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TREATY WITH CZECH REPUBLIC ON MUTUAL
LEGAL ASSISTANCE IN CRIMINAL MATTERS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE
CZECH REPUBLIC ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL
MATTERS, SIGNED AT WASHINGTON ON FEBRUARY 4, 1998



MAY 22, 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

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *May 22, 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 United States of America and the Czech Republic on Mutual Legal Assistance in Criminal Matters, signed at Washington on February 4, 1998. 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 in order to counter criminal activities more effectively. The Treaty should be an effective tool to assist in the prosecution of a wide variety of crimes, including 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: locating or identifying persons or items; serving documents; taking testimony or statements of persons; transferring persons in custody for testimony or other purposes; providing documents, records, and articles of evidence; executing requests for searches and seizures; immobilizing assets; assisting in proceedings related to forfeiture of assets, restitution, and criminal fines; and providing any other assistance consistent with 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, April 14, 1998.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Treaty between the United States of America and the Czech Republic on Mutual Legal Assistance in Criminal Matters (the "Treaty") signed at Washington on February 4, 1998. I recommend that the Treaty 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.

The Treaty with the Czech Republic contains all essential provisions sought by the United States. It will enhance our ability to investigate and prosecute a variety of offenses, including drug trafficking, terrorism, other violent crime, and money laundering and other white collar crime. The Treaty is designed to be self-executing and will not require implementing legislation.

Article 1 sets forth a non-exclusive list of the major types of assistance to be provided under the Treaty, including locating or identifying persons or items; serving documents; taking the testimony or statements of persons; transferring persons in custody for testimony or other purposes; providing documents, records, and articles of evidence; executing requests for searches and seizures; immobilizing assets; assisting in proceedings related to forfeiture of assets, restitution, and criminal fines; and rendering any other assistance consistent with the laws of the Requested State. The scope of the Treaty includes not only criminal offenses, but also forfeiture and other proceedings related to criminal offenses, which may be civil or administrative in nature.

Article 1 states that assistance shall be provided without regard to whether the conduct involved would constitute an offense under the laws of the Requested State, except that the Requested State may refuse to comply in whole or in part with a request to the extent that the conduct would not constitute an offense under its laws and the execution of the request would require a court order. The Requested State must make every effort to approve a request for assistance requiring such a court order and grant assistance where the request establishes a reasonable suspicion that the conduct, had it occurred in that state, would constitute an offense under its laws. Article 1(4) states explicitly that the Treaty is not intended to create rights on the part of any private person to ob-

tain, suppress, or exclude any evidence or to impede the execution of a request.

Article 2 provides for the establishment of Central Authorities and defines Central Authorities for purposes of the Treaty. For the United States, the Central Authority is the Attorney General or such persons in the Department of Justice as the Attorney General designates. For the Czech Republic, the Central Authority is the Office of the Prosecutor General and the Ministry of Justice. This dual Central Authority arrangement for the Czech Republic reflects the importance and independence of the Office of the Prosecutor General in the Czech Republic's criminal justice system. Although such an arrangement is very rare among U.S. treaties in the mutual assistance field, no practical problems with implementation of the Treaty are anticipated.

Article 2 specifies on whose behalf each Central Authority will make requests and it provides that the Central Authorities will communicate directly with one another for purposes of the Treaty.

Article 2 also requires each Central Authority to use its best efforts to ensure that a request is not made where, in its view, the offense does not have serious consequences or the extent of assistance requested is unreasonable in view of the sentence expected upon conviction.

Article 3 sets forth the limited circumstances under which the Requested State's Central Authority may deny assistance under the Treaty. A request may be denied if it relates to a military offense that would not be an offense under ordinary criminal law applicable generally or to a political offense (a term expected to be defined on the basis of its usage in extradition treaties). In addition, a request may be denied if its execution would prejudice the sovereignty, security, order public, or similar essential interests of the Requested State, 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 State denies assistance, it is required to inform the Central Authority of the Requesting State of the reasons for the denial.

Article 4 prescribes the form and content of written requests under the Treaty, specifying in detail the information required in each request. The article permits other forms of request in emergency situations but requires written confirmation within ten days thereafter, unless the Central Authority of the Requested State agrees otherwise. Unless otherwise agreed, a request, including any attachments, shall be in the language of the Requested State. The Requested State has no obligation to translate the response, including any attachments.

Article 5 requires that the Central Authority of the Requested State execute the request promptly or transmit it to the authority having jurisdiction to do so. It provides that the competent authorities of the Requested State, including courts, must have the au-

thority to issue such orders to execute a request under the Treaty as are authorized under the laws of the Requested State with respect to domestic proceedings and must do everything in their power to execute the request.

Under Article 5(3), requests are to be executed in accordance with the laws of the Requested State except to the extent the Treaty provides otherwise. However, 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 the request would interfere with an ongoing criminal proceeding in that State, it may postpone execution or, after consulting with the Central Authority of the Requesting State, impose conditions on such execution. If the Requesting State accepts assistance subject to such conditions, it shall comply with them.

Article 5(5) further requires the Requested State, if so requested, to use its best efforts to keep confidential a request and its contents, and to inform the Requesting State's Central Authority if the request cannot be executed without breaching confidentiality. This provides the Requesting State an opportunity to decide whether to pursue the request or to withdraw it in order to maintain confidentiality.

Article 5(6) requires the Central Authority of the Requested State to respond to reasonable inquiries by the Central Authority of the Requesting State regarding the status of the execution of a request. Article 5(7) requires the Central Authority of the Requested State to report promptly to the Central Authority of the Requesting State on the outcome of the execution of a request and, if the request is delayed or postponed, to inform the Requesting State's Central Authority of the reasons therefor.

Article 6 apportions between the two States the cost incurred in executing a request. It provides that the Requested State must pay all costs relating to the execution of the request, except for the following items to be paid by the Requesting State: fees of experts, the costs of translation, interpretation, and transcription, and allowances and expenses related to the travel of persons travelling either in the Requested State for the convenience of the Requesting State or pursuant to Articles 11, 12, and 13. If complete execution will entail expenses of an extraordinary nature, the Central Authorities are to consult to determine the terms and conditions under which execution may continue.

Article 7 requires the requesting State to comply with any request by the Central Authority of the Requested State that information or evidence obtained under the Treaty not be used other than in the proceeding described in the request without its prior consent.

Article 8 establishes a procedure for consultation between Central Authorities in situations where a condition imposed by the Requested State conflicts with a constitutional obligation in the requesting State to disclose information. The Central Authority of the Requested State is required to use its best efforts to permit disclosures; with respect to a condition imposed pursuant to Article 7, it is required to permit disclosure unless prohibited by its law.

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While Articles 7 and 8 vary from the U.S. model text, which permits disclosure to meet constitutional obligations, the flexibility they afford in allowing initial production of information is viewed as benefiting U.S. interests overall. The Department of State understands that the only circumstance in which Czech law would not permit release is when information is obtained from use of a wiretap. In that situation, federal and state prosecutors in the U.S. in principle would face limitations in their ability to pursue prosecution with respect to a defendant who is denied access to the information obtained from the Czech Republic.

Article 8(2) provides that information or evidence that has been made public in the course of being used appropriately in the proceeding for which it was provided may be used thereafter for any purpose.

Article 9 provides that a person in the Requested State from whom testimony or evidence is requested pursuant to the Treaty shall be compelled, if necessary, to appear and testify or provide a statement, or produce items and articles of evidence. The article requires the Central Authority of the Requested State, upon request, to furnish information in advance about the date and place of the taking of testimony or items and articles of evidence.

Article 9(3) further requires the Requested State to allow the presence of persons specified in the request and to allow them to specify questions to be posed to the person giving the testimony or statement or producing the evidence. 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, Article 9(4) provides that the testimony, statement, or other evidence shall be taken and provided, together with the claim, to the Central Authority of the Requesting State for resolution by competent authorities of that State.

Finally, in order to ensure admissibility in evidence in the Requesting State, Article 9(5) provides a mechanism, through the use of Form A appended to the Treaty, for authenticating evidence that is produced pursuant to this Article or that is the subject of testimony taken in the Requested State, as well as a mechanism for attesting to the absence of such records through the use of Form B appended to the Treaty.

Article 10 requires that the Requested State provide the Requesting State with copies of publicly available records in the possession of a government department or agency or a court in the Requested State. The Requested State may further provide copies of records or information in the possession of a government department or agency or a court in that State, but not publicly available, to the same extent and under the same conditions as it would provide them to its own law enforcement or judicial authorities. The Requested State has the discretion to deny such requests entirely or in part. Article 10(3) also provides that no further authentication shall be necessary for admissibility into evidence in the Requesting State of official records, where the official in charge of maintaining them authenticates the records through the use of Form C or the absence of such records through use of Form D appended to the Treaty.

Article 11 provides a mechanism for the Requesting State to invite the voluntary appearance in the Requesting State or in a third State of a person located in the Requested State. The Requesting State shall indicate the extent to which the expenses will be paid.

Article 11 further provides that an invited person may not be prosecuted, detained, or subjected to any restriction of personal liberty in the Requesting State by reason of acts or convictions that preceded the person's departure from the Requested State. The Central Authority of the Requesting State has discretion to extend safe conduct to the effects of service of process or to limit the application of the safe conduct. Any such extension or limitation of safe conduct is required to be communicated to the invited person before the person travels to the Requesting State. Any safe conduct provided for by this Article ceases seven days after the person has been notified that the person's presence is no longer required, or when the person has left the Requesting State and voluntarily returns to it.

Article 12 provides for the temporary transfer of a person in custody in the Requested State to the Requesting State or to a third State for purposes of assistance under the Treaty (for example, a witness incarcerated in the Requested State may be transferred to the Requesting State to have his deposition taken in the presence of the defendant), provided that the person in question and the Central Authorities of both States agree. Article 12(3) establishes both the express authority and the obligation of the receiving State to maintain the person transferred in custody unless otherwise agreed by the Central Authorities of both States. The return of the person transferred is subject to terms and conditions agreed to by the Central Authorities, and the sending State is not required to initiate extradition proceedings for return of the person transferred. The person transferred receives credit for service of the sentence imposed in the sending State for time served in the custody of the receiving State.

Article 13 facilitates transit through the Requested State's territory of a person held in custody in a third State whose personal appearance has been requested by the Requesting State to give testimony or evidence or otherwise provide assistance in criminal proceedings or other proceedings related to criminal offenses. Article 13(3) also provides that the Requested State has both the authority and the obligation to keep the person in custody during transit. Each Contracting State may refuse to grant transit of its nationals.

Article 14 requires the Requested State to use its best efforts to ascertain the location or identity of persons or items specified in a request.

Article 15 requires the Requested State to use its best efforts to effect service of any document relating, in whole or in part, to a request for assistance under the Treaty. Any request for the service of a document inviting a person to appear in the Requesting State must be transmitted a reasonable time before the scheduled appearance. Proof of service is to be provided in the manner specified in the request. Article 15 includes a description of two acceptable means of providing service, but does not preclude use of other means.

Article 16 obligates the Requested State to execute requests for search, seizure, and transfer of any item 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 by the Central Authority of the Requesting State, every person who has custody of a seized item is required to certify, through the use of Form E appended to the Treaty, the continuity of custody, the identity of the item and the integrity of its condition. The certificate is admissible in evidence in the Requesting State. Article 16 further provides that the Central Authority of the Requested State may impose upon the Requesting State terms and conditions deemed necessary to protect third party interests in the item to be transferred.

Article 17 provides that, at or before the time of transfer, the Central Authority of the Requested State may require that the Requesting State return as soon as possible any item furnished under the Treaty. A request for return not made until after the transfer shall be complied with to the extent feasible.

Article 18 requires the Requested State, upon request, to use its best efforts to ascertain whether proceeds or instrumentalities of an offense, potentially forfeitable or otherwise subject to seizure under either State's laws, are located in the Requested State. To the extent permitted by its laws, the Requested State may take protective measures, including seizure and temporary immobilization, to ensure that such proceeds or instrumentalities are available for forfeiture, and may give effect to a final forfeiture determination in the Requesting State or initiate its own legal action for the forfeiture of such assets. A Contracting State that enforces a final legal determination regarding such assets shall dispose of them in accordance with its laws. Either Contracting State may share all or part of such forfeited assets, or the proceeds of their sale, with the other State to the extent permitted by the transferring State's laws and upon such terms as it deems appropriate, giving due consideration to relevant factors including the extent of co-operation provided by the other Contracting State.

Article 19 obligates the Contracting States to assist each other to the extent permitted by their respective laws to facilitate restitution, including transfer of items obtained through criminal activity.

Article 20 obligates the States to assist each other to the extent permitted by their respective laws in proceedings regarding criminal fines, excluding collection of such fines.

Article 21 states that the Treaty is not intended to prevent the Contracting States from seeking and granting assistance to each other through provisions of other international agreements or domestic laws.

Article 22 provides that the Central Authorities of the Contracting States shall consult, at times mutually agreed, to promote the most effective use of the Treaty and to agree on practical measures as may be necessary to facilitate the Treaty's implementation.

Article 23 provides that the Treaty shall be subject to ratification and that the instruments of ratification shall be exchanged at Prague. The Treaty shall enter into force two months after the exchange of instruments of ratification. Article 23(3) provides that the Treaty shall apply to requests presented after its entry into

force even if the relevant acts or omissions occurred before that date. In addition, Article 23 allows either Contracting State to terminate the Treaty with six months written notice to the other Contracting State, termination to take effect six months following the date of notification.

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 UNITED STATES OF AMERICA
AND
THE CZECH REPUBLIC
ON
MUTUAL LEGAL ASSISTANCE
IN CRIMINAL MATTERS**

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The United States of America and the Czech Republic,
Desiring to provide more effective cooperation between the two States through
mutual legal assistance in criminal matters,
Have agreed as follows:

Article 1
Scope of Assistance

1. The Contracting States shall provide mutual assistance, in accordance with the provisions of this Treaty, for criminal proceedings, including investigations to verify the commission of offenses, to gather evidence of offenses, and to prosecute offenses, the punishment of which, at the time of the request for assistance, would fall within the jurisdiction of the judicial authorities of the Requesting State. The Contracting States shall also provide such assistance for forfeiture and other proceedings related to criminal offenses.

2. Assistance shall include:

- (a) locating or identifying persons or items;
- (b) serving documents;
- (c) taking the testimony or statements of persons;
- (d) transferring persons in custody for testimony or other purposes;
- (e) providing documents, records, and articles of evidence;
- (f) executing requests for searches and seizures;
- (g) immobilizing assets;
- (h) assisting in proceedings related to forfeiture of assets, restitution, and criminal fines; and
- (i) providing any other assistance consistent with the laws of the Requested State.

3. The Requested State shall provide assistance without regard to whether the conduct that is the subject of the request would constitute an offense under the laws of the Requested State, except that the Requested State may refuse to comply in whole or in part with a request for assistance to the extent that the conduct would not constitute an offense under its laws and the execution of the request would require a court order. However, the Requested State shall make every effort to approve a request for assistance requiring such a court order and shall grant assistance where the facts stated in the

request establish a reasonable suspicion that the conduct described, if it had occurred in the Requested State, would constitute an offense under its laws.

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

Article 2

Central Authorities

1. The Contracting States shall seek and obtain assistance through their Central Authorities. The Central Authority for the United States shall be the Attorney General or such persons in the Department of Justice as the Attorney General designates. The Central Authority for the Czech Republic shall be the Office of the Prosecutor General and the Ministry of Justice.

2. The Central Authority for the United States will make requests on behalf of prosecutors, investigators with criminal law enforcement jurisdiction, and agencies and entities with specific statutory or regulatory authority to refer matters for criminal prosecution. The Central Authority for the Czech Republic will make requests on behalf of prosecutors and courts.

3. The Central Authority for the Requesting State shall use its best efforts to ensure that a request is not made where, in its view:

- (a) the offense on which the request would be based does not have serious consequences; or
- (b) the extent of the assistance to be requested would be unreasonable in view of the sentence expected upon conviction.

4. The Central Authorities shall communicate with one another directly for the purposes of this Treaty.

Article 3

Denial of Assistance

- 1. The Central Authority of the Requested State may deny assistance if:
 - (a) the request relates to an offense under military law that would not be an offense under ordinary criminal law applicable generally;

- (b) the request relates to a political offense;
- (c) the execution of the request is likely to prejudice the sovereignty, security, order public, or similar essential interests of the Requested State; or
- (d) the request does not conform to the requirements of 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, Content, and Language of Requests

1. A request for assistance shall be in writing except that the Central Authority of the Requested State may accept a request in another form in urgent situations. In any such situation, the request shall be confirmed in writing within ten days unless the Central Authority of the Requested State agrees otherwise. The request, including any attachments, shall be in the language of the Requested State unless agreed otherwise. The Requested State shall have no obligation to translate the response, including any attachments.

2. The request shall include the following:

- (a) the identity of the authority initiating the request;
- (b) a description of the factual basis of each offense, the text of the applicable provisions of law containing the elements constituting each offense, and the nature and stage of the proceeding;
- (c) a description of the evidence, information, or other assistance sought; and
- (d) a statement of the purpose for which the evidence, information, or other assistance is sought.

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

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

- (b) information on the identity and location of a person to be served, that person's relationship to the proceeding, and the manner in which service is to be made;
- (c) information on the identity and suspected location of a person or item to be located;
- (d) a precise description of the place or person to be searched and of the item to be seized;
- (e) a description of any particular procedure to be followed in executing the request;
- (f) a description of the manner in which any testimony or statement is to be taken and recorded;
- (g) a description of the testimony or statement sought, which may include a list of questions to be asked of a person;
- (h) information as to the allowances and expenses to which a person asked to appear in the Requesting State will be entitled; and
- (i) any other information that may be brought to the attention of the Requested State to facilitate its execution of the request.

Article 5

Execution of Requests

1. The Central Authority of the Requested State shall promptly execute a request or, when appropriate, transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State, including courts, shall have the authority to issue such orders to execute a request under this Treaty as are authorized under the laws of the Requested State with respect to domestic proceedings and shall do everything in their power to execute the request.
2. When necessary, the request shall be presented to the appropriate authority by the persons appointed by the Central Authority of the Requested State.
3. A request shall be executed in accordance with the laws of the Requested State except to the extent that this Treaty provides otherwise. If the Requesting State requests execution in accordance with the procedures of the Requesting State and provides legal reference thereto, the Requested State shall so execute unless such execution would violate 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 proceeding in that State, it may postpone execution, or make execution subject to conditions determined to be necessary after consultations with the Central Authority of the Requesting State. If the Requesting State accepts the assistance subject to the conditions, it shall comply with the conditions.

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

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

7. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the outcome of the execution of the request. If execution of the request is delayed or postponed, the Central Authority of the Requested State shall inform the Central Authority of the Requesting State of the reasons for the delay or postponement.

Article 6

Costs

1. The Requested State shall pay all costs relating to the execution of a request except for the following:

- (a) the fees of experts;
- (b) the costs of interpretation, translation and transcription; and
- (c) the allowances and expenses related to travel of persons travelling outside the local judicial district in the Requested State for the convenience of the Requesting State or pursuant to Articles 11, 12, and 13.

2. If during the execution of a request it becomes apparent that complete execution will entail expenses of an extraordinary nature, the Central Authorities shall consult to determine the terms and conditions under which execution may continue.

Article 7
Limitation on Use

The Central Authority of the Requested State may require that the Requesting State not use any information or evidence obtained under this Treaty other than in the proceeding described in the request without the prior consent of the Central Authority of the Requested State. In such situations, the Requesting State shall comply with the requirement.

Article 8
Alteration of Conditions

1. To the extent that the Constitution of the Requesting State imposes an obligation to disclose information provided under this Treaty and such disclosure would conflict with a condition imposed by the Requested State, the Central Authority of the Requesting State shall consult with the Central Authority of the Requested State to consider whether the condition may be modified to permit such disclosure. The Central Authority of the Requested State shall use its best efforts to permit such modification; with respect to a condition imposed pursuant to Article 7, it shall permit such disclosure unless prohibited by its law.

2. Information or evidence that has been used appropriately in the proceeding for which it was provided and in the course of such use has been made public may be used for any purpose.

Article 9
Evidence in the Requested State

1. A person in the Requested State from whom evidence is requested pursuant to this Treaty shall be compelled, if necessary, to appear and either testify or provide a statement, or produce items, including documents, records, and articles of evidence. A person other than an accused who gives false testimony, either orally or in writing, in execution of a request shall be subject to prosecution in the Requested State in accordance with the criminal laws of that State.

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

3. The Requested State shall allow the presence of such persons as specified in the request during the execution of the request and shall allow such persons to specify questions to be posed to the person giving the testimony or statement or producing the evidence.

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

5. Evidence produced in the Requested State pursuant to this Article or that is the subject of testimony or a statement taken under this Article shall, upon request, be authenticated by an attestation, including, in the case of business records, authentication in the manner indicated in Form A appended to this Treaty. The absence or nonexistence of such records shall, upon request, be certified through the use of Form B appended to this Treaty. Records authenticated by Form A, or Form B certifying the absence of such records, shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.

Article 10 Official Records

1. The Requested State shall provide the Requesting State with copies of publicly available records in the possession of a government department or agency or a court in the Requested State. Publicly available records are documents, records, or information in any form that are available to members of the public of the Requested State generally or upon compliance with a legal condition.

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

3. Records of a government department or agency or a court produced pursuant to this Article shall, upon request, be authenticated by an official responsible for maintaining them through the use of Form C appended to this Treaty. The absence or nonexistence of such records shall, upon request, be certified through the use of Form D appended to this Treaty. Records authenticated by Form C, or Form D certifying the absence of such records, shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.

Article 11

Appearance Outside The Requested State

1. The Requesting State may request the appearance in the Requesting State or in a third State of any person to assist in criminal proceedings or other proceedings related to criminal offenses. The Requested State shall invite the person to appear and shall inform the Requesting State of the person's response.

2. The Requesting State shall indicate the extent to which the expenses will be paid. A person who agrees to appear may ask that the Requesting State advance money to cover these expenses. This advance may be provided through the Embassy or a consulate of the Requesting State.

3. An invited person may not be prosecuted, detained, or subjected to any restriction of personal liberty in the Requesting State by reason of acts or convictions that preceded that person's departure from the Requested State. The Central Authority of the Requesting State shall have discretion to extend safe conduct to the effects of non-criminal proceedings or to limit the application of safe conduct. Any such extension or limitation of safe conduct shall be communicated to the invited person prior to that person's travel to the Requesting State.

4. The safe conduct provided in the above paragraph shall cease seven days after the person has been notified that the person's presence is no longer required or when the person, having left the Requesting State, voluntarily returns.

Article 12

Temporary Transfer Of Persons in Custody

1. A person in the custody of the Requested State whose presence in the Requesting State or in a third State is sought for purposes of assistance under this

Treaty shall be transferred temporarily from the Requested State to the Requesting State or to a third State for that purpose if the person consents and if the Central Authorities of the Requesting and the Requested States agree.

2. A person in the custody of the Requesting State whose presence in the Requested State is sought for purposes of assistance under this Treaty may 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 agreed by the Central Authorities of both States;
- (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 the Central Authorities of both States;
- (c) the receiving State shall not require the sending State to initiate extradition proceedings or any other proceedings for the return of the person transferred;
- (d) time served in the custody of the receiving State by the person transferred shall be credited toward the service of the sentence imposed in the sending State; and
- (e) where the receiving State is a third State, the Requesting State shall make all arrangements necessary to meet the requirements of this paragraph.

4. Safe conduct shall be provided in accordance with Article 11, paragraphs 3 and 4, except that the person shall be kept in custody for the offense for which the person is incarcerated in the sending State.

Article 13

Transit of Persons in Custody

1. The Requested State may authorize the transit through its territory of a person held in custody by a third State whose personal appearance has been requested by the Requesting State to give testimony or evidence or otherwise provide assistance in criminal proceedings or other proceedings related to criminal offenses.

2. The Requested State shall have the authority and the obligation to keep the person in custody during transit.

3. Each Contracting State may refuse to grant transit of its nationals.

Article 14

Location or Identification of Persons or Items

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

Article 15

Service of Documents

1. The Requested State shall use its best efforts to effect service of any document relating, in whole or in part, to any request for assistance made by the Requesting State under the provisions of this Treaty.

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

3. The Central Authority of the Requested State shall return a proof of service in the manner specified in the Request. Acceptable means of proving service may include:

- (a) the signature of the person upon whom service has been requested acknowledging receipt of service; or
- (b) a report of an official of the Requested State describing the effort to obtain the signature of the person upon whom service has been requested who has refused either to accept service or to acknowledge receipt thereof, and specifying any reasons given for such refusal.

Article 16
Search and Seizure

1. The Requested State shall execute a request for the search, seizure, and transfer 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 by the Central Authority of the Requesting State, every official who has had custody of a seized item shall certify, through the use of Form E appended to this Treaty, the identity of the item, the integrity of its condition, and the continuity of its custody. The certificates shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.
3. The Central Authority of the Requested State may require that the Requesting State agree to the terms and conditions deemed necessary to protect third state interests in the item to be transferred.

Article 17
Return of Items

At or before the transfer of an item, including a document, record, or article of evidence, furnished to the Requesting State in execution of a request under this Treaty, the Central Authority of the Requested State may require that the Requesting State return such item as soon as possible. A request for return of an item not made until after transfer of the item shall be complied with by the Requesting State to the extent feasible.

Article 18
Forfeiture

1. Upon request, the Requested State shall use its best efforts to ascertain whether proceeds or instrumentalities of an offense, potentially forfeitable or otherwise subject to seizure under the laws of either State, are located in the Requested State. The request shall state the grounds for believing that such proceeds or instrumentalities are so located. The Requested State shall inform the Requesting State of the results of its inquiry.

2. If, pursuant to its inquiry, the Requested State locates proceeds or instrumentalities of an offense, it may, to the extent permitted by its laws, take protective measures, including seizure and temporary immobilization, to ensure that such proceeds or instrumentalities are available for forfeiture.

3. The Requested State may, to the extent permitted by its laws, give effect to any final legal determination given in the Requesting State forfeiting such proceeds or instrumentalities, or initiate its own legal action for the forfeiture of such assets.

4. The Contracting State that enforces a final legal determination relating to proceeds or instrumentalities of offenses shall dispose of them in accordance with its laws. Either Contracting State, to the extent permitted by its laws and upon such terms as it deems to be appropriate, giving due consideration to relevant factors including the extent of cooperation provided by the other Contracting State, may transfer all or part of such assets, or the proceeds of their sale, to the other Contracting State.

Article 19

Restitution

The Contracting States shall assist each other to the extent permitted by their respective laws to facilitate restitution. Assistance shall include transfer of items obtained through criminal activity.

Article 20

Criminal Fines

The Contracting States shall assist each other to the extent permitted by their respective laws in proceedings regarding criminal fines. Assistance shall not include collection of criminal fines.

Article 21

Compatibility With Other Treaties

This Treaty is not intended to prevent the Contracting States from seeking and granting assistance to each other through the provisions of other international agreements or domestic laws.

Article 22
Consultation

The Central Authorities 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 23
Ratification, Entry Into Force, and Termination

1. This Treaty shall be subject to ratification, and the instruments of ratification shall be exchanged at Prague as soon as possible.
2. This Treaty shall enter into force two months after the exchange of instruments of ratification.
3. This Treaty shall apply to any requests presented after its entry into force even if the relevant acts or omissions occurred before that date.
4. This Treaty shall remain in force until terminated by either Contracting State by means of written notice to the other Contracting State. Termination shall take effect six months following the date of notification.

IN WITNESS WHEREOF, the undersigned, being duly authorized for this purpose, have signed this Treaty.

DONE at Washington, this fourth day of February 1998 in duplicate, in the English and Czech languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA:

FOR THE CZECH REPUBLIC:




Form A CERTIFICATION OF BUSINESS RECORDS I, _____, (name) _____, having been advised as a witness that a false attestation subjects me to a penalty of criminal punishment, attest as follows: I am employed by/associated with _____ (name of business from which documents are sought) _____ in the position of _____ (business position or title) _____ and by reason of my position am authorized and qualified to make this attestation. Each of the records attached hereto is a record in the custody of the above-named business that: (A) was made, at or near the time of the occurrence of the matters set forth therein [circle appropriate number(s)]: (1) by a person with knowledge of those matters; (2) from information transmitted by a person with knowledge of those matters; (3) by a person who otherwise had a duty to record information concerning such matters on behalf of the above-named business; (B) was kept in the course of a regularly conducted business activity; (C) was made by the business as a regular practice; and, (D) if not an original record, is a duplicate of the original. _____, (date of execution) _____, (country of execution) _____, (signature) 14

Form B
CERTIFICATION OF ABSENCE OF BUSINESS RECORDS

I, _____ (name), having been advised as a witness that a false attestation subjects me to a penalty of criminal punishment, attest as follows:

I am employed by/associated with _____ (name of business from which documents are sought) in the position of _____ (business position or title) and by reason of my position am authorized and qualified to make this attestation.

As a result of my employment/association with the above-named business, I am familiar with the business records it maintains. The business maintains business records that are:

- (A) made, at or near the time of the occurrence of the matters set forth therein [circle appropriate number(s)]:
- (1) by a person with knowledge of those matters;
 - (2) from information transmitted by a person with knowledge of those matters;
 - (3) by a person who otherwise had a duty to record information concerning such matters on behalf of the above-named business;
- (B) kept in the course of a regularly conducted business activity; and
- (C) made by the business as a regular practice.

Among the records so maintained are records of individuals and entities that have accounts or otherwise transact business with the above-named business. I have made or caused to be made a diligent search of those records. No records have been found reflecting any business activity between the business and the following individuals and entities:

If the business had maintained an account on behalf of or had participated in a transaction with any of the foregoing individuals or entities, its business records would reflect that fact.

 (date of execution)

 (country of execution)

 (signature)

Form C
CERTIFICATION OF OFFICIAL RECORDS

I, _____ (name), _____, having been advised as a witness that a false attestation subjects me to a penalty of criminal punishment, attest as follows:

1. _____ (name of public authority) is a government office or agency of _____ (country) and is authorized by law to maintain official records setting forth matters required by law to be reported and recorded or filed;
2. my position with the above-named public authority is _____ (official title) _____;
3. in my official capacity I have caused the production of true and accurate copies of records maintained by that public authority; and
4. those copies are described below and attached.

Description of records:

_____ (signature) _____

(Official Seal or Stamp)

_____ (date) _____

Form D
CERTIFICATION OF ABSENCE OF OFFICIAL RECORDS

I, _____(name)_____, having been advised as a witness that a false attestation subjects me to a penalty of criminal punishment, attest as follows:

1. _____(name of public authority)_____ is a government office or agency of _____(country)_____ and is authorized by law to maintain official records setting forth matters that are required by law to be reported and recorded or filed;
2. records of the type described below set forth matters that are required by law to be reported and recorded or filed, and such matters regularly are recorded or filed by the above-named public authority;
3. my position with the above-named public authority is _____(official title)_____;
4. in my official capacity I have made, or caused to be made, a diligent search of the above-named public authority's records for the records described below; and;
5. no such records have been found to exist therein.

Description of records:

_____(signature)_____

(Official Seal or Stamp)

_____(date)_____

Form E
CERTIFICATION WITH RESPECT TO SEIZED ITEMS

I, _____ (name), having been advised as a witness that a false attestation subjects me to a penalty of criminal punishment, attest as follows:

1. My position with the Government of _____ (country) is _____ (official title);
2. I received custody of the items listed below from _____ (name of person) on _____ (date) at _____ (place); and
3. I relinquished custody of the items listed below to _____ (name of person) on _____ (date) at _____ (place) in the same condition as when I received them (or, if different, as noted below).

Description of items:

Changes in condition while in my custody:

_____ (date of execution)

_____ (country of execution)

(Official Seal or Stamp)

_____ (signature)