

No. 1374*

**United Nations
and
International Criminal Court**

Memorandum of Understanding between the United Nations and the International Criminal Court concerning cooperation between the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) and the International Criminal Court (with annexes). New York, 28 July 2014 and 30 July 2014, and The Hague, 20 August 2014

Entry into force: *20 August 2014 by signature, in accordance with article 24*

Authentic text: *English*

Registration with the Secretariat of the United Nations: *ex officio, 1 September 2014*

**No UNTS volume number has yet been determined for this record. The Text(s) reproduced below, if attached, are the authentic texts of the agreement /action attachment as submitted for registration and publication to the Secretariat. For ease of reference they were sequentially paginated. Translations, if attached, are not final and are provided for information only.*

**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 la Mission multidimensionnelle intégrée des Nations Unies pour la stabilisation au Mali (MINUSMA) et la Cour pénale internationale (avec annexes). New York, 28 juillet 2014 et 30 juillet 2014, et La Haye, 20 août 2014

Entrée en vigueur : *20 août 2014 par signature, conformément à l'article 24*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat de l'Organisation des Nations Unies : *d'office, 1^{er} septembre 2014*

**Aucun numéro de volume n'a encore été attribué à ce dossier. Les textes disponibles qui sont reproduits ci-dessous sont les textes originaux de l'accord ou de l'action tels que soumis pour enregistrement. Par souci de clarté, leurs pages ont été numérotées. Les traductions qui accompagnent ces textes ne sont pas définitives et sont fournies uniquement à titre d'information.*

[ENGLISH TEXT – TEXTE ANGLAIS]

**Memorandum of Understanding
Between the United Nations and the International Criminal Court
Concerning Cooperation between the United Nations Multidimensional Integrated
Stabilization Mission in Mali (MINUSMA) 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 December 2004;

Whereas the United Nations Operation in Mali ("MINUSMA") was established pursuant to United Nations Security Council resolution 2100 (2013) of 25 April 2013 as a subsidiary organ of the United Nations;

Whereas the United Nations Security Council, in its resolution 2100 (2013) of 25 April 2013, decided that the mandate of MINUSMA shall be *inter alia* to support, as feasible and appropriate, the efforts of the transitional authorities of Mali, without prejudice to their responsibilities, to bring to justice those responsible for war crimes and crimes against humanity in Mali, taking into account the referral by the transitional authorities of Mali of the situation in that country since January 2012 to the Court;

Whereas the United Nations Security Council condemned strongly all abuses and violations of human rights and violations of international humanitarian law and reiterated that all perpetrators of such acts must be held to account and that some of such acts may amount to crimes under the Rome Statute of the International Criminal Court (the "Rome Statute");

Whereas the transitional authorities or Government of Mali (the "Government") on 18 July 2012 referred the situation in Mali since January 2012 to the Prosecutor of the Court ;

Whereas the Prosecutor of the International Criminal Court opened, on 16 January 2013, an investigation into alleged crimes committed on the territory of Mali since January 2012;

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 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 her or his 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, represented by MINUSMA, and the Court (the "Parties"), represented by the Registrar and the Prosecutor (the "Registrar" and the "Prosecutor"), 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 investigations conducted by the Prosecutor into crimes within the jurisdiction of the Court which may have been committed on the territory of Mali since January 2012.

Article 2

Cooperation

1. The United Nations undertakes to cooperate with the Court, including 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, as the case may be.
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 MINUSMA 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 taking duly into consideration the safety of its members and assets, and its operational priorities.

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 MINUSMA shall be responsible for the safety or security of the staff/officials or assets of the Court or of potential 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 MINUSMA to ensure or provide for the protection of witnesses, potential witnesses or victims identified or contacted by the Court, including the Prosecutor, in the course of its investigations.

Article 4
Reimbursement

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

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

3. It is understood that the clearly identifiable costs referred to in paragraph 2 above, include the costs of the administrative overheads involved in providing services, facilities, cooperation, assistance or support to the Court pursuant to this MOU and that these administrative costs shall be reimbursed to the United Nations at the rate of 14 per cent of the direct costs incurred by the United Nations, including MINUSMA, as a result of or in connection with the provision of such services, facilities, cooperation, assistance or support to the Court pursuant to this MOU.

4. The Court shall not be required to reimburse the United Nations, including MINUSMA for or in respect of:

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

(b) depreciation in the value of United Nations or contingent owned equipment, vehicles, vessels or aircraft that might be used by the United Nations, including MINUSMA 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. MINUSMA is prepared, at the request of the Court, to provide administrative and logistical services to the Court, including:

- (a) access to MINUSMA's information technology (I.T.) facilities in areas where available, subject to compliance with MINUSMA'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 MINUSMA's internal telecommunications facilities (PABX) and its two-way radio security channels for the purpose of communications within Mali;
- (c) storage for items of equipment or property owned by the Court 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 MINUSMA shall lie with the Court. The Court hereby agrees to release the United Nations, including MINUSMA, and their officials, agents, servants and employees from any claim in respect of damage to, or deterioration or loss of, such equipment or property;
- (d) provided that (i) staff/officials of the Court, and (ii) victims, witnesses, defence counsel and defence team members travelling for Court related purposes ("Other Persons") are lawfully entitled to benefit from the same immigration formalities on their entry into and departure from Mali as members of MINUSMA, assistance to staff/officials of the Court and Other Persons in completing those formalities when arriving or departing on flights that are also carrying members of MINUSMA. It is understood that it is the Court's responsibility to ensure that its staff/officials and Other Persons are in possession of appropriate travel documents and that MINUSMA is not in a position to resolve any travel, immigration or departure problems for staff/officials of the Court and Other Persons;
- (e) on an exceptional basis and with the prior written consent of the Government, temporary or overnight accommodation for staff/officials of the Court on MINUSMA premises, it being understood that MINUSMA will consider requests for such services on a case-by-case basis, taking duly into consideration the accommodation needs and 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/officials of the Court on MINUSMA premises that he or she first sign a waiver of liability as set out in Annex A of this