

TREATY WITH ARGENTINA ON MUTUAL LEGAL
ASSISTANCE IN CRIMINAL MATTERS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF ARGENTINA ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS, SIGNED AT BUENOS AIRES ON DECEMBER 4, 1990



OCTOBER 31, 1991.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate.

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Treaty
Between
The Government of the United States of America
And
The Government of the Republic of Argentina
On
Mutual Legal Assistance in Criminal Matters

The Government of the United States of America
and
The Government of the Republic of Argentina

Desiring to improve the effectiveness of the law enforcement
authorities of both countries in the prevention, investigation,
and prosecution of crime through cooperation and mutual legal
assistance in criminal matters,

Have agreed as follows:

ARTICLE 1

Scope of Assistance

1. The Contracting Parties shall provide mutual
assistance, in accordance with the provisions of this Treaty, in

connection with the prevention, investigation, and prosecution of offenses, and in proceedings related to criminal matters.

2. Assistance shall include:

- a) taking the testimony or statements of persons;
- b) providing documents, records, and articles of evidence;
- c) serving documents;
- d) locating or identifying persons;
- e) transferring persons in custody for testimony or other purposes;
- f) executing requests for searches and seizures;
- g) immobilizing assets;
- h) assisting in proceedings related to forfeiture, restitution, and collection of fines; and
- i) any other form of assistance not prohibited by the laws of the Requested State.

3. Assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution, or proceeding in the Requesting State would constitute an offense under the laws of the Requested State.

4. This Treaty is intended solely for mutual legal assistance between the Parties. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

ARTICLE 2

Central Authorities

1. Each Contracting Party shall designate a Central Authority to make and receive requests pursuant to this Treaty.
2. For the United States of America, the Central Authority shall be the Attorney General or the persons designated by him. For the Republic of Argentina, the Central Authority shall be the Subsecretary of Justice or the persons designated by him.
3. The Central Authorities shall communicate directly with one another for the purposes of this Treaty.

ARTICLE 3

Limitations on Assistance

1. The Central Authority of the Requested State may deny assistance if:
 - a) the request relates to a political offense or an offense under military law which would not be an offense under ordinary criminal law; or
 - b) the execution of the request would prejudice the security or similar essential interests of the Requested State.
2. Before denying assistance pursuant to this Article, the Central Authority of the Requested State shall consult with

the Central Authority of the Requesting State to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

3. If the Central Authority of the Requested State denies assistance, it shall inform the Central Authority of the Requesting State of the reasons for the denial.

ARTICLE 4

Form and Content of Requests

1. A request for assistance shall be in writing except that the Central Authority of the Requested State may accept a request in another form in urgent situations. In any such case, the request shall be confirmed in writing within ten days thereafter unless the Central Authority of the Requested State agrees otherwise. The request shall be in the language of the Requested State unless otherwise agreed.

2. The request shall include the following:

a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;

b) a description of the subject matter and nature of the investigation, prosecution, or proceeding, including the specific criminal offenses which relate to the matter;

c) a description of the evidence, information, or other assistance sought; and

d) a statement of the purpose for which the evidence, information, or other assistance is sought.

3. To the extent necessary and possible, a request shall also include:

a) information on the identity and location of any person from whom evidence is sought;

b) information on the identity and location of a person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;

c) information on the identity and whereabouts of a person to be located;

d) a precise description of the place or identification of the person to be searched and of the articles to be seized;

e) a description of the manner in which any testimony or statement is to be taken and recorded;

f) a list of questions to be asked;

g) a description of any particular procedure to be followed in executing the request;

h) information as to the fees and expenses to which a person asked to appear in the Requesting State will be entitled; and

i) any other information which may be brought to the attention of the Requested State to facilitate its execution of the request.

ARTICLE 5
Execution of Requests

1. The Central Authority of the Requested State shall promptly execute the request or, when appropriate, transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute the request. The Courts of the Requested State shall have authority to issue subpoenas, search warrants, or other orders necessary to execute the request.

2. When necessary, the request shall be presented to the appropriate authority by the persons designated by the Central Authority of the Requested State. Such persons shall be legally authorized to act in any proceedings related to the request.

3. Requests shall be executed in accordance with the laws of the Requested State except to the extent that this Treaty provides otherwise. However, the method of execution specified in the request shall be followed except insofar as it is prohibited by the laws of the Requested State.

4. If the Central Authority of the Requested State determines that execution of a request would interfere with an ongoing criminal investigation or proceeding in that State, it may postpone execution, or make execution subject to conditions determined to be necessary after consultations with the Central Authority of the Requesting State. If the Requesting State

accepts the assistance subject to the conditions, it shall comply with the conditions.

5. The Requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the Central Authority of the Requesting State. If the request cannot be executed without breaching the requested confidentiality, the Central Authority of the Requested State shall so inform the Central Authority of the Requesting State, which shall then determine whether the request should nevertheless be executed.

6. The Central Authority of the Requested State shall respond to reasonable inquiries by the Central Authority of the Requesting State concerning progress toward execution of the request.

7. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the outcome of the execution of the request. If the request is not executed, the Central Authority of the Requested State shall inform the Central Authority of the Requesting State of the reasons for the failure to execute.

ARTICLE 6

Costs

The Requested State shall pay all costs relating to the

execution of the request, except for the fees of expert witnesses, the costs of translation and transcription, and the fees and expenses related to travel of persons pursuant to Articles 10 and 11, which fees and expenses shall be paid by the Requesting State.

ARTICLE 7

Limitations on Use

1. The Requesting State shall not use any information or evidence obtained under this Treaty in any investigation, prosecution, or proceeding other than that described in the request without the prior consent of the Requested State.

2. The Central Authority of the Requested State may request that information or evidence furnished under this Treaty be kept confidential in accordance with conditions which its Central Authority shall specify. In that case, the Requesting State shall use its best efforts to comply with the conditions specified.

3. Information or evidence which has been made public as a result of the investigation, prosecution or proceeding in the Requesting State in accordance with paragraph 1 or 2 may thereafter be used for any purpose.

ARTICLE 8

Taking Testimony and Evidence in the Requested State

1. A person in the Requested State from whom evidence is requested pursuant to this Treaty shall be compelled, if necessary, to appear and testify or produce documents, records, or articles of evidence.

2. Upon request, the Central Authority of the Requested State shall furnish information in advance about the date and place of the taking of the testimony or evidence pursuant to this article.

3. The Requested State shall authorize the presence of such persons as specified in the request during the execution of the request, and shall allow such persons to present questions in accordance with the laws of the Requested State.

4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, the testimony or evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting State for resolution by the authorities of that State.

5. Documents, records, and articles of evidence produced in the Requested State or which are the subject of testimony taken under this article may be authenticated by an attestation. In the case of business records, authentication shall be made in the manner indicated in Form A appended to this Treaty. Documents authenticated by Form A shall be admissible in

evidence in the Requesting State as proof of the truth of the matters set forth therein.

ARTICLE 9

Records of Government Agencies

1. Upon request, the Requested State shall provide the Requesting State with copies of publicly available documents, records, or information in the possession of government departments and agencies in the Requested State.

2. The Requested State may provide copies of any documents, records, or information which are in the possession of a government department or agency in that State but which are not publicly available, to the same extent and under the same conditions as it would be available to its own law enforcement or judicial authorities. The Requested State may in its discretion deny a request pursuant to this paragraph entirely or in part.

3. Official records produced pursuant to this Article may be authenticated under the provisions of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents dated 5 October 1961 and, if that Convention is not applicable, by the official in charge of maintaining them through the use of Form B appended to this Treaty. No further authentication shall be necessary. Documents authenticated under this paragraph shall be admissible in evidence in the Requesting State.

ARTICLE 10

Testimony in the Requesting State

When the Requesting State requests the appearance of a person in that State, the Requested State shall invite the person to appear before the appropriate authority in the Requesting State. The Requesting State shall indicate the extent to which the expenses will be paid. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the response of the person.

ARTICLE 11

Transfer of Persons in Custody

1. A person in the custody of the Requested State whose presence in the Requesting State is needed for purposes of assistance under this Treaty shall be transferred from the Requested State for that purpose if both the person and the Central Authority of the Requested State consent to the transfer.

2. A person in the custody of the Requesting State whose presence in the Requested State is needed for purposes of assistance under this Treaty may be transferred to the Requested State if the person consents and if the Central Authorities of both States agree.

3. For purposes of this Article:

a) the receiving State shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorized by the sending State;

b) the receiving State shall return the person transferred to the custody of the sending State as soon as circumstances permit or as otherwise agreed by both Central Authorities;

c) the receiving State shall not require the sending State to initiate extradition proceedings for the return of the person transferred; and

d) the person transferred shall receive credit for service of any sentence imposed in the sending State for time served in the custody of the receiving State.

ARTICLE 12

Location or Identification of Persons

The Requested State shall use its best efforts to ascertain the location or identity of persons specified in the request.

ARTICLE 13

Service of Documents

1. The Requested State shall use its best efforts to

effect service of any documents relating to or forming part of any request for assistance made by the Requesting State under the provisions of this Treaty.

2. The Requesting State shall transmit any request for the service of a document requiring the appearance of a person before an authority in the Requesting State a reasonable time before the scheduled appearance.

3. The Requested State shall return a proof of service in the manner specified in the Request.

ARTICLE 14

Search and Seizure

1. The Requested State shall execute a request for the search, seizure, and delivery to the Requesting State of any document, record, or article, if the request includes the information justifying such action under the laws of the Requested State.

2. Upon request, every official who has custody of a seized article shall certify, through the use of Form C appended to this Treaty, the continuity of custody, the identify of the article, and the integrity of its condition. No further certification shall be required. The certificates shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.

3. The Central Authority of the Requested State may require that the Requesting State agree to terms and conditions deemed necessary to protect third party interests in the document, record, or article to be transferred.

ARTICLE 15

Return of Documents, Records, and Articles of Evidence

The Central Authority of the Requesting State shall return any documents, records, or articles of evidence furnished to it in execution of a request under this Treaty as soon as possible unless the Central Authority of the Requested State waives their return.

ARTICLE 16

Assistance in Forfeiture Proceedings

1. If the Central Authority of one Party becomes aware of fruits or instrumentalities of offenses which are located in the territory of the other Party and may be forfeitable or otherwise subject to seizure under the laws of that State, it may so inform the Central Authority of the other Party. If that other Party has jurisdiction in this regard it may present this information to its authorities for a determination whether any

action is appropriate. These authorities shall issue their decision in accordance with the laws of their country, and shall, through their Central Authority, report to the other Party on the outcome of the decision.

2. The Contracting Parties shall assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of the fruits and instrumentalities of offenses, restitution to the victims of crime, as well as the collection of fines imposed by judicial order.

3. A Requested Party in control of forfeited assets shall dispose of them in accordance with its law. To the extent permitted by its laws and upon such terms as it considers reasonable, either Party may transfer forfeited assets or the proceeds of their sale to the other Party.

ARTICLE 17

Compatibility with Other Treaties, Agreements, or Arrangements

Assistance and procedures set forth in this Treaty shall not prevent either Contracting Party from granting assistance to the other Party through the provisions of other international agreements to which it may be a party, or through the provisions of its national laws. The Parties may also provide assistance pursuant to any bilateral arrangement, agreement, or practice which may be applicable.

ARTICLE 18

Consultation

The Central Authorities of the Contracting Parties shall consult, at times mutually agreed to by them, to enable the most effective use to be made of this Treaty.

ARTICLE 19

Ratification, Entry Into Force, and Termination

1. This Treaty shall be subject to ratification, and the instruments of ratification shall be exchanged at Washington, D.C. as soon as possible.
2. This Treaty shall enter into force upon the exchange of instruments of ratification.
3. Either Party may terminate this Treaty by means of written notice to the other Party. Termination shall take effect six months following the date of notification.

DONE in Buenos Aires, this 4 day of December, 1990, in two originals, in the English and Spanish languages, both texts being equally authentic.

FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA:

Sterence A. Friedman

FOR THE GOVERNMENT OF
THE REPUBLIC OF ARGENTINA:

[Handwritten signature]

Form A
CERTIFICATE OF AUTHENTICITY
OF
BUSINESS RECORDS

I, _____, attest on penalty of
(Name)
criminal punishment for false statement or false attestation that
I am employed by _____
(Name of Business from which documents are sought)
and that my official title is _____
(Official Title)
I further state that each of the records attached hereto is the
original or a duplicate of the original records in the custody
of _____
(Name of Business from which documents are sought)

I further state that:

- A) such records were made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;
- B) such records were kept in the course of a regularly conducted business activity;
- C) the business activity made such records as a regular practice; and
- D) if such record is not the original, such record is a duplicate of the original.

Signature Date

Sworn to or affirmed before me, _____,
(Name)
a _____, this _____ day of _____, 19____.
(Judge, Magistrate, or Commissioner of the Court)

Form B

ATTESTATION OF AUTHENTICITY OF FOREIGN PUBLIC DOCUMENTS

I, _____, attest on penalty
 _____ (Name)
 of criminal punishment for false statement or attestation that my
 position with the Government of _____ is
 _____ (Country)
 and that in that position I am
 _____ (Official Title)
 authorized by law of _____ to attest
 _____ (Country)
 that the documents attached and described below are true and
 accurate copies of original official records which are recorded
 or filed in _____, which is a
 _____ (Name of Office or Agency)
 government office or agency of the Government of _____
 _____ (Country)

Description of Documents:

 (Signature)

 (Title)

 (Date)

Form C

ATTESTATION WITH RESPECT TO SEIZED ARTICLES

I, _____, attest on penalty of
 (Name)
 criminal punishment for false statement or attestation that my
 position with the Government of _____
 (Country)
 is _____ (Title). I received custody of the
 articles listed below from _____
 (Name of Person)
 on _____, at _____ I
 (Date) (Place)
 relinquished custody of the articles listed below to
 _____ on _____, at
 (Name of Person) (Date)
 _____ in the same condition as when I
 (Place)
 received them (or, if different, as noted below).

Description of Articles:

Changes in Condition while in my custody:

Official Seal

Signature

Title

Place

Date