

Model Treaty on Mutual Assistance in Criminal Matters*

(Adopted by General Assembly resolution 45/117,
subsequently amended by General Assembly resolution 53/112)

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A/RES/45/117

68th plenary meeting

14 December 1990

The General Assembly,

Bearing in mind the Milan Plan of Action, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the General Assembly in its resolution 40/32 of 29 November 1985,

Bearing in mind also the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, principle 37 of which stipulates that the United Nations should prepare model instruments suitable for use as international and regional conventions and as guides for national implementing legislation,

Recalling resolution 1 of the Seventh Congress, on organized crime, in which Member States were urged, *inter alia*, to increase their activity at the international level in order to combat organized crime, including, as appropriate, entering into bilateral treaties on extradition and mutual legal assistance,

Recalling also resolution 23 of the Seventh Congress, on criminal acts of a terrorist character, in which all States were called upon to take steps to strengthen co-operation particularly, *inter alia*, in the area of mutual legal assistance,

Recalling further the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,

Acknowledging the valuable contributions to the development of a model treaty on mutual assistance in criminal matters that Governments, non-governmental organizations and individual experts have made, in particular the Government of Australia and the International Association of Penal Law,

Gravely concerned about the escalation of crime, both national and transnational,

Convinced that the establishment of bilateral and multilateral arrangements for mutual assistance in criminal matters will greatly contribute to the development of more effective international co-operation for the control of criminality,

Conscious of the need to respect human dignity and recalling the rights conferred upon every person involved in criminal proceedings, as embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,

Recognizing the importance of a model treaty on mutual assistance in criminal matters as an effective way of dealing with the complex aspects and serious consequences of crime, especially in its new forms and dimensions,

1. *Adopts* the Model Treaty on Mutual Assistance in Criminal Matters together with the Optional Protocol thereto, contained in the annex to the present resolution, as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral agreements aimed at improving co-operation in matters of crime prevention and criminal justice;

2. *Invites* Members States, if they have not yet established treaty relations with other States in the matter of mutual assistance in criminal matters, or if they wish to revise existing treaty relations, to take into account, whenever doing so, the Model Treaty;
3. *Urges* all States to strengthen further international co-operation and mutual assistance in criminal justice;
4. *Requests* the Secretary-General to bring the present resolution, with the Model Treaty and the Optional Protocol thereto, to the attention of Governments;
5. *Urges* Member States to inform the Secretary-General periodically of efforts undertaken to establish mutual assistance arrangements in criminal matters;
6. *Requests* the Committee on Crime Prevention and Control to review periodically the progress attained in this field;
7. *Also requests* the Committee on Crime Prevention and Control, where requested, to provide guidance and assistance to Member States in the development of legislation which would enable giving effect to the obligations which will be contained in such treaties as are to be negotiated on the basis of the Model Treaty;
8. *Invites* Member States, on request, to make available to the Secretary-General the provisions of their legislation on mutual assistance in criminal matters so that these may be made available to those Member States desiring to enact or further develop legislation in this field .

A/RES/53/112

85th plenary meeting

9 December 1998

The General Assembly,

Bearing in mind that the United Nations model treaties on international cooperation in criminal matters provide important tools for the development of international cooperation,

Convinced that existing arrangements governing international cooperation in criminal justice must be regularly reviewed and revised to ensure that the specific contemporary problems of fighting crime are effectively addressed,

Bearing in mind that developing countries and countries with economies in transition may lack the resources for developing and implementing treaties on mutual assistance in criminal matters,

Convinced that complementing and supplementing the United Nations model treaties will contribute to increased efficiency in combating criminality,

Recalling its resolution 45/117 of 14 December 1990, by which it adopted the Model Treaty on Mutual Assistance in Criminal Matters, annexed to that resolution,

Recalling also its resolution 52/88 of 12 December 1997,

Commending the work of the Intergovernmental Expert Group Meeting on Mutual Assistance in Criminal Matters, held at Arlington, Virginia, United States of America, from 23 to 26 February 1998, to implement in part resolution 52/88 by proposing complementary provisions for the Model Treaty, elements for inclusion in model legislation on mutual assistance in criminal matters, and training and technical assistance for national officials engaged in that field,

Commending also the Government of the United States of America for hosting the Intergovernmental Expert Group Meeting, for its substantial contribution to the organization of the Meeting and for the support given by the National Institute of Justice of the United States Department of Justice through the programme of the United Nations On-line Crime and Justice Clearing House,

1. *Welcomes* the report of the Intergovernmental Expert Group Meeting on Mutual Assistance in Criminal Matters, held at Arlington, Virginia, United States of America, from 23 to 26 February 1998;¹
2. *Decides* that the Model Treaty on Mutual Assistance in Criminal Matters should be complemented by the provisions set forth in annex I to the present resolution;
3. *Encourages* Member States, within the framework of national legal systems, to enact effective legislation on mutual assistance, and calls upon the international community to give all possible assistance in order to contribute to the achievement of that goal;
4. *Requests* the Secretary-General to elaborate, in consultation with Member States, for submission to the Commission on Crime Prevention and Criminal Justice, model legislation on mutual assistance in criminal matters, in order to enhance effective cooperation between States, taking into account the elements recommended by the Intergovernmental Expert Group for inclusion in such model legislation, which are set forth in annex II to the present resolution;
5. *Invites* Member States to take into account the Model Treaty in negotiating treaties at the bilateral, regional or multilateral level, as appropriate;
6. *Also invites* Member States to consider, where applicable and within the framework of national legal systems, the following measures in the context of the application of treaties on mutual assistance in criminal matters or other arrangements for such mutual assistance:

¹ E/CN.15/1998/7, annex.

(a) Establishing or designating a national central authority or authorities to process requests for assistance;

(b) Undertaking regular reviews of their treaties on mutual assistance in criminal matters or other arrangements and implementing legislation, as well as taking other necessary measures for the purpose of rendering such arrangements and legislation more efficient and effective in combating established and emerging forms of crime;

(c) Concluding asset-sharing arrangements as a means of enabling forfeited proceeds of crime to be used to strengthen the capacity of national criminal justice systems and contributing a part of such proceeds to programmes such as those aimed at enhancing national capacities for fighting crime in developing countries and in countries with economies in transition, paying due consideration to the rights of bona fide third parties;

(d) Making use of videoconferencing and other modern means of communication for, *inter alia*, the transmission of requests, consultation between central authorities, the taking of testimony and statements, and training;

7. *Encourages* Member States to promote, on a bilateral, regional or worldwide basis, measures to improve the skills of officials in order to strengthen mutual assistance mechanisms, such as specialized training and, whenever possible, secondment and exchanges of relevant personnel, and to consider the use of videoconferencing and other modern means of communication for training purposes;

8. *Reiterates its invitation* to Member States to provide to the Secretary-General copies of relevant laws and information on practices related to international cooperation in criminal matters and, in particular, to mutual assistance in criminal matters, as well as updated information on central authorities designated to deal with requests;

9. *Requests* the Secretary-General:

(a) To update and disseminate regularly the information mentioned in paragraph 8 above and, in particular, to prepare, for use by Member States, a directory of central authorities responsible for mutual legal assistance, drawing on the information already collected during the Intergovernmental Expert Group Meeting;

(b) To continue to provide advisory and technical cooperation services to Member States requesting assistance in drafting and implementing appropriate national legislation and in developing and implementing bilateral, subregional, regional or international treaties on mutual assistance in criminal matters, drawing on the expertise of Member States as appropriate;

(c) To provide, in cooperation with interested Member States and relevant intergovernmental organizations, training in mutual assistance law and practice for personnel in appropriate governmental agencies and for central authorities of requesting Member States in an effort to develop the necessary skills and to

improve communication and cooperation aimed at enhancing the effectiveness of mutual assistance mechanisms;

10. *Also requests* the Secretary-General, in cooperation with interested Member States, relevant intergovernmental organizations and the institutes constituting the United Nations Crime Prevention and Criminal Justice Programme network, to develop appropriate training materials for use in providing to requesting Member States the technical assistance referred to above;

11. *Commends* the International Institute of Higher Studies in Criminal Sciences of Siracusa, Italy, for its offer to organize and host up to two training seminars for mutual assistance officials, and invites interested Member States to provide voluntary contributions to offset the travel costs of officials from developing countries and from countries with economies in transition and to make substantive contributions to the seminars;

12. *Urges* Member States and funding agencies to assist the Secretary-General in implementing the present resolution through voluntary contributions to the United Nations Crime Prevention and Criminal Justice Fund;

13. *Requests* the Secretary-General to ensure the full implementation of the provisions of the present resolution.

ANNEX I

Model Treaty on Mutual Assistance in Criminal Matters

The _____ and the

Desirous of extending to each other the widest measure of co-operation to combat crime,

Have agreed as follows:

Article 1

Scope of application²

1. The Parties shall, in accordance with the present Treaty, afford to each other the widest possible measure of mutual assistance in investigations or court proceedings in respect of offences the punishment of which, at the time of the

² Additions to the scope of assistance to be provided, such as provisions covering information on sentences passed on nationals of the Parties, can be considered bilaterally. Obviously, such assistance must be compatible with the law of the requested State.

request for assistance, falls within the jurisdiction of the judicial authorities of the requesting State.

2. Mutual assistance to be afforded in accordance with the present Treaty may include:

- (a) Taking evidence or statements from persons;
- (b) Assisting in the availability of detained persons or others to give evidence or assist in investigations;
- (c) Effecting service of judicial documents;
- (d) Executing searches and seizures;
- (e) Examining objects and sites;
- (f) Providing information and evidentiary items;
- (g) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records.

3. The present Treaty does not apply to:

- (a) The arrest or detention of any person with a view to the extradition of that person;
- (b) The enforcement in the requested State of criminal judgments imposed in the requesting State except to the extent permitted by the law of the requested State and **article 18 of** the present Treaty;
- (c) The transfer of persons in custody to serve sentences;
- (d) The transfer of proceedings in criminal matters.

Article 2³

Other arrangements

Unless the Parties decide otherwise, the present Treaty shall not affect obligations subsisting between them whether pursuant to other treaties or arrangements or otherwise.

Article 3

Designation of **central** authorities

Each Party shall designate and indicate to the other Party a **central** authority or authorities by or through which requests for the purpose of the present Treaty should be made or received.⁴

³ Article 2 recognizes the continuing role of informal assistance between law enforcement agencies and associated agencies in different countries.

⁴ **Countries may wish to consider providing for direct communications between central authorities and for the central authorities to play an active role in ensuring the speedy execution of requests, controlling quality and setting priorities. Countries**

Article 4⁵

Refusal of assistance

1. Assistance may be refused if:⁶
 - (a) The requested State is of the opinion that the request, if granted, would prejudice its sovereignty, security, public order (*ordre public*) or other essential public interest;
 - (b) The offence is regarded by the requested State as being of a political nature;
 - (c) There are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting a person on account of that person's race, sex, religion, nationality, ethnic origin or political opinions or that that person's position may be prejudiced for any of those reasons;
 - (d) The request relates to an offence the prosecution of which in the requesting State would be incompatible with the requested State's law on double jeopardy (*ne bis in idem*);
 - (e) The assistance requested requires the requested State to carry out compulsory measures that would be inconsistent with its law and practice had the offence been the subject of investigation or prosecution under its own jurisdiction;
 - (f) The act is an offence under military law, which is not also an offence under ordinary criminal law.
2. Assistance shall not be refused solely on the ground of secrecy of banks and similar financial institutions.
3. The requested State may postpone the execution of the request if its immediate execution would interfere with an ongoing investigation or prosecution in the requested State.
4. Before refusing a request or postponing its execution, the requested State shall consider whether assistance may be granted subject to certain conditions. If

may also wish to agree that the central authorities are not the exclusive channel for assistance between the Parties and that the direct exchange of information should be encouraged to the extent permitted by domestic law or arrangements.

⁵ Article 4 provides an illustrative list of the grounds for refusal.

⁶ Some countries may wish to delete or modify some of the provisions or include other grounds for refusal, such as those related to the nature of the offence (e.g. fiscal), the nature of the applicable penalty (e.g. capital punishment), requirements of shared concepts (e.g. double jurisdiction, no lapse of time) or specific kinds of assistance (e.g. interception of telecommunications, performing deoxyribonucleic-acid (DNA) tests). **Countries may wish, where feasible, to render assistance, even if the act on which the request is based is not an offence in the requested State (absence of dual criminality). Countries may also consider restricting the requirement of dual criminality to certain types of assistance, such as search and seizure.**

the requesting State accepts assistance subject to these conditions, it shall comply with them.⁷

5. Reasons shall be given for any refusal or postponement of mutual assistance.

Article 5

Content of requests

1. Requests for assistance shall include:⁸
 - (a) The name of the requesting office and the competent authority conducting the investigation or court proceedings to which the request relates;
 - (b) The purpose of the request and a brief description of the assistance sought;
 - (c) A description of the facts alleged to constitute the offence and a statement or text of the relevant laws, except in cases of a request for service of documents;
 - (d) The name and address of the person to be served, where necessary;
 - (e) The reasons for and details of any particular procedure or requirement that the requesting State wishes to be followed, including a statement as to whether sworn or affirmed evidence or statements are required;
 - (f) Specification of any time-limit within which compliance with the request is desired;
 - (g) Such other information as is necessary for the proper execution of the request.
2. Requests, supporting documents and other communications made pursuant to the present Treaty shall be accompanied by a translation into the language of the requested State or another language acceptable to that State.⁹
3. If the requested State considers that the information contained in the request is not sufficient to enable the request to be dealt with, it may request additional information.

⁷ States should consult, in accordance with article 21, before assistance is refused or postponed.

⁸ This list can be reduced or expanded in bilateral negotiations.

⁹ Countries may wish to provide that the request may be made by modern means of communication, including, in particularly urgent cases, verbal requests that are confirmed in writing forthwith.

Article 6¹⁰

Execution of requests

Subject to article 20 of the present Treaty, requests for assistance shall be carried out promptly, in the manner provided for by the law and practice of the requested State. To the extent consistent with its law and practice, the requested State shall carry out the request in the manner specified by the requesting State.¹¹

Article 7

Return of material to the requested State

Any property, as well as original records or documents, handed over to the requesting State under the present Treaty shall be returned to the requested State as soon as possible unless the latter waives its right of return thereof.

Article 8¹²

Limitation on use

Unless otherwise agreed, the requesting State shall not, without the consent of the requested State, use or transfer information or evidence provided by the requested State for investigations or proceedings other than those stated in the request. However, in cases where the charge is altered, the material provided may be used in so far as the offence, as charged, is an offence in respect of which mutual assistance could be provided under the present Treaty.

¹⁰ More detailed provisions may be included concerning the provision of information on the time and place of execution of the request and requiring the requested State to inform promptly the requesting State in cases where significant delay is likely to occur or where a decision is made not to comply with the request and the reasons for refusal.

¹¹ **The requested State should secure such orders, including judicial orders, as may be necessary for the execution of the request. Countries may also wish to agree, in accordance with national legislation, to represent or act on behalf or for the benefit of the requesting State in legal proceedings necessary to secure such orders.**

¹² Some countries may wish to omit article 8 or modify it, e.g. restrict it to fiscal offences, or restrict use of evidence only where the requested State makes an express request to that effect.

Article 9

Protection of confidentiality¹³

Upon request:

- (a) The requested State shall use its best endeavours to keep confidential the request for assistance, its contents and its supporting documents as well as the fact of granting of such assistance. If the request cannot be executed without breaching confidentiality, the requested State shall so inform the requesting State, which shall then determine whether the request should nevertheless be executed;
- (b) The requesting State shall keep confidential evidence and information provided by the requested State, except to the extent that the evidence and information is needed for the investigation and proceedings described in the request.

Article 10

Service of documents¹⁴

1. The requested State shall effect service of documents that are transmitted to it for this purpose by the requesting State.
2. A request to effect service of summonses shall be made to a requested State not less than [...] days before the date on which the appearance of a person is required. In urgent cases, the requested State may waive the time requirement.

¹³ Provisions relating to confidentiality will be important for many countries but may present problems to others. The nature of the provisions in individual treaties can be determined in bilateral negotiations.

¹⁴ More detailed provisions relating to the service of documents, such as writs and judicial verdicts, can be determined bilaterally. Provisions may be desired for the service of documents by mail or other manner and for the forwarding of proof of service of the documents. For example, proof of service could be given by means of a receipt dated and signed by the person served or by means of a declaration made by the requested State that service has been effected, with an indication of the form and date of such service. One or other of these documents could be sent promptly to the requesting State. The requested State could, if the requesting State so requests, state whether service has been effected in accordance with the law of the requested State. If service could not be effected, the reasons could be communicated promptly by the requested State to the requesting State.

¹⁵ Depending on travel distance and related arrangements.

Article 11¹⁶

Obtaining of evidence

1. The requested State shall, in conformity with its law and upon request, take the sworn or affirmed testimony, or otherwise obtain statements of persons or require them to produce items of evidence for transmission to the requesting State.
2. Upon the request of the requesting State, the parties to the relevant proceedings in the requesting State, their legal representatives and representatives of the requesting State may, subject to the laws and procedures of the requested State, be present at the proceedings.¹⁷

Article 12

Right or obligation to decline to give evidence

1. A person who is **called upon** to give evidence in the requested or requesting State may decline to give evidence where either:
 - (a) The law of the requested State permits or requires that person to decline to give evidence in similar circumstances in proceedings originating in the requested State; or
 - (b) The law of the requesting State permits or requires that person to decline to give evidence in similar circumstances in proceedings originating in the requesting State.
2. If a person claims that there is a right or obligation to decline to give evidence under the law of the other State, the State where that person is present shall, with respect thereto, rely on a certificate of the competent authority of the other State as evidence of the existence or non-existence of that right or obligation.¹⁸

¹⁶ Article 11 is concerned with the obtaining of evidence in judicial proceedings, the taking of a person's statement by a less formal process and the production of items of evidence.

¹⁷ **Wherever possible and consistent with the fundamental principles of domestic law, the Parties should permit testimony, statements or other forms of assistance to be given via video link or other modern means of communication and should ensure that perjury committed under such circumstances is a criminal offence.**

¹⁸ **Some countries may wish to provide that a witness who is testifying in the requesting State may not refuse to testify on the basis of a privilege applicable in the requested State.**

Article 13

Availability of persons in custody to give evidence or to assist in investigations¹⁹

1. Upon the request of the requesting State, and if the requested State agrees and its law so permits, a person in custody in the latter State may, subject to his or her consent, be temporarily transferred to the requesting State to give evidence or to assist in the investigations.
2. While the person transferred is required to be held in custody under the law of the requested State, the requesting State shall hold that person in custody and shall return that person in custody to the requested State at the conclusion of the matter in relation to which transfer was sought or at such earlier time as the person's presence is no longer required.
3. Where the requested State advises the requesting State that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person referred to in article 14 of the present Treaty.

Article 14

Availability of other persons to give evidence or assist in investigations²⁰

1. The requesting State may request the assistance of the requested State in inviting a person:
 - (a) To appear in proceedings in relation to a criminal matter in the requesting State unless that person is the person charged; or
 - (b) To assist in the investigations in relation to a criminal matter in the requesting State.
2. The requested State shall invite the person to appear as a witness or expert in proceedings or to assist in the investigations. Where appropriate, the requested State shall satisfy itself that satisfactory arrangements have been made for the person's safety.
3. The request or the summons shall indicate the approximate allowances and the travel and subsistence expenses payable by the requesting State.
4. Upon request, the requested State may grant the person an advance, which shall be refunded by the requesting State.

¹⁹ In bilateral negotiations, provisions may also be introduced to deal with such matters as the modalities and time of restitution of evidence and the setting of a time-limit for the presence of the person in custody in the requesting State.

²⁰ Provisions relating to the payment of the expenses of the person providing assistance are contained in paragraph 3 of article 14. Additional details, such as provision for the payment of costs in advance, can be the subject of bilateral negotiations.

Article 15²¹

Safe conduct

1. Subject to paragraph 2 of the present article, where a person is in the requesting State pursuant to a request made under article 13 or 14 of the present Treaty:

(a) That person shall not be detained, prosecuted, punished or subjected to any other restrictions of personal liberty in the requesting State in respect of any acts or omissions or convictions that preceded the person's departure from the requested State;

(b) That person shall not, without that person's consent, be required to give evidence in any proceeding or to assist in any investigation other than the proceeding or investigation to which the request relates.

2. Paragraph 1 of the present article shall cease to apply if that person, being free to leave, has not left the requesting State within a period of [15] consecutive days, or any longer period otherwise agreed on by the Parties, after that person has been officially told or notified that his or her presence is no longer required or, having left, has voluntarily returned.

3. A person who does not consent to a request pursuant to article 13 or accept an invitation pursuant to article 14 shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure, notwithstanding any contrary statement in the request or summons.

Article 16

Provision of publicly available documents and other records²²

1. The requested State shall provide copies of documents and records in so far as they are open to public access as part of a public register or otherwise, or in so far as they are available for purchase or inspection by the public.

2. The requested State may provide copies of any other document or record under the same conditions as such document or record may be provided to its own law enforcement and judicial authorities.

²¹ The provisions in article 15 may be required as the only way of securing important evidence in proceedings involving serious national and transnational crime. However, as they may raise difficulties for some countries, the precise content of the article, including any additions or modifications, can be determined in bilateral negotiations.

²² The question may arise as to whether this should be discretionary. This provision can be the subject of bilateral negotiations.

Article 17

Search and seizure²³

The requested State shall, in so far as its law permits, carry out requests for search and seizure and delivery of any material to the requesting State for evidentiary purposes, provided that the rights of *bona fide* third parties are protected.

Article 18*

Proceeds of crime²⁴

1. In the present **article** "proceeds of crime" means any property suspected, or found by a court, to be property directly or indirectly derived or realized as a result of the commission of an offence or to represent the value of property and other benefits derived from the commission of an offence.
2. The requested State shall, upon request, endeavour to ascertain whether any proceeds of the alleged crime are located within its jurisdiction and shall notify the requesting State of the results of its inquiries. In making the request, the requesting State shall notify the requested State of the basis of its belief that such proceeds may be located within its jurisdiction.
3. In pursuance of a request made under paragraph 2 of the present **article**, the requested State shall endeavour to trace assets, investigate financial dealings, and obtain other information or evidence that may help to secure the recovery of proceeds of crime.
4. Where, pursuant to paragraph 2 of the present **article**, suspected proceeds of crime are found, the requested State shall upon request take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds of crime, pending a final determination in respect of those proceeds by a court of the requesting State.
5. The requested State shall, to the extent permitted by its law, give effect to or permit enforcement of a final order forfeiting or confiscating the proceeds of

²³ Bilateral arrangements may cover the provision of information on the results of search and seizure and the observance of conditions imposed in relation to the delivery of seized property.

* Please note that footnotes attached to this article in its previous form as the "Optional Protocol to the Model Treaty on Mutual Assistance in Criminal Matters concerning the proceeds of crime" (A/RES/45/117) were deleted in accordance with A/RES/53/112, annex I, para. 15.

²⁴ Assistance in forfeiting the proceeds of crime has emerged as an important instrument in international cooperation. Provisions similar to those outlined in the present article appear in many bilateral assistance treaties. Further details can be provided in bilateral arrangements. One matter that could be considered is the need for other provisions dealing with issues related to bank secrecy. Provision could be made for the equitable sharing of the proceeds of crime between the Contracting States or for consideration of the disposal of the proceeds on a case-by-case basis.

crime made by a court of the requesting State or take other appropriate action to secure the proceeds following a request by the requesting State.²⁵

6. The Parties shall ensure that the rights of *bona fide* third parties shall be respected in the application of the present **article**.

Article 19

Certification and authentication²⁶

A request for assistance and the documents in support thereof, as well as documents or other material supplied in response to such a request, shall not require certification or authentication.

Article 20

Costs²⁷

The ordinary costs of executing a request shall be borne by the requested State, unless otherwise determined by the Parties. If expenses of a substantial or extraordinary nature are or will be required to execute the request, the Parties shall consult in advance to determine the terms and conditions under which the request shall be executed as well as the manner in which the costs shall be borne.

Article 21

Consultation

The Parties shall consult promptly, at the request of either, concerning the interpretation, the application or the carrying out of the present Treaty either generally or in relation to a particular case.

²⁵ **The Parties might consider widening the scope of the present article by the inclusion of references to victims' restitution and the recovery of fines imposed as a sentence in a criminal prosecution.**

²⁶ The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts, and, therefore, would require a clause setting out the authentication required.

²⁷ More detailed provisions may be included. For example, the requested State would meet the ordinary costs of fulfilling the request for assistance except that the requesting State would bear (a) the exceptional or extraordinary expenses required to fulfil the request, where required by the requested State and subject to previous consultations; (b) the expenses associated with conveying any person to or from the territory of the requested State, and any fees, allowances or expenses payable to that person while in the requesting State pursuant to a request under article 11, 13 or 14; (c) the expenses associated with conveying custodial or escorting officers; and (d) the expenses involved in obtaining reports of experts.

Article 22

Final provisions

1. The present Treaty is subject to [ratification, acceptance or approval]. The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.
2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.
3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.
4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

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

DONE at _____
on _____ in
the _____ and
_____ languages, [both/all]
texts being equally authentic.

ANNEX II (General Assembly resolution 53/112)

**Elements recommended for inclusion in model legislation
on mutual assistance in criminal matters**

A. General recommendation

1. Model legislation on mutual assistance in criminal matters should reflect in statutory terms the general provisions of the Model Treaty on Mutual Assistance in Criminal Matters, together with the recommendations contained in annex I above. To the extent possible, it should provide different options for States with different legal systems. Where relevant, it should take into account provisions of the model bill on mutual assistance in criminal matters developed in 1998 by the United Nations International Drug Control Programme.

B. *Scope*

2. The model legislation should provide a full range of flexible options for assuming mutual assistance obligations. When there is a treaty on mutual assistance in criminal matters, the terms of that treaty should govern the relationship. The legislation should also permit mutual assistance to be provided without a treaty, with or without reciprocity.

C. *Jurisdiction*

3. The model legislation could provide for jurisdiction, *inter alia*:
- (a) To issue judicial orders necessary for executing mutual assistance requests;
 - (b) To authorize the requested State to act on behalf or for the benefit of, or to represent the interests of, the requesting State in legal proceedings necessary for executing mutual assistance requests;
 - (c) To punish perjury committed during mutual assistance, in particular perjury committed during videoconferencing.

D. *Procedure*

4. The model legislation should include options for procedures dealing with both incoming and outgoing requests for assistance in criminal matters. Such procedures should be in conformity, wherever applicable, with international and regional human rights instruments. Where no treaty provision is applicable, the legislation could also contain provisions on specific forms of mutual assistance, including testimony and other forms of cooperation carried out via video link, cooperation in asset seizure and forfeiture and the temporary transfer of witnesses in custody.

5. The model legislation could provide for the establishment of a central authority or authorities for the receipt and transmission of requests and the provision of advice and assistance to relevant authorities. The legislation could also specify the extent of the central authority's powers.

E. *Communications*

6. Where no treaty provision is applicable, the legislation should set forth the means of communicating between the requesting State and the requested State, allowing for the use of the most modern forms of communication.