

**Note to the Under-Secretary-General for the Department of Peacekeeping Operations,
concerning Formed Police Units**

ARTICLE 105 OF THE CHARTER OF THE UNITED NATIONS—CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946—FORMED POLICE UNITS ENJOY THE STATUS OF “EXPERTS ON MISSION” WITH THE UNITED NATIONS EVEN WHEN PROVIDED TO THE ORGANIZATION PURSUANT TO AN AGREEMENT WITH THE CONTRIBUTING STATE—EXPERTS ON MISSION MAY NOT NECESSARILY HAVE A CONTRACT WITH OR BE REMUNERATED BY THE ORGANIZATION—THEIR STATUS DOES NOT DEPEND ON THEIR ADMINISTRATIVE POSITION BUT ON THE FACT THAT THEY PERFORM A MISSION FOR THE ORGANIZATION—*DIRECTIVES FOR DISCIPLINARY MATTERS INVOLVING CIVILIAN POLICE OFFICERS AND MILITARY OBSERVERS* CURRENTLY DO NOT APPLY TO MEMBERS OF FORMED POLICE UNITS—FORMED POLICE UNITS ARE SUBJECT TO THE CRIMINAL JURISDICTION OF THE HOST STATE WITH REGARD TO ACTS COMMITTED BY THEM OUTSIDE THE COURSE OF THEIR MISSIONS OR IF THE IMMUNITY THEY ENJOY IS WAIVED

I refer to your note to The Legal Counsel dated 21 September 2005, forwarding to us for review a draft Code Cable intended for despatch to all peacekeeping missions:

- advising them that, pending further instructions, the *Directives for Disciplinary Matters Involving Civilian Police Officers and Military Observers* issued on 1 July 2003 (ref. DPKO/CPD/DDCPO/2003/001; DPKO/MD/03/00994) are to be applied to members of Formed Police Units; and
- amending those *Directives* for that purpose.

We have recently received two further requests from your Department for our advice regarding the status of members of Formed Police Units (FPUs) and the disciplinary regime that is or should be applicable to them, specifically:

- a note addressed to [this office] by [Name 1] dated 16 September 2005 regarding the applicability to the members of FPUs of the *Directives for Disciplinary Matters Involving Civilian Police Officers and Military Observers* issued on 1 July 2003;
- a note from [Name 2] to The Legal Counsel dated 12 September 2005, *inter alia*, seeking confirmation that members of FPUs enjoy the status of experts on mission and clarification of the disciplinary regime that is applicable to such personnel.

Please find copies of these two notes attached.*

We have thought it advisable to gather together in one reply our advice on the common issues raised in those three notes.

Further to [Name 2]’s note of 12 September 2005, we can confirm that, for the purposes of Article 105 of the Charter of the United Nations and the 1946 Convention on the Privileges and Immunities of the United Nations,** members of FPUs have the status of experts performing missions for the United Nations (“experts on mission”). For the purposes of the Organization’s status-of-forces and status-of-mission agreements, they are, likewise,

* Not reproduced herein.

** United Nations, *Treaty Series*, vol. 1, p. 15 and vol. 90, p. 327 (corrigendum to vol. 1).

considered as “experts on mission within the meaning of article VI of the 1946 Convention” (see paragraph 26 of the Model Status of Forces Agreement (A/54/594, annex) and paragraph 28 of all recently concluded Status of Forces Agreements).

This continues to be the case, notwithstanding that the members of an FPU may be provided to the United Nations pursuant to a memorandum of understanding or agreement concluded by the Organization with the State that contributes them, notwithstanding that they may not individually sign any agreement, contract or undertaking with the Organization and notwithstanding that they may not directly receive any remuneration from the United Nations. As the International Court of Justice has observed, an expert on mission may or may not have a contract, and may or may not be remunerated. The essence of the matter lies not in their administrative position, but in the fact that they have been entrusted with, or are performing, a mission for the United Nations. Members of FPUs undoubtedly fall within this definition.

This position was reflected in [this Office]’s letter of 14 April 2004 to the Acting Chair of the Special Committee on Peacekeeping Operations. It was also specifically confirmed by a representative of this Office, as well as by the Civilian Police Adviser and the representatives of her Division, before the Special Committee earlier this year. It has, moreover, been repeatedly applied in practice – your Department seeking waivers of the immunity that members of FPUs enjoy as experts on mission for the United Nations and this Office executing such waivers on the Secretary-General’s behalf, in order that they might be subject to legal proceedings before local courts, particularly in [territory].

Turning to [Name 1]’s note of 16 September 2005, we can confirm that, as they currently stand, the *Directives for Disciplinary Matters Involving Civilian Police Officers and Military Observers* issued on 1 July 2003 do not in fact apply to members of FPUs. This is because members of FPUs are expressly excluded from the scope of those *Directives* by footnote 1.

However, further to your note of 21 September 2005, we concur, for the reasons above, that it would be fully appropriate to amend those *Directives* and to make them applicable to members of FPUs, as well as to other civilian police officers on assignment with the civilian police component of the Organization’s peacekeeping operations (with the exception of any who may have been appointed by the Secretary-General as staff members under the staff regulations established by the General Assembly).

We would note in this connection, *à propos* of [United Nations Mission]’s Code Cable N°. [...] of 2 September 2005, which was attached to [Name 1]’s note of 16 September 2005, that it certainly would *not* be appropriate to apply, or to continue to apply, to members of FPUs the *Directives for Disciplinary Matters Involving Military members of National Contingents* dated 1 July 2003 (ref. DPKO/MD/03/00993). In particular, members of FPUs are *not*, as supposed by those *Directives*, subject to the exclusive jurisdiction of the State contributing them in respect of any criminal offences that they might commit in the territory of the State hosting a peacekeeping mission. Rather, as is clear from what is said above, they are subject to the criminal jurisdiction of the host State:

- with regard to acts done by them otherwise than in the course of the performance of their missions; and
- with regard to acts done by them in the course of the performance of their

missions, if the Secretary-General decides to waive the immunity from legal process that they enjoy in respect of such acts.

[...]

We stand ready to assist your Department in addressing both these issues – which are, of course, closely interrelated.

3 October 2005