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**United Nations
and
International Criminal Court**

Memorandum of understanding between the United Nations and the International Criminal Court concerning cooperation between the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and the International Criminal Court (with annexes and exchange of letters). New York, 8 November 2005

Entry into force: *8 November 2005 by signature, in accordance with article 25*

Authentic text: *English*

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**Organisation des Nations Unies
et
Cour pénale internationale**

Mémoire d'accord entre l'Organisation des Nations Unies et la Cour pénale internationale relatif à la coopération entre la Mission de l'Organisation des Nations Unies en République démocratique du Congo (MONUC) et la Cour pénale internationale (avec annexes et échange de lettres). New York, 8 novembre 2005

Entrée en vigueur : *8 novembre 2005 par signature, conformément à l'article 25*

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[ENGLISH TEXT — TEXTE ANGLAIS]

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED NATIONS AND THE INTERNATIONAL CRIMINAL COURT CONCERNING COOPERATION BETWEEN THE UNITED NATIONS ORGANIZATION MISSION IN THE DEMOCRATIC REPUBLIC OF THE CONGO (MONUC) AND THE INTERNATIONAL CRIMINAL COURT

Whereas the United Nations and the International Criminal Court (the “Court”) have concluded a Relationship Agreement between the United Nations and the International Criminal Court (the “Relationship Agreement”), which entered into force on 4 October 2004;

Whereas the United Nations General Assembly, in its resolution 58/318 of 13 September 2004, decided that all expenses resulting from the provision of services, facilities, cooperation and any other support rendered to the Court that may accrue to the United Nations as a result of the implementation of the Relationship Agreement shall be paid in full to the Organization;

Whereas the United Nations and the Court have concluded a Memorandum of Understanding between the United Nations, represented by the United Nations Security Coordinator, and the International Criminal Court Regarding Coordination of Security Arrangements (the “MOU on Security Arrangements”), which entered into force on 22 February 2005;

Whereas the United Nations Organization Mission in the Democratic Republic of the Congo (“MONUC”) was established pursuant to United Nations Security Council resolution 1279 (1999) of 30 November 1999 as a subsidiary organ of the United Nations;

Whereas United Nations Security Council resolution 1565 (2004) of 1 October 2004 provides, *inter alia*, that MONUC will have the mandate, in support of the Government of National Unity and Transition of the Democratic Republic of the Congo (the “Government”), to investigate human rights violations to put an end to impunity, and to continue to cooperate with efforts to ensure that those responsible for serious violations of human rights and international humanitarian law are brought to justice, while working closely with the relevant agencies of the United Nations;

Whereas the Rome Statute of the International Criminal Court (the “Rome Statute”) was ratified by the Democratic Republic of the Congo on 11 April 2002 and entered into force for the Democratic Republic of the Congo on 1 July 2002;

Whereas the Government has referred to the Prosecutor of the Court (the “Prosecutor”) the situation of crimes within the jurisdiction of the Court which may have been committed on the territory of the Democratic Republic of the Congo since 1 July 2002 and that the Prosecutor has initiated an investigation;

Whereas, in Article 10 of the Relationship Agreement, the United Nations agrees that, upon the request of the Court, it shall, subject to availability, provide on a reimbursable basis for the purposes of the Court such facilities and services as may be required and whereas it is further stipulated in that Article that the terms and conditions on which any such facil-

ities or services may be provided by the United Nations shall, as appropriate, be the subject of supplementary arrangements;

Whereas, in Article 15 of the Relationship Agreement, with due regard to its responsibilities and competence under the Charter and subject to its rules as defined under applicable international law, the United Nations undertakes to cooperate with the Court;

Whereas, in Article 18 of the Relationship Agreement, the United Nations undertakes, with due regard to its responsibilities and competence under the Charter of the United Nations and subject to its rules, to cooperate with the Prosecutor of the Court and to enter with the Prosecutor into such arrangements or agreements as may be necessary to facilitate such cooperation, in particular when the Prosecutor exercises his or her duties and powers with respect to investigation and seeks the cooperation of the United Nations under Article 54 of the Statute;

Whereas the United Nations and the Court wish to conclude arrangements of the kind foreseen in Articles 10 and 18 of the Relationship Agreement;

Now, therefore, the United Nations, acting through MONUC, and the Court (the “Parties”) have agreed as follows:

CHAPTER I. GENERAL PROVISIONS

Article 1. Purpose

This Memorandum of Understanding (the “MOU”) sets out the modalities of cooperation between the United Nations and the Court in connection with investigations conducted by the Prosecutor into crimes within the jurisdiction of the Court which may have been committed on the territory of the Democratic Republic of the Congo since 1 July 2002.

Article 2. Cooperation

1. The United Nations undertakes to cooperate with the Court and the Prosecutor in accordance with the specific modalities set out in this MOU.

2. This MOU may be supplemented from time to time by means of written agreement between the signatories or their designated representatives setting out additional modalities of cooperation between the United Nations and the Court or the Prosecutor.

3. This MOU is supplementary and ancillary to the Relationship Agreement. It is subject to that Agreement and shall not be understood to derogate from any of its terms. In the case of any inconsistency between the provisions of this MOU and those of the Relationship Agreement, the provisions of the Relationship Agreement shall prevail.

Article 3. Basic Principles

1. It is understood that MONUC shall afford the assistance and support provided for in this MOU to the extent feasible within its capabilities and areas of deployment and without prejudice to its ability to discharge its other mandated tasks.

2. The Court acknowledges that the Government has primary responsibility for the safety and security of all individuals, property and assets present on its territory. Without prejudice to the MOU on Security Arrangements, neither the United Nations nor MONUC shall be responsible for the safety or security of the staff/officials or assets of the Court or of potential witnesses, witnesses, victims, suspects or accused or convicted persons identified in the course, or as a result, of the Prosecutor's investigations. In particular, nothing in this MOU shall be understood as establishing or giving rise to any responsibility on the part of the United Nations or MONUC to ensure or provide for the protection of witnesses, potential witnesses or victims identified or contacted by the Prosecutor in the course of his or her investigations.

Article 4. Reimbursement

1. All services, facilities, cooperation, assistance and other support provided to the Court by the United Nations or by MONUC pursuant to this MOU shall be provided on a fully reimbursable basis.

2. The Court shall reimburse the United Nations or MONUC in full for and in respect of all clearly identifiable direct costs that the United Nations or MONUC may incur as a result of or in connection with providing services, facilities, cooperation, assistance or support pursuant to this MOU.

3. The Court shall not be required to reimburse the United Nations or MONUC for or in respect of:

(a) costs that the United Nations or MONUC would have incurred regardless of whether or not services, facilities, cooperation, assistance or support were provided to the Court pursuant to this MOU;

(b) any portion of the common costs of the United Nations or of MONUC;

(c) depreciation in the value of United Nations or contingent owned equipment, vehicles, vessels or aircraft that might be used by the United Nations or MONUC in the course of providing services, facilities, cooperation, assistance or support pursuant to this MOU.

CHAPTER II. SERVICES, FACILITIES AND SUPPORT

Article 5. Administrative and logistical services

1. At the request of the Court, MONUC is prepared to provide administrative and logistical services to the Court, including:

(a) access to MONUC's information technology facilities, subject to compliance with MONUC's information technology protocols, policies and rules, in particular with respect to the use of external applications and the installation of software;

(b) with the prior written consent of the Government and on the understanding that the Court purchases compatible equipment for that purpose, access to MONUC's internal telecommunications facilities (PABX) and its two-way radio security channels for the purpose of communications within the Democratic Republic of the Congo;

(c) engineering and construction assistance;

(d) storage for items of Court owned equipment or property on a space-available basis, it being understood that risk of damage to, or deterioration or loss of, such equipment or property during its storage by MONUC shall lie with the Court. The Court hereby agrees to release the United Nations, including MONUC, and their officials, agents, servants and employees from any claim in respect of damage to, or deterioration or loss of, such equipment or property;

(e) access to MONUC's vehicle maintenance facilities for the purpose of first line maintenance of the Court's vehicles, it being understood that MONUC is not in a position to guarantee parts, consumables, or workmanship;

(f) with the prior written consent of the Government, the sale at prevailing market rates of petrol, oil and lubricants (POL), subject to availability and to the priority that is to be accorded to MONUC's own operational requirements;

(g) with the prior written consent of the Government, the sale at prevailing market rates of emergency rations (Meals Ready to Eat - MRE) and water, subject to availability and to the priority that is to be accorded to MONUC's own operational requirements, it being understood that such items can only be sold where no alternative sources are available or in emergency situations, and provided that MONUC has surplus emergency stocks;

(h) provided that staff/officials of the Court are lawfully entitled to benefit from the same immigration formalities on their entry into and departure from the Democratic Republic of the Congo as are members of MONUC, assistance to staff/officials of the Court in completing those formalities when arriving or departing on flights that are also carrying members of MONUC. It is understood that it is the Court's responsibility to ensure that its staff/officials are in possession of appropriate travel documents and that MONUC is not in a position to resolve any travel, immigration or departure problems for staff/officials of the Court;

(i) on an exceptional basis and with the prior written consent of the Government, temporary or overnight accommodation for staff/officials of the Court on MONUC premises, it being understood that MONUC will consider requests for such services on a case-by-case basis, taking duly into consideration the security of its own members and assets and the availability of alternative suitable accommodation in the vicinity. It shall be a condition of the accommodation of any staff member/official of the Court on MONUC premises that he or she first sign a waiver of liability as set out in Annex A of this MOU. The Court shall advise its staff/officials concerned of this requirement and shall instruct them to complete and sign that waiver. MONUC and the Court shall make practical arrangements for the transmittal to MONUC of completed and signed waivers at least 5 (five) working days in advance of the arrival of the staff/officials concerned at the MONUC premises at which they are to be accommodated. The United Nations shall not be responsible in any way for the safety or security of any staff/officials of the Court who are accommodated on MONUC premises pursuant to a request by the Court.

2. The Court shall make requests for such services in writing. In making such requests, the Court shall specify the nature of the administrative or logistical services sought, when they are sought and for how long. MONUC shall inform the Court in writing whether or not it accedes to a request as soon as possible and in any event within 10 (ten) working