

Justice Rapid Response Feasibility Study

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JUSTICE RAPID RESPONSE FEASIBILITY STUDY

Table of Contents

Executive Summary	1
Part I: Introduction	6
A. What Is Justice Rapid Response and Why Do We Need It?	6
B. Development of the Initiative and Methodology	8
C. Scope and Function of Justice Rapid Response	10
Part II: Structure of Justice Rapid Response	15
A. Participation in the Justice Rapid Response Initiative	15
B. Coordinating Mechanisms	20
C. Rosters	30
D. Expertise	35
E. Training	39
F. Financing	46
Part III: Decision Making, Methodology and Operations	56
A. Trigger Mechanism	56
B. Assessment	62
C. Deployment	71
D. Relationships with National and International Actors	80
E. Documentation	86
Part IV: Implementation	93
A. Next Steps	93

JUSTICE RAPID RESPONSE FEASIBILITY STUDY

Table of Contents

Annexes	97
1. Advance Study	98
2. Suggested Draft Elements of a Stand-by Agreement Used with NGOs/IGOs	112
3. Suggested Draft Elements of a Memorandum of Understanding between JRR Participants	114
4. Spreadsheet for Expertise and Materials for Darfur Commission of Inquiry	120
5. Suggested Draft Confidentiality Agreement	122
6. Suggested Draft Elements for a Status of Mission Agreement between Participants in a JRR Mission and a Requesting State	126

EXECUTIVE SUMMARY

Justice Rapid Response Feasibility Study

What Is Justice Rapid Response and Why Do We Need It?

Justice Rapid Response (JRR) is an initiative intended to fill some of the serious gaps in the international community's ability to provide accountability for genocide, war crimes and crimes against humanity and to insure that international justice plays an integral role in post-conflict peace building. In the aftermath of a violent conflict, there is often only a short window of security and political opportunity to gather evidence that would be essential to a successful accountability process. By coordinating existing resources, the international community through JRR should be able to respond to requests from states that may be willing to prosecute these crimes but are unable to do so, and to international institutions with jurisdiction but lacking stand-by resources. The traditional approach to providing rule of law assistance is usually too complex and time-consuming to be effective in situations where swift action has to be taken at short notice to preserve evidence of international crimes.

JRR aims to respond quickly to a request for expertise and/or resources in support of genuine efforts to identify, collect and preserve information about genocide, war crimes and crimes against humanity for any accountability mechanism deemed appropriate. If JRR succeeds, a wide range of international, hybrid, and national courts, as well as truth commissions, could benefit from higher quality evidence gathered more efficiently and at lower cost, and in forms that permit its use under both domestic as well as international rules of evidence.

This is an independent study compiled by a team of consultants, based on more than a year of discussion among several states and civil society organizations.¹ The study derives from responses to written surveys and interviews with over sixty experts in fourteen disciplines within international justice. It attempts to draw on the lessons learned over the last two decades, and it examines some of the administrative systems in use today for maintaining rosters, engaging expertise, managing teams, and preserving evidence.

Scope, Function and Structure of JRR

The study recommends that the scope of JRR be focused on requests from states and international institutions to provide, at short notice, expertise in support of genuine efforts

¹ The study was prepared at the request of Finland, Germany, Liechtenstein, Sweden, Switzerland and the United Kingdom, by a team of consultants led by Andras Vamos-Goldman and consisting of Katrin Nyman-Metcalf, Anne Rübesame and Ines Thevarajah. A group of eminent practitioners consisting of Dr. Winrich Kühne, John Ralston, Professor William Schabas and Professor Christopher Stone acted as advisors to the project.

to identify, collect and preserve information on cases of genocide, crimes against humanity and war crimes. As every situation is unique, the possibility is left open that individual JRR participants may wish to include capacity building elements in their contribution to a JRR deployment. The study further recommends that the JRR functions should include: investigation of the pattern of violence; forensic mapping; documentary evidence investigation; visual image collection; identification and marking of massacre/mass grave sites; identification of potential witnesses; and initial witness/victim protection surveys. These functions might, in some cases, extend to the preservation of first-hand accounts of witnesses.

The study concludes that JRR would be most effective as primarily a loose intergovernmental collaboration. Every effort has to be made to attract as broad array of states as possible through “differential participation” – states being able to participate at a level with which they are comfortable. The study suggests several specific ways in which states participating in JRR can associate with IGOs and NGOs that possess unique and relevant experience and expertise. The study also stresses the importance of JRR working with local authorities, thereby also serving as a useful capacity building bridge until rule of law development assistance can be made available.

The concept of “differential participation” would allow JRR to have the broad regional, ethnic, legal and linguistic representation it would need to respond to requests from any part of the world with appropriate expertise. Participants would have to ensure that their experts were trained to common standards. Both general international deployment training, especially relating to international crimes, as well as specific pre-deployment training would be needed to ensure consistency and quality of expertise. In addition, experts on rosters would have to agree to be available for a period of time for international deployment at short notice. The study examines criteria for needed expertise, as well as programs available at leading training institutions.

The study further suggests possible arrangements for the sharing of the ensuing financial burden among participants. The starting point in each case would be that the requesting party is responsible for payment, a realistic assumption in case of a request by an international institution. In the case of a request by a state emerging from conflict, JRR participants would almost certainly have to cover the cost of deployment.

The study examines a number of options for coordinating the types of resources required by JRR. While the need for speedy action and lean administration likely rules out integrating JRR into the functions of an international organization such as the UN, potentially viable alternatives exist. These include attaching JRR for administrative purposes to an existing intergovernmental organization, or finding a modest cooperative mechanism that suits participants.

Coordination in each instance would only extend to administrative matters such as common training standards or criteria for rosters. Given “differential participation,” this would mean a very low requirement for collective administrative decision-making. Substantive decisions, such as the deployment of experts are intended to remain firmly with individual JRR participants. This approach avoids the need for a mechanism

requiring collective decisions on substantive matters and thus allows for a model that maximizes the advantages of coordinating resources, without impinging on the autonomy and freedom of action of individual JRR participants.

One of the study's most important recommendations is to ensure JRR's practicability and flexibility by allowing the concept to evolve incrementally. Participants would start with an internal stocktaking of how existing, domestic expertise could be made available internationally. At the same time, national focal points could begin establishing regular intergovernmental contact. This would allow for the development of common training standards and criteria for rosters of experts. Participants could turn to the consideration of effective and cost-efficient organizational arrangements when these are required.

Decision Making, Methodology and Operation of JRR

JRR is intended to be a request-driven initiative. Those who should be able to call upon JRR assistance primarily include states that are willing to exercise jurisdiction over alleged mass crimes but do not possess the expertise needed to start gathering information. In addition, international justice institutions such as the International Criminal Court (ICC) or hybrid courts with appropriate jurisdiction, and other international organization or regional organizations with an appropriate mandate and with the agreement of the state involved could also use JRR as a cost effective resource. The study outlines the legal and practical requirements for a request to "trigger" JRR consideration. These include: a proper legal basis; no overriding political agenda; a sufficient commitment on the part of the requesting entity to make the mission feasible; and a situation that calls for a rapid, expert deployment to make an accountability process realistic.

The study's premise, that substantive decision making at every stage of the JRR process remain with the participating entities, is demonstrated most clearly in relation to the assessment of requests. In order to determine whether JRR assistance is the appropriate response to a request, the study proposes an assessment as the first step. Requests from an IJI or an IGO would only require an assessment of appropriate jurisdiction and the concurrence of the host state, since any JRR deployment would take place under the auspices of that organization. The assessment of a request by a state, however, would be examined in some detail, as described below.

A two-step process is outlined in this case. The first step would be an independent political/security assessment. In case of a positive evaluation, those JRR participants that wish to consider taking part in a deployment could decide to request a more extensive technical review of the situation to determine the specific circumstances of the situation and the elements that would be needed for a successful mission. A final decision on deployment would be taken independently by each JRR participant on the basis of this technical evaluation. A technical assessment that recommends JRR assistance would contain a plan of action to allow for as short an interval as possible between a decision to deploy and the actual launch of the mission. The study reflects the view of experts that

even such a full two-step assessment including an evaluation mission could be completed in a matter of a few weeks.

The information collected by a timely JRR mission may assist in determining the right combination of accountability mechanisms to be used as part of post-conflict peace building. Therefore, the study reflects the view of many experts that it is not essential for the success of a JRR mission to know ahead of time exactly what institution(s) may use the information they collect. What is essential is that the experts on JRR deployment be able to work under conditions that provide them with the full range of international protections and allow them the freedom and security to get the job done.

In case of a request by a state, the study recommends that as a condition precedent to a deployment, the requesting state and the JRR participants contributing to that particular mission enter into a Status of Mission Agreement (SOMA). The study examines the requirements for such a SOMA, including a set of suggested draft elements as an Annex. In case of a request by an international institution, the requesting organization would be responsible for the legal and practical framework to ensure such conditions.

A section of the study is devoted to the ultimate fate and disposition of information collected by JRR teams. Especially in the case of a request by a state, there is an obligation to ensure the safety of witnesses and the assurance that the information collected would be used in accordance with international standards of justice and fairness. The study recommends a range of options to deal with this aspect of JRR's work.

It is anticipated that each JRR deployment would include experts from several JRR participants. The study recommends that, among the participants of each deployment, the composition of the JRR team should try to maintain the efficiency of national teams, while at the same time benefit from the diversity and added legitimacy of a multinational mix. One specific recommendation to achieve this is the notion of national sub-teams within an international deployment. The study also emphasizes the need for a clearly defined team structure, strict rules of conduct, and especially, strong team leadership. The latter includes both a requirement for team leaders with specific qualifications and training, as well as a clear mandate for them to direct the work of the JRR team.

The study outlines the range of criminal justice, historical, political, and cultural expertise that may be required on rosters. Even though deployments are intended to be of only three to four months duration, it is recognized that both members of the team and potential witnesses would likely need psychological support. A comprehensive follow-up process to deployments is recommended to ensure the successful reintegration of experts, as well as to assist them in channelling lessons learned into the ongoing training and selection of experts.

How to Get from Here to JRR?

As JRR is launched on a broader international scale, the feasibility study notes that it will be important to involve practitioners in the process and to leave the concepts flexible until they have been considered by a broader cross-section of the international community. The study also recommends some modest and easily achievable first steps for potentially interested participants.

PART I: INTRODUCTION

A. What Is Justice Rapid Response and Why Do We Need It?

In the decade since the United Nations Security Council mandated the establishment of the International Criminal Tribunals for the former Yugoslavia and for Rwanda (ICTY/ICTR), the expectation of what would happen to those responsible for war crimes, crimes against humanity and genocide has changed. Prior to and during the cold war, it seemed that the prosecution of those mass crimes was, at best, a historical anomaly and, at worst, a manifestation of victors' justice. The law considered the killing of one person to be murder, to be punished severely, while the commission of mass crimes was beyond the reach of the law, with the potential of an internationally arranged exile in comfort. Nowhere were the realities of domestic and international law farther apart.

The deeply unsettling tragedies of Bosnia and Rwanda in the early 1990s coupled with new post-cold war political realities led to the creation of the ad-hoc tribunals ICTY/ICTR, an unprecedented mobilization of resources for the prosecution of the worst atrocities. The efforts of the international community in the face of these atrocities created the expectation that the world would no longer countenance such a glaring anomaly. This sense of expectation has been both fueled and bolstered by the negotiation and establishment of the International Criminal court (ICC); the creation of a variety of hybrid courts such as those in Cambodia, East Timor, Kosovo, Bosnia-Herzegovina, and Sierra Leone;² the innovation of non-judicial accountability mechanisms such as truth commissions; and attempts at domestic prosecutions. It seems safe to say that current public opinion found the indictment of Charles Taylor by the Sierra Leone Special Court to be more the norm than the asylum granted him by Nigeria.

Yet, creating expectations without sufficient capability to live up to them can leave the achievement of a goal vulnerable. While the international community (through the Rome Statute) reinforced international prosecutions of mass crimes, it also reaffirmed the primary responsibility of states to prosecute these atrocities by basing the Rome Statute on the principle of complementarity. However, this reaffirmation has not been accompanied by sufficient innovation, in that states that are "willing but unable" often need support in their domestic attempts to prosecute those crimes. Indeed, since the establishment of the ICC it seems that a part of the international community has handed sole responsibility for dealing with these atrocities to the ICC, almost washing its hands of further efforts. This "international justice fatigue" has the potential to threaten the forward momentum in international justice.

But there are also positive developments driven by the desire to implement lessons learned from previous international justice and development efforts. Most prominently, the United Nations has begun to heed the call of many Member States and accepted that it could do a better job in bringing post-conflict societies safely through the initial, volatile

² While the Sierra Leone Special Court has the hallmarks of a hybrid court, it is generally included in the category of *ad hoc* tribunals. Its Appeals Chamber has also taken this view.

years after the end of hostilities. Among the changes called for (and acknowledged by the UN) is a need to assist post-conflict societies in restoring the rule of law, both through the strengthening of legal institutions, as well as coming to terms with the past through a variety of restorative justice methods. At present, the UN is planning to play a greater role in this area through attempts at greater centralization of its rule of law coordination.

Those initiatives are part of a trend that recognizes that the goal should not be the end of a conflict, but to bring lasting peace and security to a post-conflict society. As a large percentage of post-conflict societies lapse back into conflict, there are signs that the international community is beginning to act on the recognition that in order to increase the chances of achieving lasting peace, the traditional efforts in this regard – peace, security, humanitarian assistance, and development – need to be supplemented by others, such as justice and good governance.

The current climate therefore seems ripe for initiatives that fill the gap between the expectation of “justice for mass crimes” and the reality that we lack some key tools and mechanisms to achieve this. With the international community moving in the direction of treating post-conflict situations holistically, strengthening the rule of law and achieving closure for mass crimes through accountability mechanisms will be an integral part of this process. Thus, the introduction of practical measures that assist in the establishment of an accountability mechanism and the rule of law will contribute to this process.

Justice Rapid Response (“JRR”) is intended to be such a practical measure. It was created when persons involved in international justice efforts realized that in post-conflict situations, even if the political or security environment is conducive to the investigation and prosecution of those crimes, it may not coincide with the available expertise or resources of the State, or even an international justice institution with jurisdiction. Yet, the sooner efforts are made to identify, collect, and preserve information regarding the conflict, the more likely it is that such information will be accurate and adequate for the particular accountability mechanism ultimately deemed appropriate.

Today, when such windows of opportunity appear, the international community is not equipped to move quickly. States that may be willing to prosecute grave crimes but are unable, international justice institutions with jurisdiction but lacking stand-by resources, or even the UN with a mandate but lacking specific expertise have nowhere to turn for “justice rapid response.” Thus, crucial evidence may be lost and with it an opportunity to hold perpetrators of atrocities accountable and contribute to the re-establishment of the rule of law.

JRR is meant to fill this gap. The present study is intended to be a practical guide to how the international community of states, in cooperation with the expertise and experience of international organizations and civil society, could coordinate and focus resources to this end. In short, JRR aims to respond quickly to a request to provide expertise and/or resources in support of genuine efforts to identify, collect and preserve information about mass crimes (namely those in Article 5 of the Rome

Statute)³ for any accountability mechanism deemed appropriate. Accountability mechanisms could include national, international and hybrid justice tribunals, or restorative mechanisms like truth commissions. Thus, JRR capability is meant to provide effectiveness to efforts to come to terms with these crimes.

JRR, on the other hand, is not meant to be a panacea for post-conflict justice solutions. It is not meant to duplicate the various rule-of-law assistance efforts intended to rebuild justice institutions over a longer period of time. Yet, initiatives like JRR are needed as existing assistance efforts and processes do not meet all crucial post-conflict justice requirements. Current efforts, aimed mainly at the overhaul of justice systems through existing development assistance models and resources take much too long to be approved and launched to take advantage of the political and security windows of opportunity that may arise. Where various investigative and related capabilities must be available quickly to gather key information, a new initiative is necessary.

B. Development of the Initiative and Methodology

The concept of Justice Rapid Response first arose in the course of multi-disciplinary discussions on the “impunity gap.” The idea of JRR came up as one initiative to help bridge this gap by potentially assisting both entities assuming jurisdiction over those bearing the greatest responsibility for mass crimes (like the ICC), as well as those willing, but perhaps unable to do the same for lesser offenders (affected States). It has been the subject of discussion among a number of states and members of civil society for over a year. A theoretical study, evolving over the course of three international meetings anchored the discussions on this issue. This theoretical study outlines in a broad, conceptual manner the possible approaches that may be available to the members of the international community, individually and collectively, to establish a JRR capability.

After three meetings in 2004 that brought together state representatives, IGOs, NGOs, and independent experts, a group of six states (Finland, Germany, Liechtenstein, United Kingdom, Sweden and Switzerland) commissioned a study that outlined ways in which JRR could function in practice. The study was carried out by a group of consultants consisting of Katrin Nyman-Metcalf, Anne Rübesame and Ines Thevarajah. The work of the group was directed and coordinated by András Vamos-Goldman⁴. The consultants

³ N.B. The Outcome Document at the recent UN 60th GA Summit added a reference to ethnic cleansing to the standard list of Rome Statute Article 5 crimes.

⁴Andras Vamos-Goldman is an international legal consultant who has recently been law and policy advisor to the Liu Institute for Global Issues and consultant with the Office of the Prosecutor of the ICC. He has also been, *inter alia*, Canadian legal advisor to the UN in New York, the first Chair of the Sierra Leone Special Court Management Committee, member of the ICC PrepCom Bureau, and Head of the political section of the Canadian mission to the UN.

Dr. Katrin Nyman-Metcalf is Associate Professor of International Law attached to the Riga Graduate School of Law (Latvia) and Concordia Audentes University (Estonia) as well as working as an independent legal consultant, mainly on legislation and institution building matters in transition states. She has work

had the benefit of the guidance of an advisory panel of experts with broad experience in the field of international justice. The advisory panel consisted of John Ralston, Christopher Stone, Winrich Kühne and William Schabas.⁵

The methodology used in gathering information for the preparation of the present study, in addition to research by the consultants, was primarily based on a questionnaire prepared on the basis of the key issues identified in the theoretical study. The questionnaire was widely circulated to individuals and organizations with particular expertise in this field, after approval by the project's advisors. The experts who were contacted were intended to be a representative cross-section of those working in the field of international justice with experience in, and knowledge of the areas of potential JRR activity. Given the limited time frame allocated for the completion of this project, many persons who were contacted were unable to respond. Nevertheless, the study reflects the views, advice or commentary, whole or in part, of over sixty international justice professionals⁶.

experience involving more than 15 countries and has also published widely on international and European law.

Anne Rübesame is an associate with the law firm of O'Melveny & Myers LLP in New York. She also clerked for Judge Bruno Simma at the International Court of Justice and served as an advisor to Germany's ICC Task Force and the delegation of Bosnia & Herzegovina at the UN. She was part of ICG's project to document violations of humanitarian law in Kosovo and participated in the Rome Conference for the International Criminal Court.

Ines Thevarajah is a lawyer and has a Master in International Humanitarian Assistance. She has been working as an attorney-at-law in Germany as well as in field missions for UNHCR in Bosnia & Herzegovina and Sri Lanka.

⁵Dr. Winrich Kühne is currently the chairman and director of the Center for International Peace Operations which prepares, deploys and supports civilian personnel serving with international peace missions under the auspices of the United Nations (UN), the <http://www.auswaertiges-amt.de/www/en/aussepolitik/friedenspolitik/osze/index.html> Organization for Security and Cooperation in Europe (OSCE) or the European Union (EU).

Professor William Schabas is one of the most prolific scholars within the field of International Criminal Justice and currently serves as the director of the Irish Centre for Human Rights at the National University of Ireland, Galway, where he also holds the chair in human rights law. From May 2002 to 2004, he served as one of three commissioners to Sierra Leone's Truth and Reconciliation Commission.

John Ralston recently led the investigation team for the UN Independent Commission of Inquiry for Darfur. Among many other positions, John Ralston is currently, *inter alia*, the Executive Director of IICI. He also served as the Chief of Investigations for the ICTY.

Christopher Stone is currently the Daniel and Florence Guggenheim Professor of the Practice of Criminal Justice at Harvard University's Kennedy School of Government. From 1994 to 2004, he served as director of the <http://www.vera.org/> Vera Institute of Justice, where his own work focused on institutional reform of police, prosecution, and public defense services both in the United States and internationally. Stone also serves as chair of <http://www.altus.org/>, an alliance of nongovernmental organizations and academic centers in Russia, India, Nigeria, Chile, Brazil, and the United States that are pursuing justice sector reform.

⁶ These professionals represent a wide variety of viewpoints and expertise including: governments (5); international organizations (11); international justice institutions (prosecution (3), judges (3), administration (3)); training institutions (4); non-governmental organizations (international justice and human rights oriented (11), political/security oriented (3), local NGOs (3)); intergovernmental organizations (5); criminal justice professionals (3); defense counsel (2); academics (4); and military (2).

While some of the recipients of the questionnaire responded in writing, the consultants interviewed most of the respondents. The views, considerations and arguments presented in this study are the result of those written submissions and interviews, in addition to publications and official documents consulted in the process. Grateful appreciation is extended to all those who donated their time, energy, knowledge and imagination.

C. Scope and Function

If JRR is intended to be one part of a post-conflict peace building mosaic, it has to complement, not overlap or conflict with other efforts, whether domestic or international. As an initiative representing the international community's ability to coordinate resources, respond to a genuine request and make available appropriate expertise and assistance as soon as conditions permit, the parameters of its activities have to be clear. The purpose of this section is to explore the most effective scope and functions of the initiative - what parameters would deliver a JRR capability that is both feasible and needed the most.

One of the most consistent responses of those surveyed for this study was that there exists an unfulfilled need for evidence gathering in the immediate aftermath of a possible mass crime. This is especially troublesome for information that is the most likely to disappear with the passage of time. The sooner information is collected after the events, the more likely it is that the information is adequate to inform decision makers as to the appropriate accountability mechanism, and accurate (not distorted by time, politics etc). Countries coming out of conflict are also likely to have the most diminished judicial infrastructure and the least resources to rebuild them quickly. The commencement of steps towards an accountability mechanism as soon after the commission of the offences as possible could enhance local population's confidence in the rule of law and could provide incentives to take ownership of the process.

It is for these reasons that the focus of JRR considerations has been directed at this most time-critical and resource-poor aspect of post-conflict restorative justice. The consultations for this study reaffirmed the belief that the activities that will be of highest value to any future accountability mechanism include the early location, gathering and preservation of physical, documentary and perhaps also testimonial information of potential evidentiary value. Within this, the information that is most critical to gather is that which is likely to disappear irretrievably if not collected as soon as possible. The questions of how far the scope of these activities should extend, and what functions should be included in JRR deployments will determine the recommended parameters of this activity.

It is important to emphasize that the collection of this kind of information would be useful to a variety of accountability mechanisms that have the purpose of achieving lasting peace and security. These can range from the readily recognizable international/hybrid/domestic prosecution, or truth and reconciliation commission, to

such instruments as a Commission of Inquiry under the Additional Protocols to the Geneva Conventions and even to aid Security Council decision making, such as the recent Commission of Inquiry for Darfur.

1. Scope

Under international law, any form of assistance from abroad is subject to the sovereignty of the host country. Therefore, any such assistance must be pursuant to some form of jurisdiction – either extended by the host country itself, or by another entity which itself has jurisdiction via international agreements or conventions. The first consideration in determining the scope of the JRR initiative is how such jurisdiction can be conferred. While the details of this question will be examined in more detail in the section entitled “Trigger Mechanism”, one aspect – who should be able to call on JRR resources – is relevant to determining the scope of JRR.

A state needing to enhance its capabilities but otherwise willing to assume its primary responsibility over mass crimes can request JRR assistance. Equally, an international justice institution with jurisdiction, such as the International Criminal Court, finding itself with a window of security and political opportunity but lacking the necessary expertise on staff, could augment its capacity through JRR. It can also be envisaged that in a cooperative relationship between a state and an international justice institution (where, for example, the international justice institution focuses on those bearing the greatest responsibility and the state deals with lesser offenders through a variety of accountability mechanisms), JRR capability could assist both parties. What is clear is that under every conceivable scenario, JRR capability would only be deployed upon request.

What is less clear is whether other entities such as international organizations could request JRR assistance. The proficient and early collection of information concerning mass crimes is certainly of interest to a variety of international actors. Some of these, such as various organs, funds and programs of the United Nations, or even regional organizations, also have some claim to jurisdiction to provide assistance in a post-conflict context. These would clearly benefit from a readily deployable expert group. For this reason, those responding to the questionnaire overwhelmingly supported the idea of JRR being available not just to states and international justice institutions but also to a wider range of international institutions.

However, two important conditions were also cited. The first is that the focus of JRR activities should remain in the area of judicial or other accountability mechanism (e.g. truth commission). The second is that any entity other than a state must have both the appropriate jurisdiction to make the request, as well as the agreement of the host country. The one possible exception to the requirement of the host country’s agreement may be a request pursuant to a Security Council mandate under Chapter VII of the UN Charter.⁷

⁷ While the Prosecutor of the ICC has *proprio motu* powers under the Rome Statute, and thus does not technically need the consent of the country in question, practically speaking only a Chapter VII Security Council mandate has some chance of forcing compliance by a home state (and that, rarely).

Another determining factor of the scope of JRR is the relationship between the JRR team's information identification, collection, and preservation activities and the accountability mechanism (e.g. prosecution or truth commission). As a starting point, most responses to the questionnaire indicated that while useful, it is not absolutely necessary for a JRR team to know what the ultimate accountability mechanism for which it is collecting information will be. Thus, it is possible for it to do its work long before this decision is made. As previous experience, such as with the Cambodia tribunal has shown, there may be considerable time between the commission of those crimes and their prosecution. In fact, since the premise of JRR is to take advantage of windows of opportunity, the timing of investigations cannot be tied to the decision regarding accountability mechanisms. Indeed, the work of the JRR team may well assist local authorities in determining which accountability mechanisms are best suited for the circumstances.

On the other end of this continuum is the question of whether JRR should extend into being part of an accountability mechanism. There are mixed views on this. A majority sees JRR in a well-defined, purely expert information gathering and preservation role, far away from the possibly politicized activities surrounding accountability mechanisms. A minority view could, however, envisage JRR activities extended into providing assistance to investigations and even prosecutions. While this is a key point, it is not one that necessarily needs to lead down diverging paths. It should not be a deterring factor to JRR deployment if the decision on the accountability mechanism has already been made (or if the mechanism has already been established) and the JRR deployment happens to lead directly into a full criminal investigation phase or a definition phase for a truth commission. In fact, even those who hold the view that JRR's sole function should be information gathering concede that this is just as useful in the preliminary phase of investigations – e.g. to generate lead evidence.

There are many mission specific parameters that will vary with each deployment, defining the scope of that particular JRR. These pertain to factors such as the temporal and geographic limits within which JRR teams will work. Those factors will have to be determined prior to a deployment in the agreement entered into with the requesting entity. However, one last broad consideration concerning the scope of JRR activities should be mentioned. This pertains to ensuring that JRR does not duplicate or interfere with other rule of law type assistance mechanisms. There do not appear to be any obvious overlaps with other development assistance type activities, since JRR is intended to be deployable in a timeframe when traditional forms of assistance could not be provided quickly enough. In fact, the need for the creation of a JRR capability is mainly due to the fact that almost all existing development assistance mechanisms cannot be activated in time to take advantage of a suddenly favourable security and political climate.⁸

Yet, there are areas where there is a potential for duplication. A requesting state may ask

⁸ It should be noted that in the UN context there is an ongoing debate on the role of a rule of law element in the start-up phase of peace operations. Such a function could aim to achieve the same goals as JRR, but far from being an overlap, it could call upon JRR's expertise to carry out the work.

for assistance beyond information gathering and preservation, and one or more JRR participants would be willing to oblige such an expanded request. This would most likely come in the form of some sort of capacity-building element (e.g. training of investigators, prosecutors or even investigative judges) as an add-on to the core JRR function. It has been pointed out that if there are participants willing to provide capacity building as part of their expert deployment, this could actually serve as a useful bridge between an early JRR mission and subsequent judicial assistance, especially, if the latter is to help set up the accountability mechanisms that will use the information collected by the JRR team.

Some capacity building is inevitable in any international deployment working closely with local counterparts, and far from hampering longer term rule of law related assistance, it could serve to enhance the absorptive capacity of local authorities better to take advantage of longer-term rule of law development assistance when that is made available. In this respect, the deployment of JRR experts could leave a positive legacy for the national justice system behind, which could be a useful building block for the reconstruction of the national justice system.

2. Function

If JRR's main focus is on the identification, collection and preservation of information, then it becomes possible to chart the major functions that the members of JRR teams could be requested to carry out. As it is hoped that JRR deployments can take place as soon after the end of a conflict as possible, it is likely that their findings will inform prosecutorial decisions or even aid in the choice of accountability mechanism.

Based on responses to the questionnaire, several broad categories of activities seem uncontroversial. These categories include the investigation of the patterns of violence, forensic mapping, documentary evidence investigations, visual image collection, compilation of potential witness lists, identification and marking of massacre sites, and initial victim/witness protection surveys.

This list contains the first, broader aspects of investigations. It seems apparent that the experts recommending this list see JRR primarily as a mechanism for gathering lead evidence, i.e. evidence that will lead to other evidence. Thus, JRR is not only seen as being useful on the ground in time to preserve information that could otherwise disappear. It is also regarded as having an invaluable role in setting out the parameters of the political and military structures, the activities and the physical remains of what may have been mass crimes.

One obvious activity not on that list is the interviewing of witnesses. Two distinct points of view emerged on this issue. Some respondents were of the view that interviewing witnesses is a vital part of this early stage of information gathering. This view considered it critical that witness statements be taken as soon after the occurrence of the events as possible, not only because they would be fresher and therefore more accurate, but also because the proximity of events increases the likelihood that witnesses would come

forward. In addition, witness testimony is often crucial for the location of physical evidence. Proponents of this view held that time not only dulled memory, it also tended to blunt emotions, creating opportunities to change witnesses' minds about testifying.

Another argument in favor of early witness interviews is related to the fact that it has been difficult for states, international justice institutions, or international organizations to respond to mass crimes quickly. This early response has been filled by a variety of civil society organizations that have been engaged in contacting and questioning potential witnesses of mass crimes. In some cases the methods used have made the statements inadmissible in court. In others, especially if the trial is many years after the event, the need for re-interviewing witnesses, perhaps several times, may lead to discrepancies in the testimony, thus potentially decreasing its value in court. The proponents of this view held that civil society may organize their activities differently and less independently if a JRR team composed of professionals conducted interviews at an early stage.

Both proponents and opponents of including witness statements as a JRR function, noted that there are two distinct types of witness information: from persons who were present at events; and those on the "inside," who could connect the decision makers to events. Both groups agreed that as getting to the latter group tends to be more difficult (and the information obtained very valuable) JRR is more likely to be able to interview members of the first group. Those arguing against the necessity of early witness statements pointed out that there are usually a number of witnesses to events and thus, taking their testimony early is less crucial. On the other hand, proponents focused on the fact that with time, witnesses' memories tend to fade, and more in this sense may not be a waste.

The main argument against the value of early witness statements revolves around the notion that such witnesses would almost certainly be re-interviewed in subsequent stages of the investigation. It is possible that either the passage of time, if not outside pressure, may change their story, thereby undermining its credibility in court. Counterbalancing this perception is the reality that individuals in post-conflict societies are not easy to locate. Even without a resumption of hostilities, affected populations may not be able to return to their home areas due to a lack of food or the lack of economic opportunities. They may have moved from refugee camp to refugee camp. If a statement is not taken when there is an opportunity to do so, the chance may not present itself again. Thus, the question of value of witness statements depends on whether one places a higher value on getting a statement versus ensuring its ultimate credibility. What is clear is that interviewing witnesses should not be excluded on principle.

While the circumstances of each situation would dictate the specific functions of that JRR deployment, it is essential to note that there will be factors other than probity and accessibility that will contribute to this equation. In all functions and none more so than in taking witness statements, the questions of confidentiality and protection have to be considered. These factors and how they would affect JRR deployments are examined under the section on "documentation".

PART II: STRUCTURE OF JUSTICE RAPID RESPONSE

A. Participation in the Justice Rapid Response Initiative

1. Who should be able to participate in JRR?

The question of “participation” is essential to JRR because, as will be seen in Part III of this study under “Decision Making, Methodology and Operations,” JRR is not intended to be an international organization, or even a highly coordinated collaboration of entities. In order to ensure the greatest possible autonomy for each individual participant and the need for the smallest possible (and least costly) coordinating mechanism, each individual participant is intended to be able to decide whether, and if so, to what extent to participate in the initiative as a whole, as well as in each particular deployment. Coordinated decisions are intended only for administrative matters. In this extremely loose structure, which entities are able to participate in JRR and how they are able to contribute is a logical starting point for the consideration of JRR.

“Participation” thus refers to the various ways in which members of the international community are able to contribute to the JRR initiative through expertise and resources. The options for how JRR should ultimately be coordinated and administered is examined separately in the following section entitled “Coordinating Mechanisms.” Therefore, the question of participation deals only with the scenario where JRR would remain an intergovernmental process, rather than it being developed by an intergovernmental initiative that will eventually be handed over to an international organization. In the latter case, participation would follow the rules of the administering IGO.

A later section on “Relationship Issues” deals with the terms, arrangements, and policies involving recipient states, international justice organizations, and other international organizations. In addition, this section includes how JRR teams would interact with sub-national institutions or local groups as well as with international organizations and NGOs that are not part of the JRR team.

Thus, the basic issue of this section is which types of entities should participate in JRR. Since the JRR process has been driven by interested states, it is likely that if it goes ahead, it will remain primarily an intergovernmental initiative. At the same time, there has been considerable input and interest from those non-governmental organizations that already have developed relevant international justice expertise. It is also acknowledged that certain international organizations (primarily the UN’s conflict prevention and post-conflict peacemaking departments, as well as the EU) possess expertise and resources relevant to JRR. Given the differences in legal status of these various entities, their participation in JRR will have to be arranged in different ways.

The other important issue is the level of involvement required from each participant. If JRR is to be globally accepted among both developing and developed states, it is

important to have the broadest possible participation. Therefore, participation has to be made easy and attractive. The challenge is to ensure that this collaboration is open to any state interested and willing to make available expertise or resources, no matter how limited. In other words, participation cannot be so expensive that it becomes unattractive. Regarding IGOs and NGOs, as we will see later, ways exist in which these organizations can make a substantive and practical contribution to JRR. The goal in both instances is to increase the pool of expertise and the appeal of JRR while decreasing formal requirements and obstacles to participation.

2. **Examples of existing forms of intergovernmental cooperation**

a) Intergovernmental agreements

There is no shortage of innovation in the field of intergovernmental cooperation. Precedents can be found for nearly every level of interaction from loose cooperation governed by an exchange of letters through more formal collaborations evidenced by Memoranda of Understandings, to full-fledged coordination by a separate body established by an international agreement or convention.

Various levels of coordinating mechanisms available to states will be examined more fully in the next section. In order to maximize membership and minimize its burdens on interested states, it is useful to look at a model known as “**differential participation.**”

Two good examples of “differential participation” are the “European Space Agency” (ESA) and the “Charter for the Carbon Sequestration Leadership Forum” (CSLF). Members’ obligations can range from being entirely voluntary (CSLF) to a minimal contribution to the common maintenance of the agreement (ESA). Participation in both cases in the various projects conducted pursuant to the agreements is voluntary. In this way, each state decides more or less what it wants to pay which in turn decides its level and the extent of its participation in different projects.

In the context of these primarily scientific agreements, the size and extent of the financial contribution also determines the potential resulting benefits that could accrue to the state from its membership. As states can decide whether and to what extent to participate in each project, they can thus increase or decrease their involvement over time. It is even possible for states to join ongoing projects.

b) International organizations and non-governmental organizations

As for participation of non-state actors, there are numerous examples where an intergovernmental organization participated in some capacity in an otherwise intergovernmental agreement. These range from full-fledged membership (such as UN participation in numerous peace agreements) to what is most common – having observer status.

While there are plenty of examples of arrangements for the sharing of resources among some IGOs (especially among various UN agencies, funds and programs), there seems to be no precedent for what is really important for JRR (i.e. an instance where the expertise of the international organization is made available to, and serve under the umbrella of an intergovernmental initiative). Even in the EU, which is a special legal entity, this does not appear to be the case (see Advance Study Annex 1).

Certain NGOs that focus on academic or substantive information, rather than advocacy, tend to have expertise and information of the kind needed by JRR. In order to enable such NGOs to contribute to the JRR process we can look to so-called **stand-by arrangements**. These are working arrangements usually used by international organizations (especially the UN) that spell out the terms under which expertise from a particular NGO would be made available to that IGO (see Suggested Draft Elements of a Stand-By Agreement used with NGOs/IGOs attached as Annex 2). As stand-by arrangements are used to fill gaps in IGO rosters at very short notice, how they work in practice might serve as a good example of how NGO (and IGO) participants in JRR could make their contribution.

3. Detailed considerations of participation of states, IGOs and NGOs

a) Participation of states

There are almost an infinite number of reasons why JRR has to be as inclusive of states as possible. In addition to the obvious need for universal credibility and acceptability that no “northern club” is likely to achieve, there are many practical reasons for ensuring that developing countries do not exclude themselves from participation in JRR because of financial considerations. Some of these include:

- **Developing countries are likely to have unique criminal justice expertise and experience to deal with certain cultures, locations, environments and climates;**
- **Experts from developing countries are more likely to have expertise in traditional remedies, local application of legal systems, cultural norms and practices that influence social behaviour, in addition to local languages and dialects;**
- **A JRR deployment that is not monochromatic would be more credible to a victim population;**
- **JRR training and deployment opportunities would enhance the chance for cross-fertilization of knowledge and ideas among experts from a wide variety of countries;**
- **Most importantly, having more countries contributing experts increases the pool of available experts.**

In addition, politically, the participation of states from every region is essential for acceptability. The goal, therefore, is a sufficiently flexible mechanism that can accommodate a large number of states, irrespective of resources, to participate in JRR.

The earlier noted examples of “differential participation” (ESA and CSLF) can be almost directly applied to JRR to find ways that would not tax the resources of states that want to participate but may find it difficult to pay recurring costs. While the details of coordinating mechanisms will be considered in the next section, it is instructive to look at the principal methods in use that could be considered for JRR:

- **Rotational responsibility** – where a number of participating states agree to share the burden (and cost) of carrying out secretariat functions on a rotational basis. While in most precedents all participants tend to share the burden, there is no reason why some of the participants cannot agree to share this responsibility among a limited number of members (e.g. EU Presidency.)
- **Voluntary contributions** – while not the most stable model, many such agreements contemplate a small, central coordinating function run by a few professionals, the cost of which is being paid by voluntary contributions from participants (e.g. CSLF Agreement).
- **Designation** – in some cases one participant may offer and the others agree that the offering participant would carry out such coordinating functions. Where this has been done, a particular government agency or other body closely associated to that government is given this responsibility on behalf of all participants (e.g. CSLF Agreement).

The possible application of “differential participation” agreements to JRR is even more reasonable when we consider that participants only contribute to those projects that they voluntarily choose to join. By analogy, developing state participants to JRR could decide to contribute to the extent of placing a few experts on a JRR roster. While generally participants should be responsible for ensuring that experts placed on a roster are not only available at short notice but are also trained to a common standard for international deployment, it is conceivable that other JRR participants may be willing to defray the cost of training developing country experts. In fact, some JRR participants that choose to contribute only financially may use their contribution to train and deploy experts from developing states. This might enhance the attractiveness of joining JRR for developing states and help to ensure its universal appeal at little cost.

Although the issue of financing is covered in a subsequent section, it may be assumed that while the principle of “requester pays” should be the starting point, in most cases this would be unlikely, especially when a request comes from a state just emerging from conflict. Thus, there will have to be provisions that deal with the sharing of costs other than recurring costs. Using the same reasoning as above, we will see in the section on financing that it may also be possible to find ways for other participants to defray the cost of deploying experts from developing states.

b) Intergovernmental organizations and non-governmental organizations

The “elephant in the room” when the topic of IGO or NGO participation comes up is accountability. IGOs are accountable to their membership, which tend to be states, thus states that are members of both the agreement in question and the IGO are thought to have greater influence than others through the presence of the IGO (one example is the high level of participation of the EU at the UN). NGOs, on the other hand, are not considered to be accountable enough, so the general concern is that their actions will not be bound by the same parameters that guard those of states.

Apart from accountability, the question of participation of IGOs and NGOs actually breaks down into two issues. To a lesser extent the issue is what form their participation should take; and to a greater extent how their resources and expertise can benefit the JRR process. Regarding the former, both IGOs and NGOs could participate as observers in whatever JRR arrangement is concluded. As observers they would not have decision-making rights (nor the burdens of sharing recurring costs), while they could attend and participate in meetings. This normally satisfies those who are concerned about accountability. If, however, observer status is not considered a sufficiently “involved” mode of participation and IGOs and NGOs would be expected to contribute expertise in the same way as states, there are models available that may make this possible.

There are agreements in place that try to bridge this gap by making certain types of IGOs and NGOs “Permanent Participants” (for example the Arctic Council Agreement), or by designating them as “Associate Members” (such as the Statute of International IDEA). While these arrangements do not constitute full participation, they are a level above that of an observer. As the Arctic Council agreement puts it “the category of Permanent Participation is created to provide for active participation and full consultation...” Thus, it is envisaged that entities can be less than full members and not only be able to participate in the activities envisaged under the agreement but also have the right to be fully consulted.

Regarding how the expertise of IGO and NGO participants can benefit JRR, the situation is more straightforward. We have already seen that the model that appears to be the most appropriate is the **stand-by agreement**. As noted, these are simply Memoranda of Understandings (MOU) whereby one party agrees to maintain a stand-by capacity of expertise ready to deploy within a certain agreed timeframe upon the request of the other party. The MOU also contains provisions for compensation as well as other essential elements including the status of deployed persons, training standards etc.⁹ Most stand-by MOUs are created among international organizations (especially UN bodies) and between IGOs and NGOs. They are used primarily in situations where one institution finds itself in a situation where it cannot meet operational requirements from within its own personnel resources, and there is no time to recruit and train new personnel. The ICC, for example, is already engaged in discussing the possibility of stand-by arrangements with a number of organizations with expert capacity. Therefore, it should be easily conceivable

⁹ See Suggested Draft Elements of a Stand-by Agreement Used with NGOs/IGOs in Annex 2.

that JRR could have stand-by arrangements with a number of IGOs and NGOs to provide it with certain types of expertise.

IGOs and NGOs that possess the kind of practical capability needed for JRR could be invited by participating states to take part in JRR as “Associate Members.” They would then be able to fulfil their commitment to JRR in the same way that they now do in other stand-by agreements. By signing the JRR MOU, an IGO or NGO would agree to designate experts for rosters who would be trained and ready for deployment at short notice, like any state that participates in JRR.

4. Recommendations

The issues considered under this section were who, how and to what extent international actors can participate in the delivery of JRR. In order to enlarge the pool of potential experts as much as possible, it is recommended that a full range of international actors (states, IGOs and NGOs) with expert capacity be involved. To ensure universal appeal and applicability of JRR, it is further recommended that flexible mechanisms such as “differential participation” be used that allow states to participate at various levels of involvement. To ensure that the expertise of IGOs and NGOs are readily available, they should be made part of the JRR mechanism in a way that does not raise concerns over accountability, but that does allow for “stand-by arrangements” to be put in place. These stand-by arrangements should define the modalities for the provision of experts from IGOs and NGOs to JRR assignments.

B. Coordinating Mechanisms

1. How to coordinate JRR

Possibly the most important value added that JRR can bring to the furtherance of international justice is the idea of coordinating separate capabilities into an expert, rapidly deployable and efficient capability. Some capabilities already exist at the national, IGO, and NGO levels, but they may never be used, or used effectively unless there is a way for those in need – states as well as institutions – to be able to tap into them efficiently. Therefore, the crucial issue in the conceptualization and realization of JRR is how the members of the international community can coordinate their individual capabilities to this effect.

It is no secret that the cost of the various international justice efforts has left states somewhat exhausted. This, in addition to the myriad of issues that now dot the international scene demanding attention, has led to weariness with respect to new initiatives. It is in the context of this reality that the question of how best to coordinate JRR capabilities has to be examined.

The theoretical study upon which the present work is based proposed that coordination be carried out incrementally. Participants in JRR start the process of interaction at a basic level, which might increase in the future, albeit only at a pace with which the membership would be comfortable. As discussed in the previous section on participation, JRR members could be involved at varying levels, according to their capabilities and resources, to widen JRR's base as much as possible. An incremental approach to coordination would probably be the best way to accommodate different levels of participation. Such an incremental approach would also decrease the concerns of states that this initiative will take on a life of its own and develop into a large and costly entity.

The issues to be considered, therefore, are how such an incremental approach would work, and what are the choices and steps along the way. At the outset we have to raise the question whether JRR should be an intergovernmental initiative to remain under the guidance of states (and to a lesser extent the participating IGOs and NGOs), or whether an existing intergovernmental organization should be asked to take it over. In order not to limit available options, both of these possibilities are considered throughout the study, as appropriate. In this section, the potential IGOs and their capabilities will be examined.

The other option is to continue to treat JRR as an intergovernmental initiative. A thorough consideration will be required of the steps involved to accomplish this through an incremental approach. This will take up the majority of this section.

2. Options for coordinating JRR

As noted above, the first issue is whether JRR should be coordinated by an existing international organization, or whether it will remain under mainly intergovernmental administration.

a) The international organization option

One option discussed with the experts consulted is whether JRR should become part of the international effort through an already established global or regional organization. While this issue is considered in several sections, primarily the one concerning financing, nowhere is it more put to the test than in our considerations of coordinating mechanisms. The obvious candidates include some part of the UN system, and the EU, which in spite of its limited regional makeup has been involved in various global assistance efforts. Other than the EU and the OSCE, we did not consider regional organizations as either their makeup or their resources would not be sufficiently broad to accommodate an effort like JRR.

i) The UN as potential coordinating mechanism

Universal presence, like that of the UN, has tremendous advantages. The UN, in one guise or another, usually has some capacity on the ground, and there are economies of scale when it comes to logistical support and security. Programs administered by a

member of the UN family have the protection of the Charter, of the Convention on the Privileges and Immunities of the United Nations, and most likely of Status of Mission agreements. In other words, the UN already has all the legal and moral authority to operate that no other entity today would even be able to establish. These are good reasons for keeping the DPKO, UNDP, or even the Peace-building Support Office as options. Yet, the majority of experts recommended that a UN administered coordinating mechanism should not be the first choice for JRR coordination.

Within the UN system, the options for operating JRR would most likely involve DPKO, UNDP, or as a remote possibility, the currently planned Peace-building Support Office. Each has particular advantages and disadvantages. For example, DPKO's focus is peacekeeping which means it is present on the ground in most crisis areas (and for a limited time after the end of hostilities). In addition, it has delegated administrative authority, which makes it possible to act quickly, but only once a political decision has been taken. Even then, it sometimes goes through contortions trying to interpret the parameters of its mandate. Therefore, its biggest disadvantage is that it maintains its absolute dependence on the political decision-making in the Security Council. As Security Council decision-making is often based on a number of ongoing issues, it is not ideal for JRR.

UNDP is one of the few agencies with a presence on the ground in most places that might need JRR assistance. However, UNDP is not a natural fit. Its administrative procedures are not as streamlined as that of DPKO and its focus is more long-term development than rapid assistance. As the Peace-building Support Office is yet to be established, it would be unfair to pass judgment. However, at the time of writing, its exact makeup is still caught up in the UN reform process and it is difficult to know just what it will look like if and when it is established. It should, however, be kept under observation and consideration as it evolves.

There are other, systemic reasons why the UN is not this study's first recommendation. UN procedures, even under delegated authority, tend to be bureaucratically administered, the emphasis being on the prevention of mistakes, rather than meeting deadlines. While this is fair enough for an organization that has been overly criticised of late, it does not help a program like JRR, where deadlines tend to be real. Cost structures in the UN as in most international organizations tend to be on the high end. Thus, economies of scale aside it would be difficult for JRR to be coordinated at its most efficient under the UN umbrella. In addition, the shift from an intergovernmental initiative to the UN may be complicated by both politics, as well as by possible rivalries between various parts of the UN system that may be interested in incorporating an initiative such as JRR into their mandate.

ii) The EU and the OSCE as potential coordinating mechanisms

If the UN is not an ideal home for JRR, then any other IGO, with more limited universality will be even less so. In spite of the above, it is worth noting that the EU Common and Foreign Security Policy is increasing its mandate, even if there may be a

temporary halt to further developments due to the abandonment of the most recent constitutional process. The EU has already created a Rapid Reaction Force for quick military enforcement of certain specified humanitarian and peace-building/keeping tasks. The EU also has some experience with police and judicial cooperation.¹⁰

However, even if the EU may have some suitable characteristics to coordinate JRR, it suffers from some of the same problems as the UN. Plus one more - it is a regional club. Corresponding to its make-up, the EU has set decision-making rules that, unfortunately, exclude the kind of broad global participation envisaged for a successful JRR. The other regional option considered briefly is the OSCE. As this organization is present in many field missions in many places it is worth mentioning. It has significant drawbacks, however, (in addition to the ones already listed for the UN, which tend to apply to the OSCE as well). In addition to a limited membership, predominantly from one part of the world, the OSCE has not acted “out of region” severely reducing its global effectiveness. Furthermore, the OSCE’s consensus based decision-making may not enable it to act rapidly enough for a project like JRR.

b) The intergovernmental option

If JRR is not going to be handed over to an existing international organization as a concept to be incorporated as one of its programs, then it will have to be developed by governments with the help and advice of the relevant IGO and NGO community. As proposed in the theoretical study, and endorsed by many expert respondents, this should be accomplished through an incremental approach, step-by-step within the capacity of those parties interested in participating in JRR. There should be neither fixed steps nor firm deadlines in this approach, the first steps of which are proposed under the implementation section of this study. However, there are certain common elements that will have to appear in an incremental development of JRR. These are elaborated in the following paragraphs.

(i) The incremental approach

After the political decision is taken to proceed with JRR,¹¹ states and other entities interested in participating in JRR first will have to take steps to understand their own capabilities. This should involve a stock taking of both the sources and conditions of available expertise required for JRR missions. At the same time, they should move to set up a domestic or (in the case of IGOs and NGOs) organizational roster reflecting these findings. While this may be relatively straightforward in an IGO or NGO, it is somewhat more complex when it comes to the resources of a state.¹²

¹⁰ See Annex 1 for the Advance Study.

¹¹ Also, see final section entitled: “Implementation.”

¹² The complexity of political and bureaucratic organization that make up states mean that even the seemingly simple task of identifying potential experts will require efforts of a variety of players. The levels and jurisdiction of national and sub-national level authorities, the rules governing the conditions of employment of government employees, the relationship of one level of government to another, the relationships with domestic quasi and non-governmental bodies that may supply some of the expertise and

While the process of identifying internal assets is ongoing, interested participants should also work out **internal or domestic coordination mechanisms**. Again, this may be simple in the context of an organization, but more complicated in a state with several layers of governments and institutions. However, states are more used to creating these types of coordinating mechanisms, as this is the usual way in which they ensure that they speak with one voice to the outside world on complex multi-jurisdictional issues. It is otherwise called “domestic consultations to develop a national position.”

The next logical step is for the **designation of external focal points** to allow intergovernmental contacts to take place. Several respondents to the questionnaire emphasized the necessity of early designation of such focal points. One commentator indicated that the focal point should come from a substantive ministry – such as the Ministry of Justice, rather than one dealing with the “fuzzier” issues of foreign relations. This will be a decision for each interested state but, it is worth noting, that an external coordinator responsible for JRR will have to be at home in the field of criminal justice as well as know how to bring such expertise to bear in the international environment. The final recommended element in the initial steps, after a positive political decision is made, is to **regularize the method of international contact between focal points**, likely through periodic meetings for exchanges of information, as well as further development of structured coordination.

The process of **setting up domestic rosters of experts** is likely to take even the most efficient, motivated, and resourceful state some time. It may be useful that in the course of regular contacts between focal points interested participants can assist one another. The goal is to be able to make available internal rosters to other participants in JRR. This would be a first step towards the possible next goal of establishing a common roster. In this process of exchange, JRR participants **should decide from the beginning on one set of criteria to use for rosters**. The importance of a uniform, user-friendly, and highly informative roster cannot be overstated. This will be further discussed in the section on rosters.

Another important early activity is to **designate established training institutions to develop and propose common training standards and programs** for experts on JRR rosters. Once the common training standards and programs are identified they will likely be considered domestically and discussed in coordination meetings before being adopted and put into practice.

Finally, participants should, at this time, consider and **adopt basic provisions that will govern the deployment of their experts**. These include such items as the elements for

the rules regulating financial expenditures are just some of the considerations. Nevertheless, some states have already gone through at least the preliminary deciphering of their internal maze, and quite apart from being discouraged, have found that it would be possible to make the system work. Having said this, some countries have taken steps in this direction. Norway has a fledgling rule of law support program based on rosters, and Canada commissioned a preliminary study on key federal government and Canadian NGO capabilities.

the agreements with requesting entities and the model stand-by agreement to be entered into with IGOs and NGOs interested in participating.¹³ Up to this stage of interaction there is likely to be little need for a more structured coordinating mechanism.

As rosters begin to appear with experts willing to be deployed and having received international deployment training, JRR will begin to be able to function as intended. However, once requests for JRR assistance have been made, it will require a greater degree of coordination to receive them officially, make an assessment, and issue recommendations to participants on whether to respond. If the decision to respond is positive it will require further coordination to organize the deployment. It will become important, therefore, for participants to agree on what ought to be JRR's eventual coordinating mechanism.

Ideally, these functions will have to be carried out at the least expense and, if possible, without creating a substantial new structure. While no one has indicated that an independent JRR organization is out of the question, it is more likely that states will opt for less formal and workable alternatives if one exists, even if it does not involve significant cost savings. Thus, realistically, these functions will either have to be carried out by the participants themselves, or they may be added to an already existing structure. The following sections review possible coordinating options.

(ii) Possible options for coordinating mechanisms

As noted above, there are two realistic possibilities for handling the coordination of JRR's secretariat functions. Either the participants find a way to do it themselves, or while maintaining JRR as a self-contained initiative, attach it to an existing organization for purely administrative purposes. Each of these, in turn, leads to several possible alternatives, all of which are examined in the following paragraphs.

A. Do it yourself

One set of options available to JRR participants is to coordinate the required functions without the administrative backdrop provided by an existing institution. Those responding to the questionnaire raised three possibilities in this regard.

- **Administration by one participating state** – This option is perhaps the most straightforward, from an administrative perspective. If one participating state has the willingness and resources to agree to assume the cost and workload associated with JRR, then it should be considered as a serious and viable option. There are precedents in intergovernmental relations where parties to a convention agree that one party administers the agreement (e.g. the CSLF agreement). There are, however, significant differences between such existing agreements and JRR, which may not make this the most attractive option. First, unlike JRR, agreements such as CSLF,

¹³ See Annexes 6 and 2 for Suggested Draft Elements of a Status of Mission Agreement between Participants in a JRR Mission and a Requesting State and for Suggested Draft Elements of a Stand-by Agreement Used with NGOs/IGOs, respectively.

primarily only involve the parties to it. JRR, on the other hand, is a service to be offered to requesting states and entities some of which may not be members. Second, commentators have cautioned associating JRR too closely with any one country in order to avoid the impression of politicization. Thus, while a plausible option, it is not highly recommended.

- **Administration by rotation** – It is also conceivable for participating states to share JRR’s administrative burden on a rotational basis. There are many precedents in intergovernmental relations for this solution (e.g. the Arctic Council Agreement). As with the previous example, while this is also a viable option, it may not be the most workable. For example, most existing agreements where rotations are used involve secretariat functions that amount to the holding of periodic meetings and the circulation of documentation. Since JRR will require more functions to be fulfilled in a uniform manner, it may be asking too much of a rotational system to perform them adequately.
- **Sharing the cost** – Ultimately the cleanest option would be to set up a modest, self contained secretariat by way of an intergovernmental agreement. There would be two ways to approach this. Parties to JRR could agree to share the cost, or they could second persons to it for periodic assignments. There are plenty of precedents for both options. As will be indicated under the section on financing, it will not mean that every JRR participant has to pay a fixed share or second personnel. There are various financial options presented, all with a view to allowing the broadest possible participation in JRR.

B. Attach it to an Existing Entity

If a modest, self-contained secretariat offends perceptions and thus may be difficult to be established as a separate institution, perhaps it can be attached to an existing institution. By sharing its administrative structure it should pass the muster of international justice fatigue. One of the questions we posed to experts who were asked for recommendations for possible, existing institutions that may not match JRR’s substantive profile, but which may be a suitable home for administrative purposes. To be clear, the idea is not for such an institution to take over JRR substantively. The proposal is for JRR to be attached as an additional but separate function, apart from the organization’s mandated duties. However, there should be sufficient synergy between the institution and JRR, to allow that institution to act as an administrative support for JRR. Thus, institutions involved in international training and especially those handling international deployments would seem ideal. A number of suggestions were received, including arguments for and against various types of institutions. The categories, to be examined below, consist of government institutions, non-governmental organizations, and intergovernmental organizations.

- **Government institutions** – One suggestion for a possible home for JRR is a government institution that, while being at arms length from its home government in decision-making within its mandate, is nevertheless on solid financial footing through assured government support. There are a few such institutions, engaged in a variety of functions, such as research and development in the case of International

Development Research Centre (IDRC) in Canada, or the training and compiling of international justice personnel in the case of the Centre for International Peace Operations (ZIF) in Germany. Other entities involved in compiling rosters of experts and international deployment, such as CANADEM may also be considered.¹⁴ If a participating country wished to offer one of its institutions as an administrative home for JRR, then such an offer should be considered seriously. The only concern expressed regarding this idea is to avoid too close an association with any single government.¹⁵

- **Non-governmental organizations** – While there are many different kinds of NGOs, only those involved purely in substantive work should be considered. Organizations that even partially engage in advocacy would fall aside due to accountability and partisanship issues. Therefore, the types of NGOs that could be considered are think tanks or other academically based institutions. Some of the suggestions made in this category are the Siracusa Institute for Higher Criminal Sciences, the Florence based European University Institute or Geneva’s Institute for Higher International Studies. While this idea deserves serious consideration, there are two drawbacks to NGOs. One is the ever-present question of accountability, regardless of how stellar its reputation. The other is that their administrative ability tends not to be as robust as that of states or IGOs, which is an important consideration since this is the reason for attaching JRR to an existing institution in the first place.
- **Intergovernmental organizations** – The suggestions received in this category reflect the understanding that JRR will likely remain predominantly an intergovernmental effort. There are already some issue oriented intergovernmental efforts in existence that resemble the type of institution suitable for JRR. One institution sometimes mentioned in this category is Stockholm’s International IDEA. This is an option that deserves some consideration. In addition to an IGO’s advantage of credibility and accessibility, the basic intergovernmental organizational structure is already in place.¹⁶

There is one additional proviso to the above options. Some commentators have pointed out that as JRR is likely to be dominated by states that have the resources and expertise, it will have a tendency to look like a “northern club,” no matter how flexible its terms of membership may be. One way to overcome this concern is if JRR is destined to be part

¹⁴ Organizations such as ZIF and CANADEM are discussed in further detail in the section entitled “Rosters.”

¹⁵ It should be noted that the mentioned Center for International Peace Operations (ZIF) is not strictly an institution of the German government. The Center is a non-profit company with limited liability, with the Federal Republic of Germany, represented by the Foreign Office, as shareholder and is funded from the Foreign Office's crisis prevention budget. By statute it is governed by a supervisory board, an advisory council and shareholders meetings.

¹⁶ The International Institute for Democracy and Electoral Assistance (IDEA), an intergovernmental organization with member states from all continents, has a mandate to support sustainable democracy worldwide. IDEA operates at an interface between those who analyze and monitor trends in democracy and those who engage directly in political reform or act in support of democracy at home and abroad. IDEA works with both new and long-established democracies, helping to develop and strengthen the institutions and culture of democracy. It operates at international, regional and national levels, working in partnership with a range of institutions.

of an existing institution, then try to pick one that is somewhere in the Southern or Eastern hemisphere. The respondents did not present specific ideas. However, as the following paragraphs will argue, the administrative structures proposed for even a stand-alone JRR are meant to be modest and certainly do not require the surrounding presence of an international community like New York or Geneva, this might be a sensible proposal.

(iii) The proposed functions of a JRR secretariat

Whichever of the above options may be chosen, **so long as JRR remains an intergovernmental initiative, it should carry out the following functions:**

- **Maintain lines of communications among JRR participants on issues such as rosters through meetings and the establishment of lines of communications**
- **Establish common training standards and coordinate training exercises;**
- **Receive requests;**
- **Collect information for and arrange to assess requests quickly;**
- **Ensure that recommendations are considered in a timely fashion;**
- **If the decision is positive, assist interested participants in the coordination of deployment;**
- **Coordinate post-deployment matters such as debriefings, document management and lessons learned.**

It is not envisaged that a JRR secretariat would have to administer human resources, since these would either be made available directly by states or by IGOs and NGOs through stand-by agreements. In order to obviate the need for both an HR and a major finance function, under each scenario, the expert would remain on the books of his or her institution of employment. In the case of outside experts (retired personnel, consultants etc), they would have to be included as part of the contingent of one of the sending institution (government, IGO or NGO).

It is also not envisaged that a JRR secretariat would have to maintain an intricate financial management structure. As will be discussed in the section of financing, recurring costs (such as that of the secretariat and training) would be the responsibility of each participant. In cases of participants that are not able to carry even modest expenses, those with the ability and the willingness to do so could provide assistance directly (e.g. this could be achieved through twinning, i.e. the linking of a particular donor to a particular recipient). In cases of requests by an international justice institution like the ICC, or an international organization like the UN, the presumption is that the JRR experts will be deployed under the auspices of that organization, and thus the costs related to that deployment would also be borne by that organization.

Should one or more JRR participants decide to make a voluntary contribution of the services of their experts on such deployments, they are free to do so through an arrangement with the requesting organization. In cases of requests by states that are not

able to pay for the JRR service, this would be included in the recommendation accompanying the assessment. Those participating states and organizations that still wish to take part in a JRR deployment to that country under these terms (i.e. they would cover the cost of the deployment of their experts and the corresponding logistics) would then notify the secretariat, which would then limit the eligible pool of experts to those from these participants. Thus, a JRR secretariat would not need to manage large-scale financial accounting.

Without burdensome human resources and financial functions, a JRR secretariat could be a streamlined body. Maintaining communications among participants, receiving and responding to requests, circulating assessments, ensuring decisions are made in a timely manner, and coordinating the flow of post-deployment information are true secretariat functions. Collecting information for “background evaluation,” dealing with post-deployment documentation and maintaining a “lessons learned” capability, are archival functions. Organizing the assessment (including the evaluation team) and assisting participants in deploying experts on JRR missions are organizational/administrative functions. All of this is achievable with a small team. Based on the information received for this study, it is estimated that such an office would need between three to five persons. The overall cost would very much depend on what part of the world it was located in.¹⁷

(iv) The provisions of a possible intergovernmental agreement

What an intergovernmental agreement establishing JRR would actually look like would very much depend on which coordination option was eventually decided upon. Part of the Terms of Reference for this study was a request for a model Memorandum of Understanding for this purpose. In order to comply with this requirement, Annex 3 contains suggested elements required in such an agreement, with as many of the above-discussed options included as possible.

3. Recommendations

As noted in the introduction to this section, how JRR is eventually coordinated is one of the most sensitive issues in this study because of the scrutiny that any proposal for an expansion of, or addition to, existing international structures receives. What is certain is that JRR cannot become a reality unless its efforts are coordinated in some fashion. This section considered the option of having an existing international organization incorporate JRR as one of its functions. While possibilities exist within the UN system as well as regional bodies like the EU, this option was not recommended as the best solution, mainly (but not only) because international organizations are unlikely to be able to assure the rapidity needed for JRR to function as intended.

¹⁷ By way of an example on the high end of the scale, estimates for a New York office of the ICC with a similar capacity fell below half a million dollars per year.

The other option of maintaining JRR as an intergovernmental initiative was considered thoroughly. As noted already in the prior theoretical study, this would have to be accomplished incrementally. The steps involved in an incremental approach are familiar to international actors and several viable options exist for creating intergovernmental coordinating facilities - either by the states participating in JRR, or through governmental, international, or non-governmental organizations. No one recommendation emerged as being the only one that should be followed, but it was attempted to be demonstrated that functions of a JRR secretariat could be efficiently carried out even in a stand-alone facility. The suggested elements of an intergovernmental agreement that would create JRR are attached as Annex 3.

C. Rosters

1. The models and requirements for JRR rosters

To ensure an effective and efficient JRR response, in other words, a quick deployment of needed expertise, a user-friendly roster is necessary that identifies the qualities, training, international deployment experience, and any noteworthy pluses or limitations of a particular expert. In accordance with the proposed incremental approach, JRR participants would begin with separate, national, or in the case of IGOs or NGOs institutional rosters of personnel who are qualified, willing and trained for a JRR deployment. For coordination purposes, it will be important for all JRR participants to use the same formula for establishing their rosters.

a) Roster models

Based on the information received for the purpose of this study, rosters appear to fall into two distinct categories. The difference between the two depends on the purpose of the roster. If there is no particular hurry to fill a position (other than as soon as possible), then one option is to advertise the specific positions to a wide, known pool of available, but otherwise not pre-selected or even pre-identified individuals. On the other hand, if speed is of the essence, then there has to be a prior-identified group. The members of this group would already have been vetted to ensure that they meet the required professional and personal standards, and that they received appropriate training. In addition, the experts included in this group would have committed themselves to be on a roster and ready for deployment for a specified period of time. For the purposes of JRR missions, it is anticipated that we will need to draw on roster model two.

In addition to the above-described qualities of the second model, it is also important that the roster be interactive. Both individuals on the roster and those searching and selecting from it will require access to ensure that it is as updated as possible.

b) What information categories have to be included in a roster?

The kinds of information that would have to be listed on a roster about an expert willing to be deployed internationally as part of a JRR team include:

- **Specific professional expertise;**
- **Amount of practical experience;**
- **Amount and nature of supervising experience;**
- **Amount, if any, of investigation experience;**
- **Number and nature of prior international assignments;**
- **Level and current status of international deployment training;**
- **Indications of how well the expert performed on previous JRR deployments, if any;**
- **Security clearances;**
- **Languages spoken (including at what level);**
- **Familiarity with systems other than one's own – (e.g. common law prosecutor with civil law experience);**
- **Factors that may limit deployment options – (e.g. asthmatic);**
- **Health status – currency of medical and inoculations;**
- **Length of time remaining on roster;**
- **Flag whether candidate is suitable for assessment/evaluation team;**
- **Location and contact information;**
- **Employment status;**
- **Conditions (if any) for employer to agree to release expert for deployment.**

While this is not an inclusive list, it is demonstrative of the type of information needed for a useful JRR roster. A certain amount of automation will assist in keeping such a roster up-to-date (e.g. if a person agrees to be on the roster for two years, the time can automatically be counted down; or if recurrent training is required, the roster could automatically indicate when the time is approaching for that person to re-enter training). The roster needs to include cross-references, so that when a set of requirements is entered into the computer, the names that come up will have been electronically cross-matched. Computer programs exist that can help make this manageable.

The one thing that is omitted from the above list is the question of quality. Experience shows that quality cannot be assumed and a number of commentators have pointed out that a mission consisting of poor quality experts is potentially more harmful than no mission at all. It is also a fact that good, proven experts are in constant demand. This applies equally to those working in government circles, as well as independent contractors. Ways will have to be identified to ensure that initial domestic rosters, and any eventual consolidated JRR roster be able to make available and retain a sufficient amount of high quality experts to ensure a high standard of deployments. The way to identify and retain high quality experts is to create workable connections between rosters, training, post-deployment debriefings and evaluations.

c) Examples of existing international deployment rosters

i.) Individual rosters

There are a number of very good examples of organizations run at “arms-length” by states that have developed innovative rosters. While none contain all the requirements listed above, some of the most promising are listed in the footnote below:¹⁸

18

▪ **CANADEM**

Established in 1997 by Foreign Affairs Canada to respond to emergency personnel requests from international peace operations, CANADEM is a non-profit agency dedicated to advancing international peace and security through the recruitment, screening, promotion and rapid deployment of Canadian expertise. CANADEM is funded by the Canadian government to maintain a roster of Canadian experts. It identifies suitable candidates for the UN, the OSCE, other international and non-governmental organisations and the government. Currently, there are about 6000 possible candidates on the roster, all of whom have been at least pre-screened. Agencies looking for suitable candidates can contact CANADEM, which will then search its roster. CANADEM uses a registrant's skills list and resume to determine whether an individual is the ideal match for a position CANADEM has the ability to identify candidates within 72 hours, indicating a good cross-sectional reference system.

Available skill sets of potential interest to JRR on CANADEM's roster are:

- Human rights (monitors, capacity building, human rights law and IHL)
- Police related investigation (criminal and forensic investigation)
- International legal systems (international tribunals, truth commissions, trial monitoring, foreign legal systems)
- Domestic law experience (common, civil, administrative law, legal drafting, prosecution, defence, judiciary, detention/prison systems, human rights institutions)
- Field communications
- IT
- Mission administration/logistics
- Working with local staff
- Diplomatic/police/military regular force/military reserve

▪ **NORDEM**

NORDEM is a project at the Norwegian Centre for Human Rights (NCHR), under the Faculty of Law of the University of Oslo. NORDEM is run in cooperation with the Norwegian Refugee Council (NRC) according to a formalized collaboration agreement. NORDEM is funded by and works in close cooperation with the Norwegian Ministry of Foreign Affairs. NORDEM'S main function is to recruit and train personnel for secondment to international organisations working to promote democracy and human rights. The initiative may come from the Norwegian Ministry of Foreign Affairs, the receiving organisations or from NORDEM itself. Secondment takes place on the basis of consultations with the Foreign Ministry. Like CANADEM to Canadians, NORDEM has access to Norwegians and persons resident in Norway. It is also able to propose personnel from its roster (currently consisting of 200 members) within 72 hours. Recruitment to the roster takes places annually through advertisements in national and regional newspapers, written application and group interviews. Like in the case of ZIF, all newly recruited members are required to attend a basic training course, before they are accepted to the roster.

Available skill sets of potential interest to JRR:

There are many similarities between the rosters of these organizations. Therefore, for the purpose of this study, in order to show how rosters can be set up and perhaps further developed, it may be sufficient to examine only one of them in detail. ZIF has developed an elaborate roster with several features like online-application, management tools, virtual files, and information services. The roster was designed to make it possible for a small working unit to manage personnel resources of 1000 and more members. Core tasks of the database are the scrutiny of applicants, selection and nomination of personnel, support service for personnel during and after missions, network maintenance and participation in training courses.

The data is entered into the database by candidates themselves through the Internet and later verified by ZIF. In order to become a member of the personnel pool, a candidate has to successfully participate in a basic training course. Once a candidate has been accepted to the pool, he is also granted access to an information site (accessible through the internet) where positions are advertised and other information is published. In order to keep the roster up to date, every six months a message is sent automatically to the member asking whether his/her data is still effective.

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- Human rights (monitoring, training and education, investigation of serious breaches of human rights, minority rights, women's rights)
 - Political analysis
 - Development of democratic institutions
 - Independent judiciary
 - Legal reform
 - General administration and financial management

▪ **SAFDEM**

SAFDEM, a project of the South African Ministry of Foreign Affairs, is a relatively young organisation that includes candidates from South Africa and Zimbabwe. As traditionally Southern Africans have been under-represented in international missions, NORDEM and [CANADEM](#) undertook to oversee the establishment of a roster of Southern African civilians who are qualified and available for international missions. While it mainly has human rights monitoring experts on its roster, it is an organization to keep in mind for JRR. All applicants are carefully screened and interviewed before being accepted onto the database.

Centre for International Peace Operations — ZIF

ZIF has an interesting and innovative example for a personnel roster. ZIF was established in June 2002 by the German Federal Government with the aim of enhancing Germany's civilian crisis prevention capacities. Its mandate is the training, recruitment, and support of German civilian personnel for peace operations and election observation missions conducted in particular by the OSCE, the EU, and the UN.

ZIF's concept is singular, as all organisational aspects of deployment are covered here: recruitment (including an elaborate roster for deployment), training and analysis. It could easily take over the organisation of German JRR operations during the early phases of JRR. It already has a number of professionals who have expertise relevant to JRR in its roster and could enlarge this capacity as well as specify one section according to the requirements of JRR. It may even be able to develop the capacity to take over the coordinating part for other participating countries as well.

ZIF's roster is searchable (e.g. for the recruitment unit) by the following criteria: personal details, availability, preferred regions and countries, professional experience, regional experience, mission-specific fields of expertise, election observation experience, training experience, mission experience, and abilities.

The existence of these rosters is encouraging, and the models used by them highly instructive for how JRR rosters should be established. Given the need for the very specialized expertise required by JRR for up-to-date training and, most importantly, for a roster that is able to keep and identify the best experts for the job, it is unlikely that in their present form any existing roster could be a ready substitute. However, one or more of the above mentioned agencies could play a very useful role as JRR evolves, and internal rosters are not only shared but perhaps consolidated.

ii) Rosters within international organizations

A number of international organizations operate with the use of rosters, including the EU and the OSCE. However, the most universal is the one used by the UN. Within the UN system, a number of separate rosters are operated by various departments and agencies. The central and thus the most prominent UN roster is the UN Galaxy system. It creates and posts vacancy announcements either for generic mission postings or for individual mission's specific posts. It services field missions under DPKO and DPA and it is not linked to other secretariat or agency human resources systems. Applicants are entered into a roster once they have been through an initial clearance and a technical clearance based on the requirements of the position. The roster is organised under particular areas of expertise, such as Legal Affairs. It is searchable by name, gender, nationality, age, language and key words (such as MBA, LLM, criminal justice etc.).

Unfortunately, the Galaxy System's lack of flexibility has led some parts of the UN family to try to go it alone. For example, in matters related to the work of JRR, DPKO as well as UNDP are trying to develop pools of international rule of law experts. DPKO in association with the United States Institute for Peace is in the process of developing a very broad database that would not only list experts, but also allow them to chat with one another in real time, asking advice and sharing experiences. This project, called INPROL, is still not operational. UNDP has been building various databases for many years, including one for international law experts. However, UNDP's database tends to reflect the consultancy focus of its operations, as well as the fact that UNDP's work with governments is focused on longer-term rule of law items. The newest database of international justice professionals is the "Roster of External Experts" established by the Office of the Prosecutor of the ICC.

2. Recommendations

An updated, accurate, interactive roster will be vital to the success of JRR. It is recommended that among the first steps taken in the creation of a JRR capability is for interested participants to make an evaluation of their capabilities with a view to create

their own internal roster. The categories, parameters and information to be contained in these rosters should be agreed upon before hand by all JRR participants to ensure the compatibility of the rosters from the very beginning. In addition, rosters should be as interactive as possible in order to allow for maximum currency - a must in questions of rapid deployment.

A number of existing models are available which can be operated either by national and institutional authorities, or by a JRR secretariat. However, commentators warn that the special needs of JRR, not only in specific expertise but also in consistent quality would be difficult to meet with current models. JRR participants will have to find ways to ensure that the rosters that are established are able to identify those experts who are wanted on deployments, not just those who may be available.

D. Expertise

1. The expertise required for a JRR deployment

Inclusion on a JRR roster is likely to be a two-step process. An expert has to be willing, and put him/herself forward as being available for a certain period of time for international deployment as a member of a JRR team. The second step is that a JRR participant places the expert on the roster, if in the opinion of that participant the expert meets the necessary requirements. What those requirements are and where specific expertise may be found is the subject of this section.

The expertise required for JRR missions will require a full range of criminal justice professionals. In addition, in order for this initiative to be successful, it needs the participation of other experts whose work will make it possible for the criminal justice professionals to do their jobs. The issues addressed in the following paragraphs therefore are: What is the range of criminal justice expertise that will have to be available on rosters to meet requests; and what other types of expertise have to accompany a JRR deployment to make it work and ensure the safety of its members.

2. General considerations

There are a number of general considerations cutting across specific functional issues that go into the choice of expertise required for JRR. Among these, especially noteworthy are the capability to work and communicate effectively in a dynamic multicultural environment and experience in working in the field, especially in post-conflict settings, in addition to exposure to international humanitarian and human rights law. A gender balance is essential in light of the types of crimes and victims JRR teams will encounter.

Experts can be provided with the necessary international deployment and mission specific pre-deployment training to help at least approximate these requirements, and to ensure that they are familiar with the environment in which they will be working. In

addition, experts should have a range of general personal qualifications that cannot be provided in this kind of training. These include: language skills; the ability to work in high-stress situations; and the ability to operate within a team.

As noted previously, as one of their first steps, JRR participants need to agree on criteria and guidelines regarding the kind of expertise to be included in national rosters. In addition to professional qualifications, personal conduct must be considered. In this way, it is hoped that the various national rosters that are likely to differ at the outset of the JRR process will have a good degree of uniformity in both the kinds of expertise represented, as well as the kind of persons who fill these slots. This is important, because, while at the outset it is the individual expert's choice to decide if he or she wishes to put his or her name forward for consideration, it should ultimately be the employing government, or IGO or NGO with which a stand-by arrangement exists that will decide on the composition of the roster.

a) Expertise by profession

A range of professional expertise needed for JRR assignments has been alluded to in previous sections. To keep the team size small an overlap of functions and expertise should be considered whenever possible. In most situations, not all the expertise would be required – the assessment would provide guidance on what the most essential functions on a team would be. However, separate logistics and security functions are indispensable to allow the specialists to focus on the primary tasks of JRR. While it may be impossible to foresee every possible expert requirement that may arise,¹⁹ the following categories of expert functions have been recommended and should be considered as an essential pool in a JRR roster from which JRR teams would be assembled:

- **Specialists in investigations:** Trained investigators, forensic experts (e.g. DNA, human remains, ballistics etc.), forensic psychologists, finger print experts, crime scene managers, crime scene technicians, biologists, pathologists, chemists, laboratory technicians, archivists/record keepers, evidence storage experts, profilers, experts in issues involving children and women in armed conflict as well as experts in victim/witness protection.
- **Legal specialists:** Lawyers specialised in international justice and international comparative law, criminal lawyers, prosecutors, investigative judges, lawyers with knowledge of local laws, police legal advisors, and military lawyers,
- **Specialist in team leadership:** Team leaders can come from any of the investigative, legal, diplomatic military or police disciplines, but they also have to have a proven ability to manage specialist groups in challenging situations, and possess international experience. Generally, team leaders should have a higher degree of experience than other experts.

¹⁹ The mission most closely resembling a possible JRR deployment is the very recent Darfur Commission. Its personnel component consisted of: seven investigators (including chief investigator); one legal advisor; three analysts; three crime-scene officers; one security and logistics officer; and nine interpreters.

- **Logistics and security:** Security experts, general logistics officers, military logisticians, drivers, administrative staff and technical maintenance (some of these functions could be filled by local staff.) In addition, police or military personnel (current or retired) need to set up security procedures and liaise with local and other security providers.
- **Social, historical, political specialists:** Social anthropologists, historians, political scientists, diplomats, policy analysts, historians, social anthropologists, experts (liaison officers) in coordination with local authorities, communities, and cultural experts who can help put the conflict and what happened in a meaningful context.
- **Interpreters:** The need to find qualified language expertise has been emphasized. While highly qualified international interpreters are very expensive, they have the advantage of being more likely to be neutral in the conflict situation than local interpreters, who might have a stake in the outcome of the work of JRR. A lot of international organisations do their fieldwork with the help of so-called language assistants, who are not qualified as interpreters, but have a strong working knowledge of English (or perhaps another working language of the JRR mission) and the local dialects. While each situation will be different, respondents to the questionnaire cautioned about JRR working with these local language assistants, if it can be avoided.
- **Psychology specialists in mass trauma:** Psychology specialists are needed both to counsel trauma victims and to help JRR team members alleviate the effects of vicarious traumatization and other consequences of such missions.

b) Expertise by sector

In addition to the criminal justice and other expertise that will be required for JRR, it is useful to look at the most likely sources of expertise.

- **Personnel from government service:** Investigative expertise will likely come from government authorities, as investigations are typically a state function. However, it can be difficult for civil servants to be released from their duty. Part of the first steps of JRR implementation must, therefore, include the establishment of a domestic process that will allow for the short-term deployment of some employees without adverse effects on their long-term careers. A number of experts have indicated that at least some of the JRR team members should be current government employees, primarily to ensure that someone on the team has the kind of security clearance needed to obtain current information on security, as well as potentially useful investigative leads. Military personnel, in particular, are ready and rapidly deployable, have medical and travel insurance, appropriate training and expertise, up-to-date vaccinations, security clearance, a certain level of physical fitness and familiarity with the chain of command and command responsibility.
- **Personnel from the IGO and NGO community:** While government service may be the best place to find criminal justice professionals, it is argued that

criminal justice professionals with international experience are more and more to be found in IIJs, international organizations, and even NGOs. The last decade has seen a lot of professionals pass through the revolving doors of the Yugoslavia and Rwanda tribunals, the hybrid courts, and now the ICC. While some have returned to government service, many have remained in the international arena with another IIJ, the UN or an NGO.

In addition to these international criminal justice professionals, especially the NGO community (notably academia and think-tanks) will contain the leading edge thinkers on post-conflict issues generally, and likely on the specifics of the situation that JRR will have been asked to investigate. These experts will be invaluable in helping the other team members understand the conflict in the social and historical context, as well as, advise the team leaders on how best to ensure that the work the JRR team does will fit into the post-conflict effort to create the conditions for lasting peace in that country.

- **Personnel from the private sector:** All respondents have recommended expertise to be both private and governmental. Not only are consultants, such as retired officials, more easily available on short notice, but they also may come with a wealth of experience. Just the same way as independent consultants can be hired temporarily to fill vacant spots in government they can also be made part of a JRR deployment by that participating government.

3. Recommendations

An expert willing to put him/herself forward as being available for a certain period of time for international deployment as a member of a JRR team still has to be vetted and put forward by a JRR participant. This decision should be based on the person's relevant expertise, experience in the field, ability to work in groups, especially on international deployment, as well as on his/her tangible and personal skill sets. In addition to professional capabilities, language skills, possible leadership skills, evaluation experience and capability, and intercultural communication skills should be considered. Some, though not all of these can be acquired or enhanced through training.

Governments neither possess all the expertise required for JRR, nor are they the most able to ensure the rapid deployment of needed individuals. For this reason it is also recommended that other entities, especially IGOs and NGOs, must be participants in JRR with the ability to place experts on to JRR rosters. Private consultants, possibly the easiest group to dispatch, should also be considered.

E. Training

1. Training needs of JRR

The essence of JRR is to deploy criminal justice and other experts from one country to another, where they are to identify, collect, and preserve information regarding mass crimes. While it can be assumed that such experts do not need training in their own disciplines, it cannot be assumed that they have training, experience, or knowledge of performing their trade in an international environment, especially one that is just emerging from conflict. While international deployment of experts is not new, and training for such assignments has been with us for some time, it is still useful to review the reasons why it is a necessary pre-condition to JRR assistance.

In order to fulfil JRR tasks successfully, experts need to prepare for rather difficult working conditions. They will most probably have to face an environment that is shaped by violence, prejudices, inadequate health care and supply systems, and a lack of sufficient material infrastructure. Such conditions are extremely challenging. Experts have to perform far away from their normal life with family and friends. They might have to cooperate closely with colleagues from all over the world, who have different cultural backgrounds and approaches to problem solution within a diverse post-conflict environment. In order to be able to cope with such conditions, JRR experts have to be well prepared. Thus, a comprehensive training programme needs to be developed.

For these reasons, experts willing and eligible to participate on JRR missions will need to receive some general training for international work, as well as specific training in the political, social, and legal environments of the particular situation to which they are dispatched. It is necessary to clearly differentiate between the generic type of training which is required for all missions and the mission specific orientation and training. Experienced commentators pointed out that if one tries to combine generic and mission specific training at a time immediately prior to deployment the generic training is unlikely to be properly absorbed by the participants.

Thus, we need to consider the make-up of generic international deployment training and specific pre-deployment training separately. In addition, we need to consider how to ensure that all those on JRR rosters (from various countries, organizations, and institutions) would be trained according to a common standard, in order to make JRR deployments as uniform as possible.

2. Components of JRR training

a) Generic international deployment training

Among the members of a specific team there might be very different training needs. Some may require overseas operations training in general, as they have not worked abroad before and others with a lot of overseas experience may only need mission

specific training. However, there should be standardisation in the training of experts from every participant in the JRR effort to ensure as much uniformity as possible in JRR assistance. Furthermore, it has been suggested that, in addition to their own expertise, each member should have knowledge of some basic issues related to the deployment of the team as a whole, including logistics, investigations and psychosocial issues. While, for example, logistics personnel would not be undertaking investigations, they should have a basic understanding of how investigations are carried out to avoid mistakes being made that might affect the integrity of the mission. On the other hand, investigators might not be responsible for the minutiae of operations, but should have an understanding of logistical requirements.

As experts who make it on to a roster would not require training in their own expertise, a generic training process does not need to be long, but it should be periodic (maybe once a year) and sustained to ensure continuity. It should not be assumed, however, that attendance at training sessions should be sufficient to keep an expert on the roster. A number of interlocutors pointed out the importance of ensuring the high quality of JRR teams. One way to achieve this is at the training phase. It would be possible to identify and select out those experts who, in spite of their technical qualifications would not make constructive team members on an international deployment. Thus, a pass-fail system should be included in any standardized international training offered to experts on JRR rosters.

Mission related training should contain the following main elements:

(i) Personal safety and security

The nature of JRR missions will likely require experts to operate in unstable and insecure environments. Even though an armed conflict could be deemed over, there may be periods of unrest caused by uncontrolled elements. In many countries personal safety risks for mission members will include, *inter alia*, minefields, organised crime, theft and hijacking.

Generic mission training should include a section on personal safety and security in the field. This training component should address mine-awareness and unexploded ordnance (UXO) issues. Training on how to behave in instances of armed robbery and hostage taking, as well as at checkpoints needs to be included as well. Furthermore, in field conditions, prolonged pressure leading to stress symptoms is not only the result of difficult and emotionally consuming tasks, but also the result of difficult working and living conditions in unfamiliar environments.

Hence, the training should introduce stress management techniques to avoid unrelieved prolonged stress leading to symptoms like diminished response, severe fatigue and frustration. This would also affect colleagues and the overall work of the team negatively. Frequently, mission members have to fulfil their tasks in remote areas. As a result of the lack of infrastructure, as well as poor transportation conditions, emergency medical treatment may be difficult to obtain in these circumstances. Knowledge of first aid measures is crucial. Also, communication and orientation in the field (radio and

satellite phone, mapping and GPS) need to be practiced. The ability to maintain radio contact (including knowledge of the radio alphabet and voice procedures) is essential for security in the field. So is good orientation in unfamiliar topography and the ability of mission members to report on their position in case of an incident. It is very important that all of these elements are not only taught in theory, but also practiced in complex field simulations.

(ii) Cross-cultural awareness

There should be a training module on cross-cultural awareness and how to engage with fragile communities. This includes guidance on working with national staff and intercultural communication in general.

The successful completion of a mission will depend on establishing a relationship of trust with communities and individuals in the host country. The need for this competence should not be underestimated. Especially those experts who are extremely experienced in their professional fields, albeit without prior mission experience, will find it hard to realise that results are not achieved as easily as in their home countries if they are unfamiliar with local customs and structures. Furthermore, culturally diverse contexts are very demanding, which adds to the challenge of establishing trust and professional relationships within a post-conflict environment. Consequently, skills related to managing complex situations within pluralistic cultures and deeply divided societies are needed in addition to function-specific knowledge. It is strongly recommended that the intercultural dimension should be reflected in the training itself. The learning environment should be international, multidisciplinary, and multicultural in order to reflect the reality in the field.

Intercultural competence is also required for working with national staff that will be employed on the spot. As national staff members are almost always involved in conflict situations, a high degree of sensitivity is required from international team members. Furthermore, since certified professional interpreters are not always available, missions must often rely on individuals who lack training in interpretation skills although being proficient in English, French, Spanish or whatever the language of the mission may be (so-called language assistants). Communicating effectively through an interpreter/language assistant is a skill that must be learned as well - it requires careful preparation, good teamwork and close collaboration.

(iii) International legal frameworks (especially international human rights and humanitarian law)

General international deployment training is incomplete without a strong component on international legal frameworks, such as human rights, rule of law, and international humanitarian law. An international justice mission should also aim at strengthening the rule of law in the host society. Therefore, any expert deployed to a JRR mission needs to be aware of international legal standards as a solid base. In addition, it is recommended that standardised training for JRR missions include a component on the

Rome Statute and the various rules and procedures of the ICC since these represent the latest standards in international criminal law and practice. The advantage of using ICC practices would lie in aiding the proliferation of a uniform international criminal justice system via the use of similar standards and methods.

(iv) International or mass crimes related training

Fourthly, there needs to be training on war crimes' related investigative methods and analysis. Investigations of violations of international humanitarian law and the laws of war require unique knowledge and skills that even the most experienced domestic investigators do not have. Hence, a familiarity with the elements of relevant criminal offences (war crimes, crimes against humanity, genocide), and their treatment and punishment in comparative criminal law needs to be developed. Requirements for mass murder investigations and the protection of witnesses, as well as knowledge about military command structures are also crucial. In addition, awareness of the magnitude and importance of ethnic hatred, discord, intolerance, and related criminality needs to be raised.

(v) Team leadership

The crucial importance of team leadership was a point made in a number of responses to the questionnaire. As will be noted in subsequent sections, team leaders are responsible for the direction, conduct and relations (both inside and out) of a team on deployment. They are also the ones in ultimate charge of negotiations with host country counterparts. In order to carry out these tasks it has been recommended that they be able to exercise strict control over a diverse group of experts, likely from different parts of the world. It is therefore crucial that they not only have the ability, but also the currency in performing these tasks well. In addition to the background and qualities necessary in a team leader (see the sections on "rosters" and "deployment"), since the leader will be the most important member of a JRR team, it was emphasized that potential team leaders would require specialized, frequently recurrent (perhaps on an annual basis) training to keep on top of the game. It was also recommended that one way to do this is to have team leaders participate as trainers in training others in the disciplines required for all experts on rosters. This would not only help hone their skills, but also familiarize team leaders with the abilities of a wide pool of experts.

b) Pre-deployment training

Although there are certain familiar common factors to all post-conflict situations, each country situation has its own particularities. Mission members also have to be familiar with these before the mission commences. Prior to deployment, team members will need to receive country specific training to understand the historical, cultural, political, and geographical context of the situation that may have included mass crimes. They also have to be familiar with the country in its post conflict situation, including the current political and security situation. Finally, they need to be familiar with its legal system, especially its criminal justice rules. Specific security concerns (mine-

awareness areas, former frontlines and battlefields and the occurrence of hostage-takings etc.), as well as health issues, such as occurrence of diseases and preventive measurements should be raised in the pre-deployment training. The team members will also need to have information on what infrastructure will be available to them (transportation, communications and accommodation), and a myriad of administrative issues from how the financing will work to what computer systems and programmes they will use.

The pre-deployment training could be conducted at a central institution that has been tasked with the pre-deployment specific training. As an alternative, it could be done “in-country” upon arrival. Any “in-country” training would have the advantage that the local counterparts of the team could be included and involved as well.

Another option would be to hold the pre-deployment training in a neighbouring country. An advantage of this would be that nationals from countries neighbouring to the mission country who might share a common culture and language could conduct the training. Obviously, details need to be left to the individual situation in which a request occurs. How extensive this training can be, will also depend on the situation and time constraints. By most accounts, pre-deployment training will not last any longer than three to five days.

c) Common training standards

Assuming an incremental approach (see above), the highest possible degree of uniformity should be ensured amongst the member states. Thus, training should be conducted according to common standards. The establishment of these common standards is one of the first orders of business for JRR participants. Existing training institutions (see below) should be requested to propose such standards. It is noteworthy that a high degree of coordination already exists at the European level that might serve the purpose of establishing such common standards initially.

3. Examples of training

Several training institutions already exist that provide generic mission training for a variety of post-conflict assistance situations. It is noteworthy that the UN does not have its own training institution, but outsources to existing training institutions (e.g. Kofi Annan International Peacekeeping Training Centre, see below). The EU conducts training mainly through its member states that have their own training institutions (e.g. ZIF, please see below). The OSCE has its own pre-deployment training, but as its contents focus on OSCE procedures they are not relevant for JRR.

a) Examples of the most prominent training institutions for generic mission training:

ZIF (Centre for International Peace Operations, Berlin, for more details see above under the section on “Rosters”)

ZIF courses are especially designed for the preparation of civilian personnel to be deployed in peace-operations. They are conducted on the national and the European (“EU Core Courses”) level and cover all relevant issues of peacekeeping missions that are mentioned above. Field exercises simulate complex risk situations such as moving in mined areas and hostage taking. Close cooperation with international organisations, as well as other European training centres is maintained. While the two- week long Basic Course focuses on general mission preparation, there are also several specialized courses as well (such as the “Rule of Law”-Course).

Pearson Peacekeeping Centre (PPC)

The Pearson Peacekeeping Centre is the Canadian training centre for the preparation of personnel to be deployed to peace operations. Its training programme covers the essential issues of peace operations as well: Human rights, cooperation and coordination, negotiation and peace-building initiatives and other relevant topics are also taught. Special emphasis is placed on best practices. The PPC offers two kinds of courses: foundation and specialized. While the Foundation Course focuses on the core competencies required to be an effective member of a complex peace operation, the specialized course provides in-depth focus on complex issues that shape contemporary peace operations. PPC also delivers customized versions of its courses in order to meet the specific needs of organisations.

Folke Bernadotte Academy (FBA)

The Folke Bernadotte Academy is a Swedish government agency dedicated to improving the quality and effectiveness of international conflict and crisis management, with a particular focus on peace operations. It functions as a platform for cooperation between Swedish agencies and organisations and their international partners and has the following responsibilities: national cooperation and coordination, education and training, research and evaluation, method and doctrine development. In 2005, the training section has conducted courses on “cooperation in multifunctional peace operations”, “civil-military coordination”, “rule of law”, “protection against risks” as well as a computer assisted simulation training for preparedness in support of peace operations. Like ZIF, the Folke Bernadotte Academy is part of the “European Group of Training” and, as such, responsible for the coordination of courses.

Institute for International Criminal Investigations (IICI)

The “Academy” of IICI trains investigators in the techniques and knowledge necessary to conduct professional criminal investigations of violations of international humanitarian law and the laws of war that require unique knowledge and skills that even the most experienced domestic investigators do not have. It works closely with the staff of existing tribunals to ensure the relevance of course material. Subjects covered include controlling international law, elements of crimes, military science and military intelligence, questions of command and control, crime scene investigation, forensics, ballistics, witness protection, mine awareness, security, interviewing and

interrogation techniques, working through interpreters, data management, etc. Basic knowledge about the history of conflicts, a survey of current major conflicts and awareness of cultural, ethnic and gender issues are also taught. The details of persons, who successfully completed the training, are retained on a roster.

b) Examples for pre-deployment training

Kofi Annan International Peacekeeping Training Centre (KA IPTC):

The Kofi Annan International Peacekeeping Training Centre (KA IPTC) in Accra, Ghana was developed as a Regional Centre of Excellence in Western Africa for education, training and research in peace operations. Originally set up as a military training centre, it is now also frequently being used as a training platform by the UN, as well as by other institutions like ZIF. KA IPTC seems to be an interesting option for regional training in a developing country. It has the ability to impart knowledge about the region, while being placed in a considerably safe environment. KA IPTC could be explored as a possible platform for deployment training, particularly for JRR missions in Africa.

c) Cost of training

The question of costs breaks down into two considerations: how much and who pays. As to the former, the cost depends on the course. By way of example at the top end, ZIF's "Basic Course" costs on average 41,000 EUR, including everything from room and board to instruction and materials. Shorter and less intense courses would be less. Regarding the question of who pays, based on current presumptions, it is the participating entity that is responsible for ensuring that the experts it wishes to put on the roster receive training. In the case of ZIF, the individual is responsible for a 300 EUR contribution only. As is shown in the section on financing, it is also possible for some participants to cover the costs of others.

4. Recommendations

Training for JRR missions should be conducted in two phases: generic mission training and specific pre-deployment training. Contents of the generic mission training should be: personal safety and security, cross-cultural awareness, international legal frameworks and specific training regarding war crimes' related investigation methods. A number of institutions already exist that could with few modifications theoretically provide JRR generic training, as they already perform most relevant disciplines.

There is no need to create a new organisation to provide training for JRR teams. For example, IICI offers training with the above-identified elements. The Pearson Peacekeeping Centre has offered to tailor-make a course for JRR. ZIF could do the same. At the outset, however, existing training organizations should be asked to prepare common training standards and schedules for the approval and adoption of JRR participants. As a next step, JRR participants may decide whether one of the

existing institutions can assume the JRR training component as a whole or whether it is spread out among various institutions. This would be among the early items on the agenda of the JRR. Practicability and cost effectiveness should be the decisive factors.

The pre-deployment training should focus on situation specific information. The planning and implementation of pre-deployment training is much more complicated than the generic training, as most of it cannot be organized ahead of time. There will have to be a certain level of integration at this stage between pre-deployment training and team selection, especially team-leader selection. In order to be as rapid as possible, once a mission has been initiated, it is recommended to establish good relationships (and possibly conclude an agreement) with regional training centres in advance, such as the Kofi Annan International Peacekeeping Training Centre (KAIPTC) in Ghana. Furthermore, a pool and network of potential trainers with relevant regional expertise should be created.

F. Financing

1. Financing options for JRR

The question of financing is often the most controversial, certainly one of the most difficult issues that has to be grappled with in the consideration of any intergovernmental effort. In the area of international justice, the intergovernmental community, one way or another is already financing the Yugoslavia and Rwanda Tribunals, as well as the ICC, the Sierra Leone Special Court, the tribunals in Kosovo, Bosnia Herzegovina and East Timor, as well as the Cambodia Special Chamber and most recently, the looming prospects of an accountability mechanism in Burundi. Thus, it is not surprising that some commentators speak of “donor fatigue” in this area.

Given the above, it would seem to be bold, if not foolhardy, to propose the establishment of another collaborative effort in the name of international justice. Any such proposal to have a chance of a sympathetic hearing would not only have to be convincing of the usefulness of the initiative, but also that it was being proposed in an efficient and cost-effective fashion.

Other sections of this study are examining whether JRR makes international justice more achievable. **The present section is meant to consider whether JRR also makes it more efficient and cost effective in the long run. In particular, this section looks at:**

- **Who should be responsible for the cost of JRR?**
- **What are possible sources of financing?**
- **What are the financial needs of JRR likely to be?**
- **What financing arrangements can best ensure that JRR is both as inclusive and as cost effective as possible?**

a) Who should pay?

There are no hard and fast precedents about who pays for assistance from members of the international community. Generally speaking, those who ask for assistance do not usually have the means to do it themselves. Therefore, there is seldom a bill presented for the assistance provided. There are circumstances such as currently in Iraq where a party receiving assistance and having access to a constant flow of resources is asked to compensate a portion of the costs of assistance. In the case of a request by an international justice institution or an international organization, that organization either has funds from which to reimburse JRR assistance, or it has provisions for incorporating the assistance into its own mechanism and thus, making it part of its regular costs. In most such organizations there are also ways in which support, such as JRR assistance, can be received as a voluntary donation.

b) Possible sources of funding

There are three sources that could provide funding for JRR:

- i) Participating governments;**
- ii) Intergovernmental and international organizations;**
- iii) Large-scale private donor community.**

The questions of which of these areas may serve as sources of financing for JRR will depend, to a large extent, on the option chosen for coordinating the work of JRR. Thus, if JRR is handed over to an international organization – most alternatives coming from within the UN system - it is almost inevitable that the rules of that organization, including financial administration rules will apply to JRR. Those rules will then determine whether and how additional funding from other sources (e.g. voluntary contributions in cash or kind) could be applicable.

(i) States

On the other hand, if JRR were to develop to be coordinated as an essentially intergovernmental body (either as a *sui generis* entity or one attached to an existing organization), then several sources of funding are available. The first is from the participating governments themselves. Government support can come from a number of internal sources, including development cooperation ministries, ministries of justice and foreign affairs. More particularly, since some or maybe even much of the expertise that will go on JRR rosters is likely to come from these and other government departments, government support for JRR is likely to take many forms, not just financial support. These would include contributions in kind, such as making personnel available to backfilling their positions.

(ii) International organizations

Currently, the most likely sources of funding from international organizations are the UN and the EU (and also the OSCE). Annex 1 of this study contains the advance study that lists some of the main programs available especially in the EU framework, as well as some of the characteristics of these programs.

(iii) Large private donors

The third possibility for support for JRR comes from the large private donor community. Mainly, but not exclusively based in the United States, they vary not only in size and focus, but also in the level of involvement in the project. Organizations such as the Ford or MacArthur foundations have large international justice programs where they fund academic and some practical work based on submissions. On the other side of this spectrum is the Open Society Institute, which also finances outside programs, but mainly funds its own initiatives.

c) What are the financial needs of JRR?

While there have been deployments and preparations for deployments of both investigative and rule of law related missions, there is no real precedent for a concept like JRR. Most previous deployments that resemble JRR in deployment speed have been in the context of peacekeeping missions and thus, under the auspices of the UN, pursuant to a Security Council resolution (e.g. Kosovo). Missions sent by the EU, or provided bilaterally tend to be of a longer term, rule of law development nature, rather than a rapid deployment. Then again, most existing examples of international justice related deployments are of either too large a group of experts, or too long a duration for JRR purposes.

However, there is one recent example that is helpful both because it is the approximate size and duration of a plausible JRR deployment, and because it is very recent, namely the Darfur Commission of Inquiry. The fact that the Darfur Commission deployment was carried out under UN auspices probably means that it was near the top end of what deployments could cost. A spreadsheet of the components and costs of a JRR team based on the Darfur model is attached as Annex 4. The details of the items and their costs should provide a practical framework for the consideration of options presented in the following paragraphs.

d) Inclusive financial arrangements

As noted in the earlier section on participation, it is important for JRR to be as accessible as possible to states from as many regions, cultures, legal systems and linguistic groups as possible. To a lesser extent, this also pertains to those international organizations and NGOs possessing the types of substantive expertise needed by JRR. One obstacle to this could be financial since not all states would be able to afford (or justify) all the expenses involved in participating in JRR. Some of the same agreements considered under the

section on participation offer models of financial participation that allow states to “pay-to-play” at various levels. These include the European Space Agency Agreement (ESA) and the Charter for the Carbon Sequestration Leadership Forum (CSLF).

2. Who should pay for JRR?

The theoretical report underlying this study contemplated that in each case of a request for JRR assistance the assumption would be that if the requesting party were able to pay, it should be asked to do so. It was also immediately conceded that few, if any state emerging from conflict and likely to have use for the JRR facility, would be in a position to pay. Thus, the immediate second assumption was that in most cases of requests by states, some or probably all the costs associated with JRR deployment will have to be borne by those participating in JRR. While this is likely to be the reality in all (or almost all cases), it was felt by the states that commissioned the theoretical report that at least the principle of payment for service should be established.

This principle is much more likely to apply in cases where the request comes from an international justice institution or an international organization. The main reason for this is that JRR would most likely be of service to these bodies as a rapidly available, one-stop-shop stand-by capacity for criminal justice and other professionals who possess appropriate international deployment training. This means that these institutions would not need to maintain a large investigative team of experts, waiting for the security and political windows of opportunity to emerge. This would be akin to what in business is called “just in time delivery” that saves costs by reducing the need to hold large inventories.

As the budgets of international justice institutions should cover the identification, collection and preservation of evidence, it is realistic to assume that when JRR is used for these purposes, the requesting institution would have the budgetary resources to pay for the service. This in no way prevents states participating in JRR, individually or collectively, to decide to cover these costs to lessen the burden on the requesting institution. In fact, as the same states that are parties and chief financial contributors to the international justice institution are likely to be the financial backers of JRR, this may appear to be a moot point. However, given the close scrutiny with which the international community follows the budgets of international justice institution, it may be that states will continue to prefer to keep the budgets of these institutions under a tight reign, and be generous in supplying gratis resources or assistance on a voluntary basis, such as in the form of JRR, when the situation calls for it.

a) Sources of financing

i) Participating states

The issue of financing in this sub-section refers to the funding of JRR’s ongoing costs, as well as the cost of subsidizing deployments that requesting entities cannot pay for. Of the

three possible sources of financing identified in the earlier discussion, the principal source will inevitably be the states participating in JRR. As JRR is likely to remain primarily an intergovernmental effort, there is little alternative but to accept that a wide range of its costs will fall to participating states to shoulder. The good news is that to the extent that government experts are used in JRR deployments, many of these costs are already accounted for in government budgets. Salaries, training in expert disciplines, even specific expenses such as insurance and medical coverage (including any extra associated with international deployment) would normally be borne by the state for its employees anyway, no matter where they performed their duties. This is not to pretend that there are no costs associated with the absence of an employee – back-filling positions is very much an expense of JRR.

ii) Funding by IGOs

JRR could also rely on IGOs for some of its funding. The main challenge would be to find sources of IGO funding that meet JRR's requirements. In the survey of current UN and EU funding possibilities, the considerations that make this option difficult are: the very long lead-times required; and the fact that there is a marked, almost exclusive preference for single projects, as opposed to funding recurring costs. The combination of these two factors makes most known IGO funding mechanisms unavailable to cover ongoing costs and too slow in covering assistance missions that have to take advantage of favourable conditions on the ground. While this study did not examine IFI programs that may be relevant, the challenges with IGO funding described above are institutional in nature and thus it is unlikely that this will change with the change of institutions.

To be fair, there are EU programs that are designed for rapid response, but these would involve JRR coming under EU administrations. The same applies to parts of the UN, especially DPKO. However, as already discussed under the section entitled “coordinating mechanisms” the main problem with placing JRR under the EU or one part of the UN system is that the decision-making process in these organizations are so politicized with other ongoing issues, that this will inevitable hold up JRR decision-making. This will make it impossible for JRR to be “rapid.”

iii) Funding by private sources

Large, independent philanthropic organizations set up according to transparent, idealistic trust instruments, controlled by a board of governors consisting of eminent, respected, knowledgeable individuals ought to be a safe source of funding. Nevertheless, such donors are not usually in the business of funding intergovernmental initiatives. They focus mainly on the non-governmental sector, leaving governments to fund their own programs. Second, there is no evidence that the decision-making process in the donor community is any faster than in the IGO community. Large donors in particular have a highly structured decision-making system with appropriate checks and balances. Finally, in spite of philanthropic institutions' obvious impartiality, there remains a strong stigma among mature democracies of not wanting private individuals (no matter how remote or how dead) to be able to “buy” their involvement in the public process.

In spite of the above, such private donors will be crucial to the success of JRR. NGOs that possess the expertise or knowledge required on JRR deployment that become associate members of JRR will need to be able to turn to large philanthropic organizations that already fund a good part of their work, to finance training and, perhaps, even the deployment of their experts. For this reason, it is important to ensure that private donors are also part of the JRR development process.

3. What are the financial needs of JRR?

a) Recurring costs

The main, foreseeable recurring costs of JRR are likely to be training and the secretariat costs associated with coordination. While there is a separate section devoted to training, it is worth pointing out in the financial context that there are several international training institutions that run programs similar to the needs of JRR. This includes both general international deployment training, as well as specific, pre-mission preparation. Some of these institutions have already indicated a willingness to adopt their syllabus to include courses designed for JRR participants. The costs involved with these should be similar to those charged for current programs focused on issues such as peacekeeping, civilian police work and electoral assistance.

The other main recurring expense is likely to be the cost of secretariat functions. This presupposes that JRR remains an intergovernmental initiative and is not handed to an international organization to be managed under its rules, as recommended in the section on coordinating mechanisms. It does not, however, presuppose the level and intensity of that coordination. As recommended in the coordinating mechanisms section, JRR could take an incremental approach towards closer coordination. Starting with modest liaison and cooperation efforts in the establishment and exchange of information on national rosters, and considering proposals for common training standards and holding periodic meetings would entail a proportionately small cost. As requests are entertained and assessed, there would be a need for further levels of coordination. These could be accommodated as part of an existing institution, which would allow for the size, and therefore the cost of the secretariat to remain small. Even if a *sui generis* institution is envisaged, the size and cost of secretariat functions need not be high. Even in New York, an office of three to four professional staff and one or two general service staff, inclusive of overhead costs can be maintained on a budget that is under half a million dollars a year.

b) Deployment related costs

As noted earlier, there is a very useful recent example of an international fact-finding deployment that is about the size and duration of the typical JRR mission. This is the Security Council mandated Darfur Commission. While a spreadsheet outlining its costs is attached as Annex 4, and thus speaks for itself, there are a number of important points to consider. First, these estimates are relevant only for JRR missions in response to

requests by states, or in the very rare cases where a requesting international justice institution or international organization does not engage the JRR team under the umbrella of its own administration. For example, should the ICC request JRR assistance, while these experts were on such a mission they would most likely be deployed as loaned officers of the ICC. As will be seen in the section on deployment, this is advantageous from several points of view, including, for example, Privileges & Immunities, and insurance coverage. Thus, in those situations, it would be the requesting organization, the one providing the umbrella that would be responsible for the deployment costs.

Second, in cases where the request is from a state, deployments will come in two different formats. As will be seen in the section on assessments, a positive political consideration of a request would generally be followed by a technical assessment. The latter would likely include a short evaluation mission. Approximately of one week's duration, consisting of four or five experts, this should be a relatively low cost affair. In case of a positive technical evaluation, there may be JRR participants willing to launch a deployment. This would be the main mission.

As we know, the circumstances that lead to each JRR deployment will be different. Therefore, it is not possible to predict what expertise, what numbers, what equipment or even how long each mission will last. The security and logistical components of each mission will differ, depending to a large extent on the ability of the local partner. Thus, while it is possible to itemize and price each possible component of a deployment, it is not possible to know what components may be used on any given assignment. Accordingly, the estimates related to the cost of deployment can be ballpark guesses at best.

c) Hidden costs

Contrary to the advice of some, it is important to mention that there are costs to JRR that are not immediately apparent. The mention of these is not intended to discourage potential participants. On the contrary, by showing that while there may be other costs to JRR, it can also be demonstrated that these are common to most organizations, and these have found ways to deal with them. The chief hidden cost of JRR is the need to backfill the position of an expert who is on deployment. His or her government department or other place of employ will have to either bring in someone else, or spread the workload to others. Fortunately, as the anticipated duration of JRR missions would not normally exceed three to four months, most organizations already have a great deal of experience in back-filling for this period of time. Laws in most jurisdictions where the majority of experts would originate already provide for maternity leave (and in some cases paternity leave) of approximately this duration. Therefore, systems are in place to ensure that the organization's functions are not impaired during employees' short periods of absence.

4. Flexible financial arrangements

It cannot be overstated how important it is for JRR to be as accessible as possible to states from as many regions, cultures, legal systems and linguistic groups as possible. To a lesser extent this also pertains to those international organizations and NGOs possessing the types of substantive expertise needed by JRR. We have already looked at making JRR as easy to belong to as possible from a structural point of view in the section on participation, and in that context examined a number of existing precedents.

a) IGOs and NGOs

Regarding IGOs and NGOs, as noted previously, the recommended model is the stand-by agreement (see Annex 2). The financial provisions of stand-by agreements seem to separate the costs much the same way as we have done above, between pre-deployment and deployment related line items. Thus the lending institution (IGO or NGO) is responsible for their expert up to the point of delivering him or her to the closest port of entry to the intended country (in practice this is treated more flexibly). This also includes items such as the expert's training for international missions and travel documents. The recipient organization then takes over for all subsequent costs, from salary, benefits, insurance, travel etc. In this way, organizations would only have the "hidden cost" of backfilling for the expert on loan, and would actually benefit by his or her enhanced experience upon return. The issue of recurring costs does not arise. The IGO or NGO would cover the recurring costs associated with its expert, while it would not be required to contribute to these costs of the JRR mechanism (and also not be involved in decision making, thus avoiding the accountability issue).

b) States

In the case of participating states, the model examined earlier in this study allows participants to have a choice of different levels of involvement. Each level would mean a greater commitment, and therefore, a potentially larger financial exposure. Regarding recurring costs, the most flexible model, the CSLF Agreement, contemplates that one party to the agreement carry out the secretariat function, within its bureaucratic structure, and thus, at its expense. This may be the simplest way of dealing with this issue, and if agreeable to all participants (especially to the one offering the facility), a good one. Other ways include rotationally hosting the secretariat function among states with resources, or several states "lending" personnel on a gratis basis.

There are other ways in which both recurring costs as well as the costs associated with deployments can be shared among participants in a differentiated manner. By way of example only, something akin to the following categories could be used:

- **Entry** – States may join by placing a small number of experts on a roster for deployment, but making it clear that they cannot pay for their training, deployment or contribute financially to the secretariat;

- **Basic** – States may join by placing experts on a roster for deployment, and would ensure that these experts received the agreed upon international deployment training. They would not, however, pay for deployment (if this cost was not borne by the requesting party), or joint secretariat costs;
- **Basic Plus** – States would place experts on the roster for deployment, train them to the agreed standards, and pay for deployment of the expert within their region only, if the cost is not borne by the requesting party. They would not pay for joint secretariat costs.
- **Standard** – States would place experts on the roster for deployment, train them to the agreed standards, and pay for deployment of the expert, if the cost is not borne by the requesting party. They would not pay for joint secretariat costs;
- **Full** - States would place experts on the roster for deployment, train them to the agreed standards, and pay for deployment of the expert, if the cost is not borne by the requesting party. They would pay their share of joint secretariat costs, donate personnel to fulfill this function, or agree to host in rotation with others;
- **Full Minus** – States may decide not to place any of their own experts on a roster, but still wish to participate in JRR. They could do so by sponsoring the recurring and/or deployment costs of one or more participating states (or participating NGOs) that could not afford or justify that expense.
- **Full Plus** - States would place experts on the roster for deployment, train them to the agreed standards, and pay for deployment of the expert, if the cost is not borne by the requesting party. They would pay a portion of joint secretariat costs, donate personnel to fulfill this function, or agree to host in rotation with others. In addition, they would agree to contribute to the training and deployment of experts from participating countries that could not afford or justify that expense.

5. Recommendations

In the previous pages, we attempted to break down the costs associated with JRR. We have seen examples and recommendations for making the financing of JRR **flexible** (to allow for inclusive participation) and **versatile** (to allow for the broadest possible distribution of the burden). We have also examined possible sources of funding, and outlined why the most achievable and least complicated funding alternative for JRR would be for this initiative to remain primarily an intergovernmental effort.

This section began with a proviso that any new international justice initiatives has to both be necessary and cost effective. Thus, it is recommended that a number of sources of funding, including states, IGOs, and private donors be considered to cover the recurring and deployment costs of JRR. While there are also so called hidden costs, these should not be a concern as governmental and other institutions have already learned how to deal with them. Finally, and perhaps most importantly, financial arrangements have to be as flexible as possible in order to allow for the widest possible participation in JRR.

While there is no pretence that JRR would be cost-free, it is also recommended that the possible long-term benefits of this initiative be taken into consideration when calculating its actual cost. These include:

- JRR assistance to states that are unable but may be willing to shoulder their primary responsibility under international law in the context of mass crimes may be more cost effective than creating an international or a hybrid process (irrespective of the jurisdiction of the ICC, since that institution would only focus on key perpetrators);;
- In the case of a request by the ICC, another international justice institution, or even an international organization, the provision of JRR expertise at short notice allows that organization to have a smaller permanent staff. This, in turn, is a direct saving for the international community, since its members are the ones funding these organizations;
- By making participation in JRR as inclusive as possible, the process may strengthen domestic criminal justice institutions of developing countries participating in JRR through their experts receiving training and practical experience;
- By increasing the number of instances where accountability mechanisms can successfully be used, because information and evidence that may otherwise disappear is gathered and preserved in a timely fashion, JRR contributes to making deterrence be more realistic. This in turn should help increase a belief in the advantages of a rule based system – especially where it is most needed – in states emerging from conflict.

PART III: DECISION MAKING, METHODOLOGY AND OPERATIONS

A. Trigger Mechanism

1. What can “trigger” a JRR deployment?

Experts indicate that JRR capability should be used in a variety of situations. Yet, as the principal participants in a JRR initiative would be states, it is especially important to observe international legal norms governing the interaction between states. Therefore, as a basic rule, JRR capability would only be deployed upon a specific request in accordance with international legal norms. Only a request adhering to the rules of international law can trigger the process towards a possible JRR deployment.

2. Who should be able to make a request?

a) States and international justice institutions

Considerable discussion has gone into the question of which entities could make a request that could “trigger” a JRR response. States that are willing but lack the capacity to deal with the aftermath of mass crimes can make a request. It has also been discussed that international justice institutions (the ICC, ad hoc tribunals, or hybrid courts) with jurisdiction but lacking specific expertise could look to JRR for such surge capacity. Given the above, it is not surprising that responses to the questionnaire universally indicated that in circumstances where a state and an international justice institution are cooperating, both could request JRR technical assistance. An example of such cooperation would be where the international justice institution undertakes to deal with perpetrators bearing the greatest responsibility, while the state, perhaps through a variety of national courts, truth commissions, and even traditional justice remedies deals with the rest of the possible offenders.

The most obvious international justice institution in any such scenario is the ICC. Experts from the ICC have been particularly helpful in the development of the JRR concept. It is important to note that the first two cases that the ICC has been involved with – DRC and Uganda – have not come about by methods contemplated during the negotiation of the Rome Statute. Rather, they each represent some “sharing of the burden” between the ICC, whose prosecutorial strategy is clearly focused on those offenders bearing the greatest responsibility, and the state, which perhaps through a variety of national courts, truth commissions, and even traditional justice remedies deals with the rest of the possible offenders, as was done in Sierra Leone. In each of these cases, both the ICC on the one hand, the DRC and Uganda on the other, could ask for JRR assistance. The presence of the “burden sharing relationship” should go a long way to meeting some of the tests outlined in the next section entitled “assessments.”

b) International organizations

While the theoretical study contemplated only states, international justice institutions or a combination of both as possible triggers for a JRR response, our consultations showed a widely held view that other institutions should also be able to call on this kind of assistance. This view generally seemed to be based on the argument that if a facility is to be created, for it to be truly effective, it should have the widest possible application. As in the case of states and international justice institutions, the basic requirement for other entities to call on JRR assistance is that they need appropriate legal authority to make the request.

To try to understand clearly what “appropriate legal authority” means, it is helpful to look at the possible entities that may fall into this category. Among the other eligible entities, the United Nations, due to its universality has pride of place. The UN, however, is made up of a variety of Departments, Agencies, Funds and Programs, working under various mandates, directed by either the membership of the entire Organization, or various subsets of Councils and Executive Boards. It is unnecessary to go through each of these to determine if they possess the requisite authority.

Our consultations indicate that there are two general ways in which the UN (writ large) can have the legal authority to trigger JRR assistance through a request. In the first scenario, a Security Council Resolution, passed under Chapter VII of the UN Charter, mandates the UN as an organization to carry out a range of activities, and the UN requests outside assistance to fulfill some part of this mandate. This happens in cases of failed states and especially those coming out of the kinds of conflicts that go hand in hand with mass crimes. Recent instances of such authority include UN administrations in East Timor and Kosovo. In the second scenario, a national entity with the most legitimate authority possible under the circumstances requests the UN to carry out certain functions on its territory. In this case, the range of the requested functions must be broad enough to include the first steps in looking into possible instances of mass crimes.

When a government does not effectively control all of its territory and has requested the UN's assistance in providing a wide range of services throughout the country, a request for JRR services by the UN is still possible in theory. However, in practice, this would seldom lead to a JRR deployment, chiefly because the security climate would be unlikely to be favourable. Theoretically, it is even possible to go further and posit that a non-state entity, in full control of a particular region of a country and exercising all the functions of government in that area could ask (or more likely permit) the UN to carry out certain functions that could include collecting information about the nature of the conflict. While academically these are interesting issues, for the purposes of JRR, the UN should only request JRR assistance if it has a request or concurrence from the state. While a Chapter VII Security Council mandate is sufficient in theory, in practice it should be accompanied by the concurrence of the host state, unless it is a situation like Kosovo or East Timor.

In the context of the Security Council it is important to point out another function for which JRR expertise could be used. The Security Council could request a JRR mission to unearth information that would be helpful in its decision-making (much as it did with the Commission for Darfur). This should not be confused with the completely different scenario, where the Security Council refers a situation to the ICC for action by the Court. In such cases, should the ICC need the expert services available through JRR, it would be the ICC that would request it.

In addition to the UN, there exists a wide range of regional and international organizations that could find themselves in a position where the kind of expertise offered by JRR would be helpful in fulfilling a particular mandate. Our responses indicate a view consistent with the above that such organizations require at least the concurrence of the concerned state before such a request should be looked at for JRR response.

c) Non-governmental organizations

Some of our respondents questioned whether non-governmental organizations could request JRR assistance, especially domestic NGOs located close to the commission of mass crimes and in the best position to have information about them. This could range from an invitation to investigate, to a request to receive information collected by the NGO(s). The majority of opinion, however, viewed a request by a non-governmental entity as an insufficient trigger. Since the JRR concept is intended primarily to function as cooperation among states, it would be difficult to imagine, at this stage, that states would go outside the accepted practice under international law and consider what would likely be seen as interference in the internal affairs of another state. Nevertheless, receiving information of mass crimes from local NGOs is an important function to be fulfilled by the international community. It is, however, perhaps better fulfilled by another entity. Thus it is not one that we would recommend within the near-term parameters of JRR.

3. The content of a request

a) Legal authority

Realistically speaking, requests for JRR assistance are rarely, if ever, going to come unexpectedly. Nor is a request likely to make its first appearance in the form of an official communication. As practitioners know, a whole host of informal contacts, discussions and consultations precede such a step. This is irrespective of the source of the request – states, international justice institutions or the UN would normally act in this way. Thus, there will be a great deal of scope to advise the prospective requesting party about what has to be included in the request – before it is “committed to paper”.

A request by an international justice institution, such as the ICC, or even a member of the UN family is easier to characterize because their activities are governed by statutes or by charters, and they have applicable rules of procedure and evidence. Thus, for example, in

the case of the ICC, a request of the kind of expert surge capacity that is envisaged could be made under Article 44(4) of the Rome Statute. The international justice institution, the UN or any other international organization would then be responsible for having in place the other requirements listed below. Thus, much of the considerations in the following sections apply primarily to requests for JRR assistance by a state.

Probably the most basic element of any request has to be the confirmation of the legal authority on which it is based. This consists of two parts. As noted in the above paragraphs, the request has to make clear that the entity has the requisite jurisdiction under international law. Whether it comes from the government of a sovereign country; the ICC with jurisdiction under the Rome Statute; the UN pursuant to a Chapter VII Security Council Resolution; or the UN or other international organization acting with the concurrence of the state in question, the requisite jurisdiction has to be spelled out in the request.

The second part of confirming the appropriate authority is to ensure that the person making the request on behalf of the entity is the appropriate person to do so under domestic law. Thus in the case of a state, the letter would most likely have to come from the Head of State, Head of Government or the Minister of Foreign Affairs. In the case of an international justice institution, the person would be the one designated under the statute and the rules of procedure of the institution – most likely the Prosecutor or the Registrar. In the case of the UN, it could be the appropriate senior officer acting on behalf of the Secretary-General, whose authority would come from a Security Council resolution or an agreement with the host country.

b) What can be requested?

Perhaps the other most important element of a request would be a description of what is being asked. Presuming that JRR would, as described earlier in the “Concept” and “Scope and Functions” part of this study, remain mainly focused on **identifying, collecting and preserving information that is most likely to be lost with the passage of time, a request should focus on only these activities. In particular, it needs to include some very basic identifying elements, such as a description of the events; geographic parameters of the events to be looked into; the temporal scope envisaged for the investigation; and if known, the purpose to which the information being requested would be used.**

The description of the events will also aid in determining whether the threshold of Rome Statute Article 5 crimes has been committed – thus meeting one of the key criteria for JRR involvement. Regarding the geographic, and the temporal scope of the request, these elements will go a long way to help JRR participants determine whether the request is genuine and feasible. A government not willing to go beyond a certain date calls into question whether it really wants information for a truly fair and impartial accountability mechanism, or whether it just wants to eliminate a former foe and current political opponent. Limiting the geographic scope of JRR activity could be evidence of

the same concern, or might indicate that the requesting party is unable to assure the security of JRR experts in certain parts of the country.

The question whether a requesting party needs to indicate the purpose for which JRR findings would be used did not find consensus. This scenario will mainly arise in a request by a State. There are two issues: first, whether the JRR team needs to know, *ab initio*, whether the information is to be used for a judicial purpose, another accountability mechanism (or both), or some other purpose such as, for example, in aid of a Commission of Inquiry under Additional Protocol I (Article 90) to the Geneva Conventions. The second issue is whether the information is to be used domestically or internationally (or possibly both). In either scenario, the JRR team will need to know what rules of procedure to follow. Even if the purpose is known from the outset, it should be considered whether there is a possibility that the information could be shared with another accountability mechanism, or another jurisdiction.

If the purpose for which the information is required is known, it will facilitate the work of the JRR team. They would be able to prepare their deployment in accordance with a knowable set of procedural rules. Nevertheless, a large majority of those responding to the questionnaire indicated that it is not absolutely necessary for a JRR team to know, at the time of deployment, to which ends the information they are likely to gather would ultimately be used. In reality, in the case of states, when the political will that leads to a request and the security situation that allows a JRR deployment to take place coincide, the requesting state is unlikely to have had the time or the resources to make that decision. It may even be relying on the information gathered by the JRR team to help it make that decision.

Regarding the purpose for which the information would be used, respondents felt that a JRR team could be given a broad enough mandate of what to look for that would encompass the gathering of information on specific mass crimes, as well as help to document a general history of the conflict. This is not an unrealistic expectation, since the timing of JRR activities which presumably precede formal investigations, would likely turn up information that would lead to actual evidence. Regarding the procedural rules that JRR teams would have to follow, it is not considered unreasonable that the teams could respect both domestic rules, and those of the international institution that is likely also to receive this information.

c) Other essential elements

Our responses indicate that there are several other elements that are essential for a complete request. As will be noted from the following detailed list, it is not expected that all of these elements be spelled out in detail in the request. The details will be included in the context of a Status of Mission Agreement (“SOMA”) that the JRR providers and the requesting authorities will have to enter into prior to a JRR deployment. However, it is important that the request indicates a willingness to enter into such a detailed agreement.

The other essential elements include the following:

- **An indication that the security environment is conducive to the gathering of information (and/or that adequate security will be provided);**
- **That the JRR team members will receive the protection of Privileges and Immunities according to the Vienna Conventions;**
- **That the team members will be given the freedom of movement within the subject territory; that local authorities will cooperate with JRR team members, provide them access to the information requested and that a liaison mechanism will be established for this purpose;**
- **The duty free importation and exportation of transportation, communication and other equipment needed by the JRR team;**
- **The free and unhindered use of communications and telecommunications facilities;**
- **The provision of secure office facilities;**
- **The ability for the JRR team to select interpreters and to review the qualifications of local liaison officers; and**
- **The availability of adequate facilities in which to store gathered information securely and according to national and international standards.**

As noted above, in the case of a request by an international justice institution, the UN, or another international organization, the requesting entity would have to ensure the presence of these elements, likely through arrangements entered into with the host government.

d) Previous Examples

The above paragraphs attempted to outline the elements that would need to go into, and be taken account of in a request for JRR assistance. As JRR is a new initiative, there are no congruent examples to follow. In the past, when the type of expertise to be provided by JRR was requested, states, international justice institutions and international organizations approached individual states. Thus, in Bosnia and Herzegovina and later in Kosovo, a variety of countries (e.g. Germany, Canada, Argentina) provided expert assistance. The UN and other international organizations use several rosters and stand-by arrangements with non-governmental organizations to get expert help on short notice, when their internal human resources are not sufficient.²⁰ It should also be mentioned that while the European Union does have programs that attempt to both fund as well as dispatch rule of law related assistance efforts they are not similar to JRR. It is not ruled out, however, that the EU mechanisms cannot be of assistance, especially when it comes to financial assistance to JRR (see a more detailed discussion in the Advance Study under Annex 1).

²⁰ This is discussed in more detail under the section entitled “Rosters.”

4. Recommendations

The options to be considered under this section are how narrow or how broad the participants in the JRR process wish the initiative to be. In other words, from what entities and under what circumstances would JRR participants entertain a request that could trigger a JRR deployment? It is probably reasonable to assume that the narrowest possible scope in this regard would include requests by states, international justice institutions with jurisdiction, or a combination of the two. These requests are likely to be either judicial in nature or primarily so, and thus fit well into the profile of the experts to be involved in JRR. Moreover, since the main purpose of establishing JRR is to help the entities primarily involved in fighting impunity and establishing the rule of law, it would make sense to entertain requests from these entities.

Therefore, the more pertinent question is whether requests from the UN and other international organizations, especially for purposes other than a judicial accountability mechanism, should be entertained. At first glance it would appear that especially in the initial phase of the establishment of a JRR facility, participating states would wish to have a more limited, clearly defined mission profile. If JRR is established pursuant to an incremental approach, i.e. the level of coordination of activities develops over time it may appear to make sense to begin activities on a more limited basis. However, this should be contrasted with the indication from most of those responding to the questionnaire that there is no internationally coordinated facility that the UN or international organizations could approach for rapid, credible, expert information gathering. Two recent examples attest to this. Both, the ad-hoc Commissions of Inquiry for Darfur and the International Independent Investigation Commission in Lebanon, had to scramble for expert personnel. In addition, the fact that OHCHR is about to establish its own rapid response capability indicates that a broad recognition may be emerging regarding the need for this capability. It is recommended that JRR participants consider being open to requests from the full range of eligible national and international actors.

B. Assessment

1. What is the purpose of assessments?

Having considered the nature of a “request” for JRR assistance, the next logical step is to look at how the participating international actors should deal with it. As noted in the section on “Participation” the decision to take part in a mission to provide JRR assistance will always remain within the purview of each JRR participant. This is meant to keep the need to coordinate the activities of JRR members to a minimum, and allow each participant full discretion as to where and to what degree it wants to partake in the work of JRR. Given this loose association of participants, it is important to ensure that they have a timely, thorough and impartial evaluation of any request upon which to make their decisions. This is the ultimate purpose of assessments.

The present section is intended to examine in detail how requests for JRR assistance would be assessed. First, however, it is important to look at it in overview, to see how it would mesh with the decision-making process intended for this initiative. Ultimately, every assessment will have to be based on a large number of political, security, technical and logistical factors. For the sake of speed and efficiency of decision-making on each request, it is considered preferable to split the assessment into two phases. The first in time would be an evaluation that looks mainly at the legal and political issues arising from the request. As with every other decision, each individual JRR participant would decide whether to participate materially in this initial evaluation. On the strength of this first evaluation, participants would again, individually, be able to decide if they want to support a second step that would be of a technical nature. The decision to take part in a mission would again be an individual choice that participants would make on the strength of this second report – and their own interests and capabilities.

Given the intended breadth of JRR, it is anticipated that there should be a sufficient variety among participants to ensure that there would be some members interested in pursuing every real request. Thus it would not be necessary, nor is it intended, that every participating state support the assessment of every request, in the same way that not every JRR participant would take part in every deployment. This is a reflection of reality – states have their own special interests, areas in which they are stronger and weaker, parts of the world where they feel more or less engaged. Thus for JRR to succeed it will be sufficient if participants do no more than what they are capable of and interested in.

2. What should be assessed?

Before looking at each stage of the assessment process, as a basic rule, assessments would have to be broad enough to determine the following factors: **legitimacy; genuineness; feasibility; and usefulness**. More specifically:

- **Is the request legitimate – i.e. does the requesting authority have the necessary legal basis under international and domestic law;**
- **Is the request genuine – i.e. is the request’s sole purpose the furtherance of accountability mechanisms in aid of lasting peace and security;**
- **Is this a feasible mission - i.e. are the assurances, especially concerning the security situation realistic, and is the requesting party representing an accurate picture of the situation and its own capabilities to contribute;**
- **Is JRR assistance what the situation calls for – i.e. would the deployment of a JRR team in these circumstances make a sufficiently significant difference to the success of justice contributing to lasting peace?**

While it will be up to each JRR participant to decide how to respond to a request, it would be considered prudent for **all four elements to receive a positive evaluation for JRR assistance to be considered**.

a) Legitimacy

As noted in the introductory section, requests for JRR assistance must have a legal basis under both international and domestic law. Thus, an assessment of legitimacy would be a technical, legal determination of both the substance and the form of the request. In the case of request by a state, the authority of the government under international law, as well as appropriateness of the person representing that government under domestic law would have to be examined. In the case of a request by an international justice institution, the UN or an international organization, it is the basis of the entity's jurisdiction and the support of the host government that will be most important to take into account.

b) Genuineness

This refers to the motive for the request and is really only a relevant consideration for assessment in case of a request by a state. The purpose of the assessment in this case is to ensure that the involvement of the international community through a JRR deployment is not being used by the requesting state for a purpose other than the furtherance of accountability mechanisms. For example, a government should not be motivated by seeking revenge *vis-a-vis* political opponents, or to mask its own involvement in mass crimes by tailoring narrow requests for JRR assistance.

c) Feasibility

Every request would have to indicate what the requesting party would be able to provide to make the JRR deployment possible and successful. These should include the items indicated in the previous section as being essential ingredients of a request - anything from local counterparts to assurances of freedom of movement. While the accuracy of each of these representations is possible to assess only to some degree of certainty, there is none more important than security guarantees. Every practitioner experienced in international deployment who responded to the questionnaire emphasized the importance of a secure climate if identification, collection and preservation of information on mass crimes are to take place. While no assessment is flawless, in this respect it must be particularly accurate, and at a minimum indicate the degree to which JRR needs to bring its own security.

d) Usefulness

While there seems to be overwhelming agreement on the general usefulness of the kind of work that JRR would be engaged in, not every situation may require, or benefit from a team of experts collecting and preserving information on mass crimes. For example, if the events took place many years before there is a political and security environment that would allow a JRR deployment, the most perishable kind of information may already have disappeared. In this situation, rapid deployment may be less important than thorough preparation and a longer engagement.

3. What should the first phase of an assessment include?

The first phase of an assessment would look at the request in the political, legal and security context in which a mission would have to be launched. In other words, before the more involved technical evaluation is considered, participants should know whether a JRR mission would be helpful in the current political context. The preparation of this study revealed a variety of tools available to help reach a recommendation in each of the areas enumerated above.

a) Background Monitoring

As noted previously, even before there is a request for JRR assistance, there will be a general awareness of any situation that may be ripe for a request. International relations experts will have a better idea of possibly pending requests. Thus a request is unlikely to emerge unexpectedly in written form. It will almost certainly be preceded by contacts that would help the requesting party frame its official communications. These factors make it clear that there would be an opportunity to make use of what some experts referred to as “background monitoring” – akin to a heightened focus on gathering background and current events information on any potentially imminent request. The gathered information would form the basis of an assessment that would be performed upon the receipt of a request.

Whoever performs the background monitoring (the options are examined below) will have to include a preliminary analysis of the political and security situation in the country and the region, as well as the state of government services, especially in the justice sector. The sources used for background monitoring should include open sources. In addition to international current affairs media, a variety of useful in-depth periodical publications are available, such as the Economist Intelligence Unit.

Similarly, in any post-conflict situation there will be published reports of various UN bodies active in the area, as well as of international NGOs. Some NGOs specializing in justice and rule of law assistance and the EU might have specific background information on the situation.²¹ Sufficient open source materials exist to anticipate a request in an informed manner, and thereby reduce the time required to perform an assessment.

b) Initial Analysis

Once the request is received, the first step will be to choose those who will be performing this initial phase of the assessment. As we have seen in previous sections (e.g. “rosters”) experts with specific experience in evaluations with recognized, impartial international reputations would be “flagged” in rosters for this purpose. These specially flagged experts would come from only those JRR participants that agree to support this first step. At least some of these experts should be on current government service, and thus should have access to current information from states participating in JRR. Participating states with representation in the country or in the region that is the subject of the request should

²¹ One such NGO coalition may be Altus, especially if it expands into other justice sector monitoring.

be prepared to make appropriate (i.e. sufficiently censored to satisfy domestic security concerns but still informative enough to be useful) reports and analysis available for this purpose. While it is recognized that arrangements would have to be worked out regarding otherwise classified information, this should not present an insurmountable problem if the distribution and purpose were strictly limited and the documents in question could be sufficiently sanitized.

In addition to government sources, some organizations such as the International Crisis Group provide in-depth analysis on crisis areas. It may be possible to work out an arrangement for cooperation with JRR in the provision of up-to-date information. The same sources that can furnish background information (see above) would also have detailed up-to-date information. If necessary, Memoranda of Understanding could be signed that would include confidentiality provisions (for an example of confidentiality provisions see Annex 5).

4. What would be involved in a second, technical evaluation phase?

a) Evaluation Mission

It is important to note that if the above political/security considerations were not found to be favourable for a JRR response, it would most likely not be necessary to proceed with a technical evaluation. It would be unlikely that any participant would want to pursue the matter.

In case of a positive (or at least not a negative assessment), those responding to this part of the questionnaire, especially persons with international justice deployment experience emphasized the need for a short fact-finding mission as the best way to assess the technical aspects of a possible JRR response. Their point of view was that there is no substitute for first-hand information, and that a JRR fact-finding team can clarify for local authorities the conditions necessary for a positive decision on JRR deployment. They recommended that if possible, there should be some overlap between those chosen to prepare the assessment, and the evaluation team. This will depend, of course, on having some overlap between those states that supported the first phase of the assessment, and those involved with the second phase. This is unlikely to be a difficulty, since states interested enough in phase one would be unlikely to turn away in the presence of a positive report. In the view of experts, a technical evaluation team would have to be composed of the following:

- **Team leader** –has to possess special leadership and negotiating skills perhaps with specific diplomatic experience or knowledge of the area. He/she could also be the legal or investigative member of the mission possessing the above leadership skills;
- **Legal expert**– with criminal law and international justice experience, preferably familiar with the legal system of the subject jurisdiction;

- **Investigator** – police, prosecutor or investigative judge as appropriate for the situation and the legal system;
- **Security expert** – military or police with international deployment experience and, if possible, experience in the region;
- **Logistician** – with international deployment experience and, if possible, working knowledge of the region.

The evaluation team may even be equipped with a draft Status of Mission Agreement to shorten the time it will take to launch JRR. In the view of experts, a fact-finding mission would have to be organized and dispatched quickly from an existing roster kept for this purpose, or individuals with the above qualifications should be clearly flagged in general rosters. Once deployed, and given the cooperation of local authorities (and the assistance of the requesting entity if it is not the state), experts thought that an evaluation mission could be accomplished in a matter of days.

b) The use of guidelines or templates in making the assessment

Respondents suggested that those making the assessment, and especially members of an evaluation team should work with at least a clear set of guidelines. Some suggested that guidelines may not be sufficient, and that a clear template would be needed. The main reason for these suggestions is the need to ensure that assessments are, and are seen to be consistent and transparent. While guidelines would be both useful and show openness, a template that is too rigid may not be appropriate since the circumstances of each request, starting with the variety of actors that could make them will vary. More importantly, the question also arose whether the assessment team should weigh some factors more than others. For example, should security have greater weight than logistics, and should this be laid out beforehand for the assessment team? Or, should they be able to use their judgment to add the appropriate weight to each of the factors they are asked to evaluate? While this is an issue ultimately for JRR participants to decide, it would be logical to have sufficient confidence in those selected to make an assessment to let them decide how much weight to give each factor.

c) What should a final assessment include?

The report of the technical assessment team would form the basis of the decision that each JRR participant would make regarding whether to participate in a deployment or not. **This final assessment should contain the information from the first phase regarding the background and history of the situation that is alleged to include mass crimes, the current political and security situation, as well as the state of the justice sector and the willingness and ability of local authorities to provide, at a minimum:**

- **Basic logistical support;**
- **Security;**
- **Freedom of movement;**
- **Appropriate privileges and immunities;**

- **Duty free import/export of equipment and property of JRR experts;**
- **Freedom of use of communications and telecommunications;**
- **Access to information;**
- **Local counterparts with appropriate backgrounds (i.e. police or justice officials not political minders);**
- **A pool of interpreters to choose from;**
- **Secure facilities;**
- **Secure and appropriate storage facilities for information.**

Even in the case where the requesting party is an international justice institution, the UN or another international organization, the attitude and capacity of the host country is important, for the decision on deployment, though admittedly much less critical than in case of a request by a state. This is because in such cases the JRR experts would likely be deployed under the auspices of that organization, which would mean that the critical host-country link responsibilities would rest with the requesting entity. However, in the case of a request by a state the above factors would determine the likely response of JRR participants.

If the assessment is sufficiently positive to contemplate a positive reception from some JRR participants, it should include a plan of action recommended by the assessment team. The action plan should detail the recommended options and scenarios needed for deployment and for the accomplishment of the mission. **A plan of action should include, at a minimum, the following elements:**

- **Kind of expertise required;**
- **Recommended number of experts;**
- **Security and logistics needs of the deployment;**
- **Likely equipment that will be requires;**
- **Timetable for deployment;**
- **Estimate of the time needed for the mission;**
- **Contingency arrangements (e.g. need for early departure due to security concerns).**

5. Additional considerations

The purpose of developing a plan of action in the assessment is two-fold. First, it allows JRR participants to make an informed, practical decision, not just a theoretical one. Second, it further reduces the time to deployment by ensuring that once a decision is made, there is a plan ready to execute.

A variety of international actors engage in assessments of one kind or another. Foreign affairs and development cooperation ministries of developed countries are continuously evaluating proposals that are, in fact, requests for assistance. The UN, especially its funds and programs, also evaluate requests for countries in which they are active – as

well as making requests to their donors. The EU has several predetermined programs for assistance, all of which incorporate some type of evaluative method. While most of these types of assessments tend to be slow there are some that are designed for quick turn around. Even the slower methods provide models for JRR participants both in what they have to do and what they need to avoid in order for the assessment to be quick, thorough, impartial and consistent.

a) When should assessments be done?

According to the responses to the questionnaire, time is of the essence in a JRR deployment. Thus every step following the receipt of a request should be undertaken in as short a timeframe as possible. Any delay could mean that the window of opportunity is missed – a window that perhaps could have been kept open by the presence of JRR experts, or even that of an evaluation team. As political and security situations, especially in post conflict societies tend to be fluid, it is essential that the information on which the decision to deploy or not deploy is taken be as contemporary to that decision as possible, thereby being as accurate as possible.

b) How long should an assessment take?

It has already been shown that through proper background monitoring it is possible to be prepared to have a running start. Assuming that at least some JRR participants would be willing to look at a particular request, and they had experts with assessment and international experience clearly “flagged” on the rosters, then a first phase should be possible to complete in a couple of weeks. If a second phase is warranted, the composition of an evaluation team, their acquaintance with the situation and their dispatch should be possible in another two-week period. We have already seen that it is believed that an evaluation mission needs to spend only a few days on the ground. Including travel it should be possible to accomplish the on-site evaluation in a week. Finally, those with experience in this area uniformly indicated that a competent team would require a week at the most to put together a technical assessment report, including the plan of action. In sum, according to the responses received and including each phase of the process, an assessment should be possible in around six weeks.

c) Who should perform assessments?

To answer this question, it is useful to remember that an assessment must be quick, thorough, impartial, and consistent. The issue is whether JRR participants should perform the assessment as well or whether it could/should be performed by an outside entity. While thus far in this section we have assumed that assessments would be performed by qualified experts selected from rosters, it is also prudent to examine whether there are entities currently able to perform this kind of an assessment. Specific focus in the questionnaire was devoted to this matter. None of the responses indicated that there exists today any facility – governmental or non-governmental - that can carry out all the various functions of an assessment. There are, however several non-governmental entities that perform some of those functions. For example, ICTJ and Altus have both

demonstrated a capability to evaluate various parts of domestic justice sectors. The ICG regularly evaluates political and security situations. But there is no single entity that performs the whole range of evaluative functions that would be involved in a JRR assessment.

If an outside entity would have to develop this range of capabilities, the question is whether it may not be simpler for JRR participants to conduct the assessment themselves. If JRR participants are establishing rosters of experts, it would not be difficult to include in this group individuals with the skill-sets and experience outlined above, whose tasks it would be to perform the analysis and evaluations that would be involved in an assessment. In particular, states tend to have the kinds of expertise necessary in their foreign ministries, ministries of justice and development cooperation ministries.

6. Recommendations

Upon the receipt of a request, a two-phase assessment process is recommended. Potential JRR participants will be able to make decisions at both the political/security stage, as well as the subsequent technical stage of the assessment process. The most basic question is who will perform these functions. Based on the options examined above **it is recommended that JRR develop an internal assessment capability** through creating a specific expertise in the JRR roster of experts who have worked internationally and have a proven ability to evaluate complex situations and create plans of action. **It is also recommended that if possible there be an overlap between experts participating in both phases of the assessment.**

Other options to consider include whether specific guidelines or templates should be created for JRR related assessments, and whether to predetermine what, and how the factors to be examined should be weighed by the evaluators. Based on the views of expert respondents to the questionnaire, **it is recommended that while guidelines are useful, inflexible templates would make JRR assessment procedures unnecessarily rigid.** At the same time, while differential weighing of factors makes sense, as situations will likely greatly differ, it is impossible to assign predetermined weighting on a general basis. This is better left to the evaluation teams in each situation. An evaluation team sent to assess the situation on the ground should be composed of a team leader, investigator(s), security expert(s) and logistician(s).

Finally, JRR participants will have a choice of a large number of organizations, international and non-governmental, with which to make arrangements to receive timely and thorough information on the political and security situation, and the state of the justice sector in countries that may be the originator or subject of a request for JRR assistance. **It is recommended that JRR participants enter into information gathering arrangements with a list of key organizations.** This should be among the first activities of the participants in the JRR initiative.

C. Deployment

1. The phases of deployment

JRR deployment will most likely take place in a post-conflict situation. Post-conflict situations share certain common factors and challenges that JRR teams will encounter: incapacitated public institutions, little public policy development, or delivery of public services, a complete breakdown of representative political structures, and social and economic chaos. Under such conditions, a deployment of a JRR team needs careful planning and consideration. As in a number of other sections, it is useful to point out that much of the following considerations will only be relevant when a JRR mission is dispatched “independently” pursuant to a request by a state. In cases of requests by an IJI or an IGO, that institution will almost certainly have the deployment infrastructure into which JRR experts would fit.

It is also important to reiterate that each JRR participant will make its own decision on whether or not to join a particular deployment. This decision will obviously be based on a variety of factors, including the two-phased assessment of the request. Such a decision by a critical mass of participants is the first step in the deployment process. As noted earlier, it is only necessary for some JRR participants to be willing to offer experts and/or resources for a mission for that deployment to go ahead.

For ease of consideration, **deployment has been separated into three phases:**

- a) **Pre-deployment preparation**
- b) **Deployment**
- c) **Follow-up/Reintegration**

2. Pre-deployment preparation

- a) Logistical arrangements

Careful planning is crucial for the success of a JRR mission. From an organisational point of view, certain minimum logistical arrangements need to be in place before teams are deployed. As discussed in the section under coordinating mechanisms, one function of a JRR secretariat would be to assist JRR participants in the coordination of deployments. This could include some aspects of preparation for deployments, such as developing standard lists of basic equipment required for JRR missions. The type of equipment required will depend on the type of mission, the situation and availability of resources on the ground, and possibly the ability to enter into sharing agreements with partners already working on the ground. Such advance preparation would likely also include the identification of potential suppliers, especially for items that may take some lead-time to

procure. It should be emphasized that the equipment is meant only for the kind of preliminary investigative process that JRR will be asked to perform.²²

A number of the most basic characteristics of the pre-deployment phase are:

- **Previous vetting and both substantive and situational training of experts to ensure that the best available are on the team;**
- **Special focus on the selection of an experienced, capable team leader who is appropriate for the particular mission being contemplated;**
- **Ensure language skills (all excellent in working language of mission, and some with local *lingua franca* capability);**
- **Clear team leader with substantive knowledge and field management experience;**
- **Clear and unambiguous decision making structures within the teams - chain-of-command and authority clearly defined;**
- **Proper logistical support – both in personnel and equipment;**
- **Plan of action from assessment ready to be implemented;**
- **Ensure backups such as insurance coverage and medical evacuation, are in place.**

b) Contractual arrangements

One pre-deployment consideration is the contractual status of experts. As discussed in the section on coordinating mechanisms, in order to avoid overburdening the JRR administrative capacities, as well as to ensure the rapidity of JRR missions, it is recommended that individual contractual arrangements between experts and JRR should not be considered. Rather, participating governments, international or non-governmental organizations that have stand-by arrangements with JRR would continue to employ those experts who they place on the JRR roster. On deployments where these experts would work under the auspices of a requesting organization, such as the ICC or a member of the UN system, the experts would most likely become temporary staff of those organizations.

In cases where the request is from a state, it is the sending government or stand-by agency that would continue to be responsible for the expert contractually (including salary, insurance, pension (if applicable, etc)). In case of an expert on the roster who is an independent consultant, that expert would have to become a temporary staff member of a sending government or stand-by organization for contractual purposes. All of these are standard practices today. By proceeding in this way, a JRR secretariat can be kept free from burdensome of human resources considerations.

It is recognized that this will lead to experts on the same mission receiving different salaries and benefits. It should also be recalled, however, that in every instance of a

²² As an example, the investigative mission to Darfur, Sudan included the following: six vehicles, 15 laptop computers, 15 memory sticks, 5 printers, 8 GPS, 24 mobile phones, 10 satellite phones, 4 B-Gan Antennas, assorted notepads, whiteboards, markers, 5 metre tape, 20 metre tape, 13 digital cameras, 4 video cameras, 10 digital voice recorders, 24 hand held radios. For further details see Annex 4.

mixed mission that is not under the auspices of an organization strictly following the guidelines of the International Civil Service Institute, this will be the case. Even these organizations differentiate between international and local staff for remunerative purposes. As JRR deployments are strictly of short duration, it is believed that this situation should not pose a problem.

As discussed in more detail in the next section, the relationship between JRR participants contributing experts and resources to a mission and the requesting states is intended to be governed by a Status of Mission Agreement to be entered into as a condition precedent for the deployment. This agreement is intended to cover not only the status and activities of the experts on the mission, but also to make clear any relationship between the states themselves.²³

c) Duration of assignments

Responses to the questionnaire varied only slightly on the length of a JRR deployment, ranging from three to four months. One expert commented that six months may be the upper limit of an international assignment like that contemplated for JRR without risking a high rate of burn-out of individuals.²⁴ Recalling the types of activities to be assigned to JRR teams, such short duration times appear to make sense. In addition, short duration times are imperative for reasons such as not mixing JRR with longer-term rule of law assistance. Should the time allocated not be sufficient, or the work or conditions involved prove to be too much of a hardship for this length of posting, a mechanism for the rotation of experts will also have to be considered.

d) Orientation/Training

As has been discussed under the section on training, ideally, a regional/country specific briefing will take place prior to deployment.

e) Self-selection by JRR participants

One vital part of the pre-deployment stage is the determination which JRR participants will send experts, and the designation of a team leader. As noted in other sections of this study, while requests for assistance are followed by an assessment, this is unlikely to be a strictly linear process. In the normal course of events, an informal dialogue would commence between JRR focal points of interested participating state (at a later stage perhaps the JRR secretariat) on one side and the potentially requesting entity.

²³ See Annex 6 Suggested Draft Elements for a Status of Mission Agreement between Participants in a JRR Mission and a Requesting State.

²⁴ It is instructive that militaries usually do not allow for peacekeeping deployments to last more than six months.

While international justice institutions and IGOs such as the UN would not need much advice on how to frame a request, government representatives of states emerging from conflict situations might welcome support. These discussions and the subsequent request would be disclosed to all JRR participants.

As noted previously, participants with ties to requesting states, or those with assets in the area would likely be more interested in this request, and would be more liable to offer experts for the assessment and evaluation. In the course of the evaluation, these experts would be able to discuss draft elements of a SOMA that would have to be signed as a condition precedent of a JRR deployment. Upon a positive recommendation of the assessment team (which could already contain a draft SOMA as well as an action plan), the focal points involved or later the JRR secretariat would circulate the result and request JRR participants to indicate an interest in making experts available for the mission. It is hoped that several participants, including organizations and NGOs with stand-by agreements would indicate an interest. In early missions, before there is a JRR secretariat, it would be useful from an administrative point of view if at least one participating state would indicate an interest in taking the lead. It is even likely that among these will be the some of the assessment team participants.

A lead country, or later the JRR secretariat, would assist the interested participants in the assembling of the team, including the communications with the requesting entity and pre-deployment orientation training. In the case of a request by a state, the lead country or the JRR secretariat would help prepare the SOMA for signature by the requesting state as well as all participants whose experts will be included on the deployment.

3. Deployment phase

a) Security and logistics

Providing personal security and adequate logistics in post-conflict situations will always be a challenge. It should be noted again that while this will be the responsibility of JRR participants on some assignments only, it is good to be aware of available options.

- **United Nations/ICC**

If the United Nations requests a JRR deployment, experts would likely be dispatched under the UN auspices. If JRR responds to an ICC request, JRR experts would fall under the responsibility of the ICC. In both cases, the respective organisations have operating logistic and security systems (or arrangements). Even if a JRR deployment is not pursuant to a UN request, but UN logistical and/or security facilities are in the area, arrangements may be negotiated for the UN's support of the JRR mission.²⁵

²⁵ Such an arrangement can only be made if neither mission will be compromised.

- **OSCE**

If operating in the area covered by the OSCE, JRR might consider tying its mission to the OSCE. The OSCE is commonly recognised as an organisation active in the field of rule of law, human rights, and democratisation. It operates various field missions and has the advantage of being more streamlined and operative than the UN. Thus, if JRR deployment is commenced either pursuant to an OSCE request, or in an area where the OSCE has facilities, and it would not compromise either mission, it may be possible to reach an agreement to use OSCE security and logistics.

- **Other considerations**

As part of the assessment of any request, the presence and capabilities of key operational partners should be established, and links should be made that may assist JRR without compromising either mission. JRR on the ground should participate in inter-agency meetings. In cases of responses to requests by states, the host country should not be relied upon solely to provide the team with security. At the same time, since a JRR mission can only operate if it has the full cooperation of the host government, security and logistical arrangements have to be clarified with host authorities in advance of the deployment. These issues are discussed in more detail in the sections on host country and other relations.

b) Advance teams

In case of a JRR mission not under the auspices of another organization, the mission should commence with an advance team that is deployed to the field a week or two before the arrival of the team leader and two to three weeks before the arrival of the experts. It should be headed by the chief logistician, and contain at least one security expert, one communications/IT expert, and one investigator. **The advance team has the responsibility of setting up the mission:**

- **It should map out the approximate area of activity;**
- **Find a safe and suitable location for an office or secure the facility provided by the government;**
- **Begin to build a logistical and communications base (e.g. rental or purchase of vehicles);**
- **Set up of communications equipment; and**
- **Establish preliminary contacts not only with local authorities but also with national and international organisations already working on the ground.**

When the team leader arrives, basic systems should be operational so he/she can prepare the investigative strategy of the JRR mission. Once the full team arrives, the mission should already be operational.

c) Composition of teams

As a premise, this section deals with situations where a JRR deployment is not being made under the auspices of another organization. The actual composition of JRR teams has been deemed crucial by all sources consulted. All experts seem to agree that while national and professional diversity within the team results in real value-added, it also causes difficulties. Misunderstandings and miscommunications can be a waste of time and resources. Thus the importance of finding a balance that includes both the benefits of diversity and the clarity of uniformity.

- **National teams**

Efficiency considerations weigh in favour of organizing teams of professionals on a national basis. It is argued that this would lead to the most effective management, administration, security, and logistics. Purely national teams could, potentially, be on the ground more quickly, and the risk of incompatibility among team members, regarding training, language and methodology, would be minimal. After the initial request, other than the time it will take to complete the assessment and gather the political will to deploy, JRR teams will likely have very little lead-time to prepare. They will need to be effective in working together in a very short period of time. All these are easier to achieve at the national, rather than the multilateral level.

- **Multinational teams**

On the other hand, multinational teams may enjoy greater acceptance by the local community and may also offer some methodological advantages as well as a stronger international profile. One advantage of multinational teams would be the avoidance of any possible concerns over political motivation in the provision of the assistance. Especially in post-colonial societies there is a high potential benefit in multinational teams giving the receiving population a sense that the entire international community, rather than just one country, is concerned with their situation. For this reason, a receiving population might be more willing to assist a JRR team of mixed nationalities. In addition, multinational teams have a chance to provide a cross-cultural approach to problem solving, leave national biases behind, and be able to combined expertise and disciplines as well as a variety of approaches to investigations. Another benefit of multi-national teams is that they are better at avoiding the kind of “tunnel-vision” that can lead especially criminal investigations in false directions. Given the drive to make JRR as open as possible to developing state participants, a multi-national approach would allow the unique expertise of developing partners, preferably from the region where the JRR team would operate, to contribute to a JRR deployment.

On the other hand, multinational teams involve somewhat more organisation and preparatory work, the coordination of which a JRR secretariat would have to undertake. For example, it may be a real advantage to have multinational teams become acquainted with each other prior to deployment, and thus have opportunities for team building. Joint training, especially specific pre-deployment training, rehearsals and team-building

exercises should take place in advance of deployment. In multinational teams, perhaps even more so than in national ones, a team leader needs to be designated and enabled with a strong, clear mandate, while the team members all need a clear division of labour and firm terms of responsibilities.

- **Distinct national sub-teams**

An alternative to the dilemma of national versus multinational composition is the possibility that distinct national sub-units (with sub-team leaders) would make-up a JRR deployment under the coordination of one overall team leader, who presumably would be from the lead participating country. This is considered a workable solution, since traditionally, the number of experts carrying out a particular function (e.g. human remains forensics), or being assigned a specific region tends to be relatively small. As all recommendations point to the need to keep teams small, having distinct, small sub-teams along national lines could work. With a JRR deployment to locate, collect and preserve evidence, several different functions will be needed. It would be possible for these various components of the JRR deployment to be made up of small national units. In this way the advantages of both national and multinational teams are preserved.

d) Other team considerations

The question of mixed teams of private experts, civil servants and military has been raised many times. While a mixture has the advantage of a plenitude of different approaches and ways of problem solving, it also involves the question of accountability and responsibility. If experts come from different working environments, they are used to different working methods and command structures. This could lead to tensions within the team that should be avoided, if possible. However, if team building measures cannot overcome such problems, the possibility also exists that distinct sub-units can be formed within the larger JRR team.

Furthermore, the idea has been raised to combine senior and junior experts. For senior experts this could be a way of sharing their skills and expertise, while junior experts could be given an opportunity to gain more or specialised work experience. The management challenges that arise from such a combination should be easily absorbed.

While the composition of each team needs to be uniquely suited to the conditions in the requesting environment, certain skills and factors should be pre-identified that would be applicable in most missions. The composition of the team should reflect the kind of work required by expertise and gender (i.e. gathering and preserving forensic/ballistic evidence and interviewing victims and witnesses who are women and children). It was also suggested to include one serving official with security clearance to facilitate the flow of information. Perhaps most importantly, experts in psychology need to be included – both for potential witnesses, as well as for team members. These issues are covered in greater detail in the section on “experts”.

Finally, as noted above, teams (or sub-teams) should be small with less than 10 experts in each grouping. Anything larger is considered unmanageable in a post-conflict environment, even under a leader with extensive international and managerial experience.

e) Team leader

A team leader with firm and clear authority over other members of the team is essential to ensure responsibility and accountability. Various suggestions have been made as to what disciplines a team leader should possess. On the one hand, the chances of safeguarding a subsequent successful prosecution would be best ensured by a lawyer as the team leader. However, regional, political, and diplomatic knowledge and skills are at least as important to ensure the success of the mission. It seems generally agreed, however, that most importantly, a team leader has to be a strong “leader” since he/she will carry the burden of responsibility for not just the performance, but also the conduct of the team. Such a person would have to have the ability and experience to use wisely a considerable amount of power over his/her colleagues. This could extend to the preparation of a post-deployment report. It has been recommended that the team leader should have a counterpart from the requesting state to ensure cooperation in logistical, security, and other matters, as well as in compliance with national laws.

f) Command structure

The command structure within JRR teams has to allow managers, especially the team leader to exercise the necessary discipline to ensure strict professionalism in every aspect of the team’s conduct. The gathering of information and the preservation of sensitive evidence require serious discipline. According to responses, the experience of the UN, as well as of many organizations that have carried out this kind of work clearly shows that a democratic, transparent and consultative modus operandi can be dangerously counterproductive. The team leader has to have clear authority, even to the extent of sending home members who do not perform to standard. At the same time, the responsibilities and lines of communication of each member have to be clearly defined.

A strict code of conduct needs to be maintained. For example, if any testimonial evidence is gathered, it needs to be done in a responsible manner. In particular, re-traumatization of witnesses and survivors of human rights abuses and war crimes must be avoided. Documentation of such testimonial evidence must be done discretely, confidentially, and systematically, to ensure that critical details are gathered. Individuals who come forward need to be able to speak without fear of reprisal and need to be able to make informed and independent decisions about providing testimony. The safeguarding of the identities of witnesses is dealt with under the documentation section. Given the recent international focus on the personal conduct of internationally deployed persons, this aspect of discipline should not be forgotten.

4. Follow-up/Reintegration

Adequate facilities staffed by experienced personnel need to be established to help both local and international workers deal with the psychological demands of the work. Staff members documenting serious violations of humanitarian law in the field have to listen to the most horrific stories day after day. Having to hear atrocities over and over again tends to be tiring and traumatic. Additional stress factors in a post-conflict situation, like having to work in an environment of mass destruction, landmines, tension in the surroundings and long strenuous working hours add to that. To cope with such a situation sufficient rest for staff needs to be ensured. Further, if at all possible, a counsellor should be with the team. A psychological debriefing is also extremely important.

How the preserved information is handled is considered under the section entitled: "documentation." However, upon the return of the team debriefing and counselling are necessary. These will likely be done by the expert's own authorities, although coordination may be required from the JRR secretariat. The JRR secretariat would also be responsible for coordinating the gathering of lessons learned from each mission. One of the most important uses of such lessons learned is to feed information back to training institutions in order to continuously improve the training standards and methods of experts on future deployments. Another purpose could be to provide something like a "score card" on the performance of the experts on the deployment. Since the quality of expertise is considered to be crucial to the success of missions, the only way to ensure that good quality experts are recognized (including for future assignments) and that good practices are preserved, is to have the individual and collective lessons learned fed back to both the training and the rosters. This is also where a team leader's potential post-deployment report would be useful.

5. Recommendations

The success of a JRR mission will depend on proper planning and preparation. Some of the key recommendations in this include:

Long-term preparation:

- Pre-deployment training;
- Development of a basic standard list of equipment;
- Development of standard SOMAs;
- Set-up of debriefing and counseling programs;
- Set-up of a system to capture and distribute lessons learned.

Short-term preparation (just prior to deployment):

- Self-selection of mission members from among JRR participants and making the choice of a national versus multinational team;
- Choosing experts in accordance with expertise required and surrounding circumstances;
- Sending of an advance team;

- Establishment of links to potential partners on the ground.

Ideally, the duration of assignments should not exceed three to four months. The command structure of the teams should be tight and a strict code of conduct should be followed. Psychological counseling for the team members has to be ensured.

D. Relationships with National and International Actors

1. Relationship issues

The success of any international deployment will depend to a great extent on the relationships it develops and maintains with a range of local and international actors. While this is important in every case, in looking at the kinds of possible deployments that JRR could be engaged in, there is one instance requiring the focus of this study. Should JRR be deployed pursuant to a request by an international justice institution such as the ICC, a member of the UN system, or another international organization, it has been seen in previous sections that deployment will likely be under the auspices of that organization. Thus, JRR experts would assume their place within that structure, including the relationships that have been developed with other actors. In such situations, the responsibility for those relationships will rest with the requesting organization.

The one instance in which JRR participants and especially expert team members would be responsible for developing and maintaining such relationships would be when a JRR deployment is in response to a request by a state, and it does not fall under any umbrella. This section, therefore, deals with this scenario. **There are five main types of actors that have to be taken into account. They are:**

- **Local official authorities;**
- **Local traditional authorities;**
- **Local NGOs;**
- **International or Regional Organizations - especially if active in that country;**
- **International NGOs – especially if active in that country.**

The issues to be considered in this section involve ways in which JRR can prepare for and best execute the kinds of relationships it needs to succeed. In relation to local official authorities, the main concerns will be to clarify as quickly as possible, in a Status of Mission Agreement, the rights, obligations, roles, and responsibilities of both the JRR team and local officials. Regarding local traditional leadership and local NGOs, the relationship will be an informal one. Nevertheless, issues such as understanding of and respect for cultural norms, as well as knowing and taking into account the often partisan nature of these groups and institutions will be important for establishing a positive working relationship. The importance of having JRR accepted by the local professional

establishment, as well as by the population at large has been mentioned by commentators as an important goal of this process.

Relationships with international actors that are following developments in that country, and especially those that are working *in situ* will have to be planned early, as early as the preparation of the assessment of the request for JRR assistance. In this way part of the decision-making process will already include a consideration of such relationships. The main goal in these cases is to ensure both that there are no overlaps or duplications of effort, and to the extent possible that there is mutual assistance. This will allow JRR teams to “hit the ground” prepared. In the case of international NGOs, a distinction will have to be made between those carrying out humanitarian work, and those engaged in more human rights related activities. The former will have severe limitations on their ability to interact with JRR, while the latter, much like domestic NGOs, may have agendas different from that of the goals of JRR.

2. Experiences with international and local actors

There are a number of Status of Mission/Forces Agreements (SOF/MA) in operation for a wide range of international organizations with missions operating all over the world. For example, the UN has prepared a model SOFA that is widely used as the basis for new agreements. The needs of a JRR deployment are somewhat different from that of a tribunal or a hybrid court. Therefore, this study also contains an annex with suggested draft elements designed for an agreement to be entered into between the JRR participants providing expert assistance and the requesting state (see Annex 6).

In addition to the matters that can be set out in an agreement, the question of how to fashion cooperation with local authorities needs a sense of flexibility, as well as the recognition of the uniqueness of each situation. For instance, the UN's early experience in Kosovo is often used as an example of unrealistic reliance on local capacity when there was little left to work with. Experience in places like Sierra Leone, and more recently for the ICC in Uganda and the DRC, confirm that such flexibility will be especially important when dealing with local traditional authorities and NGOs, whose cooperation is important, but whose partisan motivations will have to be taken into consideration.

Regarding relations with international actors, JRR teams may encounter situations such as in Bosnia-Herzegovina where a number of international actors were present and active and the attachment to local society was weak. This tends to be the norm in post conflict situations with a divided society and an apparent absence of a functioning civil society. The danger of the Bosnia-Herzegovina example demonstrates is that it is easier to just deal with international organisations instead of taking the time to identify potential local partners. Without an attempt to engage the community that is the object of the support, the effort might as well not be undertaken in the first place.

3. Considerations for dealing with international and local actors

a) Local “official” authorities

The most important aspect of the official relationship between JRR and the requesting state is the early agreement on a SOMA. Responses to the questionnaire have indicated that this should be a condition precedent for any JRR deployment. Given the importance of this item, it is prudent to consider it in the hypothetical chronology of a JRR process.

As described in the earlier sections on “trigger mechanism” and “assessment,” even prior to a request being received, those involved in the process will have a good idea where such requests may come from. They could, therefore, be conducting “background monitoring” of ongoing situations with the potential to lead to a request. One of the tools at their disposal to help in this process would be the model SOMA and draft elements for such an agreement with JRR. Knowing that the conclusion of a SOMA is a condition precedent, and with some insight into the particular conditions of the country, they would be able to make the preparation of a first, plausible draft part of the background package to be handed to the assessment team.

It was also noted in these sections that requests from states are unlikely to emerge unexpectedly. Those familiar with the normal course of international relations know that a “formal” request is most often preceded by numerous informal contacts. In the course of these, those representing JRR would be able to assist the state in making the request. Among the items to be brought to the attention of the potential requesting state is the condition of a signed SOMA, along with the draft elements particular to JRR deployments. In this way, a requesting state would understand, even before it decided formally to communicate its need for assistance that it will have to sign a SOMA before it receives JRR assistance.

Once the official request has been received and an assessment has begun, an important part of that assessment is the preparation of a draft SOMA specific to that situation. If the second, technical phase of the assessment is reached, and the evaluation team visits the requesting country, one of the things they will have to evaluate is the willingness of the local “official” establishment to enter into, and to be able to fulfill the terms of the draft SOMA. This may entail both negotiations with appropriate officials, and a keen eye for reality. The position (official and real) of the requesting state regarding the signing and fulfilling the terms of the draft SOMA will be an important point of consideration in the final technical assessment and evaluation prior to the decision to launch a JRR deployment²⁶.

²⁶ The SOMA would regulate the relationship between the requesting state and the JRR participants actually deploying experts on that mission as far as the scope of JRR activities are concerned. However, it should be pointed out that there is nothing restricting a JRR participant from offering broader services to a requesting state. This can even be included in a specific, bilateral annex to the SOMA.

While it has been pointed out that in practice, even with the best of intentions SOMAs are seldom signed until well into the dispatch of a mission, the short duration of a JRR mission, the sensitive nature of its work, and its potential hazards argue strongly in favour of not actually deploying experts until there is a signed SOMA in existence. With the early preparation described above, this is not considered unrealistic.

The following are the **key practical issues** that would need to be covered in such agreements:

- **Basic logistical support;**
- **Security;**
- **Freedom of movement;**
- **Appropriate privileges and immunities;**
- **Duty free import/export of equipment and property of JRR experts;**
- **Freedom of use of communications and telecommunications;**
- **Access to information;**
- **Local counterparts with appropriate backgrounds (i.e. police or justice officials not political minders);**
- **A pool of interpreters to choose from;**
- **Secure facilities;**
- **Uncensored public information opportunities;**
- **Provisions concerning the possession and use of the gathered information;**
- **Secure and appropriate storage facilities for information.**

Special mention needs to be made of provisions for Privileges and Immunities. Based on the 1961 Vienna Convention on Diplomatic Relations, there are several so-called Privileges and Immunities (P&I) conventions in existence. These are the provisions that allow foreign experts to conduct their work as freely as possible from constraint and fear of harassment. The most recent P&I Convention relates to the ICC. The SOMA will absolutely have to cover, either by incorporation or by reference, the relevant provisions of this P&I Convention.

Aside from clarifying obligations as much as possible in a prior written agreement, the personal relationship with local officials will be crucial. Proposals for furthering such relationships include selecting a JRR team leader with not just organizational and international justice capabilities, but also proven diplomatic experience. Some ability to determine the qualifications of local counterparts will aid in making local-JRR relations more manageable. There should be an effort to have a balance of national makeup represented on the local liaison team. A well-trained JRR team, especially in the cultural, historical, political, and legal aspects of the recipient country, will find it easier to relate to local officials. It should not be forgotten that while not the primary goal of JRR, the association with local counterparts, who would come from the police and other parts of the domestic justice system, is also intended indirectly to provide a training element. It is hoped that JRR members, in addition to performing their information gathering functions, would be able to impart knowledge, standards and procedures, thus enhancing local

capabilities. In this way JRR would be playing a bridging role until longer-term rule of law assistance can arrive to support the requesting state's accountability mechanism.

b) Traditional authorities and local NGOs

The two other local organized entities that JRR experts will have to build constructive relationships with are the traditional, often tribal authorities and local NGOs. These will be purely personal or informal group relationships, which will most often depend on the perception of these groups (and especially their leadership) of JRR's role. In many cases these perceptions will also be based on how closely associated JRR appears to be with the government, as these groups will often represent the internal "opposition". Such groups have a great deal of influence in opening the door to information of every kind, e.g. tribal leaders can convince members to cooperate with JRR; local NGOs may already have compiled information about the mass crimes in question. However, it will be important for JRR team members to keep in mind that the information may not have been gathered in a manner that will comply with requirements in certain accountability mechanisms.

While there are no hard and fast rules to follow, there are some benchmarks that can be offered to help ease these relations. Even though JRR experts will be in the country at the request of the government, working under the umbrella of a SOMA signed with that government and likely to be accompanied by government counterparts if not security, there are ways in which the JRR team can put a little distance between themselves and the government. The most effective way is through clear, single-source, consistent public information. For example, it should be made clear that JRR is investigating a "situation" and not parties. In addition, the provisions regarding the security, possession, and use of the gathered information must be publicized. This might require that public affairs specialists be included among the required JRR expertise.

c) International organizations and international NGOs

Any post conflict situation where JRR assistance is required and may be requested by the state will call for the involvement of other IGO and international NGO actors. Almost certainly some will already be on the ground before a JRR mission, and many others will have had a close eye on the situation. As noted in previous sections, some of the information that JRR assessments will rely on to make a recommendation will come from such organizations. It will be essential for the JRR team to have as good a working relationship as possible with these entities. In non-humanitarian cases it may even be possible to take advantage of facilities or protection that may be offered.

- **IGOs**

A number of members of the UN system are likely to be on the ground in these situations. Most likely those delivering humanitarian assistance such as OCHA, UNHCR or UNICEF will be the most established, and enjoy the best networks and connections to all parts of the country. However, because these organizations depend on their political neutrality to enable them to have access to every needy person, no matter what side of a

war-zone they may be on, there is little chance that they would overtly assist JRR with information or logistical help. On the other hand, especially if the conflict has been over for some time, they may have, and be willing to share confidentially, information that could lead JRR experts in the right direction.

Other UN agencies likely on the ground would include UNDP (whose head would likely be the UN resident coordinator) and either DPA or DPKO. There may be more room for discussion with these organizations regarding support of the mission. Especially if security is an issue, JRR may be able to ask for the assistance of a peacekeeping presence, if there is one. It is likely that if it is within their mandate from the Security Council, they will be supportive. Similar rules would apply for missions from the EU.

- **International NGOs**

International NGOs also break down into humanitarian and non-humanitarian categories. As with the UN's humanitarian agencies, outfits such as the ICRC, MSF or CARE would not compromise their neutral status by openly assisting JRR. However, other NGOs might be on the ground precisely because of the conflict and the mass crimes that may have been committed. No matter how quickly a JRR can hit the ground, some of these organizations would already have been there (indeed some may have stayed throughout the conflict). If precedent is to be relied upon, they will also have begun the process of gathering information, interviewing possible witnesses, compiling documentation, and they may be willing to share this with any process that appears to be heading towards an accountability mechanism.

Some of these organizations would be extremely valuable to JRR, especially for information they could provide during the assessment phase. Of particular importance would be information on the capacity of the local government, specifically about the justice and security sector. There are NGOs specializing in such ongoing diagnostic work (e.g. Altus), whose assistance would be invaluable. Other NGOs (e.g. ICTJ, NPWJ) are very professional in both information gathering and conflict mapping.

4. Recommendations

If JRR's conduct is part of an IGO or international justice institution request, the relationships entered into with local officials, traditional leaders, and NGOs, as well as international organizations and NGOs on each mission, will be the responsibility of these organizations. But if JRR is responding to a request by a state, the JRR participants sending experts on that mission will enter into a Status of Mission Agreement with the requesting state as a condition precedent to deployment. Otherwise, neither the experts nor the mission will have the conditions it needs for success. While formal agreements with other entities are not called for, the following recommendations should be considered as aiding a JRR team in securing the most mutually desirable relationships.

- Conclusion of a Status of Mission Agreement SOMA should be a condition precedent for a JRR mission;
- Local official counterparts should represent all sides of a former conflict;
- JRR should have a public information capability to maximize relations with local populations;
- Traditional leadership and local NGOs will be influential in gaining access to information, but the information they provide may reflect a bias;
- Some international organizations could help provide security and other assistance;
- Humanitarian IGOs will not be likely to compromise their access gained through neutrality by helping JRR;
- Some international NGOs have valuable information on the state of the requesting country's infrastructure;
- At the same time other NGOs will already be in the field gathering information. This may be valuable, especially to lead to other information if obtained pursuant to the required rules of evidence.

E. Documentation

1. How to handle information related to mass crimes

The question of how to handle the information received and measured by a JRR team which may be relevant evidence of mass crimes (hereafter collectively referred to as "documentation") is an issue of major importance. This breaks into two separate issues. The first relates to how that information is collected and preserved and will determine their ultimate usability in an eventual accountability mechanism. Get something wrong at this stage, and all the work, expense, risk, not to mention hope and aspiration is in jeopardy. This is where the JRR team's pre-deployment training, specific expertise in the rules of procedure and evidence of the laws of that country and its relationship with local authorities will be put to a test.

The second issue concerns what is done with the information once it is collected and preserved. This is not a problem in situations where the services of a JRR team are requested by an international justice institution or an international organization. Most experts responding to the questionnaire pointed out that in cases of requests by states, there may well be real concerns about what is released and to whom. As a state would be requesting JRR assistance in order to help it fulfill its responsibilities under international law with respect to mass crimes that may have occurred on its territory, the idea of not sharing all the information uncovered with that state is extremely delicate. Yet JRR teams also have to do their utmost to protect their sources of information. The following paragraphs contain ways in which this issue can be resolved.

To help resolve these issues, it is helpful to recall what JRR is intended to do. First, it should be noted that if JRR is being deployed at the request of, and under the auspices of an international justice institution, or an international organization, then JRR experts will fit into whatever requirements the requesting organization has for their expertise. Thus, in such cases, JRR experts could be involved in work ranging from commissions of inquiry looking into human rights abuses, to full-scale investigations of war crimes with a view to international prosecution.

If, on the other hand, JRR assistance is requested by a state, then it is not intended to be a full investigation of alleged mass crimes. Rather, it is hoped that by being on the ground as quickly as possible, it can locate and preserve the kind of information that may be most “perishable.” As discussed earlier in this study, it may well be that the state would not know at the time of its request what accountability mechanism(s) may be feasible, and would wish to see what preliminary information is available to help make that decision.

In either case, the information gathered and preserved would have to meet the evidentiary standards of the jurisdiction (for example in order to show a valid chain of custody), as well as relevant international evidentiary standards.

2. Examples of previous documentation efforts

The kind of information that JRR experts would likely be looking for has been collected over the past decade by a myriad of organizations ranging from UN tribunals to local and international NGOs. Unfortunately, the methodology used is almost as varied as the number of organizations. However, over the years, some practices have been more broadly used than others. The Yugoslavia and Rwanda tribunals have also helped to standardize some of these practices, and their rules of procedure and evidence serve as precedents. The coming into force of the Rome Statute for the ICC and the subsequent agreement on its rules of procedure and evidence has further helped to solidify the standards to which an internationally deployed group of experts, working on situations involving mass crimes should work. While no international investigative standards exist today, the ICC has begun a process for their development.

One example of the developing practices is the rules prepared by the International Commission of Jurists as part of the East Timor Evidence Project. The “Guidelines for Persons taking statements from East Timorese in Western Australia” of October 1999 provide guidance on how to talk to the witnesses in order to get the most relevant information. They have been recommended as a particularly good example of emerging standards in this area.

As JRR experts would also likely be asked to look at possible mass crimes from a wide perspective, it is useful to consider models of “conflict mapping,” which reconstructs the chain of events during a conflict through gathering information in the field and analyzing the decision-making processes to ascertain the role of those who bear the greatest

responsibility for policies of systematic and massive violations of the laws of war. Conflict mapping has been done by a number of international NGOs with good reputations (such as NPWJ in Sierra Leone) – and conflict-mapping practices have been elaborated, for example by ABA/CEELI. They describe their approach as involving data collection and reporting on a larger and different scale from more common forms of human rights reporting. This method is hoped to avoid the possibility of the introduction of bias into reports. The purpose is to be able to make a quantitative analysis that can be made to help identify trends and patterns of abuses not readily apparent from a more traditional narrative reporting.

This use of statistical analysis is intended to enable a prosecutor to prove important aspects of the case with a combination of direct testimony and statistical general knowledge of violations. In addition to having a wide information base of events, it will be possible to see if people in different places, without an opportunity to collude, say the same thing. Conflict mapping should, therefore, not only lead criminal investigators to specific cases of evidence but also provide a basis for prosecutors to answer questions regarding what happened to whom and who did what when. It is also possibly the most effective source to begin the process of reconciliation through the process of a truth commission.

3. Considerations and options

a) Collecting information

As noted in the first section of this study, **JRR teams will most likely carry out the following work:**

- **Pattern of violence investigation;**
- **Forensic mapping;**
- **Documentary evidence investigation;**
- **Visual image collection;**
- **Compilation of potential witness lists;**
- **Identification of massacre sites;**
- **Initial victim/witness protection measures.**

While this is not meant to be a complete list, it is indicative of the type of broader functions JRR experts would be required to carry out. They are functions that can include statistics gathered by conflict mapping and could lead to a variety of accountability mechanisms from lead evidence in prosecutions to the preparation of a historical survey by a truth commission. Experts advise that while the collection of this type of information may require broader thinking on the part of JRR team members, the way they are collected must, nevertheless, meet the legal procedural and evidentiary standards of the requesting jurisdiction, as well as the best available international standards. Since it may not be known how this information will be used, it cannot be assumed that a proper chain of evidence will not be required in a criminal prosecution, either in a domestic court, a hybrid tribunal, or before the ICC.

The best way in which JRR teams can prepare to fulfill this responsibility is by ensuring that the specific pre-deployment training includes local legal requirements for rules of procedure and evidence. While it should be possible to assume that longer-term international deployment training would have already included the ICC's rules of procedure and evidence, as well as the best existing and accepted international investigative procedures, it may be prudent to review these as well during pre-deployment training. In addition, at least one member of the team should be familiar with local legal rules. That person should be put in charge of ensuring that the information is collected properly. While it is accepted that JRR teams will work alongside local counterparts who will likely be able to advise them on local rules, the overall responsibility for the project still rests on the JRR team.

b) Preserving information

After the information has been collected, the next issue is preservation. It is assumed that the rules of procedure and evidence that the JRR team members would follow would also include the legal rules required for proper preservation. Much will depend on the facilities available to JRR teams in the field, including secure premises and secure storage facilities. As noted in previous sections, especially in the sections on "deployment" and "relationship issues" JRR teams will have to bring some of their own equipment, but mainly rely on local facilities.

Again two distinct scenarios exist. If the JRR deployment is in response to a request by an international justice institution or an international organization, it is more likely that some of the equipment for field use and storage would already be available. More importantly, the requesting organization would be responsible for securing appropriate storage facilities. In case of a request by a state, on the other hand, there might be very little available equipment. How much of a burden this would place on participating JRR members could be deduced from the assessment of the request. The SOMA that would be entered into between the JRR participants and the requesting state might need to contain provisions requiring the State to provide secure offices and information storage facilities for the JRR team.

c) Providing access to collected information

Potentially the most sensitive part of this section is how to deal politically with the collected information. After all, it will almost certainly contain both information and sources of information that is damaging to one side of a previous conflict or another. These sides may now have formed different political camps in a post-conflict setting. It may be literally dangerous to impart the sources of information, such as keepers of documents or witnesses. There are moral, ethical and now increasingly recognized international legal standards requiring the protection of victims and witnesses who come forward to provide information concerning mass crimes. JRR teams will have to be aware of those standards and abide by them.

There are again two distinctive scenarios in which JRR teams may find themselves. In the first instance, when responding to a request by an international justice institution or an international organization, it is the rules of that organization that JRR experts, as temporary employees or consultants to that organization would have to follow. It would be the responsibility of those institutions to ensure that their rules met with the appropriate international standards. Therefore, it is again only in the realm of a request by a state that the full burden of this responsibility would fall on the shoulders of the JRR participants deploying experts.

While this is admittedly a potentially volatile issue, in order to alleviate some concerns it should be recalled that a thorough assessment would have been concluded in advance to ensure, in part that the request is genuine. It is unlikely that if a government requested JRR assistance so that it can use the information to take revenge on its enemies that this would not be caught in the assessment. Looked at in another way, if such a government wanted to act unlawfully, they would probably not want the presence of a JRR team, and not need the information that they could gather.

To the contrary, any international involvement in highlighting the roles of some people would extend some measure of protection, making it more difficult to carry out political revenge. The one genuine concern that has to be guarded against is a subsequent change of government that, instead of using the information for the purposes of an accountability mechanism, as intended by its requesting predecessor, would use it as a short list for prosecution or worse.

It is impossible to fully safeguard against something that might happen in the future. The most that can be done, as a practical measure, is to make the provisions regarding what happens to collected information as clear as possible in the SOMA. A JRR team leader cannot in the middle of a deployment decide that the moral and ethical considerations let alone any international standards do not permit him/her to turn over the information collected to the government that requested the service of the JRR team in the first place. In addition to the moral and ethical problems with this scenario, there is the consideration of sovereignty. Since this is information collected on the territory of a sovereign state – unless there is an agreement to the contrary, it belongs to that state.

Therefore, it cannot be emphasized enough that appropriate provisions be included in the SOMA that will govern the conditions under which information is provided to the requesting government, ensuring as much as possible that time sensitive details (especially about the identities of sources) are safeguarded.

Responses to the questionnaire provided some ways in which this could be achieved:

- **International involvement** – this scenario envisages the release of some or parts of the collected information only if the host country proceeds with an accountability mechanism with international involvement. This could be in the form of a hybrid court, cooperation with the ICC, a truth commission with some international participation, or any combination of the above. The

assumption is that such international presence will guarantee that international rules of justice and fairness will be used;

- **Release information to accountability mechanism** – this scenario contemplates that instead of turning the information over to the government, it be turned over to the court or truth commission set up by the government (presumably if it met international standards of justice and fairness). If the mechanism is not set up for some time, this scenario would have either JRR hold on to it, or have it put in escrow with a neutral party acceptable to the requesting government, such as a regional organization;
- **“Bar code” some information** – this scenario would have the collected information turned over to the host government, with the exception of certain censored parts such as identities of witnesses. The information kept confidential in this way would then be turned over to the accountability mechanism if this met with international standards of justice and fairness.

It will not be easy to persuade a sovereign government, one that has reached out to the international community for help in an effort to attempt to fulfil its international legal obligations in spite of its lack of capacity, that it should accept measures in an agreement that are tantamount to a no-confidence vote. This is especially so since the requesting government will likely come from the poor “South” and the responding JRR partners are likely to come from the relatively well-off “North”. On the other hand, it is not unusual for agreements with governments of States emerging from conflict situations to contain provisions where the international community retains control over items that would normally be a matter of sovereignty. An obvious example is the presence of peacekeeping forces. Thus while this is something to be aware of, it should not be an insurmountable problem.

There is one other related issue that needs to be addressed. It involves the question of whether the JRR team should retain a copy of the information collected. If the answer is yes, further questions as to where would this information be kept, and for what purpose also need to be answered. All respondents indicated that it is imperative for the JRR teams to retain copies of their findings. The most often-cited example of why this is important is the case of East Timor, where a “powerful neighbour” put pressure on the commission to destroy its findings. Such political pressure is not unlikely in future situation, and thus the need for a “backup” set of records. The purpose of such a backup is, therefore, to ensure that shifting political winds – domestic or foreign, do not threaten the reason for having made the effort to collect the information. The question then becomes where such records should be kept. There are two obvious choices – a JRR secretariat when one is established, and until then, with the lead country of the JRR team.

4. Recommendations

Documentation, or the collection, preservation and management of access to information obtained by JRR teams raises issues that need to be considered institutionally as JRR is developed. When deployed upon the request of a state it will be important for JRR participants to understand the following:

- Nature of the information they are seeking;
- Local legal rules pertaining to procedures and evidence;
- Developing international practice regarding investigations;
- Latest international rules on procedures and evidence (ICC);
- Developing international practice on the protection of victims and witnesses.

In particular it is recommended that:

- Pre-deployment training include the legal requirements for procedure and evidence of the jurisdiction where the JRR team will work;
- At least one member of the JRR team must have working knowledge of the legal system where the JRR team will be deployed;
- International deployment training include international practice regarding investigation, the latest international rules on procedures and evidence, as well as internationally accepted standards on witness protection;
- Every SOMA contain provisions regarding how the information gathered by the JRR team will be treated including when, and under what conditions, it is turned over to the requesting authorities; who should receive it, and whether the JRR team should retain a copy.

Part IV: IMPLEMENTATION

A. Next Steps

1. Implementation of JRR

The idea of JRR is not unknown to the international community. As outlined in the introduction to this study, it was first introduced almost two years ago, and has been the subject of three international meetings featuring both governments and civil society. These meetings shaped the theoretical study that has been widely circulated. Indeed, the idea of JRR appears to have helped move along a number of other initiatives that feature rapid deployment. These initiatives are applauded by the authors of this report. It is time that international justice and human rights mechanisms take tangible steps to catch up to where humanitarian issues have been trying to go for years - to be ready to deliver help when it can do the most good.

The question for this section is: how to take the next steps? This feasibility study opened with the admission that today's climate is not ideal for new initiatives. It is true, however, that rarely is it ever a good time to introduce something new. This does not mean that if, as is presently the case, JRR is considered to be useful and timely by so many people in the international justice community, ways cannot be found to turn the international community's theoretical interest into practical support and participation. The issue discussed in this concluding section of the study is what the necessary components of such a plan of action are.

The entire basis of this study, originating in the theoretical report, is that only an incremental approach to the implementation of JRR has any chance of success. In previous sections it has been shown repeatedly why an incremental approach is preferable, even necessary from a technical point of view. This section focuses on the reason why it is a must from a political and organizational perspective.

2. Proposed Next Steps

a) Introduction of the feasibility study as a working document

The consultative process that produced the theoretical study is a good example of how the present document should be treated. As each meeting produced new ideas and perspectives, they were incorporated in the document. This meant that there was an evolving text that both led international opinion, as well as reflected its needs and concerns. The fact that the theoretical study was clearly a working document made it easy for members of the international community to join in the development process along the way. It was understood that nothing was cast in stone yet and all interested parties would be able to influence the process.

While it is not possible to leave a document forever open for changes, it is important for gathering broader support, to keep it open until at least a critical mass of interested participants agree with its concepts and key provisions. The theoretical study did not contain sufficient detail to enable potentially interested states parties to reach this point. It is the purpose of this study to put sufficient meat onto the bones to help make that determination. Until they do, and **until there are a sufficient numbers of participants, it is recommended that the text of this feasibility study also be considered a working document – open to the positive comments and helpful concerns of those interested in participating in JRR.**

b) Seeking the support of practitioners

One of the best ways to ensure that the concept of JRR receives a positive hearing in the places where it counts is for the concept to have the backing of practitioners. Many such practitioners provided their helpful contribution to the drafting of this study, both, by sharing their experiences as well as by projecting their knowledge into the future to make JRR work practically.

In order to gain further support of practitioners the feasibility study should be circulated widely in that community. There are a wide range of seminars, conferences and other opportunities where the concepts in this study should be of interest. There should not be any intellectual property associated with a concept such as this. The more it is circulated, the more opportunities to explain it, the more it is talked about, the more chances to answer questions that it may raise, the better it will be understood, the more likely that it will be positively received in places where it needs to be accepted.

Thus, while keeping the text open to the comments of potential partners there should be a parallel effort to get opinion-makers on board in order to help influence decision-makers.

c) Make JRR's appeal as universal as possible

One theme that has been repeated throughout this study is the need to make JRR universally appealing. This means that it has to be attractive both to states and organizations that would wish to make use of its services. It is most important, however, that it be made as attractive as possible to potentially interested participants. Universal participation means that every region, key legal system, culture, and linguistic group should be amply represented among participants. Only this can ensure that when a request is received, an informed, constructive response is possible.

The states sponsoring this feasibility study have indicated a willingness to bring together interested parties further to discuss, and possibly make progress on the implementation of JRR. The question is: how to attract widespread interest, and how to try to ensure as universal participation as possible? One way that has been pointed out by experts responding to the questionnaire is to make sure that among the states sending the invitation to such gathering, there is a basic cross-section of regions, key legal systems,

cultures and major linguistic groups. Not only will this send a message of endorsement to potentially interested parties, but it will also help establish JRR from the outset as a universal initiative.

In order to achieve this, it is recommended that the sponsors of the feasibility study share the study with those states first that have previously shown interest in JRR.

This core group, having participated in the meetings that developed the theoretical study, would be both the most knowledgeable and receptive to this further development of the concept. This group contains states from almost every category mentioned above.

In addition to seeking their comments, **they should be invited to join the current sponsoring group to extend an invitation to the larger international meeting.** Of course, it would have to be mentioned that no financial or other obligation would be assumed by this step. It would even be important to point out that by joining the inviting group these states are not endorsing the feasibility study. They would merely have to believe that JRR is potentially a good idea, and that there is now sufficient detail on hand to warrant a focused discussion with broader participation.

d) Back it up with high-level political support

It is an undeniable truth of international relations that nothing progresses without high-level support. No idea or initiative, however important or indispensable has ever progressed without it receiving something more than just the green light from above. It is one thing to have officials, even at the decision-making level, believe that something is useful and workable. It is quite another to break the bounds of inertia and start the implementation.

In the context of JRR, it will undoubtedly be important for some states to start the implementation of the first steps and thereby show interest at the political level.

Those first steps need only include the actions that every state can undertake by itself. For example, the establishment of a national roster and the gathering of information of domestic capabilities and resources would be one such step. Possibly the only “international” step that may have to be taken is the designation of a focal point to interact with other potentially interested parties.

There is insufficient information available at the moment to permit a recommendation as to whether “political muscle” would have to be flexed in the period leading up to the proposed international meeting. An educated guess, however, is that the concept of JRR should be seen to be sufficiently useful to attract the international community, even if it is just to have a closer look.

e) Expand the circle of support

The goal of the next international meeting should be modest. It should not aim for the commencement of JRR by all states participating in the meeting, not even for a full endorsement of the concept. It should be recalled that for most of the participants this

would be the first substantive meeting about this subject. Precedents amply demonstrate that it most often takes several meetings to reach the stage where concerted action, even at the preliminary level can begin.

The expectations for the first meeting should include an expanded circle of support, a commitment by some of the key supporters of the initiative to undertake the first steps recommended by this study (for example to appoint focal points), and to agree to a second meeting with a more directed agenda aimed at exchanging information on the first required steps.

3. Recommendations

The premise of this theoretical study is that JRR can only be implemented by using an incremental approach. When it comes to what the next steps should be to move the acceptance of this concept forward, the following are recommended:

- Until there is a sufficient number of participants, it is recommended that the feasibility study be considered a working document – open to the positive comments and helpful concerns of those interested in making JRR a realizable objective;
- To gain the support of practitioners, the feasibility study should be circulated actively and widely in that community;
- It is recommended that the sponsors of the feasibility study share the study first with a number of states that have previously shown interest in JRR. It will have to be ensured that these states represent the major regions, legal systems, cultures and languages. They should then be invited to join the current sponsoring group to extend an invitation to the larger international meeting;
- It will be important for some states to commence with the recommended first steps to show active interest at the political level;
- Current partners should not aim for the commencement of JRR at the next meeting, not even for a full endorsement of the concept;
- The limit of expectations for the first meeting should be an expanded circle of support, the declaration of the undertaking of the first steps by a few key states, and a second meeting with a more directed agenda.

JUSTICE RAPID RESPONSE

FEASIBILITY STUDY

Annexes

- 1. Advance Study**
- 2. Suggested Draft Elements of a Stand-by Agreement Used with NGOs/IGOs**
- 3. Suggested Draft Elements of a Memorandum of Understanding between JRR Participants**
- 4. Spreadsheet for Expertise and Materials for Darfur Commission of Inquiry**
- 5. Suggested Draft Confidentiality Agreement**
- 6. Suggested Draft Elements for a Status of Mission Agreement between Participants in a JRR Mission and a Requesting State**

ANNEX 1

Advance Study

JUSTICE RAPID RESPONSE INITIATIVE ADVANCE STUDY

Andr s Vamos-Goldman

Introduction

1. The Justice Rapid Response (JRR) initiative is an intergovernmental effort with considerable civil society support. Its basic idea that the international community should be able to provide assistance at the crucial, initial stages of investigations that could lead to bringing perpetrators of genocide, war crimes and crimes against humanity to justice has been the subject of discussion for the past year. A theoretical study, evolving over the year anchored the discussions on this issue. This study outlines possible approaches for members of the international community, individually and collectively, to provide resources and expertise at short notice in support of genuine efforts to bring to justice perpetrators mass crimes.
2. After the third meeting, held in New York on 13 and 14 December 2004, a group of six states (Finland, Germany, Liechtenstein, United Kingdom, Sweden, Switzerland) decided to commission a study that would outline ways in which JRR could function in practice. The study would be conducted with the advice and guidance of a group of eminent persons who have considerable practical experience in this field. As a first step in determining the final terms of reference of this study, it was felt by members of the steering group that an advance study taking account of some of the most relevant activities of the United Nations and the European Union in this area would be useful.
3. More specifically, the advance study is intended to focus on what these institutions are doing currently (or plan on doing in the near future) that could help in two key areas: the facilitation of resources in support of JRR activities; and the means to coordinate the kind of rapid assistance for criminal investigations for mass crimes that are contemplated by the JRR concept. Finally, it also hopes to provide a better idea of how the JRR concept can best fit in with emerging international post-conflict peace-building efforts.

Background

4. The international community, through the Rome Statute for the International Criminal Court, reaffirmed the primary responsibility of States to prosecute crimes against humanity, war crimes and genocide. It also reinforced the fight against impunity by buttressing State responsibility with a number of ad hoc international justice institutions (IJI), culminating in the creation of the ICC.
5. In post-conflict situations, however, the political or security situation conducive to the exercise of justice may not coincide with the ability of the State or even the ICC to take the necessary steps to investigate and prosecute those crimes, due to a lack of expertise and resources. Thus at the national level, justice may not have a chance to contribute to the lasting peace and security of a post-conflict society if such windows of opportunity are not seized, and at least information that could become evidence in any eventual prosecution is not identified, collected and preserved. Missing this chance could also undermine the deterrence value of prosecutions, and could easily undermine the chance for affected populations to believe in the rule of law. It is therefore in the interest of the international community to ensure that rapid, thus timely and effective, assistance is available, hence: Justice Rapid Response.
6. On a global level, the capability to provide assistance in the first, crucial stages in the pursuit of justice for mass crimes, and thus help to make possible real effectiveness in prosecutions, would enhance the deterrence value of the newly reinforced international justice system. It would thus help narrow the “impunity gap”, making the principle of complementarity between national and international jurisdictions work more effectively.

Objectives

7. The ultimate objective of this line of inquiry is to help determine the environment in which the JRR concept could function most effectively. As a multilateral effort, in order for JRR to be effective, it has to fit into the post-conflict peace-building assistance mosaic that is dominated by the United Nations (without prejudice to the quality of that domination). Especially when it comes to funding, the European Union may be a major contributor. Thus this study will attempt to examine the most relevant current, and possible medium-term activities of these institutions, in order to find linkages that will assist the steering group to define the terms of reference of the main study.
8. Within this context, the “advance study” focuses on the following:
 - What are the key units within the United Nations and the European Union that deal with those aspects of rule of law support within the context of post-conflict resolution that are most relevant from a JRR point of view?

- What kind of assistance does the United Nations and the European Union actually provide in these circumstances?
- What plans do these institutions have to improve their ability better to deliver assistance in these fields?
- In the case of the United Nations, what is the timing for decisions concerning the organizational location; mandate; and financing of the Peace Support and Rule of Law Offices?
- Regarding the European Union, would this organization be able to co-finance or otherwise contribute to JRR related preparations and deployment?
- What is likely to be the practical reaction of these institutions to intergovernmental cooperation in this field? Would the United Nations, for instance, be capable of taking over this task and executing it effectively? When?
- How could intergovernmental co-operation in the JRR context be organized in a way to best fit in the new structures developed in the UN framework?

The United Nations

9. At present, a number of UN entities perform various functions in this area, based on their different mandates. The following is a brief summary of their various roles:
 - The Office of the High Commissioner for Human Rights (OHCHR) is the focal point for coordinating system-wide attention to human rights, democracy and rule of law, and leads on human rights issues within the United Nations system. More specifically, mainly through its Rule of Law and Democracy Unit, it provides advice, assistance and training on international human rights standards to courts, law enforcement and corrections officials, public prosecutors, legal aid professionals and NGOs. It provides field assistance in the administration of justice, human rights training and guidelines for public officials, and legal analysis of draft legislation. It also provides guidance to peacekeeping operations and other UN field operations.
 - The Department of Peacekeeping Operations (DPKO) has been supporting police activities in peace operations ranging from an actual executive role providing a full range of law enforcement services (Kosovo and East-Timor), to capacity building of national police services in a wide range of countries from Afghanistan to Sierra Leone. This is carried out through the Civilian Police Division, with functions ranging from mission planning, policy development, the recruitment of field staff and the provision of guidance to peacekeeping and political missions. There is one person involved in covering judicial matters and one other person involved in corrections. This is acknowledged to be insufficient, given the fact

that DPKO also purports to plan and support other rule of law related aspects of peacekeeping operations, including justice, legal systems, and corrections, as well as being the UN office responsible for convening the United Nations Rule of Law Focal Point Network (see below).

- The United Nations Office on Drugs and Crime (UNODC) promotes efforts to combat trafficking, transnational organized crime, corruption, and terrorism, including reform of criminal justice systems. One of its main activities is to provide legal drafting assistance.
- The United Nations Children's Fund (UNICEF) deals with juvenile justice issues, including children in conflict with the law and child victims and witnesses of atrocities in post-conflict settings.
- The Department of Political Affairs (DPA) works on incorporating transitional justice elements in conflict resolution and management while its Electoral Assistance Division is responsible for electoral matters. It is also engaged in rule of law matters during its involvement in peace negotiations.
- The work of the United Nations Development Program (UNDP) on justice, human rights and rule of law is among the fastest growing areas of support within the Organization. UNDP supports national capacities with a view to sustainable development from a long-term perspective and an ability to mobilize resources in an effective manner at times of crisis. Its areas of support include governance and management bodies, justice institutions, police and law enforcement and civil society. Since 2002 a special unit has been active to support UNDP assistance specifically in crisis and post conflict areas.
- The United Nations Development Fund for Women (UNIFEM) assists in developing programs and strategies that focus on ensuring gender equality and gender justice in peace processes as well as rehabilitation and reconstruction processes.
- The work of the United Nations High Commissioner for Refugees (UNHCR) focuses on obtaining an environment for the safe and sustainable return of displaced populations through the restoration of a credible rule of law system. Specifically it involves work on issues such as amnesties, citizenship, documentation and status.
- The Office of Legal Affairs (OLA) is principally involved in preparing the constituent legal instruments of courts (the most prominent being the preparation of the draft material for consideration by the ICC Preparatory Committee) and ad hoc-tribunals (these range from the ICTY/R to the Sierra Leone Special Court and the Cambodia Tribunal) that prosecute serious violations of human rights and international humanitarian law. It also represents the United Nations in negotiations with Member States regarding Status of Mission Agreements, and

with international institutions, including justice institutions regarding relationship agreements.

- The Office for the Coordination of Humanitarian Affairs (OCHA) provides policy guidance and support in the protection of civilians and internally displaced persons, and the creation of related coordination mechanisms.
10. Only the most rudimentary cooperation and information sharing exists within the United Nations system – in spite of the many formal relationships. The United Nations Rule of Law Focal Point Network is meant to serve as a coordinating and information-sharing body for rule of law activities in peace operations. Interdepartmental task forces, under the auspices of the Executive Committee for Peace and Security (ECPS), have been established to coordinate the planning of peace operations, including rule of law and transitional justice aspects. OHCHR and UNHCR have entered into distinct agreements with DPKO outlining their coordination and joint approaches respectively on human rights and refugee issues in peacekeeping. (UNDP and OHCHR have had an MoU on the implementation of human rights at the country level since 1999). OHCHR, UNDP, UNIFEM and other agencies, funds and programs use the country team coordination framework to plan and synthesize rule of law programming to enhance national promotion and protection systems.
 11. While these formal mechanisms exist, much of the coordination work is conducted through informal contacts. The result is that, although 11 UN departments, agencies and funds and programs have focal points in the “Rule of Law Focal Point Network”, this “Network” has been functioning mainly as an ad hoc information sharing mechanism. Thus instead of being able to provide a substantial source of support on rule of law issues to peace operations, in practice, the “Network” has served merely as a discussion forum to be used on a case-by-case basis. While not denying the utility of effective informal relationships as being critical to the success of any support in conflict and post-conflict situations, there remains a recognized need for greater formal coordination of UN policies and programs.
 12. Since as far back as the Brahimi Report, and more recently with the report of the High Level Panel on Challenges and Change, the United Nations as an institution has begun to heed the call of many of Member States and accept that it could do a better job in bringing post-conflict societies safely through the initial, volatile years after the end of hostilities. As the Secretary-General admitted in “In Larger Freedom”, his response to the High Level Panel’s report, more than half of the countries emerging from conflict fall back into strife. Among the changes called for (and acknowledged by the UN) is a need for a focus on “rule of law” matters that would include the areas in which JRR would be applicable.
 13. The United Nations appears to be taking steps to try to address this shortcoming. The Secretary-General’s 21 March 2005 report proposed to Member States that

- they create an intergovernmental Peace-building Commission, which would consist of a combination of members of the Security Council and the Economic and Social Council, and be serviced by a Peace-building Support Office within the United Nations Secretariat. The Peace-building support office would in turn include, *inter alia*, a dedicated Rule of Law office.
14. The Peace-building Commission is intended to be a central node for helping to create and promote comprehensive strategies for peace building both in general terms and in country situations. It is also intended to provide a forum in which representatives of the United Nations system, major bilateral donors, troop contributors, relevant regional actors and organizations, the international financial institutions and the national or transitional authorities of the country concerned can share information about their respective post-conflict recovery activities, all with a view to achieving coherence between the security/political and development/economic issues, in the interests of greater effectiveness.
 15. Bringing together the critical actors, the Peace-building Commission is intended to do four things: ensure that the international community as a whole is effectively supporting the national authorities; propose overall priorities, and ensure that those priorities reflect country-based realities; mobilize necessary resources, both for early priorities in recovery and in particular for sustained financial investment over the medium to longer term period of recovery; and it can provide a forum for ensuring coordination and resolving complications or differences where these emerge. It is both the intergovernmental nature of the Peace-building Commission, as well the above described functions that make this initiative interesting from a JRR point of view. If the UN were ever able to house a JRR coordinating mechanism, this would be its most logical “outer office”.
 16. Not surprisingly, given the scope of this issue, both the General Assembly (GA) and the Security Council are focusing on post-conflict matters. While the GA seems to be running with the concept of a Peace-Building Support Office, the Danish Presidency of the Security Council has scheduled a debate on Post-Conflict Peace Building on 26 May. From a JRR point of view the significance of the SC debate is the clear realization that one of the most significant gaps in the international community’s arsenal is civilian rapid response, including on rule of law matters. This is one of the key areas that Member States participating in the debate have been asked to address.
 17. The most interesting aspect of this development from a JRR perspective, however, is the proposal to establish a dedicated Rule of Law Assistance Unit within the proposed Peace Building Support Office. This proposal will be contained in the Secretary-General’s long awaited next report on rule of law and transitional justice issues, which is still in the works. At the writing of this report, a group at the Assistant Secretary-General level, representing a number of departments, funds and programs of the UN have been convened to iron out inter-UN challenges by the end of May, with a view to enabling the Secretary-General

- to put forward his recommendations by mid-June. The Rule of Law Unit (or ROLAU as it is being referred to within the UN) is intended to be a strategic centre further to develop rule of law doctrine and practice in order to assist national and international efforts to reestablish the rule of law in conflict and post-conflict societies. The UN hopes that it will bring more coherence and enhanced coordination to the support provided by the system. It is probably safe to assume that when the proposal finally emerges it will touch upon the key areas of changes that are needed at the headquarters and field activities level; what level of coordinating authority it is to have; and where its resources are to come from. Were it to receive the mandate and resources required actually to be able to coordinate the work of the various bodies within the UN system and enable them better to work with national and other international entities, it could become a leading candidate for the coordination of JRR activity – thus its “inner office”.
18. The other interesting current development in the UN system from the JRR point of view is the work being done in the Office of the High Commissioner for Human Rights (OHCHR). In response to the Secretary-General’s call in his “In Larger Freedom” report for a plan in 60-days on how to increase capabilities to deploy expertise quickly in crisis situations, the High Commissioner for Human Rights has commissioned a study on human rights rapid response. Expected to be ready by the end of May 2005, this study may contain some synergies with, or ideas to improve upon the JRR concept.
19. What appears to emerge from the above paragraphs is an evolving UN structure that is intended to play a more significant role in the post-conflict, peace-building restorative justice areas. It remains to be seen if practice can match theory in this case. Much will depend on whether the structures that are planned will have effective coordinating authority, or whether in an attempt to please all and offend no-one, all that will happen is that the current, ineffective consultative functions will be centralized in a new, costly structure. The outcome for the JRR concept is significant. Without the planned reforms leading to effective coordination within the UN system, there is little chance that any UN structure would be able to take over and properly execute the delivery of JRR services.

The European Union

20. Unlike the United Nations, where rule of law related activities and assistance are quite disparate but mostly delineated, the European Union’s more nuanced political and administrative structures make the sources of this area more difficult to pinpoint. In the EU, the development and coordination of external policy has been relatively recent and evolutionary. Consequently, as Community structures and cooperation evolved, especially over the last decade, and as the nature of external challenges changed, tasks involving rule of law action and assistance have been taken up in several places. In a study of this preliminary nature, it is possible to consider only the most obvious centers. Yet even this will provide a useful window to show where the kinds of activities relevant for JRR –

identification, collection and preservation of information that would assist in the investigation and prosecution of perpetrators of mass crimes – may find support from the European Union.

21. It appears that both the European Commission and the Council of the European Union have programs which include rule of law related activities, and which would be of interest from a JRR point of view. In the case of the Commission, there are several possibly relevant programs under the External Relations and Development Directorates-General. In the case of the Council, while the UN and ICC unit (DG E IV) maintain relations with Member States on issues that could include rule of law, the Civilian Crisis Management Unit (DG E IX) appears to be a possibly useful operational center.
22. While the work done in, and criteria used by these units will be examined in the next paragraphs, it should be noted that other parts of the European Union are, or potentially may also be involved in rule of law activities. For example, EuropAid is intimately involved in the financial administration of many of these programs although the policy determination and planning takes place in other Departments. In addition, it is conceivable that in the future the Freedom, Security and Justice Directorate-General could, in the long run, possibly be involved in rule of law related matters.
23. Given that JRR, by its very nature has to be done in a timely fashion when a request is made and the security and political window of opportunity exists, the first most logical place to look within the External Relations Directorate-General of the Commission is at the institution's Rapid Reaction Mechanism (RRM). This mechanism is an exception to the usual, detailed, carefully considered processes that characterize most of the rest of the Commission's assistance mandates. RRM is designed to allow the EC to respond in a rapid, flexible and efficient manner to situations of urgency or crisis. Any assistance program must, however, conform to the general external policies of the EU, and be complimentary to the specific external policy profile of the institution to that particular situation. From a JRR perspective, it is important to note that the actions that are triggered are civilian in nature, with the purpose of helping to establish conditions of stability. This has already involved rule of law related assistance (e.g. Georgia), thus it would seem to be able to cover the specific requirements of a JRR deployment.
24. The RRM has an annual ceiling (currently set at 13 million Euros), and the operations it supports have to be completed within a short, defined period of time – six months. While the actions have to be civilian in nature, they cannot involve activities of humanitarian response. The RRM is neither a revolving facility nor a general fund – it is linked to a specific situation and applies to unique, one time interventions. While intended as a rapid intervention tool, it can also be used to kick-start longer-term (and thus more slowly developed) assistance efforts. The RRM is able to support the delivery of programs by service providers who are

- either civil society groups or intergovernmental organizations. It appears, however, that the administrative process may be more streamlined in the case of an intergovernmental group. In fact, there are standing precedents with such agencies as UNDP or the IBRD.
25. While the RRM seems to be uniquely well suited to support specific JRR deployments, it is important also to look at other, longer term assistance mechanisms, as they may also be able to support ongoing JRR activities such as training, or perhaps be used as a standing facility on which JRR responses to requests could be drawn. While there are several possible facilities, one worth mentioning is administered by the Human Rights and Democratization division of the External Relations Directorate-General (RELEX). The European Initiative for Democracy and Human Rights (EIDHR) has a budget of over 100 million Euros per year to support programs in these fields. It has a long-term approach, and in order to try to enhance its impact, it focuses on four, closely related priority areas, one of which includes the rule of law. Much of the EU's support for projects that assist the ICC fall under this program, and it may be significant for JRR that the focus of such support is currently in transition from a focus on ratifications to one where practical assistance to the ICC's work is paramount.
 26. In practical terms, the EIDHR can take up to a year and a half to go from the call for proposal stage to the approval and finally disbursement stage. By all accounts, it is not an easy mechanism to work with especially since a number of EU institutions get involved (for example, besides the Commission's External Relations Directorate-General, EuropAid not only administers the calls for proposals, but also works closely with RELEX in defining the parameters of the projects). As with RRM, a range of entities from civil society groups to intergovernmental organizations are eligible to apply, as the funding does not go directly to the country, region or entity (such as the ICC) that is the ultimate recipient of the assistance. Also as with the RRM, the process for intergovernmental bodies in some cases can be more streamlined than for civil society groups. On a positive note, the entities receiving assistance have three years to complete their projects – a period which could be sufficiently long to serve as a standing facility for JRR deployments in that period.
 27. Another facility that must be mentioned can be found under the Cotonou Agreement. The European Community has, for some time, recognized that the escalation of conflicts in the Africa, Caribbean and Pacific (ACP) regions of the world requires special attention and increased more streamlined assistance. Under this scheme, the programming can be either at the country or regional level. Programs have to conform to EU policy for the country or the region, and identify the main sectors of intervention. These programs are administered by the Commission's Development Directorate-General, which also works closely with EuropAid.

28. Like the EIDHR, this is also not a quick facility. After negotiations with the target country or region to identify the main sectors of interventions, a framework agreement is signed between the EU and that country or region. The framework agreements are usually five years in duration, and have mid-term performance reviews. On the basis of that framework agreement, a call for proposals can be issued, and anywhere from six months to a year is required for project approval, unless an emergency negotiating procedure is used in case of a crisis situation. It may be conceivable that situations conducive to JRR interventions could be analogous to emergency situations, enabling the use of these expedited procedures.
29. As with the previously mentioned facilities, a range of civil society and intergovernmental groups can be eligible to carry out project proposals. Also as previously noted, intergovernmental groups can benefit from an easier process. For example, there is a framework agreement already between the EU and the United Nations to benefit its agencies. There is another with the IBRD, and it appears that other framework agreements, which further streamline and speed-up procedures can be entered into with other intergovernmental bodies. On a positive note from a JRR standpoint, if a certain service provider has totally *sui generis* capabilities, it may even be possible to pre-identify it in the framework financial agreement with the country or the region. This should be borne in mind considering the uniqueness of the JRR initiative. At the same time, given the fact that under the Cotonou Agreement a project needs an official request by the recipient countries (however, it may be triggered by the EU): must be agreed in the framework as an indicative program normally established for a three year period: and thus involves a lead time of more than 9 months, at first glance it does not appear to suit JRR's requirements.
30. In addition to facilities administered by the Commission, there is at least one Council related activity that must be mentioned. Under the European Security and Defense Policy (ESDP) there are programs relating to military, as well as civilian crisis management, and conflict prevention. Under the civil component, there are already four main instruments, two of which could be of interest from a JRR point of view. One, which is the most developed, involves police cooperation. Its aim is to have up to 5,000 policemen, with the possibility having as many as 1,000 ready for deployment within 30 days. The second involves strengthening the rule of law, with the possibility of providing up to 200 judges, prosecutors and other experts in the field. There are several programs already in existence with either police or rule of law assistance. These include PROXIMA (police assistance to Macedonia – soon to finish); EUJUST THEMIS (rule of law assistance to Georgia); EUPM (police assistance to Bosnia-Herzegovina, having the largest civil deployment); EUPOL (police assistance to the DRC); and EUJUST LEX Iraq (off-site training assistance for Iraqi judges, prosecutors and police officers).

31. Within the framework of "Civil planning 2008" EU Member States try to identify possible future missions on a short and long-term basis which might complement other bilateral measures. One of the possible tools might be civilian response teams for which areas of deployment need to be identified. They could include stop-gap measures in the rule of law/justice sector. Member States would nominate experts for an EU-wide pool which in turn would be used for the staffing of crisis response teams. In general, the ESDP civil crisis management missions are deployed on the request of a post-conflict state to provide short-term support (up to 12 months). However, it seems that they need strong political pressure both in the lead up to the decision-making of the Council as well as in the implementation phase.
32. There are a couple of key differences between these programs and the ones run by the Commission. As Council programs fall under the framework of the ESDP, they are part of initiatives taken by EU members acting in concert, through the EU Council. Thus they form part of politically oriented action taken by the Community in given situations, as opposed to implementing ongoing EU policy through established instruments, as in the case of Commission actions. The second key difference, especially from a JRR point of view, is that instead of using outside entities on the basis of project proposals, these projects are not performed by experts recruited on the "open market", but by personnel provided by Member States, working under EU auspices. While the ESDP model could be considered for JRRT co-operation (one common roster, training scheme ect.) one also has to keep in mind that some states, including EU member states involved in the JRR initiative have indicated a preference for different levels of participation. Finally, one has to keep in mind that funding for these ESDP projects – at least for the time being – is considered to be totally insufficient.
33. In relation to future activities, there was insufficient time in the context of this report to explore possible changes that the adoption of the EU Constitution may bring. Uniformly, EU interlocutors believe that if the new constitution is adopted it will result in more streamlined and simplified procedures after its coming into force in November 2006 only. Regarding reaction within the EU to the changes that are taking place or are contemplated by the United Nations, at best this can be described as a "wait and see" attitude.

Finally, but significantly, the across-board reaction of EU interlocutors to the JRR concept was positive and enthusiastic. This is not surprising given that for the most part EU institutions rely on outside expertise to identify and deliver the projects that support and carry out EU policies. As JRR fits a number of EU initiatives and fulfills EU priorities, in the right context material support for this concept is highly likely.

The Organization For Security And Co-Operation In Europe (OSCE)

(Katrin Nyman-Metcalf)

34. The Organization for Security and Cooperation in Europe (OSCE) was created in the early 1990s out of the Conference on Security and Cooperation in Europe, which in turn was created in the early 1970s to enable an all-European discussion in the era of East-West division in European politics. The OSCE has 55 Member States, including almost all European States, the United States and Canada. Partners for cooperation also include Asian, Middle Eastern and North African states. The OSCE is recognized as a regional arrangement under Chapter VIII of the UN Charter. The main task of the organization is to assist with security cooperation in Europe and to support and coordinate various activities of the Member States in this area. The OSCE is active in Eastern and South-eastern Europe, Caucasus, Central Asia and to some extent in Western Europe and North America. The areas of activity include conflict prevention, combating terrorism, arms control, anti-trafficking, border management and democratization. As part of this work the OSCE performs important monitoring tasks, monitoring the application of human rights and security related legislation and mechanisms in the Member States. Its key functions could be described both as early-warning in times of crisis and as a post-conflict actor for rehabilitation.

35. The OSCE main secretariat is situated in Vienna and this is also where the Permanent Council, consisting of diplomatic representatives of the Member States meet. Ministerial meetings and Summits are also held regularly and there is a Parliamentary Assembly. The OSCE employs close to 440 persons in its various institutions and has in the field about 1,000 international and 2,600 local staff. The staffing of field operations is based on secondments, where the responsibility for the salaries of personnel remains that of the seconding national administrations. It is also finally up to Member States what personnel they second and for what periods. The Member States perform the Chairman functions on a rotation basis for one year at the time. The Secretariat is headed by a Secretary-General appointed for a three-year term. Decisions are made by consensus – all Member States having equal weight - and regarded as politically rather than legally binding. They normally enjoy a high degree of respect from Member States however. Apart from the general secretariat, there are special organizations like ODHIR, Office for Democratic Institutions and Human Rights, the High Commissioner on National Minorities and the Special Representative on Freedom of the Media. The OSCE field operations or missions act similarly to embassies although not representing any country and are normally set in post-conflict countries where the missions perform active work like monitoring and legal assistance. These missions are important in posts-conflict rehabilitation work but also as impartial international organs present in conflict or recent conflict areas that can inform about developments – to inform on positive developments, effectiveness of international assistance or act as early-warning if the situation were to deteriorate. Currently (2005) there are 18 missions or other special

- activities in 16 states: Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Croatia, Georgia, Kazakhstan, Kyrgyzstan, Macedonia, Moldova, Serbia and Monte Negro, Tajikistan, Turkmenistan, Ukraine, Uzbekistan.
36. The OSCE further performs a very important function in offering legal drafting assistance and expertise on laws, institution building and other such matters. In some countries the OSCE has recently been given an important overall role like in Kosovo, where it is responsible for one of the pillars of the state building in Kosovo (the EU and the UN being responsible for the other two). In its legislative support activity the work is similar to that of the EU and the Council of Europe and often these organizations cooperate. The OSCE with its focus on security seen in a broad sense (politico-military, economic-environmental and human-social) tends to be involved in questions of particular importance in this sphere rather than more technical legal issues that may be the focus of the EU and the Council of Europe, depending of course on the country and situation. The OSCE also has an important arms control function as well as offering peaceful resolution of disputes e.g. through the Court of Conciliation and Arbitration.
 37. As for connecting points with JRR, the OSCE maintains missions on the ground in many countries that experience post-conflict problems and in this way can provide a very important function to be “the ears to the ground” and indicate when JRR missions may be needed, assess situations and give advice. JRR teams could also get support from OSCE missions already established. In the sense that JRR like the OSCE is likely to rely on seconded staff, there may also be a certain competition, which makes cooperation and coordination all the more important. The OSCE with a wide involvement in security related matters would be an important partner for the JRR activities and may in some countries be the focal point also for JRR missions if Member States so decide. This kind of coordination and possible co-location may be a cost saving measure and given the wide membership of the OSCE should be attractive to Member States as well as to target countries.

Observations

38. If the above thumbnail over-view of UN and EU activities is to be relevant to the JRR concept, and be useful in finalizing the terms of reference for the main study, then it has to provide guidance in two key areas. One is how best to coordinate JRR activities; the other is in the area of resources. While the ultimate goal of a practical study is to describe how something can work in practice, in the case of JRR this must also include how JRR, and its narrow but significant focus can fit into the emerging international post conflict, peace-building, restorative justice mosaic.
39. Regarding the coordination of JRR activities, the available choices are a loose intergovernmental coordination with real control remaining at the national level; a

modest intergovernmental coordinating mechanism (possibly housed in an existing institution) with considerable control still exercised at the national level; and turning the entire coordination of the concept over to an existing, truly international body. This advance study impacts the first option, a necessary first step in the further development of JRR, only in that JRR clearly seems to have a place in the post-conflict mosaic and is positively received by the institutions with which it will have to work, and from which it may receive funding. Regarding the second option, the examination of some EU programs clearly points to a more streamlined procedure for project approval and support for intergovernmental (rather than civil society) entities. Regarding the third option, “school is still out” on whether the UN can play such a role. However, if an effective UN institution can be identified, there is existing precedent for housing a hereto *sui generis* international effort (see the WHO’s administration of the Global Fund for Malaria HIV/AIDS etc.).

40. In respect of resources, the positive reaction of EU interlocutors and the variety of programs within the EU provide a hopeful picture. In addition to the possibility of rapid assistance to make rapid response possible, the longer-term facilities should not be overlooked. It may well be that such resources would be available to fund training, serve as a stand-by fund for deployments, and could possibly also be used to pay for the coordinating mechanism of JRR. One drawback is that the EU is not a global organization, and it does retain some eligibility requirements for funding that include demonstrable ties to the EU. As the UN is unlikely to be in a position to provide resources, and as significant JRR partners exist outside the EU, the drawback of the EU covering only parts of the overall costs due to the eligibility requirements of its funding mechanisms has to be taken into account.
41. Finally, the single most significant observation of this advance study is that the international community has begun to focus on post-conflict peace-building and its various components in a realization that if conflicts can be prevented from re-starting, their number will be able to be cut in half. JRR can be one small but significant component of this emerging mosaic. The main study cannot go far wrong if it conceptualizes JRR in this manner, and tries to define its practical application in reference to the rest of the post-conflict peace-building effort.

ANNEX 2

Suggested Draft Elements for a Stand-By Agreement Used with NGOs/IGOs

(N.B. – The below elements assume an early phase of JRR cooperation without a secretariat or other central coordinating mechanism.)

Nature of Cooperation:

- A JRR participant that is an IGO or NGO has “Associate Member” status that provides for active participation and full consultation. Only States are “Members” with the right and responsibility of administrative decisions, such as any eventual formal cooperative mechanism.
- Both Members and Associate Members participate fully in the substantive work of JRR. Therefore, just as Members have to canvass their capabilities in order to create an initial domestic roster, so too Associate Members have to create and maintain a stand-by capacity for the rapid mobilization and deployment of stand by personnel who can be deployed in JRR missions in response to a request receiving a positive assessment.
- Associate Members shall maintain a roster of staff with specific skill profiles and other qualifications that match the requirements of JRR and who are available for rapid deployment as stand by personnel at short notice. Members and Associate Members together shall determine the required job categories and detailed associated skills profiles, which will be reviewed periodically.
- Associate Members and Members shall cooperate in determining training standards proposed by the leading training institutions, and each shall be responsible for the periodic and recurrent training of individuals on its Roster.
- The Associate Member (same as Members) shall have a designated focal point for all issues relating to stand by personnel on their roster.
- When a request is received for JRR assistance, the Rosters of both Associate Members and Members will be examined for assessment expertise, although it will be the Member or Associate Member that will ultimately decide if the expert on its Roster will be released to participate. As the need for a quick assessment is vital, it may be possible that some Members and Associate Members would pre-clear the participation of experts designated for assessment and evaluation missions.

- If the assessment is positive, the members and Associate Members would be able to decide whether to offer experts on their Rosters for participation in the JRR mission.

Administrative and Financial Obligations

- The Associate Member (same as a Member) shall be responsible generally for training, deployment and return travel of the Stand By Personnel, including all travel arrangements, obtaining visas and other necessary travel related documents etc (this is a general assumption only because both the possibility of differential participation, and requests by IJIs and IGOs could mean that assistance may be available on some or most of these items).
- The Associated Member (same as a Member) shall be responsible generally for costs associated with the roster, including costs relating to deployment, salaries, benefits, insurance, and other payments (this is a general assumption only because both the possibility of differential participation, and requests by IJIs and IGOs could mean that assistance may be available on some or most of these items).

Legal Status and Obligations of Expert Personnel on Rosters

- In case of request by an IJI or an IGO, experts from Member and Associate Member Rosters alike would likely work under the auspices of the requesting entity, either as a temporary staff member or as an expert on mission.
- In case of a request by a state, experts from Member and Associate Member rosters alike would be deployed as members of a JRR mission whose status shall be determined by the Status of Mission Agreement to be entered into between the requesting state and the participating entities in the JRR mission. To the extent that a JRR Associate Member should lack the international legal personality to enter into such a SOMA, its expert(s) may be deployable under the auspices of the JRR Member whose nationality they possess.
- Experts from rosters of either Members or Associate Members shall at no time be regarded as official staff members of any requesting IJI or IGO, or as employees of the government of a requesting state.

ANNEX 3

Suggested Draft Elements of a Memorandum of Understanding between JRR Participants

Model Memorandum Establishing JRR

N.B. The Feasibility Study considers a number of alternative options for the way potential participants to JRR could cooperate and coordinate their activities, including their administrative and financial arrangements. As many of these options are mutually exclusive, it is not possible to prepare a ready-made MOU without knowing which options participants may end up choosing. Therefore, the following document consists of the basic annotated “elements” that would be required in an MOU among JRR participants. Where there are several options, they are presented as alternatives. Should a particular option or set of options be decided upon, these elements are designed to make the drafting of a JRR MOU easier.

Preamble

The undersigned Participants (Parties and Associate Parties),

AFFIRMING the continued need to strengthen the international legal framework, fight against impunity and ensure that post-conflict justice serves the cause of lasting peace and security;

RECOGNIZING that the first, vital step of identifying collecting and preserving information, especially information that is likely to disappear with the passage of time, about crimes of genocide, war crimes and crimes against humanity must be taken as soon as the security and political environment are conducive;

RECOGNIZING further that States emerging from periods of conflict, and international institutions charged with the jurisdiction over genocide, war crimes and crimes against humanity do not usually have all the expertise and resources to commence the work needed for the establishment of accountability mechanisms over those crimes;

RECOGNIZING also that while the international community possesses significant expertise in this area, there is a lack ability to mobilize these assets in response to a request by a State or an international institution in a sufficiently rapid manner to take advantage of favourable opportunities to take this first, vital step in post-conflict justice;

DESIROUS to coordinate their expertise and resources to assist those States and Institutions having the jurisdiction over incidents of genocide, war crimes and crimes

against humanity, but lacking the means to identify, collect and preserve information about such incidents;

AGREE hereby to cooperate together as follows:

1. Scope and Functions

- a). JRR participants agree to work toward coordinating their activities in order to be ready to respond quickly, in case of a favorable security and political climate, to a request to provide expertise and/or resources in support of genuine efforts to identify, collect and preserve information, especially that which is most likely to disappear, concerning alleged genocide, war crimes, and crimes against humanity, for any accountability mechanism deemed appropriate.
- b). JRR participants further agree that the kinds of functions that JRR teams may engage in could include: the investigation of the patterns of violence, forensic mapping, documentary evidence investigations, visual image collection, compilation of potential witness lists, identification and marking of massacre sites, initial victim/witness protection surveys and as appropriate the recording of testimonial information.

2. Participation

- a). States, International Organizations and Non-Governmental Organizations may participate in JRR. States shall be “Members” of JRR, while Intergovernmental and Non-Governmental Organizations shall have the status of “Associate Members.” Members and Associate Members shall collectively be known as “Participants.”
- b). Members shall be responsible for organizational decision-making. All Members are not required to participate to the same extent in the work of JRR. Rather, membership shall be based on the concept of “differential participation,” which means that each Member State can decide the extent to which it is able to contribute to the coordination and deployment of JRR experts. Some possible levels of participation are:
 - Entry – States may join by placing a small number of experts on a roster for deployment, but making it clear that they cannot pay for their training, deployment or contribute financially to the secretariat;
 - Basic – States may join by placing experts on a roster for deployment, and would ensure that these experts received the agreed international deployment training. They would not, however, pay for deployment (if this cost was not borne by the requesting entity), or join secretariat costs;

- Basic Plus – States may join by placing experts on the roster for deployment, train them to the agreed standards, and pay for deployment of the expert within their region only, if the cost is not borne by the requesting party. They would not pay for joint secretariat costs.
 - Standard – States may join by placing experts on the roster for deployment, train them to the agreed standards, and pay for deployment of the expert, if the cost is not borne by the requesting party. They would not pay for joint secretariat costs;
 - Full - States may join by placing experts on the roster for deployment, train them to the agreed standards, and pay for deployment of the expert, if the cost is not borne by the requesting party. They would pay their share of joint secretariat costs, donate personnel to fulfill this function, or agree to host in rotation with others;
- Full Minus – States may join without placing experts on rosters but agree to pay the recurring and deployment costs of other Members (and Associate Members);
- Full Plus - States may join by placing experts on the roster for deployment, train them to the agreed standards, and pay for deployment of the expert, if the cost is not borne by the requesting party. They would pay a portion of joint secretariat costs, donate personnel to fulfill this function, or agree to host in rotation with others. In addition, they would agree to contribute to the training and deployment of experts from participating countries that could not afford or justify that expense.

3. Associate Membership

- a). Associate Members shall have the opportunity for active participation and full consultation. In order to become an Associate Member, the organization has to be properly constituted with defined rules, and have a functional and professional role relevant to the work of JRR. At no time shall the number of Associate Members exceed that of the Members of JRR.
- b). Associate Members shall contribute to the work of JRR the same way as Members. By concluding this Memorandum of Understanding, Associate Members agree to participate in the work of JRR by providing trained and readily deployable expertise in the same way as Members. Associate Members could also be able to fulfil their commitment through differential participation.

4. Organization

- a). JRR Members agree that the organization of this initiative shall commence incrementally. Initial steps that could be followed include:
- i). Preparation of an internal or domestic survey for expertise and procedures for making experts available;
 - ii). Creation of an internal or domestic coordinating mechanism;
 - iii). Designation of an external focal point;
 - iv). Regularization of the method of contact among JRR participants;
 - v). Setting up an internal or domestic roster of experts using a common criteria;
 - vi). Designation of established training institutions to design appropriate long-term, international deployment as well as short-term specific pre-deployment standards and courses;
 - vii). Agree on and adopt the procedures to be followed for the process of providing JRR assistance;
 - viii). As appropriate, consider methods of more efficient coordination of activities (which will require this MOU to be amended accordingly).
- b). JRR Members further agree that during this initial period, the organization of the coordination of JRR shall be carried out through:
- Rotational responsibility – where a number of Members agree to share the burden (and cost) of carrying out secretariat functions on a rotational basis. In accordance with the principle of differential participation, it is possible for only some Members share this responsibility; or
 - Designation – Members shall be canvassed for an offer to carry out coordinating functions on behalf of all Participants. In case of an offer by one Member, the proposal shall be submitted for a decision by all other Members; or
 - Contributions – Members shall be asked to contribute resources, personnel or both to operate a small, central coordinating function. In accordance with the principle of differential participation, contributions would not be mandatory.

5. Decision Making

- a). Members agree that all decisions pertaining to organizational matters will be by consensus of all Members;
- b). Members further agree that all decisions pertaining to a request for JRR assistance shall only be taken after an assessment with recommendations has been circulated to all Members and Associate Members. A decision whether to offer expertise

and/or resources for a JRR deployment shall be made by each Member and Associate Member.

6. Financing

- a). Members agree that the entity requesting JRR assistance shall be responsible for all costs directly associated with that assistance. Such costs to include, inter alia:
 - i). Pre-deployment training;
 - ii). All travel costs;
 - iii). All costs associated with the expert (salary, pension, insurance etc);
 - iv). Cost of all equipment;
 - v). All costs associated with offices, housing, storage of documentation etc;
 - vi). All telecommunications costs;
 - vii). Stand-by costs such as medical evacuation;
 - viii). Etc.
- b). Members further agree that each Participant in a JRR deployment shall decide if it wishes to provide the services of its expert or its resources free of cost to the requesting entity.

7. Entry into Force

- a). This MOU shall enter into force on the day on which at least ... States have signed it;
- b). Any State, or Intergovernmental or Non-Governmental Organization (as defined in Article 2) may at any time accede to this MOU.

8. Amendments

- a). This MOU may be amended by a vote of ... of all Members to it. Any proposal for an amendment shall be circulated to all Members and Associate Members at least sixty ... in advance.
- b). The amendment will enter into force thirty days after all Members and Associate members have been notified of the decision. It shall then be binding on all Members and Associate Members.

9. Withdrawal

- a). Any Member or Associate may withdraw from the terms of this MOU by notifying all Members and Associate Members. The withdrawal shall take effect ... days after the issuance of the notification.

10. Termination

- a). This MOU can be terminated upon the vote of ... of the Members to it.
- b). The termination shall come into effect ... days after all obligations entered into pursuant to this MOU have been fulfilled.

ANNEX 4

Spreadsheet For Expertise And Materials For Darfur Commission of Inquiry

STAFF	Salary	Air Travel	DSA	TOTAL
Chief Investigator (D1)	32351.25	5000	27000	64351.25
Legal Adviser P5	26591.25	5000	27000	58591.25
Field Security/Logistics FS7	17570	5000	27000	49570
Field Interpreter	22077	5000	27000	54077
Investigator P4	21552.75	5000	27000	53552.75
Investigator P3	17444.75	5000	27000	49444.75
Analyst P3	17444.75	5000	27000	49444.75
Field Interpreter	22077	5000	27000	54077
Field Interpreter	22077	5000	27000	54077
Investigator P4	21552.75	5000	27000	53552.75
Investigator P3	17444.75	5000	27000	49444.75
Analyst P3	17444.75	5000	27000	49444.75
Field Interpreter	22077	5000	27000	54077
Field Interpreter	22077	5000	27000	54077
Investigator P4	21552.75	5000	27000	53552.75
Investigator P3	17444.75	5000	27000	49444.75
Analyst P3	17444.75	5000	27000	49444.75
Field Interpreter	22077	5000	27000	54077
Field Interpreter	22077	5000	27000	54077
Crime Scene Officer P4	21552.75	5000	27000	53552.75
Crime Scene Officer P4	21552.75	5000	27000	53552.75
Crime Scene Officer P4	21552.75	5000	27000	53552.75
Field Interpreter	22077	5000	27000	54077
Field Interpreter	22077	5000	27000	54077
STAFF COSTS TOTAL	509190.5	120000	648000	1277190.5

EQUIPMENT	NO REQUIRED	COST PER ITEM	TOTAL
Vehicles	6	9000	54000
Lap tops	15	1500	0
Memory Sticks	15	100	1500
Printer	5	200	1000
GPS	8	300	0
Mobile Telephones	24	1000	24000
Satellite Phone	10	1000	10000
B-Gan Antenna	4	300	1200
Notepads, whiteboards, markers			500
5 metre tape	4		60
20 metre tape	4		60
Digital Camera's	13	300	0
Video Camera's	4	600	2400
Digital Voice Recorders.	10	200	200
Hand held radio	24	600	14400
OFFICE			
3 Month office rent - 3 locations.	6,000		6000
Fax, fixed line, internet	3000		3000
OVERALL TOTAL			1395510.5

EXPLANATORY NOTES & ASSUMPTIONS

Budget is prepared for a 3 month deployment.

Minimum one female investigator each sub team.

Each sub team to have one member, either analyst or investigator, with military experience.

Salaries are calculated at UN rates for 3 months.

Vehicle calculated at 100 euro per day

GPS - two per sub team

UN Field security requirements - each member of team to have means of communication – i.e.: Mobile phone, hand held radio.

Sat Phones – 2 per sub team, 2 leaders - for use in areas with no mobile or radio coverage.

B-Gan Antenna – field internet connection & transfer of data to head office securely on daily basis

Air travel is estimate only

DSA - Daily subsistence estimate only - can be considerably less depending on region.

Field interpreter cost significantly less if locally engaged.

ANNEX 5

Suggested Draft Confidentiality Agreement

Model Confidentiality Provisions

CONFIDENTIALITY AGREEMENT

1. The parties intending to be bound by this agreement are:
 - a). The [representatives of states/organizations and their parent organizations, subsidiaries, affiliates, agents, employees, officers and directors] collectively, the “Participants;“
 - b). The [representatives of states/organizations and their parent organizations, subsidiaries, affiliates, agents, employees, officers and directors] collectively, the “Representatives.”
2. Except as provided in Paragraph 3 below, and absent written agreement between the parties to the contrary, Participants and Representatives agree that all documents and communications generated in the course of this project, correspondence, oral discussions and information exchanged in connection with the project (hereinafter collectively referred to as Project Information) will be kept confidential. This Confidentiality Agreement will remain in effect even after conclusion of the project.
3. Disclosure of Project Information may be made: (a) to the extent necessary to fulfill the work requirements, or to secure payment from interested parties; (b) as is necessary in communications with auditors retained by any party, or regulators; (c) as is necessary to comply with subpoenas, discovery requests or orders of any court; (d) in connection with any arbitration or other means of alternative dispute resolution between the parties; and (e) to the extent Project Information is already lawfully in the public domain. Any disclosures pursuant to subparagraphs (a) or (b) shall be accompanied by a copy of this Confidentiality Agreement and an instruction to any recipient to maintain the confidentiality of all Project Information. If any party is requested or required under subparagraph (c) to disclose Project Information, subject to any applicable legal restrictions, that party will give written notice to the other(s) as soon as possible after the subpoena, discovery request or court order is received. In all contexts, all parties will make good-faith efforts to limit the extent of the disclosures, if any, to be made, and will cooperate with each other in resisting or limiting disclosure of Project Information.

4. For the purpose of conducting this project, Project Information may be disclosed as needed or appropriate to the following persons only:
 - a). The Participants, who evidence by their execution hereof their undertaking to maintain Project Information in confidence as set forth herein;
 - b). Counsel for a Participant or employees of counsel's law firm who are assisting counsel;
 - c). Employees and agents of the Participants for purposes consistent with this agreement;

5. If a party is requested or required to disclose Project Information, subject to applicable legal restrictions, that Party will: 1) notify the other party(ies) in writing as soon as possible after the request subpoena, or court order is received, to permit the other party(ies) to seek legal protection against any such disclosure; and 2) tender the defense of that demand to the party that produced the Project Information, or permit that party to associate in the defense of that demand. Unless the demand has been timely limited, quashed or extended, the obligated party will thereafter be entitled to comply with such demand, request or court order to the extent required by law. If requested by any other party(ies), the obligated party will cooperate (at the expense of the requesting other party(ies)) in the defense of a demand.

6. The parties recognize that serious injury could result to any party and its business if the other party breaches its obligations under this Agreement. Therefore, each party agrees that all parties will be entitled to seek a restraining order, injunction or other equitable relief if another party breaches its obligations under this Agreement, in addition to any other remedies and damages that would be available at law or equity.

Requesting entity:

	Date:
	Date:
	Date:

AGREED:

Members of Organizations/states involved in Assessment and other JRR functions

JRR participant

Outside participant

Date: _____

Date: _____

AFFIDAVIT

_____, being duly sworn, deposes and says:

1. I live at _____.
2. I am employed as (state position) _____ by (state name and address of employer) _____.
3. I am aware that the parties to.....have entered into a Confidentiality Agreement dated _____. I have received and read a copy of that Confidentiality Agreement.
4. I agree to review or otherwise use the material produced in the instant project by _____ only under supervision of a party's counsel and only in connection with this particular project.
5. I agree that I will be bound by the terms of the Confidentiality Agreement as though I were a participant in the project, and I will not disclose or discuss material produced by Participants or Representatives to or with any person other than to such material under the Confidentiality Agreement.

Dated: _____

Signature

Name (please print)

Sworn to and subscribed
this ____ day of _____, 20 ____

(Notary)

ANNEX 6

Suggested Draft Elements for a Status of Mission Agreement between Participants in a JRR Mission and a Requesting State

Suggested Draft Elements for a Status of Mission Agreement between Participants to a JRR Mission and a Requesting State

N.B. The Feasibility Study considers a number of alternative options for the way potential participants to JRR could cooperate and coordinate their activities, including their administrative and financial arrangements. As many of these options are mutually exclusive, it is not possible to prepare a ready-made SOMA without knowing which options parties may end up choosing. Therefore, the following document consists of the basic annotated “elements” that would be required in an SOMA between JRR participants sending experts on a particular deployment and the government of the requesting State. Where there are several options, they are presented as alternatives. Should a particular option or set of options be decided upon, these elements are designed to make the drafting of a SOMA easier.

1. Parties

WHEREAS the government of country x (hereinafter referred to as “the Requesting Government”) by a letter dated ... from the Minister of ... requested assistance in identifying, locating and preserving information concerning alleged crimes of (genocide, war crimes and crimes against humanity) that may have taken place in the country of x during time y from participants in the Justice Rapid Response Initiative (JRR), established pursuant to ... (MOU as fundamental document setting up JRR); and

WHEREAS the participants in JRR having received and considered said request, several of the participants in JRR namely ... (hereinafter collectively referred to as the “JRR Parties”) have agreed that as time is of the essence if information concerning alleged genocide, war crimes or crimes against humanity is to be identified, located and preserved, they would provide assistance pursuant to the request as hereby agreed according the terms of this Status of Mission Agreement;

Now THEREFORE the Requesting Government and the JRR Parties hereby agree as follows:

2. Use of Terms – (as needed) – for example:

- a). JRR Team – determine if international experts only, or also local staff. Local staff is not the same as local counterparts who should not be part of the JRR team;

3. Parameters – The JRR parties and the requesting government agree that:

- a). The temporal scope of the work of the JRR team shall be ...
- b). The geographic scope of the work of the JRR team shall be ...
- c). The duration of the mission involving the presence of the JRR team in country x shall be ...
- d). The number of international experts on the JRR team shall be ...
- e). The JRR team shall be able to employ a sufficient number of nationals of country x to fulfill the following positions ...
- f). Etc.

4. Payment – The JRR parties and the requesting government agree that expenses related to the work of the JRR team shall be borne as follows:

- a). The requesting government shall bear all costs related to the work of the JRR team; or ...
- b). The JRR parties will cover all the costs associated with the work of the JRR team; or ...
- c). The costs of the work of the JRR team shall be shared between the requesting government and the JRR parties in the following manner ...

5. Application of Conventions – (As notes in Article 6, either the relevant provisions of the Convention on Privileges and Immunities of the United Nations, or preferably the much more recent Agreement on the Privileges and Immunities of the International Criminal Court that protect the person, status, private and professional goods, movement, etc of JRR team members has to be incorporation by reference, or preferably spelled out. In order to ensure its application, the “application” of the relevant Convention should be noted.)

6. Privileges & Immunities Coverage – (In addition to indicating the application of the preferred P&I Convention, the following specific items should be spelled out regarding the P&I protection for the JRR team):

- a). Immunity of the team, its property and assets;

- b). Inviolability of archives and documents;
- c). Exemption from taxes, duties and import/export restrictions;
- d). Freedom from currency restrictions;
- e). Facilities in respect of communications.
- f). International members of the JRR team shall enjoy the privileges and immunities necessary or the independent performance of their functions including:
 - i). Immunity from arrest, detention or seizure of baggage;
 - ii). Immunity from every kind of legal process (see Article 12);
 - iii). Inviolability of personal and professional documents in whatever form and materials;
 - iv). Exemption from all forms of personal and income taxation;
 - v). Exemption from immigration restrictions and alien registration;
 - vi). Exemption from inspection of personal baggage (with limits);
 - vii). Exemption from currency restrictions to the same extent as are members of diplomatic missions;
 - viii). Same repatriation privileges in times of crisis as re granted to members of diplomatic missions;
 - ix). Etc.

7. **Mutual respect** - JRR team shall respect all local laws and regulations (JRR tem leader to ensure), while the requesting government shall respect the exclusively international nature of the JRR team.

8. Requesting government agrees to provide the following:

- a). Logistical support to the extent of ... (office-space, telecommunications connections, vehicles (as appropriate), transportation in the country, etc);
- b). An agreed number of local counterparts with specified background in police, investigations, criminal justice, military law etc.;
- c). Security to the extent of ... (personnel, vehicle, information etc);
- d). Secure facilities for the JRR team consisting of ... (in the alternative, facilities which the JRR security specialist agrees can be made sufficiently secure);
- e). Secure storage facilities for the information collected and preserved by the JRR team on the premises, or under the sole control of the JRR team. Such facilities are to include appropriate refrigeration, climate control etc.

9. Requesting government agrees to ensure the following:

- a). Free and unhindered movement of the JRR team throughout the country;
- b). Free and unhindered use of communications and telecommunications equipment and channels;
- c). Cooperation by government officials in providing access to information requested by the JRR team in pursuance of its inquiry;
- d). The duty free import and export of all goods and equipment belonging to the JRR team or team members;
- e). The uncensored ability for the JRR to disseminate public information concerning the nature of its work in the country.

10. Requesting government agrees to accept:

- a). All permits, licenses and identification provided by JRR team members;
- b). The presence of appropriately armed security as part of the JRR team (as necessary and as previously agreed).

11. Requesting government and the JRR participants agree that the following provisions shall govern the information collected and preserved by the JRR team (hereafter referred to as “documentation”)

- a). The documentation shall be turned over by the JRR team when the government enters into an arrangement with the ICC (or another IJI) for the joint establishment of an accountability mechanism. The documentation shall given directly to the joint accountability mechanism; – or –
- b). The documentation shall be released to the government, save and except that such part of the information that identifies the sources of information shall be safeguarded in accordance with international rules of witness protection. When an accountability mechanism is established by the government according to international standards of justice and fairness, the safeguarded information shall be turned over to that part of the accountability mechanism responsible for witness protection issues;
- c). The documentation shall be turned over to an accountability mechanism constituted according to international standards of justice and fairness;

- d). One copy of the documentation shall remain with the JRR team to be kept safe by either the JRR participant that is providing the team leader, or the JRR secretariat. Said documentation shall be kept confidential until the final disposition of all accountability mechanisms concerning the situation investigated by the JRR.

12. Requesting government agrees that:

- a). All JRR team members shall be held immune and safe from legal process for words spoken or written, and all acts performed by them in their official capacity. Such immunity shall continue after the end of the JRR mission;
- b). JRR participants signatory to this SOMA agree to exercise jurisdiction with respect to crimes and offences that may have been committed by JRR experts during the term of the JRR deployment;
- c). In case of civil proceedings against a member of a JRR team, if the JRR team leader certifies that the action was within that team member's official duties, the proceedings shall be discontinued. In the absence of such certification, the proceedings may continue.

13. Settlement of disputes – If the JRR team leader and the local counterpart cannot agree on a matter within a period of 10 working days, then upon five working days notice by either the requesting government or the JRR team the matter in dispute is automatically submitted for binding arbitration to

14. Supplemental arrangements - (if and as necessary).

15. Effective date - (should be prior to the deployment of the JRR team).

16. End of Agreement - (should not only be until the departure of the JRR team, but also needs to take into consideration the final disposition of the documentation collected, including any copies to be kept by the JRR team).