



Treaty Series No. 42 (1995)

# Agreement

between the Government of the  
United Kingdom of Great Britain and Northern Ireland  
and the Government of Malaysia  
on Mutual Assistance in relation to  
Drug Trafficking

Kuala Lumpur, 17 October 1989

[The Agreement entered into force on 1 January 1995]

*Presented to Parliament  
by the Secretary of State for Foreign and Commonwealth Affairs  
by Command of Her Majesty  
June 1995*

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**AGREEMENT  
BETWEEN THE GOVERNMENT OF THE  
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND  
AND THE GOVERNMENT OF MALAYSIA  
ON MUTUAL ASSISTANCE IN RELATION TO DRUG TRAFFICKING**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Malaysia,

Desiring to provide mutual assistance, to the extent possible within their respective laws, in the investigation of drug trafficking and the seizure, freezing and confiscation of the proceeds thereof;

Have agreed as follows:

**ARTICLE 1**

**Scope of Application**

- (1) The Parties shall, in accordance with this Agreement, and to the extent permitted by their laws, grant to each other assistance in investigations and proceedings in respect of drug trafficking including the seizure, freezing and confiscation of the proceeds thereof.
- (2) Such assistance shall include, but not be limited to:
  - (a) taking evidence and statements from persons;
  - (b) seizing, freezing and confiscating the proceeds and instrumentalities of drug trafficking;
  - (c) executing requests for searches and seizures;
  - (d) providing information and original or certified copies of relevant documents and records;
  - (e) facilitating the appearance of witnesses or persons who can assist in investigations;
  - (f) effecting the temporary transfer of persons in custody to appear as witnesses;
  - (g) locating or identifying persons, objects and sites;
  - (h) serving documents.
- (3) The Parties may afford one another any other form of assistance permitted by the domestic law of the Requested Party.
- (4) This Agreement shall not derogate from other obligations between the Parties whether pursuant to other treaties, arrangements or practices, nor prevent the Parties providing assistance to each other pursuant to such treaties, arrangements or practices.

**ARTICLE 2**

**Definitions**

For the purposes of this Agreement:

- (a) "proceedings are instituted" when an action that may lead to the making of an order to which Article 9(1) applies is commenced in a court exercising jurisdiction in the territory of the Requesting Party or when a person is charged having been taken into custody without a warrant;
- (b) "drug trafficking" means any drug trafficking activity referred to in:
  - (i) Article 3.1 of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances opened for signature at Vienna on 20 December 1988<sup>1</sup>;  
or

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<sup>1</sup> Treaty Series No. 26 (1992) Cm 1927.

- (ii) any international agreement binding upon both Parties when such activity is treated as an offence pursuant to that Agreement;
- (c) "proceeds" means any property that is derived or realised, directly or indirectly, by any person from drug trafficking, or the value of any such property;
- (d) "property" includes:
  - (i) money and all kinds of movable or immovable and tangible or intangible property;
  - and
  - (ii) any interest, whether present or future, vested or contingent, in such property.

### ARTICLE 3

#### Central Authorities

- (1) The Parties shall each appoint a Central Authority to transmit and receive requests pursuant to this Agreement. Unless the relevant Party designates another authority, the Central Authority for Malaysia shall be the Inspector-General of Police, Malaysia, and the Central Authority for the United Kingdom shall be the Secretary of State for the Home Department.
- (2) The Central Authority of the Requested Party shall take whatever steps it considers necessary to give effect to requests from the Requesting Party.

### ARTICLE 4

#### Form and Contents of Requests

- (1) Requests shall be made in writing. In urgent circumstances, or where otherwise permitted by the Requested Party, requests may be made orally but shall be confirmed in writing thereafter.
- (2) Requests for assistance shall include a statement of:
  - (a) the name of the competent authority conducting the investigation or proceedings to which the request relates;
  - (b) the matters, including the relevant facts and laws (and specifying where possible the quantity of drugs or proceeds involved) to which the investigation or proceedings relate;
  - (c) the purpose for which the request is made and the nature of the assistance sought;
  - (d) details of any particular procedure or requirement that the Requesting Party wishes to be followed;
  - (e) the need, if any, for confidentiality and the reasons therefor; and
  - (f) any time limit within which compliance with the request is desired.
- (3) Requests for assistance shall also include where appropriate:
  - (a) the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;
  - (b) a description of any information, statement or evidence which is required and where practicable the identity and location of any person from whom such information, statement or evidence is sought;
  - (c) a description of any document, record or article of evidence to be produced as well as a description of the appropriate person to be asked to produce it and, to the extent not otherwise provided for, the form in which it should be produced and authenticated.
- (4) If the Requested Party 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 information be furnished.

## ARTICLE 5

### Execution of Requests

- (1) To the extent permitted by its law, the Requested Party shall provide assistance in accordance with the requirements specified in the request and shall respond to the request as soon as practicable after it has been received.
- (2) The Requested Party may postpone the delivery of material requested if such material is requested for proceedings in respect of criminal or civil matters in its territory. The Requested Party shall, upon request, provide certified copies of documents.
- (3) The Requested Party shall promptly inform the Requesting Party of any circumstances which are likely to cause a significant delay in responding to the request.
- (4) The Requested Party shall promptly inform the Requesting Party of a decision of the Requested Party not to comply in whole or in part with a request for assistance and the reason for that decision.
- (5) The Requesting Party shall promptly inform the Requested Party of any circumstances which may affect the request or its execution or which may make it inappropriate to proceed with giving effect to it.

## ARTICLE 6

### Refusal of Assistance

Assistance may be refused if:

- (a) the Requested Party is of the opinion that the request, if granted, would seriously impair its sovereignty, security, national interest or other essential interest; or
- (b) the Requested Party is of the opinion that the execution of the request would not be permitted by its domestic law;
- (c) provision of the assistance sought could prejudice an investigation or proceedings in the territory of the Requested Party, prejudice the safety of any person or impose an excessive burden on the resources of that Party,

provided that before refusing to grant a request for assistance the Requested Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to conditions, it shall comply with them.

## ARTICLE 7

### Information and Evidence

- (1) The Parties may make requests for information and evidence pursuant to this Agreement for the purpose of an investigation or a proceeding.
- (2) The Requested Party shall as appropriate and insofar as its laws permit:
  - (a) provide information and documents or copies thereof for the purpose of an investigation or a proceeding in the territory of the Requesting Party;
  - (b) take evidence or statements of persons and produce documents, records or other material for transmission to the Requesting Party;
  - (c) search for, seize and deliver to the Requesting Party any relevant material and provide such information as may be required by the Requesting Party concerning the seizure, the circumstances of seizure and the subsequent custody of the material seized prior to delivery.
- (3) Where required by the Requested Party, the Requesting Party shall return material provided under this Agreement when no longer needed for any investigation or proceeding.

## ARTICLE 8

### **Seizure and Freezing of Property Liable to Confiscation**

- (1) Where proceedings in the territory of a Party may result in the making of an order mentioned in paragraph 1 of Article 9 of this Agreement, or where such an order has been made, that Party may request the seizure and freezing in the territory of the Requested Party of property for the purpose of ensuring that it is available for confiscation.
- (2) A request made under this Article shall include:
  - (a) a certificate to the effect that proceedings will be instituted or have been instituted on a specified date and that those proceedings have not been concluded;
  - (b) a description of the property to be seized and frozen and its connection with the person specified under sub-paragraph (a) of this paragraph, and in so far as possible its whereabouts; and
  - (c) details of any relevant order made by a competent authority of the Requesting Party.
- (3) Where the seizure and freezing of property has been ordered pursuant to this Agreement and there is a representation in the territory of the Requested Party by a person affected by the order, that Party shall inform the Requesting Party as soon as possible and shall also inform it promptly of the outcome of that representation.

## ARTICLE 9

### **Assistance in Enforcing the Confiscation of Proceeds**

- (1) This Article applies to an order made by a court of the Requesting Party for the purpose of confiscating the proceeds or instrumentalities of drug trafficking.

Provided that, without prejudice to any powers relating to seizure and freezing under Article 8:

- (a) if proceeds have been transformed or converted into other property, such property shall be liable to be confiscated instead of the proceeds;
- (b) if proceeds have been intermingled with property acquired from legitimate sources, such property shall be liable to confiscation up to the assessed value of the intermingled proceeds;
- (c) income or other benefits derived from:
  - (i) proceeds;
  - (ii) property into which proceeds have been transformed or converted; or
  - (iii) property with which proceeds have been intermingled,

shall be liable to be confiscated in the same manner and to the same extent as proceeds.

- (2) A Party may request the assistance of the other Party in enforcing an order to which this Article applies.

- (3) A request made under this Article shall be accompanied by the following documents:

- (a) an authenticated copy of the order;
- (b) an authenticated statement that neither the order nor any conviction to which it relates is subject to appeal;
- (c) an authenticated statement showing either that the person in respect of whom the order was made appeared in the proceedings, or that he received notice of the proceedings in sufficient time to enable him to defend them;
- (d) a description of the property in relation to which assistance is sought and its connection with the person in respect of whom the order was made;
- (e) where appropriate, a statement of the amount which it is desired to realise as a result of the assistance; and

- (f) where appropriate a statement of any special circumstances regarding the proceedings leading to the making of the order.
- (4) Proceeds confiscated pursuant to this Agreement shall be retained by the Requested Party, unless otherwise mutually agreed in a particular case.
- (5) Where the confiscation of proceeds has been ordered pursuant to this Agreement and there is a representation in the territory of the Requested Party by a person affected by the order, the Party shall inform the Requesting Party as soon as possible, and shall also inform it promptly of the outcome of that representation.

#### ARTICLE 10

##### **Protecting Confidentiality and Restricting Use of Evidence and Information**

- (1) The Requested Party shall, to any extent requested, keep confidential a request for assistance, its contents and any supporting documents, and the fact of granting such assistance. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party which shall then determine the extent to which it wishes the request to be executed.
- (2) The Requesting Party shall, if so requested, keep confidential any evidence and information provided by the Requested Party, except to the extent that its disclosure is necessary for the investigation or proceedings described in the request.
- (3) The Requesting Party shall not use for purposes other than those stated in a request, evidence or information obtained as a result of it, without the prior consent of the Requested Party.

#### ARTICLE 11

##### **Certification and Authentication**

- (1) Any document or other material supporting a request for assistance pursuant to this Agreement shall, to the extent required by the Requested Party, be authenticated in accordance with paragraph (3) of this Article.
- (2) Any document or other material supplied in response to a request for assistance shall, to the extent requested, be authenticated in accordance with paragraph (3) of this Article.
- (3) A document is authenticated for the purposes of this Agreement if:
  - (a) it purports to be signed or certified by a judge, magistrate or other officer of the Party sending the document; and
  - (b) it purports to be authenticated by the oath or affirmation of a witness, or to be sealed with an official seal of the Party sending the document or of a Minister of State or department or officer of the Government of that Party.

#### ARTICLE 12

##### **Representation and Costs**

- (1) The Requested Party shall make all necessary arrangements for the representation of the Requesting Party in any proceedings arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.
- (2) (a) Subject to the provisions of sub-paragraph (b) of this Article the Requested Party shall bear any costs incurred in its territory in executing a request unless otherwise mutually agreed in a particular case;

- (b) The Requesting Party shall bear the expenses associated with conveying any person to or from the territory of the Requested Party, and any fees, allowances or expenses payable to that person while in the territory of the Requesting Party pursuant to a request for such a person to assist in investigations or to appear as a witness.

### ARTICLE 13

#### Consultation

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

### ARTICLE 14

#### Territorial Application

This Agreement shall apply:

- (a) in relation to the United Kingdom:
  - (i) to England, Wales and Scotland;
  - (ii) subject to the necessary modifications, by agreement between the Parties through the diplomatic channel, to Northern Ireland and any territory for the international relations of which the United Kingdom is responsible;
- (b) to Malaysia.

### ARTICLE 15

#### Entry into Force, Application and Termination

- (1) This Agreement shall enter into force on the first day of the month following the exchange of notification through the diplomatic channel by the Parties that they have completed their respective requirements for the entry into force of the Agreement.<sup>1</sup>
- (2) This Agreement shall apply to a request made pursuant to it whether or not the drug trafficking to which the request relates occurred prior to the entry into force of the Agreement.
- (3) Either Party may terminate this Agreement at any time by giving 180 days' written notice to the other through the diplomatic channel.

In witness thereof the undersigned, being duly authorised thereto by their respective Governments have signed this Agreement.

Done in duplicate at Kuala Lumpur on the 17th day of October 1989.

For the Government of the United  
Kingdom of Great Britain and  
Northern Ireland:

MARGARET THATCHER

For the Government of Malaysia:

MAHATHIR bin MOHAMAD

<sup>1</sup> The Agreement entered into force on 1 January 1995.

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