CHAPTER 4

USE OF MUTUAL ASSISTANCE TREATIES IN CRIMINAL MATTERS TO OBTAIN EVIDENCE FROM ABROAD FOR USE IN UNITED STATES

§4-1 History and Purpose

Civil law countries, as early as the 1820s, entered into treaty-based relations with respect to judicial assistance in criminal matters. Most of this early treaty-based judicial assistance was governed by provisions in bilateral treaties that dealt with both extradition and judicial assistance in criminal matters. In 1959 the Council of Europe successfully concluded the negotiation of the multilateral European Convention on Mutual Assistance in Criminal Matters. This development gave great impetus to the concept of treating non-extradition-related judicial assistance in criminal matters as a distinct, important subject of international criminal law, warranting separate treatment in bilateral and multilateral treaties.

2 Id. at 91, 119–28.
3 The European Convention on Mutual Assistance in Criminal Matters (E.T.S. No. 30) and the Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (E.T.S. No. 99), an up to date list of parties to them (including their reservations, declarations, and statements of territorial application), and the Council of Europe’s explanatory reports on the Convention and the Additional Protocol are available on the Internet at http://conventions.coe.int.
For the reasons discussed in §§1-1(1) and 1-1(2), supra, prior to the 1960s, the United States felt little need to obtain evidence from other countries in connection with its criminal investigations and prosecutions, and, for the most part, because of insufficient legislation, lacked the ability to make use of such evidence even if it could be obtained. In the late 1950’s and early 1960’s, federal investigations revealed that elements of the American Mafia were engaged in skimming large sums from the profits of Las Vegas casinos and depositing those funds and other illicit revenues in Swiss bank accounts. These investigations highlighted to United States law enforcement officials and members of Congress the increasing need of the United States to be able to obtain evidence from abroad for use in United States criminal investigations and prosecutions, the serious obstacles the United States faced in obtaining such evidence, and the grave problems it had in gaining the admission of such evidence in United States criminal trials even if it were successful in obtaining it.

As a result of this realization, the United States determined that it had to proceed on two fronts. First, it had to enact legislation that permitted it to introduce evidence obtained from abroad in federal criminal trials. As discussed in §2-3(1), supra, this legislation, passed in 1970, initially permitted the government to introduce foreign depositions in evidence only in organized crime cases. Five years later, as also described in that Section, the government’s ability to introduce foreign deposition evidence in federal criminal trials was extended, through the revision of Rule 15, Federal Rules of Criminal Procedure, to all federal criminal trials. Since then, the United States has enacted additional statutes to facilitate the use of evidence from abroad in federal criminal trials.4

Second, the United States had to enter into treaties and executive agreements with other countries to permit it to obtain evidence from them in an efficient and effective manner. Following the example of the Council of Eu-

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4 See §§2-2(4) and 2-2(6) to 2-2(9), supra.