

# United Nations Office on Drugs and Crime

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## **Treaty Between The Government Of The United States Of America And The Government Of The Arab Republic Of Egypt On Mutual Legal Assistance In Criminal Matters**

*Signed at Cairo on 3 May 1998*

*Entered into force on 29 November 2001*

The Government of the United States of America and the Government of the Arab Republic of Egypt (hereinafter "the Contracting Parties");

Desiring to improve the effectiveness of the law enforcement 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 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, and items of evidence;
- (c) locating or identifying persons or items;
- (d) serving documents;
- (e) transferring persons in custody for testimony or other purposes;
- (f) executing requests for searches and seizures;
- (g) assisting in proceedings related to immobilization and forfeiture of assets;  
restitution; collection of fines; and
- (h) any other form of assistance not prohibited by the laws of the Requested State.

3. Assistance shall be provided in connection with any conduct that is the subject of the investigation, prosecution, or proceeding under the laws of the Requesting State.

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

## **Article 2**

### *Central Authorities*

1. Each Contracting Party shall 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 Arab Republic of Egypt, the Central Authority shall be the Minister of Justice or a person designated by the Minister of Justice.
3. 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 execution of the request would prejudice the security or similar essential interests of the Requested State; or
  - (c) the request is not made in conformity with the 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 pursuant to this article, 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 thereafter 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 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; 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 investigation, prosecution, or proceedings, and the manner in which service is to be made;
  - (c) information on the identity and whereabouts of persons or items to be located;
  - (d) a precise description of the place or person to be searched and of the items to be seized;
  - (e) a description of the manner in which any testimony or statement is to be taken and recorded;
  - (f) a description of the testimony or statement sought, which may include a list of questions to be asked of a witness;
  - (g) a description of any particular procedure to be followed in executing the request;
  - (h) information as to the allowances and expenses to which a person asked to appear in the Requesting State will be entitled; and
  - (i) any other information 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 Courts of the Requested State shall have authority to issue 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 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 requests by the Central Authority of the Requesting State on 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*

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.

## **Article 7**

### *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. In cases where consent is provided, the Requesting State shall comply with the conditions specified by the Requested State.

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

3. Nothing in this Article shall preclude 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 shall notify the Requested State in advance of any such proposed use or disclosure.

4. Information or evidence that has been made public in the Requesting State in a manner consistent with paragraphs 1 or 2 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, under the laws of the Requested State 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 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, except when the presence of such persons would be prohibited under the laws of the Requested State, and shall allow such persons to pose questions directly or indirectly to 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.

5. Evidence produced in the Requested State pursuant to this Article or that has been the subject of testimony taken under this Article may be authenticated by attestation, including in the case of business records, in the manner indicated in Form A appended to this Treaty. The absence or nonexistence of such records may, upon request, be certified through the use of Form B appended to this Treaty. Records authenticated by Form A, or Form B certifying the absence or nonexistence of such records, shall be admissible in evidence in the Requesting State.

## **Article 9**

### *Records of Government Agencies*

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, 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 deny a request pursuant to this paragraph entirely or in part.
3. Records produced pursuant to this Article may be authenticated by the official responsible for maintaining them through the use of Form C appended to this Treaty. The absence or nonexistence of such records may, upon request, be certified through the use of Form D appended to this Treaty. No further authentication shall be necessary. Records authenticated by Form C, or Form D certifying the absence or nonexistence of such records, shall be admissible in evidence in the Requesting State.

## **Article 10**

### *Testimony in the Requesting State*

1. When the Requesting State requests the appearance of a person who is present in the Requested State, the Requested State shall invite the person to so appear. The Requesting State shall indicate the extent to which the expenses 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. The Central Authority 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 his departure from the Requested State.
3. The safe conduct provided for by this Article shall cease 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 when the person, having left the Requesting State, voluntarily returns. The Central Authority of the Requesting State may, in its discretion, extend this period up to fifteen days if it determines that there is good cause to do so.

## **Article 11**

### *Transfer of Persons in Custody*

1. A person in the custody of a Contracting Party, whose presence is requested in the State of the other Contracting Party for purposes of assistance under this Treaty, shall be transferred to that State if the person consents and if the Central Authorities of both States agree.
2. For purposes of this Article:

- (a) the receiving State shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorized by the sending State;
- (b) the receiving State shall return the person transferred to the custody of the sending State as soon as circumstances permit or as otherwise agreed by both Central Authorities;
- (c) the receiving State shall not require the sending State to initiate extradition or any other 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 12**

### *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 13**

### *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 14**

### *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. Upon request by the Central Authority of the Requesting State, every official in the Requested State who has had custody of a seized item shall certify, through the use of Form E appended to this Treaty, the identity of the item, the continuity of its custody, and any changes in its condition. No further certification shall be required. The certificates shall be admissible in evidence in the Requesting State.
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 15**

### *Return of Items*

The Central Authority of the Requested State may require that the Central Authority of the Requesting State return any items, including documents, records, or articles of evidence furnished to it in execution of a request under this Treaty as soon as possible.

## **Article 16**

### *Assistance in Seizure and Forfeiture Proceedings*

1. If the Central Authority of one Contracting Party becomes aware of proceeds or instrumentalities of offenses that are located in the other Contracting Party and may be forfeitable or otherwise subject to seizure under the laws of that Contracting Party, it may so inform the Central Authority of the other Contracting Party. If the Contracting Party 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 Contracting Party that received the information shall inform the Central Authority of the Contracting Party that provided the information of the action taken.
2. The Contracting Parties shall assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of the 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 Party that has custody over proceeds or instrumentalities of offenses shall dispose of them in accordance with its laws. Either Contracting Party may transfer all or part of such assets, or the proceeds of their sale, to the other Contracting Party, to the extent permitted by the transferring Contracting Party's laws and upon such terms as it deems appropriate.

## **Article 17**

### *Compatibility with Other Treaties*

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

## **Article 18**

### *Consultation*

The Central Authorities of the Contracting 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 19**

### *Ratification, Entry Into Force, and Termination*

1. This Treaty and its Appendices, which are integral parts of the Treaty, shall be subject to ratification, and the instruments of ratification shall be exchanged as soon as possible.
2. This Treaty shall enter into force upon the exchange of instruments of ratification.
3. This Treaty shall apply to any request presented after the date of its entry into force whether the relevant acts or omissions occurred prior to or after that date.
4. Either Contracting Party may terminate this Treaty by means of written notice to the other Contracting Party. Termination shall take effect six months following the date of notification.

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

DONE at Cairo this third day of May, 1998, in duplicate, in the English and Arabic languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE ARAB REPUBLIC OF EGYPT:

**FORM A**

*CERTIFICATE OF AUTHENTICITY OF BUSINESS RECORDS*

I, \_\_\_\_ (Name) \_\_\_\_, attest on penalty of criminal punishment for false statement or false attestation that

I am employed by \_\_\_\_ (Name of Business from which documents are sought) \_\_\_\_ and that my official title is \_\_\_\_.

I further state that each of the records attached hereto is the original or a duplicate [35] of the original records in the custody of \_\_\_\_ (Name of Business from which documents are sought) \_\_\_\_.

I further state that:

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

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

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

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

\_\_\_\_ (Signature)

\_\_\_\_ (Date)

Sworn to or affirmed before me. \_\_\_\_ (Name) \_\_\_\_, a \_\_\_\_ (notary public, judicial officer, etc.) \_\_\_\_ this \_\_\_\_ day of \_\_\_\_ 19\_\_.

**FORM B**

*CERTIFICATE OF ABSENCE OR NON-EXISTENCE OF BUSINESS RECORDS*

I, \_\_\_\_ (Name) \_\_\_\_, attest on penalty of criminal punishment for false statement or false attestation that

I am employed by \_\_\_\_ (Name of Business from which documents are sought) \_\_\_\_ and that my official title is \_\_\_\_.

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



(SEAL)

\_\_\_\_ (Date)

**FORM E**

*ATTESTATION WITH RESPECT TO SEIZED ARTICLES*

I, \_\_\_\_ (Name) \_\_\_\_, attest on penalty of criminal punishment for false statements or attestation that my position with the Government of \_\_\_\_ (Country) \_\_\_\_ is \_\_\_\_ (Official Title) \_\_\_\_ . I received the articles listed below from \_\_\_\_ \_\_\_\_ (Name of Person) \_\_\_\_ on \_\_\_\_ (Date), at \_\_\_\_ (Place) \_\_\_\_ in the following condition:

Description of Article:

Changes in Condition while in my custody:

Official Seal

\_\_\_\_ (Signature)

\_\_\_\_ (Title)

\_\_\_\_ (Date)

EMBASSY OF THE UNITED STATES OF AMERICA

No. 430

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of the Arab Republic of Egypt and has the honor to refer to the proposed Treaty between the United States of America and the Government of the Arab Republic of Egypt on Mutual Legal Assistance in Criminal Matters (the "Treaty") which was initialed on November 19, 1997, in Washington.

In connection with the Treaty, the Embassy notes that during its negotiation the U.S. delegation agreed to delete from Article 3(1) its proposal for the inclusion of an [39] express reference to a "political offense" exception among the bases for denial of assistance in the Treaty. In so doing, the United States took into account the view of the Egyptian delegation that the term "political offense" is not used in Egyptian law and that Article 3(1)(b) of the Treaty provided an adequate basis upon which to deny assistance requests in cases the United States would consider "political offenses." Article 3(1)(b) permits each Party to deny assistance if the execution of the request would prejudice the "security or essential interests" of the requested state. The Embassy hereby confirms that it is the view of the United States that Article 3(1)(b) is sufficient to meet the concerns of the United States in this area, and the United States will implement the Treaty accordingly.

Embassy of the United States of America

Cairo, April 22, 1998

U.S. DEPARTMENT OF STATE OFFICE OF LANGUAGE SERVICES  
Translating Division

LS No. JIP0619991897

SK

Arabic

Ministry of Foreign Affairs

Deputy Assistant Minister for Treaty Affairs

10/3/1998

Outgoing Number: 2274 + 1

The Ministry of Foreign Affairs of the Arab Republic of Egypt, the office of the Deputy Assistant Minister for International Treaty Affairs, extends its best regards to the Embassy of the United States of America in Cairo. This is in reference to the memorandum from the esteemed Embassy, memorandum number 430, dated 3/31/1998, regarding Paragraph 1.b. of Article Three of the Mutual Legal Assistance Treaty on Criminal Matters, which was signed by both countries on 5/3/1998. (A copy of the Embassy's memorandum, which is dated 4/22/1998, was sent to the Ministry of Justice of the Arab Republic of Egypt.) The Ministry of Foreign Affairs of the Arab Republic of Egypt has the honor of attaching herewith a copy of a memorandum dealing with that issue. The memorandum, memorandum number 193, dated 8/1/1998, was sent to us by the Ministry of Justice.

The Ministry of Foreign Affairs of the Arab Republic of Egypt, the office of the Deputy Assistant Minister for International Treaty Affairs, avails itself of this opportunity to extend to the esteemed Embassy its highest regard and appreciation.

[signature]

[illegible stamp]

To the Embassy of the United States of America in Cairo

U.S. DEPARTMENT OF STATE OFFICE OF LANGUAGE SERVICES

Translating Division

LS No. JIP0619991897

SK

Arabic

Arab Republic of Egypt

Ministry of Justice

Bureau of Legislative Affairs

205/1 General

Attachments: \_\_\_\_

Record Number: 193 / 8/1/98

Ambassador Ezzat Sa'd

Deputy Assistant Minister for International Agreements Affairs

[Dear Ambassador Sa'd:]

This is in reference to letter number 430, dated 4/22/1998, from the Embassy of the United States of America in Cairo concerning the Mutual Legal Assistance Treaty [LAT] in criminal matters between the government of the Arab Republic of Egypt and the United States of America.

We wish to inform you that the Egyptian side understands the reasons behind the deletion of the term, "political offenses," from the draft treaty. Both sides had agreed to that deletion during the negotiations because the term, "political offenses," is not defined in the provisions of Egypt's criminal code. Moreover, Paragraph 1.b. of Article Three makes reference to that term unnecessary. Hence, both

parties are entitled to deny requests for assistance if [uch requests] have a bearing on the security or interests of the Requested State.

This is for your information. We ask that you kindly notify the American party.

Respectfully yours,

[Signature]

Counselor Dr. Essam Ahmad Muhammad  
Chief, Department of Legislation

8/1/1998

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