



Treaty Series No. 39 (2005)

# Exchange of Letters

between the Government of the United Kingdom of Great Britain and Northern Ireland and the Prosecutor of the International Criminal Court concerning the Provision of Information by the United Kingdom to the Office of the Prosecutor

The Hague, 17 August 2005

[The Exchange of Letters entered into force on 17 August 2005]

*Presented to Parliament  
by the Secretary of State for Foreign and Commonwealth Affairs  
by Command of Her Majesty  
November 2005*

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**EXCHANGE OF LETTERS BETWEEN THE GOVERNMENT OF THE  
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND  
AND THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL  
COURT CONCERNING THE PROVISION OF INFORMATION BY THE  
UNITED KINGDOM TO THE OFFICE OF THE PROSECUTOR**

**No. 1**

*The British Ambassador at The Hague to the Prosecutor of the International  
Criminal Court*

The Hague  
17 August 2005

Your Excellency,

1. I am writing to you with regard to the procedures for the provision of information by the United Kingdom to the Office of the Prosecutor of the International Criminal Court.
2. You will be aware of the longstanding commitment of the United Kingdom to the establishment of the International Criminal Court. In furtherance of this commitment, the United Kingdom is conscious of the need to cooperate with the Court, including through the provision of such information to the Office of the Prosecutor (the “OTP”) necessary for the execution of its functions in accordance with the Rome Statute of the International Criminal Court<sup>1</sup> (the “Rome Statute”).
3. To facilitate co-operation in the provision of information to your office, and following informal consultations, it is necessary to establish the following framework that will offer appropriate protection to the United Kingdom's national security interests and confidentiality concerns.

**Part I – General Provisions**

4. In this Exchange of Letters “information” includes “records, documents and material”. For the avoidance of doubt “information” also includes witness statements and “requests for information” includes requests to interview witnesses.
5. Where any information is requested from the United Kingdom then such requests shall be in writing and shall be supported by the following:-
  - i. A concise statement of the purpose of the request and the assistance sought, including the legal basis and the grounds for the request;

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<sup>1</sup> Treaty Series No. 35 (2002) Cm 5590

- ii. A concise statement of the essential facts underlying the request;
- iii. As much detailed and specific information as possible about the identification of any record, document or person that must be found or identified, including all relevant dates, times and locations where known; and
- iv. Any other information relevant in order for the assistance sought to be provided.

6. All requests for information shall be sent only to Her Majesty's Foreign and Commonwealth Office via the British Embassy in The Hague. The Jurisdiction, Complementarity and Co-operation Division of the OTP (or any other person designated in writing to the British Embassy by the Prosecutor) shall be the channel for the communication and provision of all information between the United Kingdom and the OTP under this Exchange of Letters.

## **Part II – Information Co-operation under Article 54(3)(e) of the Rome Statute**

7. Where information is requested by the OTP under Article 54(3)(e) of the Rome Statute, and the United Kingdom indicates in its reply that the information is being provided on a condition of confidentiality, the following conditions shall apply:-

- i. All such information provided to the OTP shall be treated as secure confidential information and subject to any conditions imposed by the United Kingdom on the use and handling of any such information.
- ii. All such information shall be provided solely for the purposes of generating new evidence.
- iii. Subject to any conditions imposed by the United Kingdom on the use and handling of any such information, the information shall be treated as provided to the OTP for the benefit of any and all investigations under its mandate and the distribution of that information within the OTP shall be at the discretion of the management of the OTP. In the event that the OTP does not agree to the conditions imposed on the provision of information by the United Kingdom, or cannot otherwise fully comply with those conditions, it shall decline to accept the information.
- iv. Subject to paragraphs (v), (vi), (vii), (viii) and (ix), all such information provided to the OTP shall be treated as provided on the condition that no member of the OTP staff (including all persons acting pursuant to the Prosecutor's directions) may under any circumstances disclose the information outside the OTP, including to the Chambers or any other organ of the Court, the accused or his representatives or to any other

person or body without the express written consent of the United Kingdom.

- v. Information provided to the OTP on the condition of confidentiality shall not be included in any shared disclosure database, but shall stay at all times within OTP's possession and control. This information shall be scrutinized by the OTP in order to determine whether it amounts to evidence in the OTP's possession or control which shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or to affect the credibility of the prosecution evidence, in accordance with Article 67(2) of the Rome Statute. The OTP shall apply carefully defined search parameters and shall give detailed consideration to the nature and relevance of the information to the proceedings.
- vi. In the event that the OTP believes that the information provided on the condition of confidentiality shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or to affect the credibility of the prosecution evidence, in accordance with Article 67(2) of the Rome Statute, the OTP shall consult the UK and 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 and its source.
- vii. Where any potential conflict, between the obligations of the OTP under this Exchange of Letters and Article 67(2) of the Rome Statute, cannot be resolved through the procedures outlined above, the OTP may, having informed the United Kingdom in advance, notify the relevant Chamber of the existence of a potential conflict, without naming the United Kingdom as the provider, without disclosing the relevant confidential information and making every possible argument in order to avoid naming the United Kingdom and disclosing the information. Thereafter,
  - (a) Where any potential conflict arises *prior to confirmation of the charges*, the OTP shall ensure compliance with its obligations of confidentiality under this Exchange of Letters by:
    - (I) Making all possible applications and arguments to prevent disclosure of the information or its source, including to the Chambers; and/or
    - (II) Amending or withdrawing charges in a manner so as to render the information no longer relevant to the proceedings.

- (b) Where any potential conflict arises *following confirmation of the charges*, the OTP shall:
- (I) Make all possible applications and arguments to prevent disclosure of the information or its source, including to the Chambers; and/or
  - (II) Make every effort to amend or withdraw charges in a manner so as to render the information no longer relevant to the proceedings.
- viii. In the event that the steps outlined above have been exhausted, and the Court orders disclosure of the fact of the information, or the information itself, the OTP shall, in complying with the order, seek all possible protective measures available under the Statute and the Rules of Procedure and Evidence in order to protect the confidentiality of the information and its source, including, but not limited to, the use of *ex parte* and *in camera* hearings.
- ix. Where, at any point during the procedure provided for under this paragraph, the United Kingdom so requests, the OTP shall take all possible steps to facilitate the United Kingdom in making representations directly to the Chambers concerning the potential conflict, between the obligations of the OTP under this Exchange of Letters and Article 67(2) of the Rome Statute, and the measures necessary in order to protect the confidentiality of the information.

### **Part III – Other Information Co-operation pursuant to Article 54(3)(d) of the Rome Statute**

8. Information may be provided by the Government of the United Kingdom to the OTP other than under Article 54(3)(e) of the Rome Statute, in accordance with this Part, where it is of a strictly non-evidential character and wholly unrelated to any facts under investigation or prosecution, such as information to facilitate the arrest and surrender of individuals and other related matters. Information shall only be accepted by the OTP under this Part when it is clearly of such a character.

9. Under this Part, such information may be provided by the Government of the United Kingdom to the OTP on condition of confidentiality, in which case the following conditions shall apply:-

- i. All such information provided to the OTP shall be treated as secure confidential information and subject to any conditions imposed by the United Kingdom on the use and handling of any such information; and
- ii. All such information provided to the OTP shall, in accordance with the Rome Statute, be treated as provided on the condition that no member of the OTP staff (including all persons acting pursuant to the Prosecutor's directions) may under any circumstances disclose the

information outside the OTP, including to the Chambers or any other organ of the Court, the accused or his representatives or to any other person or body without the express written consent of the United Kingdom.

#### **Part IV – Final Provisions**

10. Nothing in this Exchange of Letters shall prejudice any rights enjoyed by the United Kingdom pursuant to the Rome Statute, in particular any rights enjoyed under Articles 72 and 73.

11. Any amendments to this Exchange of Letters agreed by the parties shall come into effect when confirmed by an Exchange of Letters.

12. Either party may terminate this Exchange of Letters by means of written notice to the other party. Termination shall take effect two months following the date of notification. This Exchange of Letters shall continue to govern any information, provided by the United Kingdom to the OTP, before its termination.

13. If the foregoing is acceptable to you, I would propose that this letter and your reply to that effect should be regarded as constituting an Agreement between the Government of the United Kingdom and the Prosecutor of the International Criminal Court, in accordance with Article 54(3)(d) of the Rome Statute, which shall enter into force on the date of your reply.

14. May I take this opportunity to assure you of the full commitment of the United Kingdom to supporting the work of the Court and to express our appreciation of the work performed by your office.

**SIR COLIN BUDD**

**No. 2**

*The Prosecutor of the International Criminal Court to Her Majesty's Ambassador  
at The Hague*

The Hague  
17 August 2005

Thank you for your letter of 17 August 2005 with regard to the procedures for the provision of information by the United Kingdom to the Office of the Prosecutor of the International Criminal Court, which reads as follows:

**[As in No. 1]**

In reply, I am pleased to confirm that the proposal set out in your letter is acceptable to the Office of the Prosecutor of the International Criminal Court and that your letter, and this reply, shall constitute an Agreement between the Prosecutor of the International Criminal Court and the Government of the United Kingdom which shall enter into force today.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

**LUIS MORENO-OCAMPO**









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