



**OECD International Academy for Tax Crime Investigation**

*Asset Recovery: Freezing and Seizing Assets*



# MUTUAL LEGAL ASSISTANCE

International Asset Recovery

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## MLA – what is it?

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*“a process by which States seek and provide assistance in gathering evidence for use in criminal cases”*

UNODC

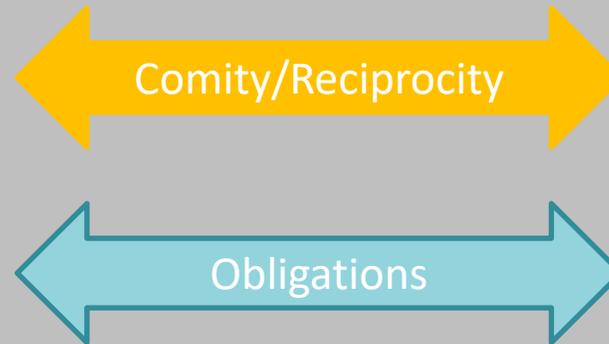
*“sometimes known as ‘judicial assistance’ is the formal way in which states request and provide assistance in obtaining evidence located in one state to assist in criminal investigations or proceedings in another state”*

Council of Europe



# MLA – Why is it necessary?

## Fundamentals of International Law



## Jurisdiction at International Law:

- Prescriptive jurisdiction
- Enforcement jurisdiction
- Adjudicative jurisdiction



# International Basis for MLA

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- Comity and Reciprocity
- Bilateral Treaties
  - Treaty on Mutual Legal Assistance in Criminal Matters
- Multilateral Treaties
  - UN Convention Against Corruption
  - UN Convention Against Transnational Organised Crime



## MLA – What can it do?

**“States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings...”**

UN Convention against Transnational Organised Crime (2000 – Palermo), Art. 18(1)

UN Convention against Corruption (2003 – New York), Art. 46(1)

**“Taking evidence or statements from persons”**

**“Examining objects and sites”**

**“Providing information, evidentiary items and expert evaluations”**

**“Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes”**

**“Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records”**

**“Any other type of assistance that is not contrary to the domestic law of the requested State Party”**

**“Executing searches and seizures, and freezing”**

**“Effecting service of judicial documents”**

**“Facilitating the voluntary appearance of persons in the requesting State Party”**

UN Convention against Transnational Organised Crime (2000 – Palermo), Art. 18(3)

UN Convention against Corruption (2003 – New York), Art. 46(3)



# Terminology

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## “Subject”

*Person or body who is the subject of the investigation or prosecution (otherwise, suspect or defendant)*

## “Requested State”

*State who receives the request from another*

## “Requesting State”

*State making the request for assistance*

## “Commission Rogatoire”, “Commission Rogatory” or “Letter of Request”

Other names for a Mutual Legal Assistance Request. Sometimes used to denote that the request is made without a treaty on the basis of reciprocity and comity.



# Basic Structure

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Use the following headings for your request:

- Introduction
- Legal Basis of Request
- Purpose and Subject of the Request
- Summary of Facts
- Details of Assistance Requested
- Format of Evidence Provided
- Undertakings/Assurances
- Reciprocity
- Transmission and Contact Details
- Appendices



# Writing an MLA Request

## UNODC MLA REQUEST WRITER TOOL [unodc.org/mla](https://unodc.org/mla)

unodc.org/mla

UNODC United Nations Office on Drugs and Crime

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Introduction

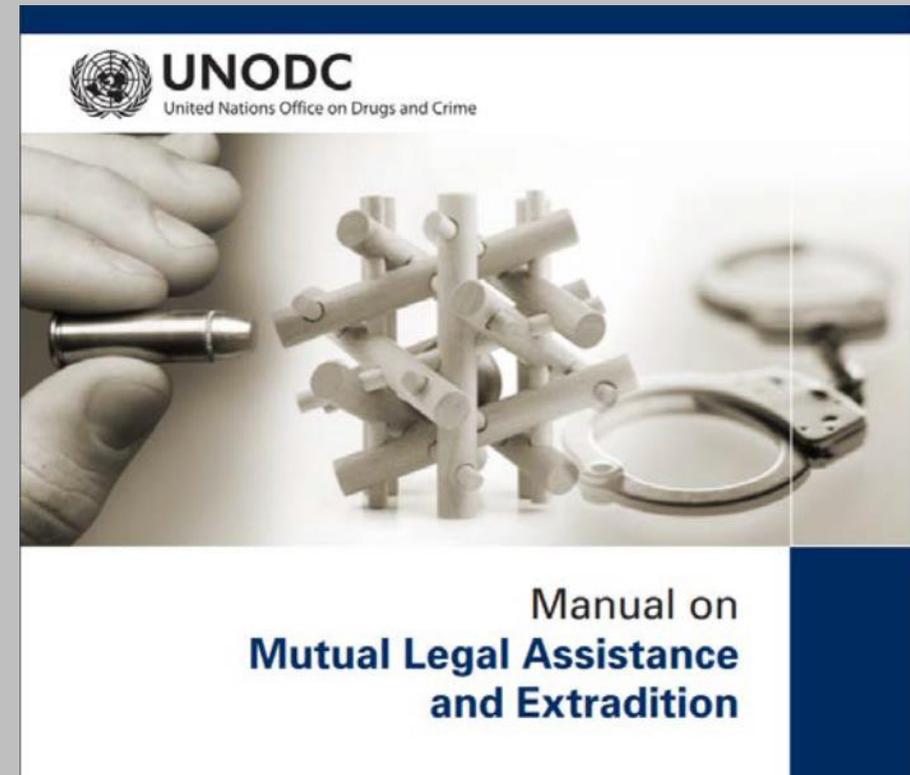
### Mutual Legal Assistance Request Writer Tool

The Mutual Legal Assistance Request Writer Tool (MLA Tool) was developed by UNODC to assist criminal justice practitioners in drafting expeditiously MLA requests, thereby enhancing cooperation between States and accelerating responses to such requests.

In its revised and expanded version, the Tool is an HTML-based stand-alone application, capable of running on all devices. It provides guidance to practitioners through each step of the drafting process and further helps them draft MLA requests by filling in all appropriate and relevant information.

The new guiding elements in the revised text of the MLA Tool are the following:

- The integration of additional specific forms or means of international cooperation in criminal matters, including transfer of criminal proceedings and videoconferencing;
- The inclusion in the part under the title "Any other form of assistance" of references to joint investigations and international cooperation to conduct controlled deliveries;
- The addition of substantive text in the so called "digital evidence module" (taking into account all pertinent developments in the field of international cooperation to combat cybercrime and covering the following forms of cooperation: expedited preservation of stored computer data; ensuring access to stored computer data; and real-time collection of traffic data); and
- The streamlining of the asset recovery features of the tool to avoid overlaps and repetition with the traditional MLA features.



[https://www.unodc.org/documents/organized-crime/Publications/Mutual\\_Legal\\_Assistance\\_Ebook\\_E.pdf](https://www.unodc.org/documents/organized-crime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf)



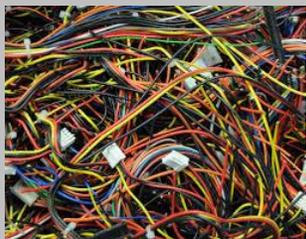
# Drafting Deficiencies

Some of the common deficiencies in MLA drafting are as follows:

The request is not specific enough

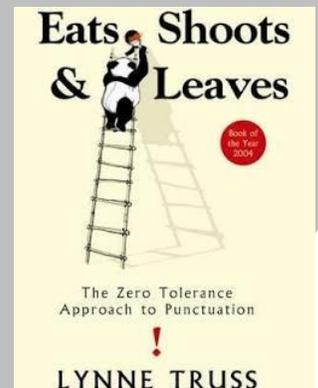
The request does not contain sufficient information or is unclear

The request does not cite the international law basis



The request fails to show a clear nexus between the investigation and the assistance requested in the other jurisdiction

The request has not been translated (or not properly translated)





## Grounds for Refusal

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The following are grounds upon which States may refuse to assist:

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Lack of Dual Criminality

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Contrary to the legal system or laws of the Requested State

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Prejudice to Sovereignty, security, public order or other essential interests

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Human rights considerations or severity of punishment

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Political Offences

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Double jeopardy

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Fiscal Offences and Banking Secrecy

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## Legal and Procedural Issues

If a requested state has these features it may be more difficult (not impossible) to obtain cooperation:

- Inadequate legislation for the provision of evidence to foreign counterparts or the enforcement of foreign orders
- Overly bureaucratic systems
- No established central authority
- Slow diplomatic channels
- Insufficient resource/overwhelming demand





# Communication deficiencies

- Insufficient use of informal channels
- Failing to understand the needs of the requested state
- Failing to appreciate the procedure that must be applied in the requested state
- Failing to collaborate with partners overseas (holding back information, not responding promptly to requests for information, not using their expertise in their legal systems)
- Failing to collaborate effectively or use your own Central authority



Talk to your law enforcement and prosecution counterparts!

Approach cross-border investigations as teamwork



# Successful MLA

## OECD Anti Corruption Initiative 2017: Mutual Legal Assistance in Asia and the Pacific – Experiences in 31 Jurisdictions

Table 3. Timeframe for responses to MLA requests in six members of the Asia-Pacific Initiative

|                                  | Australia | Bangladesh | India       | Indonesia   | Japan         | Korea      | Macao,<br>China |
|----------------------------------|-----------|------------|-------------|-------------|---------------|------------|-----------------|
| Total requests submitted         | 20        | 36         | 117         | 38          | 24            | 75         | 11              |
| Requests executed                | 16        | 30         | 22          | 38          | 21            | 51         | 9               |
| Requests still pending           | 4         | 6          | 77          | 0           | 3             | 18         | 1               |
| Requests rejected                | 0         | 0          | 3           | 0           | 0             | 1          | 1               |
| Requests withdrawn               | 0         | 0          | 15          | 0           | 0             | 4          | 0               |
| Usual time to receive assistance | 14 months | 12 months  | 1–22 months | 6–12 months | 1–13.3 months | 7–8 months | 6–48 months     |

**Make your requests early!**



**Any Questions?**