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TREATY WITH AUSTRIA ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS, SIGNED AT VIENNA ON FEBRUARY 23, 1995

SEPTEMBER 6, 1995.—Treaty was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *September 6, 1995.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty Between the Government of the United States of America and the Government of the Republic of Austria on Mutual Legal Assistance in Criminal Matters, signed at Vienna on February 23, 1995. 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 activity more effectively. The Treaty will enhance our ability to investigate and prosecute a wide variety of offenses, including drug trafficking, violent crimes, and "white-collar" crimes. The Treaty is self-executing.

The Treaty provides for a broad range of cooperation in criminal matters. Mutual assistance available under the Treaty includes; (1) taking the testimony or statements of persons; (2) providing documents, records, and articles of evidence; (3) serving documents; (4) locating or identifying persons or items; (5) transferring persons in custody for testimony or other purposes; (6) executing requests for searches and seizures; (7) assisting in forfeiture proceedings; and (8) 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, August 4, 1995.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Treaty between the Government of the United States of America and the Government of the Republic of Austria on Mutual Legal Assistance in Criminal Matters (the "Treaty"), signed at Vienna on February 23, 1995. 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 Argentina, The Bahamas, Canada, Italy, Jamaica, Mexico, Morocco, the Netherlands, Spain, Switzerland, Thailand, Turkey, the United Kingdom (concerning the Cayman Islands), and Uruguay. Other similar treaties have been signed and ratified by the United States (but have not yet entered into force) with Belgium Colombia, and Panama. In addition, treaties with Korea, Nigeria, and the United Kingdom have been transmitted to the Senate and await Senate consideration.

This Treaty contains many provisions similar to those in the other mutual legal assistance treaties. It will enhance our ability to investigate and prosecute a variety of offenses, including violent crimes, drug trafficking, fraud and other white-collar crimes. The Treaty is designed to be self-executing and will not require implementing legislation.

Article 1 contains a non-exhaustive list of the major types of assistance to be provided under the Treaty. The scope of the Treaty includes not only criminal offenses, but also forfeiture proceedings. Moreover, the article declares that dual criminality is not required for assistance to be provided under the Treaty, except that a request may be denied when there is no dual criminality and execution of the request would require a court order for search and seizure or other coercive measures. In other words, assistance shall be provided without regard to whether the conduct involved would constitute an offense under the laws of the Requested State, except when the Requested State exercises its discretion to deny requests in cases involving coercive measures, bearing in mind the requirement that the Requested State make every effort to approve requests necessitating coercive measures. Furthermore, Article 1 requires the Requested State to 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."

Article 1 also provides that assistance requests in fiscal offense cases shall not be refused on the ground that the law of the Requested State does not impose the same kind of tax or duty, or does not contain tax, duty, customs or exchange regulations of the same kind as the law of the Requesting State. Finally, Article 1 makes clear that the Treaty is designed to be utilized only by governmental authorities or institutions who seek evidence for use in criminal investigations and prosecutions. The Treaty is not intended to create any right in a private person to seek, suppress or exclude evidence.

Article 2 provides for the establishment of Central Authorities and defines the Central Authorities for purposes of the Treaty. For the United States, the Central Authority is the Attorney General or such persons as the Attorney General designates. For the Republic of Austria, the Central Authority is the Federal Minister of Justice or such persons as the Federal Minister of Justice designates. Article 2 provides that each Central Authority shall make and receive requests on behalf of authorities which by law are responsible for investigations or prosecutions related to criminal matters, that each Central Authority shall make only such requests as it considers and approves (with discretion to screen out minor cases), and that the Central Authorities shall communicate directly between each other for purposes of the Treaty.

Article 3 sets forth the circumstances (in addition to those in Article 1) under which the Requested State may deny assistance under the Treaty. A request may be denied if it relates to a political offense, or military offense that would not be a crime under ordinary criminal law. In addition, a request may be denied if its execution would prejudice the security or other essential interests of the Requested State, or if the request does not comply with the provisions of Article 4.

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 it deems necessary. 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 prescribes the form and content of written requests under the Treaty, specifying in detail the information required in each request. The article specifies additional information to be provided to the extent necessary and possible to assist in locating individuals and effecting particular types of assistance. All requests and supporting documents shall be in the language of the Requested State. In urgent situations, the Central Authority of the Requested State may accept a request that is not in writing, but such requests must be confirmed in writing within ten days unless the Central Authority agrees otherwise.

Article 5 requires the Requested State to comply promptly with a request, or to transmit it to the authorities with jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute a request. Requests are to be

executed in accordance with the laws of the Requested State except to the extent the Treaty provides otherwise, and the courts of the Requested State shall have authority to issue such orders to execute requests under the Treaty as are authorized under the law of the Requested State with respect to proceedings in domestic investigations and prosecutions. The method of execution specified in the request shall 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 investigation or proceeding, jeopardize the security of a person, or impose an extraordinary burden on the resources of that State, it may postpone execution or, after consultations with the Requesting State, impose conditions on such execution.

Article 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 if the request cannot be executed without breaching confidentiality.

Article 5 also requires a Requested State to provide a status report on a request in progress and promptly inform the Central Authority of the Requesting State of the outcome of the request. If execution of a request is delayed or denied, the Requested State must inform the Requesting State of the reasons.

Article 6 approptions between the two States the costs incurred in executing a request. Generally, the Requested State shall pay all costs, except for the following items to be paid by the Requesting State: fees of expert witnesses, travel and subsistence expenses for the travel of persons pursuant to Articles 10 and 12, and costs of translation, interpretation, and transcription.

Article 7 provides that the Central Authority of the Requested State may require that any information or evidence obtained under the Treaty may not be used for investigations, proceedings, or prosecutions other than those described in the request without prior consent of the Requested State. In the case of fiscal offenses, such use shall only be made with prior consent of the Requested State, except in related customs duty, excise, and tax proceedings. If the Requested State requests that information or evidence furnished be kept confidential subject to conditions specified by its Central Authority, the Requesting State is required to use its best efforts to comply with those conditions. Once information is made public in the Requesting State in accordance with the Treaty, no further limitations on use apply.

Article 8 provides that the Requested State shall compel, if necessary, the appearance, testimony or production of documents or other evidence by a person in its territory on behalf of the Requesting State. The article requires the Requested State, upon request, to inform the Requesting State in advance of the date and place of the taking of testimony.

Article 8 also requires the Requested State to permit the presence of any persons specified in the request (such as the accused, counsel for the accused, or other interested persons) and to permit such persons either to question the person whose testimony is being taken or, if such direct questioning is not permitted, to have questions posed in accordance with applicable procedures in the

Requested State. In the event that a person whose testimony or evidence is being taken asserts a basis for not testifying under the laws of the Requesting State, which was not specified in the request, the testimony or evidence shall be taken and the claim made known to the Requesting State for resolution by its authorities.

Finally, Article 8 provides mechanisms for authentication of documentary evidence produced pursuant to the article (including Form A appended to the Treaty) and provides that documents so authenticated shall be admissible in evidence in proceedings in the Requesting State as proof of the truth of the matters set forth therein.

Article 9 requires that the Requested State provide the Requesting State with copies of publicly available documents, records, or information recorded in any form in the possession of a governmental or judicial authority in the Requested State. The Requested State may further provide copies of records in the possession of a government department or agency that are not publicly available to the same extent and under the same conditions as it would to its authorities, but the Requested State has the discretion to deny such requests entirely or in part. Article 9 provides that no further authentication is necessary for admissibility into evidence in the Requesting State as proof of the truth of the matters set forth therein for official records authenticated in accordance with the provisions of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents, dated 5 October 1961.

Article 10 provides a mechanism for the Requesting State to invite the voluntary appearance and testimony in its territory of a person located in the Requested State. The Requesting State shall indicate the extent to which the expenses will be paid and may, at the person's request, provide an advance of money to cover expenses through the Embassy or a consulate of the Requesting State.

Article 11 provides that a person appearing in the Requesting State pursuant to the Treaty shall not be subject to any civil suit to which the person could not otherwise be subjected, but for the person's presence in the Requesting State, or be detained or subjected to any restriction of personal liberty. This "safe conduct" is limited to acts or convictions that preceded the person's departure from the Requested State. Any safe conduct provided under this article shall cease seven days after notification to a person appearing pursuant to the Treaty that his presence is no longer required in the Requesting State or whenever the person voluntarily reenters the Requesting State after having left it.

Article 12 provides for the voluntary transfer to one State of a person in custody in the other State for purposes of assistance under the Treaty, provided that the person in question and both Central Authorities agree. The article establishes the express authority and the obligation of the receiving State to maintain the person transferred in custody unless otherwise authorized by the sending State. It further obligates the receiving State to return the person to the sending State as soon as circumstances permit or as otherwise agreed by both Central Authorities without the need for extradition proceedings and with the person transferred given credit for time served in the custody of the receiving State.

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

Article 14 requires the Requested State to use its best efforts to effect services of any documents relating to or forming part of a request under the Treaty. The article further requires that any request for the service of document inviting a person to appear in the territory of the Requesting State be transmitted by the Requesting State a reasonable time before the scheduled appearance. The Requested State is required to return proof of service. The article also declares that a person who is a national of the Requested State or has equal status and who does not answer a summons to appear in the Requesting State as a witness or expert pursuant to the Treaty shall not be liable to any penalty or be subject to any coercive measures.

Article 15 obligates the Requested State to execute requests for 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. That information shall also include a statement that an appropriate authority in the Requesting State could compel production of the items in question if they were located in that State. The article further provides, upon request for the Central Authority of the Requesting State, for the certification by every official of the Requested State who has had custody of a seized item of the continuity of custody, its identity, and the integrity of its condition. The certification shall be by means of Form B appended to the Treaty or a document containing the essential information required by the Requesting State. No further certification is required under the Treaty, and any such certificates shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein. In addition, Article 15 provides that the Central Authority of the Requested State may impose conditions on the transfer of the seized items to protect third-party interests in the property.

Article 16 obliges the Requesting State to return to the Requested State as soon as possible any documents, records, or articles of evidence furnished under the Treaty, if the Requested State so requests.

Article 17 provides that a Central Authority of one Party which becomes aware of proceeds or instrumentalities of crime located in the territory of the other Party that may be forfeitable or otherwise subject to seizure under the laws of that Party may inform the Central Authority of that Party. If the Party so informed has jurisdiction in this regard, it is free to take appropriate action. It shall report to the Central Authority of the first Party on any action taken. Article 17 further obligates the Parties to assist one another to the extent permitted by their respective laws in proceedings involving the forfeiture of the proceeds and instrumentalities of offenses, restitution to the victims of crime, and the collection of fines imposed as sentences in criminal prosecutions. The article further permits a Requested State in control of forfeited assets to dispose of them in accordance with its law, and permits either Party to transfer to the other Party forfeited assets, or the proceeds of their

sale, to the extent permitted by applicable laws and upon such terms as the Parties deem appropriate.

Article 18 states that assistance and procedures provided in the Treaty shall not prevent a Party from granting assistance under any other international agreement to which it may be a party, or through the provisions of its national laws. The article also states that the Treaty shall not prevent the granting of assistance available under any bilateral arrangement, agreement, or practice which may be applicable.

Article 19 provides that the Central Authorities of the two Parties shall consult, at times mutually agreed upon, concerning the most effective use to be made of the Treaty.

Article 20 declares that the Treaty is subject to ratification, the instruments of ratification shall be exchanged as soon as possible, and the Treaty shall enter into force on the first day of the third month following the month of the exchange of the instruments. The article also states that the Treaty applies to requests whether or not the relevant offenses occurred prior to the entry into force of the Treaty. In addition, Article 20 allows either Party to terminate the Treaty by means of written notice to the other Party which takes effect six months following the date of 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 recommending approval of this Treaty by the Senate as soon as possible.

Respectfully submitted.

PETER TARNOFF.

TREATY BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA
ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

The Government of the United States of America and The Government of the Republic of Austria,

Desiring to improve the effectiveness of the law enforcement authorities of both countries in the investigation and prosecution of crime by extending to each other the widest measure of cooperation and mutual legal assistance in criminal matters,

Have agreed as follows:

Article 1

SCOPE OF ASSISTANCE

1. The Contracting Parties shall provide mutual assistance, in accordance with the provisions of this Treaty, in connection with the investigation and prosecution of 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, and in related forfeiture proceedings.

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 and restitution; and

(i) any other assistance consistent with the objects of this Treaty mutually acceptable to the Central Authorities of the Contracting Parties.

3. The Requested State shall provide assistance without regard to whether the conduct which is the subject of the investigation, prosecution, or proceeding in the Requesting State would constitute an offense under the laws of the Requested State, 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 for search and seizure or other coercive measures. However, the Requested State shall make every effort to approve a request for assistance requiring court orders or other coercive measures 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. Mutual assistance in fiscal offenses shall not be refused on the ground that the law of the Requested State does not impose the same kind of tax or duty or does not contain tax, duty, customs or exchange regulations of the same kind as the law of the Requesting State.

5. This Treaty is intended solely for mutual legal assistance between the Contracting Parties. The provisions of this Treaty shall not give rise to a right on the part of any

private person to obtain, suppress, or exclude any evidence or to impede the execution of a request.

Article 2

CENTRAL AUTHORITIES

1. Each Contracting Party shall have a Central Authority. For the United States, the Central Authority shall be the Attorney General or such persons as the Attorney General designates. For the Republic of Austria, the Central Authority shall be the Federal Minister of Justice or such persons as the Federal Minister of Justice designates.

2. Each Central Authority shall make and receive requests. Requests shall be made on behalf of authorities which by law are responsible for investigations or prosecutions related to criminal matters. For purposes of this Treaty, investigations conducted by agencies with jurisdiction to refer matters for criminal prosecution shall be considered to be penal proceedings.

3. Each Central Authority shall make only such requests as it considers and approves. The Central Authority for the Requesting State shall not make a request where, in its view:

(a) the offense on which the request is based does not have serious consequences; or

(b) the extent of the assistance to be requested is disproportionate to the sentence expected upon conviction.

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

Article 3

LIMITATIONS ON ASSISTANCE

1. Assistance may be denied if:

(a) the request relates to a political offense or an offense under military law which would not be an offense under ordinary criminal law; or

(b) the execution of the request would prejudice the security or other essential interests of the Requested State.

2. Before assistance is denied pursuant to paragraph 1 of 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.

3. If assistance is ultimately denied, the Central Authority of the Requested State shall inform the Central Authority of the Requesting State of the reasons.

Article 4

FORM AND CONTENTS OF REQUESTS

1. A request for assistance shall be in writing except that the Central Authority of the Requested State may 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 Requesting State shall translate the request and any supporting documents into the language of the Requested State. However, the Central Authorities may make arrangements for the Requested State to translate the request and any supporting documents at the expense of the Requesting State.

2. The request shall include the following:

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

(b) a description of the facts and the nature of the investigation, prosecution, or forfeiture proceeding, including the applicable provisions of law; and

(c) a description of the evidence, information, or other assistance sought.

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

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

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

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

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

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

(f) a description of the testimony sought, which may include a list of questions to be asked of a witness;

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

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

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

Article 5

EXECUTION OF REQUESTS

1. The Central Authority of the Requested State shall promptly execute the request or, when appropriate, transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute the request.

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. Requests shall be executed in accordance with the laws of the Requested State except to the extent that this Treaty provides otherwise. The courts of the Requested State shall have the authority to issue such orders to execute requests under this Treaty as are authorized under the law of the Requested State with respect to proceedings in domestic investigations and prosecutions. The method of execution specified in the request shall be followed except insofar as it is prohibited by the laws of the Requested State.

4. If the Central Authority of the Requested State determines that execution of a request would interfere with an ongoing criminal investigation or proceeding in that State,

jeopardize the security of a person, or impose an extraordinary burden on the resources of 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.

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 promptly inform the Central Authority of the Requesting State of the outcome of the execution of the request.

Article 6

COSTS

The Requested State shall pay all costs relating to the execution of the request except for the fees of expert witnesses, the costs of interpretation, translation and

transcription, and the allowances and expenses related to travel of persons pursuant to Articles 10 and 12, which fees, costs, allowances, and expenses shall be paid by the Requesting State.

Article 7

LIMITATIONS ON USE

1. The Central Authority of the Requested State may require that any information or evidence obtained under this Treaty not be used in any investigation, prosecution, or proceeding other than that described in the request without prior consent of the Requested State. However, in the case of fiscal offenses, such use shall only be made with prior consent of the Requested State except in related customs duty, excise, and tax proceedings.

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

3. Information or evidence which has been made public in the Requesting State in the normal course of the proceeding for which it was provided may thereafter be used for any purpose.

Article 8

TESTIMONY OR EVIDENCE IN THE REQUESTED STATE

1. A person whose testimony or statement is requested pursuant to this Treaty shall be compelled to appear, testify, and produce any items, including, but not limited to, documents, records, and articles of evidence, in the same manner and to the same extent as in criminal investigations or proceedings in the Requested State. A person who gives false testimony, either orally or in writing, in execution of a request shall be subject to prosecution and punishment 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 evidence pursuant to this Article.

3. The Requested State shall permit the presence of such persons as specified in the request during the execution of the

request and shall allow such persons either to question directly the person whose testimony or evidence is being taken or to have questions posed in accordance with applicable procedures in the Requested State.

4. If the person referred to in paragraph 1 asserts a basis for not testifying under the laws of the Requesting State which was not specified in the request, the testimony or evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting State for resolution by the authorities of that State.

5. The Requesting State may request that items produced in the Requested State pursuant to this Article or Article 15, or which are the subject of testimony taken pursuant to this Article, be authenticated by an attestation. Where such items are business records, the attestation may be:

(a) by a certificate such as Form A appended to this Treaty;

(b) by protocol containing the essential information sought in Form A; or

(c) by a document containing the essential information required by the Requesting State.

Documents so authenticated shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.

Article 9

RECORDS OF GOVERNMENT AGENCIES

1. The Requested State shall provide the Requesting State with copies of publicly available documents, records, or information recorded in any form in the possession of government departments and agencies or courts of the Requested State.

2. The Requested State may provide copies of any documents, records, or information recorded in any form which are in the possession of a government department or agency or court of that State, but which are not publicly available, to the same extent and under the same conditions as copies would be available to its authorities on whose behalf requests may be made pursuant to Article 2(2). The Requested State may in its discretion deny a request pursuant to this paragraph entirely or in part.

3. Official records produced pursuant to this Article may be authenticated in the manner prescribed by the Convention Abolishing the Requirement of Legalization for Foreign Public Documents dated 5 October 1961. No further authentication shall be necessary. Documents authenticated under this paragraph shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.

Article 10

APPEARANCE IN THE REQUESTING STATE

1. The Requesting State may request the appearance of any person to assist in investigations or proceedings in that State. 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 person's 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.

Article 11

SAFE CONDUCT

1. Unless otherwise specified in the request, a person appearing as a witness or expert in the Requesting State pursuant to this Treaty shall not be subject to any civil suit to which the person could not be subjected but for the person's presence in the Requesting State, or be prosecuted, punished, or subjected to any restriction of personal liberty by reason of any acts or omissions which preceded the person's departure from the Requested State.

2. Any safe conduct provided pursuant to this Article shall cease to apply if, 7 days after a person appearing pursuant to this Treaty has been notified that the person's presence is no longer required, that person, being free to leave, has not left the Requesting State, or, having left, has voluntarily returned.

Article 12

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 needed for purposes of assistance under this Treaty shall be transferred from the Requested State for that purpose if the person consents and the Central Authorities of both States agree.

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

3. For purposes of this Article:

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

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

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

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

Article 13

LOCATION OR IDENTIFICATION OF PERSONS OR ITEMS

The Requested State shall use its best efforts to ascertain the location or identity of persons or items specified in the request if that is necessary for the execution of a request made under this Treaty.

Article 14

SERVICE OF DOCUMENTS

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

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

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

4. A person who is a national of the Requested State or who has equal status thereto and who does not answer a summons to appear in the Requesting State as a witness or expert pursuant to this Treaty shall not by reason thereof be liable to any penalty or be subjected to any coercive measures.

Article 15

SEARCH AND SEIZURES

1. The Requested State shall execute a request for the search, seizure, and delivery of any item, including, but not limited to, any document, record, or article of evidence, to the Requesting State if the request includes the information justifying such action under the laws of the Requested State. Such information shall include a statement that an appropriate authority in the Requesting State could compel production of the items in question if they were located in that State.

2. Upon request, every official who has custody of a seized item shall certify the identity of the item, the continuity of its custody, and the integrity of its condition. This certification shall be by means of Form B appended to this Treaty or a document containing the essential information required by the Requesting State. No further certification shall be required. The certificates shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.

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

Article 16

RETURN OF ITEMS

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

Article 17

ASSISTANCE IN FORFEITURE PROCEEDINGS

1. If the Central Authority of one Contracting Party becomes aware of fruits or instrumentalities of offenses which are located in the territory of the other Party and may be forfeitable or otherwise subject to seizure under the laws of that Party, it may so inform the Central Authority of the other Party. If the other Party has jurisdiction in this regard, it may present this information to its authorities for a determination as to whether any action is appropriate. These authorities shall issue their decision and shall, through their Central Authority, report to the other Party on the action taken.

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

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

Article 18

COMPATIBILITY WITH OTHER

TREATIES, AGREEMENTS, OR ARRANGEMENTS

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

Article 19

CONSULTATIONS

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

Article 20

RATIFICATION, ENTRY INTO FORCE, AND TERMINATION

1. This Treaty shall be subject to ratification, and the instruments of ratification shall be exchanged at Washington as soon as possible.

2. This Treaty shall enter into force on the first day of the third month following the month of the exchange of instruments of ratification.

3. This Treaty shall apply to requests whether or not the relevant offenses occurred prior to the entry into force of this Treaty.

4. Either Contracting Party may terminate this Treaty by means of written notice. Termination shall take effect six months after receipt of notification.

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

DONE at Vienna this 23rd day of February, 1995, in duplicate, in the English and German language, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA:

Form A

CERTIFICATE OF AUTHENTICITY OF BUSINESS RECORDS

I _____(Name)_____ attest on penalty of criminal punishment for false statement or false attestation that I am employed by _____(Name of Business from which documents are sought)_____ and that my business position or function is _____(business position or function)_____.

I further state that each record attached hereto is the original or a duplicate of the original in the custody of _____(Name of Business from which documents are sought)_____.

I further state that:

(A) such records were made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

(B) such records were kept in the course of a regularly conducted business activity;

(C) the business activity made such records as a regular practice; and

(D) if any such record is not the original, such record is a duplicate of the original.

Signature: _____

Date: _____

Affirmed before me, _____(Name)_____, a _____(Judge, agent of the Court, or an official commissioned by the Court)_____, this ____ day of _____, 19__.

Form B

ATTESTATION WITH RESPECT TO SEIZED ARTICLES

I _____(Name)_____ attest on penalty of criminal punishment for false statement or false attestation that my position with the Government of _____(Country)_____ is _____ (Position or Function)_____. I received custody of the articles listed below from _____(Name of Person)_____ on _____(Date)_____ at _____(Place)_____.

I relinquished custody of the articles 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 articles:

Changes in condition while in my custody:

Official Seal

_____

Signature

_____

Position or Function

_____

Place

_____

Date