

## **Model Treaty on Mutual Assistance in Criminal Matters**

*The General Assembly,*

*Bearing in mind* the Milan Plan of Action, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the General Assembly in its resolution 40/32 of 29 November 1985,

*Bearing in mind also* the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, principle 37 of which stipulates that the United Nations should prepare model instruments suitable for use as international and regional conventions and as guides for national implementing legislation,

*Recalling* resolution 1 of the Seventh Congress, on organized crime, in which Member States were urged, inter alia, to increase their activity at the international level in order to combat organized crime, including, as appropriate, entering into bilateral treaties on extradition and mutual legal assistance,

*Recalling also* resolution 23 of the Seventh Congress, on criminal acts of a terrorist character, in which all States were called upon to take steps to strengthen co-operation particularly, inter alia, in the area of mutual legal assistance,

*Recalling further* the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,

*Acknowledging* the valuable contributions to the development of a model treaty on mutual assistance in criminal matters that Governments, non-governmental organizations and individual experts have made, in particular the Government of Australia and the International Association of Penal Law,

*Gravely concerned* about the escalation of crime, both national and transnational,

*Convinced* that the establishment of bilateral and multilateral arrangements for mutual assistance in criminal matters will greatly contribute to the development of more effective international co-operation for the control of criminality,

*Conscious* of the need to respect human dignity and recalling the rights conferred upon every person involved in criminal proceedings, as embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,

*Recognizing* the importance of a model treaty on mutual assistance in criminal matters as an effective way of dealing with the complex aspects and serious consequences of crime, especially in its new forms and dimensions,

1. *Adopts* the Model Treaty on Mutual Assistance in Criminal Matters together with the Optional Protocol thereto, contained in the annex to the present resolution, as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral agreements aimed at improving co-operation in matters of crime prevention and criminal justice;
2. *Invites* Member States, if they have not yet established treaty relations with other States in the matter of mutual assistance in criminal matters, or if they wish to revise existing treaty relations, to take into account, whenever doing so, the Model Treaty;
3. *Urges* all States to strengthen further international co-operation and mutual assistance in criminal justice;
4. *Requests* the Secretary-General to bring the present resolution, with the Model Treaty and the Optional Protocol thereto, to the attention of Governments;
5. *Urges* Member States to inform the Secretary-General periodically of efforts undertaken to establish mutual assistance arrangements in criminal matters;
6. *Requests* the Committee on Crime Prevention and Control to review periodically the progress attained in this field;
7. *Also requests* the Committee on Crime Prevention and Control, where requested, to provide guidance and assistance to Member States in the development of legislation which would enable giving effect to the obligations which will be contained in such treaties as are to be negotiated on the basis of the Model Treaty;
8. *Invites* Member States, on request, to make available to the Secretary-General the provisions of their legislation on mutual assistance in criminal matters so that these may be made available to those Member States desiring to enact or further develop legislation in this field.

68th plenary meeting

14 December 1990

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## **ANNEX**

### **Model Treaty on Mutual Assistance in Criminal Matters**

The \_\_\_\_\_ and the \_\_\_\_\_ ,

*Desirous* of extending to each other the widest measure of co-operation to combat crime,

*Have agreed* as follows:

**Article 1**  
**SCOPE OF APPLICATION**

1. The Parties shall, in accordance with the present Treaty, afford to each other the widest possible measure of mutual assistance in investigations or court proceedings in respect of offences the punishment of which at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting State.
2. Mutual assistance to be afforded in accordance with the present Treaty may include:
  - a. Taking evidence or statements from persons;
  - b. Assisting in the availability of detained persons or others to give evidence or assist in investigations;
  - c. Effecting service of judicial documents;
  - d. Executing searches and seizures;
  - e. Examining objects and sites;
  - f. Providing information and evidentiary items;
  - g. Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records.
3. The present Treaty does not apply to:
  - a. The arrest or detention of any person with a view to the extradition of that person;
  - b. The enforcement in the requested State of criminal judgements imposed in the requesting State except to the extent permitted by the law of the requested State and the Optional Protocol to the present Treaty;
  - c. The transfer of persons in custody to serve sentences;
  - d. The transfer of proceedings in criminal matters.

**Article 2**  
**OTHER ARRANGEMENTS**

Unless the Parties decide otherwise, this Treaty shall not affect obligations subsisting between them.

**Article 3**  
**DESIGNATION OF COMPETENT AUTHORITIES**

Each Party shall designate and indicate to the other Party an authority or authorities through which requests for the purposes of this Treaty should be made.

**Article 4**  
**REFUSAL OF ASSISTANCE**

1. Assistance may be refused if:

- a. The Requested State is of the opinion that the request, if granted, would prejudice its sovereignty, security, public order or other essential public interests;
  - b. The offense is regarded as being of a political nature;
  - c. There are grounds to believe the request has been made for the purpose of prosecuting a person on account of race, sex, religion, nationality, ethnic origin or political opinions or that person's position may be prejudiced for any of those reasons;
  - d. The request relates to an offense subject to investigation or prosecution in the Requested State or which would be incompatible with this State's law on double jeopardy;
  - e. The Requested State is required to carry out compulsory measures inconsistent with its law and practice;
  - f. The act is an offense under military law, and not also an offense under ordinary criminal law.
2. Before refusing a request, the Requested State shall consider whether assistance may be granted subject to certain conditions. If the Requesting State accepts assistance under these conditions, it shall comply with them.
  3. Reasons shall be given for any refusal or postponement of mutual assistance.

#### **Article 5**

#### **CONTENTS OF REQUESTS**

1. Requests for assistance shall include:
  - a. The name of the requesting office and the competent authority conducting the investigation or court proceedings;
  - b. The purpose of the request and a brief description of the assistance sought;
  - c. A description of the facts alleged to constitute the offense and a statement of the relevant laws;
  - d. The name and address of the person to be served, where necessary;
  - e. The reasons for and details of any procedure or requirement that the Requesting State wishes to be followed;
  - f. Specification of any time-limit to be complied with;
  - g. Other necessary information.
2. Requests and supporting documents shall be accompanied by a translation into the language of the Requested State or another language acceptable to that State.
3. The Requested State may request additional information.

#### **Article 6**

#### **EXECUTION OF REQUESTS**

Requests for assistance shall be carried out promptly. To the extent consistent with the law of the Requested State, it shall carry out the request in the manner specified by the Requesting State.

**Article 7**  
**RETURN OF MATERIAL TO THE REQUESTED STATE**

Any property, records or documents handed over to the Requesting State shall be returned as soon as possible unless right of return is waived.

**Article 8**  
**LIMITATION ON USE**

The Requesting State shall not use information provided for proceedings other than those stated in the request.

**Article 9**  
**PROTECTION OF CONFIDENTIALITY**

Upon request:

- a. The Requested State shall endeavor to keep confidential the request for assistance and its contents;
- b. The Requesting State shall keep confidential evidence and information provided, except as needed for investigation and proceedings described in the request.

**Article 10**  
**SERVICE OF DOCUMENTS**

1. The Requested State shall effect service of documents that are transmitted to it.
2. A request to effect service of summonses shall be made not less than ... days before the date on which the appearance of a person is required. In urgent cases, the time requirement may be waived.

**Article 11**  
**OBTAINING EVIDENCE**

1. The Requested State shall take sworn or affirmed testimony for transmission to the Requesting State.
2. Upon request, the parties to the relevant proceedings in the Requesting State, their legal representatives and representatives of the Requesting State may be present at these proceedings.

**Article 12**  
**PROTECTION OF CONFIDENTIALITY RIGHT OR OBLIGATION TO DECLINE TO GIVE EVIDENCE**

1. A person required to give evidence may decline to do so where either:

- a. The law of the Requested State permits or requires that person to decline to give evidence in similar circumstances; or
  - b. The law of the Requesting State permits or requires that person to decline to give evidence in similar circumstances.
2. If a person claims a right or obligation to decline to give evidence under the law of the other State, a certificate of the competent authority of that other State as to the existence or nonexistence of that right or obligation shall be relied on.

#### **Article 13**

#### **AVAILABILITY OF PERSONS IN CUSTODY TO GIVE EVIDENCE OR TO ASSIST IN INVESTIGATIONS**

1. Upon request, and if the Requested State agrees and its law permits, a person in custody may, subject to his or her consent, be temporarily transferred to the Requesting State to give evidence or assist in the investigations.
2. The Requesting State shall hold that person in custody and shall return him or her at the conclusion of the matter under investigation or at such earlier time as that person's presence is no longer required.
3. Where the Requested State advises the Requesting State that the transferred person is no longer required to be held in custody, that person shall be set at liberty.

#### **Article 14**

#### **AVAILABILITY OF OTHER PERSONS TO GIVE EVIDENCE OR ASSIST IN INVESTIGATIONS**

1. The Requesting State may request the assistance of the Requested State in inviting a person:
  - a. To appear in proceedings in relation to a criminal matter, unless that person is the person charged; or
  - b. To assist in the investigations in relation to a criminal matter.
2. The Requested State shall invite the person to appear as a witness or expert in proceedings or to assist in investigations.
3. The request or the summons shall indicate the approximate allowances and the travel and subsistence expenses payable by the Requesting State.
4. Upon request, the Requested State may grant the person an advance, to be refunded by the Requesting State.

#### **Article 15**

#### **SAFE CONDUCT**

1. Where a person is in the Requesting State pursuant to a request for assistance:

- a. That person shall not be detained, prosecuted, punished or subjected to any other restrictions of personal liberty in respect of any acts or omissions that preceded the person's departure from the Requested State;
- b. That person shall not, without that person's consent, be required to give evidence or assist in any other investigation or proceeding other than that which the request relates to.

2. Paragraph 1 of this article shall cease to apply if that person, being free to leave, has not left the Requesting State within a period of [15] consecutive days after having been officially notified that his or her presence is no longer required or, having left, has voluntarily returned.

3. A person who does not consent to a request pursuant to article 13 or accept an invitation pursuant to article 14 shall not, by reason thereof, be liable to any penalty or subjected to any coercive measure.

#### **Article 16**

#### **PROVISION OF PUBLICLY AVAILABLE DOCUMENTS AND OTHER RECORDS**

1. The Requested State shall provide copies of documents and records in so far as they are open to public access as part of a public register.

2. The Requested State may provide copies of any other document or record under the same conditions as they would be provided to its own law enforcement and judicial authorities.

#### **Article 17**

#### **SEARCH AND SEIZURE**

The Requested State shall, in so far as its law permits, carry out requests for search and seizure and delivery of any material to the Requesting State for evidentiary purposes, provided that the rights of bona fide third parties are protected.

#### **Article 18**

#### **CERTIFICATION AND AUTHENTICATION**

A request for assistance shall not require certification or authentication.

#### **Article 19**

#### **COSTS**

The ordinary costs of executing a request shall be borne by the Requested State, unless otherwise determined. The Parties shall consult in advance to determine the terms and conditions under which costs of a substantial or extraordinary nature will be borne.

**Article 20  
CONSULTATION**

The Parties shall consult promptly, at the request of either, concerning the interpretation and application of this Treaty.

**Article 21  
FINAL PROVISIONS**

1. This Treaty is subject to (ratification, acceptance or approval).
2. This Treaty shall enter into force on the thirtieth day after the instruments of (ratification, acceptance or approval) are exchanged.
3. This Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.
4. Either Party may denounce this Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which notice is received by the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

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DONE at \_\_\_\_\_ on \_\_\_\_\_ in the  
\_\_\_\_\_ and \_\_\_\_\_ languages, both/all texts being  
equally authentic.

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**Optional Protocol to the Model Treaty on Mutual Assistance  
in Criminal Matters concerning the proceeds of crime**

1. In the present Protocol "proceeds of crime" means any property suspected, or found by a court, to be property directly or indirectly derived or realized as a result of the commission of an offence or to represent the value of property and other benefits derived from the commission of an offence.
2. The requested State shall, upon request, endeavour to ascertain whether any proceeds of the alleged crime are located within its jurisdiction and shall notify the requesting State of the results of its inquiries. In making the request, the requesting State shall notify the requested State of the basis of its belief that such proceeds may be located within its jurisdiction.
3. À In pursuance of a request made under paragraph 2 of the present Protocol, the requested State shall endeavour to trace assets, investigate financial dealings, and

obtain other information or evidence that may help to secure the recovery of proceeds of crime.

4. Where, pursuant to paragraph 2 of the present Protocol, suspected proceeds of crime are found, the requested State shall upon request take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds of crime, pending a final determination in respect of those proceeds by a court of the requesting State.

5. The requested State shall, to the extent permitted by its law, give effect to or permit enforcement of a final order forfeiting or confiscating the proceeds of crime made by a court of the requesting State or take other appropriate action to secure the proceeds following a request by the requesting State.

6. The Parties shall ensure that the rights of bona fide third parties shall be respected in the application of the present Protocol.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed the present Protocol.

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DONE at \_\_\_\_\_ on \_\_\_\_\_ in the  
\_\_\_\_\_ and \_\_\_\_\_ languages, both/all texts being  
equally authentic.