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CONSULTATION

ON

THE IMPLICATIONS FOR COUNCIL OF EUROPE MEMBER STATES OF THE RATIFICATION OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

MEMORANDUM OF UNDERSTANDING BETWEEN THE NETHERLANDS AND THE OFFICE OF THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT ON INTERNATIONAL CO-OPERATION AND JUDICIAL ASSISTANCE

Council of Europe, Athens (Greece) 14-15 September 2006



Memorandum of Understanding between The Netherlands and the Office of the Prosecutor of the International Criminal Court on International Cooperation and Judicial Assistance

In accordance with Article 54(3)(d) of the Statute, and in order to facilitate cooperation and judicial assistance between The Netherlands and the Office of the Prosecutor of the International Criminal Court (ICC OTP), it is proposed that the following provisions constitute a Memorandum of Understanding (MoU) between The Netherlands and the ICC OTP (hereafter the Parties).

In concluding this MoU, the Parties recall the complementary nature of the International Criminal Court's jurisdiction and the importance of ensuring effective mutual cooperation in ensuring that crimes within the jurisdiction of the Court are investigated and prosecuted.

In the context of this MoU, reference to The Netherlands only designates the European part of the Kingdom of The Netherlands.

Section 1 General

- The provisions of this MoU build upon the cooperation and judicial assistance regime set out in the Rome Statute under Part 9 and establish mechanisms to enhance the cooperation between the Parties to facilitate the expeditious conduct of investigations and prosecutions of crimes under the jurisdiction of the International Criminal Court (ICC).
- Nothing in this MoU shall be inconsistent with any rights enjoyed, and obligations owed, by the parties pursuant to the Rome Statute and the ICC's Rules of Procedure and Evidence.

Cooperation and Judicial Assistance

Section 2 Requests for Assistance

 The ICC OTP may make requests for assistance to The Netherlands for the purposes of seeking additional information, gathering evidence, or otherwise assisting in relation to investigations and prosecutions of crimes within the jurisdiction of the Court. The Netherlands shall, in accordance with the Rome Statute and relevant national legal procedures, comply with such requests.



- 2. The Netherlands may make requests for assistance to the ICC OTP in relation to investigations or trials in respect of conduct which constitutes a crime within the jurisdiction of the Court or which constitutes a serious crime under the national law of The Netherlands and in relation to offences against the administration of justice made under Article 70 of the Statute and Rule 167 of the Rules of Procedure and Evidence.
- For the purposes of section 2(1) of this MoU, requests for assistance shall include requests and other communications made under Part 9 of the Statute, Article 15 of the Statute and Rule 104 of the ICC Rules of Procedure and Evidence.
- 4. In addition to requests for assistance outlined above, the ICC OTP may seek other forms of cooperation for the specific purpose of seeking additional information or gathering evidence in relation to the Investigation and prosecution of crimes within the jurisdiction of the Court.
- 5. The ICC OTP may relay a request for information from a police register directly to the International Coordination Center of The Hague (Internationaal Rechtshulpcentrum Den Haag IRC Den Haag) where such information is necessary for the execution of the tasks of the ICC OTP. The International Coordination Center of The Hague may spontaneously relay such information to the ICC OTP.

Section 3 Modalities for Cooperation and Assistance

Channels for Requests for Assistance

- Unless otherwise designated, the Ministry of Justice, Bureau for International Legal Assistance in Criminal Matters (Bureau Internationale rechtshulp in strafzaken), shall be the channel for the communication of requests for assistance and requests for other forms of cooperation relevant to obtaining information and evidence for ICC OTP investigations and prosecutions.
- Unless otherwise designated, the Jurisdiction, Complementarity and Cooperation Division of the ICC OTP (JCCD) shall be the channel for the communication and coordination of requests for assistance and cooperation between the ICC OTP and The Netherlands.
- The ICC OTP and the Ministry of Justice may designate other channels for specific forms of cooperation. Where necessary, cooperation through those channels may be the subject of alternative agreements or arrangements.



- All requests for assistance and cooperation shall be processed without undue delay.
- A fist of contact points is annexed to this MoU for reference purposes. This list may be subject to amendment and revision.

Language

6. All communications between the Parties shall be in English or French.

Format of Requests for Assistance

- The content of requests for assistance shall comply with the requirements of Article 96 of the Rome Statute. The requests shall, in particular, contain:
 - A concise statement of the purpose of the request and the assistance sought, including the legal basis and the grounds for the request:
 - ii. A concise statement of the essential facts underlying the request;
 - As much detailed information as possible about the location or identification of any person, place or object that must be found or identified in order for the assistance sought to be provided;
 - Any other information relevant in order for the assistance sought to be provided.
- A sample framework for requests for assistance is annexed to this MoU for reference purposes. This sample may be subject to amendment and modification and does not represent a definitive model.

Execution of Requests for Assistance

- Subject to advance notification through the above mentioned channels of communication, where possible 72 hours in advance, the ICC OTP may proceed to undertake non-compulsory measures that, under national legal procedures, do not require the participation or presence of the Dutch police authorities
- 10. Requests for assistance from one of the Parties will be executed by the competent authorities of the requested Party. Unless otherwise designated, the public prosecutor of the District of The Hague is responsible for the execution of requests made to The Netherlands. Where specified in the request, representatives of the ICC OTP may be permitted to be present during the execution of requests for assistance.



 Requests for assistance made to the ICC OTP by The Netherlands shall be executed by the competent authority designated by the ICC OTP on a case-by-case basis.

Confidentiality of Requests for Assistance

12. The requested Party shall keep all requests for assistance and any supporting documentation confidential, except to the extent that disclosure is necessary for the execution of the request. Steps will be taken to ensure that any persons handling requests and supporting documentation are fully aware of the obligation to keep such materials confidential and that the materials are handled properly in accordance with that obligation

Section 4 Confidentiality of Information

- The Parties may agree that The Netherlands provide documents or information to the ICC OTP on condition of confidentiality and solely for the purpose of generating new evidence, pursuant to article 54(3)(e) of the Statute. The ICC OTP shall ensure that, subject to the Statute and Rules of Procedure and Evidence, such information is not disclosed, at any stage of the proceedings, without the prior written consent of the competent authority of The Netherlands.
- The Parties may agree that the ICC OTP provide documents or information to The Netherlands subject to confidentiality or other protective conditions, and to the provisions of article 68 of the Statute. The Netherlands shall ensure that such documents or information are not disclosed without the express written consent of the ICC OTP.
- 3. In the event that information provided to the ICC OTP on the condition of confidentiality appears to show, or tends to show, the innocence of the accused, or to mitigate the guilt of the accused, pursuant to article 67(2) of the Statute, the ICC OTP shall consult The Netherlands and shall take all necessary steps to resolve the matter by cooperative means. Such steps may include, the obtaining of the information from a different source or in a different form, agreement on conditions under which disclosure could take place, for example redactions and summaries, limitations on disclosure, use of in camera and ex parte proceedings, or any other measures permissible under the Statute and the Rules of Procedure and Evidence in order to protect the confidentiality of the information.
- information provided on a confidential basis must be clearly marked "Article 54 Confidential – Netherlands".



- 5. The Parties shall indicate any other restrictions on the use of any information, including any conditions relating to the handling of such information. In the event that the requesting Party does not agree to the conditions imposed on the provision of the information, or cannot otherwise fully comply with those conditions, it will consult with the requested Party and, where necessary, will decline to accept the information.
- The Parties may enter into such arrangements or agreements as are necessary to regulate the use and handling of confidential information, including the specification of any restrictions, conditions and channels of communication.

Section 5 Final Clauses

Costs

 The costs associated with execution of requests for assistance and other forms of cooperation shall be administered in accordance with article 100 of the Rome Statute.

Entry into Force and Termination

This memorandum of understanding shall enter into force on signature of the Parties and shall remain in force unless terminated by either Party on six month's written notice.

Cooperation Review Meetings

The Parties agree to meet at least every six months, following entry into force of this memorandum, in order to review implementation and to exchange other relevant information to ensure efficient and effective cooperation.

Dispute Settlement

- Any dispute arising out of the interpretation or application of this
 memorandum shall be settled amicably through negotiation and
 consultation.
- In the event that an amicable solution cannot be reached the Parties may agree an alternative mode of settlement.



Amendment

This memorandum of understanding may be amended at any stage by mutual consent of the Parties in writing.

DONE in triplicate in English, at The Hague on the 20th day of December, 2004 For The Netherlands, hereby

The Director-General International Affairs and Immigration

The Chief Prosecutor, district of The Hague

For the Office of the Prosecutor of the International Criminal Court

The Chief Prosecutor