AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

106TH CONGRESS
1st Session

SENATE

TREATY DOC.
106–16

TREATY WITH UKRAINE ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

TREATY BETWEEN THE UNITED STATES OF AMERICA AND UKRAINE ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS WITH ANNEX, SIGNED AT KIEV ON JULY 22, 1998, AND WITH AN EXCHANGE OF NOTES SIGNED ON SEPTEMBER 30, 1999, WHICH PROVIDES FOR ITS PROVISIONAL APPLICATION



NOVEMBER 10, 1999.—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

79–118 WASHINGTON : 1999

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *November 10, 1999.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty Between the United States of America and Ukraine on Mutual Legal Assistance in Criminal Matters with Annex, signed at Kiev on July 22, 1998. I transmit also, for the information of the Senate, an exchange of notes which was signed on September 30, 1999, which provides for its provisional application, as well as the report of the Department of State with respect to the Treaty.

The Treaty is one of a series of modern mutual legal assistance treaties being negotiated by the United States in order to counter criminal activities more effectively. The Treaty should be an effective tool to assist in the prosecution of a wide variety of crimes, including drug trafficking offenses. The Treaty is self-executing. It provides for a broad range of cooperation in criminal matters. Mutual assistance available under the Treaty includes: taking of testimony or statements of persons; providing documents, records, and articles of evidence; serving documents; locating or identifying persons; transferring persons in custody for testimony or other purposes; executing requests for searches and seizures; assisting in proceedings related to restraint, confiscation, forfeiture of assets, restitution, and collection of fines; and 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, October 19, 1999.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Treaty Between the United States of America and Ukraine on Mutual Legal Assistance in Criminal Matters with Annex ("the Treaty"), signed at Kiev on July 22, 1998. I recommend that the Treaty be transmitted to the Senate for its advice and consent to ratification.

Also enclosed, for the information of the Senate, is an exchange of notes under which the Treaty is being provisionally applied to the extent possible under our respective domestic laws, in order to provide a basis for immediate mutual assistance in criminal matters. Provisional application would cease upon entry into force of the Treaty.

The Treaty covers mutual legal assistance in criminal matters. In recent years, similar bilateral treaties have entered into force with a number of other countries. The Treaty with Ukraine contains all essential provisions sought by the United States. It will enhance our ability to investigate and prosecute a range of offenses. The Treaty is designed to be self-executing and will not require new legislation.

Article 1 sets forth a non-exclusive list of the major types of assistance to be provided under the Treaty, including taking the testimony or statements of persons; providing documents, records and other 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. The scope of the Treaty includes not only criminal offenses, but also proceedings related to criminal matters, which may be civil or administrative in nature.

Article 1(3) states that assistance shall be provided without regard to whether the conduct involved would constitute an offense under the laws of the Requested State.

Article 1(4) states explicitly that the Treaty is not intended to create rights in private parties to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

Article 2 provides for the establishment of Central Authorities and defines Central Authorities for purposes of the Treaty. For the United States, the Central Authority shall be the Attorney General

or a person designated by the Attorney General. For Ukraine, the Central Authority shall be the Ministry of Justice and the Office of the Prosecutor General. The article provides that the Central Authorities shall communicate directly with one another for the purposes of the Treaty.

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

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

Article 4 prescribes the form and content of written requests under the Treaty, specifying in detail the information required in each request. The article permits other forms of requests in emergency situations but requires written confirmation within ten days thereafter unless the Central Authority of the Requested State agrees otherwise.

Article 5 requires the Central Authority of the Requested State to execute the request promptly or to transmit it to the authority having jurisdiction to do so. It provides that the competent authorities of the Requested State shall do everything in their power to execute a request, and that the courts or other competent authorities of the Requested State shall have authority to issue subpoenas, search and arrest warrants, or other orders necessary to execute the request. The Central Authority of the Requested State must make all arrangements for representation of the Requesting State in any proceedings arising out of an assistance request.

Under Article 5(3), requests are to be executed in accordance with the laws of the Requested State except to the extent that the Treaty provides otherwise. However, the method of execution specified in the request is to be followed except insofar as it is prohibited by the laws of the Requested State.

Article 5(4) provides that if the Central Authority of the Requested State determines that execution of the request would interfere with an ongoing criminal investigation, prosecution, or proceeding in that State, it may postpone execution or, after consulting with the Central Authority of the Requesting State, impose conditions on execution. If the Requesting State accepts assistance subject to the conditions, it shall comply with such conditions.

Article 5(5) further requires the Requested State, if so requested, to use its best efforts to keep confidential a request and its contents, and to inform the Requesting State's Central Authority if the

request cannot be executed without breaching confidentiality. This provides the Requesting State an opportunity to decide whether to pursue the request or to withdraw it in order to maintain confidentiality.

This article additionally requires the Requested State's Central Authority to respond to reasonable inquiries by the Requesting State's Central Authority regarding the status of the execution of a particular request; to report promptly to the Requesting State's Central Authority the outcome of its execution; and, if the request is denied, to inform the Requesting State's Central Authority of the reasons for the denial.

Article 6 apportions between the two States the costs incurred in executing a request. It provides that the Request State shall pay all costs, except for the following items to be paid by the Requesting State: fees of expert witnesses, costs of interpretation, translation and transcription, and allowances and expenses related to travel of persons pursuant to Articles 10 and 11. If during the execution of the request, it becomes apparent that extraordinary expenses will be entailed, the Central Authorities shall consult to determine the terms and conditions under which execution may continue.

Article 7 requires the Requesting State to comply with any request by the Central Authority of the Requested State that information or evidence obtained under the Treaty not be used for proceedings other than those described in the request without its prior consent. Further, if the Requested State's Central Authority asks that information or evidence furnished under this Treaty be kept confidential or be used in accordance with specified conditions, the Requesting State must use its best efforts to comply with the conditions. Once information is made public in the Requesting State in accordance with either or these provisions, no further limitations on use apply. Nothing in the article prevents the use or disclosure of information to the extent that there is an obligation to do so under the Constitution of the Requesting State in a criminal prosecution. The Requesting State is obliged to notify the Requesting State in advance of any such proposed use or disclosure.

Article 8 provides that a person in the Requesting State from whom testimony or evidence is requested pursuant to the Treaty shall be compelled, if necessary, to appear and testify or produce items, documents and records. The article requires the Central Authority of the Requested State, upon request, to furnish information in advance about the date and place of the taking of testimony or evidence pursuant to this Article.

Article 8(3) further requires the Requested State to permit the presence of persons specified in the request and to permit them to question the person giving the testimony or evidence. In the event that a person whose testimony or evidence is being taken asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, Article 8(4) provides that the testimony or evidence shall be taken and the claim made known by written notification to the Central Authority of the Requesting State for resolution by its competent authorities. Finally, in order to ensure admissibility of evidence in the Requesting State, Article 8(5) provides a

mechanism for authenticating evidence that is produced pursuant to or that is the subject of testimony taken in the Requested State.

Article 9 requires that the Requested State provide the Requesting State with copies of publicly available records in the possession of government departments and agencies in the Requesting State. The Requested State may further provide copies of any documents, records or information in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as it would provide them to its own law enforcement or judicial authorities. The Requested State has the discretion to refuse to execute, entirely or in part, such requests for records not publicly available. Article 9(3) provides that records produced pursuant to this Article shall, upon request, be certified by the appropriate form attached to the request. Article 9(3) also provides that no further authentication shall be necessary for admissibility into evidence in the Requesting State of official records pursuant to this Article.

Article 10 provides a mechanism for the Requesting State to invite the voluntary appearance in its territory of a person located in the Requested State shall indicate the extent to which the expenses will be paid. It also states that the Central Authority of the Requesting State has discretion to determine that a person appearing in the Requesting State pursuant to this Article shall not be subject to service of process or be detained or subjected to any restriction of personal liberty by reason of any acts or convictions that preceded his departure from the Requested State. Any safe conduct provided for by this article ceases seven days after the Central Authority of the Requesting State has notified the Central Authority of the Requested State that the person's presence is no longer required, or if the person has left the Requesting State and voluntarily returns to it.

Article 11 provides for temporary transfer of a person in custody in the Requested State or in a third State to the Requesting State for purposes of assistance under the Treaty (for example, a witness incarcerated in the Requested State may be transferred to have his deposition taken in the presence of the defendant), provided that the person in question and the Central Authorities of both States agree. The article also provides for voluntary transfer of a person in the custody of the Requesting State to the Requested State for purposes of assistance under the Treaty (for example, a defendant in the Requesting State may be transferred for purposes of attending a witness deposition in the Requesting State), if the person consents and if the Central Authorities of both States agree.

Article 11(3) further establishes both the express authority and the obligation of the receiving State to maintain the person transferred in custody unless otherwise agreed by both Central Authorities. The return of the person transferred is subject to terms and conditions agreed to by the Central Authorities, and the sending State is not required to initiate extradition proceedings for return of the person transferred. The person transferred receives credit for time served in the custody of the receiving State.

Article 12 establishes the authority of the Requested State to authorize transit through its territory of a person held in custody by a third State whose appearance has been requested by the Re-

questing State. The Requested State further has the authority and the obligation to keep the person in custody during transit. The Parties retain discretion to refuse to grant transit of their own nationals, however.

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 obligates the Requested State to use its best efforts to effect service of any document relating, in whole or in part, to any request for assistance under the Treaty. A request for the service of a document requiring a person to appear in the Requesting State must be transmitted a reasonable time before the scheduled appearance. Proof of service is to be provided in the manner specified in the request.

Article 15 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 appropriate. The Central Authority of the State receiving such information is required to inform the Central Authority that provided the information of any action taken.

Article 17 also obligates the Contracting States to assist each other to the extent permitted by their respective laws in proceedings relating to forfeiture of the proceeds and instrumentalities of offenses, restitution to victims of crime, and collection of fines imposed as sentences in criminal prosecutions. This may include action to temporarily immobilize the proceeds or instrumentalities pending further proceedings. The Contracting State having custody over proceeds or instrumentalities of offenses is required to dispose of them in accordance with its laws. Either Contracting State may transfer all or part of such assets, or the proceeds of their sale, to the extent permitted by the transferring State's laws and upon such terms as it deems appropriate.

Article 18 states that assistance and procedures provided in the Treaty shall not prevent either Contracting State from granting assistance to the other Contracting State through the provisions of other applicable international agreements or through the provisions of its national law. The Contracting States may also provide assistance pursuant to any bilateral arrangement, agreement, or practice which may be applicable.

Article 19 provides that the Central Authorities of the Contracting States shall consult, at times mutually agreed, to promote the most effective use of the Treaty, and may agree upon such practical measures as may be necessary to facilitate the Treaty's implementation.

Article 20 provides that the Treaty is subject to ratification and the instruments shall be exchanged at Washington as soon as possible. The Treaty enters into force upon the exchange of instruments of ratification. Article 20 further provides that either Contracting State may terminate the Treaty by written notice to the other Contracting State, with termination to be effective six months following the date of notification.

A Technical Analysis explaining in detail the provisions of the Treaty is being prepared by the United States negotiating delegation, consisting of representatives from the Departments of Justice

and State, and will be transmitted separately to the Senate Committee on Foreign Relations.

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

Respectfully submitted,

STROBE TALBOTT.

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

TABLE OF CONTENTS

Article 1	Scope of Assistance
Article 2	Central Authorities
Article 3	Limitations on Assistance
Article 4	Form and Contents of Requests
Article 5	Execution of Requests
Article 6	Costs
Article 7	Limitations on Use
Article 8	Testimony or Evidence in the Requested State
Article 9	Official Records
Article 10	Testimony or Evidence Outside the Requested State
Article 11	Transfer of Persons in Custody
Article 12	Transit of Persons in Custody
Article 13	Location or Identification of Persons or Items
Article 14	Service of Documents
Article 15	Search and Seizure
Article 16	Return of Items
Article 17	Assistance in Forfeiture Proceedings
Article 18	Compatibility with Other Treaties
Article 19	Consultation
Article 20	Ratification, Entry Into Force, and Termination
Annex	

The United States of America and Ukraine,

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

Have agreed as follows:

ARTICLE 1
SCOPE OF ASSISTANCE

1. The Contracting States shall provide mutual assistance, in accordance with the provisions of this Treaty, in connection with the investigation, prosecution, and prevention of offenses, and in proceedings related to criminal matters.

2. Assistance shall include:

(a) taking the testimony or statements of persons;

(b) providing documents, records, and other items;

(c) locating or identifying persons or items;

(d) serving documents;

(e) transferring persons in custody for testimony or other purposes;

(f) executing searches and seizures;

(g) assisting in proceedings related to immobilization and forfeiture of assets, restitution, and collection of fines; and

(h) any other form of assistance not prohibited by the laws of the Requested State.

3. Assistance shall be provided without regard to whether the conduct that is the subject of the investigation, prosecution, or proceeding in the Requesting State would constitute an offense under the laws of the Requested State.

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

ARTICLE 2
CENTRAL AUTHORITIES

1. Each Contracting State shall have a Central Authority to make and receive requests pursuant to this Treaty.

2. For the United States of America, the Central Authority shall be the Attorney General or a person designated by the Attorney General. For Ukraine, the Central Authority shall be the Ministry of Justice and the Office of the Prosecutor General.

3. Each Central Authority shall make only such requests as it considers and approves. The Central Authority for the Requesting State shall use its best efforts to ensure that a request is not made where, in its view:

(a) the offense on which the request 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 directly with one another for the purposes of this Treaty.

ARTICLE 3
LIMITATIONS ON ASSISTANCE

1. The Central Authority of the Requested State may deny assistance if:

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

(b) the request relates to a political offense;

(c) the execution of the request would prejudice the security or similar essential interests of the Requested State; or

(d) the request does not conform to the requirements of this Treaty.

2. Before denying assistance pursuant to this Article, the Central Authority of the Requested State shall consult with the Central Authority of the Requesting State to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

3. If the Central Authority of the Requested State denies assistance, it shall inform the Central Authority of the Requesting State of the reasons for the denial.

ARTICLE 4
FORM AND CONTENTS OF REQUESTS

1. A request for assistance shall be in writing except that the Central Authority of the Requested State may accept a request in another form in urgent situations. If the request is not in writing, it shall be confirmed in writing within ten

days unless the Central Authority of the Requested State agrees otherwise. The request shall be in the language of the Requested State unless otherwise agreed.

2. The request shall include the following:

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

(b) a description of the nature and subject matter of the investigation, prosecution, or proceeding, and the applicable provisions of law for each offense;

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

(d) a statement of the purpose for which the evidence, information, or other assistance is sought.

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

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

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

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

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

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

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

(g) a description of any particular procedure to be followed in executing the request, including certifications specified in Articles 8, 9, and 15 of this Treaty through completion of the appropriate forms annexed to this Treaty;

(h) information as to the expenses related to travel and subsistence of a person asked to appear outside the Requested State; and

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

ARTICLE 5
EXECUTION OF REQUESTS

1. The Central Authority of the Requested State shall promptly execute the request or, when appropriate, shall transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute the request. The competent authorities of the Requested State shall have authority to issue subpoenas, search and arrest warrants, or other orders necessary to execute the request.

2. The Central Authority of the Requested State shall represent or make arrangements for representation of the interests of the Requesting State in the execution in the Requested State of a request for assistance.

3. Requests shall be executed in accordance with the laws of the Requested State except to the extent that this Treaty provides otherwise. However, the method of execution specified in the request shall be followed except insofar as it is prohibited by the laws of the Requested State.

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

5. The Requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the Central Authority of the Requesting State. If the request cannot be executed without breaching 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.

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

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

ARTICLE 6
COSTS

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

(a) the fees of experts;

(b) the costs of interpretation, translation, and transcription; and

(c) the expenses related to travel and subsistence of persons travelling either in the Requested State for the convenience of the Requesting State or pursuant to Articles 10 and 11 of this Treaty.

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

ARTICLE 7
LIMITATIONS ON USE

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

2. The Central Authority of the Requested State may request that evidence or information furnished under this Treaty be kept confidential or be used only subject to terms and conditions that it may specify. If the Requesting State accepts the evidence or information subject to such conditions, the Requesting State shall use its best efforts to comply with the conditions.

3. Nothing in this Article shall preclude the use or disclosure of evidence or information to the extent that there is an obligation to do so under the Constitution of

the Requesting State in a criminal prosecution. The Requesting State shall notify the Requested State in advance of any such possible use or disclosure.

4. Evidence or information that has been made public in the Requesting State in a manner consistent with paragraph 1 or 2 of this Article may thereafter be used for any purpose.

ARTICLE 8
TESTIMONY OR EVIDENCE IN THE REQUESTED STATE

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

2. Upon request, the Central Authority of the Requested State shall furnish information in advance about the date and place of the taking of the testimony or 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 to question the person giving the testimony or evidence.

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

5. If specified in a request, evidence produced in the Requested State pursuant to this Article or referred to in testimony taken under this Article shall be certified by the appropriate form attached to the request. Business records certified as authentic by the appropriate form, or the form certifying the absence or non-existence of such records, shall be admissible in evidence in the Requesting State as proof of the matters set forth therein.

ARTICLE 9
OFFICIAL RECORDS

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

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

3. If specified in a request, evidence produced in the Requested State pursuant to this Article shall be certified by the appropriate form attached to the request. Official records certified as authentic by the appropriate form, or the form certifying the absence or non-existence of such records, shall be admissible in evidence in the Requesting State as proof of the matters set forth therein.

ARTICLE 10
TESTIMONY OR EVIDENCE OUTSIDE THE REQUESTED STATE

1. When the Requesting State requests the appearance of a person in that State or in a third State, the Requested State shall invite the person to appear before the appropriate authority in the Requesting or in the third State. The Central Authority of the Requested State shall promptly inform the Central Authority of 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.

3. The Central Author ty of the Requesting State may, in its discretion, determine that a person appearing in the Requesting State pursuant to this article shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty, by reason of any acts or convictions that preceded the person's departure from the Requested State.

4. The safe conduct provided for by this Article shall cease after a competent authority of the Requesting State has notified a person appearing pursuant to this Treaty that the person's presence is no longer required, and that person, being free to leave, has not left within seven days or, having left, has voluntarily returned.

ARTICLE 11
TRANSFER OF PERSONS IN CUSTODY

1. A person in the custody of the Requested State whose presence in the Requesting State or in a third State is sought for purposes of assistance under this Treaty shall be transferred from the Requested State to the Requesting State or to the third State for that purpose if the person consents and if the Central Authorities of both States agree.

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

3. For purposes of this Article:

(a) the receiving State shall have the authority and the obligation to keep the person transferred in custody unless otherwise agreed by both Central Authorities;

(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 or any other proceedings for the return of the person transferred; and

(d) time served in the custody of the receiving State by the person transferred shall be credited toward the service of the sentence imposed in the sending State and shall not exceed the time remaining to be served on that sentence.

ARTICLE 12
TRANSIT OF PERSONS IN CUSTODY

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

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

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

ARTICLE 13
LOCATION OR IDENTIFICATION OF PERSONS OR ITEMS

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

ARTICLE 14
SERVICE OF DOCUMENTS

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

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

3. The Requested State shall return a proof of service to the Requesting State in the manner specified in the Request.

ARTICLE 15
SEARCH AND SEIZURE

1. The Requested State shall execute a request for the search, seizure, and transfer of any item to the Requesting State if the request includes the information justifying such action under the laws of the Requested State.

2. If specified in a request, every official in the Requested State who has had custody of a seized item shall certify, through the use of a form attached to the request, the identity of the item, the continuity of custody, and any changes in condition. Such certificates shall be admissible in evidence in the Requesting State as proof of the matters set forth therein.

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

ARTICLE 16
RETURN OF ITEMS

The Central Authority of the Requested State may require that the Central Authority of the Requesting State return, as soon as possible, any items, including documents and records, 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 State becomes aware of proceeds or instrumentalities of offenses that are located in the other State and may be forfeitable or otherwise subject to seizure under the laws of that State, it may so inform the Central Authority of the other State. If the State receiving such information has jurisdiction in this regard, it may present this information to its authorities for a determination whether any action is appropriate. These authorities shall issue their decision in accordance with the laws of their country. The Central Authority of the State that received the information shall inform the Central Authority of the State that provided the information of the action taken.

2. The Contracting States shall assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of the proceeds and instrumentalities of offenses, restitution to the victims of crime, and the collection of fines imposed as sentences in criminal prosecutions. This may include action to temporarily immobilize the proceeds or instrumentalities pending further proceedings.

3. The Contracting State that has custody over proceeds or instrumentalities of offenses shall dispose of them in accordance with its laws. Either Contracting State may transfer all or part of such assets, or the proceeds of their sale, to the other State, to the extent permitted by the transferring State's laws and upon such terms as it deems appropriate.

ARTICLE 18
COMPATIBILITY WITH OTHER TREATIES

Assistance and procedures set forth in this Treaty shall not prevent either Contracting State from granting assistance to the other Contracting State through the provisions of other applicable international agreements, or through the provisions of its national laws. The Contracting States may also provide assistance pursuant to any bilateral arrangement, agreement, or practice that may be applicable.

ARTICLE 19
CONSULTATION

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

ARTICLE 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 upon the exchange of instruments of ratification.

3. Either Contracting State may terminate this Treaty by means of written notice to the other Contracting State. Termination shall take effect six months following the date of notification.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Treaty.

DONE at Kyiv this twenty-second day of July, 1998, in duplicate in the English and Ukrainian languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA:

FOR UKRAINE:

ANNEX
TO THE TREATY
BETWEEN
THE UNITED STATES OF AMERICA
AND
UKRAINE
ON
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

Form A: Certification of Business Records

Form B: Certification of Absence or Non-Existence of Business Records

Form C: Certification of Official Records

Form D: Certification of Absence or Non-Existence of Official Records

Form E: Certification with respect to Seized Items

FORM A

CERTIFICATION OF BUSINESS RECORDS

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

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

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

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

(B) was kept in the course of a regularly conducted business activity;

(C) was made by the business as a regular practice; and,

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

(date of execution)

(place of execution)

(signature)

FORM B

CERTIFICATION OF ABSENCE OR NON-EXISTENCE OF BUSINESS RECORDS

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

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

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

(A) are 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;

(B) are kept in the course of a regularly conducted business activity; and

(C) are made by the business as a regular practice.

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

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

_____(date of execution)_____

_____(place of execution)_____

_____(signature)_____

FORM C

CERTIFICATION OF OFFICIAL RECORDS

I, (name), certify as follows:

1. (name of public authority) is a government office or agency of (country) and is authorized by law to maintain official records setting forth matters authorized by law to be reported and recorded or filed;

2. my position with the above-named public authority is (official title);

3. in my official capacity I have caused the production of true and accurate copies of records maintained by that public authority; and

4. those copies are described below and attached.

Description of records:

(signature)

(Official Seal or Stamp)

(date)

FORM D

CERTIFICATION OF ABSENCE OR NON-EXISTENCE OF OFFICIAL RECORDS

I, __(name)__, certify as follows:

1. __(name of public authority)__ is a government office or agency of __(country)__ and is authorized by law to maintain official records setting forth matters that are authorized by law to be reported and recorded or filed;

2. records of the type described below set forth matters that are authorized by law to be reported and recorded or filed, and such matters regularly are recorded or filed by the above-named public authority;

3. my position with the above-named public authority is __(official title)__;

4. in my official capacity I have made, or caused to be made, a diligent search of the above-named public authority's records for the records described below; and

5. no such records have been found to exist therein.

Description of records:

_____(signature) _____

(Official Seal or Stamp)

_____(date)_____

FORM E

CERTIFICATION WITH RESPECT TO SEIZED ITEMS

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

1. I am employed by (country) and my position or title is (position or title);

2. I received custody of the items listed below from (name of person) on (date) at (place); and

3. I relinquished custody of the items listed below to (name of person) on (date) at (place) in the same condition as when I received them (or, if different, as noted below).

Description of items:

Changes in condition while in my custody:

(date of execution)

(place of execution)

(signature)

(Official Seal or Stamp)

DEPARTMENT OF STATE
WASHINGTON

September 30, 1999

Excellency:

I have the honor to refer to the Treaty Between the United States of America and Ukraine on Mutual Assistance in Criminal Matters (hereafter "the Treaty") signed on July 22, 1998.

The Government of the United States of America plans to submit the Treaty in the near future to the United States Senate for Senate advice and consent to ratification, and to seek favorable action by the Senate at the earliest possible date. Because of the pressing need to enhance law enforcement cooperation between our two governments to the extent possible at this time, I have the honor to propose that until such time as the Treaty enters into force through an exchange of instruments of ratification between our governments as provided for under Article 20(2) of the Treaty, our governments apply the terms of the Treaty to the extent possible under the respective domestic laws of the United States and Ukraine.

I have the further honor to propose that if the foregoing is acceptable to the Government of Ukraine, Your Excellency confirm this fact in a note in reply.

His Excellency

Anton Buteiko,

Ambassador of Ukraine.

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

For the Secretary of State:

Ethel Scatcherd

Unofficial translation
into English

Your Excellency:

I have the honor to acknowledge receipt the note of Your Excellency's note dated of September 30, 1999 which reads as follows:

"I have the honor to refer to the Treaty between the United States of America and Ukraine on Mutual Assistance in Criminal Matters (hereafter "the Treaty") signed on July 22, 1998.

The Goverment of the United States of America plans to submit the Treaty in the near future to the Senate for Senate advice and consent for ratification, and to seek favorable action by the Senate at the earliest possible date. Because of the pressing need to enhance law enforcement cooperation between American and Ukrainian Parties to the extent possible at this time, I have the honor to propose that until such time as the Treaty enters into force through an exchange of instruments of ratification as provided for under Article 20(2) of the Treaty, American and Ukrainian Parties apply the terms of the Treaty to the extent possible under the respective domestic laws of the United States of America and Ukraine.

I have the further honor to propose that if the foregoing is acceptable to the Ukrainian Party, Your Excellency confirm this fact in a note in reply.

Accept, Your Excellency, the assurances of my highest consideration."

I have the honor to confirm that the proposal set forth in the note of Your Excellency is acceptable to the Ukrainian Party.

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

Anton Buteyko
Ambassador

H.E. Madeleine Albright
The Secretary of State

O