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TREATY WITH THE RUSSIAN FEDERATION ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

DECEMBER 14, 2001.—Ordered to be printed

Mr. BIDEN from the Committee on Foreign Relations
submitted the following

REPORT

[To accompany Treaty Doc. 106–22]

The Committee on Foreign Relations, to which was referred the Treaty Between the United States of America and the Russian Federation on Mutual Legal Assistance in Criminal Matters (Treaty Doc. 106–22), having considered the same, reports favorably thereon, with three conditions indicated in the resolution of advice and consent, and recommends that the Senate give its advice and consent to the ratification thereof as set forth in this report and the accompanying resolution of advice and consent to ratification.

CONTENTS

I. PURPOSE

The purpose of the Treaty is to establish a formal, treaty-based means for cooperation on law enforcement matters with the Russian Federation.

II. BACKGROUND

The United States is currently party to 45 bilateral treaties on mutual legal assistance (MLATs). These treaties have proven to be

important legal mechanisms for international cooperation against crime, which increasingly involves cross-border activity. In the 106th Congress, the Senate gave its advice and consent to ratification of such treaties with Cyprus, Egypt, France, Greece, Nigeria, Romania, South Africa and Ukraine. The Treaty with Russia was signed on June 17, 1999, and submitted to the Senate on February 10, 2000. It follows a standard form for such mutual legal assistance treaties.

Although submitted by President Clinton, the Bush Administration has expressed its support for the advice and consent to ratification of the Treaty. On December 11, 2001, Secretary of State Powell wrote to the Committee Chairman and Ranking Member to urge that the Senate act on the Treaty (see appendix).

III. Entry Into Force and Termination

The Treaty enters into force upon the exchange of the instruments of ratification. The Committee has been informed by the Department of State that the Government of the Russian Federation has completed the ratification process and is ready to exchange the instrument with the United States.

Either Party may terminate the Treaty by means of written notice to the other Party. Termination takes effect six months following the date of receipt of such notification.

IV. Committee Action

The Committee conducted a public hearing on the Treaty on September 12, 2000 (S. Hrg. 106–660), taking testimony from the Departments of State and Justice. On December 12, 2001, the Committee considered the Treaty, and ordered it favorably reported by voice vote, with the recommendation that the Senate give its advice and consent to the ratification of the Treaty, subject to the conditions set forth in the resolution of advice and consent to ratification, below in Section VII.

V. Committee Recommendation and Comments

The Committee recommends that the Senate advise and consent to ratification of the Mutual Legal Assistance Treaty with Russia. Prior to September 11, U.S. law enforcement already was engaged in many highly important investigations involving Russian organized crime, money laundering and corruption. Since September 11, the United States and Russia have been engaged in close cooperation to counter the threat of international terrorism. The Treaty will be an important means for fostering cooperation with Russia in fighting crime and international terrorism.

The United States and Russia already have a similar agreement in place. The pending Treaty would replace an existing executive agreement between the United States and Russia which was signed in June 1995. That agreement, a mutual legal assistance agreement, is more limited than the pending Treaty in an important respect. The executive agreement applies only to a limited set of criminal offenses set forth in the annex of the agreement. The Treaty before the Senate provides a broader, and more flexible, "dual criminality" provision, which obligates each Party to provide

assistance in any case where the conduct that is the subject of the request constitutes a crime under the laws of both Parties. The MLAT will therefore be useful to U.S. law enforcement interests by expanding the possible scope of bilateral cooperation.

The Executive Branch has indicated that the record of cooperation under the existing agreement has been not fully satisfactory. This is hardly unusual; the process of building a cooperative relationship between national law enforcement institutions is often a slow one, particularly given the differences between the U.S. and Russian legal systems. One problem in implementation of the agreement, however, is due not to the Russian legal system but to the operation of the government itself: there has been a lack of continuity on the Russian side in the designation of the point of contact in the Central Authority.

The Executive Branch representatives have indicated to the Committee that the entry into force of the MLAT will make law enforcement cooperation with Russia more reliable. For a variety of reasons, according to testimony before the Committee, the Russian government "looks upon the treaty obligation" imposed by the MLAT as being "binding on more government agencies" than the executive agreement now in place. The Committee expects that entry into force of this Treaty will lead the Russian government to fully review and fully implement all aspects of the Central Authority arrangement required by the Treaty.

The Committee recognizes that cooperation and trust between the two governments will be an evolutionary process; that is hardly surprising after decades of antagonism. The Committee expects, however, that the pledges of an enhanced law enforcement relationship will result in concrete improvements in bilateral cooperation. Both the United States and Russia should devote the necessary resources, and political commitment, to ensure that the Treaty is effectively utilized. The Committee is encouraged by Secretary of State Powell's report to the Committee on his recent discussions with Foreign Minister Ivanov about the Treaty (see appendix). Secretary Powell stated that his Russian counterpart indicated that the Russian Federation would "work closely with the United States to ensure the effective implementation of this treaty." The Committee looks forward to, and intends to monitor, the implementation of the Treaty.

VI. Explanation of Proposed Treaty

The following is an article-by-article technical analysis provided by the Departments of State and Justice regarding the Treaty.

On June 17, 1999, the United States signed a Treaty Between the United States of America and the Russian Federation ("the Treaty"). In recent years, the United States has signed similar treaties with a number of countries as part of a highly successful effort to modernize the legal tools available to law enforcement authorities in need of foreign evidence for use in criminal cases.

The Treaty is expected to be a valuable weapon for the United States in its efforts to combat organized crime, transnational terrorism, and international drug trafficking, and other offenses.

It is anticipated that the Treaty will be implemented in the United States largely pursuant to the procedural framework pro-

vided by Title 28, United States Code, Section 1782. Russia does not have a law specifically dealing with mutual legal assistance.

The following technical analysis of the Treaty was prepared by the Office of International Affairs, United States Department of Justice, and the Office of the Legal Adviser, United States Department of State, based upon the negotiating history. The technical analysis includes a discussion of U.S. law and relevant practice as of the date of its preparation, which are, of course, subject to change. Foreign law discussions reflect the current state of that law, to the best of the drafters' knowledge.

ARTICLE 1—SCOPE OF ASSISTANCE

Paragraph 1 requires the Parties to provide "comprehensive mutual legal assistance in criminal matters." Paragraph 2 defines that term as meaning assistance provided in connection with the prevention, suppression, and investigation of crimes; criminal prosecutions; and other proceedings related to such criminal matters.

The negotiators specifically agreed that the phrase "investigation of crimes" includes grand jury proceedings in the United States and preliminary investigation proceedings in Russia, and other legal measures taken prior to the filing of formal charges in either State.[1] The term "criminal prosecutions" was intended to cover the full range of proceedings in a criminal case, including such matters as bail and sentencing hearings.[2] For Russia, this term generally represents the final stage of the "preliminary investigation" phase. It was also agreed that since the phrase "proceedings related to such criminal matters" is broader than the prevention, suppression, and investigation of crimes, as well as criminal prosecutions or the sentencing process itself, proceedings covered by the Treaty need not be strictly criminal in nature. For example, proceedings to forfeit to the government the proceeds of illegal drug trafficking may be civil in nature,[3] but such proceedings are covered by the Treaty.

Paragraph 3 conditions cooperation upon a showing of "dual criminality", i.e., proof that the facts underlying the offense charged in the Requesting Party would also constitute an offense had they occurred in the Requested Party. During the negotiations, the Russian delegation gave assurances that assistance would be available under the Treaty to the United States in investigations of major crimes such as conspiracy; drug trafficking, including operating a continuing criminal enterprise (Title 21, United States Code, Section 848); offenses under the racketeering statutes (Title

[1] The requirement that assistance be provided under the Treaty at the pre-indictment stage is critical to the United States, as our investigators and prosecutors often need to obtain evidence from foreign countries in order to determine whether or not to file criminal charges. This obligation is a reciprocal one; the United States must assist Russia under the Treaty in connection with investigations prior to charges being filed in Russia.

[2] One U.S. court has interpreted Title 28, United States Code, Section 1782, as permitting the execution of a request for assistance from a foreign country only if the evidence sought is for use in proceedings before an adjudicatory "tribunal" in the foreign country. *In Re Letters Rogatory Issued by the Director of Inspection of the Gov't of India,* 385 F.2d 1017 (2d Cir. 1967); *Fonseca* v. *Blumenthal,* 620 F.2d 322 (2d Cir. 1980). This rule poses an unnecessary obstacle to the execution of requests concerning matters which are at the investigatory stage, or which are customarily handled by administrative officials in the Requesting State. Since this paragraph of the Treaty specifically permits requests to be made in connection with matters not within the jurisdiction of an adjudicatory "tribunal" in the Requesting State, this paragraph accords the courts broader authority to execute requests than does Title 28, United States Code, Section 1782, as interpreted in the *India* and *Fonseca* cases.

[3] *See,* Title 21, United States Code, Section 881; Title 18, United States Code, Section 1964.

18, United States Code, Section 1961–1968); money laundering; Export Control Act violations; criminal tax; securities fraud and insider trading, environmental protection, and antitrust offenses.

The second sentence of paragraph 3 provides that even when dual criminality does not exist, a Requested Party may, in its discretion, provide legal assistance.

Paragraph 4 contains a standard provision in United States mutual legal assistance treaties,[4] which states that the Treaty is intended solely for government-to-government mutual legal assistance. The Treaty is not intended to provide to private persons a means of evidence gathering, or to extend generally to civil matters. Private litigants in the United States may continue to obtain evidence from Russia by letters rogatory, an avenue of international assistance that the Treaty leaves undisturbed. Similarly, the paragraph provides that the Treaty is not intended to create any right in a private person to suppress or exclude evidence provided pursuant to the Treaty, or to impede the execution of a request.

Paragraph 5 of this article defines the term "person" as used in articles 1(4), 2(4), 5(3) subparagraphs 1–5, 10(1), 14, and 15(2) as both individuals and legal entities, consistent with usage in U.S. law.

ARTICLE 2—SCOPE OF LEGAL ASSISTANCE

This article lists the major types of assistance specifically considered by the Treaty negotiators. Most of the items listed are described in detail in subsequent articles. The list is not intended to be exhaustive, a fact that is signaled by the word "include" in the opening clause of the paragraph and reinforced by the final subparagraph.

ARTICLE 3—CENTRAL AUTHORITIES AND PROCEDURES FOR COMMUNICATIONS

This article requires that each Party implement the provisions of the Treaty, including the making and receiving of requests, through its Central Authority. The Central Authority of the United States will make all requests to Russia on behalf of federal agencies, state agencies, and local law enforcement authorities in the United States. Likewise, the Central Authority of Russia will make all requests emanating from appropriate law enforcement authorities in Russia.

The Central Authority for the Requesting Party will exercise discretion as to the form and content of requests, and the number and priority of requests. The Central Authority of the Requested Party also is responsible for receiving each request, transmitting it to the proper federal or state agency, court, or other authority for execution, and ensuring that a timely response is made.

Paragraph 2 provides that the Attorney General or persons designated by the Attorney General will be the Central Authority for the United States. The Attorney General has delegated the authority to handle the duties of Central Authority under mutual assist-

[4] *See, United States* v. *Johnpoll,* 739 F.2d 702 (2d Cir. 1984), *cert. denied,* 469 U.S. 1075 (1984).

ance treaties to the Assistant Attorney General in charge of the Criminal Division.[5] Article 3(2) of the Treaty also states that the Office of the Procurator General of the Russian Federation or persons designated by the Procurator General will serve as the Central Authority for Russia.

Paragraph 3 states that the Central Authorities shall communicate directly with one another for the purposes of the Treaty and may agree upon such practical measures as may be deemed necessary to facilitate the implementation of the Treaty. It is anticipated that such communication will be accomplished by telephone, telefax or any other means, at the option of the Central Authorities themselves.

ARTICLE 4—DENIAL OF LEGAL ASSISTANCE

This article specifies the limited classes of cases in which assistance may be denied under the Treaty. These restrictions are similar to those found in other mutual legal assistance treaties.

Paragraph (1)(1) permits denial of a request if it relates to an offense under military law that would not be an offense under general criminal law.

Paragraph (1)(2) permits the Central Authority of the Requested Party to deny a request if execution of the request would prejudice the security or other essential interests of that Party. All U.S. mutual legal assistance treaties contain provisions allowing the Requested Party to decline to execute a request if execution would prejudice its essential interests.

The delegations agreed that the word "security" would include cases in which assistance might involve disclosure of information that is classified for national security reasons. It is anticipated that the U.S. Department of Justice, as Central Authority for the United States, would work closely with the Department of State and other government agencies to determine whether to execute a request that might fall in this category.

The negotiators also agreed that "other essential interests" could include interests related to the fundamental purposes of the Treaty. For example, one fundamental purpose of the Treaty is to enhance law enforcement cooperation, and attaining that purpose would be hampered if sensitive law enforcement available under the Treaty were to fall into the wrong hands. Therefore, the U.S. Central Authority may invoke paragraph 1(2) to decline to provide information pursuant to a request under this Treaty if it determines, after appropriate consultation with law enforcement, intelligence, and foreign policy agencies, that a senior foreign government official who will have access to the information is engaged in a felony, including the facilitation of the production or distribution of illegal drugs.[6]

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[5] 28 C.F.R. §0.64–1. The Assistant Attorney General for the Criminal Division has in turn delegated this authority to the Deputy Assistant Attorneys General and the Director of the Criminal Division's Office of International Affairs, in accordance with the regulation. Directive No. 81, 45 Fed. Reg. 79,758 (1980), as corrected at 48 Fed. Reg. 54,595 (1983). That delegation was subsequently extended to the Deputy Directors of the Office of International Affairs. 59 Fed. Reg. 42,160 (1994).

[6] This is consistent with the Senate resolution of advice and consent to ratification of other mutual legal assistance treaties with, *e.g.*, Luxembourg, Hong Kong, Poland and Barbados. *See,* Cong. Rec. S12985–S12987 (November 1, 1998). *See, also,* Mutual Legal Assistance Treaty Concerning the Cayman Islands, Exec. Rept. 100–26, 100th Cong., 2 Sess., 67 (1988) (testimony of

In addition, the United States and Russia exchanged diplomatic notes stating that during the negotiations the U.S. delegation agreed to exclude an express reference in the Treaty to "political offense" as a basis for denial of assistance since the term "political offense" is not used in Russian law. Instead, the Parties, through the exchange of these diplomatic notes, have agreed that Article 4(1)(2) of the Treaty provides a sufficient basis upon which the United States may deny assistance in cases it would consider "political offenses." The United States would employ jurisprudence similar to that used in extradition treaties for determining what is a "political offense." Such a restriction is similar to provisions explicitly included in other mutual legal assistance treaties. [7]

Paragraph 1(3) allows the Central Authority of a Requested Party to deny assistance if the request does not conform to the requirements of this Treaty.

Paragraph 2 specifically prohibits the Requested Party from denying assistance on the ground of bank secrecy. The negotiators agreed that inclusion of this provision was useful to explicitly demonstrate to bank and other officials of a Requested Party, particularly in Russia where bank secrecy laws exist, that they cannot assert bank secrecy as a basis for refusing to provide assistance sought pursuant to a request made in accordance with this Treaty.

Paragraph 3 is similar to Article 3(2) of the U.S.-Switzerland Mutual Legal Assistance Treaty,[8] and obliges the Requested Party to consider imposing appropriate conditions on its assistance in lieu of denying a request outright pursuant to the first paragraph of the article. For example, a Contracting Party might request information that could be used either in a routine criminal case (which would be within the scope of the Treaty) or in a prosecution of a political offense (which would be subject to refusal). This paragraph would permit the Requested Party to provide the information on the condition that it be used only in the routine criminal case. Naturally, the Requested Party would notify the Requesting Party of any proposed conditions before actually delivering the evidence in question, thereby giving the Requesting Party a chance to indicate whether it is willing to accept the evidence subject to the conditions. If the Requesting Party does accept the evidence subject to the conditions, it must honor the conditions.

Paragraph 4 requires that the Central Authority of the Requested Party promptly notify the Central Authority of the Requesting Party of the basis for any denial of assistance. This ensures that, when a request is only partly executed, the Requested Party will provide some explanation for not providing all of the information or evidence sought. This should avoid misunderstandings, and enable the Requesting Party to better prepare its requests in the future.

Mark M. Richard, Deputy Assistant Attorney General, Criminal Division, United States Department of Justice).

[7] In addition, the delegations agreed during the negotiation that the term "essential interest" encompasses the fundamental interests of each Party, including those relating to human rights and civil liberties.

[8] U.S.-Switzerland Mutual Legal Assistance Treaty, signed at Bern May 25, 1973, entered into force January 23, 1977, art. 26, 27 U.S.T. 2019, TIAS No. 8302, 1052 UNTS 61.

ARTICLE 5—FORM AND CONTENTS OF REQUESTS FOR LEGAL ASSISTANCE

Paragraph 1 requires that requests be in writing, except that the Central Authority of the Requested Party may accept a request in another form in "urgent situations." If the request is not in writing, it must be confirmed in writing within ten days unless the Central Authority of the Requested Party agrees otherwise.

Paragraph 2 lists the five kinds of information deemed crucial to the efficient operation of the Treaty which must be included in each request. Paragraph 3 lists eight kinds of information that are important but not always crucial, and should be provided "to the extent necessary and possible." In keeping with the intention of the Parties that requests be as simple and straightforward as possible, there is no requirement under the Treaty that a request be legalized or certified. Paragraph 4 states that the request shall be prepared and signed in accordance with the regulations of the Requesting Party. Requests from the U.S. Central Authority to Russia will be signed by an authorized person of the Central Authority. Requests from Russia to the United States typically will be both signed by an appropriate person and contain official seals of the Central Authority.

ARTICLE 6—LANGUAGE

This article states that requests for assistance and attached documents must be accompanied by a translation into the language of the Requested Party.

ARTICLE 7—EXECUTION OF REQUESTS

Paragraph 1 requires each Central Authority to promptly execute requests. The negotiators intended that the Central Authority, upon receiving a request, will first review the request, then promptly notify the Central Authority of the Requesting Party if the request does not appear to comply with the Treaty's terms. If the request does satisfy the Treaty's requirements and the assistance sought can be provided by the Central Authority itself, the request will be fulfilled immediately. If the request meets the Treaty's requirements but its execution requires action by some other entity in the Requested Party, the Central Authority will promptly transmit the request to the correct entity for execution.

When the United States is the Requested Party, it is anticipated that the Central Authority will transmit most requests to federal investigators, prosecutors, or judicial officials for execution if the Central Authority deems it appropriate to do so.

Paragraph 1 further authorizes and requires the competent judicial or other authorities to do everything within their power to execute the request. This provision is not intended or understood to authorize the use of the grand jury in the United States for the collection of evidence pursuant to a request from Russia. Rather, it is anticipated that when a request from Russia requires compulsory process for execution, the U.S. Department of Justice would ask a federal court to issue the necessary process under Title 28, United States Code, Section 1782, and the provisions of the Treaty. Similarly, this general language should not be understood to authorize

the use of the Treaty to conduct criminal proceedings in Russia for the U.S. (*e.g.*, the accepting of guilty pleas from defendants).

Paragraph 2 states that the Central Authority of the Requested Party shall represent the interests of the Requesting Party in executing a request for assistance. Thus, it is understood that if execution of the request entails action by a judicial or administrative agency, the Central Authority of the Requested Party shall arrange for the presentation of the request to that court or agency at no cost to the Requesting Party.

Paragraph 3 provides that "[r]equests shall be executed in accordance with the laws of the Requested Party except if this Treaty provides otherwise." Thus, the method of executing a request for assistance under the Treaty must be in accordance with the Requested Party's domestic laws absent specific contrary procedures in the Treaty itself. For the United States, the Treaty is intended to be self-executing; no new or additional legislation will be needed to carry out the obligations undertaken.

The second sentence of Article 7(3) states: "[t]he competent authorities of the Requested Party shall have the authority to issue subpoenas, search warrants, or other orders necessary for the execution of requests." This language specifically authorizes U.S. courts to use all of their powers to issue subpoenas and other process to satisfy a request under this Treaty. It also reflects an understanding that the Parties intend to provide each other with every available form of assistance from judicial and executive branches of government in the execution of mutual assistance requests. The term "competent authorities" is intended to include all those officials authorized to issue compulsory process that might be needed in executing a request.

The same paragraph requires that procedures specified in the request shall be followed in the execution of the request except to the extent that those procedures cannot lawfully be followed in the Requested Party. This provision is necessary for two reasons.

First, there are significant differences between the procedures which must be followed by U.S. and Russian authorities in collecting evidence in order to assure the admissibility of that evidence at trial. For instance, U.S. law permits documents obtained abroad to be admitted in evidence if they are duly certified and the defendant has been given fair opportunity to test its authenticity.[9] Since Russian law contains no similar provision, documents acquired in Russia in strict conformity with Russian procedures might not be admissible in U.S. courts. Furthermore, U.S. courts use procedural techniques such as videotape depositions that simply are not used in Russia even though they are not forbidden there.

Second, the evidence in question could be needed for subjection to forensic examination, and sometimes the procedures which must be followed to enhance the scientific accuracy of such tests do not coincide with those utilized in assembling evidence for admission into evidence at trial. The value of such forensic examinations could be significantly lessened—and the Requesting Party's investigation could be retarded—if the Requested Party were to insist

[9] Title 18, United States Code, Section 3505.

unnecessarily on handling the evidence in a manner usually reserved for evidence to be presented to its own courts.

Both delegations agreed that the Treaty's primary goal of enhancing law enforcement in the Requesting Party could be frustrated if the Requested Party were to insist on producing evidence in a manner which renders the evidence inadmissible or less persuasive in the Requesting Party. For this reason, Paragraph 3 requires the Requested Party to follow the procedure outlined in the request to the extent that it can, even if the procedure is not that usually employed in its own proceedings. However, if the procedure called for in the request is unlawful in the Requested Party (as opposed to simply unfamiliar there), the appropriate procedure under the law applicable for investigations or proceedings in the Requested Party will be utilized.

Paragraph 4 states that a request for assistance need not be executed immediately when the Central Authority of the Requested Party determines that execution would interfere with an ongoing criminal investigation, criminal prosecution, or legal proceeding related to a pending criminal matter in the Requested Party. The paragraph also allows the Requested Party to provide the information to the Requesting Party subject to conditions needed to prevent interference with the Requested Party's proceedings.

It is anticipated that some United States requests for assistance may contain information which under our law must be kept confidential. For example, it may be necessary to set out information that is ordinarily protected by Rule 6(e), Federal Rules of Criminal Procedure, in the course of an explanation of "a description of the facts and circumstances of the case" as required by Article 5(2)(2). Therefore, Paragraph 5 of Article 7 enables the Requesting Party to call upon the Requested Party to use its best efforts to keep the information in the request confidential.[10] If the Requested Party cannot execute the request without disclosing the information in question (as might be the case if execution requires a public judicial proceeding in the Requested Party), or if for some other reason this confidentiality cannot be assured, the Treaty obliges the Requested Party to so indicate, thereby giving the Requesting Party an opportunity to withdraw the request rather than risk jeopardizing an investigation or proceeding by public disclosure of the information.

Paragraph 6 states that the Central Authority of the Requested Party shall respond to inquiries by the Requesting Party concerning progress of its request. The delegations understood that this meant reasonable inquiries. This is to encourage open communication between the Central Authorities in monitoring the status of specific requests.

Article 7(7) requires the Central Authority of the Requested Party, upon request by the Central Authority of the Requesting Party, to furnish information in advance about the date and place of the execution of the request. The second sentence of this same paragraph requires the Requested Party to permit the presence of

[10] This provision is similar to language in other United States mutual legal assistance treaties. *See, e.g.*, U.S.-Lithuania Mutual Legal Assistance Treaty, signed at Washington January 16, 1998, entered into force August 26, 1999, art. 5(5).

persons specified in the request during the execution of the request.

Paragraph 8 requires that the Central Authority of the Requested Party promptly notify the Central Authority of the Requesting Party of the outcome of the execution of a request. If the assistance sought is not provided, the Central Authority of the Requested Party must also explain the basis for the outcome to the Central Authority of the Requesting Party. For example, if the evidence sought could not be located, the Central Authority of the Requested Party would report that fact to the Central Authority of the Requesting Party.

ARTICLE 8—COSTS

This article reflects the increasingly accepted international rule that each Party shall bear the expenses incurred within its territory in executing a legal assistance Treaty request. This is consistent with similar provisions in other United States mutual legal assistance treaties.[11] Since the cost of retaining counsel abroad to present and process letters rogatory is sometimes quite high, this provision is a significant advance in international legal cooperation. It is also understood that should the Requesting Party choose to hire private counsel for a particular request, it is free to do so at its own expense. Article 8 does obligate the Requesting Party to pay fees of experts, the costs of translation, interpretation, and transcription, and allowances and expenses related to travel of persons pursuant to Articles 11 and 12.

Paragraph 2 of this article provides that if it becomes apparent during the execution of a request that complete execution of a request would require extraordinary expenses, then the Central Authorities shall consult to determine the terms and conditions under which execution may continue.

ARTICLE 9—LIMITATIONS ON USE OF THE RESULTS OF EXECUTED REQUESTS

Paragraph 1 states that the Central Authority of the Requested Party may require that the Requesting Party not use the results of the execution of a request obtained under the Treaty for purposes other than those described in the request without the prior consent of Central Authority of the Requested Party. If such a use limitation is required, the Requesting Party must comply with the requirement. It will be recalled that Article 5(2)(5) states that the Requesting Party must specify the purpose for which the information or evidence is needed.

It is not anticipated that the Central Authority of the Requested Party will routinely request use limitations under paragraph 1. Rather, it is expected that such limitations will be requested sparingly, only when there is good reason to restrict the utilization of the evidence.

Paragraph 2 states that nothing in Article 9 shall preclude the use or disclosure of information to the extent that there is an obligation to do so under the Constitution of the Requesting Party in

[11] *See, e.g.*, U.S.-Czech Republic Mutual Legal Assistance Treaty, signed at Washington February 4, 1998, entered into force March 7, 2000, art. 6.

a criminal prosecution.[12] Any such proposed disclosure and the provision of the Constitution under which such disclosure is required shall be notified by the Requesting Party to the Requested Party in advance of any such possible or proposed use or disclosure.

Paragraph 3 states that once results of an executed request have been used for the purpose for which they were provided and, in the course of such use, have been made public in the Requesting Party in accordance with the Treaty, the Requesting Party is free to use the evidence for any purpose. So, for example, when evidence obtained under the Treaty has been revealed to the public in a trial, that information effectively becomes part of the public domain, and is likely to become a matter of common knowledge, perhaps even be described in the press. The negotiators noted that once this has occurred, it is practically impossible for the Central Authority of the Requesting Party to block the use of that information by third parties.

It should be noted that under Article 1(4), the restrictions outlined in Article 9 are for the benefit of the Parties, and the invocation and enforcement of these provisions are left entirely to the Parties. If a person alleges that a Russian authority has used information or evidence obtained from the United States in a manner inconsistent with this article, the person can inform the Central Authority of the United States of the allegations for consideration as a matter between the Parties.

ARTICLE 10—OBTAINING TESTIMONY AND EVIDENCE IN THE REQUESTED PARTY

Paragraph 1 states that a person in the Requested Party from whom testimony and evidence, including documents, records, or other items, is sought shall be compelled, if necessary, to appear and testify and produce such documents, records, or items, in accordance with the law of the Requested Party. The compulsion contemplated by this article can be accomplished by subpoena or any other means available under the law of the Requested Party. [13]

Paragraph 2, read in conjunction with Article 7.7, provides that any persons specified in the request, including the defendant and his counsel in criminal cases, shall be permitted by the Requested Party to be present and permitted to pose questions directly or to formulate questions that shall be posed to the person giving the testimony, and to make a verbatim transcript of the proceeding, using technical means if necessary.

Paragraph 3 states that if a witness asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting Party, the Requested Party shall nonetheless take the evidence and turn it

[12] *See, Brady* v. *Maryland,* 373 U.S. 83 (1963).

[13] The U.S. and Russian delegations discussed the possibility of an Annex to the Treaty including forms for the Certification of Business Records and the Certification of Absence of Business Records along the lines of those included in the Annex to the U.S.-Czech Republic Legal Assistance Treaty, Treaty Doc. 105–47, and discussed in Article 10 of the U.S.-Czech Republic Treaty. The delegations ultimately decided not to include such forms in the Treaty, but the Russian delegation indicated that in practice the Russian Government would ask an appropriate person to complete such forms whenever the U.S. Central Authority specifically requested such assistance in connection with a request under this Treaty. Such cooperation on the part of the Russian Government would be consistent with Article 7(3) of the Treaty. As a result, the U.S. expects to use forms along the lines of Forms A and B attached to the U.S.-Czech Republic Treaty to facilitate the effective use of the U.S.-Russia Treaty.

over to the Requesting Party along with notice that it was obtained over a claim of privilege. The applicability of the privilege can then be determined in the Requesting Party, where the scope of the privilege and the legislative and policy reasons underlying the privilege are best understood. A similar provision appears in many of our recent mutual legal assistance treaties.[14] It is understood that when a person asserts a claim of immunity, incapacity or privilege under the laws of the Requested Party, that claim will be resolved in accordance with the law of the Requested party. This is consistent with Article 7(3), and ensures that no person will be compelled to furnish information if he has a right not to do so under the law of the Requested Party. Thus, a witness questioned in the United States pursuant to a request from Russia is guaranteed the right to invoke any of the testimonial privileges (*e.g.*, attorney client, husband-wife) available in the United States as well as the constitutional privilege against self-incrimination, to the extent that it might apply in the context of evidence being taken for foreign proceedings.[15] A witness testifying in Russia may raise any of the similar privileges available under the law of Russia.

ARTICLE 11—OBTAINING TESTIMONY IN THE REQUESTING PARTY

This article provides that upon request, the Requested Party shall invite persons in that Party to travel to the Requesting Party to appear before an appropriate authority. The Requesting Party would be expected to pay the expenses of such an appearance pursuant to Article 8. Therefore, Article 11 provides that the Requesting Party must indicate the extent to which expenses and allowances will be paid to the invited person. It is assumed that such expenses would normally include the costs of transportation, as well as room and board. When the person is to appear in the United States, a nominal witness fee would also be provided. A person who agrees to appear in the Requesting Party may request an advance, which may be provided through the Embassy or a consulate of the Requesting Party, to cover expenses.

The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the invitee's response. An appearance in the Requesting Party under this article is not mandatory, and the invitation may be refused by the prospective witness.

Paragraph 2 provides that a person appearing in the Requesting Party under this Article shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty, by reason of acts or convictions that preceded the person's departure for the Requesting Party from the Requested Party. It is understood that this provision would not prevent the prosecution of a person for perjury or any other crime committed while in the Requesting Party pursuant to this provision or thereafter. If such guarantee cannot be provided for any reason, the Central Authority of the Requesting Party shall indicate this in the request in order to inform the invited person, who may then decide whether to appear in view of the fact that such guarantees could not be provided.

[14] *See, e.g.*, U.S.-Barbados Mutual Legal Assistance Treaty, signed at Bridgetown February 28, 1996, entered into force March 3, 2000, art. 8(4).

[15] This is consistent with the approach taken in Title 28, United States Code, Section 1782.

Paragraph 3 states that any safe conduct provided for under this article expires seven days after the Central Authority of the Requesting Party has notified the Central Authority of the Requested Party that the person's presence is no longer required, or if the person leaves the territory of the Requesting Party and thereafter returns to it. However, the Central Authority of the Requesting Party may extend the safe conduct up to fifteen days if it determines that there is good cause to do so.

ARTICLE 12—TRANSFER OF PERSONS IN CUSTODY

In some criminal cases, a need arises for the testimony in one country of a witness in custody in another country. In some instances, foreign countries are willing and able to "lend" witnesses to the U.S. Government, provided the witnesses would be carefully guarded while in the United States and returned to the foreign country at the conclusion of the testimony. On occasion, the U.S. Justice Department has arranged for consenting federal inmates in the United States to be transported to foreign countries to assist in criminal proceedings.[16]

Paragraph 1 provides an express legal basis for cooperation in these matters. It is based on Article 26 of the U.S.-Switzerland Mutual Legal Assistance Treaty,[17] which in turn is based on Article 11 of the European Convention on Mutual Assistance in Criminal Matters.[18] It provides that persons in custody in one Party whose presence in the other Party is sought for purposes of legal assistance under the Treaty shall be transferred in custody for that purpose provided that the person consents and the Central Authorities of both states agree. This would also cover a situation in which a person in custody in the United States on a criminal matter has sought permission to travel to another country to be present at a deposition being taken there in connection with the case.[19]

Paragraph 2 provides express authority for the receiving Party to keep such a person in custody throughout the person's stay there, unless the sending Party specifically authorizes release. This paragraph also authorizes and obligates the receiving Party to return the person in custody to the sending Party as soon as circumstances permit or as otherwise agreed, and provides that this return will occur in accordance with terms and conditions agreed upon by the Central Authorities. The initial transfer of a prisoner under this article requires the consent of the person involved and of both Central Authorities, but the provision does not require that the person consent to be returned to the sending Party.

In keeping with the obligation under subparagraph 2(2) to return a person transferred under this article, subparagraph (3) explicitly

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[16] For example, in September, 1986, the United States Justice Department and the United States Drug Enforcement Administration arranged for four federal prisoners to be transported to the United Kingdom to testify for the Crown in *Regina* v. *Dye, Williamson, Ells, Davies, Murphy, and Millard,* a major narcotics prosecution in "the Old Bailey" (Central Criminal Court) in London.

[17] U.S.-Switzerland Mutual Legal Assistance Treaty, signed at Bern May 25, 1973, entered into force January 23, 1977, art. 26, 27 U.S.T. 2019, TIAS No. 8302, 1052 UNTS 61.

[18] This is consistent with Title 18, United States Code, Section 3508, which provides for the transfer to the United States of witnesses in custody in other States whose testimony is needed at a federal criminal trial.

[19] *See, also, United States* v. *King,* 552 F.2d 833 (9th Cir. 1976), *cert. denied,* 430 U.S. 966 (1977), where the defendants insisted on traveling to Japan to be present at the deposition of certain witnesses in prison there.

prohibits the Party to whom a person is so transferred from requiring the transferring Party to initiate extradition proceedings for that purpose. Paragraph (2)(4) states that the person is to receive credit for time served while in the custody of the receiving Party. This is consistent with U.S. practice in these matters. Paragraph 2(5) states that where the sentence imposed has expired, or where the sending Party has advised the receiving Party that the transferred person is no longer required to be held in custody, that person shall be treated as an invited person pursuant to Article 11 or returned to the sending Party.

Article 12 does not provide for any specific "safe conduct" for persons transferred under this article, because it is anticipated that the authorities of the two countries will deal with such situations on a case-by-case basis. If the person in custody is unwilling to be transferred without safe conduct, and the Receiving Party is unable or unwilling to provide satisfactory assurances in this regard, the person is free to decline to be transferred.

ARTICLE 13—PRODUCTION OF OFFICIAL RECORDS

Paragraph 1 obliges each Party to furnish the other with copies of publicly available records, including documents or information in any form, possessed by an executive, legislative, or judicial authority in the Requested Party. The phrase "executive, legislative, or judicial authority" covers all levels of government, including, for the United States, federal, state and local levels of government. [20]

Paragraph 2 provides that the Requested Party may share with its Treaty partner copies of nonpublic information in government files. The undertaking under this provision is discretionary, and such requests may be denied in whole or in part. Moreover, the article states that the Requested Party may only exercise its discretion to turn over information in its files "to the same extent and under the same conditions" as it would to its own competent authorities. It is intended that the Central Authority of the Requested Party, in close consultation with the interested law enforcement authorities of that Party, would determine that extent and those conditions.

The discretionary nature of this provision was deemed necessary because government files in each Party contain some kinds of information that would be available to investigative authorities in that Party, but that justifiably would be deemed inappropriate to release to a foreign government. For example, assistance might be deemed inappropriate where the information requested would identify or endanger an informant, prejudice sources of information needed in future investigations, or reveal information that was given to the Requested Party in return for a promise that it not

[20] The U.S. and Russian delegations discussed the possibility of an Annex to the Treaty including forms for the Certification of Official Records and the Certification of Absence of Official Records along the lines of those included as Forms C and D in the Annex to the U.S.-Czech Republic Legal Assistance Treaty, Treaty Doc. 105–47, and discussed in Article 13 of the U.S.-Czech Republic Treaty. The delegations ultimately decided not to include such forms in the Treaty, but the Russian delegation indicated that in practice the Russian Government would ask an appropriate person to complete such forms whenever the U.S. Central Authority specifically requested such assistance in connection with a request under this Treaty. Such cooperation on the part of the Russian Government would be consistent with Article 7(3) of the Treaty. As a result, the U.S. expects to use forms along the lines of Forms C and D attached to the U.S. Czech Republic Treaty to facilitate the effective use of the U.S.-Russia Treaty.

be divulged. Of course, a request could be denied under this clause if the Requested Party's law bars disclosure of the information.

The delegations discussed whether this article should serve as a basis for exchange of information in tax matters. It was the intention of the U.S. delegation that the United States be able to provide assistance under the Treaty for tax offenses, as well as to provide information in the custody of the Internal Revenue Service for both tax offenses and non-tax offenses under circumstances that such information is available to U.S. law enforcement authorities. The U.S. delegation was satisfied after discussion that this Treaty, like most other U.S. mutual legal assistance treaties, is a "convention relating to the exchange of tax information" for purposes of Title 26, United States Code, Section 6103(k)(4), and the United States would have the discretion to provide tax return information to Russia under this article in appropriate cases.

ARTICLE 14—LOCATION OR IDENTIFICATION OF PERSONS AND ITEMS

This article provides for ascertaining the whereabouts in the Requested Party of persons (such as witnesses, potential defendants, or experts) or items if the Requesting Party seeks such information. This is a standard provision contained in all U.S. mutual legal assistance treaties. The Treaty requires only that the Requested Party make "best efforts" to locate the persons or items sought by the Requesting Party. The extent of such efforts will vary, of course, depending on the quality and extent of the information provided by the Requesting Party concerning the suspected location and last known location.

The obligation to locate persons or items is limited to persons or items that are or may be in the territory of the Requested Party. Thus, the United States would not be obliged to attempt to locate persons or items which may be in third countries. In all cases, the Requesting Party would be expected to supply all available information about the last known location of the persons or items sought.

ARTICLE 15—SERVICE OF DOCUMENTS

This article creates an obligation on the Requested Party to use its best efforts to effect the service of documents such as summons, complaints, subpoenas, or other legal papers. Identical provisions appear in most U.S. mutual legal assistance treaties.[21]

It is expected that when the United States is the Requested Party, service under the Treaty will be made by registered mail (in the absence of any request by Russia to follow a specified procedure for service) or by the United States Marshal's Service in instances in which personal service is requested.

Paragraph 2 provides that when the documents to be served call for the appearance of a person in the Requesting Party, the documents should be transmitted by the Central Authority of the Requesting Party within a reasonable time before the date set for any such appearance.

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[21] *See, e.g.*, U.S.-Lithuania Mutual Legal Assistance Treaty, signed at Washington, January 16, 1998, entered into force August 26, 1999, art. 13.

Paragraph 3 requires that proof of service be returned to the Requesting Party in the manner specified in the request.

ARTICLE 16—SEARCH AND SEIZURE

It is sometimes in the interests of justice for one Party to ask another to search for, secure, and deliver articles or objects needed in the former as evidence or for other purposes. U.S. courts can and do execute such requests under Title 28, United States Code, Section 1782.[22] This article creates a formal framework for handling such requests and is similar to provisions in many other U.S. mutual legal assistance treaties.[23]

Article 16 requires that the search and seizure request include "information justifying such action under the laws of the Requested Party." This means that normally a request to the United States from Russia will have to be supported by a showing of probable cause for the search. A U.S. request to Russia would have to satisfy the corresponding evidentiary standard there, which is "a reasonable basis to believe" that the specified premises contains articles likely to be evidence of the commission of an offense.

Paragraph 2 is designed to ensure that a record is kept of articles seized and of articles delivered up under the Treaty. This provision requires that, upon request, every official who has had custody of a seized item shall certify the identity, the continuity of its custody, and the integrity of its condition. [24]

Paragraph 3 states that the Requested Party may require that the Requesting Party agree to terms and conditions necessary to protect the interests of third parties in the item to be transferred.

ARTICLE 17—TRANSFER OF DOCUMENTS, RECORDS, AND OTHER ITEMS

Paragraph 1 provides that upon request for the transfer of documents or records, a Requesting Party must provide true copies of the documents or records. If the Requesting Party, however, expressly requests the transfer of original documents or records, the Requested Party must make every effort to comply with the request.

Paragraph 2 states that, unless prohibited by its laws, a Requested Party must transfer documents, records, or other items in such a manner or with a particular certification as may be requested by the Requesting Party in order to ensure admissibility under the laws of the Requesting Party. The second sentence of this paragraph notes that the Central Authorities of the Parties

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[22] *See, e.g., United States Ex Rel Public Prosecutor of Rotterdam, Netherlands* v. *Richard Jean Van Aalst,* Case No 84–52–M–01 (M.D. Fla., Orlando Div.) (search warrant issued February 24, 1984).

[23] *See, e.g.*, U.S.-Latvia Mutual Legal Assistance Treaty, signed at Washington June 13, 1997, entered into force September 17, 1999, art. 15.

[24] The U.S. and Russian delegations discussed the possibility of an Annex to the Treaty including a form for Certification with Respect to Seized Items along the lines of that included as Form E in the Annex to the U.S.-Czech Republic Legal Assistance Treaty, Treaty Doc. 105–47, and discussed in Article 16 of the U.S.-Czech Republic Treaty. The delegations ultimately decided not to include such forms in the Treaty, but the Russian delegation indicated that in practice the Russian Government would ask an appropriate person to complete such forms whenever the U.S. Central Authority specifically requested such assistance in connection with a request under this Treaty. Such cooperation on the part of the Russian Government would be consistent with Article 7(3) of the Treaty. As a result, the U.S. expects to use forms along the lines of Form E attached to the U.S.-Czech Republic Treaty to facilitate the effective use of the U.S.-Russia Treaty.

will directly communicate, pursuant to Article 3(3), with respect to the requirements for admissibility in their respective legal systems.

The last sentence of paragraph 2 provides that documents, records, and other items transferred in accordance with this paragraph—that is, those produced pursuant to Articles 10, 13 and 16—shall not require any further certification in order to make them admissible. Of course, it will be up to the judicial authority presiding over the trial to determine whether the evidence, in fact, should be admitted. The evidentiary tests other than authentication (such as relevance or materiality) must be established in each case.

Paragraph 3 of this article provides that the Requested Party may require that any documents, records, or items furnished under the Treaty be returned as soon as possible. The delegations understood that this requirement would be invoked only if the Central Authority of the Requested Party specifically requests it at the time that the items are delivered to the Requesting Party. It is anticipated that unless original records or articles of significant intrinsic value are involved, the Requested Party will not usually request return of the times, but this is a matter best left to development in practice.

ARTICLE 18—PROCEEDS AND INSTRUMENTALITIES OF CRIMES

A major goal of the Treaty is to enhance the efforts of both the United States and Russia in combating organized crime. One significant strategy in this effort is action by U.S. authorities to seize and confiscate money, property, and other proceeds of members of the organized crime groups.

This article is similar to a number of U.S. mutual legal assistance treaties, including Article 16 of the U.S.-Barbados Mutual Legal Assistance Treaty and Article 17 of the U.S.-Latvia Mutual Legal Assistance Treaty. Paragraph 1 obligates the Parties to assist one another, in accordance with their laws, in locating, immobilizing, and seizing proceeds, including earnings from, or that are the result of, criminal activities, as well as instrumentalities of offenses, for purposes of: forfeiture; restitution to victims of crime; and collection of fines imposed pursuant to judicial decisions in criminal matters. Thus, if the law of a Requested Party enable it to seize assets in aid of a proceeding in the Requesting Party or to enforce a judgment of forfeiture levied in the Requesting Party, the Treaty provides that the Requested Party shall do so. The language of the article is carefully selected, however, so as not to require either Party to take any action that would exceed its internal legal authority. It does not, for instance, mandate institution of forfeiture proceedings or initiation of temporary immobilization in either country against property identified by the other if the relevant prosecution officials do not deem it proper to do so. [25]

Paragraph 2 of Article 18 authorizes the Central Authority of one Party to notify the other Party of the existence in the latter's territory of proceeds and instrumentalities of offenses that may be forfeitable so that the other Party may take appropriate measures

[25] In Russia, unlike the United States, the law does not allow for civil forfeiture. However, Russian law permits forfeiture in criminal cases, and ordinarily a defendant must be convicted in order for Russian authorities to confiscate the defendant's property.

under paragraph 3 of this article. The term "proceeds and instrumentalities" was intended to include things such as money, vessels, or other valuables either used in the crime or purchased or obtained as a result of the crime.

Upon receipt of notice under this article, the Central Authority of the Party in which the proceeds or instrumentalities are located may take whatever action is appropriate under its law. For instance, if the assets in question are located in the United States and were obtained as a result of a fraud in Russia, the assets could be seized under Title 18, United States Code, Section 981 in aid of a prosecution under Title 18, United States Code, Section 2314,[26] or be subject to a temporary restraining order in anticipation of a civil action for the return of the assets to the lawful owner. Proceeds of a foreign kidnaping, robbery, extortion or a fraud by or against a foreign bank are civilly and criminally forfeitable in the United States since these offenses are predicate offenses under U.S. money laundering laws.[27] Thus, it is a violation of U.S. criminal law to launder the proceeds of these foreign fraud or theft offenses, when such proceeds are brought into the United States.

If the assets are the proceeds of drug trafficking, it is especially likely that the Contracting Parties will be able and willing to help one another. Title 18, United States Code, Section 981(a)(1)(B), allows for the forfeiture to the United States of property "which represents the proceeds of an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substance Act) within whose jurisdiction such offense or activity would be punishable by death or imprisonment for a term exceeding one year if such act or activity had occurred within the jurisdiction of the United States." This is consistent with the laws in other countries, such as Switzerland and Canada; there is a growing trend among nations toward enacting legislation of this kind in the battle against narcotics trafficking.[28] The U.S. delegation expects that Article 18 of the Treaty will enable this legislation to be even more effective.

U.S. law permits the government to transfer a share of certain forfeited property to other countries that participate directly or indirectly in the seizure or forfeiture of the property. Under regulations promulgated by the Attorney General, the amount transferred generally reflects the contribution of the foreign government in law enforcement activity which led to the seizure and forfeiture of the property. The law requires that the transfer be authorized by an international agreement between the United States and the foreign

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[26] This statute makes it an offense to transport money or valuables in interstate or foreign commerce knowing that they were obtained by fraud in the United States or abroad. Proceeds of such activity become subject to forfeiture pursuant to Title 18, United States Code, Section 981 by way of Title 18, United States Code, Section 1956 and Title 18, United States Code, Section 1961. The forfeiture statute applies to property involved in transactions in violation of Title 18 United States Code, Section 1956, which covers any activity constituting an offense defined by section 1961(1), which includes, among others, Title 18, United States Code, Section 2314.

[27] Title 18, United States Code, Section 1956(c)(7)(B).

[28] Article 5 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, calls for the States that are party to enact legislation to forfeit illicit drug proceeds and to assist one another in such matters. United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, with annex and final act, done at Vienna, December 20, 1988.

country, and be approved by the Secretary of State.[29] Paragraph 3 is consistent with this framework in that it obligates a Party having custody over proceeds or instrumentalities of offenses to transfer immobilized, seized, or forfeited proceeds, or the proceeds of the sale of such assets, to the other Party, but only if such transfer is permitted by its laws and to the extent it deems it appropriate and within the time frame and under the conditions it deems acceptable.

ARTICLE 19—CONSULTATION

Experience has shown that as the parties to a treaty of this kind work together over the years, they become aware of various practical ways to make the treaty more effective and their own efforts more efficient. This article anticipates that the Contracting Parties will share those ideas with one another, and encourages them to agree on the implementation of such measures. Practical measures of this kind might include methods of keeping each other informed of the progress of investigations and cases in which treaty assistance was utilized. Similar provisions are contained in recent United States mutual legal assistance treaties. It is anticipated that the Central Authorities will conduct regular consultations pursuant to this article.

ARTICLE 20—SCOPE OF APPLICATION

This article provides that any request presented after this Treaty enters into force shall be executed pursuant to the Treaty even if the underlying acts or omissions occurred before that date. Provisions of this kind are common in law enforcement agreements.

ARTICLE 21—OTHER LEGAL BASES FOR COOPERATION

This article states that assistance and procedures set forth in this Treaty shall not prevent either Party from cooperating and granting assistance to the other Party through the provisions of other applicable international treaties and agreements, national laws, and practices. The Treaty would leave the provisions of United States and Russian law on letters rogatory completely undisturbed, and would not alter any pre-existing agreements[30] concerning investigative assistance.

ARTICLE 22—ENTRY INTO FORCE AND TERMINATION

Paragraph 1 states that the Treaty is subject to ratification and shall enter into force upon the exchange of instruments of ratification, which shall take place as soon as possible.

Paragraph 2 provides that the Agreement between the Government of the United States of America and the Government of the Russian Federation on Cooperation in Criminal Matters, signed on June 30, 1995, shall cease to be in force upon entry into force of this Treaty.

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[29] *See,* Title 18, United States Code, Section 981(i)(1).

[30] *See, e.g.*, Agreement on Cooperation and Mutual Assistance in Customs Matters, signed at Washington Sept. 28, 1994, entered into force December 15, 1994; Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed at Washington June 17, 1992, entered into force December 16, 1993.

Paragraph 3 states that either Party may terminate this Treaty via written notice to the other Party through the diplomatic channel. Termination shall take effect six months after the date of receipt of written notification. Similar termination provisions are included in other United States mutual legal assistance treaties.

VII. TEXT OF RESOLUTION OF ADVICE AND CONSENT TO RATIFICATION

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1. ADVICE AND CONSENT TO RATIFICATION OF THE Treaty WITH THE RUSSIAN FEDERATION ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS, SUBJECT TO CONDITIONS.

The Senate advises and consents to the ratification of the Treaty Between the United States of America and the Russian Federation on Mutual Legal Assistance in Criminal Matters, signed at Washington on June 17, 1999 (Treaty Doc. 106–22; in this resolution referred to as the "Treaty"), subject to the conditions in section 2.

SEC. 2. CONDITIONS.

The advice and consent of the Senate under section 1 is subject to the following conditions:

(1) TREATY INTERPRETATION.—The Senate reaffirms condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe (CFE) of November 19, 1990 (adopted at Vienna on May 31 1996), approved by the Senate on May 14, 1997 (relating to condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988).

(2) LIMITATION ON ASSISTANCE.—Pursuant to the right of the United States under the Treaty to deny legal assistance under the Treaty that would prejudice the essential public policy or interests of the United States, the United States shall deny any request for such assistance if the Central Authority of the United States (as designated in Article 3(2) of the Treaty), after consultation with all appropriate intelligence, anti-narcotic, and foreign policy agencies, has specific information that a senior Government official of the requesting party who will have access to information to be provided as part of such assistance is engaged in a felony, including the facilitation of the production or distribution of illegal drugs.

(3) SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes the enactment of legislation or the taking of any other action by the United States that is prohibited by the Constitution of the United States as interpreted by the United States.

APPENDIX

Hon. COLIN L. POWELL,
SECRETARY OF STATE,
Washington, DC, December 11, 2001.

Hon. JOSEPH R. BIDEN, JR, *Chairman,*
United States Senate,
Committee on Foreign Relations,
Washington, DC.

DEAR MR. CHAIRMAN: I am writing to seek your support to improve legal cooperation between the United States and Russia as an important weapon in our war on terrorism and other serious crimes.

I discussed this priority when I met with Foreign Minister Ivanov in Moscow December 9. While law enforcement cooperation has been increasing steadily for some time, Minister Ivanov told me that entry into force of our Mutual Legal Assistance Treaty would provide a solid legal and legally-binding basis for our work on combating transnational organized crime and international terrorism. The Russians have indicated that Russia's legal authority to assist us in criminal investigations and prosecutions, including those connected with September 11, will be significantly enhanced once the Treaty is brought into force.

I explained to Minister Ivanov that the Administration was seeking rapid action on advice and consent to ratification by the Senate. He assured me that the Russian Federation would work closely with the United States to ensure the effective implementation of this Treaty.

Sincerely,

COLIN L. POWELL.

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