

TREATY WITH FRANCE 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 FRANCE ON MUTUAL
LEGAL ASSISTANCE IN CRIMINAL MATTERS, SIGNED AT PARIS
ON DECEMBER 10, 1998



JANUARY 31, 2000.—Treaty was read the first time, and together with
the accompanying papers, referred to the Committee on Foreign Rela-
tions and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *January 31, 2000.*

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 France on Mutual Legal Assistance in Criminal Matters, signed at Paris on December 10, 1998. I transmit also, for the Senate's information, an explanatory note agreed between the Parties regarding the application of certain provisions. The report of the Department of State with respect to the Treaty is enclosed.

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 and drug trafficking offenses. The Treaty is self-executing.

The Treaty provides for a broad range of cooperation in criminal matters. Mutual assistance available under the Treaty includes: obtaining the testimony or statements of persons; providing documents, records, and items of evidence; locating or identifying persons or items; serving documents; transferring persons in custody for testimony or other purposes; executing requests for searches and seizures; assisting in proceedings related to immobilization and forfeiture of assets, restitution, and collection of fines; and rendering any other form of assistance not prohibited by 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, December 14, 1999.

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 France on Mutual Legal Assistance in Criminal Matters (the "Treaty"), signed at Paris on December 10, 1998. I recommend that the Treaty be transmitted to the Senate for its advice and consent to ratification. Accompanying the Treaty is an explanatory note between the Parties regarding the application of certain provisions. I recommend that this note be transmitted for the information of the Senate.

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 all of the essential provisions sought by the United States. It will enhance our ability to investigate and prosecute a variety of offenses, including terrorism and drug-trafficking offenses of particular interest to the U.S. law enforcement community with respect to France. The Treaty is designed to be self-executing and will not require new legislation.

Article 1(1) establishes the Parties' obligation to afford each other the widest measure of mutual assistance in criminal investigations or proceedings. Article 1(2) limits the scope of the treaty, setting forth the circumstances under which the Treaty does not apply. These circumstances include: the execution of requests for provisional arrest and extradition, the enforcement of criminal judgments except for forfeiture decisions referred to in Article 11, or offenses under military law that do not constitute offenses under ordinary criminal law.

Article 1(3) states explicitly that the Treaty is not intended to affect the exercise of rights otherwise available to private persons under the laws of the State presented with a claim based on rights. In the explanatory note on the Treaty, the Parties agreed that, for the United States, the Treaty does not create a new right for private persons to obtain assistance, to suppress or exclude any testimony or evidence, or to impede the execution of a request.

Article 2(1) 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 a person designated by the Attorney General. For France, the Central Authority is the Ministry of Justice. The Central Authorities

shall communicate directly with one another for the purposes of the Treaty.

Article 2(2) states that the Central Authorities are obligated to consult, at times mutually agreed, to promote the most effective use of the Treaty, and may agree upon such practical measures as may be necessary to facilitate the Treaty's implementation, in particular those related to the implementation of Article 9.

Under Article 2(3), the Central Authorities are required to provide each other with information regarding the execution of requests, and to respond to inquiries regarding progress toward execution of specific requests.

Article 3 provides that the requests from Central Authorities shall emanate from competent authorities. For the United States, the competent authorities are prosecutors and authorities with statutory or regulatory responsibility for investigations of criminal offenses, including the referral of matters to prosecutors for criminal prosecution. During the negotiation of Article 3, the Parties agreed not to attempt to list exhaustively in the Treaty the numerous state and federal authorities in the United States that fall under the definition of "competent authorities," particularly because the inadvertent omission of one from the list could diminish the value of the Treaty to the United States. The explanatory note does set forth an illustrative short list of such authorities, however. To facilitate the identification of competent authorities of the United States by France, Article 3 provides that the presentation by the U.S. Central Authority of a request coming from a competent authority establishes the competence of those authorities. Article 3 further states that the competent authorities for France are the judicial authorities including the public prosecutor.

Article 4 prescribes the form and content of requests under the Treaty, specifying in detail the information required in each request. Requests for assistance shall be in writing. Where appropriate, the Requesting State may indicate any time limit within which the assistance should be provided.

Article 5 establishes a mechanism for transmission of requests. The Central Authority of the Requesting State is required to send requests to the Central Authority of the Requested State. The results of execution shall be returned through the same channel unless the Central Authorities agree otherwise. In urgent situations, an advance copy of a request may be transmitted by any means, including Interpol. Thereafter, the Central Authority of the Requesting State is required to transmit the original request to the Central Authority of the Requested State.

Article 6(1) sets forth the circumstances under which the Requested State may deny legal assistance. A request may be denied if: (i) the offense to which the request relates is a political offense or an offense related to a political offense; or (ii) execution of the request would prejudice its sovereignty, security, public order, or other essential interests.

Before denying assistance, 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 Central Authority of the Requested State

denies assistance, it is required under Article 6(3) to inform the Central Authority of the Requesting State of the reason for denial.

Under Article 7, if the Central Authority of the Requested State determines that execution of the request would interfere with an ongoing criminal investigation or proceeding in that State, it may, after consulting with the Central Authority of the Requesting State, postpone execution or impose conditions on it. If the Requesting State accepts assistance subject to the conditions, it shall comply with them.

Article 8 establishes a mechanism for execution of requests, which, in accordance with Article 8(1), is to occur in accordance with the provisions of the Treaty and the laws of the Requested State. Article 8(2) states that the Central Authority of the Requested State is required to make all necessary arrangements for a request to be presented to its competent administrative and judicial authorities for execution. Administrative and judicial authorities charged with the execution of a request are obligated to use all necessary measures available under the laws of the Requested State to provide necessary or useful forms of assistance that are not prohibited by its laws.

Article 8(3) provides that a person giving testimony or evidence in the Requested State may assert such claims of immunity, incapacity, or privilege as are available under the Requested State's laws. The testimony of a person who asserts a claim under the laws of the Requesting State shall be taken and the claim recorded and preserved for consideration by the judicial authorities of the Requesting State. If, within a reasonable time prior to giving testimony or evidence, the person notifies the executing authority of the Requested State of the intention to assert such a claim, the Central Authorities may consult with respect to it.

Under Article 8(4), a person who gives false testimony in the execution of a request shall be subject to prosecution and punishment in the Requested State in accordance with its laws.

Article 9(1) provides that, if the Requesting State requests, the Requested State shall inform it of the dates and places of the execution of the request. It further provides that the Requested State may permit the authorities and persons designated by the Requesting State to be present at, and assist in, the execution of the request, including the taking of depositions for use in a judicial proceeding in the Requesting State, subject to Articles 6 and 7.

According to the explanatory note on the Treaty, Article 9(1) sets forth the principle that, with the consent of the Requested State, persons designated by the Requesting State are allowed to travel to the territory of the Requested State to be present and to assist during the execution of a request. The request for legal assistance should request the presence of these persons. This paragraph also commits the two Parties to accommodate such a request so that the deposition obtained in the Requested State may be used in the Requesting State in compliance with its internal procedure. This commitment does not preclude that, in certain cases, which in practice shall be most exceptional, the authority entrusted with the execution of the request may determine that the presence and assistance of the designated persons are not possible in a specific case.

Article 9(2) sets forth in detail certain procedures for execution of a request, which are to be carried out as outlined in the request insofar as they are not contrary to the fundamental principles of a judicial proceeding in the Requested State. Article 9(3) states that, upon request by the Requesting State, the Requested State shall transmit original documents or records to the extent possible; otherwise, the Requested State shall transmit true copies. Article 9(4) provides that business records shall be produced together with a certificate or proces-verbal following the requirements of Form A appended to the Treaty, and that such records shall be admissible in evidence in the Requesting State.

Article 10 obligates the Requested State to execute requests 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. It provides that, if the Requesting State requests, a competent authority in the Requested State shall provide a certificate or proces-verbal that: (i) identifies the item seized; (ii) identifies every official who has had custody of the item seized; and (iii) describes the circumstances of custody.

Article 10 further provides that if, after seizure, any transfer of custody of or material change in the item seized occurs, the competent authority in the Requested State is required to provide an additional certificate or proces-verbal that describes the circumstances of such transfer of custody or material change. No further proof of the identity of the item, the continuity of custody, or the integrity of its condition is required. The certificates or proces-verbaux shall be admissible in evidence in the Requesting State as proof thereof.

Article 11 establishes a mechanism for providing assistance for proceedings related to the forfeiture of proceeds or instrumentalities of criminal offenses. Article 11(2) provides that, upon the request of the Requesting State, the Requested State is obligated to take appropriate measures to locate and identify proceeds or instrumentalities of offenses within the Requested State. The request must specify the reasons for believing that proceeds or instrumentalities are within the Requested State. The Requested State is required to inform the Requesting State of the results of its inquiry. Article 11(3) states that, at the request of the Requesting State, the Requested State may take protective measures to immobilize temporarily proceeds or instrumentalities to ensure their availability for forfeiture. Article 11(4) provides that, at the request of the Requesting State, the Requested State may execute a final decision of forfeiture pronounced by judicial authorities of the Requesting State. The execution of such a request shall be in accordance with the laws of the Requested State.

Under Article 11(5), the Requested State that executes a final forfeiture decision shall dispose of the forfeited proceeds and instrumentalities in accordance with its laws. As it determines appropriate, the Requested State also may transfer all or part of such assets, or the proceeds of their sale, to the Requesting State. Article 11 further provides that, insofar as cooperation between the two States contributed to a final forfeiting decision, the forfeiture State, to the extent permitted by its laws and upon such terms as

it deems to be appropriate, may transfer all or part of such assets, or the proceeds of their sale, to the other State.

Article 12 permanently transfers to the Requesting State articles of evidence, including original documents and records, that are transmitted pursuant to a request, unless the Requested State asks at the time of transmission for their return. Article 12 provides further that the Requested State may require that the Requesting State agree to terms and conditions for the care and return of articles of evidence deemed to be necessary to protect third-party interests.

Article 13 obligates the States to assist each other to facilitate restitution to the extent permitted by their respective laws.

Article 14(1) requires the Requested State to 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 a breach of confidentiality, the Central Authority of the Requested State shall inform the Central Authority of the Requesting State, which will then determine whether the request should nevertheless be executed.

Under Article 14(2), 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, the Requesting State must use its best efforts to comply with the conditions.

Article 14(3) further permits the Central Authority of the Requested State to request that the Requesting State not use any information or evidence obtained under this Treaty in any investigation or proceeding other than that described in the request without the prior consent of the Requested State. Under such circumstances, the Requesting State shall comply with the condition.

Article 14(4) states that nothing in Article 14 shall preclude the use or disclosure of information or evidence to the extent that an obligation to do so in a criminal proceeding exists, for the United States under its Constitution or for France under its Constitution and general principles of its law having Constitutional value. To the extent possible, the Requesting State shall notify the Requested State in advance of any such use or disclosure.

Under Article 14(5), information and evidence obtained under the conditions referred to in Articles 14(2) or 14(3) may be used for any purpose if they have been made public within the framework of the proceeding for which they were transmitted to the Requesting State.

Article 15 establishes a mechanism for service of procedural documents and judicial decisions. Under Article 15(2), service may be effected by simple transmission of the document or decision to its addressee. If the Requesting State requests, the Requested State shall serve the document using a method provided by or compatible with its laws. Article 15(3) provides that proof of service consists of a receipt dated and signed by the addressee or a statement by the Requested State noting the fact, the method, and the date of service. Either of these documents shall be sent immediately to the

Requesting State. If service could not be effected, the Requested State shall inform the Requesting State immediately of the reason.

Article 15(4) further requires the Central Authority of the Requesting State to transmit a document requiring the appearance of a person in the Requesting State to the Central Authority of the Requested State at least 50 days before the date of the scheduled appearance. Upon the request of the Requesting State, the Central Authority of the Requested State may waive this requirement for persons other than defendants.

Article 16(1) provides a mechanism for inviting the voluntary appearance of a person in the Requested State's territory. Article 16(2) requires such a request to mention the approximate amount of the invited person's travel and subsistence costs to be reimbursed. Upon the person's request, the Requesting State may advance part or all of the funds to pay those expenses through its diplomatic or consular missions in the Requested State. Article 16(3) states that a witness or expert who has been served and who fails to comply with a document requiring an appearance in the Requesting State shall not be subjected to any sanction or measure of restraint, unless the person subsequently travels voluntarily to the Requesting State, is duly served, and again fails to comply.

Article 17(1) provides that a witness or expert appearing in the Requesting State in response to a request shall not be subject to service of process, prosecuted, detained, or subjected to any other restriction of personal liberty in that State based on any prior acts or convictions unless the Requesting State's Central Authority limits such safe conduct. Any such limitation of safe conduct shall be communicated to the witness or expert at the time the witness or expert is invited to appear.

Under Article 17(2), a person appearing in the Requesting State in response to a document served to answer for acts for which that person is the subject of a criminal investigation or prosecution, shall not be prosecuted, detained, or subjected to any other restriction of personal liberty for any prior acts or convictions.

Article 17(3) provides that the safe conduct provided for by this Article ceases if the person, being free to leave, has not left the Requesting State within a period of fifteen consecutive days after being officially advised that the person's presence was no longer necessary, or, having left, has returned.

Article 18 provides that, upon the request of either State, a person who is in custody in either State may be temporarily transferred to the receiving State to give testimony or evidence or other assistance in investigations or proceedings in relation to a criminal matter. Article 18(2) sets forth the circumstances under which a transfer may be denied: (i) if the person in custody does not consent; (ii) if the person's period of detention might be thereby extended; (iii) if the person's presence is required for ongoing criminal proceedings; or (iv) for reasons of safety, security, or other imperative concerns. Article 18(3) establishes both the express obligation and the authority of the receiving State to maintain the person transferred in custody unless the sending State authorizes the person's release.

Article 18(4) provides that the receiving State shall require no proceeding to effect the return to the sending State of the person

transferred. The return is required to occur by the date specified by the sending State. This period may be extended by agreement between both States. Article 18(5) obligates the sending State to deduct from the transferred person's sentence any time that the person serves in the custody of the receiving State. Article 18(6) provides that a person appearing in either State pursuant to Article 18 may receive the safe conduct authorized under Article 17.

Article 19 provides that, upon the request of the Requesting State, the Requested State may authorize the transit through its territory of a person held in custody by the Requesting State or a third State whose personal appearance has been requested by the Requesting State to give testimony or evidence or otherwise provide assistance in investigations or proceedings in relation to a criminal matter. The Requested State shall have the obligation and the authority to keep the person in custody during transit.

Article 20(1) requires that the Requested State, upon request, provide copies of records that are in the possession of its judicial or government authorities and that are accessible to the public. Under Article 20(2), the Requested State may provide copies of records that are in the possession of its judicial authorities or government departments or agencies but that are not accessible to the public, to the same extent and under the same conditions that would apply to its own competent authorities in obtaining such copies. The Requested State has discretion to deny a request with respect to the latter category entirely or in part.

Article 20(3) further provides that official records produced pursuant to this Article and certified by a competent authority of the Requested State as official records or copies shall be admissible in evidence in the Requesting State. No further authentication shall be necessary.

Article 21 obligates the Requesting State to translate the request and any supporting documents into the language of the Requested State.

Under Article 22, except as otherwise provided by the Treaty, evidence, in whatever form, transmitted pursuant to the Treaty shall be exempt from all legalization formalities.

Article 23 apportions between the two States the costs incurred in executing a request. It requires the Requested State to meet the costs of executing requests except for: (i) the allowances and expenses related to travel of witnesses and experts pursuant to Article 16 and the travel of persons in custody pursuant to Articles 18 and 19; (ii) the costs of interpretation and translation; (iii) the costs of services provided by private parties at the request of the Requesting State; (iv) and the fees of experts needed to fulfill a request. If during the execution of a request it becomes apparent that execution will entail expenses of an extraordinary nature, the Central Authorities are obligated to consult to determine the terms and conditions according to which execution may continue.

According to the explanatory note on the Treaty, in order to minimize the expense of obtaining depositions in the United States, the United States Government will arrange and pay for audio recordings of depositions requested by French authorities and their transmission to French authorities. On the other hand, the costs of services furnished by private parties, such as those resulting from the

transcription of depositions by a court reporter, will be paid by French authorities.

Under Article 24, each State may provide to the other State information and evidence relating to criminal acts and may request that the other State submit the information and evidence to its competent authorities for criminal investigation and prosecution where both States have jurisdiction to investigate and prosecute those acts. Such requests shall be transmitted through the respective Central Authorities. The Requested State shall consider initiating an investigation or prosecution as appropriate under its laws. The Requested State is required to notify the Requesting State of any action taken pursuant to the request and to transmit a copy of any decision rendered.

Article 25 states that each State shall notify the other of the completion of the procedures required for the entry into force of the Treaty. The Treaty shall enter into force on the first day of the second month following the date of receipt of the latter of these notifications.

Article 26 provides that either State may terminate the Treaty at any time by forwarding through the diplomatic channel written notice of termination. Termination takes effect six months after receipt 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 favoring approval of this Treaty by the Senate as soon as possible.

Respectfully submitted,

MADELEINE ALBRIGHT.

**TREATY ON MUTUAL LEGAL ASSISTANCE
IN CRIMINAL MATTERS
BETWEEN
THE UNITED STATES OF AMERICA
AND
FRANCE**

**The President of the United States of America and the
President of the French Republic,**

**Desiring to establish more effective cooperation in the area of
mutual legal assistance in criminal matters;**

**Have decided to conclude a treaty on mutual legal assistance in
criminal matters and have appointed as their plenipotentiaries for this
purpose:**

The President of the United States of America:

**The Honorable Madeleine Albright, Secretary of State of the
United States of America;**

The President of the French Republic:

The Honorable Elisabeth Guigou, Minister of Justice;

**Who, having communicated to each other their respective full
powers, which were found in good and due form,**

Have agreed as follows:

ARTICLE 1
SCOPE OF ASSISTANCE

1. The Contracting States undertake to afford each other, in accordance with the provisions of this Treaty, the widest measure of mutual assistance in investigations or proceedings in respect of criminal offenses the punishment of which, at the time of the request for assistance, is a matter for the judicial authorities of the Requesting State.

2. This Treaty does not apply to:

- (a) the execution of requests for provisional arrest and extradition;
- (b) the enforcement of criminal judgments except for forfeiture decisions referred to in Article 11; or,
- (c) offenses under military law that do not constitute offenses under ordinary criminal law.

3. This Treaty is intended solely for mutual legal assistance between the States. The provisions of the Treaty shall not affect the exercise of rights otherwise available to private persons under the laws of the State presented with a claim based on such rights.

ARTICLE 2
CENTRAL AUTHORITIES

1. Each State shall designate a Central Authority to make and receive requests pursuant to this Treaty. For the United States of America, the Central Authority is the Attorney General or a person designated by the Attorney General. For France, the Central Authority is the Ministry of Justice. The Central Authorities shall communicate directly with one another for the purposes of this Treaty.

2. The Central Authorities shall consult, at times to which they mutually agree, to promote the most effective use of this Treaty. The Central Authorities shall agree on such practical measures as may be necessary to facilitate the implementation of this Treaty, in particular those related to the implementation of Article 9.

3. The Central Authorities shall provide each other with information regarding the execution of requests and each shall respond to the other's requests regarding progress toward execution of specific requests.

ARTICLE 3 COMPETENT AUTHORITIES

The Central Authorities shall make requests emanating from competent authorities. For the United States of America, the competent authorities are prosecutors and authorities with statutory or regulatory responsibility for investigations of criminal offenses, including the referral of matters to prosecutors for criminal prosecution. The presentation by the Central Authority of the United States of America of a request coming from such authorities establishes the competence of those authorities. For France, the competent authorities are the judicial authorities including the public prosecutor.

ARTICLE 4 CONTENTS OF REQUESTS

1. Requests for assistance shall be in writing and shall include the following information:
 - (a) the identity of the competent authority from whom the request emanates;
 - (b) a description of the nature of the investigation or proceeding, including the facts on which the request is based, and a statement of the purpose for which the assistance is sought;
 - (c) the text of the applicable criminal statute;
 - (d) insofar as possible, the identity and nationality of the person who is the subject of the investigation or proceeding;
 - (e) insofar as possible, the identity, nationality, and address or location of any person to be served or from whom assistance is sought;

- (f) a description of the evidence or other assistance sought including, where appropriate, a list of questions if testimony of a witness or questioning of a person who is the subject of the investigation or proceeding is requested; and
 - (g) the details of any particular procedure that the Requesting State wishes to be followed.
2. Where appropriate, the Requesting State may indicate any time limit within which the assistance should be provided.

**ARTICLE 5
TRANSMISSION OF REQUESTS**

Requests shall be sent by the Central Authority of the Requesting State to the Central Authority of the Requested State. The results of execution shall be returned through the same channel unless the Central Authorities agree otherwise. In the event of urgency, an advance copy of a request may be transmitted by any means, including Interpol. Thereafter, the Central Authority of the Requesting State shall transmit the original request to the Central Authority of the Requested State.

**ARTICLE 6
DENIAL OF ASSISTANCE**

1. Legal assistance may be denied if the Requested State considers that:
- (a) the offense to which the request relates is a political offense or an offense related to a political offense; or
 - (b) execution of the request would prejudice its sovereignty, security, public order, or other essential interests.
2. Before denial of a request for assistance, 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 the Requested State deems to be necessary.

3. If a request for assistance is denied, the Central Authority of the Requested State shall inform the Central Authority of the Requesting State of the reasons for the denial.

**ARTICLE 7
POSTPONING EXECUTION**

If the Requested State determines that execution of a request would interfere with an ongoing criminal investigation or proceeding in that State, it may, after consultations between the Central Authorities, postpone execution, including transmission, or make execution subject to conditions determined to be necessary. If the Requesting State accepts the assistance subject to the conditions, it shall comply with the conditions.

**ARTICLE 8
EXECUTION OF REQUESTS**

1. Requests shall be executed in accordance with the provisions of this Treaty and the laws of the Requested State.

2. The Central Authority of the Requested State shall make all necessary arrangements for a request to be presented to its competent administrative and judicial authorities for execution. Administrative and judicial authorities charged with the execution of a request shall use all necessary measures available under the laws of the Requested State to provide any form of assistance, not prohibited by its laws, necessary or useful for the execution of the request.

3. A person giving testimony or evidence in the Requested State may assert such claims of immunity, incapacity, or privilege as are available under its laws. If such person asserts a claim under the laws of the Requesting State, the person's testimony or evidence shall be taken and the claim recorded and preserved for consideration by the judicial authorities of the Requesting State. If, within a reasonable time prior to giving testimony or evidence, such person notifies the executing authority of the Requested State of the intention to assert such a claim, the Central Authorities may consult with respect thereto.

4. A person who gives false testimony in the execution of a request shall be subject to prosecution and punishment in the Requested State in accordance with its laws.

**ARTICLE 9
SPECIFIC PROCEDURES**

1. If the Requesting State requests, the Requested State shall inform it of the dates and places of the execution of the request. The authorities and persons designated by the Requesting State may be permitted to be present at, and may assist in, the execution of the request if the Requested State consents. The Requested State shall permit such designated authorities and persons to be present at and assist in the taking of depositions for use in a judicial proceeding in the Requesting State subject to, in particular, the application of Articles 6 and 7.

2. The procedures specified in this paragraph and outlined in the request shall be carried out insofar as they are not contrary to the fundamental principles of a judicial proceeding in the Requested State. The Requested State, if the Requesting State requests, shall:

- (a) take the testimony of witnesses or experts under oath, or question persons who are the subject of investigations or proceedings;**
- (b) allow a confrontation between a defendant, together with counsel, and a witness or expert whose testimony or evidence is taken for use against that defendant in a criminal prosecution in the Requesting State;**
- (c) ask questions submitted by the Requesting State, including questions proposed by authorities of the Requesting State present at the execution of the request;**
- (d) record or allow to be recorded the testimony, questioning, or confrontation; and**
- (e) produce or allow to be produced a verbatim transcript of the proceeding in which the testimony, questioning, or confrontation occurs.**

3. If the Requesting State requests, the Requested State shall transmit original documents or records to the extent possible. Otherwise, the Requested State shall transmit true copies thereof.

4. If the Requesting State requests, business records, whether originals or copies, shall be accompanied by:

- (a) a certificate such as Form A appended to this Treaty; or
- (b) a proces-verbal containing the essential information sought in Form A.

Such records shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.

ARTICLE 10 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 search under the laws of the Requested State.

2. If the Requesting State requests, a competent authority in the Requested State shall provide a certificate or proces-verbal that:

- (a) identifies the item seized;
- (b) identifies every official who has had custody of the item seized;
and
- (c) describes the circumstances of custody.

If, after seizure, any transfer of custody of or material change in the item seized occurs, the competent authority in the Requested State shall provide an additional certificate or proces-verbal that describes the circumstances of such transfer of custody or material change. No further proof of the identity of the item, the continuity of custody, or the integrity of its condition shall be required. The certificates or proces-verbaux shall be admissible in evidence in the Requesting State as proof thereof.

**ARTICLE 11
PROCEEDS OF OFFENSES**

1. Upon the request of the Requesting State, the Requested State shall provide assistance for proceedings related to the forfeiture of proceeds or instrumentalities of criminal offenses.

2. Upon the request of the Requesting State, the Requested State shall take appropriate measures, in accordance with its laws, to locate and identify proceeds or instrumentalities of offenses within the Requested State. The request shall specify the reasons for believing that proceeds or instrumentalities are within the Requested State. The Requested State shall inform the Requesting State of the results of its inquiry.

3. At the request of the Requesting State, the Requested State, based on facts that would constitute an offense under the laws of both States and to the extent permitted by its laws, may take protective measures to immobilize temporarily such proceeds or instrumentalities to ensure their availability for forfeiture.

4. At the request of the Requesting State, the Requested State may execute a final decision of forfeiture pronounced by judicial authorities of the Requesting State. The execution of such a request shall be in accordance with the laws of the Requested State.

5. The Requested State that executes a final forfeiture decision shall dispose of the forfeited proceeds and instrumentalities in accordance with its laws. As it determines appropriate, the Requested State also may transfer all or part of such assets, or the proceeds of their sale, to the Requesting State.

Insofar as cooperation between the two States contributed to a final forfeiture decision, the forfeiting State, to the extent permitted by its laws and upon such terms as it deems to be appropriate, may transfer all or part of such assets, or the proceeds of their sale, to the other State.

**ARTICLE 12
RETURN OF EVIDENCE**

1. Articles of evidence, including original documents and records, transmitted pursuant to a request shall be retained by the Requesting State unless the Requested State asks at the time of transmission for their return.

2. The Requested State may require that the Requesting State agree to terms and conditions for the care and return of articles of evidence deemed to be necessary to protect third party interests.

**ARTICLE 13
RESTITUTION**

The States shall assist each other to the extent permitted by their respective laws to facilitate restitution.

**ARTICLE 14
CONFIDENTIALITY**

1. 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 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.

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 use its best efforts to comply with the conditions.

3. The Central Authority of the Requested State may request that the Requesting State not use any information or evidence obtained under this Treaty in any investigation or proceeding other than that described in the request without the

prior consent of the Requested State. In that event, the Requesting State shall comply with the condition.

4. Nothing in this Article shall preclude the use or disclosure of information or evidence to the extent that an obligation exists, for the United States under its Constitution or for France under its Constitution and general principles of its law having Constitutional value, to do so in a criminal proceeding. To the extent possible, the Requesting State shall notify the Requested State in advance of any such use or disclosure.

5. Information and evidence obtained under the conditions referred to in paragraphs 2 or 3 of this Article may be used for any purpose insofar as they have been made public within the framework of the proceeding for which they were transmitted to the Requesting State.

ARTICLE 15
SERVICE OF PROCEDURAL DOCUMENTS AND
JUDICIAL DECISIONS

1. The Requested State shall serve procedural documents and judicial decisions sent to it for this purpose by the Requesting State.

2. Service may be effected by simple transmission of the document or decision to its addressee. If the Requesting State requests, the Requested State shall serve the document using a method provided by or compatible with its laws.

3. Proof of service shall consist of a receipt dated and signed by the addressee or a statement by the Requested State noting the fact, the method, and the date of service. Either of these documents shall be sent immediately to the Requesting State. If service could not be effected, the Requested State shall inform the Requesting State immediately of the reason.

4. The Central Authority of the Requesting State shall transmit a document requiring the appearance of a person in the Requesting State to the Central Authority of the Requested State at least 50 days before the date of the scheduled appearance. Upon the request of the Requesting State, the Central Authority of the Requested State may waive this requirement for persons other than defendants.

ARTICLE 16

APPEARANCE IN THE REQUESTING STATE

1. If the Requesting State requests the personal appearance of a witness or an expert, the Requested State shall invite this witness or expert to appear. The Requested State shall inform the Central Authority of the Requesting State of the person's response.

2. Such a request shall mention the approximate amount of the invited person's travel and subsistence costs to be reimbursed. If the person so requests, the Requesting State may advance part or all of the funds to pay those expenses through its diplomatic or consular missions in the Requested State.

3. A witness or expert who fails to comply with a document requiring an appearance in the Requesting State, service of which has been effected pursuant to a request, shall not be subjected to any sanction or measure of restraint, even if the document contains a notice of penalty, unless the person subsequently travels voluntarily to the Requesting State, is duly served, and again fails to comply.

ARTICLE 17

SAFE CONDUCT

1. A witness or expert appearing in the Requesting State in response to a request shall not be subject to service of process, prosecuted, detained, or subjected to any other restriction of personal liberty in that State by reason of any acts or convictions that preceded the person's departure from the Requested State unless the Central Authority of the Requesting State limits such safe conduct and so notifies the Central Authority of the Requested State. Any such limitation of safe conduct shall be communicated to the witness or expert at the time the witness or expert is invited to appear.

2. A person appearing in the Requesting State in response to a document served to answer for acts, for which that person is the subject of a criminal investigation or prosecution, shall not be prosecuted, detained, or subjected to any other restriction of personal liberty for acts or convictions that preceded that person's departure from the Requested State other than those specified in the document served.

3. The safe conduct provided for by this Article shall cease if the person, being free to leave, has not left the Requesting State within a period of fifteen consecutive days after being officially advised that the person's presence was no longer necessary or, having left, has returned.

ARTICLE 18
TEMPORARY TRANSFER

1. Upon the request of either State, a person in custody in either State may be temporarily transferred to the receiving State to give testimony or evidence or otherwise provide assistance in investigations or proceedings in relation to a criminal matter.

2. Such transfer may be denied:

- (a) if the person in custody does not consent;
- (b) if the person's period of detention might be thereby extended;
- (c) if the person's presence is required for ongoing criminal proceedings; or
- (d) for reasons of safety, security, or other imperative concerns.

3. Pursuant to this Treaty, the receiving State shall have the obligation and the authority to keep the person transferred in custody unless the sending State authorizes the person's release.

4. The receiving State shall require no proceeding to effect the return to the sending State of the person transferred. The return shall occur by the date specified by the sending State. This period may be extended by agreement between both States.

5. The sending State shall deduct from that person's sentence any time that the person transferred serves in the custody of the receiving State.

6. A person appearing in either State pursuant to this Article may receive the safe conduct authorized under Article 17.

ARTICLE 19

TRANSIT

1. Upon the request of the Requesting State, the Requested State may authorize the transit through its territory of a person held in custody by the Requesting State or a third State whose personal appearance has been requested by the Requesting State to give testimony or evidence or otherwise provide assistance in investigations or proceedings in relation to a criminal matter.

2. Pursuant to this Treaty, the Requested State shall have the obligation and the authority to keep the person in custody during transit.

ARTICLE 20

OFFICIAL RECORDS

1. At the request of the Requesting State, the Requested State shall provide copies of records of any nature and in any form that are in the possession of its judicial authorities or government departments or agencies and that are accessible to the public.

2. At the request of the Requesting State, the Requested State may provide copies of records of any nature and in any form that are in the possession of its judicial authorities or government departments or agencies, but that are not accessible to the public, to the same extent and under the same conditions that would apply to its own competent authorities in obtaining such copies. The Requested State may in its discretion deny a request, pursuant to this paragraph, entirely or in part.

3. Official records produced pursuant to this Article and certified by a competent authority of the Requested State as official records, or true and correct copies thereof, shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein. No further authentication shall be necessary.

**ARTICLE 21
TRANSLATION**

The Requesting State shall translate the request and any supporting documents into the language of the Requested State.

**ARTICLE 22
LEGALIZATION**

Except as otherwise provided by this Treaty, evidence, in whatever form, transmitted pursuant to this Treaty shall be exempt from all legalization formalities.

**ARTICLE 23
COSTS**

- 1. The Requested State shall meet the costs of executing requests except for:**
 - (a) the allowances and expenses related to travel of witnesses and experts pursuant to Article 16 and the travel of persons in custody pursuant to Articles 18 and 19;**
 - (b) the costs of interpretation and translation;**
 - (c) the costs of services provided by private parties at the request of the Requesting State; and**
 - (d) the fees of experts needed to fulfill a request.**
- 2. If during the execution of a request it becomes apparent that execution will entail expenses of an extraordinary nature, the Central Authorities shall consult to determine the terms and conditions according to which execution may continue.**

**ARTICLE 24
INITIATION OF CRIMINAL PROCEEDINGS
IN THE REQUESTED STATE**

- 1. Each State may provide to the other State information and evidence**

relating to criminal acts and request that the other State submit the information and evidence to its competent authorities for the purpose of criminal investigation and prosecution where both States have jurisdiction to investigate and prosecute those acts. Such requests shall be transmitted through the respective Central Authorities.

2. The Requested State shall consider initiating an investigation or prosecution as appropriate under its laws.

3. The Requested State shall notify the Requesting State of any action taken pursuant to the request and transmit a copy of any decision rendered.

ARTICLE 25 ENTRY INTO FORCE

Each State shall notify the other of the completion of the procedures required for the entry into force of this Treaty. This Treaty shall enter into force on the first day of the second month following the date of receipt of the latter of these notifications.

ARTICLE 26 TERMINATION

Either State may terminate this Treaty at any time by forwarding through the diplomatic channel written notice of termination. Termination shall take effect six months after receipt of this notification.

IN WITNESS WHEREOF, the respective Plenipotentiaries have signed this Treaty and affixed their seals thereto.

DONE at Paris this tenth day of December, 1998, in duplicate, in the English and French languages, both texts being equally authentic.

Madeline Albright

Elita Gujra

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Form A

CERTIFICATION OF BUSINESS RECORDS

I, the undersigned, _____ *[name]* _____, with the understanding that I am subject to criminal penalty under the laws of _____ *[name of country]* _____ for an intentionally false declaration, declare that 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 declaration.

Each of the records attached hereto is a record in the custody of the above-named business that:

1. was made at or near the time of the occurrence of the matters set forth therein by (or from information transmitted by) a person with knowledge of those matters;
2. was kept in the course of a regularly conducted business activity;
3. was made by the business as a regular practice; and
4. if not an original record, is a duplicate of the original.

_____ *[date of execution]* _____

_____ *[place of execution]* _____

_____ *[signature]* _____

**EXPLANATORY NOTE ON THE TREATY ON MUTUAL
LEGAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE
UNITED STATES OF AMERICA AND FRANCE**

The following understandings regarding the application of certain provisions of the treaty are agreed between the Parties.

Article 1(3)

Both Parties understand that, for the United States, the provisions of the Treaty do not create a new right on the part of a private person to obtain assistance, to suppress or exclude any testimony or evidence, or to impede the execution of a request. However, such rights of private persons as otherwise exist under United States law in this regard continue in effect.

Article 3

During the negotiation of Article 3 of the Treaty, both Parties discussed the competent authorities from whom requests under the Treaty must emanate. The Parties noted the substantial number of authorities for the United States, aside from prosecutors, that were capable of being competent to initiate requests for mutual legal assistance. These authorities are not judicial authorities but are comparable to them since their requests, in accordance with Paragraph 1 of Article 1, are presented in the framework of "investigations or proceedings in respect of criminal offenses the punishment of which, at the time of the request for assistance, is a matter for the judicial authorities of the Requesting State." Under United States law, these authorities are those that are responsible for the investigations of criminal offenses, including the referral of matters to prosecutors for criminal prosecution.

The Parties accordingly agreed not to attempt to list exhaustively in the Treaty the numerous state and federal authorities that fall under this definition, particularly because the inadvertent omission of one from the list could diminish the value of the Treaty to the United States. To illustrate this diversity, the United States, however, has agreed to provide, for the purposes of illustration only, the following short list:

Bureau of Alcohol, Tobacco, and Firearms
Commodity Futures Trading Commission
Drug Enforcement Administration
Federal Bureau of Investigation

Federal Trade Commission
Food and Drug Administration
Immigration and Naturalization Service
Internal Revenue Service
Securities and Exchange Commission
Trustees in Bankruptcy.

In any case, to facilitate in the identification of competent authorities of the United States by France, the two States agreed that the requests that are presented by the Central Authority of the United States of America will establish the competence of the requesting authorities for the purposes of this Treaty.

Article 9

The first part of paragraph 1 sets forth the principle that, with the consent of the Requested State, persons designated by the Requesting State (for example, the requesting authority, the defendant, and the counsel for such persons) shall be allowed to travel to the territory of the Requested State to be present and to assist during the execution of the request. The request for legal assistance should request the presence of these persons. For purposes of this Article, the term "Requested State" refers to the authorities in the Requested State who are authorized to approve or consent to the requested presence.

The second part of paragraph 1 commits the two Parties to accommodate such a request so that the deposition obtained in the Requested State may be used in the Requesting State in compliance with its internal procedure. The scope of this commitment, however, may be limited, notably by the application of Articles 6 and 7 relating respectively to the denial of requests for legal assistance and to postponement of execution of such requests. This commitment does not preclude that, in certain cases, which in practice shall be most exceptional, the authority entrusted with the execution of the request may determine that the presence and assistance of the designated persons are not possible in a specific case.

Article 23(1)

The discussions relating to Article 23 demonstrated the Parties' concerns to execute requests for mutual legal assistance in the least expensive manner, in particular those requests to obtain depositions in the United States. As a result, the Parties agreed that the United States will arrange and pay for the audio recording of

a deposition requested by French authorities and its transmission to French authorities. Sealed in a container, the audio recording will be accompanied by a report or a declaration of the competent authority in the United States certifying the circumstances in which the deposition was taken. This document will mention the name of the authority conducting the proceeding, the identity of the person being deposed, and a statement whether or not the person was deposed under oath. The document should be signed by the deponent or, in case the deponent refuses or is unable to sign the document, the document should contain a statement to that effect. On the other hand, the costs of services furnished by private parties, such as those resulting from the transcription of depositions by a "court reporter," will be paid for by French authorities.

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