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TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE ITALIAN REPUBLIC ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

The Government of the United States of America and the Government of Italian Republic, [11] desiring to conclude a Treaty on mutual assistance in criminal matters, have agreed as follows:

ARTICLE 1

Obligation to Render Assistance

1. The Contracting Parties undertake to afford each other, upon request and in accordance with the provisions of this Treaty, mutual assistance in criminal investigations and proceedings.

2. Such assistance shall include:

- a. locating persons;
- b. serving documents;
- c. producing documents and records;
- d. executing requests for search and seizure;
- e. taking testimony;
- f. transferring persons for testimonial purposes; and
- g. immobilizing and forfeiting assets.

' Other types of assistance shall also be granted to the extent such assistance is not inconsistent with the laws of the Requested State.

3. Assistance shall be rendered even when the acts under investigation are not offenses in the Requested State and without regard to whether the Requested State would have jurisdiction in similar circumstances.

4. This Treaty is intended solely for mutual assistance in criminal matters between authorities of the Contracting Parties.

ARTICLE 2

Central Authority

1. A request under this Treaty shall be made by a Central Authority for each Contracting [12] Party. The Central Authorities shall communicate directly with each other to implement the provisions of this Treaty.

2. For the United States the Central Authority shall be the Attorney General. For the Republic of Italy

the Central Authority shall be the Minister of Grace and Justice.

ARTICLE 3

Contents of a Request

1. A request for assistance shall indicate:

- a. the name of the authority conducting the criminal investigation or proceeding to which the request relates;
- b. the subject matter and nature of the investigation or proceeding;
- c. a description of the evidence or information sought or the acts to be performed; and
- d. the purpose for which the evidence, information or action is sought.

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

- a. available information on the identity and whereabouts of a person to be located;
- b. the identity and location of a person to be served, that person's relationship to the proceeding, and the manner in which service is to be made;
- c. the identity and location of a person from whom evidence is sought;
- d. a precise description of the place to be searched and the objects to be seized;
- e. a description of the manner in [13] which any testimony is to be taken and recorded;
- f. a list of questions to be answered; and
- g. a description of any particular procedure to be followed in executing the request.

3. A request shall indicate the allowances and expenses to which a person appearing in the Requesting State will be entitled.

4. A request and accompanying documents shall be in both English and Italian.

ARTICLE 4

Execution of a Request

1. The Central Authority of the Requested State shall promptly comply with a request or, when appropriate, transmit it to the authority having jurisdiction to do so. The competent officials of the Requested State shall do everything in their power to execute a request. The courts of the Requested State shall issue subpoenas, search warrants, or any other process necessary in the execution of a request.

2. A request shall be executed in conformity with the provisions of this Treaty and according to the laws of the Requested State. Procedures specified in the request shall be followed unless prohibited by the laws of the Requested State.

ARTICLE 5

Limitations on Compliance

1. The Requested State may deny assistance to the extent that:
 - a. execution of a request would [14] prejudice the security or other essential public interests of the Requested State;
 - b. a request relates to a purely military offense or a matter considered a political offense by the Requested State; or
 - c. a request does not comply with the provisions of this Treaty.
2. Before refusing to execute a request, the Requested State shall determine whether assistance can be given subject to such conditions as it deems necessary.
3. The Requested State may postpone execution of a request or grant it subject to conditions if execution would interfere with an ongoing investigation or proceeding in the Requested State.
4. The Requested State shall immediately inform the Requesting State of the reason for partial or total denial or postponement of assistance.

ARTICLE 6

Return of a Completed Request

1. Upon completion of a request the Requested State shall, unless otherwise agreed, return to the Requesting State the original request together with all information and evidence obtained, indicating place and time of execution.
2. To the extent possible, all documents and records to be furnished pursuant to a request shall be complete and in unedited form. Upon application of the Requesting [15] State, the Requested State shall make every effort to furnish original documents and records.

ARTICLE 7

Costs and Translations

The Requested State shall render assistance without cost to the Requesting State except for:

- a. expenses incurred in the translation of documents accompanying a request or which result from a request;
- b. fees of private experts specified in a request;
- c. all expenses related to travel of witnesses pursuant to Article 15; and
- d. all expenses related to the transfer of witnesses in custody pursuant to Article 16.

ARTICLE 8

Protecting Confidentiality and Restricting Use of Evidence and Information

1. When necessary, the Requested State may require that evidence and information provided, and information derived therefrom, be kept confidential in accordance with stated conditions. Nevertheless, disclosure may be made where necessary as evidence in a public proceeding.
2. If deemed necessary, the Requesting State may request that the application for assistance, the contents of the request and its supporting documents, and the granting of such assistance be kept confidential.

3. The Requesting State shall not use evidence obtained, nor information derived [16] therefrom, for purposes other than those stated in a request without the prior consent of the Requested State.

ARTICLE 9

Return of Documents, Records, and Articles of Evidence

The Requesting State shall return upon request any documents, records, or articles of evidence furnished in execution of a request as soon as possible.

ARTICLE 10

Locating Persons

The Requested State, consistent with the provisions of this Treaty, shall make thorough efforts to ascertain the location of persons specified in the request and believed to be in the Requested State.

ARTICLE 11

Serving Documents

1. The Requested State shall cause service of any document transmitted for that purpose by the Requesting State.
2. A request for service of a document requiring the appearance of a person before an authority in the Requesting State shall be transmitted a reasonable time before the scheduled appearance.
3. A document requiring such an appearance shall be served thirty days prior to the scheduled appearance or as otherwise agreed.
4. The Requested State shall return a proof of service executed according to its laws.

ARTICLE 12

Providing Documents and Records of Government Offices or Agencies [17]

1. The Requested State shall provide a copy of a publicly available document or record of a government office or agency.
2. The Requested State may provide any document or record in the possession of a government office or agency, but not publicly available, to the same extent and under the same conditions as it would be available to its own law enforcement or judicial authorities. The Requested State in its discretion may deny the request entirely or in part.
3. Any document or record provided pursuant to this Article in accordance with procedures specified in the request and certified authentic by the Central Authority of the Requested State shall require no further certification or authentication to be admissible into evidence in the Requesting State.

ARTICLE 13

Producing Other Documents and Records

1. The Requested State, if necessary, shall compel a person to produce a document, record or article to the same extent as would be required for criminal investigations or proceedings in that State. When search and seizure is required, the request shall contain such information as would justify such action in criminal investigations or proceedings under the laws of the Requested [18] State.

2. With respect to paragraph 1 of this Article, every official of the Requested State who has custody of a seized document, record or article shall certify to the Central Authority of that State the identity of the thing seized, the continuity of the custody thereof, and the integrity of its condition. The Central Authority of the Requested State shall certify that the procedures specified in the request have been followed to the extent possible pursuant to the laws and practices of that State. A document, record or article so certified shall require no further foundation to be admissible into evidence in the Requesting State.

ARTICLE 14

Taking Testimony in the Requested State

1. A person from whom evidence is sought shall, if necessary, be compelled to appear and testify to the same extent as would be required in criminal investigations or proceedings in the Requested State.
2. Upon request, the Requested State shall specify the date and place of the taking of testimony.
3. The Requested State shall permit the presence of an accused, counsel for the accused, and persons charged with the enforcement of the criminal laws to which the request relates.
4. The executing authority [19] shall provide persons permitted to be present the opportunity to question the person whose testimony is sought in accordance with the laws of the Requested State.
5. The executing authority shall provide persons permitted to be present the opportunity to propose additional questions and other investigative measures.
6. Testimonial privileges under the laws of the Requesting State shall not apply in the execution of a request, but such questions of privilege shall be preserved for the Requesting State.

ARTICLE 15

Taking Testimony in the Requesting State

1. The Requested State, upon request that a person in that State appear and testify in connection with a criminal investigation or proceeding in the Requesting State, shall compel that person to appear and testify in the Requesting State by means of the procedures for compelling the appearance and testimony of witnesses in the Requested State if:
 - a. the Requested State has no reasonable basis to deny the request;
 - b. the person could be compelled to appear and testify in similar circumstances in the Requested State; and
 - c. the Central Authority of the Requesting State certifies that the person's testimony is relevant and material. [20]
2. A person who fails to appear as directed shall be subject to sanctions under the laws of the Requested State as if that person had failed to appear in similar circumstances in that State. Such sanctions shall not include removal of the person to the Requesting State.

ARTICLE 16

Transferring Persons in Custody for Testimonial Purposes

1. A person in custody needed as a witness in the Requesting State for criminal investigations or proceedings shall be transported to that State pursuant to conditions proposed by Article 15(1).
2. A defendant in custody in one State who seeks for purposes of confrontation to be present at a judicial proceeding in the other State shall be transported to that State unless the State in which the defendant is in custody has a reasonable basis to deny the request.
3. For purposes of this Article:
 - a. the receiving State shall have the authority and obligation to keep in custody a person transferred 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;
 - c. the receiving State shall not decline to return a [21] person transferred on the basis of nationality nor require the sending State to initiate extradition proceedings; and
 - d. the person transferred shall receive credit for service of the sentence imposed in the sending State while in the custody of the receiving State.

ARTICLE 17

Safe Conduct

1. A person appearing before an authority in the Requesting State pursuant to a request:
 - a. shall not be subject to suit, or be detained or subjected to any other restriction of personal liberty, with respect to any act or conviction which preceded departure; and
 - b. shall not be subject to prosecution based on testimony provided pursuant to the request to the extent that such testimony is required to honor the request and is true.
2. Safe conduct provided in this Article shall cease if, ten days after the person appearing has been notified that his or her presence is no longer required, that person, being free to leave, has not left the Requesting State or, having left, has returned.

ARTICLE 18

Immobilization and Forfeiture of Assets

1. In emergency situations, the Requested State shall have authority to immobilize assets found in that State which are subject to forfeiture.
2. Following [22] such judicial proceedings as would be required under the laws of the Requested State, that State shall have the authority to order the forfeiture to the Requesting State of assets immobilized pursuant to paragraph 1 of this Article.

ARTICLE 19

Other Treaties and Domestic Laws

1. Assistance and procedures provided by this Treaty shall not prevent or restrict any assistance or procedure available under other international conventions or arrangements or under the laws of the Contracting Parties.
2. The activities of the International Criminal Police Organization (INTERPOL) are not affected by this

Treaty.

ARTICLE 20

Ratification and Entry into Force

1. This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged, as soon as possible, in Washington.
2. This Treaty shall enter into force upon the exchange of instruments of ratification.

ARTICLE 21

Denunciation

Either Contracting Party may terminate this Treaty at any time by giving notice to the other Party and the termination shall be effective six months after the date of receipt of such notice.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, [23] have signed this Treaty and have affixed hereunto their seals.

Done in Rome in duplicate, in the English and Italian languages, both equally authentic, this 9th day of November 1982.

For the United States of America

For the Italian Republic

MEMORANDUM OF UNDERSTANDING

Regarding the Treaty on Mutual Assistance in Criminal Matters and its implementation, the delegations of both parties wish to draw special attention to certain provisions of the Treaty.

ARTICLE 1

For the purpose of defining the scope of the various provisions of the Treaty on Mutual Assistance in Criminal Matters, Article 1 refers to "criminal investigations and proceedings".

The Contracting Parties mutually recognize that this phrase refers to the various stages of a criminal action. A "criminal action" lies within the responsibility not only of courts, but also of any other authority which institutionally has, under the laws of its State, power to initiate or proceed in prosecutions for the punishment of criminal offenses.

ARTICLE 4

During the negotiations between the United States and Italy, the delegations discussed requirements for admissibility into evidence under each country's legal system. With respect to the [24] United States, certain "formalities" exist as conditions precedent to admission. First, a document, record or article sought to be introduced into evidence must be "authenticated". Thereafter, the requisite "foundation" must be furnished. When both authenticity and foundation are established, the trial judge may admit the document, record, or article into evidence. These preadmission, authentication and foundation requirements are not altered by this Treaty. Therefore, the treaty partner should anticipate, especially with respect to documents and records requested pursuant to Articles 12 and 13, that procedures will be specified in the request to comply with internal requirements. Where evidence is secured pursuant to and in accordance with a Treaty request, the trial judge is permitted to find that such evidence is trustworthy in determining whether the requisite "authenticity" and "foundation" have been established.

ROME, November 9, 1982.

The Head of the Delegation of the United States of America

The Head of the Delegation of the Italian Republic

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