



MEMORANDUM OF UNDERSTANDING ON ACCESS TO DOCUMENTS
THROUGH THE ELECTRONIC DISCLOSURE SUITE BETWEEN THE OFFICE OF
THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE
FORMER YUGOSLAVIA AND THE OFFICE OF THE WAR CRIMES PROSECUTOR
OF THE REPUBLIC OF SERBIA

(“The Parties”)

PREAMBLE

WHEREAS the Office of the Prosecutor (“OTP”) of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) and the War Crimes Prosecutor of the Republic of Serbia (“War Crimes Prosecutor of Serbia”) have a common interest in combating impunity for war crimes, crimes against humanity and genocide.

WHEREAS the Security Council of the United Nations in support of the completion strategy of the ICTY in its resolution 1503 recalled and reaffirmed “in the strongest terms the statement of 23 July 2002 made by the President of the Security Council (S/PRST/2002/21), which endorsed the ICTY’s strategy for completing investigations by the end of 2004, all trial activities at first instance by the end of 2008, and all of its work in 2010 (ICTY Completion Strategy) (S/2002/678), by concentrating on the prosecution and trial of the most senior leaders suspected of being most responsible for crimes within the ICTY’s jurisdiction and transferring cases involving those who may not bear this level of responsibility to competent national jurisdictions, as appropriate, as well as the strengthening of the capacity of such jurisdictions.”¹

¹ Security Council Resolution 1503 (2003) of 28 August 2003

The Parties have agreed as follows:

Article 1

The OTP will grant the War Crimes Prosecutor of Serbia access to documents in possession of the OTP, through the Electronic Disclosure Suite (“EDS”), subject to the ICTY Statute, the ICTY Rules of Procedure and Evidence and any applicable rulings of the ICTY Chambers and in accordance with the provisions of this Memorandum.

Article 2

Access to Documents

The ICTY/OTP will provide the following assistance:

- a) The OTP will provide access to their “document collections”, primarily, via the EDS;
- b) The OTP will provide access to its collection of “redacted witness statements”, primarily, via the EDS;
- c) The OTP will provide such access at the office premises of the War Crimes Prosecutor of Serbia;
- d) The OTP will facilitate, as authorised by the Head of Mission or a person designated by the Head of Mission, the certification of documents and other material printed from the EDS;
- e) The OTP will, in accordance with applicable procedures, provide facilities for members of the Office of the War Crimes Prosecutor of Serbia to carry out such searches of OTP electronic databases, not included in EDS;
- f) Notwithstanding the previous provisions, the OTP is prohibited from providing documents falling within the provisions of Rule 70 of the ICTY Rules of Procedure and Evidence and is under no obligation to provide its “work product” (i.e. written analyses, memoranda and records of conversations) or any other material determined by the OTP to be confidential;
- g) Material disclosed by the OTP to the Office of the War Crimes Prosecutor of Serbia will be treated as confidential and will be released to no one, except members of the Office of the War Crimes Prosecutor of Serbia and the competent court, as necessary and for the purposes of furthering criminal investigations and proceedings, and to persons required under the applicable criminal procedure law to receive such information in the course of such investigations and proceedings;
- h) The OTP may require, after consultation with the War Crimes Prosecutor of Serbia, that information or evidence furnished or the source of such information or evidence, be used only subject to such terms and conditions as specified by the OTP.

Article 3

Access to Expert Reports

1. Upon request by the War Crimes Prosecutor of Serbia, the OTP will provide a list of public reports made by experts for the purposes of cases at the ICTY which have been filed with the ICTY Registry, and/or admitted into evidence in any case.
2. The War Crimes Prosecutor of Serbia will make a request to the ICTY Registry for certified copies of the listed reports, together with certified copies of any documents referred to therein which may have been exhibited.
3. If the ICTY Registrar is not in possession of electronic copies of the reports and/or documents referred to in the reports (either through filing or the “Judicial Data Base”), the OTP undertakes to provide the War Crimes Prosecutor of Serbia with electronic copies of the reports and electronic copies of documents referred to in the reports, provided these documents are readily available in a single electronic folder on the network of the OTP.

Article 4

Final Provisions, Entry into Force and Termination

1. This Memorandum shall enter into force upon the signature of the Parties.
2. This Memorandum shall apply to any request for assistance relating to the occurrence of war crimes, crimes against humanity or genocide presented after its entry into force, even if the assistance sought is requested with respect to events that predate the coming into force of this Memorandum.
3. Any amendment to this Memorandum may be made upon written consent of the Parties. Subject to the consent of Parties, other agencies may also be included in this Memorandum.
4. This Memorandum shall be terminated by either Party, giving written notice of termination to the other Party.
5. The foregoing agreement is the whole agreement reached between the Parties.
6. Done in English and Bosnian/Croatian/Serbian, the English text being authoritative.

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Office of the Prosecutor of the ICTY*

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