

No. 13407

**UNION OF SOVIET SOCIALIST REPUBLICS
and
IRAQ**

**Treaty on legal assistance. Signed at Moscow on 22 June
1973**

Authentic texts : Russian and Arabic.

Registered by the Union of Soviet Socialist Republics on 24 June 1974.

**UNION DES RÉPUBLIQUES SOCIALISTES
SOVIÉTIQUES
et
IRAK**

**Traité relatif à l'entraide judiciaire. Signé à Moscou le 22 juin
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Textes authentiques : russe et arabe.

Enregistré par l'Union des Républiques socialistes soviétiques le 24 juin 1974.

[TRANSLATION — TRADUCTION]

TREATY¹ ON LEGAL ASSISTANCE BETWEEN THE UNION OF SOVIET SOCIALIST REPUBLICS AND THE REPUBLIC OF IRAQ

The Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics and the President of the Republic of Iraq, desiring to strengthen the friendly ties between the peoples of the Union of Soviet Socialist Republics and the Republic of Iraq and attaching great importance to the development of co-operation in the sphere of legal relations, have decided to conclude a Treaty on legal assistance and for that purpose have appointed as their Plenipotentiaries:

The Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics:
Mr. Vladimir Ivanovich Terebilov, Minister of Justice of the Union of Soviet Socialist Republics;

The President of the Republic of Iraq: Saleh Mahdi Amash, Ambassador Extraordinary and Plenipotentiary of the Republic of Iraq in the USSR,

Who, having exchanged their full powers, found in good and due form, have agreed as follows:

Part I. LEGAL PROTECTION AND LEGAL ASSISTANCE

Article 1. 1. Citizens of either Contracting Party shall enjoy in the territory of the other Contracting Party the same legal protection in respect of their personal and property rights as citizens of the other Party. They shall have access to authorities of the other Contracting Party having jurisdiction in civil, family and criminal cases under the same conditions as citizens of the other Party. They shall be exempt from legal costs and from the deposit of security (*cautio judicatum solvi*) under the same conditions and to the same extent as citizens of the other Party.

2. The provisions of paragraph 1 of this article shall also apply to bodies corporate.

Article 2. 1. Where a petition is filed for legal assistance and for exemption from legal costs, the competent authorities of the Contracting Party in whose territory the petitioner resides shall issue a certificate relating to his material status.

2. If the petitioner does not reside in the territory of either Contracting Party, a certificate issued by the diplomatic or consular representative of the Contracting Party of which he is a citizen shall suffice.

3. The certificate shall be issued in the language of the Contracting Party applied to or in English.

Part II. SERVICE OF DOCUMENTS AND EXECUTION OF JUDICIAL APPLICATIONS
IN CIVIL AND FAMILY CASES

Article 3. The Contracting Parties undertake to ensure co-operation in legal activities between their juridical authorities (hereinafter referred to as "authorities") in civil and family cases in accordance with the provisions of this Treaty.

¹ Came into force on 22 April 1974, i.e. 30 days after the date of the exchange of the instruments of ratification, which took place at Baghdad on 23 March 1974, in accordance with articles 43 and 44.

Such co-operation shall include the service of documents and the execution of judicial applications relating to specific acts required in connexion with judicial proceedings, such as the interrogation of witnesses, litigants and experts.

Article 4. In their co-operation in legal matters, the competent authorities of the Contracting Parties shall communicate with one another through the diplomatic channel.

Article 5. The Contracting Parties undertake to process, in accordance with their domestic legal provisions, the legal documentation and the documents to be transmitted in connexion with co-operation pursuant to this Treaty; they shall attach to such documents a translation in the language of the other Party or in English certified by the competent authorities.

Article 6. 1. An application for service of a document shall contain particulars concerning the person on whom the document is to be served, i.e., his full name, occupation, exact address and citizenship, and shall also indicate the nature of the document to be served.

The document to be served shall be drawn up in two copies, one of which shall be delivered to the recipient and the other returned upon being signed by the recipient or with confirmation of receipt or an indication that acceptance was refused.

2. The official who is authorized to effect service shall confirm service on the copy which is returned, indicating the date and manner of service or the reason why service did not take place.

3. If a document is not drawn up in the language of the Contracting Party applied to or in English and is not accompanied by a certified translation in either of those languages, the authority applied to may deliver the document to the recipient if he is willing to accept it.

Article 7. Service effected in accordance with article 6 of this Treaty shall be regarded as an act performed in the territory of the State which applied for service.

Article 8. Each Contracting Party shall have the right to serve documents on its own citizens through its diplomatic or consular missions.

Article 9. 1. In executing an application for the performance of specific acts required in connexion with judicial proceedings, the authority applied to shall follow the law of its own State. At the request of the applicant authority, the application may, however, be executed in another manner if that does not conflict with the law of the Contracting Party applied to.

2. If the authority applied to is not competent to execute the application, it shall transmit it to the competent authority.

3. The applicant authority shall, at its request, be notified of the time and place of execution of the application in order to enable the party concerned to be present when the application is executed or to authorize someone to represent him for that purpose; this shall not apply in cases where the application is executed as a matter of urgency or where the executing authority considers that the circumstances are not appropriate for the persons concerned to be present.

4. The authority applied to shall return the documents to the applicant authority. If it has not been possible for legal assistance to be provided, the authority applied to shall, in returning the documents, indicate the circumstances which prevented execution of the application.

Article 10. Acts required in connexion with judicial proceedings which are performed pursuant to a judicial application under this Treaty shall have the same legal force as similar acts performed by the competent authorities of the applicant Contracting Party.

Article 11. Legal assistance shall not be provided if its provision might be prejudicial to the sovereignty or security of the Contracting Party applied to or conflict with its fundamental legal principles.

Article 12. 1. No person of whatsoever citizenship who, in response to a summons, has appeared voluntarily as a witness or expert before a competent authority of the other Contracting Party may be prosecuted or detained in the territory of that Contracting Party for a punishable offence committed before he crossed the frontier of the applicant Contracting Party or be punished in execution of a past sentence. A witness or expert shall forfeit this protection if he fails to quit the territory of the Contracting Party in question within 15 days after being informed that his presence is not necessary. Such period of 15 days shall not be deemed to include any period of time during which the witness or expert is prevented by circumstances beyond his control from quitting the territory of the said Contracting Party.

In addition, such persons may not be prosecuted or detained in connexion with their testimony.

2. A request to call as a witness a person who is held in custody in the territory of the Party applied to may be granted on condition that such person is kept in custody and is returned, immediately after interrogation, to the Party applied to.

Article 13. Each Contracting Party shall assume all costs incurred in its territory in connexion with legal co-operation in civil and family cases.

Part III. RECOGNITION AND ENFORCEMENT OF JUDGEMENTS

Article 14. Judgements of courts and other competent authorities in civil and family cases rendered in the territory of one Contracting Party subsequent to the entry into force of this Treaty shall, if they have become final and enforceable, be recognized and enforced in the territory of the other Contracting Party. This shall also apply to final sentences in so far as relates to the payment of damages in criminal cases.

Article 15. The competent authority applied to shall not examine the judgement as to the merits. Enforcement of the judgement may be refused:

1. If the court or other authority which rendered the judgement is not competent to hear the case under the domestic law of the State in whose territory the judgement was rendered;
2. If the litigants were not duly advised to be present;
3. If recognition and enforcement of the judgement as a whole is, in the opinion of the Contracting Party applied to, contrary to the interests of public order;
4. If a judgement has been rendered by a court of the Contracting Party applied to in an action between the same litigants, in relation to the same claim and on the same grounds, and such judgement has become final, or if an action between the same litigants, in relation to the same claim and on the same grounds, was instituted in a court of the State applied to earlier than in the applicant State and is being tried in such court at the time when the application is being considered.

Article 16. Subject to compliance with the provisions of articles 14 and 15 of this Treaty, the competent authority applied to for enforcement of an arbitral award in the territory of the other Contracting Party shall not examine the award as to the merits. Enforcement of an arbitral award may be refused:

1. If, under the law of the Contracting Party in which the award is to be enforced, such a case cannot be submitted to arbitration;
2. If the arbitral award was made in a dispute which is not provided for by, or covered by the conditions of, an arbitration agreement or an arbitration clause in a treaty;
3. If the composition of the arbitral body was not in conformity with the agreement between the litigants or with an arbitration clause in a treaty or was not in conformity with the law of the State in which the arbitration took place;
4. If the litigants were not duly informed of the appointment of the arbitrator or of the arbitration proceedings;
5. If a recognition and enforcement of the award as a whole are, in the opinion of the Contracting Party in whose territory it is to be enforced, contrary to the interests of public order;
6. If the arbitral award has not become final in the State in which it was made.

Article 17. An application for enforcement of a judgement shall be accompanied by:

1. An official copy, certified by the competent authorities, of the judgement whose enforcement is sought; an application for enforcement of an arbitral award must also be accompanied by a certified copy of the agreement under which the litigants undertook to submit the dispute to arbitration;
2. The original document giving notice of the judgement which is to be enforced or an official certificate showing that the judgement was duly brought to the attention of the litigants;
3. Confirmation by the competent authority that the judgement has become final and enforceable; such confirmation shall be certified by the Ministry of Justice;
4. Where the judgement or arbitral award which is to be enforced was rendered in the absence of the litigants, confirmation that the latter were duly advised to be present at the judicial or arbitral proceedings;
5. A certified translation, in the language of the Contracting Party which is to enforce the judgement or in English, of the application and other documents referred to in the preceding paragraphs.

Article 18. Judgements accepted for enforcement by authorities of the Party by which they are to be enforced shall have the same effect with respect to enforcement as the judgements of authorities of that Party.

Article 19. Each Contracting Party shall determine which authorities are competent to hear applications for authorization of the enforcement of judgements and which procedure is to be used for appeals against the decisions of such authorities.

All such information shall be communicated to the other Contracting Party.

Part IV. SERVICE OF DOCUMENTS AND EXECUTION OF APPLICATIONS
IN CRIMINAL CASES, EXTRADITION OF OFFENDERS

Article 20. The Contracting Parties undertake to provide legal assistance to each other in criminal cases, and in particular:

1. To effect service of documents, including summonses to appear before courts and investigative authorities;
2. To execute applications for the interrogation of witnesses, experts, accused persons and injured parties, for searches and seizures, and for other acts required in connexion with judicial proceedings.

Article 21. The provisions of articles 3-12 of this Treaty shall also apply to assistance in criminal cases.

Legal assistance in criminal cases shall not be provided:

1. If legal assistance is requested in connexion with an offence which is not extraditable under this Treaty;
2. If the Party applied to considers that execution of the application would be prejudicial to its sovereignty or security or would be contrary to the interests of public order.

Article 22. Each Contracting Party undertakes to extradite to the other on request, in accordance with the provisions of this Treaty, persons in its territory whose presence is required for the purpose of criminal prosecution or for the execution of a sentence.

Article 23. 1. Extradition shall take place in respect of acts which, under the law of both Contracting Parties, constitute offences and are punishable with deprivation of liberty for a term of not less than two years or with a heavier penalty. Extradition with a view to the execution of a sentence shall take place on condition that the sentence has become final and that the person claimed has been sentenced to deprivation of liberty for a term of not less than six months or to a heavier penalty.

2. Where more than one offence has been committed, the requisition for extradition shall be deemed to be justified if at least one of the said offences is an extraditable offence.

Article 24. Each Contracting Party undertakes to prosecute under its own law, at the request of the other Contracting Party, any of its citizens who are suspected of having committed in the territory of the other Contracting Party an offence which is extraditable under article 23 of this Treaty.

The request shall be accompanied by a certificate containing particulars of the offence and all available evidence.

The Contracting Party applied to shall inform the applicant Contracting Party of the results of the prosecution and, if a sentence was pronounced, shall transmit a copy thereof.

Article 25. Each Contracting Party shall notify the other Contracting Party of final sentences pronounced by its courts in respect of citizens of the other Contracting Party; that is to say, it shall provide particulars concerning the convicted person, the court by which the sentence was pronounced, the date of sentencing, the nature of the offence and the penalty imposed by the court.

Article 26. Extradition shall not take place:

1. If the person claimed is a citizen of the Contracting Party applied to or has been granted asylum in that State;
2. If the offence was committed in the territory of the Contracting Party applied to;
3. If, under the law of the Contracting Party applied to, exemption from prosecution or punishment has been acquired by lapse of time or on other legal grounds;
4. If extradition is not permitted under the law of the State applied to;
5. If, at the time when the requisition for extradition is received, the person claimed is under investigation or on trial in the same case in the State applied to or the said person has been convicted, acquitted or discharged in respect of the same offence or a sentence imposed on him in respect of the said offence has been executed or remitted;
6. If the offence is subject to prosecution under the laws of the State applied to even though it was committed outside the territory of that State.

Article 27. If extradition has not taken place, the Contracting Party applied to shall so notify the other Contracting Party, informing it of the grounds for refusal of extradition.

Article 28. 1. If the person claimed is being prosecuted for another offence in the territory of the Contracting Party applied to, extradition may take place upon the termination of the proceedings or the execution or remission of the sentence.

2. If postponement of extradition will result in exemption from prosecution being acquired by lapse of time or may prejudice the prosecution of the person claimed, the applicant Party may request temporary extradition for the purpose of criminal prosecution. The applicant Party shall return the temporarily extradited person immediately upon the termination of the preliminary investigation or judicial proceedings without executing the sentence, and in any case no later than three months from the date of extradition.

Article 29. Communication in matters relating to criminal prosecution or the extradition of offenders shall take place through the diplomatic channel between the Ministry of Justice of the USSR or the Procurator's Office of the USSR and the Ministry of Justice of the Republic of Iraq. Decisions on such matters shall, save as otherwise provided in this Treaty, be taken by the competent authorities of the Contracting Party applied to on the basis of its own law.

Article 30. A requisition for extradition shall be accompanied by the following:

1. If the requisition concerns a person who is under investigation, a certified copy of the warrant of arrest, particulars as to the circumstances of the offence and its legal definition, and the text of the statute defining the offence, and, if the offence resulted in material damage, particulars as to the extent of the damage which the offender caused or intended to cause;
2. If extradition is sought for the purpose of execution of a sentence, an official copy of the final sentence or other relevant judicial decision and the text of the statute defining the offence; if the convicted person has already served a part of his sentence, that fact shall be indicated;

3. Detailed information concerning the person claimed, particulars as to his citizenship, residence and distinctive marks, and, if possible, a photograph, save where such particulars can be obtained only after the offender's arrest or trial;
4. The documents referred to in paragraphs 1-3 of this article shall be certified by the competent authorities and authenticated on behalf of the Union of Soviet Socialist Republics by the Ministry of Justice of the USSR or the Procurator's Office of the USSR and on behalf of the Republic of Iraq by the Ministry of Justice; the documents in question shall be translated into the language of the Contracting Party applied to or into English.

Article 31. 1. Where extradition takes place, the Contracting Party applied to shall, at the request of the other Party, deliver to it any articles acquired through the commission of an offence and any articles which may be used as evidence in connexion with the offence. Such articles shall be delivered even in cases in which the offender cannot be extradited by reason of his death or flight or for other reasons.

2. The Contracting Party applied to may temporarily retain the articles referred to in paragraph 1 above if they are required for criminal proceedings being conducted in its territory in another case.

3. The rights of third parties to such articles shall remain unaffected, and the articles shall, upon the conclusion of the trial, be returned to the extraditing Contracting Party for transmittal to the persons entitled to them if the identity of such persons is established.

Article 32. If the requisition for extradition does not contain the information required for its execution, the Party applied to may request such information and set a time-limit for transmittal of the supplementary information. Such time-limit may be extended on request.

Article 33. After receipt of a requisition for extradition, the Contracting Party applied to shall, save in cases where extradition is not permitted, take immediate steps under its law to find the person claimed and, if necessary, arrest him.

Article 34. 1. In cases admitting of no delay, a person against whom criminal proceedings have been initiated may be arrested even before receipt of the requisition for extradition if the competent authority makes application for such arrest, specifying that there exists a warrant of arrest or a final sentence, and if notice is given at the same time that the requisition for extradition is being transmitted. The application for arrest may be made by telegraph or other similar means. The applicant Contracting Party shall submit at the earliest possible time all documents required for extradition to which reference is made in article 30 of this Treaty.

2. The competent authorities of either Contracting Party may arrest a person present in their territory in the absence of the application provided for in paragraph 1 of this article if there is sufficient reason to believe that he has committed an offence subject to extradition under article 23 of this Treaty in the territory of the other Contracting Party.

3. The other Contracting Party shall be notified forthwith of arrests made under paragraphs 1 and 2 of this article or of the reasons why an application made under paragraph 1 of this article has not been complied with.

Article 35. An extradited person may not, without the consent of the Party which extradited him, be prosecuted (or punished in the applicant State for an offence committed before his extradition or an offence other than that for which he

was extradited. An extradited person may not, without the consent of the Party which extradited him, be surrendered to a third state.

However, if an extradited person is afforded an opportunity to quit the territory of the State to which he was extradited and fails to avail himself of such opportunity within 30 days after the conclusion of the criminal proceedings or, in the event of his conviction, within 30 days after the completion or remission of the sentence, the said person may be prosecuted or punished for another offence. Such period of 30 days shall not be deemed to include any period of time during which the extradited person is unable through no fault of his own to quit the territory of the Party to which he was extradited.

Article 36. Each Contracting Party shall assume all costs incurred in its territory in connexion with legal co-operation in criminal cases, except for the cost of conveying and escorting offenders, which shall be borne by the Party applying for extradition.

Part V. SUCCESSION

Article 37. In all succession proceedings arising in the territory of either Contracting Party, the diplomatic or consular representative of the other Contracting Party shall have the right to represent citizens of his own State before courts and other authorities if such citizens are not present and have not appointed other representatives; no special power of attorney shall be required in such cases.

Article 38. 1. If a citizen of one Contracting Party dies in the territory of the other Contracting Party, the competent authority shall immediately notify the diplomatic or consular mission of the other Contracting Party of such death, communicating to it whatever information is available concerning possible heirs, their domicile or residence, the size and value of the estate and the existence of a will.

The said authority shall give similar notice if it has information to the effect that the decedent has left property in the territory of a third State.

2. If the competent authority of one Contracting Party learns that a citizen of the other Contracting Party has an interest in a matter of succession with which it is dealing, it shall so notify the diplomatic or consular mission of the latter State.

3. If the diplomatic or consular mission learns first of the death of a citizen of its country, it shall notify the competent authority of the other Contracting Party so that steps may be taken to protect the estate.

Article 39. If a citizen of either Contracting Party not domiciled in the territory of the other Contracting Party dies during a temporary stay in the said territory, his personal effects together with an inventory thereof shall be delivered without any formal proceedings to the diplomatic or consular mission of the Contracting Party of which he was a citizen.

Part VI. DOCUMENTS

Article 40. Documents duly drawn up or attested by a competent authority in the territory of either Contracting Party shall be accepted in the territory of the other Contracting Party in accordance with the latter's law. Official documents of either Contracting Party shall also have the evidential value of official documents in the territory of the other Contracting Party in accordance with the latter's law.

Part VII. EXCHANGE OF INFORMATION ON LEGAL MATTERS

Article 41. The Ministries of Justice of the Contracting Parties shall, on request, provide each other with information on legislation in force or formerly in force in their respective States and exchange delegations and experience in connexion with legal matters.

Article 42. All questions arising in connexion with the interpretation and application of this Treaty shall be settled by the Ministers of Justice of the Contracting Parties or adjusted through the signing of a protocol.

Part VIII. FINAL PROVISIONS

Article 43. This Treaty is subject to ratification by the competent authorities of the Contracting Parties in accordance with their constitutional provisions. The exchange of the instruments of ratification shall take place at Baghdad.

Article 44. This Treaty shall enter into force 30 days after the date of the exchange of the instruments of ratification and shall remain in force for a term of five years, which shall be automatically renewed until such time as one of the Contracting Parties gives notice in writing, at least six months before the expiry of the current term, that it wishes to revise or terminate the Treaty.

This Treaty has been drawn up at Moscow on 22 June 1973, in duplicate in the Russian and Arabic languages, both texts being equally authentic.

IN WITNESS WHEREOF the Plenipotentiaries of the two Contracting Parties have signed this Treaty and have thereto affixed their seals.

For the Presidium
of the Supreme Soviet
of the Union of Soviet
Socialist Republics:

[V. TEREILOV]

For the President
of the Republic of Iraq:

[SALEH MAHDI AMASH]