



**JUSTICE  
RAPID  
RESPONSE**

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BRUSSELS 2007

**JUSTICE RAPID RESPONSE  
GUIDELINES FOR COOPERATION AND DEPLOYMENT**

**AS AMENDED BY THE STEERING COMMITTEE MEETING OF  
6 JULY 2007**

## **General guidelines for Co-operation in the Justice Rapid Response (JRR) Mechanism**

*with comments in italics*

*General comment: These guidelines do not necessarily require any formal agreement to become operational, with the possible exception of paragraph 5. Some sort of political commitment seems to be required, though, in order to ascertain who is and who is not a part of the mechanism. However, if partners so prefer, a MoU could be envisaged.*

### 1) Scope and Functions

*This paragraph sets out the basic parameters of JRR, including its functions. Litera a) and b) explain that the purpose is not to provide the whole criminal justice chain, but just one particular facet, that is generally lacking at present. Litera c) clarifies that the JRR will work under the authority of the State or the International Institution that might ask for its assistance and that JRR will cooperate with other actors, such as the UN.*

- a) JRR participants will work toward coordinating their activities in order to be ready to respond quickly, in case of a favorable security and political climate, to a genuine request for support of a national or international accountability mechanism, primarily by the provision of expertise and/or resources in support of efforts to identify, collect and preserve information, especially that which is most likely to disappear, concerning alleged genocide, war crimes, and crimes against humanity.
- b) JRR teams may engage in various functions, including 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. If appropriate, a JRR mission or part of it may also assist in investigations and preparations of prosecution.
- c) JRR teams will act under the authority of the State or the International Institution that requests in its assistance. The sovereignty of the host state will be respected. They will, whenever feasible, coordinate their activities with those of other international and national actors.

### 2) Participation and partnership

*This paragraph sets out the basic conditions for participation in the JRR. The distinction between State Participant and Associate Participant in (a) has been deemed useful in order to provide states with ultimate control, in case that is felt important. The proposed “semi-dependent” position of non-governmental partners is due to the fact that participants will act in sensitive areas in which accountability is crucial, and it has been held that it is important that they act under the authority of a Participant, as explained in (a) (see also paragraph 4 (f) in the Basic Elements of the Procedure for the Deployment of a JRR Mission). (c)-(e) set out the formal conditions for actors other than states to participate; they should constitute no obstacle for those actors that have been involved in the process so far. Litera (b) provides a smorgasbord of options for actors that want to participate in JRR; the purpose is to provide several ways of contributing to JRR.*

a) States which take part in the JRR Mechanism shall be “State Participants” of JRR, while Intergovernmental Organizations shall have the status of “Associate Participants”. State Participants and Associate Participants shall collectively be known as “Participants”. Non-governmental Partners are being linked to the JRR Mechanism by agreement of Participants and shall, whenever they take part in JRR operations, do so under the authority of one or several Participant.

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b) States can participate by supplying one or more of the following categories of assistance:

- i) Putting a number of experts on a roster for deployment
- ii) Paying the costs for deployment of own experts
- iii) Paying the costs for deployment of experts from other Participants
- iv) Paying the costs for training of own experts
- v) Paying the costs for training of experts from other Participants
- vi) Contribute to the costs of the administration of the JRR, by funding or in kind
- vii) Contribute to other common costs or otherwise make valuable contributions to the activities of the JRR.

*Note: The last few words of b) vii) intend to convey that participants could also provide assistance in kind. The wording could surely be improved.*

c) Associate Participants shall have the opportunity for active participation and full consultation, as set out in this document and other relevant documents. In order to become an Associate Participant, 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 Participants exceed that of the States Participants of JRR.

d) Associate Participants shall contribute to the work of JRR the same way as States Participants.

e) Non-Governmental Partners may contribute to the work of JRR the same way as States Participants or by other appropriate means, such as consultancy. Non-

Governmental Partners have to be properly constituted with defined rules, and have a functional and professional role relevant to the work of JRR.

### 3) Organization

*The purpose of this paragraph – and in particular (a) and (c) -- is to guarantee that the JRR will not be a heavy mechanism. The decision on how to deal with necessary secretarial functions is deferred in this draft. That could be changed, of course, if a lean, effective and acceptable solution were to appear soon.*

- a) The organization of this initiative shall commence incrementally, as agreed by Participants.
- b) The JRR Mechanism may be administered by a Secretariat or by an existing institution, as decided by the Participants.
- c) The JRR Mechanism shall not have legal personality.

### 4) Decision Making

*This paragraph assumes that some decisions might be of a more political and other decisions of a more practical nature. Due to the permanent representation with relevant people in NY, it has been assumed that NY might be a convenient place for the policy group to meet. The technical group, which might be involved in more in-depth discussions on technical issues, such as criteria for the rosters, might meet more often in the start-up phase, and perhaps with more representation from capitals.*

- a) Participants may meet in two formations, the permanent Policy Group and the ~~Co-~~ordinating Group. The Policy Group shall meet at least once a year, usually in New York, to review the activities of the mechanism, take necessary procedural decisions and deal with other appropriate matters. The ~~Co-~~ordinating Group will meet as often as necessary. Chairmanship in the Groups will rotate annually according to a schedule determined by the Policy Group. Decisions may be taken *per capsulam* through focal points of Participants.  
*A focal point could be a person or a unit.*
- b) All decisions pertaining to general organizational and technical matters will be by consensus of all States Participants.
- c) All decisions pertaining to missions will be taken in accordance with The Guidelines for the Deployment of a JRR Mission

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- 5) The JRR Mechanism and JRR activities shall be financed on a voluntary basis. Financing of the administration of the JRR Mechanism and other common costs shall be decided by the Policy group on behalf of Participants at the basis of available funds.<sup>1</sup> The Participants may decide to set up one or more funds for the financing of the Secretariat and other costs associated with regular or ad hoc JRR activities. Any necessary financial regulations may be decided by the Participants.<sup>2</sup>

*Obviously, this is one of the more difficult issues, and an issue that might require a more formal arrangement over time. It is not envisaged that the permanent costs will be very high, but there will need to be stability in the funding. Perhaps the JRR mechanism could live with ad hoc donations from the “most interested participants” during the first few years, but ultimately there would need to be a sustainable way of distributing the burden between those partners who chose to participate by funding the permanent costs.*

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<sup>1</sup> In order to make this practical, the contributors to the common costs will have to make pledges at or in advance of that meeting at which the budget is decided.

<sup>2</sup> Such a document would probably have to be in legally binding form.

## **Guidelines for the Deployment of a Justice Rapid Response (JRR) Mission *with comments in italics***

*As is the case for the General Guidelines for co-operation, these guidelines for the deployment of a JRR mission are drafted with the intention of not necessarily requiring a legally binding agreement. Nevertheless, it has to be acknowledged that there is probably a positive relation between the amount of formalization and the speed at which the mechanism can be put in place when it is called for in a concrete situation. To take the most important example, the issues of responsibility, liability and criminal accountability covered in paragraph 4 will probably have to be dealt with at some stage, and it is likely that it is better to deal with them well before any operation is put in place. Nevertheless, one could also decide to adopt the guidelines as they are now, start work on other technical issues -- like roster, training, etc -- and deal with the strictly legal issues in paragraph 4 in parallel with this technical work, rather than to wait for the legal issues to be settled before the other work is being undertaken.*

### 1) General

*Paragraph 1 sets out the basic parameters, namely that any decision has to be made by each Participant for itself (which follows from the lean basic concept of JRR) and that such a decision has to be taken after a comprehensive assessment, in order to ascertain whether the mission is appropriate and “doable”. The concept of consultation here suggests that a Participant that wants to take part in a mission should take some account of the view of others, including any negative view of the request (for instance that the request is not made bona fide).*

Any decision pertaining to a request for JRR assistance shall be taken after a comprehensive assessment with recommendations has been circulated to all States Participants and Associate Participants. A decision to offer expertise and/or other resources for a JRR deployment shall be made by each Participant for itself<sup>3</sup> in consultation with other Participants.<sup>4</sup>

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<sup>3</sup> This means that it is up to the willing participants to say “yes”, and that they cannot be prevented from doing so by others.

<sup>4</sup> I have made minor changes in the last two lines by changing to capital P’s and by deleting the word “interested”.

## 2) Procedure

*Paragraph 2 explains the procedure in detail from the reception of a request – which may be made to any participant – to the deployment of the mission. The lead may be taken either by the receiving participant or by a lead participant, if one has been designated (a). If there is a Secretariat, it will obviously do much if not most of the administrative work, but it will be a participant that has responsibility for the diplomatic contacts with the requesting state. As quickly as possible the request will be distributed to the other participants, and the time-frame for their response might be quite short, depending on the circumstances (b)-(c). At this stage, participants – and in particular the receiving participant – will make a preliminary assessment, including as to whether the request is genuine (d). If there is sufficient interest among participants to warrant further steps, an assessment mission will be deployed (e), and based upon the findings of that mission, the organization of the JRR mission will be done (f)-(g). The issue will be discussed by the Policy Group, but the draft guidelines leave open the question whether the individual participants or the Policy Group will take the decision.*

- a) A request for a JRR mission may be received by any Participant. Unless otherwise agreed, for example by the selection of a Lead State, the receiving Participant will be responsible for diplomatic contacts with the requesting entity. If an administrative mechanism (such as a Secretariat) has been set up, that mechanism will assist and advise the Receiving Participant or the Lead State, as the case may be, in accordance with terms to be established at such time.
- b) The request shall immediately be transmitted, together with any relevant information, to the other Participants, who will be invited to respond within an appropriate period. The receiving Participant may also transmit a proposal as to future action, if appropriate and feasible, and indicate in which time-frame responses from other participants shall be given.
- c) Responses from other Participants shall indicate whether they are willing and able to participate in the requested JRR mission, as well as any other information or assessments which they might want to give.
- d) If the receiving Participant finds that there appears to be good reasons for preparing a JRR mission, and if it also finds that there is sufficient interest among other Participants to merit an indication that a JRR mission will be possible, the receiving Participant may proceed, including by enquiring whether any Participating State is willing to take the lead in an operation and making preliminary inquiries into a possible composition of a mission.

- e) Before a mission is finally organized and deployed, an assessment mission will be sent to the area in question. Such an assessment mission will be organised and deployed by the receiving Participant or the lead State after a consultation at short notice to other Participants. It will be composed of relevant experts and led by an experienced expert.
- f) After the assessment mission has been completed, the mission will submit a report including its assessment of the needs and possibilities for a JRR mission as well as a recommendation. This report will consider in detail the political, legal and security situation and whether the request was genuinely made. It will contain a draft SOMA and other instruments deemed necessary for the deployment of a JRR mission to be agreed upon with the requesting state or entity or amongst the latter. All of them will be ~~sent to the~~ distributed by the lead State or the receiving Participant, which will transmit it to all Participants, with a request for responses as to possible contributions. Based on these responses, the lead State or the receiving Participant will propose the conditions of deployment and organization of a JRR mission.
- g) ~~The proposal shall be submitted to all Participants. The lead State or the receiving Participant will convene a meeting of the Policy Group at the latest 10 working days after the report of the assessment mission was distributed to participants. Once it has been determined<sup>5</sup> that a request to deploy a JRR mission was genuinely made and that the political and security situation in the region warrant the deployment and the participants that have contributed personnel or other resources (“contributing states”) have agreed to the organization, the mission shall be deployed as soon as possible. In case an international organisation requested the deployment it will, if feasible and appropriate, integrate the mission in its own field mission whereby the JRR mission enjoys at least the same privileges and immunities as the main mission of the IO.~~
- h) Those participants which contribute to the JRR mission may at their discretion form:
  - i) A policy ad hoc committee which monitors the deployment of the JRR mission with regard to the political and security situation on the ground and decides on the further treatment of the findings of the JRR mission in close co-operation with the requesting state or entity. Non-contributing participants and partners may attend without participating in decision making which will be by consensus.

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<sup>5</sup> Such a determination could be made by consensus, by majority vote (for instance 3/4) or by each potential contributing state for itself. I have assumed the latter option.

- ii) A technical ad hoc committee which prepares and supervises the deployment of the JRR mission, decides on its format and funding etc.

### 3) Financing

*As a matter of principle, it will be the requesting state or international institution that will be responsible for the costs. However, it is envisaged that in particular a requesting state might not be in the position to cover the costs, and the guidelines provide various other ways for a mission to be financed.*

- a) States Participants agree that the entity requesting JRR assistance shall as a main rule be responsible for all costs directly associated with that assistance. In case the requesting entity is not able to cover the costs, Participants could cover the costs on a voluntary basis.<sup>6</sup>

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Such costs shall include, inter alia:

- i. Pre-deployment training;
  - ii. All travel costs;
  - iii. All costs associated with the experts (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. Standby costs such as medical evacuation.
- b) Each contributing 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.
  - c) A Participant who has not provided experts to a mission may contribute through a financial contribution.
  - d) States Participants may also agree to seek financial contributions from other actors, such as interested International Organizations.

### 4) Legal responsibility, liability and criminal accountability.

*The issues of responsibility and liability are potentially difficult. JRR missions will not have legal personality (b). The lead state will have overall responsibility (a), but will not have sole economic liability. Instead, the main principle is that each*

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<sup>6</sup> I have added this sentence to clarify that Participants understand that many requesting entities – in particular states from the developing world – might not be able to bear the costs of a JRR mission.

*participant shall be liable for the conduct of its own personnel (c), (d), but that difficulties of distributing liability should not provide an insurmountable bar to claims from third party victims of any wrongdoing (c). That is why we put joint liability as a rebuttable presumption. Litera (e) and (f) provide for individual accountability, which is important, since JRR missions will be involved in sensitive matters, ultimately pertaining to criminal justice. Lastly, the lead state shall enter into a SOMA agreement that provides for immunity, at least as far as accountability of JRR personnel is provided by the national jurisdiction of participants; the underlying idea is that JRR personnel should be protected from liability in a foreign and insecure jurisdiction, but that there should be no lacunas in accountability.*

*As mentioned, it is probably advisable to work out these issues in a binding general agreement between Participants. A binding form seems preferable, since this provision deals with legal issues. It also seems preferable to have a general agreement rather than ad hoc agreements for each mission, because otherwise it will be necessary to negotiate these matters every time a request is at hand. However, regardless of whether a legally binding general agreement is worked out eventually, this provision should still be included in the Guidelines. Please note that the guidelines are not legally binding, so it is **not** necessary to have a consensus on all of the details before the guidelines are adopted; that could be worked out later between legal experts.*

Issues of responsibility, liability and criminal accountability should be agreed upon before a mission is launched. The following principles may form the basis for such agreements.

- a) The Lead State will be responsible for the overall conduct of a JRR mission. The Lead State will also be responsible for the documents and the archives. In legal matters relating to a JRR mission, the Lead State will represent the mission.
- b) JRR missions will not have legal personality.
- c) When personal death or injury or material loss or damage arises from the activities of a JRR mission, the Participants shall be jointly and severally liable, provided that a Participant which establishes that no part or only a part of the damage results from its activities shall be liable in respect of that part only.
- d) Claims between the Participants for compensation for personal death or injury or for material loss or damage, caused by one Participant to another Participant in the performance of duty, will be settled in accordance with international law.

- e) Each Contributing Participant ensures that its experts are accountable under its domestic law for any wrongs committed and will exercise its authority concerning penalties, disciplinary measures and other sanctions or measures in accordance with its national criminal, disciplinary and procedural laws.
- f) In case an Associate Participant or a Non-Governmental Partner offers to contribute to a mission an expert who will perform tasks usually associated with the exercise of authority, such as direct handling of evidence, that offer may be accepted only on the condition that one of the States Participants which has jurisdiction accepts that person. In case of offers of experts with other tasks from an Associate Participant or a Non-Governmental Partner, it will be preferable but not necessary that that person is under the jurisdiction of a State Participant.
- g) The Lead Participant of a JRR Mission shall, on behalf of all other Contributing Participants, enter into a Status of Mission Agreement with the host state that protects the Mission and its experts. For experts in a JRR Mission that are covered by the jurisdiction of one or more State Participant, such an agreement shall provide for immunity from legal processes in respect of words spoken and all actions performed by them in their official capacity. For other experts, appropriate protection from legal processes shall be provided as agreed with the host state.<sup>7</sup>

*Note regarding participation from Associate Participants and Non-Governmental Partners: Provision 4 f) and g) provide that such individuals can handle evidence, etc, only if they come under the jurisdiction of a Participant (f). Such individuals are immune for acts in their official capacity (g), but on the other hand Participants agree to exercise jurisdiction over them (e). Individuals that do not handle evidence do not have to be covered by the jurisdiction of a Participant (f). This means that an individual from a non-participant may take part in a mission as an advisor. Such a person will not be covered by the jurisdiction of a Participant, and may therefore not be accountable. It is therefore open to agreement between the JRR and the host state whether such a person should be immune or not.*

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<sup>7</sup> The last sentence has been changed in order to clarify that the level of protection for this category will have to be agreed,