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TREATY WITH VENEZUELA ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF VENEZUELA ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS, SIGNED AT CARACAS ON OCTOBER 12, 1997



MARCH 27, 1998.—Treaty was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate.

U.S. GOVERNMENT PRINTING OFFICE
59–118 WASHINGTON : 1998

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *March 27, 1998.*

To the Senate of the United States:

With a view of 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 Venezuela on Mutual Legal Assistance in Criminal Matters, signed at Caracas on October 12, 1997. I transmit also, for the information of the Senate, the report of the Department of State with respect to the Treaty.

The Treaty is one of a series of modern mutual legal assistance treaties being negotiated by the United States for the purpose of countering criminal activities more effectively. The Treaty should be an effective tool to assist in the prosecution of a wide variety of modern criminals, including those involved in terrorism, other violent crimes, drug trafficking, and money laundering and other white collar crime. The Treaty is self-executing, and will not require new legislation.

The Treaty provides for a broad range of cooperation in criminal matters. Mutual assistance available under the Treaty includes: (1) locating or identifying persons or items; (2) serving documents; (3) taking testimony or statements of persons; (4) transferring persons in custody, or persons subject to criminal proceedings, for testimony or other purposes; (5) providing documents, records, files, and articles of evidence; (6) executing requests for searches and seizures; (7) assisting in proceedings related to immobilization and forfeiture of assets, restitution, and collection of fines; (8) executing procedures involving experts; and (9) any other form of assistance appropriate under the laws of the Requested State.

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

WILLIAM J. CLINTON

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, March 12, 1998.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Treaty between the Government of the United States of America and the Government of the Republic of Venezuela on Mutual Legal Assistance in Criminal Matters ("the Treaty"), signed at Caracas on October 12, 1997. I recommend that the Treaty be transmitted to the Senate for its advice and consent to ratification.

The Treaty covers mutual legal assistance in criminal matters. In recent years, similar bilateral treaties have entered into force with a number of countries. This Treaty contains many provisions similar to those in the other treaties.

The Treaty will enhance our ability to investigate and prosecute a variety of offenses, including drug trafficking, terrorism, other violent crimes, and money laundering and other white-collar crime. The Treaty is designed to be self-executing and will not require new legislation.

Article I contains a non-exhaustive list of the major types of assistance to be provided under the Treaty, including taking the testimony or statements of persons; providing documents, records, files, and articles of evidence; locating or identifying persons or items; serving documents; transferring persons in custody, or persons subject to criminal proceedings, 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; executing procedures involving experts; and any other form of assistance appropriate under the laws of the Requested State. The scope of the Treaty includes not only the investigation, prosecution, and prevention of criminal offenses, but also proceedings related to criminal matters, which may be civil or administrative in nature, including proceedings relating to the immobilization and forfeiture of assets, restitution, and collection of fines.

Assistance under the Treaty is to be provided without regard to dual criminality (*i.e.,* whether the conduct involved would constitute an offense under the laws of both States). However, assistance or cooperation relating to searches, seizures, and forfeitures will only be provided if the Central Authority of the Requested State determines that the act to which the request relates in the Requesting State is also punishable as an offense under the laws of the Requested State.

Article I(4) states explicitly that the Treaty is intended solely for mutual legal assistance between the Parties of the purpose of investigations or prosecutions of acts punishable in the Requesting State, the prevention of such acts, or proceedings related to criminal matters ancillary to such acts. The Treaty provisions 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 for assistance.

Article II provides for the establishment of Central Authorities and defines the 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 Venezuela, the Central Authority shall be the Attorney General of the Republic. This Article specifies that the Central Authorities will make and receive requests pursuant to the Treaty, and that the Central Authorities will communicate directly with one another for purposes of the Treaty. The Article also provides that, if appropriate, the Central Authority of the Requested State may transmit the request to other competent authorities for the purpose of its execution. The Article requires that requests be promptly executed by the authorities of the Requested State.

Article III sets forth the circumstances under which the Requested State's Central Authority may deny assistance under the Treaty. A request may be denied if it relates to a political offense, or to a military offense that would be a crime under ordinary criminal law. A request may also be denied if its execution would prejudice the public order, security or similar essential interests of the Requested State, or if the request is not made in conformity with the provisions of the Treaty.

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

Article IV prescribes the form and contents of requests under the Treaty, specifying the detail the information required in each request. The Article provides that requests for assistance must be in writing, except that the Central Authority of the Requested State may accept a request in another form in urgent situations, subject to written confirmation within ten days thereafter. All requests must be accompanied by a translation in the language of the Requested State.

Article V requires the competent authorities of the Requested State to do everything in their power to execute requests. The Article provides that the Courts of the Requested State shall have the authority to issue subpoenas, search warrants, or other orders necessary to execute the request.

The Central Authority of the Requested State is required to make all necessary arrangements for, and meet the costs of, the representation in the Requested State of the Requesting State in

any proceedings arising out of a request for assistance pursuant to the Treaty. Under Article V(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.

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, after consultations with the Central Authority of the Requesting State, make execution subject to conditions. If the Requesting State accepts assistance subject to such conditions, it is required to comply with them.

Article V(5) further requires the Requested State to use its best efforts to keep confidential a request and its contents if 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 must so inform the Central Authority of the Requesting State, which will then determine whether the request should nevertheless be executed.

Finally, Article V(6) requires the Central Authority of the Requested State to promptly inform its counterpart from the Requesting State of the outcome of the execution of the request, and, if the execution of the request is denied, delayed, or postponed, of the reasons therefor.

Article VI apportions between the States the costs associated with the execution of requests. The Article provides that the Requested State is responsible for paying all costs relating to the execution of a request, except that the Requesting State must pay for the fees of expert witnesses, the costs of translation, interpretation, and transcription, and the allowances and expenses related to the travel of persons pursuant to Articles X and XI. The Article also provides that, in cases in which extraordinary expenses arise, the Central Authorities are to consult with one another to establish the terms and conditions under which the assistance may be provided.

Article VII provides that the Central Authority of the Requested State may request that the Requesting State not use any information or evidence obtained under the 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. The Requesting State is required to take all possible legal measures to comply with such limitation.

Article VII(2) provides that the Central Authority of the Requested State may request that information or evidence furnished under the Treaty be kept confidential or be used only subject to terms and conditions it may specify. If the Requesting State accepts the information or evidence subject to such conditions, it is required to take all possible legal measures to comply with the conditions. The reference to "all possible legal measures" was not intended by the negotiating delegations to preclude a constitutionally required disclosure or use of information in a criminal prosecution, and it was the understanding of the negotiators that in such cases the obligation of confidentiality would not apply. This point was

discussed at length between the negotiating delegations, and expressly agreed upon.

Article VII(3) states that once information or evidence has been made public in the Requesting State in a manner consistent with the other provisions of the Article, it may thereafter be used for any purpose.

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

Article VIII(3) also requires the Requested State, unless it is prohibited from doing so by its domestic law, to permit the presence of persons designated in the request, and to allow such persons 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, the testimony or evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting State for resolution by authorities of that State.

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

Article X provides a mechanism for the Requesting State to invite the voluntary appearance in its territory of a person located in the Requested State. The Requesting State is required to indicate the extent to which the expenses of the person will be paid. The Central Authority of the Requested State is required to invite the person to appear and promptly to inform the Requesting State of the person's response.

Article X further provides that, upon request by the person invited to appear, the Requesting State may consider providing security guarantees for that person during the period that his or her presence is required in that State. The Central Authority of the Requesting State may, in its discretion, determine that such person shall not be subject to service of process, detained, or subjected to any restriction of personal liberty by reason of acts or convictions that preceded the person's departure from the Requested State. In addition, such person may not be required by the Requesting State to give statements or testify in proceedings other than those specified in the request, unless the person consents in writing and the Central Authorities of both Parties agree. The safe conduct ceases ten days after notification by the Central Authority of the Requesting State to its counterpart in the Requested State that the per-

son's presence is no longer required, or when the person, having left the Requesting State, voluntarily returns.

Article XI provides for the temporary transfer to one State Party, for purposes of assistance under the Treaty, of a person in custody in the other State Party, provided that the person in question consents in writing and the Central Authorities of both States agree. Article XI(3) establishes the express authority and the obligation of the receiving State to maintain the person transferred in custody unless otherwise authorized by the sending State. It further obligates the receiving State to return the person to the custody of the sending State as soon as circumstances permit or as otherwise agreed by the Central Authorities of both States, without the need for extradition proceedings. The person transferred is to receive credit toward service of the sentence imposed in the sending State for time served in the custody of the receiving State.

Article XII requires the Requesting State to take all necessary measures to ascertain the location or identity of persons or items specified in a request.

Article XIII requires the Requesting State to take all necessary measures to effect service of any documents relating, in whole or in part, to a request under the Treaty. The Article further requires that any request for the service of a document requiring the appearance of a person before an authority in the Requesting State must be transmitted within a reasonable time prior to the scheduled appearance. The Requested State is required to return proof of service in the manner specified in the request.

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

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

Article XVI provides that the Central Authority of either Party may contact that of the other Party when it has reason to believe that proceeds, fruits, or instrumentalities of offenses are located in the territory of the other Party. The Article obligates the Parties to assist each other, to the extent permitted by their respective laws, in procedures relating to the immobilization, securing, and forefeiture of the proceeds, fruits, and instrumentalities of offenses, restitution to victims of crime, and the collection of fines imposed as sentences in criminal proceedings. The Party with custody over proceeds, fruits, or instrumentalities of offenses is required to dispose of them in accordance with its laws. Either Party may transfer all or part of such assets, or the proceeds of their sale, to the other Party, to the extent permitted by the transferring Party's laws and upon such terms as it deems appropriate.

Article XVII contains provisions regarding authentication and certification. Notwithstanding any authentication or certification

necessary under its law, the Requested State shall authenticate any document, record, or copy thereof, or provide a certification regarding any article, in the matter requested by the Requesting State, if such is not incompatible with the laws of the Requested State. For the purpose of facilitating the use of such authentications or certifications, the Requesting State is required to enclose in the request the appropriate forms or describe the particular procedure to be followed.

Article XVIII states that the assistance and procedures set forth in the Treaty shall not prevent either Party from granting assistance to the other Party through the provisions of other applicable international agreements to which they are parties, or pursuant to any bilateral arrangement, agreement, or practice that may be applicable, consistent with their respective domestic laws.

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

Article XX provides that the Treaty shall enter into force upon written notification between the Parties, through diplomatic channels, of compliance with their respective legal requirements necessary for its approval. The Treaty shall apply to any request presented after the date of its entry into force, even if the relevant acts or omissions occurred before that date.

Article XX also provides that the Treaty shall have indefinite duration, but it allows either Party to terminate the Treaty by written notice to the other Party, through the diplomatic channel. Such termination would take effect six months following the date of notification, and requests for assistance that may be pending at the time of termination of the Treaty may be executed if agreed by both Parties.

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,

STROBE TALBOT.

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

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

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

Based on the principle of sovereign equality of States,

Have agreed as follows:

Article I

Scope of Assistance

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

2. Assistance shall include:

(a) taking the testimony or statements of persons;

(b) providing documents, records, files, and articles of evidence;

(c) locating or identifying persons or items;

(d) serving documents;

(e) transferring persons in custody or subject to criminal proceedings for testimony or other purposes;

(f) executing requests for searches and seizures;

(g) execution of procedures involving experts;

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

(i) any other form of assistance appropriate under 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.

However, assistance or cooperation in connection with searches, seizures, and forfeitures shall only be provided if the Central Authority of the Requested State determines that the act to which the request relates in the Requesting State is also punishable as an offense under the laws of the Requested State.

4. This Treaty is intended solely for mutual legal assistance between the Parties for the purpose of investigations or prosecutions of acts punishable in the Requesting State, the prevention of such acts, or proceedings related to criminal matters ancillary to such acts. 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 for assistance.

Article II

Central Authorities

1. Each Party shall designate a Central Authority to make and receive requests pursuant to this Treaty.

2. For the United States of America, the Central Authority shall be the Attorney General or a person designated by the Attorney General. For the Republic of Venezuela, the Central Authority shall be the Attorney General of the Republic.

3. The Central Authority of the Requested State shall process a request directly, unless it is appropriate to transmit such request to other competent authorities for purposes of its execution. Requests shall be executed promptly by the authorities of the Requested State.

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

Article III

Limitations on Assistance

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

(a) the request relates to a political offense;

(b) the request relates to a military offense, unless the offense also constitutes an offense under ordinary criminal law;

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

(d) the request is not made in conformity with the provisions 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 determine 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 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 IV

Form and Contents of Requests

1. A request for assistance shall be in writing. However, in urgent situations the Central Authority of the Requested State may accept a request in another form, in accordance with its domestic laws. If the request is not in writing, it shall be

presented in writing within ten days thereafter. The request shall be accompanied by a translation in the language of the Requested State.

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 subject matter and nature of the investigation, prosecution, or proceeding, including the specific criminal offenses that relate to the matter;

(c) a description of the evidence, information, or other assistance sought, as well as any information necessary to facilitate the execution of the request; 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 whereabouts of a person to be located;

(d) a precise description of the place or person to be searched and of the articles to be seized, forfeited, or otherwise restrained;

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

(f) a list of questions to be asked of a witness, which may be reviewed by the Requested State to determine whether they conform to the requirements of its domestic law;

(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 that may be brought to the attention of the Requested State to facilitate its execution of the request.

Article V

Execution of Requests

1. The competent authorities of the Requested State shall do everything in their power to execute the request. The Courts

of the Requested State shall have authority to issue subpoenas, search warrants, or other orders necessary to execute the request.

2. The Central Authority of the Requested State shall make all necessary arrangements for and meet the costs of the representation in the Requested State of the Requesting State in any proceedings arising out 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 promptly inform the Central Authority of the Requesting State of the outcome of the execution of the request. If the request is denied, or if its execution is delayed or postponed, the Central Authority of the Requested State shall inform the Central Authority of the Requesting State of the reasons for such denial, delay, or postponement.

Article VI

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 translation, interpretation, and transcription, and the allowances and expenses related to travel of persons pursuant to Articles 10 and 11, which shall be paid by the Requesting State.

In cases in which extraordinary expenses arise, the Central Authorities shall consult with one another to establish the terms and conditions under which the assistance may be provided.

Article VII

Limitations on Use

1. The Central Authority of the Requested State may request that the Requesting State not use any information or evidence obtained under this Treaty in any investigation, prosecution, or proceeding other than that described in the

request without the prior consent of the Central Authority of the Requested State. The Requesting State shall take all possible legal measures to comply with the provisions of this paragraph.

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

3. Information or evidence that has been made public in the Requesting State consistent with paragraph 1 or 2 may thereafter be used for any purpose.

Article VIII

Testimony and Evidence in the Requested State

1. Upon request by the Requesting State, a person in the Requested State from whom testimony or evidence is requested pursuant to this Treaty shall be summoned and, if necessary, compelled, to appear and testify or produce items, including documents, records, and articles of evidence.

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 production of the evidence pursuant to this Article.

3. Unless prohibited from doing so by its domestic law, 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 to the Central Authority of the Requesting State for resolution by the authorities of that State.

Article IX

Records of Government Agencies

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

Article X

Testimony and Evidence in the Requesting State

1. When the Requesting State requests the appearance of a person in that State for testimony or other purposes, the Requested State shall invite the person to appear before the appropriate authority in the Requesting State. The Requesting State shall indicate the extent to which the expenses related to the travel of such person will be paid. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the response of the person.

2. Upon request by the person invited to appear, the Requesting State may consider providing security guarantees for that person during the period that his or her presence is required in that State.

3. The Central Authority of the Requesting State may 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.

4. A person who appears in the Requesting State for the purposes contemplated in this Article may not be required by that State to give statements or testify in proceedings other than those specified in the request, unless the person consents in writing and the Central Authorities of both States agree.

5. The safe conduct provided for by this Article shall cease ten 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 when the person, having left the territory of the Requesting State, voluntarily returns.

Article XI

Transfer of Persons in Custody or Subject to Criminal Proceedings

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

2. A person in the custody of, or subject to criminal proceedings in, 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 in writing 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 such person's presence is no longer required for the purposes set forth in the request, 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 XII

Location or Identification of Persons or Items

The Requested State shall take all necessary measures to ascertain the location or identity of persons or items specified in the request.

Article XIII

Service of Documents

1. The Requested State shall take all necessary measures 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 in the manner specified in the Request.

Article XIV

Search and Seizure

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

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

Article XV

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, records, or articles of evidence, furnished to it in execution of a request under this Treaty.

Article XVI

Assistance in Forfeiture Proceedings

1. The Central Authority of either Party may notify that of the other when it has reason to believe that proceeds, fruits or instrumentalities of crime are located in the territory of the other Party.

2. The Parties shall assist each other, to the extent permitted by their respective laws, in procedures relating to the immobilization, securing and forfeiture of the proceeds, fruits and instrumentalities of crime, restitution, and collection of fines.

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

Article XVII

Authentication and Certification

1. Notwithstanding any authentication or certification necessary under its law, the Requested State shall authenticate any document, record, or copy thereof, or provide a certification regarding any article, in the manner requested by the Requesting State, if this is not incompatible with the laws of the Requested State.

2. For the purpose of facilitating the use of the special authentications or certifications mentioned above, the Requesting State shall enclose in the request the appropriate forms or describe the particular procedure to be followed.

Article XVIII

Compatibility with Other Treaties

Assistance and procedures set forth in this Treaty shall not prevent either Party from granting assistance to the other Party through the provisions of other international agreements to which they are parties. The Parties may also provide assistance to each other pursuant to any bilateral arrangement, agreement, or practice that may be applicable, consistent with their respective domestic laws.

Article XIX

Consultation

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

Article XX

Entry Into Force, Duration, and Termination

1. This Treaty shall enter into force upon written notification between the Parties, through diplomatic channels, of compliance with their respective legal requirements necessary for its approval. The Treaty shall have indefinite duration.

2. This Treaty shall apply to any request presented after the date of its entry into force, even if the relevant acts or omissions occurred prior to that date.

3. Either Party may terminate this Treaty at any time by means of written notice, through diplomatic channels, to the other Party. Termination shall take effect six months following the date of notification. Requests for assistance that may be pending at the time of termination of the Treaty may be executed if agreed by both Parties.

IN WITNESS WHEREOF, the undersigned, have signed this Treaty.

DONE at Caracas, in duplicate, in the English and Spanish languages, this 12th day of October, 1997, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Madeleine K. Albright
Secretary of State

FOR THE GOVERNMENT OF THE REPUBLIC OF VENEZUELA

Miguel Angel Burelli Rivas
Minister of Foreign Affairs