

105TH CONGRESS }
2d Session }

SENATE

{ TREATY DOC.
105-40 }

TREATY WITH ISRAEL ON MUTUAL LEGAL
ASSISTANCE IN CRIMINAL MATTERS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES
OF AMERICA AND THE GOVERNMENT OF THE STATE OF ISRAEL
ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS,
SIGNED AT TEL AVIV ON JANUARY 26, 1998, AND A RELATED
EXCHANGE OF NOTES SIGNED THE SAME DATE



APRIL 2, 1998.—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

U.S. GOVERNMENT PRINTING OFFICE

59-118

WASHINGTON : 1998

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *April 2, 1998.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty between the Government of the United States of America and the Government of the State of Israel on Mutual Legal Assistance in Criminal Matters, signed at Tel Aviv on January 26, 1998, and a related exchange of notes signed the same date. I transmit also, for the information of the Senate, the Report of the Department of State with respect to the Treaty.

The Treaty is one of a series of modern mutual legal assistance treaties being negotiated by the United States for the purpose of countering criminal activities more effectively. The Treaty should be an effective tool to assist in the prosecution of a wide variety of modern criminals, including those involved in terrorism, other violent crimes, drug trafficking, money laundering, and other white collar crime. The Treaty is self-executing.

The Treaty provides for a broad range of cooperation in criminal matters. Mutual assistance available under the Treaty includes: taking the testimony or statements of persons; providing documents, records, and articles of evidence; serving documents; locating or identifying persons or items; transferring persons in custody for testimony or for other assistance; executing requests for searches and seizures; assisting in proceedings related to seizure, immobilization and forfeiture of assets, restitution, and collection of fines; executing procedures involving experts; and providing any other form of assistance appropriate under the laws of the Requested State.

I recommend that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, March 5, 1998.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Treaty between the Government of the United States of America and the Government of the State of Israel on Mutual Assistance in Criminal Matters ("the Treaty"), signed at Jerusalem on January 26, 1998, and a related exchange of notes signed the same date. I recommend that the Treaty and the related exchange of notes be transmitted to the Senate for its advice and consent to ratification.

The Treaty covers mutual legal assistance in criminal matters. In recent years, similar bilateral treaties have entered into force with a number of countries. This Treaty contains many provisions similar to those in the other treaties and all of the essential provisions sought by the United States. The Treaty will enhance our ability to investigate and prosecute a variety of offenses, including drug trafficking, terrorism, other violent crimes, and money laundering and other white-collar crime. The Treaty is designed to be self-executing and will not require new legislation.

Article I contains a non-exclusive list of the major types of assistance to be provided under the Treaty, including taking the testimony or statements of persons; providing documents, records, and articles of evidence; serving documents; locating or identifying persons or items; transferring persons in custody for testimony or other assistance under this treaty; executing requests for searches and seizures; assisting in proceedings related to seizure, immobilization and forfeiture of assets; and providing any other form of assistance not prohibited under the laws of the Requested State.

Assistance under the Treaty is to be provided without regard to dual criminality (*i.e.*, whether the conduct involved would constitute an offense under the laws of both States).

Article 1(4) states explicitly that the Treaty is intended solely for mutual assistance between the Parties. The Treaty provisions shall not give rise to any right, that does not otherwise exist, on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request for assistance.

Article 2 provides for the establishment of Central Authorities and defines the Central Authorities for purposes of the Treaty. For the United States, the Central Authority is the Attorney General or an official designated by the Attorney General. For Israel, the Central Authority is the Minister of Justice or an official designated by the Minister of Justice. Article 2 specifies that the Cen-

tral Authorities will make and receive requests pursuant to the Treaty, and that the Central Authorities will communicate directly with one another for purposes of the Treaty.

Article 3 sets forth the circumstances under which the Requested State's Central Authority may deny assistance under the Treaty. A request may be denied if the request, if granted, would prejudice the sovereignty, security, important public policy, ordre public, or other essential interest of the Requested State, if it relates to a political offense, or to an offense under military law which would not be an offense under ordinary criminal law; or if the request is not made in conformity with the Treaty.

Before denying assistance under Article 3, the Central Authority of the Requested State is required to consult with its counterpart in the Requesting State to consider whether assistance can be given subject to such conditions as the Central Authority of the Requested State deems necessary. If the Requesting State accepts assistance subject to these conditions, it is required to comply with the conditions. If the Central Authority of the Requested States denies assistance, it must inform the Central Authority of the Requesting State of the reasons for the denial.

Article 4 prescribes the form and contents of written requests under the Treaty, specifying in detail the information required in each request. The Article provides that requests for assistance must be in writing, except that the Central Authority of the Requested State may, in its discretion, accept a request in another form in urgent situations, but requires written confirmation within the time period determined by the Central Authority of the Requested State. All requests must be accompanied by a translation in the language of the Requested State unless otherwise agreed.

Article 5 requires the competent authority of the Requested State to promptly execute the request or, where appropriate, to transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State must do everything in their power to execute requests. The Article provides that the Courts of the Requested State shall have the authority to issue subpoenas, search warrants, or other orders necessary to execute the request. In the case of Israel this authority will be derived from its domestic law. The Central Authority of the Requested State is required to make all necessary arrangements for the representation in the Requested State of the Requesting State in any proceeding arising out of a request for assistance.

Under Article 5(3), requests are to be executed as empowered by the Treaty or by applicable law. The method of execution specified in the request is to be followed except insofar as it is prohibited by the laws of the Requested State. If the Central Authority of the Requested State determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding of that State, it may postpone execution or make execution subject to conditions determined to be necessary after consultation with the Central Authority of the Requesting State. If the Requesting State accepts assistance subject to such conditions, it must comply with them.

Article 5(5) states that the Requesting State may request that the request for assistance, the contents of the request and its supporting documents, and the fact of granting such assistance be kept

confidential, and discusses consequences of such a request for confidentiality. Article 5(6) requires the Central Authority of the Requested State to respond to reasonable requests by its counterpart concerning progress toward execution of the request. Article 5(7) requires the Central Authority of the Requested State to promptly inform its counterpart from the Requesting State of the outcome of the execution of the request.

Article 6 apportions between the two States the costs associated with the execution of requests. The Article provides that the Requested State is responsible for paying all costs relating to the execution of a request, except that the Requesting State must pay for the fees of expert witnesses, the costs of translation, interpretation, and transcription, and the allowances and expenses related to the travel of persons pursuant to Articles 10 and 11. The Article also provides that, in cases in which extraordinary expenses arise, the Central Authorities of the Parties are to consult with one another to determine the manner in which the expenses shall be borne. Finally, the Article provides that the Parties shall also consult to determine the manner in which costs shall be borne in certain cases including requests for seizure, immobilization or forfeiture of assets or restraining orders.

Article 7(1) provides that the Requested State shall not use evidence or information obtained under the Treaty for purposes other than those stated in the request without prior consent of the Central Authority of the Requested State.

Article 7(2) provides that the Central Authority of the Requested State may request that information or evidence furnished under the Treaty be kept confidential or be used only subject to terms and conditions it may specify. If the Requesting State accepts the information or evidence subject to such conditions, it is required to comply with the conditions to the fullest extent possible. Under Article 7(3), nothing in the Article precludes the United States from using or disclosing information in a criminal prosecution if it is the Requesting State and is required to do so under its Constitution, or precludes Israel from using or disclosing the information in a criminal prosecution if it is the Requesting State and is obligated to do so under the fundamental rights provided under its law.

Article 7(4) states, finally, that unless otherwise indicated by the Requested Party when executing the request, information or evidence, the contents of which have been disclosed in a public judicial or administrative proceeding related to the request, may thereafter be used for any purpose.

Article 8 provides that the Requested State must, upon request, endeavor to obtain a statement of a person for the purpose of an investigation, prosecution or proceeding of the Requesting State. The Requested State, if necessary, must compel the appearance of a person for taking testimony and producing documents, records, and articles to the same extent as would be permitted in investigations, prosecutions, and proceedings of that State. The Article requires the Central Authority of the Requested State, upon request, to inform the Requesting State in advance about the date and place of the taking of the statement, testimony or evidence pursuant to this Article.

Article 8(4) requires the Requested State to permit the presence of such persons as specified in the request during the execution of the request, and to allow such persons to question the person giving the statement, testimony or evidence, provided that they would be competent to do so in the Requesting States. Under Article 8(5), in the event that a person whose testimony or evidence is being taken asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, the statement, testimony or evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting State for resolution by authorities of that State.

Finally, in order to ensure admissibility in evidence in the Requesting State, Article 8(6) provides that evidence provided by the Requested State pursuant to this Article or which is the subject of testimony taken under this Article may be authenticated by an attestation, or in another manner specified by the Requesting State, which may include, in the case of business records, authentication in the manner indicated in Form A appended to the Treaty, if so requested. No further authentication or certification shall be necessary in order for such documentary information to be admissible in proceedings of the Requesting State.

Article 9 requires that the Requested State provide the Requesting State with copies of publicly available records in the possession of government departments and agencies in the Requested State. The Requested State may also provide copies of any records that are in the possession of authorities in that State but that are not publicly available, to the same extent and under the same conditions as such copies would be available to its own law enforcement or judicial authorities. However, the Requested State has the discretion to deny such requests entirely or in part.

Official records produced pursuant to Article 9 may be authenticated under the provisions of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents, dated 5 October 1961, or they may be authenticated by the official in charge of maintaining them in the manner specified by the Requesting State, which may include the use of Form B appended to the Treaty, if so requested. No further authentication or certification shall be necessary in order for such records to be admissible in evidence in proceedings of the Requesting State.

Article 10 provides that when the Requesting State requests the voluntary appearance of a person before authorities of that State, the Requested State shall invite the person to appear before the appropriate authority of the Requesting State. The Requesting State is required to indicate the extent to which the expenses of the person 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 provides for the temporary transfer to one State, for purposes of assistance under the Treaty, of a person in custody in the other State, provided that the person in question consents and the Central Authorities of both States agree. Article 11(3) establishes the express authority and the obligation of the receiving State to maintain the person transferred in custody unless otherwise authorized by the sending State. It further obligates the re-

ceiving State to return the person to the custody of the sending State as soon as circumstances permit or as otherwise agreed by the Central Authorities of both States, without the need for extradition proceedings. The person transferred is to receive credit for service of the sentence imposed in the sending State for time served in the custody of the receiving State. Article 11(4) provides that if the sending State notifies the receiving State that the transferred person is no longer required to be held in custody that person must be either expeditiously returned to the sending State or be set at liberty. A person so set at liberty is entitled to the cost of his return travel to the sending State, if he returns to that State.

Article 12 provides that a person appearing before authorities of the receiving State pursuant to a request under Article 10 or 11 will not, with respect to criminal proceedings, be subject to service of process, or be detained or subjected to any other restriction of liberty, with respect to any acts or conviction which preceded that person's departure from the sending State, except as provided by Article 11. The Central Authority of the Requesting State may, in its discretion, determine that a person appearing before its authorities pursuant to a request under Article 10 or 11 will not, with respect to civil proceedings, be detained or subjected to any restriction of personal liberty, with respect to any acts or omissions which preceded his departure from the Requested State. Where not inconsistent with its domestic laws, the Central Authority of the receiving States may, in its discretion, determine that a person appearing before its authorities pursuant to a request under Article 10 or 11 will not, with respect to civil proceedings, be subject to service of process with respect to any acts or omissions which preceded his departure from the sending State. Safe conduct, as provided in Article 12, ceases fifteen days after the person has been notified that his presence is no longer required, and being physically able to depart, he has not left the receiving State, or when the person, having left the Requesting State, voluntarily returns.

Article 13 obligates the Requested State to use its best efforts to ascertain the location or identity of persons or items specified in a request.

Article 14 obligates the Requested State to use its best efforts to execute a request to effect service of a document, and to the extent possible to effect such service in the manner specified by the Requesting State. A request for the service of a document seeking the appearance of a person before any authority in the Requesting State must be transmitted a reasonable time prior to the scheduled appearance. The Requested State is required to return proof of service in the manner specified in the request. If services cannot be effected, or cannot be effected in the manner specified, the Requesting State must be informed and advised of the reasons.

Article 15 obligates the Requested States to execute requests for search, seizure, and delivery of any article to the Requesting State if the request includes the information justifying such action under the laws of the Requested State. It provides that upon request, and to the extent possible, every official who has custody of a seized item is required to certify in a manner specified by the Requesting State, which may include the use of Form C appended to this Treaty, the continuity of custody, the identity of the item, and the integ-

riety of its condition. No further authentication or certification is required for a certification under this paragraph to be admissible as proof of the truth of the matters asserted therein.

Finally, Article 15 provides that the Central Authority of the Requested State may impose terms and conditions on the transfer of the seized items to protect third party interests in the property.

Article 16 requires the Requesting State's Central Authority, upon request of its counterpart in the Requested State, to return as soon as possible any documents, records, or articles of evidence furnished to it in execution of a request under the Treaty.

Article 17 addresses issues relating to assistance in forfeiture and other proceedings. It obligates the Parties to assist each other, to the extent permitted by their respective laws, in procedures relating to the forfeiture of the proceeds and instrumentalities of offenses, which may include action to temporarily seize or immobilize the proceeds or instrumentalities pending further proceedings. If the Central Authority of either Party becomes aware of proceeds or instrumentalities of offenses which may be forfeitable or otherwise subject to seizure or immobilization under the laws of the other Party, it may so inform the Central Authority of the other Party. A Party that has custody over proceeds or instrumentalities of offenses shall dispose of them in accordance with its laws. Either Party may transfer all or part of such assets, or the proceeds of their sale, to the other Party, to the extent permitted by the transferring Party's laws and upon such terms as it deems appropriate. The Parties are required to assist each other, to the extent permitted by their respective laws, in connection with restitution to victims of crime, and the imposition or collection of fines in criminal proceedings. However, they are not obligated to enforce orders of restitution or to collect fines or to enforce judgments imposing fines.

Article 18 provides that if the authorities of one Party become aware of criminal acts which the other Party may have jurisdiction to investigate or prosecute, the Central Authority of the first Party may refer the matter and, upon request, submit any relevant evidence to the Central Authority of the other Party.

Article 19 states that assistance and procedures provided in this Treaty shall not prevent either Party from granting assistance to the other Party through the provisions of other applicable international agreements, or through the provisions of its domestic laws. The Parties may also provide assistance pursuant to any applicable bilateral arrangement or agreement, provided that such assistance is not prohibited by the laws of the Requested State.

Article 20 provides that the Central Authorities of the Parties shall consult, at times mutually agreed, to promote the most effective use of the Treaty, and may agree on such practical measures as may be necessary to facilitate the Treaty's implementation.

Article 21 provides that the Treaty is subject to ratification, and the instruments of ratification will be exchanged as soon as possible. The Treaty will enter into force upon the exchange of instruments of ratification. The Treaty applies to any request presented after the date of its entry into force, even if the request relates to offenses which occurred before that date. Either Party may termi-

nate the Treaty by means of written notice to the other Party, termination to take effect six months following the date of notification.

When the Treaty was signed on January 26, 1998, the United States and Israel exchanged diplomatic notes, which was an integral part of the Treaty, addressing the relationship of the Treaty and Convention Between the Government of the United States of America and the Government of the State of Israel with Respect to Taxes on Income, signed on November 20, 1975, with Protocols signed on May 30, 1980 and on January 26, 1993, which entered into force on December 30, 1994 (the "Tax Convention"). In those notes, the Parties express their understanding that this Treaty applies to "fiscal offenses", defined as criminal tax offenses, but assistance will not be requested under this Treaty with respect to a fiscal offense if the case concerned would, by its nature, come within the scope of the provision for cooperation between tax authorities contained in the Tax Convention, unless the form of assistance requested is not included within the framework of the Tax Convention or the case concerned also includes additional serious non-fiscal offenses. In any event, a request for assistance under this Treaty with regard to a fiscal offense should specify whether assistance under the Tax Convention has been previously requested or granted. The Parties also expressed their understanding in these notes that requests for assistance in the form of bank records with respect to a fiscal offense will be made only in connection with serious offenses involving willful, fraudulent conduct. Serious offenses would include, for example, cases involving substantial sums of money or involving a pattern of criminal conduct.

A Technical Analysis explaining in detail the provisions of the Treaty is being prepared by the United States negotiating delegation, consisting of representatives from the Departments of Justice and State, and will be transmitted separately to the Senate Committee on Foreign Relations.

The Department of Justice joins the Department of State in recommending approval of this Treaty by the Senate as soon as possible.

Respectfully submitted,

MADELEINE ALBRIGHT.

TREATY BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AND THE GOVERNMENT OF THE STATE OF ISRAEL

ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

ARTICLE 1	SCOPE OF ASSISTANCE
ARTICLE 2	CENTRAL AUTHORITIES
ARTICLE 3	LIMITATIONS ON ASSISTANCE
ARTICLE 4	FORM AND CONTENTS OF REQUESTS
ARTICLE 5	EXECUTION OF REQUESTS
ARTICLE 6	COSTS
ARTICLE 7	LIMITATIONS ON USE
ARTICLE 8	STATEMENTS, TESTIMONY OR EVIDENCE BEFORE AUTHORITIES OF THE REQUESTED STATE
ARTICLE 9	RECORDS OF GOVERNMENT AGENCIES
ARTICLE 10	APPEARANCE OF PERSONS BEFORE AUTHORITIES OF THE REQUESTING STATE
ARTICLE 11	TRANSFER OF PERSONS IN CUSTODY
ARTICLE 12	SAFE CONDUCT
ARTICLE 13	LOCATION OR IDENTIFICATION OF PERSONS OR ITEMS
ARTICLE 14	SERVICE OF DOCUMENTS
ARTICLE 15	SEARCH AND SEIZURE
ARTICLE 16	RETURN OF DOCUMENTS, RECORDS AND ARTICLES OF EVIDENCE
ARTICLE 17	ASSISTANCE IN FORFEITURE AND OTHER PROCEEDINGS
ARTICLE 18	REFERRAL FOR INVESTIGATION OR PROSECUTION
ARTICLE 19	OTHER ASSISTANCE
ARTICLE 20	CONSULTATION
ARTICLE 21	RATIFICATION, ENTRY INTO FORCE, APPLICATION AND TERMINATION

The Government of the United States of America and the Government of the State of Israel (hereinafter referred to as "the Parties"),

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

HAVE AGREED as follows:

**ARTICLE 1
SCOPE OF ASSISTANCE**

1. The Parties shall provide mutual assistance, in accordance with the provisions of this Treaty, in connection with the investigation, prosecution, and prevention 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 or items;
 - (e) transferring persons in custody for testimony or for other assistance under this treaty;
 - (f) executing requests for searches and seizures;
 - (g) assisting in proceedings related to seizure, immobilization and forfeiture of assets; and
 - (h) providing 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 of the Requesting State would constitute an offense under the laws of the Requested State.
4. This Treaty is intended solely for mutual assistance between the Parties. The provisions of this Treaty shall not give rise to any right, that does not otherwise exist, 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 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 an official designated by the Attorney General. For the State of Israel, the Central Authority shall be the Minister of Justice or an official designated by the Minister of Justice.
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 it determines that:
 - (a) the request if granted would prejudice its sovereignty, security, important public policy, *ordre public*, or other essential interest;
 - (b) the request relates to a political offense or to an offense under military law which would not be an offense under ordinary criminal law;
 - (c) the request is not made in conformity with the Treaty.
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 CONTENTS OF REQUESTS**

1. A request for assistance shall be in writing except that the Central Authority of the Requested State may, in its discretion, accept a request in another form in urgent situations. In any such case, the request shall be confirmed in writing within the time period determined by the Central Authority of the Requested State. The request shall be in the language of the Requested State unless otherwise agreed.

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, and the connection between the assistance sought and the criminal matter to which it relates.
3. To the extent necessary and possible, a request shall also include:
- (a) the identity and location of any person from whom evidence is sought;
 - (b) the identity and location of a person to be served, that person's relationship to the proceeding, 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 person to be searched and of the items 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 of a witness;
 - (g) a description of any particular procedure to be followed in executing the request;
 - (h) information as to the allowances and expenses to which a person asked to appear in the Requesting State will be entitled;
 - (i) the requirements, if any, for confidentiality and the reasons therefore; and
 - (j) any other information which may be brought to the attention of the Requested State to facilitate its execution of the request, including the text of the relevant laws.
4. Exhibits or other attachments to a request for assistance shall be translated into the language of the Requested State, unless the Central Authority of that State has agreed otherwise in relation to a particular 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; in the case of Israel, this authority shall be derived from its domestic law.
2. The Central Authority of the Requested State shall make all necessary arrangements for the representation in the Requested State of the Requesting State in any proceeding arising out of a request for assistance.
3. Requests shall be executed as empowered by this Treaty or by applicable law. 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, prosecution or proceeding of that State, it may postpone execution, or make execution subject to conditions determined to be necessary after consultation 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 Requesting State may request that the request for assistance, the contents of the request and its supporting documents, and the fact of granting such assistance be kept confidential. If the request cannot be executed without breaching such 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. When such confidentiality has been requested, the Requested State shall use its best efforts to ensure that the confidentiality is maintained.
6. The Central Authority of the Requested State shall respond to reasonable requests 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.

**ARTICLE 6
COSTS**

1. 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, interpretation, and transcription, and the allowances and expenses related to travel of persons pursuant to Articles 10 and 11, all of which shall be paid by the Requesting State.
2. If expenses of an extraordinary nature are or will be required in fulfilling a request, the Central Authorities of the Parties shall consult to determine the manner in which the expenses shall be borne.
3. In the case of requests for seizure, immobilization or forfeiture of assets or restraining orders in which a Court of the Requested State, in accordance with the Requested State's domestic law, issues an order to compensate an injured party or requires the furnishing of a bond or other security, the Central Authorities of the Parties shall consult to determine the manner in which such costs shall be borne.

**ARTICLE 7
LIMITATIONS ON USE**

1. The Requesting State shall not use evidence or information obtained under this Treaty for purposes other than those stated in the request without prior consent of the Central Authority 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 or be used only subject to terms and conditions it may specify. If the Requesting State accepts the information or evidence subject to such conditions, the Requesting State shall comply with the conditions to the fullest extent possible.
3. Nothing in this Article shall preclude the Requesting State from using or disclosing information in a criminal prosecution, to the extent that:
 - (a) if the United States is the Requesting State, it is obligated to do so under its Constitution; or
 - (b) if Israel is the Requesting State, it is obligated to do so under the fundamental rights provided under the law of Israel.
4. Unless otherwise indicated by the Requested Party when executing the request, information or evidence, the contents of which have been disclosed in a public judicial or administrative proceeding related to the request, may thereafter be used for any purpose.

**ARTICLE 8
STATEMENTS, TESTIMONY OR EVIDENCE BEFORE AUTHORITIES OF
THE REQUESTED STATE**

1. The Requested State shall, upon request, endeavor to obtain a statement of a person for the purpose of an investigation, prosecution or proceeding of the Requesting State.
2. The Requested State, if necessary, shall compel the appearance of a person for taking testimony and producing documents, records, and articles to the same extent as would be permitted in investigations, prosecutions and proceedings of that State.
3. Upon request, the Central Authority of the Requested State shall furnish information in advance about the date and place of the taking of the statement, testimony or evidence pursuant to this Article.
4. The Requested State shall permit the presence of such persons as specified in the request during the execution of the request, and shall allow such persons to question the person giving the statement, testimony or evidence, provided that they would be competent to do so in the Requesting State.
5. If the person referred to in paragraphs 1 or 2 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, the statement, 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.
6. Evidence provided by the Requested State pursuant to this Article or which is the subject of testimony taken under this Article may be authenticated by an attestation, or in another manner specified by the Requesting State, which may include, in the case of business records, authentication in the manner indicated in Form A appended to this Treaty, if so requested. No further authentication or certification shall be necessary in order for such documentary information to be admissible in evidence in proceedings of the Requesting State.

**ARTICLE 9
RECORDS OF GOVERNMENT AGENCIES**

1. The Requested State shall provide the Requesting State with copies of publicly available records, including documents or information in any form, in the possession of government departments and agencies of 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 of that State but which are not publicly available, to the same extent and under the same conditions as they 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.

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, or they may be authenticated by the official in charge of maintaining them in the manner specified by the Requesting State, which may include the use of Form B appended to this Treaty, if so requested. No further authentication or certification shall be necessary in order for such records to be admissible in evidence in proceedings of the Requesting State.

**ARTICLE 10
APPEARANCE OF PERSONS BEFORE AUTHORITIES OF
THE REQUESTING STATE**

When the Requesting State requests the appearance of a person before authorities of that State, the Requested State shall invite the person to appear before the appropriate authority of the Requesting State. The Requesting State shall indicate the extent to which the expenses will be paid. Such person shall be under no compulsion to accept such an invitation. 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 is sought by the Requesting State for purposes of assistance under this Treaty shall be transferred from the Requested State to the Requesting State for that purpose if the person consents and if the Central Authorities of both States agree.
2. A person in the custody of the Requesting State whose presence is sought by the Requested State for purposes of assistance under this Treaty shall be transferred from the Requesting State 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 the sentence imposed by the sending State for time served in the custody of the receiving State.

4. If the sending State notifies the receiving State that the transferred person is no longer required to be held in custody, that person shall either be expeditiously returned to the sending State or be set at liberty. A person so set at liberty shall be entitled to the cost of his return travel to the sending State, if he returns to that state.
5. The Requesting State shall be responsible for making all necessary arrangements for the transit of transferred persons through third countries.

**ARTICLE 12
SAFE CONDUCT**

1. A person appearing before authorities of the receiving State pursuant to a request under Article 10 or 11, shall not, with respect to criminal proceedings, be subject to service of process, or be detained or subjected to any other restriction of liberty, with respect to any acts or convictions which preceded that person's departure from the sending State, except as provided by Article 11.
2. The Central Authority of the receiving State may, in its discretion, determine that a person appearing before its authorities pursuant to a request under Article 10 or 11 shall not, with respect to civil proceedings, be detained or subjected to any restriction of personal liberty, with respect to any acts or omissions which preceded his departure from the sending State.
3. When not inconsistent with its domestic laws, the Central Authority of the receiving State may, in its discretion, determine that a person appearing before its authorities pursuant to a request under Article 10 or 11 shall not, with respect to civil proceedings, be subject to service of process with respect to any acts or omissions which preceded his departure from the sending State.
4. Safe conduct, as provided in Paragraphs 1 and 2 of this Article, shall cease if:
 - (a) fifteen days after the person has been notified that his presence is no longer required, and being physically able to depart, he has not left the receiving State;
or
 - (b) having left the receiving State, the person has returned.

**ARTICLE 13
LOCATION OR IDENTIFICATION OF PERSONS OR ITEMS**

If the Requesting State seeks the location or identity of persons or items, the Requested State shall use its best efforts to ascertain the location or identity.

**ARTICLE 14
SERVICE OF DOCUMENTS**

1. The Requested State shall use its best efforts to execute a request to effect service of a document, and to the extent possible, shall effect such service in the manner specified by the Requesting State.
2. The Requesting State shall transmit any request for the service of a document seeking the appearance of a person before any authority of the Requesting State a reasonable time, as agreed by the Central Authorities, before the scheduled appearance.
3. To the extent possible, the Requested State shall return a proof of service in the manner specified in the request. If service cannot be effected, or cannot be effected in the manner specified, the Requesting State shall be so informed and shall be advised of the reasons.

**ARTICLE 15
SEARCH AND SEIZURE**

1. The Requested State shall execute a request for the search, seizure, and delivery of any item to the Requesting State if the request includes the information justifying such action under the laws of the Requested State.
2. Upon request, and to the extent possible, every official who has custody of a seized item shall certify, in the manner specified by the Requesting State, which may include the use of Form C appended to this Treaty, the continuity of custody, the identity of the item, and the integrity of its condition. No further authentication or certification shall be necessary for a certification under this paragraph to be admissible in evidence to prove the truth of the matters asserted therein.
3. The Central Authority of the Requested State may require that the Requesting State agree to the terms and conditions deemed necessary to protect third party interests in the item to be transferred.

**ARTICLE 16
RETURN OF DOCUMENTS, RECORDS AND ARTICLES OF EVIDENCE**

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

ARTICLE 17
ASSISTANCE IN FORFEITURE AND OTHER PROCEEDINGS

1. The Parties shall assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of the proceeds and instrumentalities of offenses. This may include action to temporarily seize or immobilize the proceeds or instrumentalities pending further proceedings.
2. If the Central Authority of one Party becomes aware of proceeds or instrumentalities of offenses which may be forfeitable or otherwise subject to seizure or immobilization under the laws of the other Party, 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 as to 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 action taken.
3. The Party that has custody over proceeds or instrumentalities of offenses shall dispose of them in accordance with its laws. Either Party may transfer all or part of such assets, or the proceeds of their sale, to the other Party, to the extent permitted by the transferring Party's laws and upon such terms as it deems appropriate.
4. The Parties shall assist each other to the extent permitted by their respective laws in connection with restitution to the victims of crime, and the imposition or collection of fines in criminal proceedings. However, the parties shall not be obligated to enforce orders of restitution or to collect fines or to enforce judgments imposing fines.

ARTICLE 18
REFERRAL FOR INVESTIGATION OR PROSECUTION

If the authorities of one Party become aware of criminal acts which the other Party may have jurisdiction to investigate or prosecute, the Central Authority of the first Party may refer the matter and, upon request, submit any relevant evidence to the Central Authority of the other Party.

ARTICLE 19
OTHER ASSISTANCE

Assistance and other procedures set forth in this Treaty shall not prevent either of the Parties from granting assistance to the other Party through the provisions of other applicable international agreements, or through the provisions of its domestic laws. The Parties may also provide assistance pursuant to any applicable bilateral arrangement or agreement, provided such assistance is not prohibited by the laws of the Requested State.

**ARTICLE 20
CONSULTATION**

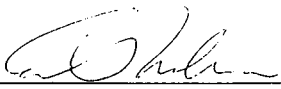
The Central Authorities of the Parties shall consult, at times mutually agreed to by them, to promote the most effective use of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

**ARTICLE 21
RATIFICATION, ENTRY INTO FORCE, APPLICATION AND TERMINATION**

1. This Treaty shall be subject to ratification, and the instruments of ratification shall be exchanged as soon as possible.
2. This Treaty shall enter into force upon the exchange of instruments of ratification.
3. This Treaty shall apply to any request presented after its entry into force, even if the request relates to offenses which occurred before that date.
4. 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.

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

DONE in Jerusalem this 26th day of January, 1998 corresponding to the 28th day of Tevet 5758, in duplicate, in the English and Hebrew languages, both texts being equally authentic.



For the Government of
the United States of America



For the Government of
the State of Israel

Form A

CERTIFICATE OF AUTHENTICITY OF BUSINESS RECORDS

I, _____^(NAME)_____, attest on penalty of criminal punishment for false statement or 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 record 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 a person with knowledge, 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 any such record is not the original, it is a duplicate of the original.

_____^(SIGNATURE)_____ _____^(DATE)_____

Sworn to or affirmed before me, _____^(NAME)_____, a judicial officer, this _____ day of _____, 19____.

Form B

ATTESTATION OF AUTHENTICITY OF FOREIGN PUBLIC DOCUMENTS

I, _____
(NAME), attest on penalty of criminal punishment for false statement
or attestation that my position with the Government of _____
(COUNTRY)
is _____
(OFFICIAL TITLE) and that in that position I am authorized by the
law of _____
(COUNTRY) to attest that the documents attached and described
below are true and accurate copies of original official records which are recorded or filed in

(NAME OF OFFICE OR AGENCY), which is a government office or agency of

(COUNTRY).

Description of Documents:

(SIGNATURE)

(TITLE)

(DATE)

Form C

ATTESTATION WITH RESPECT TO SEIZED ARTICLES

I, _____, attest on penalty of criminal punishment for false statement
(NAME)
or attestation that my position with the Government of _____
(COUNTRY)
is _____. I received custody of the articles listed below
(OFFICIAL TITLE)
from _____ on _____, at _____
(NAME OF PERSON) (DATE) (PLACE)
and transferred them to _____, on _____, at _____
(NAME OF PERSON) (DATE) (PLACE)
_____. At the time I transferred the articles, they were in the same
(PLACE)
condition as when I received them (or, if different, as noted below).

Description of Articles:

Changes in condition while in my custody:

(SIGNATURE)

(OFFICIAL SEAL) (TITLE)

(PLACE)

(DATE)

EMBASSY OF THE
UNITED STATES OF AMERICA

Excellency,

I have the honor to refer to the Treaty Between the Government of the United States of America and the Government of the State of Israel on Mutual Assistance in Criminal Matters, signed today in Jerusalem (hereinafter the "Treaty"), and to confirm on behalf of the Government of the United States of America the following Understanding:


1. This Treaty may be applied to request assistance with respect to fiscal offenses. The term "fiscal offenses" as used herein, shall mean criminal tax offenses.
2. Notwithstanding the generality of section 1, it is the understanding of the Parties that assistance will not be requested pursuant to this Treaty with respect to a fiscal offense if the case concerned would, by its nature, come within the scope of the provision for cooperation between tax authorities included in the Convention Between the Government of the State of Israel and the Government of the United States of America with Respect to Taxes on Income, signed on November 20, 1975, with Protocols signed on May 30, 1980 and on January 26, 1993, which entered into force on December 30, 1994 (hereinafter the "Tax Convention"), unless
 - a) the form of assistance requested is not included within the framework of the Tax Convention, or
 - b) the case concerned also includes additional serious non-fiscal offenses.

In any event, a request for assistance under this Treaty with regard to a fiscal offense should specify whether assistance under the Tax Convention has been previously requested or granted.

3. It is the understanding of the Parties that requests for assistance in the form of bank records with respect to a fiscal offense will be made only in connection with serious offenses involving wilful, fraudulent conduct. Serious offenses would include, for example, cases involving substantial sums of money or involving a pattern of criminal conduct.

I have the honor to propose that this Note and your Excellency's reply confirming on behalf of your Government the above Understanding shall be regarded as an integral part of the Treaty.

Accept, Excellency, the renewed assurances of my highest consideration.



x
The Ambassador of the United States of America

ראש הממשלה
Prime Minister

Excellency,

I have the honor to acknowledge receipt of your Excellency's Note of this date, which reads as follows:

"Excellency,

"I have the honor to refer to the Treaty Between the Government of the United States of America and the Government of the State of Israel on Mutual Assistance in Criminal Matters, signed today in Jerusalem (hereinafter the "Treaty"), and to confirm on behalf of the Government of the United States of America the following Understanding:

- "1. This Treaty may be applied to request assistance with respect to fiscal offenses. The term "fiscal offenses" as used herein, shall mean criminal tax offenses.
- "2. Notwithstanding the generality of section 1, it is the understanding of the Parties that assistance will not be requested pursuant to this Treaty with respect to a fiscal offense if the case concerned would, by its nature, come within the scope of the provision for cooperation between tax authorities included in the Convention Between the Government of the State of Israel and the Government of the United States of America with Respect to Taxes on Income, signed on November 20, 1975, with Protocols signed on May 30, 1980 and on January 26, 1993, which entered into force on December 30, 1994 (hereinafter the "Tax Convention"), unless
 - "a) the form of assistance requested is not included within the framework of the Tax Convention, or
 - "b) the case concerned also includes additional serious non-fiscal offenses.

"In any event, a request for assistance under this Treaty with regard to a fiscal offense should specify whether assistance under the Tax Convention has been previously requested or granted.

- "3. It is the understanding of the Parties that requests for assistance in the form of bank records with respect to a fiscal offense will be made only in connection with serious offenses involving wilful, fraudulent conduct. Serious offenses would include, for example, cases involving substantial sums of money or involving a pattern of criminal conduct.

"I have the honor to propose that this Note and your Excellency's reply confirming on behalf of your Government the above Understanding shall be regarded as an integral part of the Treaty.

Jerusalem, Israel

ראש הממשלה
Prime Minister

“Accept, Excellency, the renewed assurances of my highest consideration.”

On behalf of the Government of the State of Israel, I have the honor to confirm the Understanding set forth in your Excellency's Note and that your Excellency's Note and this Note shall constitute an integral part of the Treaty.

Accept, Excellency, the renewed assurance of my highest consideration.



The Prime Minister and Minister of Foreign Affairs

Jerusalem, Israel

○