE 2

The Competent Judicial Authorities
Of the Republic of Concordia

Dear Sirs

LETTER OF REQUEST:

I have the honour to request your assistance under the provisions of the IGAD Convention on Mutual Legal Assistance and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)in obtaining certain information, statements and documents in relation to a criminal investigation being conducted by officers of the Ruretanian Police Service in Capitala, Ruretania.

The Ruretanian Prosecution of Offences Act 2002 states that the Director of Public Prosecutions has the duty to take over the conduct of criminal proceedings (other than certain proceedings relating to relatively minor offences) instituted on behalf of a police force. The Director is head of The Public Prosecution Service of Ruretania. As a Public Prosecutor designated by him I have his powers to conduct proceedings in this case and I am designated as a Judicial Authority for the purposes of Article 6(1) of the Convention. Accordingly, I am empowered to issue this letter.

A criminal prosecution has been commenced against:-

Name:
Address:
Nationality:
Date and Place of Birth:

The purposes of this request are:

1. To obtain evidence for the Crown Court to take into account when considering the making of a confiscation order under the provisions of the Drug Trafficking Act 1994 against [insert name];
2. To use evidence obtained in (1) in any proceedings in Ruretania ancillary to the criminal proceedings; for example, if the evidence obtained in (1) above reveals any breaches of the restraint order, to utilise the evidence obtained in (1) above to institute proceedings against [Name] in the High Court for contempt of the restraint order;
3. To use evidence obtained in (1) in any proceedings in Ruretania ancillary to the confiscation proceedings, namely for the High Court to take into account when considering an application by the Public Prosecution Service to appoint a receiver to

enforce any confiscation order under the provisions of the Ruretanian Drug Trafficking Act 2004 made against [Name]; and

4. To freeze assets in the jurisdiction of the Kingdom of the Netherlands so that they are available to satisfy any confiscation order that may be made under the provisions of the Drug Trafficking Act 1994 against [Name].

The location of the High Court of Ruretania exercising jurisdiction in this case is sitting at Capitala. On the [Date] [Name] was remanded in custody for a trial on indictment of one count of possessing 2 kilograms of cocaine with intent to supply it to another, which is a criminal offence contrary to section 5(3) of the Misuse of Drugs Act 2001.

By section 5(3) of the Misuse of Drugs Act 2001 it is an offence for a person to have in his possession a controlled drug, whether lawfully or not, with intent to supply it to another. Cocaine is a controlled drug by virtue of Schedule 2 of the Misuse of Drugs Act 2001. The maximum sentence upon conviction on indictment is life imprisonment or an unlimited fine or both.
The relevant statutory provisions are annexed to this letter as Annex 'A'.

Possession of cocaine with intent to supply it to another is a drug trafficking offence. Once a defendant is convicted on indictment in the High Court of a drug trafficking offence, a hearing must be held by the High Court to determine:-

1. whether or not that defendant has benefited from drug trafficking;
2. if the Crown Court holds that the defendant has so benefited, the Crown Court must assess the amount of the benefit; and
3. the amount of realisable property held by the defendant

pursuant to section 2 of the Drug Trafficking Act 2004.

A confiscation order is made in a sum of money up to the value of the property obtained as a result of or in connection with a drug trafficking offence. Its purpose is to recover from the convicted defendant the value of the property obtained as a result of his drug trafficking.

A defendant benefits from drug trafficking if he has at any time received any payment or other reward in connection with drug trafficking carried on by him or another person. It is not confined to the benefit received by the defendant from the offence of which he was convicted. The High Court must assume that:-

1. All property in which the defendant has an interest was received as a payment or reward in connection with drug trafficking; and
2. All transfers to the defendant at any time since the beginning of the period of 6 years ending when the proceedings were commenced against him at any time since the beginning of the period and were received as a payment or reward in connection with drug trafficking; and

3. All expenditure incurred by the defendant over that same period (6 years prior to when the proceedings were commenced against him) was met out of payments or rewards received in connection with drug trafficking.

Once the High Court has decided upon the amount of benefit from drug trafficking (including the making of the assumptions above), it must go on to consider the amount of realisable property held by the defendant which may be available to satisfy the confiscation order.
Realisable property is widely defined. It includes any property in which the defendant holds an interest (interest includes right), and any property that has been given by the defendant to another for little or no consideration. The High Court, in coming to its decision, must take account of any property held by the defendant wherever it is situated in the world.

The amount of realisable property is the total value of the defendant's assets together with the value of any "gifts" (transfers made by the defendant at an undervalue to others or for no consideration). The value of legitimately acquired assets are calculated as part of the amount that might be realised. There is no requirement on the prosecution to prove that the defendant's assets are acquired from drug trafficking. The defendant bears the burden of showing that his realisable property is less than the proceeds of drug trafficking.

If the defendant satisfies the High Court that the amount of his realisable property is less than the amount of the benefit obtained from drug trafficking, the High Court must make a confiscation order in the lower amount. If the defendant is unable to satisfy the Crown Court, the Crown Court must make a confiscation order in the amount of the benefit from drug trafficking.

The High Court (Civil Division) may make a restraint order prohibiting any person from dealing with any realisable property where proceedings have been instituted in Ruretania against a defendant for a drug trafficking offence. The purpose of the restraint order is to prohibit the defendant dealing with realisable property so that the realisable property can be utilised for the satisfaction of a confiscation order.
The relevant statutory provisions are annexed to this letter as Annex 'B'.

On the [Date] the High Court (Civil Division) issued a Restraint Order against [Name] prohibiting him from dealing with his assets. The Restraint Order and the statement of [Name of Officer] are annexed to this letter as Annex 'C'.

Summary of facts

On the 26 th January 2008, officers of the Ruretanian Police Service monitoring [Name] activities saw his ______ motor vehicle, registration number in the car park of------ .

He was seen to enter a nearby house and shortly afterwards return to his vehicle. As he began to exit the car park, he was approached by officers of the____________, and his vehicle searched. Inside was found a plastic bag containing two packages, each one kilogram in weight, which appeared to be cocaine.

[Name] was arrested and taken to __________ Police Station where he was interviewed by police officers.

He denied the cocaine belonged to him or that he had it in his possession with intent to supply it to another. His explanation was that he had found the carrier bag containing the two packages in the area of a Highway Services Station whilst travelling from Capitala to see a friend in the Ruretanian Highlands. He did not know or suspect what the packages contained, but stated that he would have handed them in to the police.

Subsequent forensic, scientific examination of the packages showed that they contained two kilograms of cocaine.
[Name] stated that he owns the following vehicles in the Republic of Concordia :
1. A ______ motor vehicle, registration number ______
2. A ______ motor vehicle, registration number ______
3. A ______ motor vehicle, registration number ______

[Name] further stated that the above vehicles were purchased by him but registered to, [Name and address] in order to avoid being confiscated in the Republic of Concordia as a result of a drugs trafficking conviction there.

[Name] had in his possession documents relating to vehicle insurance in respect of a _______ motor vehicle, index number _______. The documents show the client number as _____, with the owner being [Name and address].

Enquiries by the police have revealed the following:
1. [Name] has a medical insurance policy with a company known as [Name], the address of which is unknown, account number _________.
2. [Name] has vehicle insurance with a company known as _____ of _______, in respect of the following vehicles:
(a) ______ motor vehicle, index number _______, policy number _______,
(b) _______ motor vehicle, index number ______, policy number _______, and
(c) _______ motor vehicle, index number ________ policy number ________.
3. The ______ motor vehicle, index number _______ was purchased from a company known as __________________________.
4. [Name] has the following alternative addresses:
(a) __________
(b) __________
(c) __________
5. [Name] is involved in the following companies:
(a) ___________ Company, title number _________
(b) ___________ Import Export Company, title number ___________
(c) _____________ Company, title number _____________
(d) _____________ Company, title number _____________
6. [Name] holds a bank account numbered __________ with the __________ Bank, Republic of Concordia____________________, in the name of ________________.
7. [Name] holds a ________ account number _______, pass number _______ in the name of ____________________ at ----------Bank, Republic of Concordia.

8. [Name] holds or has access to a ___________ account number ___________
9. [Name] owns a life assurance policy with a company known as _______________, in the name of _______________. Payments to this policy are made via his _______Bank account number ___________.

Enquiries to be made

1. To visit the _________ Bank at, ___________________ and take a statement in writing from the manager or other duly authorised officer of the Bank relating to account number _____________ held in the name of ___________________.
The written statement is requested to deal with the following matters in respect of that account:-
(1) When the account was opened and by whom together with details of the current signatories;
(2) The amounts of and the dates of all deposits made in to the account and withdrawals made out of the account;
(3) Information about the conduct of the account, including details of inter account transfers, telegraphic transfers, standing orders, direct debits, paid cheques and vouchers (both credit and debit), and manager's notes;
(4) Details of any documents, files, accounts or other records used in ordinary business, including bonds, securities or deeds, held by the bank or on behalf of [Name];
(5) Examination of any safety deposit box or boxes or other material held by the bank on behalf of [Name];
(6) Details of any correspondence relating to the account; and
(7) Exhibit copies of all relevant documents including:-
(a) Bank statements;
(b) Documents attributable to the account; or
(c) Documents held by the bank on behalf of ______
which would be beneficial to the Ruretanian authorities in assessing benefit or establishing assets. Copies of the documents are requested to be supplied in a form in which they can be easily and clearly examined, whether those documents are in written form, kept on microfilm, magnetic tape or any other form of mechanical or electronic data retrieval mechanism.

2. Should the enquiry as set out in paragraph 1 above reveal the details of any joint account holders in the Republic of Concordia, then assistance in the enquiry is sought in respect of each joint account holder as follows:-
(1) to visit that joint account holder;
(2) to interview that joint account holder; and
(3) to take a statement in writing from that joint account holder regarding the conduct of the joint account.

3. To visit the Head Office of the ________ Bank and take a statement in writing from the manager or other duly authorised officer of the Bank relating to account number ________, Pass Number ______ held in the name of ______________. The written statement is requested to deal with the following matters in respect of that account:-

(1) when the account was opened and by whom together with details of the current signatories;
(2) the amounts of and the dates of all deposits made in to the account and withdrawals made out of the account;
(3) information about the conduct of the account, including details of inter account transfers, telegraphic transfers, standing orders, direct debits, paid cheques and vouchers (both credit and debit), and manager's notes;
(4) details of any documents, files, accounts or other records used in ordinary business, including bonds, securities or deeds, held by the bank or on behalf of [Name];
(5) examination of any safety deposit box or boxes or other material held by the bank on behalf of [Name];
(6) details of any correspondence relating to the account; and
(7) exhibit copies of all relevant documents including:-
(a) bank statements;
(b) documents attributable to the account; or
(c) documents held by the bank on behalf of [Name]
which would be beneficial to the Ruretanian authorities in assessing benefit or establishing assets. Copies of the documents are requested to be supplied in a form in which they can be easily and clearly examined, whether those documents are in written form, kept on microfilm, magnetic tape or any other form of mechanical or electronic data retrieval mechanism.

4. Should the enquiry as set out in paragraph 3 above reveal the details of any joint account holders in the Republic of Concordia, then assistance in the enquiry is sought in respect of each joint account holder as follows:-
(1) to visit that joint account holder;
(2) to interview that joint account holder; and
(3) take a statement in writing from that joint account holder regarding the conduct of the joint account.

5. To visit the Land Registry of the , and take a statement in writing from the Registrar or other duly authorised official as to the ownership of the following properties:
(1)
(2)
(3)
(4)
The written statement is requested to deal with the following matters in respect of the properties:-
(1) the date that the property was registered and by whom the property was registered;
(2) the amount for which the property was purchased;
(3) Any interest [Name] has in the property; and
(4) exhibit copies of all relevant documents.

6. Should the enquiry at the Land Registry of the Republic of Concordia, reveal the details of any joint owners of the property in the Republic of Concordia then assistance in the enquiry is sought in respect of each joint owner as follows:-

(1) to visit that joint owner;
(2) to interview that joint owner; and
(3) take a statement in writing from that joint owner regarding:
(a) the purchase of the jointly owned property;
(b) his or her association with [Name]

7. Should the enquiries under paragraphs 5 and 6 above at the Land Registry of the Republic of Concordia reveal any of the properties in question being owned wholly by a third party or parties in the Republic of Concordia, then assistance is sought in respect of each owner as follows:-
(1) to visit that third party or those parties;
(2) to interview that third party or those third parties; and
(3) take a statement in writing from that third party or those third parties regarding:
(a) his or her association with [Name];
(b) the circumstances under which [Name] is, or was, connected with the property or properties; and
(c) details of any lease or rental agreements in respect of those properties relating to [Name] or one of the following companies:-
(i)
(ii)
(iii)

8. To ascertain the address of the company known as ________. Once that is done to visit the company and take a statement in writing from the manager or other duly authorised officer of the company relating to insurance policy number __________. A written statement is requested to deal with the following matters in respect of that account:-
(1) when the policy was started and by whom together with details of the current beneficiaries;
(2) the terms and conditions of the insurance policy;
(3) the amounts of and the dates of all deposits made in to the policy;
(4) details of any correspondence relating to the policy; and
(5) exhibit copies of all relevant documents including:-
(a) bank statements; or
(b) documents attributable to the policy.
which would be beneficial to the Ruretanian authorities in assessing benefit or establishing assets. Copies of the documents are requested to be supplied in a form in which they can be easily and clearly examined, whether those documents are in written form, kept on microfilm, magnetic tape or any other form of mechanical or electronic data retrieval mechanism.

9. To visit ______ of [address] and take a statement in writing from the manager or other duly authorised officer of the company relating to the life assurance policy taken out by ________________ in the name of ________________________. A written statement is requested to deal with the following matters in respect of that policy:-
(1) when the policy was started and by whom together with details of the current beneficiaries;
(2) the terms and conditions of the insurance policy;

(3) the amounts of and the dates of all deposits made in to the policy;
(4) details of any correspondence relating to the policy; and
(5) exhibit copies of all relevant documents including:-
(a) bank statements; or
(b) documents attributable to the policy.
which would be beneficial to the Ruretanian authorities in assessing benefit or establishing assets. Copies of the documents are requested to be supplied in a form in which they can be easily and clearly examined, whether those documents are in written form, kept on microfilm, magnetic tape or any other form of mechanical or electronic data retrieval mechanism.

10. To visit the Registrar of Companies in the Republic of Concordia, and take a statement in writing from a duly authorised officer of the Registrar of Companies relating to each of the following companies:
(1) _______________
(2) _______________
(3) etc
The written statement is requested to deal with the following matters in respect of each company:-
(1) when the company was incorporated and by whom;
(2) the shareholders of the companies;
(3) the directors of the company;
(4) the purpose for which the company was formed;
(5) any accounts submitted in respect of the company;
(6) details of any correspondence;
(7) exhibit copies of all relevant documents including:-
(a) the memorandum of association;
(b) articles of association;
(c) accounts submitted by the company; and
(d) documents attributable to the company
which would be beneficial to the Ruretanian authorities in assessing benefit or establishing assets. Copies of the documents are requested to be supplied in a form in which they can be easily and clearly examined, whether those documents are in written form, kept on microfilm, magnetic tape or any other form of mechanical or electronic data retrieval mechanism.

Should the enquiry at the Registrar of Companies in the Republic of Concordia, reveal the details of any shareholders and directors and officers located in the Republic of Concordia then assistance in the enquiry is sought in respect of each shareholder and director and officer of the company as follows:-

(1) to visit that shareholder or director or officer of the company;
(2) to interview that shareholder or director or officer of the company; and
(3) take a statement in writing from that shareholder or director or officer of the company regarding the conduct of the company and their association with ______.

Should the enquiry at the Registrar of Companies in the Netherlands reveal the details of any other bank accounts held in the Republic of Concordia by [Name] or on his behalf then assistance in the enquiry is sought as set out in paragraphs 1 and 2 above respectively in relation to those other accounts.

11. To visit the Vehicle Licensing Authority of the Republic of Concordia and to take a statement in writing from a duly authorised officer of the said Authority relating to the following:-
(1) The ownership of the ______ motor vehicle, index number ______;
(2) etc
(3) etc

12. To visit ________________ of __________________, to interview her and to take a statement in writing from her regarding the following:

(1) The circumstances of the purchase and her ownership of the ______motor vehicle, registration number _______________;
(2) The circumstances of the purchase and her ownership of the ______motor vehicle, registration number ____________;
(3) etc.

13. To visit the Taxation Office of the Republic of Concordia and take a statement in writing from the manager or other duly authorised officer of the Taxation Office relating to the tax accounts of the companies mentioned in paragraph ___ above. The written statement is requested to deal with the following matters in respect of those companies for the period 25 th of January 1994 to the 26 th January 2000:
(1) the declared income and expenditure of the individual companies;
(2) the declared profits of the individual companies;
(3) the declared earnings of the directors; and
(4) to exhibit copies of all relevant documents.
which would be beneficial to the Ruretanian authorities in assessing benefit or establishing assets. Copies of the documents are requested to be supplied in a form in which they can be easily and clearly examined, whether those documents are in written form, kept on microfilm, magnetic tape or any other form of mechanical or electronic data retrieval mechanism.

<u>Documentary evidence</u>

There are a number of statutory provisions in the law of Ruretania which govern the admissibility into evidence of business records.
Section 24 of the Criminal Justice Act 2006 provides that a statement (which is defined for these purposes as "any representation of fact") in a documents shall be admissible as evidence of any fact of which direct oral evidence would be admissible if the conditions specified in that section are satisfied. These conditions relate to the manner in which the document is created and the sources of information from which it is compiled.

Section 25 of the Criminal Justice Act 2006 preserves a discretion in the trial judge to regulate the admissibility of such evidence. This section specifies the principles to be followed in exercising that discretion. Further, Section 69 and Schedule 3, Part 2 of the Police and Criminal Evidence Act 1997 provide that where a statement which is sought to put in evidence is contained in a document produced by a computer the provisions of Section 69 must be satisfied.

It is requested that the statements referred to above include evidence that will enable the court to consider the applicability of Sections 24 and 25 of the Criminal Justice Act 2006. It is further requested that appropriate evidence is included to deal with the provisions of Section 69 of the Police and Criminal Evidence Act 1997.
Copies of the said provisions and an example of a Section 69 certificate are annexed to this letter as Annex 'D' .

Assistance required

1. **I**t is requested that any and all money, property and bank accounts held legally and beneficially by [Name] be frozen. If the competent authorities of the Republic of Concordia sought such assistance from the Ruretanian authorities I can confirm that such assistance could be granted provided that proceedings had been instituted in the Republic of Concordia.
2. I confirm that a request will be submitted for registration and enforcement of the confiscation order on behalf of the Government of Ruretania as soon as practicable after the confiscation order has been made. I further confirm that the proceedings in this matter have not concluded.
3. Should any of the enquiries carried out reveal the location and identity of any property in the Republic of Concordia held by or on behalf of [Name], it is requested that such property be searched and that any items or material relevant to the enquiry be secured.
4. That Special Court Orders are obtained in accordance with the laws of the Republic of Concordia in order to carry out the enquiries to be made listed above.
5. That such other enquiries are made, persons interviewed and documents secured as appears to be necessary in the course of the investigation to trace any property held by or on behalf of [Name].
6. That an indication be obtained whether any witness would be prepared to travel to the Ruretania to give evidence in person.
7. It is requested that the above enquiries are made and that Detective Constable _________, a Police Officer and _______________, a Financial Investigator, both of the Ruretanian Police Service, [Address, telephone and fax number] be permitted to travel to the Republic of Concordia to be present when the enquiries mentioned above are made and that Detective Constable ______________ be allowed to take such statements and copies of documents as are relevant to this enquiry.

8. That signed and certified copies of any statements made and any documents or other items secured during the course of the enquiries be handed to Detective Constable ______________ and permission given for their removal to Ruretania for use at:-

(a) at any confiscation hearing for the purpose of seeking confiscation orders against [Name];
(b) at any proceedings in Ruretania ancillary to the criminal proceedings, for example, if the statements and documents reveal a breach of the restraint order, in contempt proceedings to be instituted in the High Court against [Name];
(c) at any proceedings in Ruretania ancillary to the confiscation proceedings, namely for the High Court to take into account when considering an application by The Public Prosecution Service to appoint a receiver to enforce any confiscation order under the provisions of the Drug Trafficking Act 2004 made against [Name].

I thank you in advance for your co-operation concerning this case.

Yours faithfully

Public Prosecutor

9.3 EXAMPLE 3

Dear Sirs

Letter of Request: John Smith

I have the honour to request your assistance under the provisions of the European Convention on Mutual Assistance in Criminal Matters (1959) in obtaining certain information, statements and documents in relation to a criminal investigation being conducted by officers of the Metropolitan Police Service in London.

The Prosecution of Offences Act 1985 states that the Director of Public Prosecutions has the duty to take over the conduct of criminal proceedings (other than certain proceedings relating to relatively minor offences) instituted on behalf of a police force. The Director is head of The Crown Prosecution Service of England and Wales. As a Crown Prosecutor designated by him I have his powers to conduct proceedings in this case and I am designated as a Judicial Authority under Article 24 of the Convention. Accordingly, I am empowered to issue this letter.

Criminal proceedings have been instituted against:
Name: ______________
Address: ______________
____
____
England
Date of Birth: 11 February 1964
Nationality: Russian

He has been charged with murder. His case is listed at ______________ Crown Court on 1 February 2003 for a directions hearing. The trial of the issue will take place at a later date. The Court has withheld bail.

Murder is an offence contrary to common law and is committed where a person of sound mind and discretion unlawfully kills another with intent to kill or to cause grievous bodily harm. Murder carries a penalty on conviction after trial on indictment of imprisonment for life.

Summary of facts

On 10 April 2002 the ______________ Fire Service attended a house fire at ______________, where they found the partially burnt body of a man, ______________. Post mortem forensic examination revealed the cause of death as multiple blows to the head using a blunt instrument, possibly a bottle.
______________was an acquaintance of the deceased. He denies being responsible for his murder, but accepts he was in the house with him during the hours before his death.

Extensive forensic scientific investigations have been undertaken. Early results show that Mr Smith was at the house at the time the body and house were set on fire.
During the course of their investigations the police spoke to a person who claimed to have seen ______________ buying a bottle of vodka at a shop in Fleet Street an hour before the deceased is believed to have died. The shop is called ______________.
Police enquiries have established that if ______________ did go to the shop at that time he would have been served by a shop assistant called Miss ______________. She is a Russian national, who returned home to Moscow on 12 April 2002. Miss ______________ is not suspected of being involved in the murder in any way.
The police would like to interview Miss ______________ to establish whether she ____.
An enquiry through Mr ______________ of the ______________ Department of the Moscow Police have established that she is willing to make a statement and will, if required, travel to the United Kingdom to see if she can identify ______________ at an identification parade.

Enquiries to be made

1. 1. To visit
Miss ______________ of
____
____
Moscow
To interview her and take a witness statement in writing concerning:
(a) (a) ____
(b) (b) ____

Assistance Required

1. It is requested that the above enquiries are made and that Detective Inspector ______________ is permitted to be present when they are made. It is respectfully requested that he attend as he has a full and detailed knowledge of this investigation. His telephone number is +44 ________. His fax number is +44 ________. His address is Major Incident Room, ___________________ England.
His e-mail address is _______________.

2. That such other enquiries are made, persons interviewed and exhibits seized as appear to be necessary in the course of the investigation.

3. It is requested that the witness statement be taken in writing, dated and headed by the following declaration: “This statement consisting of ____ pages is true to the best of my knowledge and belief.” The number of pages should be filled in the space once the statement has been written and the witness should sign the statement beside the declaration, on every page and at the end. Please date the statement. It is requested that the witness' address, telephone number and date of birth be written on the back of the first page of the statement.

4. If documentation is obtained from the witness, the witness should produce each document as an exhibit in her statement. In order to do this the statement should describe the

document and give it an exhibit number. The exhibit number should consist of the witness' initials and a consecutive number. For example, the first document produced by the witness will have the exhibit number JAS1, the second will be JAS2 and so on.

5. That an indication be obtained of the preparedness of any witness to travel to England to give evidence in person.

6. That the originals of any witness statements made and the originals or certified copies of the documents or other items secured during the course of the enquiry be handed to Detective Inspector ______________ and permission given for their removal to England for use at the trial.

7. That any information held on computer in any form be preserved and secured from unauthorised interference and made available in due course to the investigating officers and The Crown Prosecution Service for use at any subsequent trial.

I confirm that the enquiries requested to be made in this letter could be made by the English police under powers currently available to them if the enquiries were made in England rather than the Russian Federation.

I thank you in advance for your valuable co-operation concerning this case.

Yours faithfully

____
Crown Prosecutor

9.4 EXAMPLE 4

The Competent Judicial Authorities
of the United States of America
Office of International Affairs
Washington
09 May 2001

Dear Sirs

Letter of Request:______________________

I have the honour to request your assistance under the provisions of the Treaty of Mutual Legal Assistance in Criminal Matters (1994) between the United States of America and the United Kingdom in relation to a criminal investigation being conducted by officers of the Metropolitan Police Service in London.

The Prosecution of Offences Act 1995 states that the Director of Public Prosecutions has the power to give, to such extent as he considers appropriate, advice to Police Forces in all matters relating to criminal offences. The Director is the head of The Crown Prosecution Service. As a Crown Prosecutor designated by him I have the power to conduct the proceedings in this case. Accordingly I am empowered to issue this letter.

An offence is under investigation in relation to:
Name:
Address:
Born:
Nationality:

Officers of the Metropolitan Police Service are investigating the background to the murder of _________________ (deceased) in London in June 1993. There are reasonable grounds to suspect that ____________________ was party to the conspiracy to murder.
Conspiracy to murder is an offence contrary to section 1(1) Criminal Law Act 1977. Under that section a conspiracy is committed if a person agrees with any other person, or persons, that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions will necessarily amount to or involve the commission of any offence by one or more of the parties to the agreement.

Murder is an offence contrary to common law and is committed where a person of sound mind and discretion unlawfully kills another with intent to kill or to cause grievous bodily harm.

Conspiracy to murder carries a maximum penalty upon conviction on indictment of imprisonment for life.

A copy of the relevant statutory provisions are annexed hereto.

<u>Summary of facts</u>
[SET OUT FACTS, RELATING THEM TO THE ENQUIRIES TO BE MADE]

ENQUIRIES TO BE MADE
1. To visit an appropriate official of:
Address: The county offices of the County of ___________
________________ State.
After obtaining any necessary court order or other authority:
To examine county records in relation to ________________________ documentation in relation to the original mortgage application for __________________________ and the subsequent redemption of that mortgage.
To obtain copies of all relevant documentation concerning the initial purchase of the property registered to ________________ and its subsequent sale to _____________ on ___________________.
To obtain all documentation in relation to the registered owners, any known beneficiaries or any persons with a legal interest in ______________________.
To take a statement in writing from an appropriate official producing all relevant documentation as exhibits.

2. To visit an appropriate official of:
Address: The _____________________ Bank
Address unknown, believed to be in ________________ State
After obtaining any necessary court order or other authority:
To obtain all documentation relating to the original mortgage application for ______________________and the subsequent redemption of that mortgage.
To take a statement in writing from an appropriate official producing all relevant documentation as exhibits.

3. To visit:
Name:
Date of birth:
Address:
To interview him and take a statement in writing in relation to (a)___________________________________, and (b)________________________ Could all relevant documentation please be obtained and produced as exhibits in the statement.

<u>Subjects for interview and statement</u>
[SET OUT QUESTIONS TO BE PUT TO WITNESS]

4. To visit:
Name:
Date of birth:
Address:

To interview her and take a statement in writing in relation to (a)_________________________________, and (b) _______________________. Could all relevant documentation please be obtained and produced as exhibits to the statement.

Subjects for interview and statement
[SET OUT QUESTIONS TO BE PUT TO WITNESS]

5. To visit ______________________or another appropriate official of:
Address: The Headquarters of American Express (AMEX)
World Financial Centre 380
200 Vesey Street
New York 10285
After obtaining any necessary court order or other authority:
To obtain documentation in relation to the US American Express card __________________________ with a registered billing address of __________________________.
To take a statement in writing producing relevant documentation and stating (a) whether ________________________ was using the card and remains the holder of the American Express card, and (b) whether _____________________has personally attended the bank in relation to the account, and methods of payments used. Please could any relevant documentation be produced as exhibits in the statement?

6. To visit:
Name:
Address:
Telephone:
To obtain all documentation in relation to her dealings with __________________ and in particular the sale of her London property ________________________.
To interview her and take a statement in writing stating (a) the nature of her relationship ___________________________, (b) her knowledge of the Swiss bank account in the name of _________________________and (c) the circumstances of the sale of ________________________. Please could any relevant documentation be produced as exhibits in the statement.

Subjects for interview and statement
[SET OUT QUESTIONS TO BE PUT TO WITNESS]

7. To visit:
Name:
Address:
Telephone:
To interview him, obtain documentation and take a statement in writing in relation to____. Please could any relevant documentation be produced as exhibits in the statement.

Subjects for interview and statement

[SET OUT QUESTIONS TO BE PUT TO WITNESS]

Assistance required

8. It is requested that the above enquiries are made and that Detective Sergeant ____________________ and Detective Constable ___________________ are permitted to be present when they are made. It is respectfully requested that both officers attend as they have a full and detailed knowledge of this complex murder investigation. It is respectfully suggested that they would be able to assist the U.S. authorities with any relevant background information. Their telephone number is +44 20 ____________. Their fax number is +44 20 _______________. Their address is ____. Their e-mail addresses are ____and ____

9. It is requested that each witness statement be taken in writing, dated and headed by the following declaration: "This statement consisting of ____ pages is true to the best of my knowledge and belief." The number of pages should be filled in the space once the statement has been written and witness should sign the statement beside the declaration, on every page and at the end. It is requested that the witness' address, telephone number and date of birth be written on the back of the first page of the statement.

10. Where documentation is obtained from a witness, the witness should produce each document as an exhibit in his/her statement. In order to do this the statement should describe the document and give it an exhibit number. The exhibit number should consist of the witness' initials and a consecutive number. For example, the first document produced by John Andrew Smith will have the exhibit number JAS1, the second will be JAS2 and so on.

11. Where it is requested that documentation be obtained from an official at a business, or organisation (as in enquiries 1, 2, 5 and 6) the official's statement should state his/her position in the organisation and produce the documents as set out above. In relation to such documents the witness should be asked to state whether the documents were written by him/her. If they were not written by him/her the witness should state how the documents were created and in particular:
(a) Were they created by a person in the course of a trade, business, profession or other occupation;
(b) Was the information contained in the documents supplied by a person (whether or not he was the person who made them) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with;
(c) If the information was not supplied directly, did each person through whom it was supplied receive it in the course of a trade, business, profession or other occupation.

The witness statement should therefore include the following words: "In order to carry out my duties I have access to all the [insert description of records e.g. County/bank] records both manual and computerised relating to [insert what records relate to e.g. set out address/account number]. The documents to which I refer are derived from and form part of the records relating to the business of [insert the business or organisation e.g. The County of

____________/_________________ Bank] and were compiled in the ordinary course of business from information recorded by persons who had, or may reasonably be supposed to have had, personal knowledge of the matter dealt with in the information they supplied. The person or persons who supplied the information recorded in the records cannot reasonably be expected to have any recollection of the matter dealt with in the information they supplied."

12. That such enquiries are made, persons interviewed and exhibits secured as appears to be necessary in the course of the investigation.

13. That an indication be obtained of the preparedness of any witness to travel to England to give evidence in person.

14. That the originals of any witness statements made and the originals or certified copies of the documents or other items secured during the course of the enquiry be handed to and permission given for their removal to England for use at the trial.

15. That any information held on computer in any form be preserved and secured from unauthorised interference and made available in due course to the investigating officers and The Crown Prosecution Service for use at any subsequent trial.

I confirm that the enquiries requested to be made in this letter could be made by the English police under powers currently available to them if the enquiries were made in England rather than the United States.

It is respectfully requested that both officers be permitted to travel as a matter of urgency in the event that _________________________ may return to the United Kingdom in June 2001. We have been in regular contact with the investigating officers detailed above and we are conscious of the limited timescales in which the police have to operate. In the event that arrests are made in June 2001 the enquiries, if they are to be made will need to be completed by the end of July 2001 if that is possible.

I thank you in advance for your valuable co-operation concerning this case.

Yours faithfully

____
Crown Prosecutor

9.5 EXAMPLE 5 (to be read with EXAMPLE 8)

Standards of Suspicion for Obtaining Evidence from Internet Service Providers in the United States

OBTAINING INTERNET/E-MAIL EVIDENCE FROM
U.S. INTERNET SERVICE PROVIDERS (18 U.S. Code §§ 2701 et seq.)

Type of evidence sought	Type of compulsory process required	Standard	Notice requirements
Unopened contents of e-mail messages 180 days old or less, plus any other information	Search warrant See § 2703 (a)	Probable cause ("pc"), same standard as for any U.S. search warrant	Not required if search warrant utilized

OBTAINING INTERNET/E-MAIL EVIDENCE FROM
U.S. INTERNET SERVICE PROVIDERS (18 U.S. Code §§ 2701 et seq.)

Type of evidence sought	Type of compulsory process required	Standard	Notice requirements
Any opened contents of e-mail messages of any age, or unopened contents more than 180 days old	Search warrant; administrative, grand jury or trial subpoena; or court order under 2703(d). see § 2703 (a) and (b)	For a warrant = pc. For a 2703(d) order = "specific and articulable facts showing reasonable grounds to believe the contents ., or the records or information sought are relevant and material to an ongoing criminal investigation."	Not required for a warrant. see § 2703 (b)(A). Prior notice from government to subscriber or customer for all other types. see § 2703 (b)(B). For possibility of delayed notification see § 2705.

OBTAINING INTERNET/E-MAIL EVIDENCE FROM
U.S. INTERNET SERVICE PROVIDERS (18 U.S. Code §§ 2701 et seq.)

Type of evidence sought	Type of compulsory process required	Standard	Notice requirements
Subscriber or customer information not including the contents of messages	Warrant or 2703(d) order. See §2703(c)(1)(B); or any type of subpoena. See §2703(c)(1)(C) which provides a specific list of types of information available pursuant to such a subpoena.	See above standards.	No notice to subscriber required. See §2703(c)(1)

OBTAINING INTERNET/E-MAIL EVIDENCE FROM
U.S. INTERNET SERVICE PROVIDERS (18 U.S. Code §§ 2701 et seq.)

Type of evidence sought	Type of compulsory process required	Standard	Notice requirements
Preservation of evidence	Upon request of a "government entity" for 90 days pending issuance of a court order or other process. see 2703(f)	Not applicable.	No notice required.

9.6 EXAMPLE 6

Dear Sirs,

LETTER OF REQUEST:

I have the honour to request your assistance under the provisions of the European Convention on Mutual Assistance in Criminal Matters (1959) in obtaining certain information, statements and documents in relation to a criminal investigation being conducted by officers of the National Crime Squad of England and Wales.

The Prosecution of Offences Act 1985 states that the Director of Public Prosecutions has the duty to take over the conduct of criminal proceedings (other than certain proceedings relating to relatively minor offences) instituted on behalf of a police force and to advise, to such extent as he considers appropriate, police forces on all matters relating to criminal offences. The Director is the head of The Crown Prosecution Service of England and Wales (The CPS). As a Crown Prosecutor designated by him I have his powers to conduct the proceedings in this case and I am a designated judicial authority under Article 24 of the Convention. Accordingly I am empowered to issue this letter.

Criminal proceedings have been instituted against:
Name:
Address:
Date of birth:
Nationality:

He appeared at _____ Magistrates' Court on 20 July 2001 and was remanded in custody awaiting committal to _____ Crown Court for trial with other defendants.

He has been charged with being concerned in the supply of 15kgs of diamorphine. Under section 4(3) of the Misuse of Drugs Act 1971 it is an offence for a person to be concerned in the supplying of a concerned drug in contravention of section 4(1) of the act. Under schedule 2 of the act, diamorphine is a controlled drug of Class A. A person convicted on indictment of being concerned in the supply of Class A can be imprisoned for up to life, fined or both.
As a result of the arrest of _____ enquiries have been instigated in relation to his financial position in order to:
(a) investigate whether he has committed any offence under sections 49 or 50 of the Drug Trafficking Act 1994, namely concealing or transferring proceeds of drug trafficking and assisting another person to retain the benefit of drug trafficking;
(b) ascertain whether he has benefited from the proceeds of drug trafficking in order that, if appropriate, the Crown Court can make a confiscation order over assets representing the proceeds of drug trafficking; and
(c) establish the involvement, if any, of any other person in the money laundering of funds derived from the proceeds of drug trafficking.

Under section 49(1) of the Drug Trafficking Act 1994 a person is guilty of an offence if he conceals or disguises any property which is, or in whole or in part directly or indirectly represents, his proceeds of drug trafficking, or converts or transfers that property or removes it from the jurisdiction, for the purpose of avoiding prosecution for a drug trafficking offence or the making or enforcement in his case of a confiscation order.

Under section 49(2) of the Drug Trafficking Act 1994 a person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, he conceals or disguises that property, or converts or transfers that property or removes it from the jurisdiction, for the purpose of assisting any person to avoid prosecution for a drug trafficking offence or the making or enforcement of a confiscation order.

Under section 50 of the Drug Trafficking Act 1994 a person is guilty of an offence if he enters into or is otherwise concerned in an arrangement whereby the retention or control by or on behalf of another person (call him “A”) of A's proceeds of drug trafficking is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise), or A's proceeds of drug trafficking are used to secure that funds are placed at A's disposal, or are used for A's benefit to acquire property by way of investment, and he knows or suspects that A is a person who carries on or has carried on drug trafficking or has benefited from drug trafficking.

The penalty on conviction on indictment for offences under 49 or 50 of the Drug Trafficking Act 1994 is imprisonment for up to life, a fine or both.
By virtue of section 1 of the Drug Trafficking Act 1994, “drug trafficking offence” is defined as including offences under section 4(3) of the Misuse of Drugs Act 1971 and under sections 49 and 50 of the Drug Trafficking Act 1994.

By virtue of section 2 Drug Trafficking Act 1994 where a defendant appears before the Crown Court to be sentenced in respect of one or more drug trafficking offences then if the prosecutor asks the court to proceed under this section or if the court considers that, even though the prosecutor has not asked it to do so, it is appropriate for it to proceed under this section, it shall act as follows: The court shall first determine whether the defendant has benefited from drug trafficking. Under this act a person has benefited from drug trafficking if he has at any time received any payment or other reward in connection with drug trafficking carried on by him or another person. If the court determines that the defendant has so benefited, the court shall, before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned, determine the amount to be recovered. The court shall then, in respect of the offence or offences concerned, Order the defendant to pay that amount.

A copy of the relevant statutory provisions are annexed to this letter.

SUMMARY OF FACTS
[Set out key facts relevant to the request. There must be a nexus between the facts and the next section. The reader should be able to comprehend why you want to make the listed enquiries.]

Enquiries to be made

1. To visit an appropriate official of:
Bank: ______ Bank Ltd
Bank Address: ______ Branch
______
______
Bank Telephone: (04) ______
To interview him and obtain from him copies of all bank statements relating to account number for the last six years.

To take a statement in writing from him setting out the account number and the name and any address recorded for the account holder and producing the bank statements as exhibits.

Assistance required

1. It is requested that the above enquiries are made and that the Detective Constable ______ (the case officer) and Detective Constable ______ (the financial investigator) are permitted to be present when the enquiries in Cyprus are made.

2. It is requested that each witness statement be taken in writing and be headed with the following declaration: "This statement consisting of ____ pages and signed by me is true to the best of my knowledge and belief." The number of pages should be filled in the space once the statement has been written and the witness should sign the statement beside the declaration, on every page and at the end. The statement should be dated.

3. Where documentation is produced by a witness each document should be described and given an exhibit number in the statement. The exhibit number should consist of the witness' initials and a consecutive number. For example, the first document produced by John Andrew smith will have the exhibit number JAS1, the second will be JAS2 and so on.

4. If a witness produces business documents, for example bank statements, he should be asked to state whether the documents were written by him. If they were not written by him the witness should state how the documents were created and in particular:
(a) Were they created by a person in the course of a trade, business, profession or other occupation;
(b) Was the information contained in the documents supplied by a person (whether or not he was the person who made them) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt;
(c) If the information was not supplied directly, did each person through whom it was supplied receive it in the course of a trade, business, profession or other occupation.
The witness statement should therefore include the following words: "In order to carry out my duties I have access to all the [*insert description of records e.g bank records*] records both manual and computerised relating to [*insert what the records relate to e.g. the account number*]. The documents to which I refer are derived from and form part of the records relating to the business of [*insert the business or organisation e.g. the name and branch of the bank*] and were

compiled in the ordinary course of business from information recorded by persons who had, or may reasonably be supposed to have had, personal knowledge of the matter dealt with in the information they supplied. The person or persons who supplied the information recorded in the records cannot reasonably be expected to have any recollection of the matter dealt with in the information they supplied."

5. That such other enquiries are made, persons interviewed and exhibits secured as appears to be necessary in the course of the investigation.

6. That an indication be obtained of the preparedness of any witness to travel to England and give evidence in person.

7. That the originals of any statements made and originals or certified copies of any documents or other items obtained during the course of the enquiries be handed to Detective Constable _______ and permission be given for their removal to England for use in the investigation, trial or confiscation proceedings. Where possible please can documents be provided in an easily readable form.

Thank you in advance for your valuable cooperation in this case.

Yours faithfully
_____ _______
Crown Prosecutor

9.7 EXAMPLE 7

Request for Asset Restraint Etc

The Competent Judicial Authorities
of the Kingdom of the Netherlands
2000

Dear Sirs

LETTER OF REQUEST:

The Crown Prosecution Service of England and Wales presents its compliments to the Competent Judicial Authorities of the Kingdom of the Netherlands and has the honour to request their assistance, pursuant to European Convention on Mutual Assistance in Criminal Matters (1959), the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) and Articles 11 and 12 of the Council of Europe Convention on Laundering, Search, Seizure and the Confiscation of the Proceeds from Crime (1990) in relation to a criminal prosecution resulting from a criminal investigation conducted by officers of the National Crime Squad, London.

The Prosecution of Offences Act 1985 states that the Director of Public Prosecutions has the duty to take over the conduct of criminal proceedings (other than certain proceedings relating to relatively minor offences) instituted on behalf of a police force. The Director is the Head of The Crown Prosecution Service. As a Crown Prosecutor designated by him, I have his powers to conduct the proceedings in this case and I am designated a judicial authority under Article 24 of the European Convention on Mutual Assistance in Criminal Matters (1959). Further section 3(2) of the Criminal Justice Act (International Co-operation) Act 1990 authorises the prosecuting authority to issue a letter of request requesting mutual assistance from another state. Accordingly, I am empowered to issue this letter.

A criminal prosecution has been commenced against:-
Name:
Address:
Nationality:
Date and Place of Birth:
The purposes of this request are to:-
1. to obtain evidence for the Crown Court to take into account when considering the making of a confiscation order under the provisions of the Drug Trafficking Act 1994 against;

2. to utilise evidence obtained in (1) in any proceedings in the United Kingdom ancillary to the criminal proceedings, for example, if the evidence obtained in (1) above reveals any breaches of the restraint order, to utilise the evidence obtained in (1) above to institute proceedings against [Name] in the High Court for contempt of the restraint order;

3. to utilise evidence obtained in (1) in any proceedings in the United Kingdom ancillary to the confiscation proceedings, namely for the High Court to take into account when considering an application by The Crown Prosecution Service to appoint a receiver to enforce any confiscation order under the provisions of the Drug Trafficking Act 1994 made against [Name]; and
4. to freeze assets in the jurisdiction of the Kingdom of the Netherlands so that they are available to satisfy any confiscation order that may be made under the provisions of the Drug Trafficking Act 1994 against [Name].

The Crown Court exercising jurisdiction in this case is the Crown Court sitting at [Court location]. On the [Date] [Name] was remanded in custody for a trial on indictment of one count of possessing 2 kilograms of cocaine with intent to supply it to another, which is a criminal offence contrary to section 5(3) of the Misuse of Drugs Act 1971.

By section 5(3) of the Misuse of Drugs Act 1971 it is an offence for a person to have in his possession a controlled drug, whether lawfully or not, with intent to supply it to another. cocaine is a controlled drug by virtue of Schedule 2 of the Misuse of Drugs Act 1971. The maximum sentence upon conviction on indictment is life imprisonment or an unlimited fine or both.

The relevant statutory provisions are annexed to this letter as Annex 'A'.
Possession of cocaine with intent to supply it to another is a drug trafficking offence. Once a defendant is convicted on indictment in the Crown Court of a drug trafficking offence, a hearing must be held by the Crown Court to determine:-
1. whether or not that defendant has benefited from drug trafficking;
2. if the Crown Court holds that the defendant has so benefited, the Crown Court must assess the amount of the benefit; and
3. the amount of realisable property held by the defendant
pursuant to section 2 of the Drug Trafficking Act 1994.

A confiscation order is made in a sum of money up the value of the property obtained as a result of or in connection with a drug trafficking offence. Its purpose is to recover from the convicted defendant the value of the property obtained as a result of his drug trafficking.

A defendant benefits from drug trafficking if he has at any time received any payment or other reward in connection with drug trafficking carried on by him or another person. It is not confined to the benefit received by the defendant from the offence of which he was convicted. The Crown Court must assume that:-
1. all property in which the defendant has an interest was received as a payment or reward in connection with drug trafficking; and

2. all transfers to the defendant at any time since the beginning of the period of 6 years ending when the proceedings were commenced against him at any time since the beginning of the period and were received as a payment or reward in connection with drug trafficking; and

3. all expenditure incurred by the defendant over that same period (6 years prior to when the proceedings were commenced against him) was met out of payments or rewards received in connection with drug trafficking.

Once the Crown Court has decided upon the amount of benefit from drug trafficking (including the making of the assumptions above), it must go on to consider the amount of realisable property held by the defendant which may be available to satisfy the confiscation order.

Realisable property is widely defined. It includes any property in which the defendant holds an interest (interest includes right), and any property that has been given by the defendant to another for little or no consideration. The Crown Court, in coming to its decision, must take account of any property held by the defendant wherever it is situated in the world.
The amount of realisable property is the total value of the defendant's assets together with the value of any "gifts" (transfers made by the defendant at an undervalue to others or for no consideration). The value of legitimately acquired assets are calculated as part of the amount that might be realised. There is no requirement on the prosecution to prove that the defendant's assets are acquired from drug trafficking. The defendant bears the burden of showing that his realisable property is less than the proceeds of drug trafficking.
If the defendant satisfies the Crown Court that the amount of his realisable property is less than the amount of the benefit obtained from drug trafficking, the Crown Court must make a confiscation order in the lower amount. If the defendant is unable to satisfy the Crown Court, the Crown Court must make a confiscation order in the amount of the benefit from drug trafficking.

The High Court may make a restraint order prohibiting any person from dealing with any realisable property where proceedings have been instituted in England and Wales against a defendant for a drug trafficking offence. The purpose of the restraint order is to prohibit the defendant dealing with realisable property so that the realisable property can be utilised for the satisfaction of a confiscation order.

The relevant statutory provisions are annexed to this letter as Annex 'B'.
On the [Date] the High Court of Justice issued a Restraint Order against [Name] prohibiting him from dealing with his assets. The Restraint Order and the statement of [Name of Officer] are annexed to this letter as Annex 'C'.

Summary of facts

On the 26 th January 2002, officers monitoring [Name] activities saw his ______ motor vehicle, registration number in the car park of .
He was seen to enter a nearby house and shortly afterwards return to his vehicle. As he began to exit the car park, he was approached by officers of the National Crime Squad, his vehicle searched and inside was found a plastic bag containing two packages, each one kilogram in weight, which appeared to be cocaine.
[Name] was arrested and taken to __________ Police Station where he was interviewed by officers of the National Crime Squad. He denied the cocaine belonged to him or that he had it in his possession with intent to supply it to another. His explanation was that he had found

the carrier bag containing the two packages in the area of a Motorway Services whilst travelling from London to see a friend in Scotland. He did not know or suspect what the packages contained but stated that he would have handed them in to the police.
Subsequent forensic, scientific examination of the packages showed that they contained two kilograms of cocaine.
[Name] stated that he owns the following vehicles in the Netherlands :
1. A ______ motor vehicle, index number ______
2. A ______ motor vehicle, index number ______
3. A ______ motor vehicle, index number ______
[Name] further stated that the above vehicles were purchased by him but registered to, [Name and address] in order to avoid being confiscated in the Netherlands as a result of a drugs trafficking conviction there.
[Name] had in his possession documents relating to vehicle insurance in respect of a _______ motor vehicle, index number _______. The documents show the client number as _____, with the owner being [Name and address].
Enquiries by the police have revealed the following:
1. [Name] has a medical insurance policy with a company known as [Name], the address of which is unknown, account number _________.
2. [Name] has vehicle insurance with a company known as _____ of _______, in respect of the following vehicles:
(a) ______ motor vehicle, index number _______, policy number _______,
(b) _______ motor vehicle, index number ______, policy number _______, and
(c) _______ motor vehicle, index number ________ policy number ________.
3. The ______ motor vehicle, index number _______ was purchased from a company known as __________________________.
4. [Name] has the following alternative addresses:
(a) __________
(b) __________
(c) __________
5. [Name] is involved in the following companies:
(a) ___________ Company, title number _________
(b) ___________ Import Export Company, title number ___________
(c) _____________ Company, title number _____________
(d) _____________ Company, title number _____________
6. [Name] holds a bank account numbered __________ with the __________ Bank, ____________________, in the name of ________________.
7. [Name] holds a ________ account number _______, pass number _______ in the name of ___________________.
8. [Name] holds or has access to a ___________ account number ___________
9. [Name] owns a life assurance policy with a company known as _______________, in the name of _______________. Payments to this policy are made via his
_______Bank account number ___________.

Enquiries to be made

1. To visit the _________ Bank at, ___________________ and take a statement in writing from the manager or other duly authorised officer of the Bank relating to account number

_____________ held in the name of ___________________. The written statement is requested to deal with the following matters in respect of that account:-
(1) When the account was opened and by whom together with details of the current signatories;
(2) The amounts of and the dates of all deposits made in to the account and withdrawals made out of the account;
(3) Information about the conduct of the account, including details of inter account transfers, telegraphic transfers, standing orders, direct debits, paid cheques and vouchers (both credit and debit), and manager's notes;
(4) Details of any documents, files, accounts or other records used in ordinary business, including bonds, securities or deeds, held by the bank or on behalf of [Name];
(5) Examination of any safety deposit box or boxes or other material held by the bank on behalf of [Name];
(6) Details of any correspondence relating to the account; and
(7) Exhibit copies of all relevant documents including:-
(a) Bank statements;
(b) Documents attributable to the account; or
(c) Documents held by the bank on behalf of ______
which would be beneficial to the United Kingdom authorities in assessing benefit or establishing assets. Copies of the documents are requested to be supplied in a form in which they can be easily and clearly examined, whether those documents are in written form, kept on microfilm, magnetic tape or any other form of mechanical or electronic data retrieval mechanism.

2 Should the enquiry as set out in paragraph 1 above reveal the details of any joint account holders in the Kingdom of the Netherlands then assistance in the enquiry is sought in respect of each joint account holder as follows:-
(1) to visit that joint account holder;
(2) to interview that joint account holder; and
(3) (3) take a statement in writing from that joint account holder regarding the conduct of the joint account.
3. To visit the Head Office of the ________ Bank and take a statement in writing from the manager or other duly authorised officer of the Bank relating to account number ________, Pass Number ______ held in the name of _______________. The written statement is requested to deal with the following matters in respect of that account:-
(1) when the account was opened and by whom together with details of the current signatories;
(2) the amounts of and the dates of all deposits made in to the account and withdrawals made out of the account;
(3) information about the conduct of the account, including details of inter account transfers, telegraphic transfers, standing orders, direct debits, paid cheques and vouchers (both credit and debit), and manager's notes;
(4) details of any documents, files, accounts or other records used in ordinary business, including bonds, securities or deeds, held by the bank or on behalf of [Name];
(5) examination of any safety deposit box or boxes or other material held by the bank on behalf of [Name];
(6) details of any correspondence relating to the account; and

(7) exhibit copies of all relevant documents including:-
(a) bank statements;
(b) documents attributable to the account; or
(c) documents held by the bank on behalf of [Name]
which would be beneficial to the United Kingdom authorities in assessing benefit or establishing assets. Copies of the documents are requested to be supplied in a form in which they can be easily and clearly examined, whether those documents are in written form, kept on microfilm, magnetic tape or any other form of mechanical or electronic data retrieval mechanism.

3. Should the enquiry as set out in paragraph 3 above reveal the details of any joint account holders in the Kingdom of the Netherlands then assistance in the enquiry is sought in respect of each joint account holder as follows:-
(1) to visit that joint account holder;
(2) to interview that joint account holder; and
(3) take a statement in writing from that joint account holder regarding the conduct of the joint account.

4. To visit the Land Registry of the Kingdom of the Netherlands, and take a statement in writing from the Registrar or other duly authorised official as to the ownership of the following properties:
(1)
(2)
(3)
(4)
The written statement is requested to deal with the following matters in respect of the properties:-
(1) the date that the property was registered and by whom the property was registered;
(2) the amount for which the property was purchased;
(3) Any interest [Name] has in the property; and
(4) exhibit copies of all relevant documents.

5. Should the enquiry at the Land Registry of the Netherlands, reveal the details of any joint owners of the property in the Netherlands then assistance in the enquiry is sought in respect of each joint owner as follows:-
(1) to visit that joint owner;
(2) to interview that joint owner; and
(3) take a statement in writing from that joint owner regarding:
(a) the purchase of the jointly owned property;
(b) his or her association with [Name]

6. Should the enquiries under paragraphs 7 and 8 above at the Land Registry of the Kingdom of the Netherlands reveal any of the properties in question being owned wholly by a third party or parties in the Netherlands then assistance is sought in respect of each owner as follows:-
(1) to visit that third party or those parties;
(2) to interview that third party or those third parties; and

(3) take a statement in writing from that third party or those third parties regarding:
(a) his or her association with [Name];
(b) the circumstances under which [Name] is, or was, connected with the property or properties; and
(c) details of any lease or rental agreements in respect of those properties relating to [Name] or one of the following companies:-
(i)
(ii)
(iii)

7. To ascertain the address of the company known as ________. Once that is done to visit the company and take a statement in writing from the manager or other duly authorised officer of the company relating to insurance policy number __________. A written statement is requested to deal with the following matters in respect of that account:-
(1) when the policy was started and by whom together with details of the current beneficiaries;
(2) the terms and conditions of the insurance policy;
(3) the amounts of and the dates of all deposits made in to the policy;
(4) details of any correspondence relating to the policy; and
(5) exhibit copies of all relevant documents including:-
(a) bank statements; or
(b) documents attributable to the policy.
which would be beneficial to the United Kingdom authorities in assessing benefit or establishing assets. Copies of the documents are requested to be supplied in a form in which they can be easily and clearly examined, whether those documents are in written form, kept on microfilm, magnetic tape or any other form of mechanical or electronic data retrieval mechanism.

8. To visit ______ of Rotterdam [address] and take a statement in writing from the manager or other duly authorised officer of the company relating to the life assurance policy taken out by _______________ in the name of _______________________. A written statement is requested to deal with the following matters in respect of that policy:-
(1) when the policy was started and by whom together with details of the current beneficiaries;
(2) the terms and conditions of the insurance policy;
(3) the amounts of and the dates of all deposits made in to the policy;
(4) details of any correspondence relating to the policy; and
(5) exhibit copies of all relevant documents including:-
(a) bank statements; or
(b) documents attributable to the policy.
which would be beneficial to the United Kingdom authorities in assessing benefit or establishing assets. Copies of the documents are requested to be supplied in a form in which they can be easily and clearly examined, whether those documents are in written form, kept on microfilm, magnetic tape or any other form of mechanical or electronic data retrieval mechanism.

9. To visit the Registrar of Companies in the Netherlands, and take a statement in writing from a duly authorised officer of the Registrar of Companies relating to each of the following companies:
(1) ______________
(2) ______________
(3) etc
The written statement is requested to deal with the following matters in respect of each company:-
(1) when the company was incorporated and by whom;
(2) the shareholders of the companies;
(3) the directors of the company;
(4) the purpose for which the company was formed;
(5) any accounts submitted in respect of the company;
(6) details of any correspondence;
(7) exhibit copies of all relevant documents including:-
(a) the memorandum of association;
(b) articles of association;
(c) accounts submitted by the company; and
(d) documents attributable to the company
which would be beneficial to the United Kingdom authorities in assessing benefit or establishing assets. Copies of the documents are requested to be supplied in a from in which they can be easily and clearly examined, whether those documents are in written form, kept on microfilm, magnetic tape or any other form of mechanical or electronic data retrieval mechanism.

Should the enquiry at the Registrar of Companies in the Netherlands, reveal the details of any shareholders and directors and officers located in the Netherlands then assistance in the enquiry is sought in respect of each shareholder and director and officer of the company as follows:-
(1) to visit that shareholder or director or officer of the company;
(2) to interview that shareholder or director or officer of the company; and
(3) take a statement in writing from that shareholder or director or officer of the company regarding the conduct of the company and their association with ______.
Should the enquiry at the Registrar of Companies in the Netherlands reveal the details of any other bank accounts held in the Netherlands by [Name] or on his behalf then assistance in the enquiry is sought as set out in paragraphs 1 and 2 above respectively in relation to those other accounts.

10 To visit the Vehicle Licensing Authority of the Netherlands and to take a statement in writing from a duly authorised officer of the said Authority relating to the following:-
(1) The ownership of the ______ motor vehicle, index number ______;
(2) etc
(3) etc

11. To visit _______________ of _________________, to interview her and to take a statement in writing from her regarding the following:

(1) The circumstances of the purchase and her ownership of the ______motor vehicle, registration number ______________;
(2) The circumstances of the purchase and her ownership of the ______motor vehicle, registration number ___________;
(3) etc

12. To visit the Taxation Office of the Netherlands and take a statement in writing from the manager or other duly authorised officer of the Taxation Office relating to the tax accounts of the companies mentioned in paragraph ___ above. The written statement is requested to deal with the following matters in respect of those companies for the period 25 th of January 1994 to the 26 th January 2000:
(1) the declared income and expenditure of the individual companies;
(2) the declared profits of the individual companies;
(3) the declared earnings of the directors; and
(4) to exhibit copies of all relevant documents.
which would be beneficial to the United Kingdom authorities in assessing benefit or establishing assets. Copies of the documents are requested to be supplied in a form in which they can be easily and clearly examined, whether those documents are in written form, kept on microfilm, magnetic tape or any other form of mechanical or electronic data retrieval mechanism.

Documentary evidence

There are a number of statutory provisions in the law of England and Wales which govern the admissibility into evidence of business records.

Section 24 of the Criminal Justice Act 1988 provides that a statement (which is defined for these purposes as "any representation of fact") in a documents shall be admissible as evidence of any fact of which direct oral evidence would be admissible if the conditions specified in that section are satisfied. These conditions relate to the manner in which the document is created and the sources of information from which it is compiled.

Section 25 of the Criminal Justice Act 1988 preserves a discretion in the trial judge to regulate the admissibility of such evidence. This section specifies the principles to be followed in exercising that discretion. Further, Section 69 and Schedule 3, Part 2 of the Police and Criminal Evidence Act 1984 provide that where a statement which is sought to put in evidence is contained in a document produced by a computer the provisions of Section 69 must be satisfied.

It is requested that the statements referred to above include evidence that will enable the court to consider the applicability of Sections 24 and 25 of the Criminal Justice Act 1988. It is further requested that appropriate evidence is included to deal with the provisions of Section 69 of the Police and Criminal Evidence Act 1984.

Copies of the said provisions and an example of a Section 69 certificate are annexed to this letter as Annex 'D' .

Assistance required

1. It is requested that any and all money, property and bank accounts held legally and beneficially by [Name] be frozen. If the competent authorities of the Kingdom of the Netherlands sought such assistance from the United Kingdom authorities I can confirm that such assistance could be granted provided that proceedings had been instituted in the Kingdom of the Kingdom of the Netherlands.

2. I confirm that a request will be submitted for registration and enforcement of the confiscation order on behalf of the Government of the United Kingdom as soon as practicable after the confiscation order has been made. I further confirm that the proceedings in this matter have not concluded.
3. Should any of the enquiries carried out reveal the location and identity of any property in the Kingdom of the Netherlands held by or on behalf of [Name], it is requested that such property be searched and that any items or material relevant to the enquiry be secured.

4. That Special Court Orders are obtained in accordance with the laws of The Kingdom of the Netherlands in order to carry out the enquiries to be made listed above.

5. That such other enquiries are made, persons interviewed and documents secured as appears to be necessary in the course of the investigation to trace any property held by or on behalf of [Name].

6. That an indication be obtained whether any witness would be prepared to travel to the United Kingdom to give evidence in person.

7. It is requested that the above enquiries are made and that Detective Constable _________, a Police Officer and _______________, a Financial Investigator, both of the National Crime Squad of England and Wales, [Address, telephone and fax number] be permitted to travel to the Kingdom of the Netherlands to be present when the enquiries mentioned above are made and that Detective Constable ______________ be allowed to take such statements and copies of documents as are relevant to this enquiry.

8. That signed and certified copies of any statements made and any documents or other items secured during the course of the enquiries be handed to Detective Constable ______________ and permission given for their removal to the United Kingdom for use at:-
(a) at any confiscation hearing for the purpose of seeking confiscation orders against [Name];
(b) at any proceedings in the United Kingdom ancillary to the criminal proceedings, for example, if the statements and documents reveal a breach of the restraint order, in contempt proceedings to be instituted in the High Court against [Name];
(c) at any proceedings in the United Kingdom ancillary to the confiscation proceedings, namely for the High Court to take into account when considering an application by The Crown Prosecution Service to appoint a receiver to enforce any confiscation order under the provisions of the Drug Trafficking Act 1994 made against [Name].

I thank you in advance for your co-operation concerning this case.

Yours faithfully

Prosecutor

9.8 EXAMPLE 8

Dear Sirs

LETTER OF REQUEST: ______.COM

I have the honour to request your assistance under the provisions of the Treaty of Mutual Legal Assistance in Criminal Matters (1994) between the United States of America and the United Kingdom in relation to a criminal investigation being conducted by officers of the _______________ Police.

The Prosecution of Offences Act 1995 states that the Director of Public prosecutions has the duty to take over the conduct of criminal proceedings (other than certain proceedings relating to relatively minor offences). He also has the power to give, to such extent as he considers appropriate, advice to police forces in al matters relating to criminal offences. The Director is the head of The Crown Prosecution Service. As a Crown Prosecutor designated by him I have the power to conduct the proceedings in this case. Accordingly I am empowered to issue this letter.

Police officers in the ________________ Police, in the United Kingdom are currently conducting an investigation in relation to an offence of blackmail. Under section 21(1) of the Theft Act 1968 a person commits blackmail if with a view to gain for himself or another or with an intent to cause loss to another, he makes an unwarranted demand with menaces.
On conviction on idictment the maximum penalty for an offence of blackmail is imprisonment for up to 14 years.

A copy of the relevant statutory provisions is annexed in this letter.

The enquiries requested relate to an alleged offence of blackmail that is being committed currently. This letter of request is faxed to you because of the urgent nature of these enquiries. The original of this letter will be transmitted in accordance with the usual procedure through the United Kingdom Central Authority.

<u>Summary of facts</u>

At 04:37:05 (GMT) on ______ 2002 a computer mail server situated in _______, UK and owned by a UK company, received an e-mail demanding that the sum of £5,000 sterling be delivered to an address in Scotland by20 ______ 2002.
The e-mail threatened that if the funds were not received by 20 _______ 2002 a series of actions would take place to close down all computer systems owned by the company and customer information collected from the computers would be distributed onto the Internet.
The e-mail address used to send this threat is ____________. This e-mail address is provided by an internet service provider called _______.com which is based in the United States of America at the following address:
________.com
____

____
United States of America

Enquiries to be made

To visit an appropriate official of _________.com:
Address: ________.com
____
____
United States of America
To interview him or her and take a statement in writing setting out all the information held by Thingfind.com about the user of e-mail address _______________ including but not limited to:

1. All logging information and account details in respect of the account.
2. Subscriber information in respect of the account as supplied on creation of the e-mail account, including, but not limited to, any names, addresses, dates of birth, and other associates e-mail addresses.
3. Telephone numbers supplied by the account holder or associated logging calling line identifier information.
4. Methods of any payment, if applicable, including any credit or debit card details supplied.
5. IP address utilised, time and date, at the time the account was created.
6. Any information indicative of account usage including any IP addresses used to connect to the account any forward e-mail address information.
7. Any reference to any other account information held by any third party.
8. Any opened contents of e-mail messages of any age or unopened contents of 180 days old or less.

To obtain copies of all documents held by ______com relating to the e-mail address __________ and its user. It is requested that these items be produced as exhibits in the statement.

Assistance required

1. It is requested that the above enquiry is made and that permission be given for the original statement and copies of documents obtained to be removed to the United Kingdom for use in criminal proceedings and trial. It is requested that they be sent to the officer in the case DC _______ who can be contacted at:

Address: PO BOX 1010,
London
E14 9NF
Telephone: 555 12345678
Fax: 555 12349876

1. It is requested that the witness statement be taken in writing, dated and headed by the following declaration: "This statement consisting of ____pages is true to the best of my knowledge and belief." The number of pages should be filled in the space once the statement has been written and witness should sign the statement beside the

declaration, on every page and at the end. It is requested that the witness' address, telephone number and Date of Birth be written on the back of the first page of the statement.

2. If documentation is obtained from the witness, he should produce each document as an exhibit in his statement. In order to do this the statement should describe the document and give it an exhibit number. The exhibit number should consist of the witness' and a consecutive number. For example, the first document produced by John Andrew Smith will have the exhibit number JAS1, the second will be JAS2 and do on.
3. The witness should state his position in the organisation and produce the documents as set out above. In relation to such documents the witness should be asked to state whether the documents were written by him. If they were not written by him the witness should state how the documents were created and particular:

(a) Were they created by a person in the course of a trade, business, profession or other occupation;
(b) Was the information contained in the documents supplied by a person (whether or not he was the person who made them) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with;
(c) If the information was not supplied directly, did each person through whom it was supplied receive it in the course of a trade, business, profession or other occupation.

The witness statement should therefore include the following words: "In order to carry out my duties I have access to all the [*insert description of records e.g. e-mail user*] records both manual and computerised relating to [*insert what records relate to e.g. user of e-mail address*__________]. The documents to which I refer are derived from and form part of the records relating to the business of [*insert the business or organisation e.g.* _______*.com*] and where compiled in the ordinary course of business from information recorded by persons who had, or may be reasonably be supposed to have had, personal knowledge of the matter dealt with in the information they supplied. The person or persons who supplied the information recorded in the records cannot reasonably be expected to have any recollection f the matter dealt with in the information they supplied."

1. That such enquiries are made, person interviewed and exhibits secured as appears to be necessary in the course of the investigation.
2. That an indication be obtained of the preparedness of any witness to travel to England to give evidence in person.
3. That any information held on the computer in any form be preserved and secured from unauthorised interference and made available in due course to the investigating officers and The Crown Prosecution Service for use at any subsequent trial.

I confirm that the enquiries be requested to be made in this letter could be be made by the English police under powers currently available to them if the enquiries were made in England rather then the United States.

I think you in advance for your valuable co-operation concerning this case.

Yours faithfully

____
Crown Prosecutor

10. USEFUL LINKS:

Eurojust:
http://www.eurojust.europa.eu

Interpol:
http://www.interpol.int/Public/Icpo/intliaison/default.asp

UNODC MLA Tool Writer (password required):
http://www.unodc.org/mla/index.html

UNODC: UN Counter-Terrorism Conventions:
http://www.unodc.org/unodc/en/terrorism/conventions.html

UNODC: UN Convention Against Corruption (UNCAC):
http://www.unodc.org/unodc/en/treaties/CAC/index.html

UNODC: UN Convention Against Organised Crime (UNTOC):
http://www.unodc.org/unodc/en/treaties/CTOC/index.html

EU MLA Convention:
http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=42000A0712(01)&model=guichett

CAERT:
http://www.caert.org.dz

Commonwealth Network of Contact Persons:
http://www.thecommonwealth.org/subhomepage/165671/

IGAD Network of Judicial Experts:
http://www.issafrica.org/cdterro/index.htm

Commonwealth Harare Scheme on International Co-operation in Criminal Matters:
http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/2C167ECF-0FDE-481B-B552-E9BA23857CE3_HARARESCHEMERELATINGTOMUTUALASSISTANCE2005.pdf