



**Republic of Serbia  
Office of the War Crimes Prosecutor**



**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE OFFICE OF THE WAR CRIMES PROSECUTOR  
OF THE REPUBLIC OF SERBIA  
AND THE CRIMES AGAINST HUMANITY AND WAR CRIMES SECTION  
OF THE DEPARTMENT OF JUSTICE CANADA  
ON THE IMPLEMENTATION AND PROMOTION  
OF MUTUAL NON-COERCIVE ASSISTANCE IN MATTERS RELATED TO  
WAR CRIMES, CRIMES AGAINST HUMANITY  
AND GENOCIDE EXAMINATIONS AND PROSECUTIONS**

The Office of the War Crimes Prosecutor of the Republic of Serbia (WCP) and The Crimes against Humanity and War Crimes Section of the Department of Justice Canada (DoJ), hereinafter referred to as the "Participants",

Whereas both the Republic of Serbia and Canada have ratified the Rome Statute of the International Criminal Court,

Whereas both the Republic of Serbia and Canada have a mutual interest in suppressing impunity for war crimes, crimes against humanity and genocide ("War Crimes"),

Whereas for the purpose of this MOU the term "War Crimes" will be deemed to include those crimes commonly known as War Crimes, Crimes Against Humanity and Genocide both individually and together,

Have come to the following understanding:

**Scope of Assistance**

1. This Memorandum of Understanding (the "Memorandum") will only deal with assistance which can be rendered by the Participants through the use of non-coercive

measures.

2. The Participants will, upon request and in accordance with the provisions of this Memorandum, grant each other the widest measure of mutual assistance in the matter of examination and prosecution of War Crimes, while observing the laws of their respective States.

3. For the purpose of this Memorandum, assistance includes the following:

(a) the provision and exchange of information, reports, documents and records, and more specifically, any information, report, document or record relevant to the examination and prosecution of War Crimes, including statements of suspects or other persons;

(b) the provision of information regarding the identity and location of possible witnesses, and the location of objects and sites relevant to the examination and prosecution of War Crimes;

(c) the provision of assistance in the arranging and conducting of interviews of possible witnesses, the viewing of objects or the visiting and viewing of sites relevant to the examination and prosecution of War Crimes in accordance with the laws of the Participants' States;

(d) the exchange of information regarding the law, including the provision of copies of relevant statutes in the field of criminal law or other related fields, where required for the examination and prosecution of War Crimes, as well as the organisation of educational and training sessions with a view to providing a better insight into the procedures and regulations applicable in the Participants' respective States where required for the examination and prosecution of War Crimes; and

(e) as required, the exchange of legal analysis in the field of criminal law or other fields related to War Crimes.

### **Communications**

4. The Participants will with the aim of creating optimum conditions for cooperation, send and receive Requests for Assistance ("Requests") to one another on the basis of this Memorandum. The Participants will exchange information such as the names of the Public Prosecutors or Counsel assigned to the Request, as well as the addresses, telephone numbers during office hours, and any other information which may facilitate direct communication.

5. (a) The Participants will transmit and receive all Requests and responses thereto for the purposes of this Memorandum through their respective authorities. The Participants will each designate the following authorities to implement this Memorandum on their behalf;

(I) for the WCP; War Crimes Prosecutor, Republic of Serbia or any other person;

(II) For DoJ; Director, Crimes Against Humanity and War Crimes Section, Department of Justice Canada or any other person;

(b) The Participants may change their designated authority at any time, with a written notice to the other Participant.

### **Execution of Requests**

6. The Requested Participant will execute Requests promptly, in accordance with the law of the Requested State, and, insofar as it is not prohibited by that law, in the manner specified by the Requesting Participant.

7. The Requested Participant may ask for additional information if required for granting the assistance.

### **Refusal or Postponement of Assistance**

8. The Requested Participant may refuse to execute a Request to the extent that the Request would:

(I) impair the sovereignty, security, public order or similar essential public interest of the Requested Participant;

(II) prejudice the safety of any person;

(III) contradict legal or other regulations of the Participant's State.

9. The Requested Participant may postpone the execution of a Request if it would interfere with an ongoing examination and prosecution in the State of the Requested Participant.

10. Before refusing or postponing the execution of a Request, the Requested Participant will consider whether assistance may be granted subject to such conditions, as it deems necessary. If the Requesting Participant accepts assistance subject to these conditions, it will comply with them.

11. Before refusing or postponing the execution of a Request or part of a Request, the Requested Participant will notify the Requesting Participant in writing of the reason for the denial or postponement within thirty days of receipt of the Request.

12. The Requested Participant will promptly notify the Requesting Participant in writing if compliance with a Request does not fall within the Requested Participant's competence.

### **Persons, Objects and Sites**

13. The Requested Participant will carry out all reasonable and effective measures within its legal competence to ascertain the identity and location of possible witnesses, and the location of objects and sites specified in the Request.

14. The Requested Participant will use all reasonable and effective measures to arrange and facilitate interviews of possible witnesses located in the territory of the Requested State, in accordance with the regulations of the Requested Participant's State.

15. The Requested Participant will use all reasonable and effective measures to arrange and facilitate the viewing of objects and the visiting and viewing of sites within the territory of the Requested State, in accordance with the regulations of the Requested Participant's State.

### **Information, Reports, Documents and Records**

16. In executing a Request, the Requested Participant will provide copies of publicly available information, reports, documents, and records of government departments and agencies.

17. In executing a Request, the Requested Participant may provide any information, reports, documents, and records in the possession of a government department or agency that are not otherwise publicly available, to the same extent and under the same conditions as would be available to its own law enforcement and judicial authorities. The copies of information, reports, documents, and records in the possession of government departments and agencies will only be provided with the permission of these government departments and agencies acting in full compliance with the Requested Participant's regime governing the protection of private information relating to identifiable individuals.

18. In making a Request, insofar as it is not prohibited by the laws of its State, the Requesting Participant may specify that the Requested Participant provide:

- (a) original reports, documents or records;
- (b) certified copies of reports, documents or records; or
- (c) reports, documents or records in a form or accompanied by such certification as may be necessary in order to make them admissible in a court or tribunal according to the domestic laws and regulations of the Requesting Participant.

19. The Requesting Participant will return original reports, documents or records upon the written request of the Requested Participant or as soon as possible thereafter.

20. Subject to the consent of the Requested Participant, the Requesting Participant may defer the return of any original reports, documents, or records requested, if this is vital for the needs of an investigation or prosecution of War Crimes.

#### **The Form and Content of a Request for Assistance**

21. The Participants will make the Request in writing. In urgent circumstances, a Participant may make a Request orally but will confirm it in writing within 24 hours, unless the Requested Participant approves otherwise.

22. In all cases, the Participants will ensure that the Requests indicate;

- (a) the competent authority conducting the examinations or prosecution to which the Requests relates:

- (b) the nature of the examinations or prosecution, including a summary of the facts and a copy of the relevant sections of the applicable substantive laws:

- (c) the purpose of the Request and the nature of the assistance sought;

- (d) the degree of confidentiality required and the reasons therefore:

- (e) the description of the type of information or other assistance requested; and

- (f) any time limit within which the Request should be executed.

23. Where possible, and if necessary, the Participants will ensure that the Requests include:

- (a) the identity, citizenship and location of the person or persons who are in possession of information pertinent to, or who are the subject of, the examinations or

prosecution:

(b) a list of questions for the person or persons to be interviewed;

(c) details of any particular procedure or requirement that the Requesting State wishes to be implemented and the reasons therefore;

(d) any other information that may be helpful in carrying out the Request; and

(e) information about compensation and reimbursement of expenses.

24. The Participants will ensure that the Requests are accompanied by a translation into one of the official languages of the Requested Participant.

### **Confidentiality**

25. After consulting with the Requesting Participant, the Requested Participant may require that certain information, reports, documents, records or objects provided, or the source of the information, reports, documents, records or objects, be kept confidential or be disclosed or used subject to such conditions as it may specify. The Requesting Participant will comply with the said requirement.

26. The Requesting Participant may require that the Request, the contents of the Request, the supporting documents, the fact of granting such assistance, and any action taken pursuant to the Request be maintained confidential by the Requested Participant. If the Request cannot be executed without breaching confidentiality, the Requested Participant will so notify the Requesting Participant, which will determine whether the Request should nevertheless be executed.

### **Limitation of Use**

27. The Requesting Participant will not disclose, use the information, reports, documents, or records furnished by the Requested Participant pursuant to a Request for purposes other than those stated in the Request without the prior written consent of the Requested Participant.

28. The Requested Participant will not use any information derived from a Request or from the results of actions taken in fulfilment of the Request to further its own national investigative efforts without the prior written consent of the Requesting Participant.

29. The Requested Participant may require, after consultation with the Requesting Participant that information, reports, documents, or records furnished by the

Requested Participant pursuant to a Request, or the source of such information or evidence, will only be used subject to such conditions as it may specify.

30. This Memorandum will not preclude the use or disclosure by the Requesting Participant of the information, reports, documents, or records furnished by the Requested Participant pursuant to a Request or the existence of a Request where this is necessary under the laws governing the rules of court or administrative tribunals as required in the State of the Requesting Participant. The Requesting Participant will notify the Requested Participant in writing in advance of such possible or proposed use or disclosure.

### **Other Assistance**

31. This Memorandum will not affect any existing treaty obligations or any-existing arrangements between the Participants.

### **Expenses**

32. The Requested Participant will pay for the cost of executing a Request.

33. If it becomes apparent that the execution of a Request requires expenses of an extraordinary nature, the Participants will consult to determine the conditions under which the requested assistance can be provided.

### **Consultations**

34. The Participants will consult promptly, at the request of either Participant, concerning the interpretation or application of this Memorandum, whether generally or in relation to a particular Request. Any difficulties which may arise from this Memorandum will be resolved between the Participants through consultation and negotiation.

### **Final Provisions, Coming into Effect and Termination**

35. This Memorandum will come into effect upon the signature of both Participants.

36. This Memorandum will apply to any Request made after its coming into effect, even if the assistance sought is in respect of War Crimes that predate the coming into effect of this Memorandum.

37. The Participants may amend this Memorandum upon their mutual written consent.

38. The Participants will meet to review the application of this Memorandum upon request or after 5 years following its coming into effect, unless notifying each other in writing that such review is unnecessary.

39. Either Participant may terminate this Memorandum by giving a three months written notice of termination to the other Participant.

Signed in duplicate at \_\_\_\_\_ this day \_\_\_\_\_ of 18th February 2010 in the English, French and Serbian each version being equally valid.

*FOR THE OFFICE  
OF THE WAR CRIMES PROSECUTOR  
OF THE REPUBLIC OF SERBIA*

*Vladimir Vukčević*

*FOR THE CRIMES AGAINST HUMANITY  
AND WAR CRIMES SECTION  
OF THE DEPARTMENT OF JUSTICE CANADA*

*Terry Beitner*