

Involvement of the Office of the Prosecutor of the International Criminal Court in JOINT INVESTIGATION TEAMS

A joint investigation team (JIT) is one of the most advanced tools used in international cooperation in criminal matters, comprising a legal agreement between competent authorities of two or more states for the purpose of carrying out criminal investigations. Made up of judicial and law enforcement authorities, JITs are established for a fixed period of time that is deemed necessary to reach successful conclusions to investigations.

Once a JIT has been set up, the JIT parties can directly exchange information and evidence, cooperate in real time and jointly carry out operational activities. Furthermore, JITs allow practitioners to be present during investigative measures in each other's territories. Direct contact and communication enable the JIT members to build personal relations and trust, leading to faster and more efficient cooperation.

Besides the JIT parties, the optional participation of 'officials of (other) bodies' is usually set out in the applicable instruments. Such optional participants include EU bodies, European Union Agency for Criminal Justice Cooperation (Eurojust) National Members, European Union Agency for Law Enforcement Cooperation (Europol) staff and European Anti-Fraud Office (OLAF) staff.

Parties vs Participants



In April 2022, for the first time, the Office of the Prosecutor of the International Criminal Court (ICC-OTP) was invited to participate in the JIT investigating alleged core international crimes committed in Ukraine.

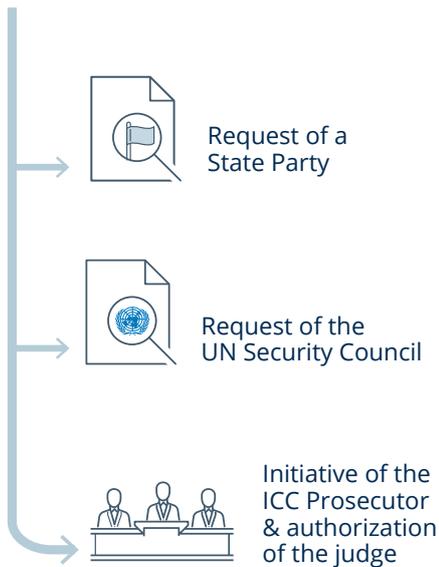
In line with its strategic goal to deepen engagement and cooperation with national authorities, the ICC-OTP intends to increase its involvement in JITs in the coming years, in order to add value to JITs investigating core international crimes and further accelerate its own lines of investigation.

✓ International Criminal Court, The Hague



The Office of the Prosecutor of the International Criminal Court

How can the ICC Prosecutor open investigations? Art 13 RS



Under its new strategic plan for 2023–2025, the ICC-OTP is taking a proactive approach to its engagement with national authorities, in a manner consistent with the spirit and provisions of the Rome Statute. This new approach is defined by placing emphasis not only on the judicial application of the principle of complementarity under Article 17 of the Rome Statute, but also through concerted efforts and cooperation to support national authorities in shouldering greater responsibility with respect to the investigation and prosecution of core international crimes.

The results of this approach have already been seen in the situations in Ukraine and Libya. Enhanced cooperation with national authorities within JITs established under the auspices of Eurojust, or joint teams under the legal framework of the United Nations Convention against Transnational Organized Crime (UNTOC), have led to concrete results both with respect to ICC investigations and in terms of direct assistance provided to national proceedings.

Governed by the Rome Statute of 17 July 1998 (the Rome Statute), the International Criminal Court (ICC) investigates and, where warranted, tries individuals charged with the gravest crimes of concern to the international community: genocide, war crimes, crimes against humanity and crimes of aggression. As a court of last resort, it seeks to complement, not replace, national courts.

The Office of the Prosecutor (ICC-OTP) is an independent organ of the ICC. It is responsible for examining situations under the jurisdiction of the court where these gravest crimes appear to have been committed, and carrying out investigations and prosecutions against the individuals who are allegedly most responsible for those crimes.

How does the ICC-OTP begin its operations?



- Crimes committed after 1 July 2002
- Crimes committed on territory of a State Party or by a national of a State Party
Does not apply in case of UNSC referral
- Crimes amount to war crimes, crimes against humanity or genocide
- Crimes are grave enough
- Crimes are not already genuinely tried at national level
- Crimes serves interests of justice

Legal basis for the ICC-OTP's involvement in a JIT

What is the legal basis for the ICC-OTP's involvement in a JIT?

The ICC is a permanent independent judicial body dealing with genocide, crimes against humanity, war crimes and crimes of aggression.

JITs are not mentioned in the Rome Statute; however, Part IX provides the legal basis for cooperation between the ICC-OTP and national authorities, allowing it to request and receive relevant information, while also providing a legal basis to provide assistance and information/evidence to national authorities upon their request. This part also represents the legal basis for the participation of the ICC-OTP in a JIT.

More specifically, this part empowers the ICC-OTP to make requests for cooperation addressed to states and outlines detailed rules with respect to the processing of these requests (Article 87). Furthermore, Article 93 lists the investigative measures that the ICC-OTP may request from states (e.g. taking evidence, including testimony; questioning of any person investigated; service of documents).

In addition, the court may, upon request, provide assistance to a state party conducting an investigation into or trial in respect of conduct which constitutes a crime within the jurisdiction of the court, or which constitutes a serious crime under the national law of the requesting state.

This assistance may include the transmission of statements, documents or other types of evidence obtained in the course of an investigation or a trial conducted by the court, or through the questioning of any person detained by order of the court. The court may, under certain conditions, grant a request for assistance under this paragraph from a state which is not a party to this statute (Article 93(10)). As outlined below, the ICC-OTP wishes to significantly expand the range of support that it provides to national authorities pursuant to this provision.

In what roles could the ICC-OTP be involved in a JIT?

The involvement of the ICC-OTP in JITs can occur in two forms: as a JIT 'party', or as a JIT 'participant'. The Rome Statute does not include explicit rules that determine the status of the ICC-OTP in a JIT, nor do the provisions of Article 13 of the Convention on Mutual Assistance in Criminal Matters (MLA 2000 Convention) and Article 20 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.

Therefore, a JIT agreement would need to determine the ICC-OTP's role, in particular taking into account the national legislation of the involved countries and the operational needs of the JIT.

Indeed, some domestic laws include the possibility to set up a JIT exclusively with another state, or would require a dedicated legal basis for the participation of a non-state party (e.g. Article 13 of the MLA 2000 Convention or Article 20 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters).

Should the ICC-OTP be invited as a 'party' or as a 'participant' in a JIT, its position would need to be clarified in detail in the JIT agreement with the specification of its role and eventual access to the evidence gathered, as was the case for the JIT with Ukraine.

While the JITs legal framework allows for 'other persons than representatives of competent authorities of the parties setting up a JIT' to take part in the activities of the team, the rights of the JIT parties shall not apply to these persons unless the agreement expressly states otherwise. Thus if the ICC-OTP engages in a JIT as a participant, the terms of reference of the JIT should make it clear that it is invited to engage in the work of the team.

The benefits of the ICC-OTP's involvement in a JIT



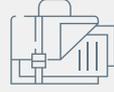
The participation of the ICC-OTP in a JIT can facilitate and accelerate the implementation of the cooperation framework set out in Part IX of the Rome Statute with respect to international cooperation and judicial assistance between the ICC-OTP and the JIT members. Inviting the ICC-OTP to participate in a JIT will ensure smooth coordination between investigations and prosecutions carried out by the JIT members and the ICC-OTP, in particular by exchanging relevant information and evidence in accordance with the applicable legal framework.



The ICC-OTP has extensive experience in investigating and prosecuting core international crimes and benefits from the services of approximately 380 dedicated staff members representing over 80 different nationalities, including members of the legal profession, investigators and analysts, psychosocial experts, individuals with experience in diplomacy and international relations, public information and communication, and more. Furthermore, the ICC-OTP has developed close partnerships with civil society and affected communities which may be of value to JIT parties. The Office is presently expanding its field presence through the opening of a number of new field offices, including in Colombia, Libya, Ukraine and Venezuela.



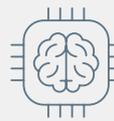
Increased field presence of the ICC-OTP in situation countries will lead to greater efficiency in identifying and collecting information and evidence in a timely and comprehensive manner. This, including unique aspects of contextual evidence, is expected to further expand and diversify the ICC-OTP's evidentiary holdings and enable the ICC-OTP to feed into non-EU country included JIT partners prosecutions that may otherwise find such data inaccessible.



All of these means allow the ICC-OTP to gather evidence efficiently and make relevant contributions to JITs.



In addition, thanks to the harnessing of new technologies (i.e. artificial intelligence (AI), machine learning systems, and advanced systems with facial detection and object detection), the ICC-OTP has recently significantly strengthened its capacity to share, exchange information and evidence and respond to requests from the JIT members.



Through the use of AI and machine learning tools, the ICC-OTP is developing its capacity to mass transcribe and translate text from video and audio files collected pursuant to its investigative activities. This step is revolutionising the ability of the office to draw on such data, removing the need for investigators and analysts to conduct in-depth reviews of all such files; and instead allowing staff to target searches on videos containing references to specific individuals, locations or other keywords. For more information, please see [this video](#).



This increased ability will bring to triaging and identifying key material amidst increasingly large digital data sets and in turn presents a significant opportunity for the office to enhance its contribution to domestic prosecutions and investigations.

Steps to follow to involve the ICC-OTP in a JIT



STEP 1 – Contact the ICC-OTP

- ✓ Contact the ICC-OTP with a dedicated address for cooperation: OTP Judicial Cooperation OTPJudicialCooperation@icc-cpi.int

STEP 2 – Legal framework discussions

- ✓ Discussions and check of the applicable legal framework between the OTP-ICC and the JIT parties



STEP 3 – Negotiation phase

- ✓ Negotiation of the JIT agreement between the different parties

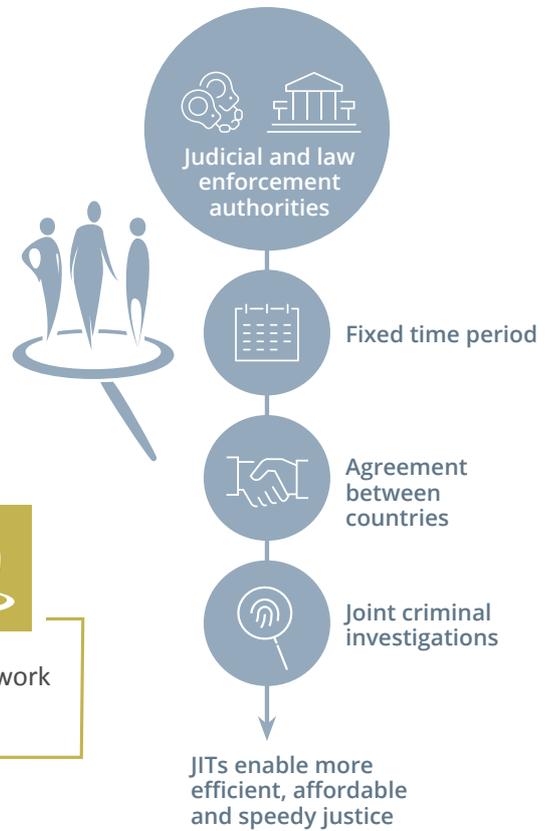
STEP 4 - JIT agreement signature

- ✓ Signature of the JIT agreement with the ICC-OTP as a participant or a party, depending on the legislation and the needs of the JIT parties



STEP 5 – Support of Eurojust

- ✓ Consider the support of Eurojust in the whole process of involvement



Eurojust support provided to a JIT with the ICC-OTP's involvement

As for any other JIT, Eurojust provides support with the involvement of the ICC-OTP based on its general mission and objectives as enshrined in the Eurojust regulation.

During the set-up phase, when the involvement of the ICC-OTP in a JIT is considered, Eurojust may organise a coordination meeting between the states involved, with the participation of the ICC-OTP. Besides the usual goals of such a meeting (i.e. agreement on mutual cooperation and/or coordination of investigations and prosecutions), legal and practical questions of ICC-OTP involvement can be discussed amongst the JIT parties and resolved with the support of Eurojust. For the purpose of this discussion, a specific legal note, JIT agreement or its amendment(s) can be drafted by Eurojust.

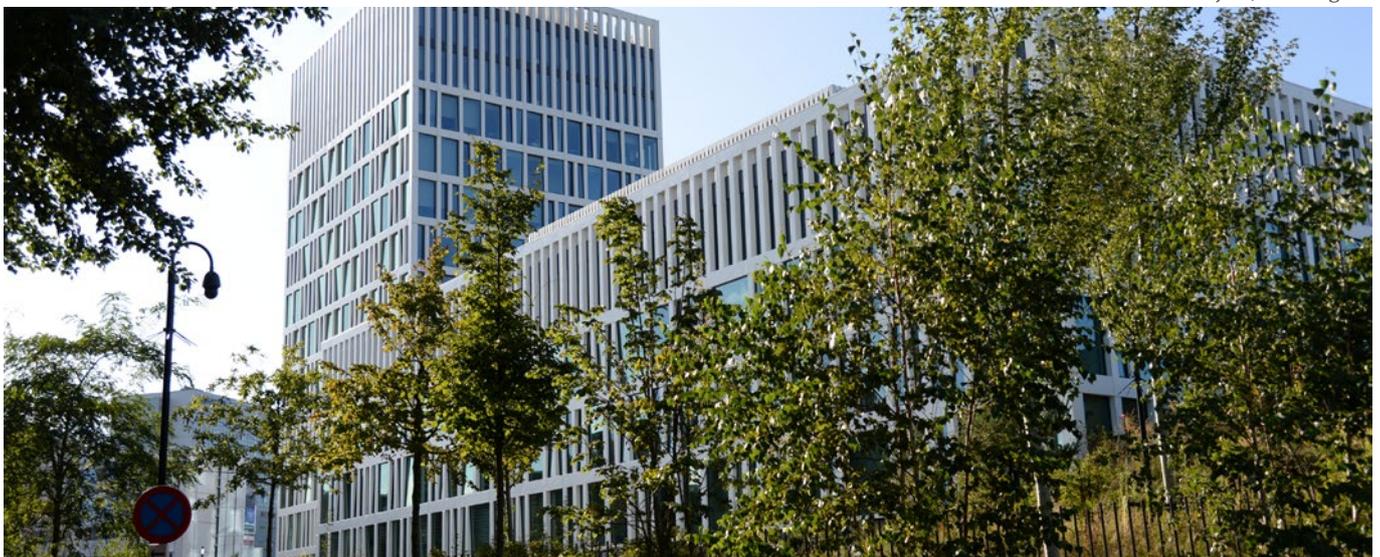
In the operational stage, Eurojust can help with the coordination of investigative and prosecutorial strategies of the JIT, the identification and solution of JIT-related issues, such as JIT extension to new parties, disclosure arrangements, anticipation of admissibility rules related to securing the gathering of evidence, conditions of involvement of seconded members to the JIT, etc. Eurojust can also provide financial support for the cross-border activities of a JIT via the Eurojust JITs Funding Programme.

Should the JIT with the ICC-OTP come to a point when a joint operation is needed, in addition to organising the coordination meeting, Eurojust can support the JIT by organising and hosting a coordination centre, also with the participation of ICC-OTP representatives. The centre acts as central information hub in which joint operations are constantly monitored and coordinated, with all stakeholders being in direct and immediate contact with each other.

Once the JIT has reached its goals and finalised its activities, the involved authorities (possibly including the ICC-OTP) are encouraged to evaluate its performance and activities. For this purpose, Eurojust can organise JIT evaluation meetings.



✓ Eurojust, The Hague



JITs Network Secretariat support provided to JITs with the ICC- OTP's involvement, and in core international crimes

The EU Network of National Experts on JITs (the JITs Network) was established in 2005 to promote the use of JITs by practitioners. Each Member State has by now appointed one or more JIT National Experts who represent both the judicial (judges, prosecutors, ministries of justice) and law enforcement (police officers, ministries of interior) dimensions of a JIT. At national level, the Experts act as contact points that practitioners willing to set up a JIT can address for advice. As members of the JITs Network, they have expertise in the functioning of JITs in their Member State, and have access to information concerning the practicalities of JITs with other Member States.

Hosted by Eurojust since 2011, the JITs Network Secretariat (JNS) promotes, supports and stimulates the activities of the JITs Network.

JITs investigating core international crimes can rely on Eurojust's and the JNS's legal, analytical, financial, logistical, administrative and operational support. The JNS can play an active role in supporting the JIT, including in the preparation of the JIT agreement and its appendix on cooperation with the ICC, and by assisting the JIT parties with a range of legal and practical issues.

The JNS also provides the JIT with financial support and equipment so that JIT parties can communicate securely. To respond to the JIT's specific needs, the JNS can ensure agile support through its standard and urgent funding procedures.

In October 2022, the JNS hosted its 18th Annual Meeting to discuss the use of JITs to support investigations into core international crimes and the benefits of ICC-OTP's involvement in such JITs. The discussion took place in the context of the ICC-OTP's having joined the JIT investigating alleged core international crimes committed in Ukraine as a participant in April. Furthermore, in April 2023, the JNS received an official request from the ICC-OTP to become an associate partner to the JITs Network. By 15 July 2023, the JITs Network agreed to grant the ICC-OTP the status of associate partner.

The JITs Network, together with the JNS and with support from Eurojust and Europol, has developed a number of tools to encourage the use of JITs by national practitioners, facilitate their setting up and contribute to the sharing of lessons learned and best practices. These tools include the following:



- ▶ The **JIT model agreement** is available in all official EU languages and in an editable format. It facilitates the setting up of JITs by providing a 'guiding, non-binding template' that is routinely used when setting up a JIT.



- ▶ To facilitate the setting up of JITs involving non-EU countries, **Guidelines on Joint Investigation Teams Involving Third Countries** are available, along with a **checklist for practitioners**. The checklist outlines the steps to be taken into account during the set-up and operational phases of a JIT involving non-EU countries and is available in all EU languages.



- ▶ Based on the findings from JIT evaluations, the JITs Network Secretariat published several **JIT evaluation reports**.



- ▶ The **JITs Restricted Area** contains a range of JIT-related resources and tools. It is accessible upon request and offers access to, for example:
 - ▶ a list of JIT contact points from EU Member States, observer states, EU organisations and associate partners;
 - ▶ summaries of national legislation on JITs for each Member State, or Fiches Espagnoles.



- ▶ As part of its efforts to facilitate the use of JITs, Eurojust provides financial support to their cross-border activities. The **JITs funding** section on the Eurojust website offers direct access to the open call for proposals, and to all information applicable to the Eurojust JITs funding programme.



The JITs Network

The **Network of National Experts on Joint Investigation Teams (JITs Network)** was established in 2005 to facilitate the work of practitioners, as well as to encourage the use of JITs and contribute to the sharing of experience and best practice in using this tool.

Each Member State appoints one or more national experts to the Network, which represents the judicial (prosecutors, judges, Ministries of Justice) and law enforcement (police officers, Ministries of Interior) dimensions of a JIT. At a national level, the experts act as 'contact points' whom practitioners wishing to set up a JIT can address. As members of the Network, they have expertise in the functioning of JITs in their country and have access to information concerning the practicalities of JITs with other Member States. Institutional bodies such as Eurojust, Europol, OLAF, the European Commission and the Council of the EU have also appointed contact points to the JITs Network.

Since 2005, the JITs Network Secretariat has organised annual meetings of the JITs Network with support from Eurojust and Europol. The meetings provide a forum for the Member States and relevant EU institutions to share experience and challenges and propose solutions from a practitioner's point of view.

The Secretariat

Hosted by Eurojust since 2011, the JITs Network Secretariat supports, promotes and stimulates the activities of the JITs Network. Since July 2013, the JITs Network Secretariat is also in charge of the management of Eurojust's JITs funding programme. The Secretariat makes a significant contribution to JIT training activities conducted – inside and outside the EU – in partnership with the European Police College (CEPOL), the Academy of European Law (ERA) and the European Judicial Training Network (EJTN).

JITs Network Secretariat

Eurojust, Johan de Wittlaan 9, 2517 JR The Hague, The Netherlands
+31 70 412 5000 • jitsnetworksecretariat@eurojust.europa.eu

www.eurojust.europa.eu

 twitter.com/eurojust

 [linkedin.com/company/eurojust/](https://www.linkedin.com/company/eurojust/)

 [youtube.com/eurojust](https://www.youtube.com/eurojust)

Printed by the Publications office of the European Union in Luxembourg
Luxembourg: Publications Office of the European Union, 2023

Print: ISBN 978-92-9404-163-0 doi: 10.2812/929110 QP-05-23-420-EN-C

PDF: ISBN 978-92-9404-162-3 doi: 10.2812/642871 QP-05-23-420-EN-N

