

**Best Practices Manual**  
**for**  
**United Nations – International Criminal Court Cooperation**

pursuant to

The Relationship Agreement between the United Nations and  
the International Criminal Court

(entry-into-force 4 October 2004)

and General Assembly resolution 58/318

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# 1. Background

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## The Rome Statute

The United Nations is not a party to the Court's founding treaty; it is not bound by it.

## The UN –ICC Relationship Agreement

[Article 2 of the Rome Statute](#), entitled "Relationship of Court with the United Nations", provides for the International Criminal Court (ICC) to be brought into relationship with the United Nations (UN).

In its [resolution 58/79](#) of 9 December 2003, the General Assembly invited the Secretary-General to take steps to conclude a relationship agreement between the United Nations and the International Criminal Court and to submit such an agreement for the General Assembly's approval.

[The Relationship Agreement](#) was negotiated in 2004. It was approved by the Assembly of States Parties to the Rome Statute (ASP) in its resolution ICC-ASP/3/25 of 7 September 2004 and by the General Assembly in its [resolution 58/318](#) of 13 September 2004. It was signed on 4 October 2004 by the then Secretary-General, Kofi Annan, and the then President of the International Criminal Court, Philippe Kirsch. It entered into force on that same date.

While recognising the independent judicial character of the International Criminal Court and the need for both the ICC and the UN to respect each other's distinct mandates, the Relationship Agreement provides for close cooperation where appropriate between the two institutions and for consultation on matters of mutual interest.

The Relationship Agreement provides a general framework for cooperation between all units and entities of the United Nations, including its offices, fund and programmes, on the one hand, and the International Criminal Court, including the Secretariat of the Assembly of States Parties, on the other.

All obligations of the UN under the Relationship Agreement are conditioned on the rules of the Organization, including the Charter, the Financial Rules and Regulations, resolutions (for example, those that provide the mandates for UN entities) and other instruments such as the Convention on the Privileges and Immunities of the United Nations.

Units and entities of the United Nations, including the offices, funds and programmes, may enter into further agreements, arrangements and memoranda of understanding pursuant to the Relationship Agreement with the International Criminal Court.

The International Criminal Court is regarded as a [related organization in the United Nations System](#).

## **GA Resolution 58/318**

On 13 September 2004, the General Assembly adopted [resolution 58/318](#) which approved the Relationship Agreement between the United Nations and the International Criminal Court.

In this resolution, the General Assembly decided that all expenses resulting from the provision of services, facilities, cooperation and any other support rendered to the ICC or the Assembly of States Parties to the Rome Statute of the ICC, including under any arrangements that may be otherwise agreed under [article 10 of the Relationship Agreement](#), 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.

Resolution 58/318 constitutes a rule of the UN – part of its internal law. The Organization has to comply with it in the case of any cooperation pursuant to the Relationship Agreement that has a cost implication for the United Nations.

The Controller has determined that, pursuant to resolution 58/318, the Court is required to reimburse the United Nations in respect of all clearly identifiable costs that the UN may incur as a result of or in connection with providing services, facilities, cooperation, assistance or support to the Court. Clearly identifiable costs include the costs of the administrative overheads involved in providing services, facilities, cooperation, assistance or support to the Court, which are usually calculated at a rate of 14 per cent.

#### **[General Assembly Resolution on the Report of the ICC to the GA \(updated annually\)](#)**

Member States of the United Nations consult annually on the agenda item “[Report of the ICC to the General Assembly](#)”, and adopt a [resolution](#) that acknowledges the Relationship Agreement as a framework for continued cooperation between the UN and the ICC and encourages the conclusion of supplementary arrangements and agreements, as necessary.

The yearly resolution focuses on cooperation not only between the United Nations and the International Criminal Court, but also between States Parties, non-States Parties and regional and international organisations and the ICC.

The GA resolution invites the ICC to submit, in accordance with [Article 6 of the Relationship Agreement](#), a report on its activities for the current year. This report is transmitted under cover of a note by the Secretary-General.

The General Assembly also invites the Secretary General to submit two reports with respect to cooperation with the International Criminal Court:

- i) [Report](#) on expenses incurred and reimbursements received by the United Nations in connection with assistance provided to the International Criminal Court; and
- ii) [Report](#) on the implementation of Article 3 of Relationship Agreement.

The Secretary-General’s report on the implementation of article 3 of the Relationship Agreement provides the General Assembly with an annual update of major activities relating to cooperation, including an account of any meetings that have taken place between UN officials and persons that are subject to arrest warrants issued by the ICC.

## 2. General Principles for Cooperation

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### Obligation of cooperation and coordination

The Relationship Agreement places upon the United Nations a legal obligation to cooperate with the International Criminal Court, including the Secretariat of the Assembly of States Parties to the Rome Statute of the ICC.

All units and entities of the United Nations, including the offices, fund and programmes **without exception**, are therefore subject to a legal obligation to cooperate with the Court.

*The content of this obligation is discussed below.*

In 2006, an agreement was reached among all units of the UN and the Office of the Prosecutor on a set of principles to guide interactions between the UN and the Court. These were subsequently communicated to the Court. The Court has recognised that it should respect them in its dealings with the UN. Any failure to do should be reported to the focal point in OLA.

### The Principle of Headquarters contact

The ICC has been advised that the first contact between the Court and any unit or entity of the UN, including any office, fund or programme, on any issue or matter should occur at the headquarters level. In the case of UN field operations, this would mean contact with the relevant mother unit of the Secretariat in New York: the Department of Peacekeeping Operations (DPKO) and the Department for Field Support (DFS) for peacekeeping operations and the Department of Political Affairs (DPA) and DFS for special political missions. Field presences should be advised that, if approached by the Court, they should refer the Court to their respective headquarters.

The Court may make subsequent contacts at the field level once the headquarters of the relevant Secretariat unit, office, fund or programme has notified the Court that it is agreeable to this. In the case of requests for administrative or logistical assistance, this will typically be the case if there is an MOU or other agreement for cooperation with the relevant field office in place.

The Court has also been advised that requests for the following types of assistance from any unit or entity of the UN, including any office, fund or programme, should always be made at the level of the headquarters of that UN Secretariat unit, office, fund or programme, or in the case of a peacekeeping operation or other field presence, its mother unit of the Secretariat, even where an MOU for cooperation with a relevant field office is in place:

- Requests to provide documents or other forms of information;
- Requests to interview current or former UN personnel or UNVs or contractors.

Requests for testimony by UN personnel should always be sent to the Office of Legal Affairs, with a copy to the headquarters of the relevant unit, office, fund or programme.

In the case of requests that relate to the human rights component of a peace operation, the Court has been advised that the request should be copied to the headquarters of OHCHR.

### **Principle of OLA involvement**

In 2005, the then Chef de Cabinet, Mark Malloch Brown, informed all UN offices, funds and programmes that the Secretary-General has designated the Office of Legal Affairs as the “[point of entry](#)” for the ICC with regard to any cooperation related matter.

The Office of Legal Affairs acts as the focal point for UN-ICC cooperation. The General Assembly in its resolution A/69/279 entitled Report of the International Criminal Court of 27 May 2015, referred to the office as having a specific role with respect to UN-ICC cooperation.

The Court has been notified that all requests for assistance that are made at headquarters level should be copied to the Legal Counsel.

In the case of requests for UN personnel to testify in proceedings before the Court, the Court addresses these to the Legal Counsel, with a copy to the headquarters of the relevant unit or entity of the UN, including the offices, funds and programmes.

All units and entities of the United Nations, including the offices, funds and programmes, may seek advice from OLA regarding matters of cooperation with any organ of the Court, including the Secretariat of the Assembly of States Parties to the Rome Statute.

In accordance with UN rules ([ST/SGB/2001/7](#)), the Office of Legal Affairs has to be consulted on any agreements or arrangements that any unit or entity of the UN, including its offices, funds and programmes, may propose to conclude with the Court, including its Prosecutor.

### **Principle of discretion**

The Court has been informed that maximum discretion is vital in the case of field-level contacts. Unless the headquarters of the relevant UN Secretariat unit, office, fund or programme, or the mother unit of a peace operation, specifically advises otherwise, care is to be taken to avoid any visible connection between UN presences in the field and the Court. This principle is particularly pertinent in countries where the Court's investigators are present, and includes contacts by telephone or e-mail, unless the field unit concerned expressly advises the Court otherwise.

In some cases, pursuant to the principle of discretion, a unit or entity of the UN may even require the fact that they are cooperating with the Court not be disclosed to any other UN entity (with the exception of OLA).

### **Principle of subsidiarity**

Primary responsibility for providing assistance to, and cooperating with, the Court lies with Governments, particularly the Governments of States Parties to the Rome Statute. It is to be expected that Governments will accordingly be the Court's interlocutor of first resort.

It is anticipated that the Court will therefore normally request documents and other forms of information from the UN only after it has confirmed that those documents or information are not available from other, less vulnerable sources.

It is recognized, though, that there will be some cases where the UN is the best source of information or evidence and will therefore naturally be the Court's interlocutor of first resort.

The principle of subsidiarity applies to all forms of legal cooperation.

### **Principle of protection**

Responsibility for the protection of victims and witnesses lies with Member States and the Court. This applies equally with respect to beneficiaries for whom the UN may have responsibility and with respect to current and former UN personnel (staff members, members of peacekeeping operations, experts on mission and UNVs) and UN contractors.

It is anticipated that the Court will consequently, where necessary, develop appropriate protection schemes with respect to beneficiaries of UN assistance and with respect to current and former UN personnel before it makes any request to interview them or for them to testify. Such protection schemes could be drawn up in consultation with the UN.



### 3. Essential Contact Policy

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#### **Obligation to refrain from action that would compromise the work of the Court**

The United Nations has a general obligation to refrain from any action that would frustrate the activities of the Court and its various organs, including the Prosecutor, or undermine the authority of their decisions.

In line with this general obligation, the Secretary-General issued guidelines in April 2013 on contact between UN officials and persons who are the subject of arrest warrants or summonses to appear issued by the International Criminal Court. The Guidance was transmitted to the President of the General Assembly and to the President of the Security Council as document [A/67/828 and S/2013/210](#).

#### **Contact with persons who are subject to summonses to appear**

The Guidance states that United Nations officials may interact without restrictions with persons who are the subject of a summons to appear issued by the International Criminal Court and who are cooperating with the Court. However, if such a person ceases to cooperate with the Court and the Prosecutor seeks the issuance by the Court of a warrant for his/her arrest, the guidance on persons subject to warrants of arrest should be followed.

#### **Contact with persons who are subject to warrants of arrest**

The Secretary-General's Guidance limits contacts between United Nations officials and persons who are the subject of warrants of arrest issued by the International Criminal Court to those that are **strictly required for carrying out essential United Nations mandated activities**.

The presence of United Nations officials at any ceremonial or similar occasion that is attended by a person who is the subject of an ICC arrest warrant should be avoided and standard courtesy calls should not be made.

The Guidance provides that, when contact is absolutely necessary, every attempt should be made to interact with individuals of the same group or party who are not the subject of an ICC arrest warrant.

#### **Defining "strictly required for carrying out UN mandated activities"**

The determination with respect to what contacts are "strictly required" is an operational one and should be made in light of the specific circumstances. Offices may seek guidance from OLA in making such a determination.

### **Procedure for informing the International Criminal Court of essential contacts**

The Secretariat unit, office, fund or programme or peace operation should inform the Office of Legal Affairs at the earliest possible time when a meeting with a person that is the subject of an ICC arrest warrant is scheduled to take place. A procedure has been established whereby OLA informs the Prosecutor of the Court and the President of the Assembly of States Parties to the Rome Statute in advance of such meetings. The letter informs the Court of the meeting and explains why it is considered necessary.

The General Assembly has requested that the Secretary-General report to it each year on contacts between UN officials and ICC suspects.

## 4. Supplementary Agreements between the UN and the ICC

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The Relationship Agreement foresees the conclusion of agreements and arrangements between the UN and the Court spelling out the concrete details of cooperation between them in specific domains or fields.

Articles 10 and 18 of the Relationship Agreement provide for supplementary arrangements which may deal with the provision of facilities or services by the UN to the Court or which may facilitate cooperation between the UN and the Prosecutor.

The United Nations has concluded agreements with the Court for cooperation with the [United Nations Office of Internal Oversight Services](#), the [United Nations Office on Drugs and Crime](#) and the [United Nations Office in Nairobi](#).

The United Nations has also concluded a number of agreements for cooperation between its peacekeeping operations and the Court. In countries, where the Prosecutor has opened investigations and anticipates numerous requests for logistical and other forms of assistance from the United Nations, such agreements, which are concluded further to the Relationship Agreement, have proven very useful from both the Court and the Organization's point of view.

### **[Memorandum of Understanding concerning cooperation between MONUC \(now MONUSCO\) and the ICC](#)**

The 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, now MONUSCO) and the International Criminal Court (MONUSCO MoU) was concluded on 8 November 2005.

THE MONUSCO MoU was the first of a number of agreements for cooperation by peacekeeping operations. It provides a basis for a range of types of administrative and logistical assistance such as transportation, medical services and loan of UN-owned equipment. It also provides for the provision of military support to the Prosecutor for the purpose of facilitating investigations in areas where MONUSCO units are already deployed. Further to the MOU, administrative and logistical services can be requested by the Court directly from MONUSCO without involving Headquarters.

The MOU also deals with legal assistance, in the form of provision of information, documents, interviews and testimonies. Such requests are still governed by the [principle of Headquarters contact](#). The Office of the Prosecutor or the Registry (on behalf of the Defence or the Legal Representatives of Victims) must address requests for such assistance to the Under-Secretary-General for Peacekeeping Operations or, in the case of testimony, to the Legal Counsel. Further to consultations with the Mission, DPKO or OLA will respond to the Court, acceding or not to the request for information, interview, or testimony of a UN official.

### **Memorandum of Understanding concerning cooperation between UNOCI and the ICC**

On 23 January 2012, the United Nations concluded an [MOU with the International Criminal Court for cooperation between the United Nations Operation in Côte d'Ivoire \(UNOCI\) and the Prosecutor](#) of the International Criminal Court.

This agreement was concluded at the request of the Prosecutor, who had commenced investigations into the situation of crimes within the jurisdiction of the ICC that might have been committed in Côte d'Ivoire since 28 November 2010.

Subsequently and further to a request by the Registry for an MOU for cooperation between UNOCI and the Court as a whole, an agreement was concluded and entered into force on 12 June 2013 that provided for [cooperation between UNOCI and the Court as a whole \(UNOCI MOU\)](#). The UNOCI MOU superseded the MOU for cooperation between UNOCI and the Prosecutor of the ICC.

### **Memorandum of Understanding concerning cooperation between MINUSMA and the ICC**

Relying on the UNOCI MOU as a general template, the Organization concluded its third agreement for cooperation by a peacekeeping mission on 20 July 2014, namely, a Memorandum of Understanding between the United Nations and the International Criminal Court for cooperation between the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) and the International Criminal Court.

### **Memorandum of Understanding concerning cooperation between MINUSCA and the ICC**

Further to the Central African Republic's second referral of a situation in the country to the ICC Prosecutor on 30 May 2014, the Court requested an MOU for cooperation with the Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA). This agreement was modelled on the MINUSMA MOU.

## 5. Consultations on matters of mutual interest

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### Legal basis for consultations on matters of mutual interest

[Article 3 of the Relationship Agreement](#) provides for the United Nations and the International Criminal Court to consult each other on matters of mutual interest.

The United Nations may be invited by the various organs of the Court to provide its views on matters of mutual interest. So, for example, the Prosecutor sought the United Nations' comments on her policy paper on sexual and gender-based crimes.

The Prosecutor's work with States that are the subject of preliminary examinations may provide an opportunity for collaboration with the UN's Rule of Law initiatives and vice versa.

### Providing input on thematic policy papers of the Prosecutor

The Prosecutor has consulted the United Nations on the drafting of its [thematic policy paper on sexual and gender-based violence crimes](#). The Office of the Prosecutor received input from the relevant offices whose mandates relate to this issue. The OTP is now finalising its thematic paper on children and armed conflict and has already alerted the Organization of its intention to seek its expert views on the draft paper.

Such collaborations make it possible for the Office of the Prosecutor to benefit from United Nations expertise and for the Organization to advance its own mandate by supporting the Prosecutor's efforts to ensure accountability for certain kinds of crimes.

### Filing amicus curiae briefs

[Rule 103 of the ICC's Rules of Procedure and Evidence](#) permits the United Nations, or any other Organization, State or person to submit observations "on any issue that the Chamber may deem appropriate". The United Nations has sought leave from the Court to file briefs as amicus curiae (a friend of the court) on a number of occasions with respect to issues that are of interest to some of its units, offices, funds and programmes.

On every occasion when leave has been sought to file such briefs, the Court has responded favourably and welcomed the United Nations' contribution.

The unit, office, fund or programme that wishes to seek leave to participate in proceedings as amicus should do so through the Office of Legal Affairs in order to ensure uniformity in approach. OLA has previously coordinated [joint amicus briefs from several units and entities of the UN](#).

### Appearing before the Court as an amicus curiae

In addition to filing amicus briefs, the Organization has also provided testimony before the Court on one occasion as an amicus curiae. The [Special Representative of the Secretary-General for Children](#)

[and Armed Conflict testified](#) in the trial of the case of *The Prosecutor v. Thomas Lubanga Dyilo* on matters relating to the use of child soldiers.

## 6. Requests for administrative or logistical assistance

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### Legal basis for administrative or logistical assistance

[Article 10 of the Relationship Agreement](#) provides a basis for the United Nations, upon the request of the Court and subject to availability, to “provide on a reimbursable basis for the purposes of the Court such facilities and services as may be required”.

### General considerations pertaining to requests for administrative or logistical assistance

As a general rule, the provision of administrative or logistical assistance is subject to availability and to the priority that naturally has to be given to the needs of the UN operation, entity or office, fund or programme providing the assistance.

In the provision of goods and services, United Nations personnel are always accorded priority. The officials and staff of the International Criminal Court will be accorded the same priority as the personnel of the specialized agencies and other related organizations of the United Nations.

### Procedure for requests for administrative or logistical assistance

Where an MOU, agreement or arrangement is in place that provides for a particular form of administrative or logistical assistance, requests for such assistance can typically be made and acceded to in the field without reference to Headquarters.

In the absence of a relevant Memorandum of Understanding, requests for administrative or logistical assistance should be addressed to the relevant Principal at Headquarters.

In consultations with the relevant office, OLA will draft a response setting out the terms pursuant to which the administrative and/or logistical assistance will be provided, and an agreement in the form of an exchange of letters will be concluded with the ICC.

Any undertaking by United Nations offices, funds and programmes to provide administrative or logistical assistance without concluding an agreement that includes all relevant legal protections for the Organization should be avoided.

### Types of administrative or logistical assistance provided by the UN to the Court

To date, the United Nations has provided a wide range of administrative and logistical assistance including:

- i. Meeting-related services (e.g. for [meetings of the ASP](#))
- ii. [Telecommunication services](#)
- iii. Air and ground transportation services
- iv. Storage of Court-owned equipment
- v. Temporary overnight accommodation

- vi. Assistance with entry and exit formalities
- vii. Assistance in arranging rental agreements, and shipping contracts
- viii. Engineering and construction services
- ix. Training for Court staff
- x. Office space
- xi. Maintenance of court-owned vehicles
- xii. Cartography and satellite imagery
- xiii. Sale of petrol, oil and lubricants (POL), water, meals-ready-to-eat (MRE), Post-Exposure Prophylaxis (PEP) kits, etc.
- xiv. Medical services



## 7. Requests for documents or information

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### Legal basis for Requests for information/documents

[Articles 15 and 18 of the Relationship Agreement](#) provide the legal basis for requests from the Court for information. Requests for information or documents, including information to be provided by UN personnel, must **always** be addressed to the relevant Principal at Headquarters. They may come from the Prosecutor, the Registrar acting on his or her own behalf, acting pursuant to an order of the Court or acting on behalf of legal representatives of the victims. They may also come from defence counsel, typically via the Registrar.

### Types of information for consideration

Article 15 and 18 provide for requests for information that is destined for investigative or prosecutorial purposes.

The Prosecutor or the defence may request information that the United Nations has generated or received regarding situations and cases before the Court.

### Procedure for requesting information/documents

Requests for information or documents must:

- i) describe with a sufficient degree of specificity, the documents sought. Requests should not be made for broad categories of documents. Where possible, titles and dates of such documents should be given;
- ii) explain the relevance of the documents to the requesting party. Any possible prejudice that might thereby be caused to prosecutorial or defence strategy may be avoided by imposing appropriate conditions of confidentiality on the communication and handling of the request;
- iii) not be unduly onerous. The Organization has very limited resources at its disposal that it can devote to searches and review of its records and archives;
- iv) give the United Nations sufficient time to respond. While urgent requests are expected on occasion, the Court is expected to make every effort to give the Organization **at least 30 days** to respond to its requests for documents;
- v) be consistent with the principle of subsidiarity. Requests should indicate why such information or documents can only be obtained from the United Nations and not from any other source.

This approach is reflected in ICC case law, which recalls the three principles of **specificity, relevance and necessity**.

The Organization may decline to consider requests that do not meet these criteria.

Requests for information pursuant to article 15 and 18 of the Relationship Agreement should be addressed to the headquarters of the unit that generated or received the documents sought by the Court.

Where the documents were generated and received by the peace operation, the head of that operation is to be copied. Where they were generated or received by the human rights section of a peace operation, OHCHR is also to be copied.

All requests for documents/information must be copied to the United Nations Legal Counsel.

The Organization makes every effort to respond to such requests within **30 days** of receipt of the request.

OLA will liaise with the unit concerned and offer advice and assistance in dealing with the request, including with respect to any redactions that may need to be applied to the document. Further to a note/memo from the unit concerned, OLA will convey the Organization's decision by letter to the Court. If the Organization accedes to the request, OLA will transmit the relevant documents subject to any conditions, limitations or exceptions that may have been decided upon in consultation with the unit concerned.

#### **Document screening prior to targeted requests**

In some instances, the Office of the Prosecutor or other requesting ICC office may not be able to meet [the above-mentioned criteria](#) when requesting documents. This may be due to the fact that they have no way of ascertaining what documents or types of documents the United Nations has in its possession. In order to address this challenge, the relevant unit, office, fund or programme may wish to consider a screening or review of certain of its documents *in situ* by the ICC.

Any document screening or review will necessarily exclude documents that the Organization is not at liberty to show to others (for example, documents provided to the Organization by third parties under an expectation of confidentiality) and will be carried out under strict conditions of confidentiality, typically including, inter alia:

- i. the presence of a UN representative throughout the review;
- ii. a prohibition on copying any of the documents;
- iii. a prohibition of the taking of any records or notes of the contents of the documents beyond a record of such information that would allow the Court to subsequently identify them for the purpose of a targeted request to the Organization for specific documents.

In addition to responding to the Court setting out the aforementioned criteria for any screening or review on behalf of the relevant office, OLA can assist in putting in place the process for the document screening.

#### **Exceptions to disclosure of information/documents**

Pursuant to the Relationship Agreement, the United Nations has an obligation to share information with the Court. However, there are six categories of information which, consistently with the

Relationship Agreement, the United Nations may withhold; specifically, information the disclosure of which would:

- (i) endanger the safety or security of any person;
- (ii) prejudice the security or proper conduct of any operation or activity of the United Nations or of its specialized agencies or related organizations or of its implementing partners or executing agencies;
- (iii) violate an obligation of confidentiality owed by the United Nations to a third party;
- (iv) violate or interfere with the privacy of a third person;
- (v) undermine or compromise the free and independent decision-making processes of the United Nations; or
- (vi) endanger the security of any Member State of the United Nations.

Information in the second category would include, for example, details of the agreed procedures for a peacekeeping operation to request combat support from a parallel force.

Information in the fifth category would include, for example, a summary of what was said during informal consultations of the Security Council.

It is for the unit, office, fund or programme holding the document to apply these criteria, and to advise OLA which specific elements of information, if any, it believes need to be withheld. OLA can offer advice and guidance on how to apply them. OLA may revert to the unit, office, fund or programme if it has any questions, regarding the advice it has received from it. The Court will expect the UN to be consistent in applying the criteria, and OLA's guidance and advice are vital to ensuring this. In the event that any documents or information are withheld, the Organisation will need to explain why to the Court. It is therefore important that the relevant unit provide such justification to OLA with respect to each document and element of information that it considers needs to be withheld.

When a document contains information of one or other of the kinds listed above, the preferred course of action will typically be to redact the document, if possible, so as to withhold the disclosure of the sensitive information. Where this is not possible and it is necessary to withhold the entire document concerned, every effort will be made to provide a narrative summary conveying key relevant information.

In certain cases, prejudice to the UN can be avoided by imposing a condition that the unredacted document is only disclosed and discussed in closed session.

The United Nations, including its offices, funds and programmes, will refrain from making an assessment of the probative value of a document or its reliability. This is a matter for the Court. When the unit holding the document has concerns regarding the reliability of the information that it is asked to provide, appropriate conditions can be attached to its disclosure.

## 8. Requests for interviews of United Nations personnel

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### Legal basis for interviews of United Nations personnel

Requests by the International Criminal Court for interviews fall within the same provisions of the Relationship Agreement as requests for documents or information: [Articles 15 and 18](#).

### General provisions pertaining to requests for screenings and interviews of UN personnel

The Court has been informed that its representatives are not permitted to contact members of United Nations personnel directly to request any information which they may have acquired. This applies both to information that they may have acquired during the course of their official duties with the United Nations and, equally, to any information they may have acquired prior to their service with the UN.

All entities of the United Nations, including its offices, funds and programmes, should instruct their field staff to advise Court personnel who may nevertheless approach them for substantive information to direct their requests to Headquarters. That said, representatives of the Court are permitted to make contact with such personnel in order to ascertain whether they may have information that may be of relevance to the Court. In making any such contacts to “screen” UN personnel, the Court has been advised that it is essential that the [principle of discretion](#) be observed at all times. UN personnel should likewise exercise maximum discretion in their dealings with the Court.

Staff in the field should be advised to report inquiries from the Court for screenings to their headquarters so that it is aware.

All United Nations personnel are subject to an obligation of confidentiality with regard to information acquired in the course of their work for the Organization. This obligation continues to exist even after they have ceased to work for the Organization. They are not at liberty to disclose such information without the authorisation of the Secretary-General. This authorisation is obtained only through the relevant Principal at Headquarters.

Current personnel who may have acquired relevant information prior to their UN service need clearance from the Principal of the relevant unit so that they can be made available during work time for interview. The relevant unit may also have concerns about disclosure of the fact that the individual concerned is currently engaged by them. There may also be security concerns with respect to the requested interview. Permission is therefore needed from the relevant Principal at Headquarters for them to be interviewed even with respect to such “non-UN” information.

It has been agreed with the Court that requests to interview personnel of the United Nations, including its offices, funds and programmes, must be made through the relevant Principal at Headquarters and copied to the Legal Counsel, the head of the peace operation and the High Commissioner for Human Rights where the request concerns a member of a Joint Human Rights Office (JHRO).

### Procedure for handling requests for interviews of UN personnel

- 1) Further to receipt of the request from the ICC, the unit, office, fund or programme by which the member of UN personnel was engaged at the time that he/she acquired the relevant information is responsible for taking the decision whether to allow him or her to be interviewed.
- 2) That unit should consult with the UN personnel's current mother unit, if different, in order to ensure that there are no concerns with respect to making him/her available for an interview.
- 3) The relevant units may wish to seek advice from OLA.
- 4) If they consider that compliance with the request could give rise to security concerns, they should also seek the advice of DSS.
- 5) During consultations, due regard should be given, amongst other things, to the following:
  - i. whether, were it to become known that the individual being interviewed works or worked for a particular unit or operation of the United Nations (including its offices, funds and programmes), it would jeopardize the operations of that unit, operation, office, fund or programme;
  - ii. whether cooperating with the ICC would pose a risk to the safety and security of the individual him/herself or of his/her colleagues.

If there is a risk of one or more of these two outcomes, the relevant unit, office, fund or programme may wish to consider acceding to the request for an interview subject to conditions, which may include:

- i. Conducting the interview by video-link;
  - ii. If conducted in person, ensuring that the interview is arranged in a discrete manner at a safe venue outside the country/region where the individual is presently carrying out his/her official duties; and
  - iii. Requesting that the International Criminal Court take all necessary measures to ensure that the utmost confidentiality and discretion is maintained in and with respect to all communications that it might have with the UN personnel, as well as with any third parties, in order to make arrangements for the interview.
- 6) The consent of the member of UN personnel concerned is not a requirement when determining whether or not to accede to a request for an interview.
- 7) The decision of the relevant unit should be transmitted to OLA under cover of a Note to the Legal Counsel, copying the Department of Safety and Security, so that OLA may respond to the Court as to whether the Organization has agreed to make the member of UN personnel concerned available for interview.

When the request relates to information that the individual acquired before his/her service with the UN, the decision whether to make him/her available for interview lies with his/her current mother unit in the UN.
- 8) The Office of Legal Affairs will convey the decision on behalf of the relevant unit, office to the International Criminal Court, including the conditions on which the interview, if authorised, is to take place.
- 9) Those conditions will typically include the following:
  - i. A representative of the United Nations will be present at and during the interview;
  - ii. The interview is to be limited to the matters specified in the ICC's request;

- iii. The individual is not authorised to answer questions if doing so would result in disclosure of information falling within one or other of the [six categories of sensitive information](#) described above;
  - iv. In the event that the individual does disclose information that falls into one or other of these categories, the ICC principal (the Prosecutor or the Registrar) will take the necessary steps to ensure that the availability of the information concerned is restricted within his/her office;
  - v. The individual will not be authorised to share any confidential documents of the United Nations that may be in his/her possession;
  - vi. The requesting ICC office will share the written transcript of the interview for review by the relevant UN unit, office, fund or programme in consultation with OLA before it is disclosed to any other participant in proceedings before the Court;
  - vii. The requesting ICC office will also send a copy of the transcript to the interviewee.
- 10) The individual will be provided with a copy of OLA's response.

### **The role of the UN representative during interviews of UN personnel**

It is typically a condition of the Organization's consent to the interview of a member of its personnel that a representative of the United Nations be present at the interview to assist the individual concerned and to protect the interests of the Organization.

The representative will be appointed further to consultations between the relevant unit, office, fund, or programme and OLA. The representative may be a member of the relevant unit, office, fund or programme or a member of OLA. During the interview, the representative will intervene if he/she considers that the UN interviewee runs the risk of providing information that falls within one or more of the [six categories of sensitive information](#).

If the representative has any concerns or is unsure about any aspect of the interview, he/she may request a break in order to consult with OLA.

### **Reviewing interview records of UN personnel for the purpose of disclosure**

A typical condition of the United Nations' consent to the interview of a member of its personnel is that the Court must send a copy of the interview transcript to the UN unit, office, fund or programme concerned, to OLA and to the interviewee.

The relevant unit, office, fund or programme will review the record in consultation with OLA and ensure that it does not contain any information that falls within one or more of the [six categories of sensitive information](#). If it does, OLA will inform the Court and will apply redactions to the interview record, subject to which the ICC will be allowed to disclose the interview record to the Judges and the parties.

## 9. Requests for United Nations personnel to testify before the ICC

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### Legal basis for testimonies of United Nations personnel

[Article 16 of the Relationship Agreement](#) provides for cooperation by the United Nations with respect to requests from the Court for the testimony of UN personnel, taking into consideration the UN Charter and the Convention on the Privileges and Immunities of the United Nations.

[The 1946 Convention on Privileges and Immunities](#) (otherwise known as the General Convention) provides immunity for UN officials “from legal process of every kind with respect to words spoken or written and acts performed” within their official capacity. The General Convention provides a similar immunity for “experts on mission for the UN” (e.g. UNMOs, UNPOLs).

In order for a current or former member of the Organization’s personnel<sup>1</sup> to testify before the International Criminal Court regarding matters that he/she learned of in the course of his/her official functions for the UN, the Secretary-General has to waive their immunity.

Requests for waivers are addressed to the Legal Counsel and copied to the Principal of the unit, office, fund or programme of the United Nations for which the individual concerned works (or worked) , copied to the head of the peace operation (where relevant) and, where it relates to work with the Human Rights section of a peace operation, to OHCHR.

The Secretary-General is under an obligation to waive the immunity of United Nations personnel when the immunity would impede the course of justice and can be waived without prejudice to the interests of the Organization.

The Legal Counsel of the Assistant Secretary-General for Legal Affairs takes such decisions on behalf of the Secretary-General and communicates them to the ICC.

### Consultations required for requests for testimonies of UN personnel

The Legal Counsel or the Assistant Secretary-General for Legal Affairs decides, on behalf of the Secretary-General, whether or not to waive the privileges and immunities of the member of UN personnel concerned. In doing so, he/she seeks the views of the current unit, office, fund or programme of the individual concerned and the unit, office, fund or programme where he/she worked at the relevant time (if different), typically by means of a memo or a note.

The consent of the individual concerned is not a consideration when determining whether or not to waive their immunity.

The current unit, office, fund or programme facilitates the individual’s testimony so that he/she may be allowed (as part of his or her official duties) to make him/herself available to testify before the

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<sup>1</sup> United Nations Volunteers (UNVs) and military members of national contingents serving in the Organization’s peace operations enjoy similar immunities pursuant to the Charter.

Court. That unit, office, fund or programme should also consider whether public knowledge of the fact that an individual who works for them is testifying before the ICC would adversely affect:

- i) the individual's safety or security or that of his/her colleagues; or
- ii) the ability of that unit, office, fund or programme to perform its mandated activities.

The unit, office, fund or programme for which the individual worked at the time of the events to which his/her testimony relates must make a similar assessment with respect to whether his/her testimony would adversely affect his/her safety or security or that of his/her colleagues, or the ability of that unit, office, fund or programme to perform its mandated activities. Where there are such concerns, it may be possible to address them by making it a condition of the waiver of the immunity of the individual that she/he testifies under a pseudonym or in closed session. Other appropriate conditions may also be imposed.

If the unit, office, fund or programme has any concerns regarding the individual testifying, it should provide a full and reasoned explanation in its response to OLA. An order from the relevant Trial Chamber will be needed to give effect to any conditions that may be attached to a waiver of the individual's immunity and OLA will need to justify why such an order is needed.

#### **General provisions pertaining to requests for United Nations personnel to appear as factual witnesses**

Factual witnesses are called by the Prosecutor or the Defence in order to testify with respect to events they witnessed or information they acquired.

Their waiver of their immunity may be subject to conditions which will be communicated to the ICC office that requests their testimony.

The United Nations has typically imposed the condition that a legal representative be permitted to assist the witness during the course of his/her testimony. The representative will be appointed further to consultations between the relevant unit, office, fund or programme and OLA. The representative should either be a member of the legal office of the field presence (where relevant), or a member of OLA. Other representatives with knowledge of the context and the legal regime pursuant to which the individual is testifying may also be selected by OLA in consultation with the relevant unit, office, fund or programme. The key role of the representative is to assist the individual in the event he or she runs the risk of disclosing [sensitive information](#).

#### **General provisions pertaining to requests for United Nations personnel to appear as expert witnesses**

Expert witnesses are called to testify about their particular area of expertise, and are not expected to refer to facts or events that he/she may have witnessed while employed or engaged by the United Nations.

The expert witness may be required to produce a report on his/her area of expertise that could subsequently become the subject of his/her testimony.



It may not be necessary that a legal representative assist an expert witness during his/her testimony. UN personnel have previously testified before the Court with respect to their areas of expertise as Special Rapporteurs, experts on children and armed conflict and satellite imagery experts without the assistance of a representative.

#### **Procedure for preparing UN personnel for testimony before the ICC**

After the waiver has been issued for the testimony of UN personnel, OLA prepares and transmits a note to the witness explaining the conditions attached to the waiver and providing him/her with a copy of that waiver. The note provides guidance on what the individual should do if he/she believes answering a question might involve revealing sensitive information.

The note prepared by OLA will also inform the individual of the procedure before the Court and whether he/she will have an opportunity to meet with representatives of the Prosecutor (if he/she has been called by the Prosecutor) before his/her testimony. To date, the jurisprudence of ICC has not been consistent with respect to “witness proofing”, i.e. preparing a witness for his or her testimony. Witness proofing has been permitted in some cases and prohibited in others. OLA will also advise the representative of the UN what to do and what not to do when assisting UN personnel in the preparation of their testimony before the Court.

## 10. Communication

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### **Communication and addressing challenges with respect to UN-ICC cooperation**

The Office of Legal Affairs acts as interlocutor when the Court seeks assistance from the United Nations.

Where the United Nations unit, office, fund or programme has concerns with respect to cooperation with the Court, including the Court's actions, it should raise the matter in the first instance with OLA, through the focal point system.

OLA will endeavour to resolve any issues by engaging with the relevant organ of the Court.

Both Organizations are required to be considerate of their separate and distinct mandates and to refrain from doing anything that would undermine the mandate of the other.

Each year, the Organization and the International Criminal Court alternately host a roundtable meeting involving all focal points from the UN's units, offices, funds and programmes. The meeting provides an opportunity to discuss the status of cooperation. It also provides an excellent opportunity for dialogue and for focal points to raise any concerns they may have in an effort to improve cooperation between the United Nations and the Court.

The [list of UN-ICC focal points](#) circulated annually by the Office of Legal Affairs provides an opportunity for the organisations to communicate effectively at the working level.

## 11. Exclusions

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### **Cooperation on questions of security**

Cooperation on questions of security is subject to special procedures implemented pursuant to the [Memorandum of Understanding between the Court and the Department for Safety and Security](#).

## 12. Cooperation with political organs and bodies

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The Office of Legal Affairs is available to advise secretariats of the Organization's political organs and bodies (e.g. sanctions panels or groups of experts) on procedures for handling requests for cooperation with the Court that may be directed to them or to those organs and bodies. OLA is also available to assist the organs and bodies themselves at their request.