

STATUTORY INSTRUMENTS

2003, No. 15

**RESOLUTION OF THE HOUSE OF REPRESENTATIVES RATIFYING
THE INTER-AMERICAN CONVENTION ON MUTUAL ASSISTANCE
IN CRIMINAL MATTERS.**

WHEREAS the ratification of Treaties Act Cap. 364 provides in section 3(1) that where a Treaty to which Antigua and Barbuda becomes a party in one which affects or concerns the relationship of Antigua and Barbuda with any international organization, agency or association or similar body, such treaty shall not enter into force with respect to Antigua and Barbuda unless it has been ratified or its ratification has been authorized or approved in accordance with the provisions of the Act; and

WHEREAS the Inter-American Convention on Mutual Assistance in Criminal Matters to which Antigua and Barbuda is a party is an international agreement which is governed by international law; and

WHEREAS the said Convention affects the relationship of Antigua and Barbuda with an international organization, namely the Organization of American States;

NOW, THEREFORE, BE IT RESOLVED by this Honourable House that the Inter-American Convention on Mutual Assistance in Criminal Matters which is attached hereto as a Schedule, be ratified as a Treaty under section 3(1)(c) of the Ratification of Treaties Act.

Passed by the House of Representatives this 14th day of March, 2003.

Bridget Harris,
Speaker.

Sylvia Walker,
Clerk to the House of Representatives.

**INTER-AMERICAN CONVENTION ON MUTUAL ASSISTANCE
IN CRIMINAL MATTERS**

PREAMBLE

WHEREAS:

The Charter of the Organization of American States, in Article 2.e, establishes that an essential objective of the American states is "to seek the solution of political, juridical, and economic problems that may arise among them"; and

The adoption of common rules in the field of mutual assistance in criminal matters will contribute to the attainment of this goal,

**THE MEMBER STATES OF THE ORGANIZATION
OF AMERICAN STATES**

Do hereby adopt the following Inter-American Convention on Mutual Assistance in Criminal Matters:

CHAPTER I

GENERAL PROVISIONS

Article 1

PURPOSE OF THE CONVENTION

The states parties undertake to render to one another mutual assistance in criminal matters, in accordance with the provisions of this convention.

Article 2

SCOPE AND APPLICATION OF THE CONVENTION

The states parties shall render to one another mutual assistance in investigations, prosecutions, and proceedings that pertain to crimes over which the requesting state has jurisdiction at the time the assistance is requested.

This convention does not authorize any state party to undertake, in the territory of another state party, the exercise of jurisdiction or the performance of functions that are placed within the exclusive purview of the authorities of that other party by its domestic law.

This convention applies solely to the provision of mutual assistance among states parties. Its provisions shall not create any right on the part of any private

person to obtain or exclude any evidence or to impede execution of any request for assistance.

Article 3

CENTRAL AUTHORITY

Each state shall designate a central authority at the time of signature or ratification of this convention or accession hereto.

The central authorities shall be responsible for issuing and receiving requests for assistance.

The central authorities shall communicate directly with one another for all purposes of this convention.

Article 4

In view of the diversity of the legal systems of the states parties, the assistance to which this convention refers shall be based upon requests for cooperation from the authorities responsible for criminal investigation or prosecution in the requesting state.

Article 5

DOUBLE CRIMINALITY

The assistance shall be rendered even if the act that gives rise to it is not punishable under the legislation of the requested state.

When the request for assistance pertains to the following measures: *(a)* immobilization and sequestration of property and *(b)* searches and seizures, including house searches, the requested state may decline to render the assistance if the act that gives rise to the request is not punishable under its legislation.

Article 6

For the purposes of this convention, the act that gives rise to the request must be punishable by one year or more of imprisonment in the requesting state.

Article 7

SCOPE OF APPLICATION

The assistance envisaged under this convention shall include the following Procedures among others:

- (a) notification of rulings and judgments;
- (b) taking of testimony or statements from persons;
- (c) summoning of witnesses and expert witnesses to provide testimony;
- (d) immobilization and sequestration of property, freezing of assets, and assistance in procedures related to seizures;
- (e) searches or seizures;
- (f) examination of objects and places;
- (g) service of judicial documents;
- (h) transmittal of documents, reports, information, and evidence;
- (i) transfer of detained persons for the purpose of this convention; and
- (j) any other procedure provided there is an agreement between the requesting state and the requested state.

Article 8

MILITARY CRIMES

This convention shall not apply to crimes subject exclusively to military legislation.

Article 9

REFUSAL OF ASSISTANCE

The requested state may refuse assistance when it determines that:

- (a) the request for assistance is being used in order to prosecute a person on a charge with respect to which that person has already been sentenced or acquitted in a trial in the requesting or requested state;
- (b) the investigation has been initiated for the purpose of prosecuting, punishing, or discriminating in any way against an individual or group of persons for reason of sex, race, social status, nationality, religion, or ideology;
- (c) the request refers to a crime that is political or related to a political crime, or to a common crime prosecuted for political reasons;

- (d) the request has been issued at the request of a special or *ad hoc* tribunal;
- (e) public policy (*ordre public*), sovereignty, security, or basic public interests are prejudiced; and
- (f) the request pertains to a tax crime. Nevertheless, the assistance shall be granted if the offense is committed by way of an internationally incorrect statement, whether oral or written, or by way of an intentional failure to declare income derived from any other offense covered by this convention for the purpose of concealing such income.

CHAPTER II

REQUESTS FOR ASSISTANCE, PROCESSING AND EXECUTION

Article 10

REQUESTS FOR ASSISTANCE

Requests for assistance issued by the requesting state shall be made in writing and shall be executed in accordance with the domestic law of the requested state.

The procedures specified in the request for assistance shall be fulfilled in the manner indicated by the requesting state insofar as the law of the requested state is not violated.

Article 11

The requested state may postpone the execution of any request that has been made to it, with an explanation of its grounds for doing so, if it is necessary to continue an investigation or proceeding in progress in the requested state.

Article 12

Documents and objects delivered in compliance with a request for assistance shall be returned to the requested state as soon as possible, unless the latter decides otherwise.

Article 13

SEARCH, SEIZURE, ATTACHMENT, AND SURRENDER OF PROPERTY

The requested state shall execute requests for search, seizure, attachment, and surrender of any items, documents, records, or effects, if the competent authority determines that the request contains information that justifies the proposed ac-

tion. That action shall be subject to the procedural and substantive law of the requested state.

In accordance with the provisions of this convention, the requested state shall determine, according to its law, what requirements must be met to protect the interests held by third parties in the items that are to be transferred.

Article 14

MEASURES FOR SECURING ASSETS

The central authority of a party may convey to the central authority of any other party information it has on the existence of proceeds, fruits, or instrumentalities of a crime in the territory of that other party.

Article 15

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 the crime.

Article 16

DATE, PLACE AND MODALITY OF THE EXECUTION OF THE REQUEST FOR ASSISTANCE

The requested state shall set the date and place for execution of the request for assistance and may so inform the requesting state.

Officials and interested parties of the requesting state or their representatives may, after informing the central authority of the requested state, be present at and participate in the execution of the request for assistance, to the extent not prohibited by the law of the requested state, and provided that the authorities of the requested state have given their express consent thereto.

CHAPTER III

SERVICE OF JUDICIAL DECISIONS, JUDGMENTS, AND VERDICTS, AND APPEARANCE OF WITNESSES AND EXPERT WITNESSES

Article 17

At the request of the requesting state, the requested state shall serve notice of decisions, judgments, or other documents issued by the competent authorities of the requesting state.

Article 18**TESTIMONY IN THE REQUESTED STATE**

At the request of the requesting state, any person present in the requested state shall be summoned to appear before a competent authority, in accordance with the law of the requested state, to give testimony or to provide documents, records, or evidence.

Article 19**TESTIMONY IN THE REQUESTING STATE**

When the requesting state requests that a person appear in its territory to give testimony or a report, the requested state shall invite the witness or expert witness to appear voluntarily, without the use of threats or coercive measures, before the appropriate authority in the requesting state. If deemed necessary, the central authority of the requested state may make a written record of the individual's willingness to appear in the requesting state. The central authority of the requested state shall promptly inform the central authority of the requesting state of the response of the person.

Article 20**TRANSFER OF PERSONS SUBJECT TO
CRIMINAL PROCEEDINGS**

A person subject to criminal proceedings in the requested state whose presence in the requesting state is needed for purposes of assistance under this convention shall be transferred temporarily to the requesting state for that purpose if the person and the requested state consent to the transfer.

A person subject to criminal proceedings in the requesting state whose presence in the requested state is needed for purposes of assistance under this convention shall be transferred temporarily to the requested state if the person consents and both states agree.

The actions set forth above may be denied for the following reasons, among others:

- (a) the individual in custody or serving a sentence refuses to consent to the transfer;
- (b) as long as his presence is necessary in an investigation or criminal proceeding that is under way in the jurisdiction to which he is subject at the time;

- (c) there are other considerations, whether legal or of another nature, as determined by the competent authority of the requested or requesting state.

For purposes of this article:

- (a) the receiving state shall have the authority and the obligation to keep the transferred person in physical custody unless otherwise indicated by the sending state;
- (b) the receiving state shall return the transferred person to the sending state as soon as circumstances permit or as otherwise agreed by the central authorities of the two states;
- (c) the sending state shall not be required to initiate extradition proceedings for the return of the transferred person;
- (d) the transferred person shall receive credit toward service of the sentence imposed in the sending state for time served in the receiving state; and
- (e) the length of time spent by the person in the receiving state shall never exceed the period remaining for service of the sentence or 60 days, whichever is less, unless the person and both states agree to an extension of time.

Article 21

TRANSIT

The states parties shall render cooperation, to the extent possible, for travel through their territory of the persons mentioned in the preceding article, provided that the respective central authority has been given due advance notice and that such persons travel in the custody of agents of the requesting state.

Such prior notice shall not be necessary when air transportation is used and no regular landing is scheduled in the territory of the state party or states parties to be overflown.

Article 22

SAFE-CONDUCT

The appearance or transfer of the person who agrees to render a statement or to testify under the provisions of this convention shall require, if the person or the sending state so requests prior to such appearance or transfer, that the receiving

state grant safe-conduct under which the person, while in the receiving state, shall not:

- (a) be detained or prosecuted for offenses committed prior to his departure from the territory of the sending state;
- (b) be required to make a statement or to give testimony in proceedings not specified in the request; or
- (c) be detained or prosecuted on the basis of any statement he makes, except in case of contempt of court or perjury.

The safe-conduct specified in the preceding paragraph shall cease when the person voluntarily prolongs his stay in the territory of the receiving state for more than 10 days after his presence is no longer necessary in that state, as communicated to the sending state.

Article 23

In connection with witnesses or expert witnesses, documents containing the relevant questions, interrogatories, or questionnaires shall be forwarded to the extent possible or necessary.

CHAPTER IV

TRANSMITTAL OF INFORMATION AND RECORDS

Article 24

In cases where assistance is carried out under this convention, the requested state, upon request and in accordance with its domestic procedure, shall make available to the requesting state a copy of the public documents, records, or information held by the government agencies or departments of the requested state.

The requested state may make available copies of any document, record, or other information held by a government agency or department of that state that is not public in nature, to the same extent as and subject to the same conditions under which they would be made available to its own judicial authorities or to others responsible for application of the law. The requested state, at its own discretion, may deny, in whole or in part, any request made under the provisions of this paragraph.

Article 25

LIMITATION ON THE USE OF INFORMATION OR EVIDENCE

The requesting state may not disclose or use any information or evidence obtained in the course of application of this convention for purposes other than

those specified in the request for assistance without prior consent from the central authority of the requested state.

In exceptional cases, if the requesting state needs to disclose and use, in whole or in part, the information or evidence for purposes other than those specified, it shall request authorization therefor from the requested state, which, at its discretion, may accede to or deny that request in whole or in part.

The information or evidence that must be disclosed and used to the extent necessary for proper fulfillment of the procedure or formalities specified in the request shall not be subject to the authorization requirement set forth in this article.

When necessary, the requested state may ask that the information or evidence provided remain confidential according to conditions specified by the central authority. If the requesting party is unable to accede to such request, the central authorities shall confer in order to define mutually acceptable terms of confidentiality.

CHAPTER V

PROCEDURE

Article 26

Requests for assistance shall contain the following details:

- (a) the crime to which the procedure refers; a summary description of the essential facts of the crime, investigation, or criminal proceeding in question; and a description of the facts to which the request refers;
- (b) proceeding giving rise to the request for assistance, with a precise description of such proceeding;
- (c) where pertinent, a description of any proceeding or other special requirement of the requesting state;
- (d) a precise description of the assistance requested and any information necessary for the fulfillment of that request.

When the requested state is unable to comply with a request for assistance, it shall return the request to the requesting state with an explanation of the reason therefor.

The requested state may request additional information when necessary for fulfillment of the request under its domestic law or to facilitate such fulfillment.

When necessary, the requesting state shall proceed in accordance with the provisions of the last paragraph of Article 24 of this convention.

Article 27

Documents processed through the central authorities in accordance with this convention shall be exempt from certification or authentication.

Article 28

Requests for assistance and the accompanying documentation must be translated into an official language of the requested state.

Article 29

The requested state shall be responsible for all regular costs of executing a request in its territory, except for those listed below, which shall be borne by the requesting state:

- (a) fees for expert witnesses; and
- (b) travel costs and other expenses related to the transportation of persons from the territory of one state to that of the other.

If it appears that the processing of the request might entail unusual costs, the states parties shall confer to determine the terms and conditions under which the assistance could be rendered.

Article 30

To the extent that they find it useful and necessary for furthering the implementation of this convention, the states parties may exchange information on matters related to its application.

Article 31

The domestic law of each party shall govern liability for damages arising from the acts of its authorities in the execution of this Convention.

Neither party shall be liable for damages that may arise from the acts committed by the authorities of the other party in the formulation on execution of a request under this Convention.

CHAPTER VI
FINAL CLAUSES

Article 32

This convention shall be open for signature by the member states of the Organization of American States.

Article 33

This convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article 34

This convention shall remain open for accession by any other state. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

Article 35

Each state may make reservations to this convention at the time of signature, approval, ratification, or accession, provided that each reservation concerns at least one specific provision and is not incompatible with the object and purpose of the convention.

Article 36

This convention shall not be interpreted as affecting or restricting obligations in effect under any other international, bilateral, or multilateral convention that contains or might contain clauses governing specific aspects of international criminal judicial assistance, wholly or in part, or more favourable practices which those states might observe in the matter.

Article 37

This convention shall enter into force on the thirtieth day following the date of deposit of the second instrument of ratification.

For each state that ratifies or accedes to the convention after the deposit of the second instrument of ratification, the convention shall enter into force on the thirtieth day after deposit by such state of its instrument or accession.

Article 38

If a state party has two or more territorial units in which different systems of law govern matters addressed in this convention, it shall state at the time of signature, ratification, or accession whether this convention will apply to all of its territorial units or only to one or more of them.

Such statements may be amended by way of subsequent statements, which shall expressly indicate the territorial unit or units to which the convention shall apply. Such subsequent declarations shall be transmitted to the General Secretariat of the Organization of American States, and shall become effective thirty days after the date of their receipt.

Article 39

This convention shall remain in force indefinitely, but any of the states parties may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. After one year from the date of deposit of the instrument of denunciation, the convention shall cease to be in effect for the denouncing state, but shall remain in effect for the other states parties.

Article 40

The original instrument of this convention, the English, French, Portuguese, and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall forward authenticated copies of the text to the United Nations General Secretariat for registration and publication, in accordance with Article 102 of the United Nations Charter. The General Secretariat of the Organization of American States shall notify the member states of that Organization and those states that have acceded to the convention of the signatures and deposits of instruments of ratification, accession, and denunciation, as well as of reservations, if any. It shall also transmit to them the statements specified in Article 38 of this Convention.

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