

Acuerdos Bilaterales

Clasificación: 217-2008

Fecha-de Ingreso: 15 de Agosto de 2008

Nombre de Acuerdo: Memorandum of Understanding between the General Secretariat of the Organization of American States and the Department of Justice, Canada of the Government of Canada to participate in the Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition

Partes: SG/OEA & Department of Justice, Canada of the Government of Canada

Referencia: Canadá

Fecha de Firma: 23 de mayo de 2008

Fecha de Inicio:

Fecha de Terminación:

Lugar de Firma:

Unidad Encargada:

Persona Encargada:

Original:

Claves:

Cierre del proceso:



Organización de los Estados Americanos
Organização dos Estados Americanos
Organization des États Américains
Organization of American States

To: Dante Negro, Office of International Law

From: Wendy Pond, Office of Legal Cooperation

WP

Re: Original signed Memorandum of Understanding for your files

Date: June 4, 2008

For your files, and in accordance with Article VII, section 7.5 of the "Normas para la negociación, preparación, revisión, firma y registro de acuerdos en la Secretaría General" (Executive Order No. 05-06. Rev1), please find an original signed copy of the

MEMORANDUM OF UNDERSTANDING BETWEEN THE GENERAL SECRETARIAT OF THE ORGANIZATION OF AMERICAN STATES AND THE (THE DEPARTMENT OF JUSTICE, CANADA) OF THE GOVERNMENT OF CANADA TO PARTICIPATE IN THE HEMISPHERIC INFORMATION EXCHANGE NETWORK FOR MUTUAL ASSISTANCE IN CRIMINAL MATTERS AND EXTRADITION.

**MEMORANDUM OF UNDERSTANDING BETWEEN THE GENERAL
SECRETARIAT OF THE ORGANIZATION OF AMERICAN STATES AND THE
(THE DEPARTMENT OF JUSTICE, CANADA)
OF THE GOVERNMENT OF CANADA
TO PARTICIPATE IN THE HEMISPHERIC INFORMATION EXCHANGE
NETWORK FOR MUTUAL ASSISTANCE IN CRIMINAL MATTERS AND
EXTRADITION**

THE PARTIES TO THIS MEMORANDUM OF UNDERSTANDING, the General Secretariat of the Organization of American States (hereinafter "GS/OAS") and the (Department of Justice, Canada) of the Government of Canada (hereinafter "(D.O.J. Canada")

CONSIDERING:

That in the context of the Meetings of Ministers of Justice or of Ministers or Attorneys General of the Americas (hereinafter "REMJA") it was decided to create a Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition (hereinafter "the Network"), as an essential tool for strengthening the accessibility and effectiveness of justice in the Hemisphere;

That the Network comprises three components: a public component, consisting of a freely accessible Internet webpage; a private component, consisting of a restricted-access Internet webpage; and a secure electronic communication system (hereinafter "the System");

That, pursuant to the mandates from REMJA and the OAS General Assembly, the OAS General Secretariat, through the Office of Legal Cooperation of the Department of International Legal Affairs (hereinafter "OLC/DILA") has from the outset been providing the necessary legal and technical assistance for the creation, implementation and functioning of the Network, and is responsible for maintaining, improving and updating the information disseminated via its public and private webpages;

That, moreover, pursuant to the mandates of REMJA and the OAS General Assembly, the OAS General Secretariat, through the Department of Information Technology Services of the Secretariat of Administration and Finance (hereinafter "DOITS/SAF") has from the outset been providing all the necessary technical support and services for the creation, implementation and functioning of the System; owns the server and the licenses and maintains and administers it; has recently taken some important initiatives including signature of a technical cooperation agreement and development of a comprehensive online training program to facilitate continuous, effective and economical training for current and future users of the System;

That REMJA VI recommended that the Network be consolidated and strengthened, and extended to all member States of the OAS, and that the Secretariat should continue to

complete and update the public and private information components, and should continue to provide technical assistance and training in connection with the System;

That, in order to consolidate the Network and institutionalize relations between its beneficiaries and the GS/OAS, the parties have agreed to establish a normative framework for these purposes;

THEREFORE, THEY HAVE AGREED to sign this Memorandum of Understanding (hereinafter "the Memorandum").

ARTICLE I PURPOSE

1.1. The purpose of this Memorandum is to establish a legal framework governing the provision of services by the GS/OAS in relation to the maintenance and functioning of the Network, and the responsibilities of the D.O.J. Canada for participating in it.

ARTICLE II RESPONSIBILITIES OF THE D.O.J. CANADA

2.1. The D.O.J.:

a) Shall submit an application in writing to the GS/OAS, through the Office of Legal Cooperation of the Department of International Legal Affairs (OLC/DILA) for a permit for use of the System licenses by those of its officials with direct responsibilities for mutual assistance in criminal matters, extradition, or both.

The application must indicate the number of permits requested, the names of the officials for whom the permit is requested, their responsibilities and functions in mutual assistance in criminal matters, extradition or both; their area of competence, by topic, geographic zone or institutional hierarchy; and any other information deemed useful for purposes of identification.

The application must be accompanied by letters of undertaking (in the format annexed to the Memorandum) duly signed by each of the officials for whom the permit for use of System licenses is requested.

Subsequent to signature of this Memorandum, each of the officials for whom the D.O.J. Canada requests a permit for use of licenses must also sign and remit the letters of undertaking to the OLC/DILA, before connecting to the System.

b) Shall take the necessary precautions, pursuant to instructions issued by the GS/OAS, for installing the System and providing online training for its proper use. Both of these activities shall be coordinated exclusively by the GS/OAS.

c) Shall maintain, and remit to the GS/OAS upon request on an annual basis, a record of requests relating to mutual assistance in criminal matters, extradition or both, that have been handled through the System. This record must include general information on the request, its current status (i.e. in process, completed, or returned for correction), the outcome and the length of time it took to respond, so that the GS/OAS will have sufficient information to evaluate the usefulness of the System and its impact on the efficiency of cooperation processes and procedures in mutual assistance in criminal matters and extradition.

d) Shall send to the GS/OAS, within 30 days after signature of this Memorandum and subsequently every four months, the information necessary to update the section corresponding to the State in the public component of the Network, using the format provided for this purpose by the GS/OAS. Failure to supply this information, following a written request from the GS/OAS, will be grounds for suspending use of the System licenses, pursuant to Article 4.4 of this Memorandum.

ARTICLE III RESPONSIBILITIES OF THE GS/OAS

3.1. The GS/OAS, through the OLC/DILA:

- a) Shall coordinate the process of issuing, suspending and canceling permits for use of System licenses, pursuant to Article IV of this Memorandum.
- b) Shall request the D.O.J. Canada, in writing every four months, to send the information necessary to update the public component of the Network. When this information is received, the OLC/DILA will analyze it and publish it.

3.2. The GS/OAS, through the DOITS/SAF:

- a) Shall provide the following technical assistance in connection with the System:
 - (i) Assistance in installing the software and entering the corresponding updates, which will be provided by the GS/OAS to staff of the D.O.J. Canada in the IT (Information Technology) area. For these purposes, the D.O.J. Canada will appoint at least one technical contact person, and will inform the DOITS/SAF of the name and contact information of that person or persons.
 - (ii) Administration of System access codes.
 - (iii) Online training for use of the System, through a series of online modules that may also be used as support for day-to-day operation of the System. These modules

will be available on the Network, and the user keys will be administered by DOITS/SAF.

(iv) Response to queries on the use and functioning of the System submitted by e-mail to the address provided by DOITS/SAF, which undertakes to respond to such queries within 48 hours after receiving the request.

(v) The platform, system and operating specifications on which the System runs. This includes the dispatch of technical bulletins to the IT managers of the D.O.J. Canada. DOITS/SAF will bear no responsibility for any problems that installation of the System may occasion in the respective equipment, notwithstanding which DOITS/SAF will do its best to help find a solution to any incompatibilities.

b) With respect to the System server, DOITS/SAF will guarantee:

(i) That its location is secured and access restricted.

(ii) Availability, except where this is disrupted by service cuts beyond the control of DOITS/SAF, caused by its Internet service providers.

(iii) Continuous updating with the most recent version of the security bulletins for the operating system.

(iv) Keeping backups on the System's server or servers, which will not contain information submitted or received by users.

3.3. The services described in this Article shall be provided within the limits and capacities of the GS/OAS.

ARTICLE IV LICENSES

4.1. The licenses for the System are the exclusive property of the GS/OAS.

4.2. The GS/OAS will grant permits for use of the licenses to the D.O.J. Canada, in response to an application that meets the requirements established in Article 2.1 (a) of this Memorandum, and provided the officials for whom the permit is requested belong to the entities, offices or government institutions established as central authorities in international, multilateral and bilateral instruments to which member States of the OAS are party, or in provisions of domestic law that grant to these entities, offices or governmental institutions direct responsibility in handling requests for mutual assistance in criminal matters, extradition or both.

4.3. The following procedure shall be used for the license use permit:

a) The D.O.J. Canada will submit a written application to OLC/DILA for a permit to use the licenses, pursuant to Article 2.1 (a) of the Memorandum.

b) The OLC/DILA will decide whether the application is in order, taking into account the provisions of Article 4.2 above.

If the application is in order, the OLC/DILA will transmit it to the DOITS/SAF to create the user accounts and perform the necessary technical procedures.

If the OLC/DILA considers that any of the officials for whom the permit is requested do not fulfill the characteristics indicated in Article 4.2 of the Memorandum, the OLC/DILA will so advise the D.O.J. Canada so that, if necessary, the official can be replaced by one who fulfills those characteristics.

c) The DOITS/SAF will contact the IT personnel of the D.O.J. Canada to proceed with installing the System software and creating the user accounts.

4.4. The GS/OAS may suspend the permit for use of licenses in case of:

a) Failure to comply with the provisions of Article 2.1 (c), or

b) Failure to comply with Annex A (Sections 1, 2 or 4) of this Memorandum.

The suspension will remain in effect until those provisions are fulfilled.

4.5. The GS/OAS may cancel the permit for use of licenses:

a) At the request of the D.O.J. Canada; or

b) If the System is not used for a period of 60 days.

Cancellation of the permit for use of the license will mean the termination of user status and of all the privileges granted in this Memorandum.

4.6. If the permit is canceled, the D.O.J. Canada may request its renewal, it being understood that such requests will be processed by the OLC/DILA in the order in which they are received.

4.7. For the replacement of users, the will proceed in accordance with Articles 4.2 and 4.3 of the Memorandum.

4.8. The issuance of permits for use of the System will be subject to the availability of licenses and sufficient resources for their functioning.

ARTICLE V INFORMATION

5.1. Given the technical characteristics and the security features of the System, the GS/OAS has no access, control or responsibility over the information circulated through that System.

5.2. Users of the System are obliged to fulfill the requirements that REMJA may adopt with respect to the handling of confidential information, provided that such requirements are not incompatible with rules and policy within the Government of Canada regarding the handling of confidential information.

5.3. The D.O.J. Canada is exclusively responsible for the truthfulness, timeliness, accuracy and precision of the information provided for inclusion in the public component of the Network.

ARTICLE VI FINANCING

6.1. The State's participation in the Network, and its use of licenses for officials of the D.O.J. Canada, will be financed from voluntary contributions of OAS member States, permanent observers, or other international financial organizations or cooperation agencies, and to the extent that the GS/OAS has financial resources available for these purposes. Without prejudice to the foregoing, the D.O.J. Canada may request use of additional licenses as a charge to its own funds, for which purpose it will make the necessary arrangements with the DOITS/SAF.

ARTICLE VII COORDINATION AND REPRESENTATIVES

7.1. The representative of the GS/OAS responsible for performance and coordination of the activities and obligations deriving from this Memorandum is Jorge García González, Director of the OLC/DILA. All communications and notifications relating to this Memorandum must be sent by mail, e-mail or fax to:

*Jorge García González
Director, Office of Legal Cooperation
Department de International Legal Affairs
Organization of American States
19th Street NW & Constitution Ave. NW, Room 225
Telephone: +1(202) 458-3297
Fax: +1(202) 458-3598
jgarciag@oas.org*

7.2. The GS/OAS representative responsible for compliance with the provisions of Article 3.2 of this Memorandum, and for all technical aspects of the Network, is Juan José Goldschtein, Director of DOITS/SAF. All communications and notifications concerning Network-related technical assistance must be sent by mail, e-mail or fax to:

*Juan José Goldschtein
Director, Department of Information and Technology Services
Secretariat for Administration and Finance
1889 F ST NW Washington DC 20006
Telephone: +1 202 458 3075
Fax: +1 202 458 6212
jgoldschtein@oas.org*

7.3. The representative of the D.O.J. Canada responsible for performance and coordination of the activities and obligations deriving from this Memorandum is (*name/title*). All communications and notifications relating to this Memorandum must be sent by mail, e-mail or fax to:

*Claude LeFrançois
Avocat-conseil/Senior Counsel, Service d'entraide internationale/International
Assistance Group
2089-2084 Wellington
Ottawa, ON, Canada K1A 0H8
(613) 941-2328.
(613) 957-8412
clefranc@justice.gc.ca*

7.4. All communications and notifications flowing from this Memorandum shall be valid only when they are sent by mail, by fax, or by e-mail, and are addressed to the representatives of the parties at the addresses indicated in Articles 7.1, 7.2 and 7.3 above. When communications and notifications are transmitted by e-mail they shall be deemed valid provided they are sent direct to the e-mail addresses of the representatives of the parties.

7.5. The parties may change their representatives, in which case they shall provide written notification advising the name, position, address, telephone, fax and e-mail of the new representatives.

ARTICLE VIII PRIVILEGES AND IMMUNITIES

8.1. No provision of this Memorandum shall constitute express or tacit waiver of the privileges and immunities enjoyed by the GS/OAS, its organs, its personnel and its property and assets, as established in Articles 133, 134 and 136 of the OAS Charter, and by virtue of applicable international agreements and national laws on privileges and immunities.

ARTICLE IX DISPUTE SETTLEMENT

9.1. The parties shall attempt to resolve amicably any dispute that may arise between them in connection with the fulfillment or interpretation of this Memorandum. If this is not possible, such disputes shall be resolved through a procedure that the parties shall agree at that time.

ARTICLE X AMENDMENTS, VALIDITY AND TERMINATION


10.1. Amendments to this Memorandum may be made only by common agreement expressed in writing by the duly authorized representatives of the parties. The instruments containing the amendments shall be appended to this Memorandum and shall form part of it.

10.2. This Memorandum shall enter into force as of its signature by the duly authorized representatives of the parties, and shall remain in effect until either of the parties gives written notice to the other, at least 30 days in advance, that it does not wish to continue with this Memorandum, or until the funds referred to in article 6.1 are no longer available to GS/OAS.

10.3. This Memorandum may be extended for terms of up to one year upon written agreement signed by the duly authorized representatives of the parties.

IN WITNESS WHEREOF, the representatives of the parties, duly authorized for this purpose, sign this Memorandum in two original copies of equal validity, on the date and at the place indicated in each case.

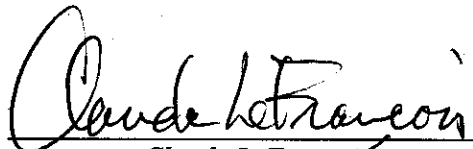
**FOR THE GENERAL SECRETARIAT OF
THE ORGANIZATION OF AMERICAN
STATES**



Jean Michel Arrighi
Director, Department of International Legal
Affairs

City: Washington, D.C.
Date: May 23, 2008

**FOR THE DEPARTMENT OF JUSTICE,
CANADA OF THE GOVERNMENT OF
CANADA**



Claude LeFrançois
Avocat-conseil/Senior Counsel,
Service d'entraide internationale/International
Assistance Group

City: Ottawa, Ontario, Canada
Date: May 5, 2008