

TREATY BETWEEN CANADA AND THE ORIENTAL REPUBLIC OF URUGUAY ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE ORIENTAL REPUBLIC OF URUGUAY,

DESIRING to improve the effectiveness of both countries in the investigation and prosecution of crime through cooperation and mutual assistance in criminal matters,

HAVE AGREED, on the basis of the principles of national sovereignty and equality of rights and mutual benefits, to conclude a Mutual Legal Assistance Treaty, as follows:

PART I - GENERAL PROVISIONS

ARTICLE 1

OBLIGATION TO GRANT MUTUAL ASSISTANCE

1. The Contracting Parties shall, in accordance with this Treaty, grant each other the widest measure of mutual assistance in criminal matters.
2. Mutual assistance for the purpose of paragraph 1 shall be any assistance given by the Requested State in respect of investigations or proceedings in the Requesting State in a criminal matter.
3. Criminal matters for the purpose of paragraph 1 mean, for the Oriental Republic of Uruguay, investigations and proceedings relating to any conduct defined as a crime by criminal law, and, for Canada, investigations or proceedings relating to any offence created by a law of Parliament which may be prosecuted by indictment.
4. Assistance shall be provided without regard to whether the conduct which is the subject of investigation, prosecution or proceedings in the Requesting State would constitute an offence under the laws of the Requested State, except in cases provided for in Articles 12 and 13. Nevertheless, the Requested State, in the latter cases, may authorize assistance to the extent permitted by its laws.
5. Assistance shall include:
 - (a) location of persons and objects, including their identification;
 - (b) service of documents, including documents seeking the attendance of persons;
 - (c) provision of documents, reports, information and evidence;
 - (d) taking of testimony or statements from persons;

(e) search and seizure;

(f) making detained persons and others available to give evidence or assist investigations;

(g) measures to locate, restrain and forfeit the proceeds of crime; and

(h) other assistance consistent with the objects of this Treaty and not prohibited by the law of the Requested State.

6. This Treaty is intended solely for mutual legal assistance between the Parties. Therefore, the provisions of this Treaty shall not confer rights on any private persons to obtain, suppress, or exclude any evidence or to impede the execution of a request for assistance.

ARTICLE 2

EXECUTION OF REQUESTS

1. Requests for assistance shall be executed promptly in accordance with the law of the Requested State and, insofar as it is not prohibited by that law, in the manner requested by the Requesting State.

2. The Requested State shall, upon request, inform the Requesting State of the time and place of execution of the request for assistance.

ARTICLE 3

REFUSAL OR POSTPONEMENT OF ASSISTANCE

1. Assistance may be refused if,

(a) in the opinion of the Requested State, the execution of the request would impair its sovereignty, security, public order or essential public interest, or prejudice the safety of any person;

(b) the request relates to an offence under military law which would not be an offence under ordinary criminal law;

(c) the request relates to an offence that the Requested State considers to be political or related to a political offence or as being prosecuted for political reasons;

(d) the request relates to a tax offence. However, assistance shall be provided if the offence committed is the willful false declaration, in oral or written form, or the willful failure to make a declaration, with the goal of concealing income obtained from any other crime covered by this Treaty.

2. Assistance may be postponed by the Requested State if execution of the request would interfere with an ongoing investigation or prosecution in the Requested State.

3. The Requested State shall promptly inform the Requesting State of a decision of the Requested State not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision.

4. Before refusing to grant a request for assistance or before postponing the grant of such assistance, the Requested State shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with them.

PART II - SPECIFIC PROVISIONS

ARTICLE 4

LOCATION OR IDENTITY OF PERSONS

The competent authorities of the Requested State shall make best efforts to ascertain the location and identity of persons specified in the request.

ARTICLE 5

SERVICE OF DOCUMENTS

1. The Requested State shall serve any document transmitted to it for the purpose of service.

2. The Requesting State shall transmit a request for the service of a document pertaining to a response or appearance in the Requesting State within a reasonable time before the scheduled response or appearance.

3. The Requested State shall return a proof of service in the manner required by the Requesting State.

ARTICLE 6

DELIVERY OF OFFICIAL DOCUMENTS

At the request of the Central Authority of the Requesting State, the Central Authority of the Requested State:

(a) shall provide copies of publicly available official documents, records or information in the possession of government departments and agencies in that State; and

(b) may provide copies of official documents, records or information in the possession of a government department or agency in that State but which are not publicly available, subject to the same conditions under which such documents would be provided to its own authorities.

ARTICLE 7

AUTHENTICATION OF DOCUMENTS AND CERTIFICATIONS

1. Notwithstanding any authentication or certification necessary under its law, the Requested State shall authenticate any document or copy thereof, or provide a certification regarding any article, in the manner requested by the Requesting State, if this is not prohibited by the laws of the Requested State.
2. For purposes of facilitating the use of the aforementioned special authentications or certifications, the Requesting State shall enclose in the request the appropriate forms or describe the particular procedure to be followed.
3. No authentication or certification of documents transmitted under this Treaty is necessary unless requested.

ARTICLE 8

TESTIMONY IN THE REQUESTED STATE

1. Any person in the Requested State from whom evidence is requested pursuant to this Treaty shall be compelled to appear, in accordance with the laws of the Requested State, before the appropriate authority and to testify or produce documents, records, or articles of evidence.
2. The Requested State shall give sufficient advance notice of the date and place in which a statement will be taken or documents, records, or articles of evidence will be obtained from a witness. Whenever possible, the Central Authorities shall confer together to set a date suitable to both Parties.
3. The Requested State shall authorize the presence of such persons as specified in the request during the execution of the request, and shall authorize such persons to question the person whose testimony or evidence is being taken, in the manner provided by the laws of the Requested State.
4. Any statement obtained from a person referred to in paragraph 1 shall be sent to the Requesting State together with all documents, records or articles of evidence furnished by the witness or obtained as a consequence of, or on the occasion of the statement. Notwithstanding any authentication or certification necessary under its law, the Requested State shall authenticate any document or record produced under this article in the manner requested by the Requesting State, if this is not prohibited by the laws of the Requested State.
5. The persons present from the Requesting State at the execution of a request shall be permitted to make a verbatim transcript of the proceedings. To the extent not prohibited by the law of the Requested State, the use of technical means to make such a verbatim transcript shall be permitted.

ARTICLE 9

AVAILABILITY OF PERSONS TO GIVE EVIDENCE OR ASSIST INVESTIGATION IN THE REQUESTING STATE

1. The Requesting State may request that a person be made available to testify or to assist an investigation.
2. The Requested State shall invite the person to assist in the investigation or to appear as a witness in the proceedings and seek that person's concurrence thereto. Upon making the request to appear, the Requesting State shall indicate the travel expenses and allowances that it will pay.

ARTICLE 10

MAKING DETAINED PERSONS AVAILABLE TO GIVE EVIDENCE OR ASSIST INVESTIGATIONS

1. A person in the custody of the Requested State whose presence in the Requesting State is needed for purposes of assistance under this Treaty shall be transferred to the Requesting State for that purpose if the person and the Requested State consent to the transfer.
2. For the purposes of this Article:
 - (a) the Requesting State shall have the authority and the obligation to keep the person transferred in custody unless otherwise indicated by the Requested State;
 - (b) the Requesting State shall return the person transferred to the Requested State as soon as circumstances permit or as otherwise agreed by the Central Authorities;
 - (c) the Requested State shall not be required to initiate extradition proceedings for the return of the person transferred;
 - (d) the person transferred shall receive credit for service of the sentence imposed in the Requested State for time served in the Requesting State;
 - (e) the length of stay of a person in the Requesting State cannot exceed the period left to serve in that person's sentence or 90 days, whichever comes first, unless at the time of acceptance of the request that person and both States consent, to extend it for a reasonable time.

ARTICLE 11

SAFE CONDUCT

1. Any person present in the Requesting State in response to a request pursuant to Articles 9 or 10, subject to Article 10(2)(a), shall not be prosecuted, detained or subjected to any other restriction of personal liberty in that State for any acts or omissions which preceded that person's departure from the Requested State, nor shall that person be obliged to give evidence in any proceeding other than the proceedings to which the request relates.

2. Paragraph 1 of this Article shall cease to apply if a person, being free to leave the Requesting State, has not left it within a period of fifteen days after being officially notified that that person's attendance is no longer required or, having left that territory, has voluntarily returned.

3. Any person who fails to appear in the Requesting State may not be subjected to any sanction or compulsory measure in the Requested State.

ARTICLE 12

SEARCH AND SEIZURE AND DELIVERY OF ITEMS

1. The Requested State shall execute a request for the search, seizure, and delivery of any item, including but not limited to any document, record, or article if the appropriate authority determines that the request contains the information justifying the proposed action. The proposed action shall be taken in accordance with the procedural and substantive law of the Requested State.

2. In accordance with Article 3(4), the Requested State shall determine in accordance with its law any conditions necessary to protect third party interests in the items to be transferred.

3. The competent authority that has executed a request for search and seizure shall provide such information as may be required by the Requesting State concerning, but not limited to, the identity, condition, integrity and continuity of possession of the documents, records or things seized and the circumstances of the seizure.

4. The Requesting State shall observe any conditions imposed by the Requested State in relation to any seized documents, records or things which may be delivered to the Requesting State.

5. The Central Authorities shall consult to whatever extent necessary for the purpose of facilitating the execution of a request pursuant to this Article.

ARTICLE 13

PROCEEDS, FRUITS, OR INSTRUMENTALITIES OF CRIME

1. Either State may convey to the other any information it has on the existence of proceeds, fruits, or instrumentalities of a crime in the territory of the other State.

2. The Parties shall assist each other, to the extent permitted by their respective laws, in precautionary measures and measures for securing the proceeds, fruits, and instrumentalities of crime.

3. The Central Authorities shall consult to whatever extent necessary for the purpose of facilitating the execution of a request pursuant to this Article.

PART III - PROCEDURE

ARTICLE 14

CONTENTS OF REQUESTS

1. In all cases requests for assistance shall include:

(a) the competent authority conducting the investigation or proceedings to which the request relates;

(b) a description of the nature of the investigation or proceedings, including a copy or summary of the relevant facts and laws;

(c) the purpose for which the request is made and the nature of the assistance sought;

(d) the need, if any, for confidentiality and the reasons therefor in accordance with Article 16; and

(e) any time limit within which compliance with the request is desired.

2. Requests for assistance shall also contain the following information:

(a) where possible, the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;

(b) where necessary, details of any particular procedure or requirement that the Requesting State wishes to be followed and the reasons therefor;

(c) in the case of requests for the taking of evidence or search and seizure, a statement indicating the basis for belief that evidence may be found in the jurisdiction of the Requested State;

(d) in the case of requests to take evidence from a person, a statement as to whether sworn or affirmed statements are required, and a description of the subject matter of the evidence or statement sought;

(e) in the case of lending of exhibits, the person or class of persons who will have custody of the exhibit, the place to which the exhibit is to be removed, any tests to be conducted and the date by which the exhibit will be returned; and

(f) in the case of making detained persons available, the person or class of persons who will have custody during the transfer, the place to which the detained person is to be transferred and the date of that person's return.

3. If the Requested State considers that the information contained in the request is not sufficient to enable the request to be dealt with, that Party may request that additional details be furnished.

4. A request shall be made in writing. In urgent circumstances or where otherwise permitted by the Requested State, a request may be made orally but shall be confirmed in writing within ten days thereafter.

ARTICLE 15

CENTRAL AUTHORITIES

1. Central Authorities shall transmit and receive all requests and responses thereto for the purposes of this Treaty. The Central Authority for Canada shall be the Minister of Justice or an official designated by that Minister; the Central Authority for the Oriental Republic of Uruguay shall be the Ministry of Education and Culture.

2. The assistance covered in this Treaty shall be provided through the respective Central Authorities of the Parties.

3. Recognizing the differences between the legal systems of the Parties to this Treaty, requests made by a Central Authority pursuant to this Treaty shall be based on requests for assistance from those authorities in the Requesting State that are responsible for the investigation or prosecution of offences.

ARTICLE 16

CONFIDENTIALITY

1. The Requested State may require, after consultation with the Requesting State, that information or evidence furnished or the source of such information or evidence be kept confidential or be disclosed or used only subject to such terms and conditions as it may specify.

2. The Requesting State may require that the Requested State keep confidential a request, its contents, supporting documents and any action taken pursuant to the request except to the extent necessary to execute it.

3. Where a request is refused, confidentiality will be maintained.

4. Disclosure may be made by the Requested State, in the course of execution of a request, when the protection of the rights of interested third parties makes it necessary.

ARTICLE 17

LIMITATION ON USE OF INFORMATION OR EVIDENCE

1. The Requesting State shall not disclose or use information or evidence furnished for purposes other than those stated in the request without the prior consent of the Central Authority of the Requested State.

2. Information or evidence which has been made public in the Requesting State in accordance with paragraph 1 may thereafter be used for any purpose in both States.

ARTICLE 18

LANGUAGE

Requests and supporting documents shall be accompanied by a translation into one of the official languages of the Requested State.

ARTICLE 19

CONSULAR OFFICIALS

1. The Requesting State may request the Requested State to invite a person to voluntarily appear to give testimony or information to a consular representative in the consular premises of the Requesting State in the Requested State provided this is not prohibited by the law of the Requested State.

2. The Requested State may attend at the hearing.

ARTICLE 20

EXPENSES

1. The Requested State shall meet the cost of executing the request for assistance, except that the Requesting State shall bear:

(a) the expenses associated with conveying any person to or from the territory of the Requested State at the request of the Requesting State, and any allowance or expenses payable to that person while in the Requesting State pursuant to a request under Articles 9 or 10 of this Treaty;

(b) the expenses and fees of experts either in the Requested State or the Requesting State.

2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, for example where the costs of transferring an object would be unusually high, the Contracting Parties shall consult to determine the terms and conditions under which the requested assistance can be provided.

PART IV - FINAL PROVISIONS

ARTICLE 21

OTHER ASSISTANCE

This Treaty shall not derogate from obligations subsisting between the Contracting Parties whether pursuant to other treaties, arrangements or otherwise, or prevent the Contracting Parties providing or continuing to provide assistance to each other pursuant to other treaties, arrangements or otherwise.

ARTICLE 22

CONSULTATIONS

The Contracting Parties shall consult promptly, at the request of either Party, concerning the interpretation and the application of this Treaty.

ARTICLE 23

LIABILITY

1. The domestic law of each Party shall govern liability for damages arising from the acts of its authorities in the execution of this Treaty.
2. Neither Party shall be liable for damages that may arise from the acts committed by the authorities of the other Party in the formulation or execution of a request under this Treaty.

ARTICLE 24

ENTRY INTO FORCE AND TERMINATION

1. This Treaty shall enter into force on the first day of the second month after the date on which the Contracting Parties have notified each other that their legal requirements have been complied with.
2. Either Contracting Party may terminate this Treaty. The termination shall take effect one year from the date on which it was notified to the other Contracting Party.

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

DONE in duplicate at, this day of

1996, in the English, French and Spanish languages, each version being equally authentic.

[Christine Stewart]

FOR THE GOVERNMENT

OF CANADA

[Elbio Roselli]

FOR THE GOVERNMENT

OF THE ORIENTAL REPUBLIC

OF URUGUAY