

No. 1379*

**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 the Central African Republic (MINUSCA) and the International Criminal Court (with annexes). New York, 3 May 2016 and 5 May 2016, and The Hague, 18 May 2016 and 19 May 2016

Entry into force: *19 May 2016 by signature, in accordance with article 24*

Authentic text: *English*

Registration with the Secretariat of the United Nations: *ex officio, 1 June 2016*

**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 concernant la coopération entre la Mission intégrée multidimensionnelle de stabilisation des Nations Unies en République centrafricaine et la Cour pénale internationale (avec annexes). New York, 3 mai 2016 et 5 mai 2016, et La Haye, 18 mai 2016 et 19 mai 2016

Entrée en vigueur : *19 mai 2016 par signature, conformément à l'article 24*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *d'office, 1^{er} juin 2016*

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**Memorandum of Understanding
Between the United Nations and the International Criminal Court
Concerning Cooperation between the United Nations Multidimensional Integrated
Stabilization Mission in the Central African Republic (MINUSCA) 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 Central African Republic ("MINUSCA") was established pursuant to United Nations Security Council resolution 2149 (2014) of 10 April 2014 as a subsidiary organ of the United Nations;

Whereas the United Nations Security Council, in its resolution 2217 (2015) of 28 April 2015, decided that the mandate of MINUSCA shall focus on immediate priority tasks including support for national and international justice and the rule of law through arresting and handing over to the CAR authorities those responsible for serious human rights violations and abuse and serious violations of international humanitarian law in the country so that they can be brought to justice, and through cooperation with States of the region as well as the ICC in cases of crimes falling within its jurisdiction;

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 Central African Republic (the "Government") on 30 May 2014 referred the situation in Central African Republic since August 2012 to the Prosecutor of the Court;

Whereas the Prosecutor of the International Criminal Court opened, on 24 September 2014, an investigation into alleged crimes committed on the territory of Central African Republic since August 2012 following the referral of the situation by the Central African authorities on 30 May 2014;

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 MINUSCA, and the Court, represented by the Registrar and the Prosecutor (the "Registrar" and the "Prosecutor") (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 Central African Republic since August 2012.

Article 2 **Cooperation**

1. The United Nations undertakes to cooperate with the Court, 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 MINUSCA 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 or to article 16 below, neither the United Nations nor MINUSCA 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 MINUSCA 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.
3. The Registrar and the Prosecutor, as appropriate, shall take all necessary steps within their powers to ensure the discipline and orderly conduct of all the staff/officials of the Court and victims, witnesses, defence counsel and defence team members and counsel for victims and their team members at all times while they are on MINUSCA premises, in MINUSCA vehicles or under the immediate protection of MINUSCA and shall ensure that they comport themselves in a manner that respects and preserves the exclusively international character of MINUSCA and its premises, vehicles and personnel and does not prejudice in any way the security or proper conduct of MINUSCA's operations or activities.

Article 4
Reimbursement

1. All services, facilities, cooperation, assistance and other support that may be provided to the Court by the United Nations, including MINUSCA pursuant to this MOU shall be provided on a fully reimbursable basis.
2. The Court shall reimburse the United Nations, including MINUSCA in full for and in respect of all clearly identifiable costs that the United Nations, including MINUSCA, 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 MINUSCA, 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 MINUSCA for or in respect of:

(a) costs that the United Nations, including MINUSCA 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 MINUSCA 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. MINUSCA is prepared, at the request of the Court, to provide administrative and logistical services to the Court, including:

- (a) access to MINUSCA's information technology (I.T.) facilities in areas where available, subject to compliance with MINUSCA'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 MINUSCA's internal telecommunications facilities (PABX) and its two-way radio security channels for the purpose of communications within Central African Republic;
- (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 MINUSCA shall lie with the Court. The Court hereby agrees to release the United Nations, including MINUSCA, 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, defence team members, and counsel for victims and their 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 Central African Republic as members of MINUSCA, assistance to staff/officials of the Court and Other Persons in completing those formalities when arriving or departing on flights that are also carrying