

producing documents, executing search and seizure requests, and taking testimony. Art. 1(2); cf. Barr v. U. S. Department of Justice, 645 F. Supp. 235, 237 (E.D.N.Y. 1986), aff'd, 819 F.2d 25 (2d Cir. 1987).

The Treaty empowers federal district courts to execute Italian requests in order to comply with the United States' treaty obligation. Article 4(1) provides in pertinent part:

The competent officials of the Requested State shall do everything in their power to execute a request. The courts of the Requested State shall issue subpoenas, search warrants or any other process necessary in the execution of a request.

B. Use of the Treaty to Execute Requests for Assistance

The Treaty is self-executing and requires no implementing legislation, other than legislation regarding asset forfeiture, which would be applicable only to Article 18. See Letter of Submittal of Treaty to the President from the Department of State, June 1, 1984. Even so, it contains little in the way of a procedural framework for executing requests. Instead, it relies on the law of each state to establish procedures for executing requests in that state. Articles 13(1) and 14(1) provide that the requested state shall compel a person to produce a document, record or article or to appear and testify "to the same extent as would be required for criminal investigations or proceedings in that State."

Consequently, "[t]he Treaty relies primarily on the existing authority of the federal courts, particularly 28 U.S.C. §1782," which is the statute governing the provision of assistance for foreign judicial proceedings generally. Letter of Submittal of Treaty to the President from the Department of State, June 1, 1984. Federal district courts routinely utilize the "commission" procedure authorized by 28 U.S.C. §1782 to fulfill their judicial responsibility

under the Treaty of executing Italian requests.

1. Appointment of a commissioner

Section 1782 provides in pertinent part:

The district court . . . may direct that the testimony or statement [of a person who resides or is found within the district] be given or the document or other thing be produced, before a person appointed by the court.

A federal district court customarily appoints or "commissions" a person or "commissioner" to collect evidence on behalf of the court and authorizes the commissioner to submit the evidence collected to the requesting foreign court or authority. With requests for assistance in criminal matters, a court typically appoints an Assistant United States Attorney as commissioner. However, a court also may commission a foreign authority together with (or in lieu of) an Assistant United States Attorney. See, e.g., In re Letter of Request from the Supreme Court of Hong Kong, 138 F.R.D. 27, 29 (S.D.N.Y. 1991) [hereinafter Hong Kong].

Application to a federal district court for appointment of a commissioner to execute a foreign request for judicial assistance is handled ex parte. In re Letter of Request from the Crown Prosecution Service of the United Kingdom, 870 F.2d at 686, 688 (D.C. Cir. 1989); In re Letters Rogatory from the Tokyo District, Tokyo, Japan, 539 F.2d 1216, 1219 (9th Cir. 1976).

2. Establishment of an evidence-collecting procedure

Section 1782 further provides in pertinent part that:

To the extent that the order does not prescribe otherwise, the testimony or statement shall be taken, and the document or other thing produced, in accordance with the Federal Rules of Civil Procedure.

A federal district court empowers a commissioner to collect the evidence using

the procedure prescribed by the court. A court has "complete discretion in prescribing the procedure to be followed." Sen. Rep. No. 1580, 88th Cong., 2d Sess. 1 (1964), reprinted in 1964 U.S. Code Cong. & Admin. News 3782, 3789. When a court's order fails to specify a procedure by which a commissioner is to collect the evidence, the Federal Rules of Civil Procedure apply. In re: Letters Rogatory from the Tokyo district Prosecutor's Office, Tokyo, Japan, 1994 WL 41811 (9th Cir. Feb. 15, 1994); Hong Kong, 138 F.R.D. at 32. However, as Section 1782 makes clear, when a court does specify a procedure other than one in accordance with the Federal Rules of Civil Procedure, the alternative procedure shall apply. In re Letter of Request from the Government of France, 139 F.R.D. 588, 590-91 (S.D.N.Y. 1991).

In executing Italian requests, the Treaty obligates United States courts to compel a person to produce a document, record or article or to appear and testify "to the same extent as would be required for criminal investigations or proceedings in" the United States. Articles 13(1) and 14(1). In other words, the Treaty requires that courts "prescribe otherwise," that is, order the use of procedures comparable to those applicable in domestic investigations and prosecutions of criminal matters rather than, by default, the Federal Rules of Civil Procedure.

a. Commissioner's subpoena.

If a federal district court so orders, a commissioner may use the attached form, (Exhibit "B") entitled commissioner's subpoena, to obtain the requested evidence. See, e.g., United States v. Erato, 2 F.3d at 12-13 (incorporating in pertinent part the district court's order directing the use of commissioner's subpoenas). The commissioner's subpoena is a creation of neither the Federal Rules of Criminal Procedure nor the Federal Rules of Civil Procedure, but is an

order of the court for the production of evidence in accordance with both the Treaty and Section 1782. See Articles 13(1) and 14(1); 28 U.S.C. 1651. Upon authorization by a court, a commissioner may issue such commissioner's subpoenas as are necessary to execute the request.

b. Notice of evidence taking.

Articles 13(1) and 14(1) require a use of compulsory process in the execution of Italian requests comparable or similar to that in domestic criminal investigations or prosecutions:

Article 13(1) provides in pertinent part:

The Requested State, if necessary, shall compel a person to produce a document, record or article to the same extent as would be required for criminal investigations or proceedings in that State.

Likewise, Article 14(1), relating to testimony, provides:

A person from whom evidence is sought shall, if necessary, be compelled to appear and testify to the same extent as would be required in criminal investigations or proceedings in the Requested State.

Inasmuch as grand jury and criminal trial subpoenas issue without notice to other than the recipients (i.e., no notice to targets, defendants, or third parties), commissioner subpoenas issued in execution of Italian requests likewise should require no notice other than to the recipients. Accordingly, a federal district court should authorize a commissioner to collect the evidence requested without notice to any party other than the recipient of the commissioner's subpoena except to the extent that an Italian request asks for specific notice procedures.⁸

⁸ Historically, United States authorities have executed requests for judicial assistance in criminal matters without notification to actual or potential targets of investigations, or even to parties in proceedings, in order to protect against compromising foreign investigations and proceedings. Moreover, United States authorities customarily rely on the requesting courts and authorities to provide such notice directly to the relevant parties as foreign law requires. Finally, requesting courts and authorities routinely request that United States executing

C. The Present Request

The instant Treaty Request (Exhibit "C") has been made by the Minister of Grace and Justice, the Central Authority under Article 2 of the Treaty, in connection with a current criminal investigation by Luca Tampierri, Assistant Public Prosecutor in Bologna, Italy. The Bologna Public Prosecutor's Office is investigating the following series of events and has asked for assistance in obtaining records of log files in to the creation and updating of the web spaces URLs during the period of these events:

1. On 21st December, 2003, approximately at 10 and 11 p.m. in Bologna, two devices planted inside two waste bins exploded in the vicinity of the home of Mr. Romano Prodi, the European Commission President. The two devices, of similar make, had been manufactured by placing a camping gas cylinder triggered by a timer inside a "pressure-cooker." Both garbage containers burnt down and got destroyed.

On 23rd December, 2003, the local editorial office of the daily newspaper "La Repubblica" received a document claiming responsibility for the criminal act. The letter is divided into three distinct parts:

- a printed section describing programs and strategies with the heading "Who we are - Open letter to the anarchist and antiauthoritarian movement" where the **Cooperativa Artigiana Fuoco e Affini** (occasionalmente spettacolo) [Literal

authorities follow particular, stated notice procedures when such procedures are necessary or useful under the foreign law or practice. For example, foreign requests frequently ask (1) that a person to be interviewed (generally a defendant or suspect) be given notice of applicable testimonial privileges (e.g., against self-incrimination) at the time of the interview and (2) that a defendant and defense counsel be permitted to be present during the taking of testimony of a witness and be given sufficient notice to make arrangements.

Translation: Artisan's Cooperative Fire(work) and company (occasionally spectacular)], **Brigata 20 Luglio** [Literal Translation: 20th July Brigada], **le Cellule contro il Capitale, il Carcere, i suoi Carcerieri e le sue Celle** [Literal Translation: the cells against the Capital Prison Gaolers and Cells], **Solidarieta Internazionale** [Literal Translation: International Solidarity], announced the creation of **Federazione Anarchica Informale** [Literal Translation: Informal Anarchist Federation], intended as a pact of "radical support" based on spontaneous and anonymous insurrectional actions as well as on its characteristic "horizontal" message for the purpose of providing "international solidarity" proposing and pursuing specific objectives, ensuring "communication between groups/ individuals."

- a printed section of political nature claiming responsibility for the terrorist act with the heading "*Operazione Santa Claus,*" (Note of the Translator: Santa Claus Operation), where the Federazione Anarchica Informale announced the beginning of a campaign against the European Union policies of "*exploitation and domination.*" The main targets of their attacks would be the "*repressive/control apparatus*" and "*the main characters in the show of mockdemocracy.*"

- a section written with a lettering stencil, where Cooperativa Artigiana Fuoco e Affini (ocasionalmente spettacolare) explicitly claims responsibility for the crime. Here they state that President of the European Union Mr. Romano Prodi is the target of their attack and a manoeuvre has been started to get at him and people like him.

Other copies of this document, although lacking the final stenciled section were received by the Milan editorial offices of the daily newspapers "Libero" and "La Repubblica." A fourth copy of it to which a stenciled text was added was mailed to the Milan editorial office of the daily newspaper "Corriere della Sera." In the section written using a stencil, solidarity and support are expressed towards "*all prisoners fighting under FIES.*" The document is signed by FAI - Solidarieta Internazionale. [Note of the translator: FAI - International Solidarity].

On 27th December, 2003, Mr. Romano Prodi inside his Bologna home opened a parcel addressed to his wife containing a hollowed book, in which a booby trap device had been placed. While the book was being extracted from the package the incendiary device burst into flames, damaging nearby furnishings and furniture, though not injuring the President.

On 29th December, 2003, similar booby trap parcels targeted the Frankfurt office of Mr. Jean Claude Trichet, President of the European Central Bank, and the seat of EUROPOL, European Police Office, in The Hague. Both parcels - defused by bomb disposal experts - were postmarked Bologna and bore the indication of a Bologna-based sender, who turned out to be fictitious.

On 30th December, 2003, a parcel of similar make was received by the President of Eurojust in its Hague seat.

In 5th January, 2004, two similar packages targeted the seat of the European Parliament in Brussel, respectively addressed to Hans-Gert Poettering, heading

the European People's Party and Jose Ignacio Salafranca, European Parliament member. A third similar one targeted the Manchester-based office of Gary Titley, British Member of the European Parliament.

From the investigations carried out so far, all of the above mentioned parcels resulted to have been mailed from Bologna and they all contained a document claiming responsibility for the act, which, however lacked the stenciled part.

2. The way the devices planted near Prodi's Bologna house had been manufactured and placed, as well as the ways the fire-bomb parcels targeting European Union officials and institutions were made, packed and mailed, have led investigating authorities to believe according to the evidence gathered so far, also on informal basis, that all devices shared the same criminal intent and are to be connected with an organized group operating in Bologna.

Hence, Bologna Public Prosecutor has initiated preliminary criminal proceedings against unknown individuals for the crime punishable pursuant to Sections 280 of the Italian Penal Code, i.e.: "Attacks for terrorist or subversive purposes" by a term not inferior to six years' imprisonment.

3. The document claiming responsibility for the attacks shows that the Federazione Anarchica Informale was created by Coopertiva Artigiana Fuoco e Affini (occasionalmente spettacolare), 20th July Brigade, Cells against the Capital Prison its Gaolers and Cells, and International Solidarity. All these groups are known to belong to the insurrectional wing of the anarchist movement. They are also known for having committed similar terrorist attacks in the past, though each acting independently of the others. Some of these attacks aimed at foreign targets or were committed to provide solidarity and

support to the inmates of the prisons located in foreign countries. Such terrorist attacks were the climax of "anti-repressive" and "anti-prison" campaigns similarly staged in the last few years to show support for the individuals of the same political affiliation, who were inmates in Spanish, Greek, Italian, and Swiss prisons. Among them, the campaign launched in support of individuals imprisoned in Spain under Fies⁹ classification (special detention measures) have been particularly harsh.

The mailing of incendiary or explosive laden parcels to European Union Officials and formerly to members of the law enforcement community or other Italian institutional figures, is a technique that starkly resembles the methods already adopted by Iberian insurrectionalists "to punish" journalists, magistrates, and police officers. These elements strongly point to possible links between the Italian anarchist-insurrectionalist groups joining the Federazione Anarchica Informale and other homologous forces in Europe who perpetrated similar terrorist attacks.

5. The *Cooperativa Artigiana Fuoco e Affini (occasionalmente spettacolare)* claiming responsibility for the two devices exploded near Mr. Romano Prodi's house, had already taken responsibility for other attacks in the past, including the mailing of an incendiary parcel to the Barcelona-based office of the Spanish Penitentiary Police Union and the planting (in July 2001) of a booby-trap device with high offensive potential in a street close to Bologna Police Headquarters. The device, disposed by bomb technicians before it could explode, was

⁹Note of the Translator: FIES=Ficheros de Internos de Especial Seguimiento (inmates files of special monitoring).

deliberately meant to cause either serious injuries or even death of law enforcement officers.

KINDLY REQUESTS:

that the competent United States Judicial Authority obtain log files in relation to the creation and updating of the web spaces corresponding to the following URLs during the period from

THIS PORTION OF THE DOCUMENT HAS BEEN REDACTED

Accordingly, to execute this request, the government moves this Court to issue the attached Order appointing Assistant United States Attorney Don J. Calvert as Commissioner, authorizing [him/her] to take the actions necessary, including the issuance of Commissioner's subpoenas, to obtain the evidence requested, and to adopt such procedures in receipt of the evidence as are consistent with the intended use thereof in Italy.

Respectfully submitted,

JOHNNY SUTTON
UNITED STATES ATTORNEY

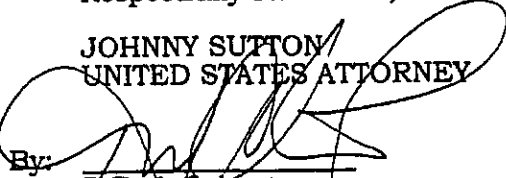
By: 
Don J. Calvert
Assistant United States Attorney

EXHIBIT A



Office of International Affairs
Department of Justice

Home	About OIA	Geographic OIA Team Listing	Documents	Treaty Related Topics and Multilateral Affairs	Interagency International Fugitive Lookout	International Coordinators at U.S. Attorney's Offices
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**United States Mutual Legal Assistance Treaty With Italy
98-25
November 9, 1982**

TREATY WITH THE ITALIAN REPUBLIC ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

TREATY DOC. 98-25

November 9, 1982, Date-Signed

STATUS:

[*1] PENDING: June 11, 1984. Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

TRANSMITTING THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE ITALIAN REPUBLIC ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS, TOGETHER WITH A RELATED MEMORANDUM OF UNDERSTANDING SIGNED AT ROME ON NOVEMBER 9, 1982

TEXT:
98TH CONGRESS

2d Session

SENATE

LETTER OF TRANSMITTAL

THE WHITE HOUSE, June 11, 1984.

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty between the United States of America and the Italian Republic on Mutual Assistance in Criminal Matters, together with a related Memorandum of Understanding, signed at Rome on November 9, 1982.

I transmit also, for the information of the Senate, the report of the Department of State with respect to the

EXHIBIT A

Treaty.

The Treaty is one of a series of modern mutual assistance treaties being negotiated by the United States. This Treaty contains two major innovations: compulsory testimony in the [*2] requesting State in appropriate cases and the immobilization and forfeiture of assets. The former is of great importance in insuring complete trials in an age of rapidly increasing levels of international criminal activity. The latter is of great importance in depriving international criminals of the fruits of their crimes. The Treaty primarily utilizes existing statutory authority, but will require implementing legislation for the provision concerning forfeiture of assets.

The Treaty provides for a broad range of cooperation in criminal matters. Mutual assistance available under the Treaty includes: (1) executing requests relating to criminal matters; (2) taking of testimony or statements of persons; (3) effecting the production and preservation of documents, records, or articles of evidence; (4) serving judicial documents; (5) requiring the appearance of a witness before a court of the requesting Party; (6) locating persons; and (7) providing judicial records, evidence, and information.

I recommend that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,

Washington, [*3] June 1, 1984.

THE PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Treaty between the United States of America and the Italian Republic on Mutual Assistance in Criminal Matters, together with a related Memorandum of Understanding, signed at Rome on November 9, 1982. I recommend that the Treaty and the Memorandum of Understanding be transmitted to the Senate for its advice and consent to ratification.

The Treaty contains two major innovations: compulsory testimony in the requesting State (Article 15) and immobilization and forfeiture of assets (Article 18). The Treaty relies primarily on the existing authority of the federal courts, particularly 28 U.S.C. § 1782. Where existing authority is absent or insufficient, this Treaty establishes the necessary authority. The provision concerning forfeiture of assets will require implementing legislation which I understand the Department of Justice intends to propose.

Article 1 provides for mutual assistance between law enforcement agencies of the Contracting States relating to criminal proceedings or investigations. Article 1 also sets forth a non-exclusive list of [*4] the types

of assistance available under the Treaty including, for example, taking testimony, serving documents, and executing requests for searches and seizures or depositions in accordance with the laws of the requested State. Article 1 further states that assistance shall be rendered whether or not the acts under investigation are offenses in the requested State or the requested State would have jurisdiction in similar circumstances.

Article 2 requires that all requests for assistance be made and executed through the "Central Authority" of each Contracting State. For the United States, the Central Authority is the Attorney General. For the Republic of Italy, the Central Authority is the Minister of Grace and Justice.

Article 3 sets out the necessary and suggested information to be included in a request for assistance. These requirements are similar to those found in other recent mutual legal assistance treaties (such as those with The Netherlands and Turkey).

Article 4 provides for the execution of requests for assistance. Requests shall be executed in accordance with provisions of the Treaty and the laws of the requested State. The agency or authority selected by the Central Authority [*5] to execute the request is authorized and required to take whatever action is necessary and within its power to execute such requests. The courts of the requested State shall issue the necessary process in the execution of a request. Desired procedures specified in the request for assistance are to be followed unless specifically prohibited by the laws of the requested State.

Article 5 specifies instances in which assistance may be denied or postponed under the Treaty. Mutual assistance may be refused if (1) assistance would prejudice the security or other essential public interests of the requested state, (2) the request relates to a military or political offense, or (3) the request does not comply with the requirements of the Treaty. Assistance may be postponed in instances where it would interfere with an ongoing investigation or proceeding in the requested State.

Article 6 provides for the return to the requesting State of the completed request. To the extent possible, documents and records provided shall be complete and in unedited form.

Article 7 provides for the payment of the costs of assistance. The requested State shall render assistance without cost, except for a) translation [*6] of documents, b) private expert fees, c) witness travel fees to the requesting State, and d) expenses related to the transfer of witnesses in custody.

Article 8 provides for the confidentiality of evidence. The requested State may require that evidence and other information be kept confidential, except when disclosure is necessary in a public proceeding.

Article 8 also provides that evidence sought under the Treaty will not be used for any purposes other than those stated in the request without the consent of the requested State.

Article 9 states that the requesting State shall return, upon request, documents, records or evidence furnished in execution of a request as soon as possible.

Article 10 states that the requested State shall make thorough efforts to locate within its territory persons specified in a request for assistance.

Article 11 provides for the service in the requested State of legal documents transmitted for this purpose by the requesting State.

Article 12 provides that the requested State shall furnish copies of publicly available documents or

records of a government agency. Article 12 further provides that any nonpublic government document or record may be provided [*7] to the same extent and under the same conditions as it would be made available to the law enforcement or judicial authorities of the requested State. Finally, Article 12 provides that these documents or records, if certified authentic by the Central Authority of the requested State, shall not require further certification or authentication to be admissible into evidence.

Article 13 provides for compulsory production of documents and articles to the same extent as would be required for criminal actions in the requested State. Article 13 further provides for search and seizure if the request contains information which would justify such action in criminal investigations or proceedings under the laws of the requested State.

Article 14 provides for the taking of testimony in the requested State. It states that a person shall be compelled to appear and testify to the same extent as would be required in a criminal investigation or proceeding in the requested State. Article 14 further states that the requested State shall permit the presence of the accused, counsel for the accused and persons charged with the enforcement of the criminal laws to which the request relates.

Article 14 also [*8] provides for questioning of the witness by those present, in accordance with the laws of the requested State, thereby permitting cross-examination of the witness. Testimonial privileges under the laws of the requesting State are not applicable in the execution of such a request, but are preserved for decision by the courts of the requesting State.

Article 15 provides for the taking of testimony in the requesting State. It states that the requested State shall compel a person to appear and testify in the requesting State provided that a) there is no reasonable basis to deny the request, b) a person could be compelled to appear and testify in similar circumstances in the requested State, and c) the requesting State certifies the testimony is material and relevant. Article 15 further provides that a person who fails to appear as directed shall be subject to sanctions under the laws of the requested State, such sanctions not to include removal of the person to the requesting State.

Article 16 provides for the transfer of persons in custody for testimonial purposes in cases where the requesting State needs such a person as a witness and in cases where a defendant seeks to be present for [*9] purposes of confrontation at a judicial proceeding in the other State. A person in custody needed as a witness in the requested State shall be transported to that State subject to the conditions set forth in Article 15. A person in custody who seeks for purposes of confrontation to be present in another State shall be transported to that State unless the State of custody has a reasonable basis for denying the request.

Article 17 provides for the safe conduct of a person appearing as a witness before an authority in the requesting State. It states that such a person a) shall not be subject to suit, detention or any other restriction of personal liberty with respect to any act or conviction which preceded departure from the requested States, and b) shall not be prosecuted based on truthful testimony provided pursuant to the request. Safe conduct ceases, however, if ten days after notification that his presence is no longer required and he is free to leave, the person has not left the requesting State, or having left, has returned.

Article 18 provides for the immobilization and forfeiture of assets. It states that, in emergency situations, the requested State shall have authority to [*10] immobilize assets found in that State and, after appropriate judicial proceedings, to order the forfeiture of those assets to the requesting State. Such forfeiture authority will be of great importance in depriving international drug traffickers and members of organized crime of the fruits of their crime. As noted above, this provision requires implementing legislation which the Department of Justice intends to propose.

Article 19 provides that assistance and procedures provided by this Treaty shall not preclude assistance available under any other applicable international agreements or under the domestic law of the Contracting States.

Article 20 provides that the Treaty shall enter into force upon the exchange of instruments of ratification.

Article 21 states that either State may terminate the Treaty upon six months written notice to the other.

The Department of Justice joins the Department of State in favoring approval of this Treaty by the Senate at an early date.

Respectfully submitted.

**TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE ITALIAN REPUBLIC ON
MUTUAL ASSISTANCE IN
CRIMINAL MATTERS**

The Government of the United States of America and the Government of Italian Republic, [*11] desiring to conclude a Treaty on mutual assistance in criminal matters, have agreed as follows:

ARTICLE I

Obligation to Render Assistance

1. The Contracting Parties undertake to afford each other, upon request and in accordance with the provisions of this Treaty, mutual assistance in criminal investigations and proceedings.
2. Such assistance shall include:
 - a. locating persons;
 - b. serving documents;
 - c. producing documents and records;
 - d. executing requests for search and seizure;
 - e. taking testimony;
 - f. transferring persons for testimonial purposes; and
 - g. immobilizing and forfeiting assets.

Other types of assistance shall also be granted to the extent such assistance is not inconsistent with the laws of the Requested State.

3. Assistance shall be rendered even when the acts under investigation are not offenses in the Requested State and without regard to whether the Requested State would have jurisdiction in similar circumstances.

4. This Treaty is intended solely for mutual assistance in criminal matters between authorities of the Contracting Parties.

ARTICLE 2

Central Authority

1. A request under this Treaty shall be made by a Central Authority for each Contracting [*12] Party. The Central Authorities shall communicate directly with each other to implement the provisions of this Treaty.

2. For the United States the Central Authority shall be the Attorney General. For the Republic of Italy the Central Authority shall be the Minister of Grace and Justice.

ARTICLE 3

Contents of a Request

1. A request for assistance shall indicate:

- a. the name of the authority conducting the criminal investigation or proceeding to which the request relates;
- b. the subject matter and nature of the investigation or proceeding;
- c. a description of the evidence or information sought or the acts to be performed; and
- d. the purpose for which the evidence, information or action is sought.

2. To the extent necessary and possible, a request shall include:

- a. available information on the identity and whereabouts of a person to be located;
- b. the identity and location of a person to be served, that person's relationship to the proceeding, and the manner in which service is to be made;
- c. the identity and location of a person from whom evidence is sought;
- d. a precise description of the place to be searched and the objects to be seized;
- e. a description of the manner in [*13] which any testimony is to be taken and recorded;
- f. a list of questions to be answered; and
- g. a description of any particular procedure to be followed in executing the request.

3. A request shall indicate the allowances and expenses to which a person appearing in the Requesting State will be entitled.

4. A request and accompanying documents shall be in both English and Italian.

ARTICLE 4

Execution of a Request

1. The Central Authority of the Requested State shall promptly comply with a request or, when appropriate, transmit it to the authority having jurisdiction to do so. The competent officials of the Requested State shall do everything in their power to execute a request. The courts of the Requested State shall issue subpoenas, search warrants, or any other process necessary in the execution of a request.

2. A request shall be executed in conformity with the provisions of this Treaty and according to the laws of the Requested State. Procedures specified in the request shall be followed unless prohibited by the laws of the Requested State.

ARTICLE 5

Limitations on Compliance

1. The Requested State may deny assistance to the extent that:

a. execution of a request would [*14] prejudice the security or other essential public interests of the Requested State;

b. a request relates to a purely military offense or a matter considered a political offense by the Requested State; or

c. a request does not comply with the provisions of this Treaty.

2. Before refusing to execute a request, the Requested State shall determine whether assistance can be given subject to such conditions as it deems necessary.

3. The Requested State may postpone execution of a request or grant it subject to conditions if execution would interfere with an ongoing investigation or proceeding in the Requested State.

4. The Requested State shall immediately inform the Requesting State of the reason for partial or total denial or postponement of assistance.

ARTICLE 6

Return of a Completed Request

1. Upon completion of a request the Requested State shall, unless otherwise agreed, return to the Requesting State the original request together with all information and evidence obtained, indicating place and time of

execution.

2. To the extent possible, all documents and records to be furnished pursuant to a request shall be complete and in unedited form. Upon application of the Requesting [*15] State, the Requested State shall make every effort to furnish original documents and records.

ARTICLE 7

Costs and Translations

The Requested State shall render assistance without cost to the Requesting State except for:

- a. expenses incurred in the translation of documents accompanying a request or which result from a request;
- b. fees of private experts specified in a request;
- c. all expenses related to travel of witnesses pursuant to Article 15; and
- d. all expenses related to the transfer of witnesses in custody pursuant to Article 16.

ARTICLE 8

Protecting Confidentiality and Restricting Use of Evidence and Information

1. When necessary, the Requested State may require that evidence and information provided, and information derived therefrom, be kept confidential in accordance with stated conditions. Nevertheless, disclosure may be made where necessary as evidence in a public proceeding.
2. If deemed necessary, the Requesting State may request that the application for assistance, the contents of the request and its supporting documents, and the granting of such assistance be kept confidential.
3. The Requesting State shall not use evidence obtained, nor information derived [*16] therefrom, for purposes other than those stated in a request without the prior consent of the Requested State.

ARTICLE 9

Return of Documents, Records, and Articles of Evidence

The Requesting State shall return upon request any documents, records, or articles of evidence furnished in execution of a request as soon as possible.

ARTICLE 10

Locating Persons

The Requested State, consistent with the provisions of this Treaty, shall make thorough efforts to ascertain the location of persons specified in the request and believed to be in the Requested State.

ARTICLE 11

Serving Documents

1. The Requested State shall cause service of any document transmitted for that purpose by the Requesting State.
2. A request for service of a document requiring the appearance of a person before an authority in the Requesting State shall be transmitted a reasonable time before the scheduled appearance.
3. A document requiring such an appearance shall be served thirty days prior to the scheduled appearance or as otherwise agreed.
4. The Requested State shall return a proof of service executed according to its laws.

ARTICLE 12

Providing Documents and Records of Government Offices or Agencies [*17]

1. The Requested State shall provide a copy of a publicly available document or record of a government office or agency.
2. The Requested State may provide any document or record in the possession of a government office or agency, but not publicly available, to the same extent and under the same conditions as it would be available to its own law enforcement or judicial authorities. The Requested State in its discretion may deny the request entirely or in part.
3. Any document or record provided pursuant to this Article in accordance with procedures specified in the request and certified authentic by the Central Authority of the Requested State shall require no further certification or authentication to be admissible into evidence in the Requesting State.

ARTICLE 13

Producing Other Documents and Records

1. The Requested State, if necessary, shall compel a person to produce a document, record or article to the same extent as would be required for criminal investigations or proceedings in that State. When search and seizure is required, the request shall contain such information as would justify such action in criminal investigations or proceedings under the laws of the Requested [*18] State.
2. With respect to paragraph 1 of this Article, every official of the Requested State who has custody of a seized document, record or article shall certify to the Central Authority of that State the identity of the thing seized, the continuity of the custody thereof, and the integrity of its condition. The Central Authority of the Requested State shall certify that the procedures specified in the request have been followed to the extent possible pursuant to the laws and practices of that State. A document, record or article so certified shall require no further foundation to be admissible into evidence in the Requesting State.

ARTICLE 14

Taking Testimony in the Requested State

1. A person from whom evidence is sought shall, if necessary, be compelled to appear and testify to the same extent as would be required in criminal investigations or proceedings in the Requested State.
2. Upon request, the Requested State shall specify the date and place of the taking of testimony.
3. The Requested State shall permit the presence of an accused, counsel for the accused, and persons charged with the enforcement of the criminal laws to which the request relates.
4. The executing authority [*19] shall provide persons permitted to be present the opportunity to question the person whose testimony is sought in accordance with the laws of the Requested State.
5. The executing authority shall provide persons permitted to be present the opportunity to propose additional questions and other investigative measures.
6. Testimonial privileges under the laws of the Requesting State shall not apply in the execution of a request, but such questions of privilege shall be preserved for the Requesting State.

ARTICLE 15

Taking Testimony in the Requesting State

1. The Requested State, upon request that a person in that State appear and testify in connection with a criminal investigation or proceeding in the Requesting State, shall compel that person to appear and testify in the Requesting State by means of the procedures for compelling the appearance and testimony of witnesses in the Requested State if:
 - a. the Requested State has no reasonable basis to deny the request;
 - b. the person could be compelled to appear and testify in similar circumstances in the Requested State; and
 - c. the Central Authority of the Requesting State certifies that the person's testimony is relevant and material. [*20]
2. A person who fails to appear as directed shall be subject to sanctions under the laws of the Requested State as if that person had failed to appear in similar circumstances in that State. Such sanctions shall not include removal of the person to the Requesting State.

ARTICLE 16

Transferring Persons in Custody for Testimonial Purposes

1. A person in custody needed as a witness in the Requesting State for criminal investigations or proceedings shall be transported to that State pursuant to conditions proposed by Article 15(1).
2. A defendant in custody in one State who seeks for purposes of confrontation to be present at a judicial proceeding in the other State shall be transported to that State unless the State in which the defendant is in

custody has a reasonable basis to deny the request.

3. For purposes of this Article:

- a. the receiving State shall have the authority and obligation to keep in custody a person transferred unless otherwise authorized by the sending State;
- b. the receiving State shall return the person transferred to the custody of the sending State as soon as circumstances permit or as otherwise agreed;
- c. the receiving State shall not decline to return a [*21] person transferred on the basis of nationality nor require the sending State to initiate extradition proceedings; and
- d. the person transferred shall receive credit for service of the sentence imposed in the sending State while in the custody of the receiving State.

ARTICLE 17

Safe Conduct

1. A person appearing before an authority in the Requesting State pursuant to a request:
 - a. shall not be subject to suit, or be detained or subjected to any other restriction of personal liberty, with respect to any act or conviction which preceded departure; and
 - b. shall not be subject to prosecution based on testimony provided pursuant to the request to the extent that such testimony is required to honor the request and is true.
2. Safe conduct provided in this Article shall cease if, ten days after the person appearing has been notified that his or her presence is no longer required, that person, being free to leave, has not left the Requesting State or, having left, has returned.

ARTICLE 18

Immobilization and Forfeiture of Assets

1. In emergency situations, the Requested State shall have authority to immobilize assets found in that State which are subject to forfeiture.
2. Following [*22] such judicial proceedings as would be required under the laws of the Requested State, that State shall have the authority to order the forfeiture to the Requesting State of assets immobilized pursuant to paragraph 1 of this Article.

ARTICLE 19

Other Treaties and Domestic Laws

1. Assistance and procedures provided by this Treaty shall not prevent or restrict any assistance or procedure available under other international conventions or arrangements or under the laws of the Contracting Parties.
2. The activities of the International Criminal Police Organization (INTERPOL) are not affected by this Treaty.

ARTICLE 20

Ratification and Entry into Force

1. This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged, as soon as possible, in Washington.
2. This Treaty shall enter into force upon the exchange of instruments of ratification.

ARTICLE 21

Denunciation

Either Contracting Party may terminate this Treaty at any time by giving notice to the other Party and the termination shall be effective six months after the date of receipt of such notice.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, [*23] have signed this Treaty and have affixed hereunto their seals.

Done in Rome in duplicate, in the English and Italian languages, both equally authentic, this 9th day of November 1982.

For the United States of America

For the Italian Republic

MEMORANDUM OF UNDERSTANDING

Regarding the Treaty on Mutual Assistance in Criminal Matters and its implementation, the delegations of both parties wish to draw special attention to certain provisions of the Treaty.

ARTICLE 1

For the purpose of defining the scope of the various provisions of the Treaty on Mutual Assistance in Criminal Matters, Article 1 refers to "criminal investigations and proceedings".

The Contracting Parties mutually recognize that this phrase refers to the various stages of a criminal action. A "criminal action" lies within the responsibility not only of courts, but also of any other authority which institutionally has, under the laws of its State, power to initiate or proceed in prosecutions for the punishment of criminal offenses.

ARTICLE 4

During the negotiations between the United States and Italy, the delegations discussed requirements for admissibility into evidence under each country's legal system. With respect to the [*24] United States, certain "formalities" exist as conditions precedent to admission. First, a document, record or article sought to be introduced into evidence must be "authenticated". Thereafter, the requisite "foundation" must be furnished.

When both authenticity and foundation are established, the trial judge may admit the document, record, or article into evidence. These preadmission, authentication and foundation requirements are not altered by this Treaty. Therefore, the treaty partner should anticipate, especially with respect to documents and records requested pursuant to Articles 12 and 13, that procedures will be specified in the request to comply with internal requirements. Where evidence is secured pursuant to and in accordance with a Treaty request, the trial judge is permitted to find that such evidence is trustworthy in determining whether the requisite "authenticity" and "foundation" have been established.

ROME, November 9, 1982.

The Head of the Delegation of the United States of America

The Head of the Delegation of the Italian Republic

*The Office of International Affairs * Department of Justice * 1301 New York Ave., NW * Suite 900 * Washington, D.C. 20005*

*Last updated by usdoj-crm/mis
January 10, 2001*

EXHIBIT B

COMMISSIONER'S SUBPOENA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

TO: Rackspace Managed Hosting,
112 E. Pecan Street, Suite 600,
San Antonio, Texas 78205

I, Commissioner Don J. Calvert, an Assistant United States Attorney for the Western District of Texas, acting under the authority of the Treaty between the United States of America and the Italian Republic on Mutual Assistance in Criminal Matters, and under Title 28, United States Code, Section 1782, for the purpose of rendering assistance to Italy, command that you appear before me in Room 7106, in the building located at 601 NW Loop 410, in the city of San Antonio, in the state of Texas, at 10:00 a.m., on the 13th day of August to provide testimony/documents regarding an alleged violation of:

The laws of Italy, namely, attempted murder, among other alleged violations;

That at the time and place aforesaid you provide the following log files in relation to the creation and updating of the web spaces corresponding to the following URLs during the period from

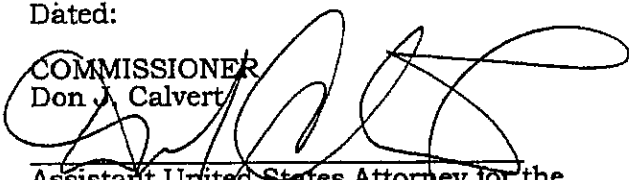
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EXHIBIT B

For failure to attend and provide testimony/said documents, you will be deemed guilty of contempt and liable to penalties under the law.

Dated:

COMMISSIONER
Don J. Calvert



Assistant United States Attorney for the
Western District of Texas
Telephone (210) 384 - 7177

EXHIBIT C



**Procura della Repubblica
presso il Tribunale di Bologna**

OGGETTO: Proc. Pen. 9608/03 + 9704/03 R.G. mod. 44

Rogatoria Internazionale

Alla competente Autorita' Giudiziaria

**per il tramite del dirigente dell'organizzazione internazionale
di polizia criminale (INTERPOL ROMA)**

**Stati Uniti d'America
D.C. - U.S.A**

WASHINGTON

C. DCT conoscenza:

**Al Signor Dirigente dell'Ufficio II
Direzione Generale Giustizia Penale**

**Ministero di Giustizia
ROMA**

in copia

**Al Signor Rappresentante del Dipartimento di Giustizia
presso l'Ambasciata U.S.A.
ROMA**

**perché solleciti l'esecuzione delle Rogatorie richieste
e favorisca i contatti tra questo Ufficio e le Autorità competenti**

**Ai sensi
del trattato di mutua assistenza in materia penale tra il governo della Repubblica
italiana e il Governo degli Stati Uniti d'America sottoscritto a Roma il 9 novembre
1982 e ratificato con L. 26 maggio 1984, n. 224**

I FATTI SUI QUALI LA PROCURA DI BOLOGNA SVOLGE INDAGINE

1. Il giorno 21 dicembre 2003, alle ore 22,00 e 23,00 circa, in Bologna, poco distante dall'abitazione privata del Presidente della Commissione Europea On. Romano Prodi, esplosevano due ordigni di analoga fattura, costituiti da "pentole a pressione" contenenti una bombola di gas del tipo da campeggio ed un timer, che provocavano la distruzione e l'incendio dei due cassonetti per l'immondizia entro i quali erano rispettivamente contenuti.

Il giorno 23 dicembre 2003, presso la redazione locale del quotidiano "La Repubblica" veniva recapitato un documento di rivendicazione dell'azione criminosa composto da tre distinte parti:

- una programmatico-organizzativa, stampata, intestata "Chi siamo. Lettera aperta al movimento anarchico ed antiautoritario", con la quale la Cooperativa Artigiana Fuoco e Affini (occasionalmente spettacolare), la Brigata 20 Luglio, la Cellula contro il Capitale, il Carcere, i suoi Carcerieri e le sue Celle, e Solidarietà Internazionale, rendevano noto di aver costituito la Federazione Anarchica Informale, intesa quale patto di "mutuo appoggio" che, imperniato sull'azione insurrezionale anonima e spontanea nonché sul messaggio orizzontale che la contraddistingue, realizza la "solidarietà rivoluzionaria", propone e persegue obiettivi specifici, assicura la "comunicazione tra gruppi/singoli";
- una politico-rivendicativa, stampata, intestata "Operazione Santa Claus", con la quale la Federazione Anarchica Informale dichiarava di aver dato inizio ad una campagna di attacco alle linee di "sfruttamento e dominio" dell'Unione Europea, che aveva, quali obiettivi concreti, gli "apparati di controllo/repressivi" ed i "protagonisti della massinscena democratica";
- una di rivendicazione in senso stretto, scritta con il normografo, con la quale la Cooperativa Artigiana Fuoco e Affini (occasionalmente spettacolare) assumeva la paternità dell'atto criminoso ed indicava nel Presidente della Commissione Europea, On. Romano Prodi, l'obiettivo dell'azione, sostenendo che era iniziata la manovra di avvicinamento a lui ed ai suoi simili.

Copie di questo documento, prive della parte finale scritta con il normografo, pervenivano inoltre alle redazioni milanesi dei quotidiani "Libero" e "La Repubblica", mentre una quarta copia dello stesso, recante un testo aggiunto con l'uso del normografo in cui si esprimeva solidarietà a "...tutti i prigionieri in lotta nel FIES" e la firma FAI - Solidarietà Internazionale, perveniva alla redazione milanese de "Il Corriere della Sera".

Il giorno 27 dicembre 2003, all'interno dell'abitazione bolognese dell'On. Romano Prodi, un plico, indirizzato alla consorte e contenente un libro che custodiva un ordigno incendiario munito di un congegno di attivazione a strappo, si incendiava violentemente tra le mani dell'uomo politico all'atto dell'estrazione, danneggiando suppellettili ed arredi, ma lasciandolo incolume.

Il giorno 29 dicembre 2003, analoghi plichi venivano recapitati al Presidente della Banca Centrale Europea, Jean Claude Trichet, presso la sede di Francoforte, e all'Europol, Ufficio Europeo di Polizia, con sede a L'Aja.

Il giorno 30 dicembre 2003, un plico di analoga fattura veniva recapitato al Presidente di Eurojust presso la sede de L'Aja.

Il giorno 5 gennaio 2004, due plichi analoghi venivano recapitati presso la sede del Parlamento Europeo in Bruxelles, rispettivamente indirizzati al capo gruppo del PPE Hans Gert Poettering e al deputato José Ignacio Salafranca, mentre un terzo ed ultimo plico veniva recapitato presso l'Ufficio del deputato Gary Titley, sito a Manchester.

Per quanto sinora noto, tutti i plichi in questione risultavano spediti da Bologna e contenevano un documento di rivendicazione privo della parte normografata.

2. Le modalità di confezionamento e collocazione degli ordigni esplosivi nelle vicinanze dell'abitazione dell'On. Romano Prodi, nonché di confezionamento e spedizione dei plichi incendiari inviati a personalità ed Istituzioni dell'Unione Europea fanno ritenere, per quanto finora noto sulla base anche di notizie acquisite informalmente, che tutti siano stati realizzati nell'ambito della stessa attività criminosa e siano riferibili ad un gruppo organizzato che ha agito in Bologna.

Per tale ragione, questo Ufficio proceda ad indagini preliminari nei confronti di ignoti per il delitto previsto dall'art. 280 del codice penale italiano, "Attentato per finalità di terrorismo o di eversione", delitto per il quale è stabilita una pena detentiva non inferiore ad anni sei di reclusione.

3. L'esame del documento di rivendicazione degli attentati ha evidenziato che la Federazione Anarchica Informale è nata ad iniziativa della Cooperativa Artigiana Fuoco e Affini (occasionalmente spettacolare), della Brigata 20 Luglio, delle Cellule contro il Capitale, il Carcere, i suoi Carcerieri e le sue Celle, e di Solidarietà Internazionale, sigle note per l'appartenenza all'area insurrezionale del movimento anarchico e per aver precedentemente effettuato, ognuna per proprio conto, analoghi attentati, alcuni dei quali realizzati contro obiettivi stranieri o compiuti in solidarietà con i detenuti ristretti nelle carceri di Paesi esteri, attentati che hanno rappresentato i momenti culminanti di quelle campagne "antirepressiva" ed "anticarceraria" puntualmente attuate nel corso degli ultimi anni in solidarietà di soggetti d'area detenuti nelle carceri di Spagna, Grecia, Italia e Svizzera, e che, soprattutto per quanto riguarda quelli sottoposti al regime di detenzione speciale spagnolo FIES, hanno assunto toni particolarmente aspri.

La spedizione di plichi esplosivo incendiari a personalità dell'Unione Europea e, prima ancora, a rappresentanti delle forze dell'ordine e di altri organi istituzionali italiani ricalca peraltro le analoghe tecniche adottate da appartenenti ad ambienti insurrezionalisti iberici per "punire" giornalisti, magistrati e poliziotti. Tali elementi inducono a ritenere possibile l'esistenza di solidi collegamenti tra gli ambienti anarco-insurrezionalisti italiani che hanno aderito alla Federazione Anarchica Informale e le omologhe realtà europee responsabili di analoghi atti terroristici.

4. La Cooperativa Artigiana Fuoco e Affini (occasionalmente spettacolare), che si è assunta la paternità dell'esplosione degli ordigni collocati nelle vicinanze dell'abitazione dell'On. Romano Prodi, aveva già rivendicato altri attentati, tra i quali l'invio di un plico incendiario presso la sede del sindacato della polizia penitenziaria spagnola a Barcellona o la posa di una trappola esplosiva ad alto potenziale offensivo in una strada vicina alla sede della Questura di Bologna, avente il chiaro scopo di cagionare gravi lesioni o la morte di operatori di polizia, ma non esplosa grazie all'intervento degli artificieri.

5. Dalle indagini attualmente in corso è emerso che una versione del documento di rivendicazione marginalmente difforme da quella presente nei testi di cui al punto 1 è stata diffusa, anche tradotta in lingua straniera, nella rete internet.

Copia di essa sono state individuate, tra gli altri, ai seguenti indirizzi telematici:

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documento dal titolo "*Federazione Anarchica Informale: anarchici o poliziotti?*", che risulta pubblicato in data 06 gennaio 2004 alle ore 21:19 - (allegato n.6)

I predetti indirizzi telematici sono riconducibili al sito "<http://indymedia.org>", che corrisponde all'omonimo "network di media a livello Internazionale gestiti collettivamente per una narrazione radicale, obbiettiva e appassionata della verità", sostanzialmente alternativa rispetto a quella degli organi di stampa e delle emittenti radio-televisive istituzionalmente riconosciute e registrate, politicamente vicina all'ambiente antagonista. Gran parte dei documenti sopra indicati risultano contenuti nello spazio web denominato "news" ovvero "newswire", uno spazio informativo e di libera discussione, nel quale gli utenti della rete hanno la possibilità di inserire documenti su argomenti di interesse comune, rimanendo nell'anonimato.

Il sito web "<http://indymedia.org>" risulta intestato alla Independent Media Center con recapito in Street 1, 1415 3rd Ave Seattle (U.S.A.), mentre il server che ospita le pagine web risulta riconducibile alla Rackspace Managed Hosting con sede in 112 E. Pecan St. Suite 600 San Antonio, Texas 78205 (U.S.A.) (allegato n. 13).

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Il sito "<http://squat.net>" risulta registrato da Forbes Developement con recapito in 19811 Pine Wind Drive Humble, Texas 77346 (U.S.A), mentre il server che lo ospita è riconducibile a Jaap Vermaas con recapito in Nieuwmarkt 4, 1012 CR Amsterdam (Olanda).

Un'ultima copia del medesimo documento è stata infine individuata al seguente indirizzo telematico:

- "<http://www.alasbarricadas.org/modules.php?file=comments&name=news&op=Reply&pid=13708&sid=3197>" documento che risulta pubblicato in data 28 dicembre 2003 alle ore 00:38:16 - (allegato n.8).

Il sito web "<http://www.alasbarricadas.org>" risulta registrato da tale Xosha Oural Martinez, con recapito in C/ Filiberto Villalobos 7, Bejar, Salamanca (Spagna), mentre il server che lo ospita è riconducibile alla società Altavoz por la Libertad de Expresión y Com con sede in c/Hileras 4 209, 28013 Madrid (Spagna).

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7. Al fine di identificare gli utenti che hanno pubblicato i documenti di rivendicazione in argomento negli spazi web sopra indicati, si rende necessario procedere all'acquisizione dei log file relativi alla creazione ed all'aggiornamento dei contenuti dei medesimi spazi.