

No. 1356

**United Nations
and
International Criminal Court**

Memorandum of Understanding between the United Nations and the International Criminal Court concerning cooperation between the United Nations Office of Internal Oversight Services and the International Criminal Court (with Memorandum of Understanding, 16 July 2010 and 21 July 2010). New York, 25 February 2011 and 18 March 2011

Entry into force: *18 March 2011 by signature and with retroactive effect from 19 July 2010, in accordance with article 12*

Authentic text: *English*

Registration with the Secretariat of the United Nations: *ex officio, 7 April 2011*

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

Mémorandum d'accord entre l'Organisation des Nations Unies et la Cour pénale internationale relatif à la coopération entre le Bureau des services de contrôle interne de l'Organisation des Nations Unies et la Cour pénale internationale (avec Mémorandum d'accord, 16 juillet 2010 et 21 juillet 2010). New York, 25 février 2011 et 18 mars 2011

Entrée en vigueur : *18 mars 2011 par signature et avec effet rétroactif à compter du 19 juillet 2010, conformément à l'article 12*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *d'office, 7 avril 2011*

[ENGLISH TEXT – TEXTE ANGLAIS]

**Memorandum of Understanding
Between the United Nations and the International Criminal Court
Concerning Cooperation between the United Nations Office of Internal Oversight
Services 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 Office of Internal Oversight Services ("OIOS") was established pursuant to the United Nations General Assembly resolution 48/218B of 12 August 1994 as an independent office under the authority of the Secretary-General of the United Nations;

Whereas United Nations General Assembly resolution 48/218B of 12 August 1994 provides, inter alia, that OIOS will have the mandate to assist the Secretary General in fulfilling his internal oversight responsibilities in respect of the resources and staff of the United Nations;

Whereas the Assembly of States Parties to the Rome Statute ("Assembly of States Parties") adopted the resolution ICC-ASP/8/Res.1 of 26 November 2009 whereby it established an independent oversight mechanism ("IOM") with the view to conduct investigations on allegations of misconduct by staff and elected officials of the Court and to ensure an effective and meaningful oversight thereof;

Whereas pursuant to the Assembly of States Parties resolution ICC-ASP/8/Res.1 of 26 November 2009, the Registrar of the Court is tasked with entering into a memorandum of understanding ("MOU") with the OIOS to provide support services on a cost recovery basis for the operationalization of the IOM;

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

Whereas in Article 8, paragraph 2 (b), of the Relationship Agreement, the United Nations and the Court agree to cooperate in the temporary interchange of personnel, where appropriate, making due provisions for the retention of seniority and pension rights;

Whereas in Article 8, paragraph 2 (c), of the Relationship Agreement, the United Nations and the Court agree to strive for the maximum cooperation in order to achieve the most efficient use of specialized personnel, systems and services;

Whereas the United Nations and the Court have concluded a Memorandum of Understanding on Reimbursable Loan of Staff on 21 July 2010;

Whereas the United Nations and the Court wish to conclude arrangements of the kind foreseen in Articles 8 and 10 of the Relationship Agreement;

Now, therefore, the United Nations, acting through the OIOS and the Court, acting through its Registry (the "Parties") have agreed as follows:

CHAPTER I: GENERAL PROVISIONS

Article I Purpose

This Memorandum of Understanding (the "MOU") sets out the modalities of cooperation between the United Nations and the Court in connection with the setting up and operationalization of the oversight mechanism of the Court.

Article 2 Cooperation

1. OIOS undertakes to cooperate with the Court in accordance with the specific modalities set out in this MOU.
2. This MOU may be supplemented at any time by means of written agreement between the Parties or their designated representatives setting out additional modalities of cooperation between OIOS and the Court.
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

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

Article 4
Reimbursement

1. All services, facilities, cooperation, assistance and other support provided to the Court by the United Nations pursuant to this MOU shall be provided on a fully reimbursable basis.
2. The Court shall reimburse the United Nations or OIOS in full for and in respect of all clearly identifiable direct costs that the United Nations or OIOS may incur as a result of or in connection with OIOS's providing services, facilities, cooperation, assistance or support pursuant to this MOU.
3. The Court shall not be required to reimburse the United Nations or OIOS for or in respect of:
 - (a) costs that the United Nations or OIOS 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 OIOS;
 - (c) depreciation in the value of United Nations or OIOS owned equipment that might be used by the United Nations or OIOS in the course of providing assistance, facilities, cooperation 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, OIOS is prepared to provide administrative and logistical services to the Court for the purposes of assisting the Court in setting up and operationalizing its own oversight mechanism, including:
 - (a) Intake assessment
 - (b) Planning support
 - (c) Assistance with records review
 - (d) Interview planning and preparation
 - (e) Guidance on IT forensic analysis and other forensic tools
 - (f) Support for the collection and management of evidence
 - (g) Advice on and review of investigation support
 - (h) Access to OIOS's Investigation Learning Programme.

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 needed and for how long. OIOS shall inform the Court in writing whether or not it accedes to a request as soon as possible and in any event within 10 working days of its receipt. In the event that it accedes to the request, OIOS shall simultaneously inform the Court in writing of the date on which it is able to commence the provision of the services concerned and of their estimated cost.

Personnel arrangements

Article 6

1. With a view to assisting the Court in the setting up and operationalization of the IOM, and pursuant to Articles 8 and 10 of the Relationship Agreement, OIOS agrees to make available to the Court, on a reimbursable basis, a staff member of OIOS at the P5 level for the period of one year.
2. The terms and conditions of the arrangement referred to in paragraph 1 above are set out in the Memorandum of Understanding between the United Nations and the International Criminal Court on Reimbursable Loan of Staff concluded on 21 July 2010 (the "July 2010 MOU"), a copy of which is attached as Annex I hereto.
3. OIOS and the Court may decide at any time, by means of a written agreement, to amend the conditions of the arrangement referred to in paragraph 1 above, including those set out in the July 2010 MOU, of the staff member of OIOS to the Court.
4. OIOS and the Court may decide at any time, by means of a written agreement, to enter into arrangements for additional staff to be made available to the Court on such terms and conditions as the Parties may agree.

Article 7

1. During his/her tenure at the IOM, the loaned staff member shall provide any such service as may be required for the setting up and operationalization of the IOM.
2. If required, the loaned staff member shall provide full investigative services to IOM. The Court shall enter into a separate agreement with OIOS, pursuant to Article 10 of the Relationship Agreement, should the IOM require additional assistance from OIOS for the purposes of the conduct of such investigations.